

IN THE MATTER OF :  
THE APPLICATION OF :  
ALVA HOOPENGARDNER, ET UX :  
FOR A SPECIAL EXCEPTION AND VARIANCE :  
ON PROPERTY LOCATED ON THE SOUTH :  
SIDE OF EDDLYNCH DRIVE, 510' EAST :  
OF CENTERLINE OF CHURCH ROAD :  
(7804 WISE AVENUE) :  
12th ELECTION DISTRICT :  
7th COUNCILMANIC DISTRICT :

BEFORE :  
COUNTY BOARD OF APPEALS :  
OF :  
BALTIMORE COUNTY :  
CASE NO. 89-159-SPHXA :

ORDER OF DISMISSAL

This case comes before the Board on appeal from a decision of the Zoning Commissioner granting the requested Petition with restrictions.

On August 15, 1989, the Board received a request for postponement from Petitioner's attorney. On August 17, the Board notified all parties that the request for continuance was denied.

On August 21, the Board had communication with Petitioner's attorney at which time he indicated that he intended to dismiss the appeal. On August 22, a hand-delivered letter to the Board indicated Mr. Mentzer's intention not to appear and to take whatever action the Board deemed appropriate. On August 21, 1989, the Board received a letter from Mrs. Ruth Endrich who was purported to be Mr. Mentzer's critical witness, said letter indicating that she would not attend nor testify at the hearing.

The Board called the case for hearing, scheduled for 10:00 a.m., at 10:40 a.m. with no one present in the hearing room. In view of the fact that Petitioner indicated through his attorney his intention to dismiss his appeal and that no one in favor of or against the Petitioner was present, the Board is of the opinion that the appeal should be dismissed and will so order.

Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

ORDER

It is therefore this 22nd day of August, 1989 by the County Board of Appeals of Baltimore County ORDERED that the appeal in Case No. 89-159-SPHXA be and the same is DISMISSED; and FURTHER ORDERED that the Zoning Commissioner's Order dated November 17, 1988 and Amended Order dated December 1, 1988 be and the same are AFFIRMED.

COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

IN RE: PETITIONS FOR SPECIAL HEARING, \* BEFORE THE  
SPECIAL EXCEPTION & VARIANCES \* ZONING COMMISSIONER  
S/S Eddlynych Drive, 510' E \* OF BALTIMORE COUNTY  
of the c/l of Church Road \* Case No. 89-159-SPHXA  
(7804 Wise Avenue) \*  
12th Election District \*  
7th Councilmanic District \*  
Alva Hoopengardner, et ux \*  
Petitioners \* . . . . .

AMENDED ORDER

WHEREAS, The Petitioners requested a special hearing to approve the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles, a special exception use Lots 1A and 2 of the subject property as a service garage, and variances to permit the outside storage of damaged and disabled vehicles on the lot to the rear of the subject property and to approve a modified plan exempting the Petitioners from the conditions set forth in Section 230.12.a of the Baltimore County Zoning Regulations (B.C.Z.R.) relative to the use of the subject property as a service garage without a principal building or containment;

WHEREAS, at the onset of the hearing held on October 26, 1988, Petitioner's Counsel withdrew the requested special exception for use of Lot 2 as a service garage;

WHEREAS, the decision rendered in this matter dated November 17, 1988 incorrectly stated that the special exception for a service garage operation on Lots 1A and 2 was granted;

IT IS THEREFORE ORDERED by the Zoning Commissioner for Baltimore County this 1st day of December, 1988 that the Order dated November 17, 1988 be and is hereby AMENDED to grant the following relief:

A special exception for a service garage operation on Lot 1A only, and the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles, in accor-

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Date 11/17/88  
By Betty Spickard

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By Betty Spickard

dance with Petitioner's Exhibit 1, which has been incorporated into the file; and,

IT IS FURTHER ORDERED that all other restrictions and conditions as set forth in the Order dated November 17, 1988 shall remain in full force and effect.

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

JRH:bjs

cc: Charles Mentzer, Esquire  
7902 Belair Road, Baltimore, Md. 21236

Dr. Dennis G. Foster  
7810 Wise Avenue, Baltimore, Md. 21222

People's Counsel

File

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21284  
TELEPHONE 587-3353

J. Robert Haines  
Zoning Commissioner

November 17, 1988

Charles Mentzer, Esquire  
7902 Belair Road  
Baltimore, Maryland 21236

RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCES  
S/S Eddlynych Drive, 510' E of the c/l of Church Road  
(7804 Wise Avenue)  
12th Election District - 7th Councilmanic District  
Alva Hoopengardner, et ux - Petitioners  
Case No. 89-159-SPHXA

Dear Mr. Mentzer:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Hearing and Special Exception have been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

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

JRH:bjs

cc: Dr. Dennis G. Foster  
7810 Wise Avenue  
Baltimore, Maryland 21222

People's Counsel

File

IN RE: PETITIONS FOR SPECIAL HEARING, \* BEFORE THE  
SPECIAL EXCEPTION & VARIANCES \* ZONING COMMISSIONER  
S/S Eddlynych Drive, 510' E \* OF BALTIMORE COUNTY  
of the c/l of Church Road \* Case No. 89-159-SPHXA  
(7804 Wise Avenue) \*  
12th Election District \*  
7th Councilmanic District \*  
Alva Hoopengardner, et ux \*  
Petitioners \* . . . . .

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the lot to the rear of the subject property for the storage of damaged and disabled motor vehicles; a special exception to use the subject property as a service garage; and variances to permit the outside storage of damaged and disabled vehicles on the lot to the rear of the subject property and to approve a modified plan exempting the Petitioners from the conditions set forth in Section 230.12.a of the Baltimore County Zoning Regulations (B.C.Z.R.) relative to the use of the subject property as a service garage without a principal building or containment, all as more particularly described on Petitioner's Exhibit 1.

The Petitioners appeared, testified, and were represented by Charles Mentzer, Esquire. Dr. & Mrs. Dennis G. Foster, adjoining land owners, appeared as interested parties.

At the onset of the hearing, Petitioners' Counsel withdrew the request for a Special Exception for use of the lot to the rear of the subject property, identified as "vacant, (Future D/D Vehicle Storage)" on Petitioner's Exhibit 1. He indicated that the Petitioners' plans to develop this portion of the property are consistent with the D.R. 5.5 regulations and stated the use of the property for the storage of damaged and disabled vehicles would cease immediately. Counsel stated that the re-

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quested Special Exception for a service garage on the front portion of the property would still be pursued.

For purposes of identification only, the subject property has been divided into three lots, namely Lots 1A, 1B and 2, and marked accordingly on Petitioner's Exhibit 1. Testimony indicated that the subject property, known as 7804 Wise Avenue, consists of 1.64 acres, of which 1.17 acres are zoned B.L.-C.N.S. and 0.47 Acres are zoned D.R. 5.5. Petitioners propose using Lot 1A, currently zoned B.L.-C.N.S., for the operation of a service garage, and further, request approval of the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles. Testimony and evidence were presented to support Petitioners' claim that a service garage operation has existed on Lot 1B since 1944. There was no testimony or evidence presented as to the requested variances.

Dr. Foster testified as to his objections to the originally requested special exception for Lot 2. He further testified he is concerned about the junk and debris along that boundary line between Lots 1A and 2, and along the fence line between his property and Petitioners' property and submitted several photographs, identified as Protestants Exhibit 1, in support of his claim. Dr. Foster testified he had no objection to the nonconforming use of Lot 1B as a storage area for disabled vehicles as he had no evidence that such use has not existed since prior to 1944. He indicated he was concerned about the appearance of the subject site and requested that all junk and debris be removed from the aforementioned boundary lines to reduce the adverse impact upon his property. Dr. Foster testified he does not want Petitioners' property to become a junk yard.

It should be noted that, as shown on the plat submitted, Lots 1A and 2 are located in the B.L.-C.N.S. zone. As a result of the comprehen-

sive rezoning process, Lot 2, in its entirety, has been rezoned D.R. 5.5, but will not become effective until approximately January 1989. Lot 1B has always been zoned D.R. 5.5 and is the lot for which the special hearing for the nonconforming use for the storage of damaged and disabled vehicles has been requested.

Petitioner's case was extremely confusing. The testimony and evidence presented at the hearing was disjointed and very difficult to follow in light of the Petitions filed. Further, there was no testimony or evidence presented whatsoever with respect to the variances requested. The decision rendered in this opinion is based on what I perceive to be what the Petitioner was requesting.

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

ORDER RECEIVED FOR FILING  
Date 11/17/88  
By Betty Spickard

WHEREFORE, Appellant prays:

- A. That this Honorable Court will grant a hearing in the above matter.
- B. That this Honorable Court grant additional discovery in the interest of justice.
- C. That this Honorable Court grant a jury trial.
- D. That this Honorable Court reverse the decision of the Administrative Agency.
- E. That this Honorable Court remand the decision of the Administrative Agency and order a further hearing.
- F. That the Petitioner be granted such other and further relief as the court deems appropriate

*Alva Hoopengardner*  
ALVA HOOPENGARDNER

*Charles Mentzer*  
CHARLES MENTZER  
7902 Belair Road  
Baltimore, Maryland 21236  
(301) 882-9595  
Attorney for Appellants

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO. 89-159-SPHXA

APPELLANT(S) ALVA HOOPENGARDNER et ux FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF EDDLYNCH DRIVE, 510' EAST OF CENTERLINE OF CHURCH ROAD 7804 WISE AVENUE 12th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT

APPELLEE(S) COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NUMBER. 89-159-SPHXA

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 1989, that a copy of the items listed below were hand-delivered or mailed, to the persons or parties named below as indicated:

- ITEMS DELIVERED:
- Appellant Alva Hoopengardner et ux's Order For Appeal
  - Appellant Alva Hoopengardner et ux's Petition in accordance with Maryland Rule 82(e)

ITEMS DELIVERED TO:

Phyllis Cole Friedman, ESQUIRE  
People's Counsel  
COUNTY OFFICE BUILDING, ROOM 304  
111 West Chesapeake Avenue  
Towson, Maryland 21204

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
COUNTY OFFICE BUILDING, ROOM 315  
111 West Chesapeake Avenue  
Towson, Maryland 21204  
Appellee

ITEMS MAILED TO:

Alva Hoopengardner et ux  
7804 Wise Avenue  
Baltimore, Maryland 21222  
Appellant

*Charles Mentzer*  
CHARLES MENTZER  
7902 Belair Road  
Baltimore, Maryland 21236  
(301) 882-9595  
Attorney for Appellant

Original to:

SUZANNE MENSCH, CLERK  
CIRCUIT COURT FOR BALTIMORE COUNTY  
P. O. Box 6754  
Towson, Maryland 21285-6754

County Board of Appeals of Baltimore County  
COUNTY OFFICE BUILDING  
111 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
(301) 494-0220 887-3180

HEARING ROOM - Room 301, County Office Building  
February 1, 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. 89-159-SPHXA ALVA HOOPENGARDNER, ET UX  
S/S Eddlynych Drive, 510' E of c/1 of Church Road (7804 Wise Avenue)  
12th Election District  
7th Councilmanic District  
SPH - Nonconforming use - storage damaged/disabled vehicles  
SE - Service Garage  
VAR - to permit outside storage of damaged/disabled vehicles; approve modified plan to exempt Petitioner from conditions of §230.12a BCZR  
11/17/88 -Z.C.'s Order -GRANTED w/restrictions  
12/01/88 -Z.C.'s Amended Order -GRANTED w/restrictions

ASSIGNED FOR: TUESDAY, MAY 9, 1989 at 11:00 a.m.

- cc: Charles Mentzer, Esquire Counsel for Appellants /Petitioners  
Mr. & Mrs. Alva Hoopengardner Appellants /Petitioners  
Dr. & Mrs. Dennis Foster  
Nicholas Commodari  
People's Counsel for Baltimore County  
P. David Fields  
Pat Keller  
J. Robert Haines  
Ann M. Nastarowicz  
James E. Dyer  
Docket Clerk -Zoning  
Arnold Jablon, County Attorney

Kathleen C. Weidenhammer  
Administrative Secretary

2/01/89 -Following notified of hearing set for Tues, May 9, 1989 at 11:00:

- C. Mentzer, Esq.
- M/M A. Hoopengardner
- Dr. & Mrs. D. Foster
- N. Commodari
- PC
- Fields
- Keller
- haines
- Nastarowicz
- Dyer
- Docket clk
- Jablon

5/10/89 -Above parties notified of Postponement and Reassignment to August 22, 1989 at 10:00 a.m.

8/17/89 -Letter received fr C. Mentzer, Counsel for Petitioner, requesting acceptance by Board of deposition of witness and/or continuance.

8/18/89 -Letter to Mr. Mentzer from WTH: continuance denied; case will proceed on 8/22/89 as scheduled; motions to be entertained at that time as appropriate.

Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3353  
J. Robert Haines  
Zoning Commissioner

December 28, 1988



Baltimore County Board of Appeals  
County Office Building, Room 315  
Towson, Maryland 21204

RE: Petitions for Special Hearing, Special Exception & Variance S/S Eddlynych Drive, 510' E of the c/1 of Church Road (7804 Wise Avenue) 12th Election District, 7th Councilmanic District ALVA HOOPENGARDNER, ET UX - Petitioners Case No. 89-159-SPHXA

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 15, 1988 by Charles Mentzer, 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,  
*J. Robert Haines*  
J. ROBERT HAINES  
Zoning Commissioner

JRH:cer

Enclosures

- cc: Mr. & Mrs. Alva Hoopengardner 7804 Wise Avenue, Baltimore, Md. 21222  
Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Md. 21236  
Dr. & Mrs. Dennis Foster, 7810 Wise Avenue, Baltimore, Md. 21222  
Nicholas Commodari, 3807 Bonview Avenue, Baltimore, Md. 21213  
People's Counsel, County Office Bldg., Towson, Md. 21204  
File ✓

APPEAL

Petitions for Special Hearing, Special Exception, & Variance S/S Eddlynych Drive, 510' E of the c/1 of Church Road (7804 Wise Avenue) 12th Election District - 7th Councilmanic District ALVA HOOPENGARDNER, ET UX - Petitioners Case No. 89-159-SPHXA

Petition for Special Hearing

Petition for Special Exception

Petition for Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

- Petitioner's Exhibits: 1. Plat to accompany Petitions  
2. Application for Towing Vehicle Operator's License  
3. Property Location Drawing

- Protestant's Exhibits: 1. Nine 3" x 5" photographs of location  
Zoning Commissioner's Order dated November 17, 1988 (Granted with restrictions)

Zoning Commissioner's Amended Order dated December 1, 1988

Notice of Appeal received December 15, 1988 from Charles Mentzer, Attorney on behalf of the Petitioners

- cc: Mr. & Mrs. Alva Hoopengardner 7804 Wise Avenue, Baltimore, Md. 21222  
Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Md. 21236  
Dr. & Mrs. Dennis Foster, 7810 Wise Avenue, Baltimore, Md. 21222  
Nicholas Commodari, 3807 Bonview Avenue, Baltimore, Md. 21213  
People's Counsel of Baltimore County Rm. 304, County Office Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
J. Robert Haines, Zoning Commissioner  
Ann M. Nastarowicz, Deputy Zoning Commissioner  
James E. Dyer, Zoning Supervisor  
Docket Clerk

IN RE: Petitions for Special Hearing \* BEFORE THE  
\* \* \* \* \*  
SPECIAL EXCEPTION & VARIANCES \* ZONING COMMISSIONER  
S/S Eddlynych Drive, 510' E \* OF BALTIMORE COUNTY  
of the c/1 of Church Road \* OF BALTIMORE COUNTY  
(7804 Wise Avenue) \*  
12th Election District \*  
7th Councilmanic District \*  
\* \* \* \* \*  
Alva Hoopengardner, et ux \*  
Petitioners \*  
\* \* \* \* \*

APPEAL

MR. CLERK:  
Please enter an appeal on behalf of the Petitioners, Alva Hoopengardner and Nadine Hoopengardner from the decision of Commissioner, J. Robert Haines on November 17, 1988

BALTIMORE COUNTY, MARYLAND No. 059874  
OFFICE OF FINANCE-REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

DATE 12-23-88 ACCOUNT 001-000-0176

AMOUNT \$ 250.00

RECEIVED FROM CHARLES MENTZER

FOR: ALVA HOOPENGARDNER ET UX

B C13\*\*\*\*280504 2211F

72ER  
Food  
Maryland 21236  
595  
Petitioners

RECEIVED  
5-88 (w-o-r)  
ING OFFICE

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: James E. Dyer  
Zoning Supervisor

DATE: September 9, 1988

FROM: James H. Thompson  
Zoning Enforcement Coordinator

RE: Item No. #32  
Petitioner: Hoopengardner

VIOLATION CASE # C-88-2144

LOCATION OF VIOLATION 7804 Wise Avenue

DEFENDANT Alva and Nadine Hoopengardner

ADDRESS 7804 Wise Avenue, Baltimore, Maryland 21222

Please be advised that the aforementioned petition is the subject of an active violation case. When the petition is scheduled for a public hearing, please notify the following persons:

NAME	ADDRESS
Dr. Dennis G. Foster	1007 Chestnut Ridge Lutherville, Maryland 21093

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

eoh/

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

J. Robert Haines  
Zoning Commissioner

Date: 10/21/88

Mr. & Mrs. Alva Hoopengardner  
7804 Wise Avenue  
Baltimore, Maryland 21222

Re: Petitions for Special Hearing, Special Exception, and Zoning Variance  
CASE NUMBER: 89-159-SPHX  
S/S Eddlych Drive, 510' c/l Church Road  
(7804 Wise Avenue)  
12th Election District - 7th Councilmanic  
Petitioner(s): Alva and Nadine Hoopengardner  
HEARING SCHEDULED: WEDNESDAY, OCTOBER 26, 1988 at 9:00 a.m.

Dear Mr. & Mrs. Hoopengardner:

Please be advised that \$53.63 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 Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before the hearing.

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

No. 059039

DATE: 10/14/88 ACCOUNT: R-01-615-000

AMOUNT: \$ 153.63

RECEIVED FROM: Alva & Nadine Hoopengardner

FOR: Posting and Advertising 10/26/88 Hearing 89-159-SPHX

VALIDATION OR SIGNATURE OF CASHIER

89-159-SPHX

Questionnaire (S) SIGN-IN SHEET

NAME: Dr. Dennis G. Foster  
ADDRESS: 7810 Wise Ave - 21222

89-159-SPHX

PLEASE PRINT CLEARLY PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Phyllis Cole Friedman	2804 Wise Ave
Nadine Hoopengardner	7804 Wise Avenue
DR. DENNIS G. FOSTER	3207 BROWN AVE 21213

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

J. Robert Haines  
Zoning Commissioner

September 20, 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:

Petitions for Special Hearing, Special Exception, and Zoning Variance  
CASE NUMBER: 89-159-SPHX  
S/S Eddlych Drive, 510' c/l Church Road  
(7804 Wise Avenue)  
12th Election District - 7th Councilmanic  
Petitioner(s): Alva and Nadine Hoopengardner  
HEARING SCHEDULED: WEDNESDAY, OCTOBER 26, 1988 at 9:00 a.m.

Special Exceptions: A service garage (storage of damaged and disabled motor vehicles). Special Hearing: To approve the storage of damaged and disabled motor vehicles on a lot at the rear of 7804 Wise Avenue, which is located on D.R.-5.5 zoned land, as a nonconforming use. Variance: To allow outside storage of damaged and disabled vehicles on a lot located at the rear of 7804 Wise Avenue to approve a modified plan exempting the petitioner from the conditions set forth in 230.12.2 (service garage) without principal building or containment.

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

cc: Mr. & Mrs. Hoopengardner  
Charles Mentzer, Esq.  
Dr. Dennis G. Foster  
File

RE: PETITION FOR SPECIAL EXCEPTION, BEFORE THE ZONING COMMISSIONER  
SPECIAL HEARING & VARIANCE OF BALTIMORE COUNTY  
S/S Eddlych Dr., 510' E c/l Church Rd. (7804 Wise Ave.)  
12th Election Dist.; 7th Councilmanic Dist.

Case No. 89-159-SPHX

HOOPENGARDNER, Alva & Nadine,  
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  
Deputy People's Counsel  
Room 304, County Office Building  
Towson, Maryland 21204  
494-2188

I HEREBY CERTIFY that on this 6th day of October, 1988, a copy of the foregoing Entry of Appearance was mailed to Charles Mentzer, Esquire, 7902 Belair Rd., Baltimore, MD 21236, Attorney for Petitioners.

Peter Max Zimmerman  
Peter Max Zimmerman

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
COUNTY OFFICE BUILDING  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

S/S EDDLYNCH DRIVE, 510' E of c/l of Church Road (7804 Wise Avenue) CASE NO: 89-159 SPHX  
12th Election District  
7th Councilmanic District

-vs-

ALVA HOOPENGARDNER, et ux (Petitioners)

SUBPOENA

TO: Ruth Endrich  
75 Milburn Circle  
Pasadena, Maryland 21122

YOU ARE HEREBY COMMANDED TO: Appear and produce documents at the County Board of Appeals of Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204 on Tuesday, August 22, 1989 at 10:00 a.m.

YOU ARE COMMANDED TO produce the following documents or objects: all records, reports, papers, charts, diagrams, plans, maps, etc. you may have pertaining to the above matter.

Subpoena requested by Petitioners and any questions should be referred to: Charles Mentzer, 7902 Belair Road, Baltimore, Maryland 21221 (301) 882-8995.  
Date Issued: 10/14/88  
Clerk: Linda Kueymant, Clerk of Appeals  
Signature and Seal

NOTICE: (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.  
(2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.  
(3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d).

SHERIFF'S RETURN

( ) Served and copy delivered on date indicated below.  
( ) Unserved, by reason of \_\_\_\_\_

Date: \_\_\_\_\_ Fee: \_\_\_\_\_ Sheriff: \_\_\_\_\_

Original and two copies needed for each witness

ALL IN A LEGAL MATTER  
OF THE COUNTY OF BALTIMORE

The Zoning Commission 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:

Special Exception: A service garage (storage of damaged and disabled motor vehicles). Special Hearing: To approve the storage of damaged and disabled motor vehicles on a lot at the rear of 7804 Wise Avenue, which is located on D.R.-5.5 zoned land, as a nonconforming use. Variance: To allow outside storage of damaged and disabled vehicles on a lot located at the rear of 7804 Wise Avenue to approve a modified plan exempting the petitioner from the conditions set forth in 230.12.2 (service garage) without principal building or containment.

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

**CERTIFICATE OF PUBLICATION**

TOWSON, MD., Oct. 13, 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 Oct. 6, 1988.

THE JEFFERSONIAN,  
S. Zebe Orlean  
Publisher

**CERTIFICATE OF PUBLICATION**

OFFICE OF  
Dundalk Eagle

4 N. Center Place  
P.O. Box 8936  
Dundalk, Md. 21222

October 6, 1988

THIS IS TO CERTIFY, that the annexed advertisement of J. Robert Haines in the matter of Zoning Hearings Case #89-159-SPHX - P.O. #05139 - Req. #M20337 - 116 lines @ \$58.00 was inserted in The Dundalk Eagle a weekly newspaper published in Baltimore County, Maryland, once a week for one successive weeks before the 7th day of October 1988; that is to say, the same was inserted in the issues of Oct. 6, 1988

Kimbel Publication, Inc.  
per Publisher.  
By K.C. Oller

**CERTIFICATE OF POSTING**

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 12th  
Posted for: Special Exception, Special Hearing & Variance Date of Posting: 10/14/88  
Petitioner: Alva & Nadine Hoopengardner  
Location of property: S/S Eddlych Drive, 510' E of Church Rd.  
7804 Wise Ave.  
Location of Sign: Eddlych Drive, 510' E of Church Rd.  
Remarks: No other signs were placed at the property.  
Posted by: M. Kueymant  
Number of Signs: 3  
Date of return: 10/17/88

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
 COUNTY OFFICE BUILDING  
 111 W. Chesapeake Avenue  
 Towson, Maryland 21204

S/S EDDLYNCH DRIVE, 510' E of c/1  
 of Church Road (7804 Wise Avenue)  
 12th Election District  
 7th Councilmanic District  
 -vs-  
 ALVA HOOPENGARDNER, et ux  
 (Petitioners)

CASE NO.: 89-159 SPHX

SUBPOENA  
 TO: Nicholas Comondari  
 3807 Bonview Avenue  
 Baltimore, Maryland 21213

YOU ARE HEREBY COMMANDED TO: Appear and produce documents at the County Board of Appeals of Baltimore County, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204 on Tuesday, August 22, 1989 at 10:00 a.m.

YOU ARE COMMANDED TO produce the following documents or objects: all records, reports, papers, charts, diagrams, plats, maps, etc. you may have pertaining to the above matter.

Subpoena requested by Petitioners and any questions should be referred to: Charles Mentzer, 7902 Belair Road, Baltimore, Maryland 21221 (301) 882-9595.

Date issued: 89 MAY 23 AM 11:47  
*Linda Lee M. Kusmaul*  
 Clerk Signature and Seal

NOTICE: (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.  
 (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.  
 (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d).

SHERIFF'S RETURN

( ) Served and copy delivered on date indicated below.  
 ( ) Unserved, by reason of:

Date: \_\_\_\_\_ Fee \$ \_\_\_\_\_ Sheriff

Original and two copies needed for each witness

RECEIVED  
 COUNTY BOARD OF APPEALS  
 89 MAY 23 AM 11:47

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
 COUNTY OFFICE BUILDING  
 111 West Chesapeake Avenue  
 Towson, Maryland 21204

S/S EDDLYNCH DRIVE, 500'E of c/1  
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Date: \_\_\_\_\_ Fee \$ \_\_\_\_\_ Sheriff

Original and two copies needed for each witness

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 89 MAY 23 AM 11:47

County Board of Appeals of Baltimore County  
 COUNTY OFFICE BUILDING  
 111 W. CHESAPEAKE AVENUE  
 TOWSON, MARYLAND 21204  
 (301) 882-9595 887-3180

HEARING ROOM - Room 301, County Office Building  
 February 1, 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. 89-159-SPHX  
 ALVA HOOPENGARDNER, ET UX  
 S/s Eddlynch Drive, 510' E of c/1 of Church Road (7804 Wise Avenue)  
 12th Election District  
 7th Councilmanic District  
 SPH - Nonconforming use - storage damaged/disabled vehicles;  
 SE - Service Garage  
 VAR - to permit outside storage of damaged/disabled vehicles; approve modified plan to exempt Petitioner from conditions of §230.12a BCZR  
 11/17/88 -Z.C.'s Order -GRANTED w/restrictions  
 12/01/88 -Z.C.'s Amended Order -GRANTED w/restrictions

ASSIGNED FOR: TUESDAY, MAY 9, 1989 at 11:00 a.m.

cc: Charles Mentzer, Esquire Counsel for Appellants /Petitioners  
 Mr. & Mrs. Alva Hoopengardner Appellants /Petitioners  
 Dr. & Mrs. Dennis Foster Appellants /Petitioners  
 Nicholas Comondari Appellants /Petitioners  
 People's Counsel for Baltimore County  
 P. David Fields  
 Pat Keller  
 J. Robert Haines  
 Ann M. Nastarowicz  
 James E. Dyer  
 Docket Clerk -Zoning  
 Arnold Jablon, County Attorney

Kathleen C. Weidenhammer  
 Administrative Secretary

County Board of Appeals of Baltimore County  
 COUNTY OFFICE BUILDING  
 111 W. CHESAPEAKE AVENUE  
 TOWSON, MARYLAND 21204  
 (301) 882-9595 887-3180

HEARING ROOM - Room 301, County Office Building  
 May 10, 1989  
 NOTICE OF POSTPONEMENT AND REASSIGNMENT

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. 89-159-SPHX  
 ALVA HOOPENGARDNER, ET UX  
 S/s Eddlynch Drive, 510' E of c/1 of Church Road (7804 Wise Avenue)  
 12th Election District  
 7th Councilmanic District  
 SPH - Nonconforming use - storage damaged/disabled vehicles;  
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 11/17/88 -Z.C.'s Order -GRANTED w/restrictions  
 12/01/88 -Z.C.'s Amended Order -GRANTED w/restrictions

which was scheduled for hearing on May 9, 1989 was postponed in open hearing and has been

REASSIGNED FOR: TUESDAY, AUGUST 22, 1989 at 10:00 a.m.

cc: Charles Mentzer, Esquire Counsel for Appellants/Petitioners  
 Mr. and Mrs. Alva Hoopengardner Appellants/Petitioners  
 Dr. & Mrs. Dennis Foster Appellants/Petitioners  
 Nicholas Comondari Appellants/Petitioners  
 People's Counsel for Baltimore County  
 P. David Fields  
 Pat Keller  
 J. Robert Haines  
 Ann M. Nastarowicz  
 James E. Dyer  
 Docket Clerk -Zoning  
 Arnold Jablon, County Attorney

Linda Lee M. Kusmaul  
 Legal Secretary

IN THE MATTER OF THE APPLICATION OF ALVA HOOPENGARDNER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF EDDLYNCH DRIVE, 510' EAST OF CENTERLINE OF CHURCH ROAD (7804 WISE AVENUE) 12th ELECTION DISTRICT 7th COUNCILMANIC DISTRICT

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
 BALTIMORE COUNTY  
 CASE NO. 89-159-SPHX

ORDER OF DISMISSAL

This case comes before the Board on appeal from a decision of the Zoning Commissioner granting the requested Petition with restrictions.

On August 15, 1989, the Board received a request for postponement from Petitioner's attorney. On August 17, the Board notified all parties that the request for continuance was denied.

On August 21, the Board had communication with Petitioner's attorney at which time he indicated that he intended to dismiss the appeal. On August 22, a hand-delivered letter to the Board indicated Mr. Mentzer's intention not to appear and to take whatever action the Board deemed appropriate.

On August 21, 1989, the Board received a letter from Mrs. Ruth Endrich who was purported to be Mr. Mentzer's critical witness, said letter indicating that she would not attend nor testify at the hearing.

The Board called the case for hearing, scheduled for 10:00 a.m., at 10:40 a.m. with no one present in the hearing room. In view of the fact that Petitioner indicated through his attorney his intention to dismiss his appeal and that no one in favor of or against the Petitioner was present, the Board is of the opinion that the appeal should be dismissed and will so order.

EXHIBIT NO. 1

Case No. 89-159-SPHX  
 Alva Hoopengardner, et ux

ORDER

It is therefore this 22nd day of August, 1989 by the County Board of Appeals of Baltimore County ORDERED that the appeal in Case No. 89-159-SPHX be and the same is DISMISSED; and FURTHER ORDERED that the Zoning Commissioner's Order dated November 17, 1983 and Amended Order dated December 1, 1988 be and the same are AFFIRMED.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

*William T. Hackett*  
 William T. Hackett, Chairman

IN RE: Petitions for Special Hearing \*  
 SPECIAL EXCEPTION & VARIANCES \*  
 S/S Eddlynch Drive, 510' E \*  
 of the c/1 of Church Road \*  
 (7804 Wise Avenue) \*  
 12th Election District \*  
 7th Councilmanic District \*  
 Alva Hoopengardner, et ux \*  
 Petitioners \*

APPEAL

MR. CLERK:  
 Please enter an appeal on behalf of the Petitioners, Alva Hoopengardner and Nadine Hoopengardner from the decision of Commissioner, J. Robert Haines on November 17, 1988

*Charles Mentzer*  
 CHARLES MENTZER  
 7902 Belair Road  
 Baltimore, Maryland 21236  
 (301) 882-9595  
 Attorney for Petitioners

RECEIVED  
 PAYMENT  
 12-15-88 (w-0-f)  
 ZONING OFFICE

RECEIVED  
 COUNTY BOARD OF APPEALS  
 89 JUN 26 AM 8:21  
 COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
 COUNTY OFFICE BUILDING  
 111 West Chesapeake Avenue  
 Towson, Maryland 21204

S/S EDDLYNCH DRIVE, 500'E of c/1  
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 12th Election District  
 7th Councilmanic District  
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Subpoena requested by Petitioners; and any questions should be referred to: Charles Mentzer, 7902 Belair Road, Baltimore, Maryland 21221 (301) 882-9595.

Date issued: 89 JUN 26 AM 8:21  
*Linda Lee M. Kusmaul*  
 Clerk Signature and Seal

NOTICE: (1) YOU ARE LIABLE TO BODY ATTACHMENT AND FINE FOR FAILURE TO OBEY THIS SUBPOENA.  
 (2) This subpoena shall remain in effect until you are granted leave to depart by the Court or by an officer acting on behalf of the Court.  
 (3) If this subpoena is for attendance at a deposition and the party served is an organization, notice is hereby given that the organization must designate a person to testify pursuant to Rule 2-412(d).

SHERIFF'S RETURN

( ) Served and copy delivered on date indicated below. 6-26-89  
 ( ) Unserved, by reason of:

Date: \_\_\_\_\_ Fee \$ \_\_\_\_\_ Sheriff

RECEIVED  
 COUNTY BOARD OF APPEALS  
 89 JUN 26 AM 8:21

2

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCES - S/S Edlynch Drive, 510' E of the C/I of Church Road (7804 Wise Avenue) 12th Election District 7th Councilmanic District

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 89-159-SPHXA

Alva Hoopengardner, et ux Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the lot to the rear of the subject property for the storage of damaged and disabled motor vehicles; a special exception to use the subject property as a service garage; and variances to permit the outside storage of damaged and disabled vehicles on the lot to the rear of the subject property and to approve a modified plan exempting the Petitioners from the conditions set forth in Section 230.12.a of the Baltimore County Zoning Regulations (B.C.Z.R.) relative to the use of the subject property as a service garage without a principal building or containment, all as more particularly described on Petitioner's Exhibit 1.

The Petitioners appeared, testified, and were represented by Charles Mentzer, Esquire. Dr. & Mrs. Dennis G. Foster, adjoining land owners, appeared as interested parties.

At the onset of the hearing, Petitioners' Counsel withdrew the request for a Special Exception for use of the lot to the rear of the subject property, identified as "Vacant, (Future D/D Vehicle Storage)" on Petitioner's Exhibit 1. He indicated that the Petitioners' plans to develop this portion of the property are consistent with the D.R. 5.5 regulations and stated the use of the property for the storage of damaged and disabled vehicles would cease immediately. Counsel stated that the re-

EXHIBIT NO. 2

quested Special Exception for a service garage on the front portion of the property would still be pursued.

For purposes of identification only, the subject property has been divided into three lots, namely Lots 1A, 1B and 2, and marked accordingly on Petitioner's Exhibit 1. Testimony indicated that the subject property, known as 7804 Wise Avenue, consists of 1.64 acres, of which 1.17 acres are zoned B.L.-C.N.S. and 0.47 Acres are zoned D.R. 5.5. Petitioners propose using Lot 1A, currently zoned B.L.-C.N.S., for the operation of a service garage, and further, request approval of the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles. Testimony and evidence were presented to support Petitioners' claim that a service garage operation has existed on Lot 1B since 1944. There was no testimony or evidence presented as to the requested variances.

Dr. Foster testified as to his objections to the originally requested special exception for Lot 2. He further testified he is concerned about the junk and debris along that boundary line between Lots 1A and 2, and along the fence line between his property and Petitioners' property and submitted several photographs, identified as Protestants Exhibit 1, in support of his claim. Dr. Foster testified he had no objection to the nonconforming use of Lot 1B as a storage area for disabled vehicles as he had no evidence that such use has not existed since prior to 1944. He indicated he was concerned about the appearance of the subject site and requested that all junk and debris be removed from the aforementioned boundary lines to reduce the adverse impact upon his property. Dr. Foster testified he does not want Petitioners' property to become a junk yard.

It should be noted that, as shown on the plat submitted, Lots 1A and 2 are located in the B.L.-C.N.S. zone. As a result of the comprehen-

-2-

sive rezoning process, Lot 2, in its entirety, has been rezoned D.R. 5.5, but will not become effective until approximately January 1989. Lot 1B has always been zoned D.R. 5.5 and is the lot for which the special hearing for the nonconforming use for the storage of damaged and disabled vehicles has been requested.

Petitioner's case was extremely confusing. The testimony and evidence presented at the hearing was disjointed and very difficult to follow in light of the Petitions filed. Further, there was no testimony or evidence presented whatsoever with respect to the variances requested. The decision rendered in this opinion is based on what I perceive to be what the Petitioner was requesting.

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978).

-3-

Those original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once within the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

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

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case

-4-

any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

Clearly, the use on Lot 1B existed before January 1, 1944. The evidence establishes this fact and there is no evidence to disprove the date. Lot 2 is not nonconforming because the storage of damaged vehicles began in 1986. No testimony was presented as to the nonconforming use of Lot 1A. The Petitioner's testimony concerning Lot 1A was in support of the request for a special exception only.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the non-con-

-5-

forming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered non-conforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d. 96 (1978).

When the claimed non-conforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the non-conforming use, the Zoning Commissioner should consider the following factors:

"(a) To what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;

(b) Is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original non-conforming use."

As to Lot 1B, the evidence is clear that the lot has always been used as a storage lot for damaged and disabled motor cars. The use has not changed since before zoning came into effect.

Turning to the issue of the special exception on Lot 1A, it is clear that the B.C.Z.R. permits the use proposed in a B.L.-C.N.S. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and

-6-

those agencies listed below, which are deemed by the Zoning Commissioner to have an appropriate interest in the individual case under consideration, or any other agency deemed by him to have a specific interest therein:

- 1) Department of Public Works
- 2) Buildings Engineer's Office
- 3) Bureau of Traffic Engineering
- 4) Fire Bureau
- 5) State Roads Commission;

d) That, at the time the Petition is heard, there is evidence of the probability of a reasonable public need for the proposed automotive-service station. The Zoning Commissioner shall consider that the presence of one abandoned service station within a one-half mile radius or two such stations within a one-mile radius of the site of the proposed service station establishes, absent evidence to the contrary, a prima facie presumption that there is no evidence of the probability of a reasonable public need for such proposed service station. The Zoning Commissioner may rebut this prima facie presumption by market data or other evidence submitted by the Petitioner.

It is clear from the testimony and evidence presented that the use of the subject property as an automotive service station will not create a traffic hazard or excessive traffic congestion, that its use will not adversely affect the general welfare or orderly development of the surrounding area, and that the use proposed meets the requirements of Section 405.3 of the B.C.Z.R. and all other requirements of the various Baltimore County agencies which may be required to review and comment on proposed uses of this nature. Further, it is clear the property's proposed use as an automotive service station meets a need in the community based on past experience and its present business.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

-8-

requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

Pursuant to Section 405.3 of the B.C.Z.R., the Zoning Commissioner shall make each of the findings set forth below before granting any special exception required to permit an automotive-service station:

a) That the proposed use will not create a traffic hazard or excessive traffic congestion because of its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern to and from such buildings, or by reason of its location on or near a vehicular way or pedestrian entrance or crossing to a school, park, playground, or hospital, or other place of public use or assembly;

b) That the use will not adversely affect the general welfare or orderly development of the general neighborhood or area in which the station is proposed, including nearby areas within adjacent political jurisdictions, considering the service required, availability or scarcity of land for other commercial uses, population, character, density, etc.;

c) That the Zoning Commissioner is satisfied that all requirements of this section and all other legal requirements of Baltimore County will be met in operating the proposed service station and that the plans for the use have been reviewed and commented upon by

-7-

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variances for Lot 1B were denied. There was no testimony presented by Petitioners in support of the requested variances. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. As indicated earlier, the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles has been established.

After reviewing all of the testimony and evidence presented, it appears that the special hearing and special exception should be granted with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing and special exception should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 17th day of November, 1988 that a special exception for

a service garage operation on Lots 1A and 2, and the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles, all in accordance with Petitioner's Exhibit 1, be approved, and as such the Petitions for Special Hearing and Special Exception be and are hereby GRANTED, subject, however to the following restrictions:

- 1) The 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) Petitioner shall submit to the Zoning Commissioner's Office by no later than March 1, 1989 a new site plan prepared by a registered professional engineer and/or land surveyor, which clearly identifies all buildings, their size and area dimensions, their exact location on the subject property, their distances from all property lines, and any other information as may be required to be a certified site plan.
- 3) The new site plan shall reflect the dimensions and depth of the current zoning line which divides Lots 1A and 1B, and shall incorporate the requirements of Section 405.4A and B.
- 4) Pursuant to Section 500.7 and 502.2, the Zoning Commissioner has the authority to require certain conditions be met in order to bring the property into compliance with the B.C.Z.R. Therefore, Petitioner shall provide landscaping and screening for Lot 1A as may be required by the Baltimore County Landscape Planner. A landscaping plan shall be developed and submitted to the Office of Current Planning and the Zoning Commissioner's Office for final approval by no later than February 10, 1989.
- 5) Petitioner shall comply with the requirements of Section 405.1A as to the operation of the service garage on Lot 1A.
- 6) There shall be no unlicensed, disabled vehicles stored on Lot 2. The Petitioner shall not store any unlicensed, disabled vehicles on Lots 1A and 1B for more than 180 days.
- 7) The service garage operation on Lot 1A shall be limited to those vehicles awaiting repair and/or ser-

vice in connection with such service garage operation or those vehicles being offered for sale as used cars.

- 8) No more than thirty (30) vehicles awaiting service and/or repair in connection with the service garage operation shall be stored on Lot 1B.
- 9) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

JRH:bjs

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

IN RE: PETITIONS FOR SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCES S/S Eddlynn Drive, 510' E of the c/l of Church Road (7804 Wise Avenue) 12th Election District 7th Councilmanic District  
Alva Hoopengardner, et ux  
Petitioners

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 89-159-SPHXA

AMENDED ORDER

WHEREAS, The Petitioners requested a special hearing to approve the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles, a special exception use Lots 1A and 2 of the subject property as a service garage, and variances to permit the outside storage of damaged and disabled vehicles on the lot to the rear of the subject property and to approve a modified plan exempting the Petitioners from the conditions set forth in Section 230.12.a of the Baltimore County Zoning Regulations (B.C.Z.R.) relative to the use of the subject property as a service garage without a principal building or containment;

WHEREAS, at the onset of the hearing held on October 26, 1988, Petitioner's Counsel withdrew the requested special exception for use of Lot 2 as a service garage;

WHEREAS, the decision rendered in this matter dated November 17, 1988 incorrectly stated that the special exception for a service garage operation on Lots 1A and 2 was granted;

IT IS THEREFORE ORDERED by the Zoning Commissioner for Baltimore County this 10th day of December, 1988 that the Order dated November 17, 1988 be and is hereby AMENDED to grant the following relief:

A special exception for a service garage operation on Lot 1A only, and the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles, in accor-

dance with Petitioner's Exhibit 1, which has been incorporated into the file; and,

IT IS FURTHER ORDERED that all other restrictions and conditions as set forth in the Order dated November 17, 1988 shall remain in full force and effect.

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

JRH:bjs  
cc: Charles Mentzer, Esquire  
7902 Belair Road, Baltimore, Md. 21236  
Dr. Dennis G. Foster  
7810 Wise Avenue, Baltimore, Md. 21222  
People's Counsel  
File

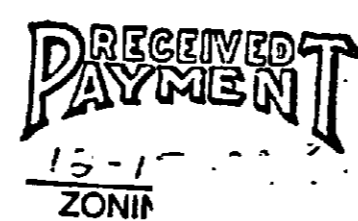
IN RE: Petitions for Special Hearing  
SPECIAL EXCEPTION & VARIANCES  
S/S Eddlynn Drive, 510' E  
of the c/l of Church Road  
(7804 Wise Avenue)  
12th Election District  
7th Councilmanic District  
Alva Hoopengardner, et ux  
Petitioners

BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY  
Case No.: 89-159-SPHXA

APPEAL

MR. CLERK:  
Please enter an appeal on behalf of the Petitioners, Alva Hoopengardner and Nadine Hoopengardner from the decision of Commissioner, J. Robert Haines on November 17, 1988

*Charles Mentzer*  
CHARLES MENTZER  
7902 Belair Road  
Baltimore, Maryland 21236  
(301) 882-9595  
Attorney for Petitioners



PETITION FOR SPECIAL EXCEPTION SPECIAL HEARING & VARIANCE S/S Eddlynn Dr., 510' E C/L CHURCH ROAD, (7804 Wise Avenue) 12TH ELECTION DISTRICT; 7th COUNCILMANIC DISTRICT  
HOOPENGARDNER, Alva & Nadine  
Petitioners

BEFORE THE ZONING COMMISSIONER OF BALTIMORE CO. Case No. 89-159 SPHXA 7804 Wise Avenue

AFFIDAVIT OF RUTH ENDRICH

I, Ruth Endrich being duly sworn depose and say:

1. I am over eighteen (18) years of age and I am competent to testify as a witness to the matters stated herein as I have personal knowledge of the information stated below.
2. I am the granddaughter of Otto Wingate who owned the property known as 7804 Wise Avenue prior to October 6, 1944 and the property was used as a residence and a business by my grandfather; I can not recall exactly what purpose(s) my grandfather used the property for as a business.
3. I am the daughter of Norman and Helen Wingate who owned the property known as 7804 Wise Avenue subsequent to October 6, 1944 and up to 1975 and the property was used as a residence and a business by my parents.
4. My parents Norman and Helen Wingate agreed to purchase 7804 Wise Avenue from my grandfather prior to October 6, 1944.
5. My father, Norman Wingate or person(s) operating under his authority operated an automobile sales and repair facility and towing operation out of 7804 Wise Avenue from early 1944 continuously; using the rear of the property as a disabled vehicle storage area until 7804 Wise Avenue was sold to Mr and Mrs. Hoopengardner in 1975.

*Ruth Endrich*  
Ruth Endrich

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 25th day of October, 1988, before me a Notary Public, of the State of Maryland, in and for Baltimore County, aforesaid, personally appeared Ruth Endrich, the herein Affiant, being more than eighteen (18) years of age, and made oath that the contents of this Affidavit are true and correct.

*Lillian Jarvis*  
NOTARY

My Commission expires 2-1-90

August 15, 1989

County Board of Appeals of Baltimore County  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: S/S Eddlynnch Drive, 500'E of c/I  
of Church Road (7804 Wise Avenue)  
12th Election District 7th Councilmanic District  
vs. Alva Hoopengardner, et ux (Petitioners)  
Case No.: 89-159-SPHXA

Gentlemen:

Mrs. Endrich who is a critical witness as to the continuous use of Lot 1B as a towing and storage area has informed me today that her mother (Mrs. Wingate) the prior owner of the property is very ill and requires constant attention.

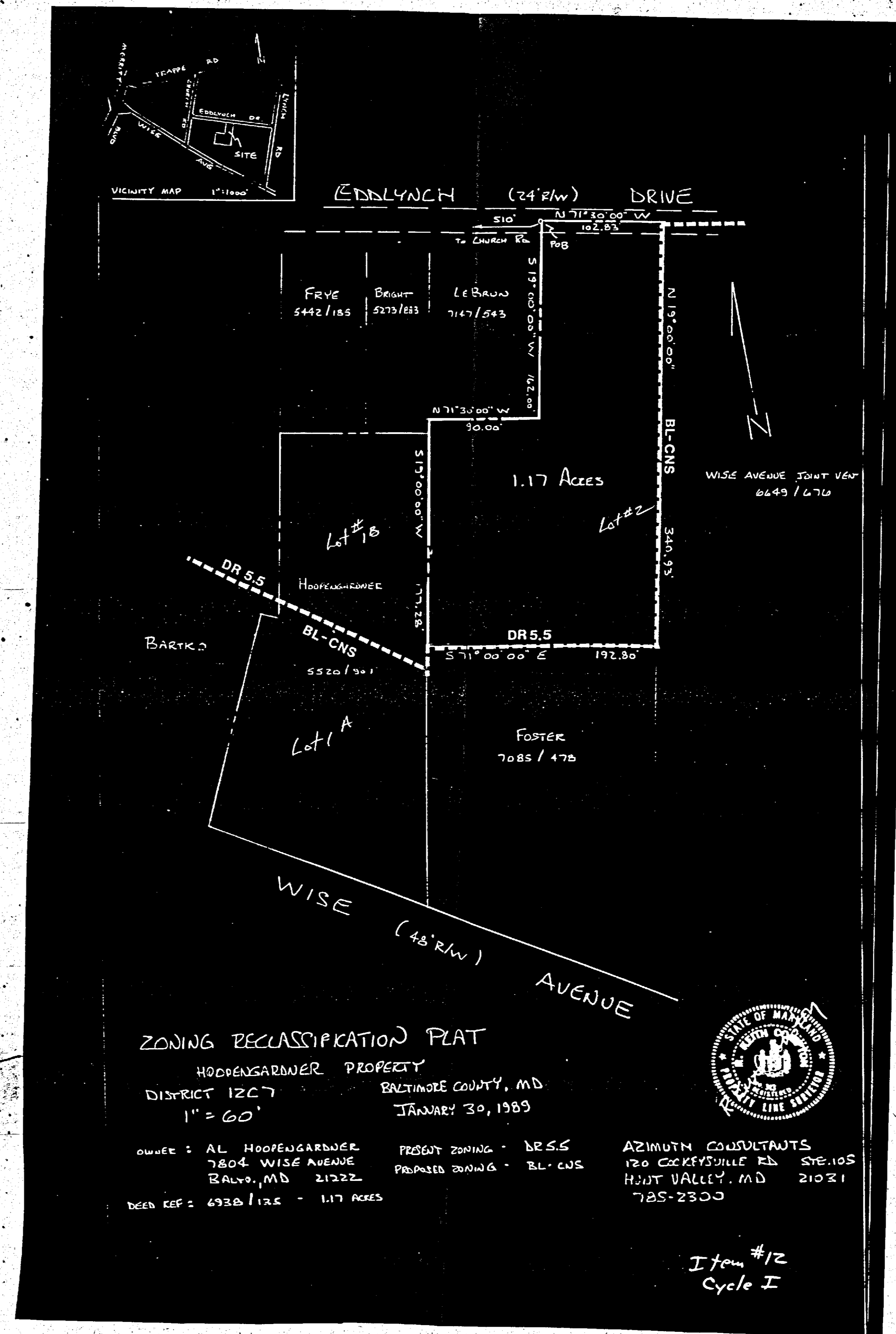
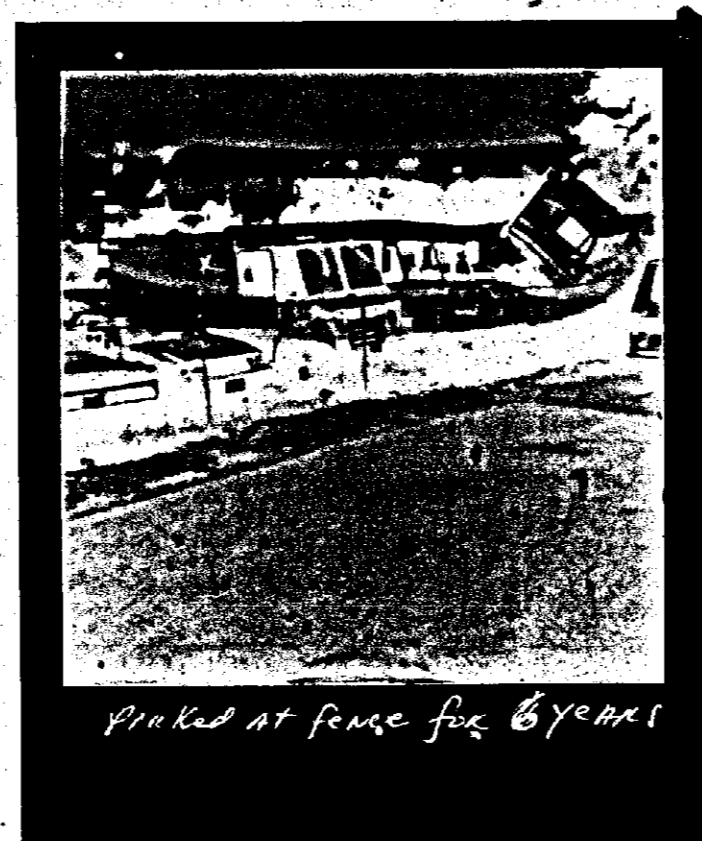
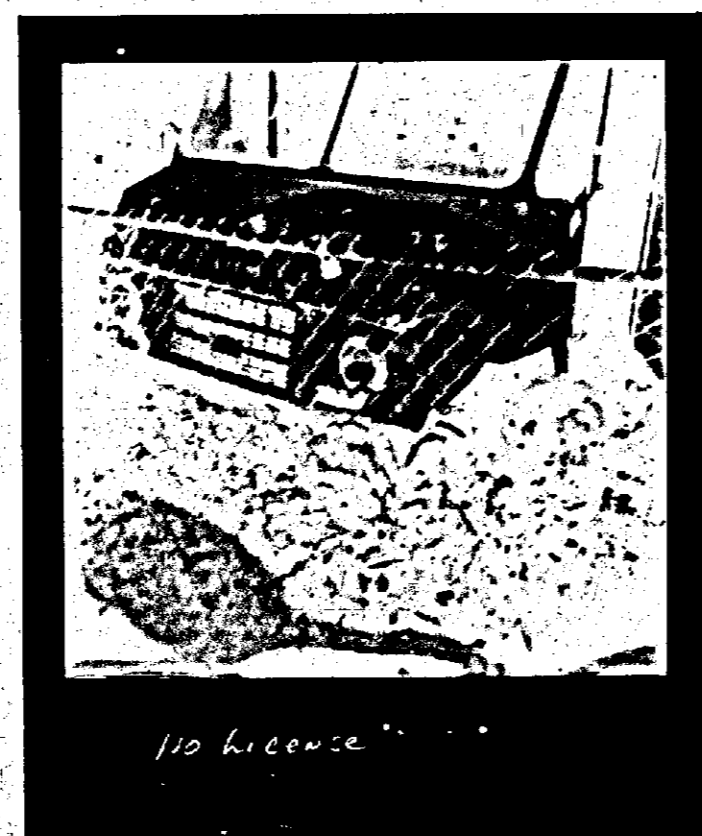
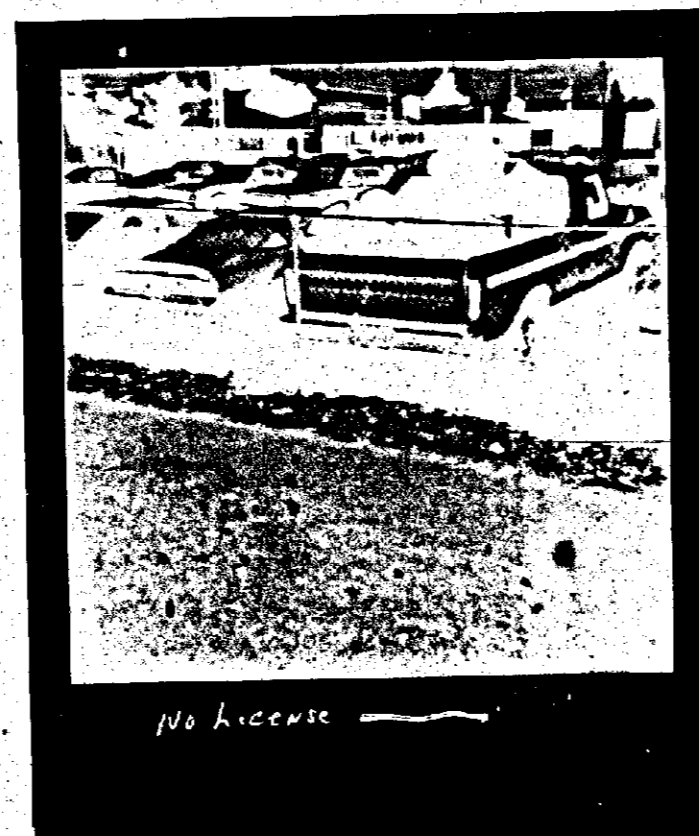
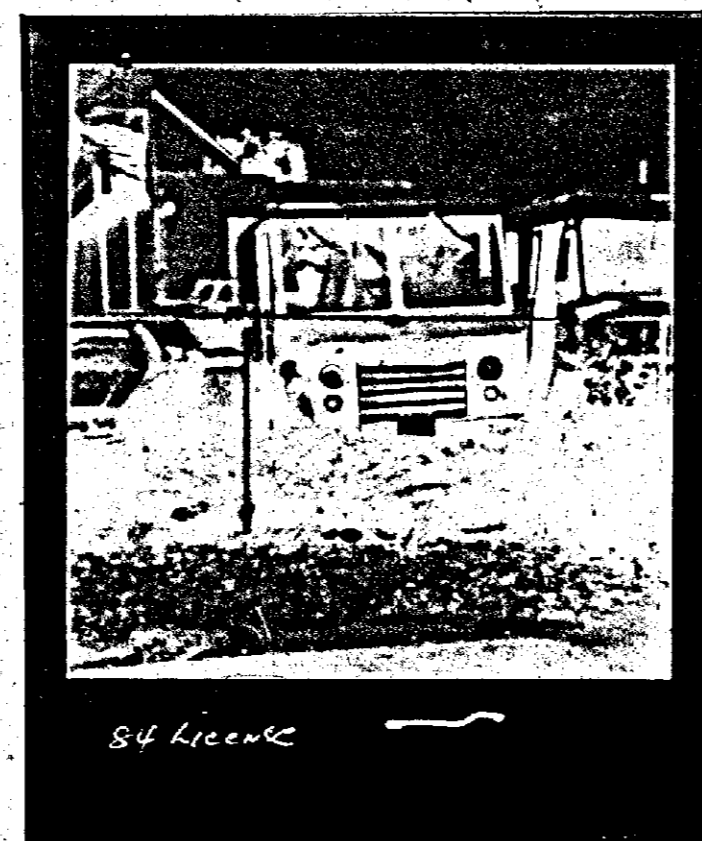
Mrs. Endrich will agree to a deposition (if you will authorize it and all parties agree) at her home and all the parties may be present; although, if there are going to be many protestants I would prefer that one person be delegated to represent the group.

If we can't reach an agreement then we will have to request a continuance to another more convenient date.

Mrs. Friedman and Mr. Zimmerman are invited to voice their opinions.

I would appreciate an early reply from everyone as I would like to avoid the expenses associated with preparation if the hearing is going to be continued.

EXHIBIT No. 5



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

August 17, 1989

Charles Mentzer, Esquire  
MENTZER AND MENTZER  
7902 Belsair Road  
Baltimore, MD 21236

RE: Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

Dear Mr. Mentzer:

The Board is in receipt of your letter of August 15 in which you indicate the unavailability of one of your witnesses for personal reasons. This case has been scheduled, postponed, rescheduled and has been pending before this Board for a long time.

The Board will deny your request for a continuance and will conduct the hearing as scheduled. The Board will at that time naturally consider any motions that you may feel relevant. The Board will accept argument on such motions and any argument that may be presented by the People's Counsel or the protestants.

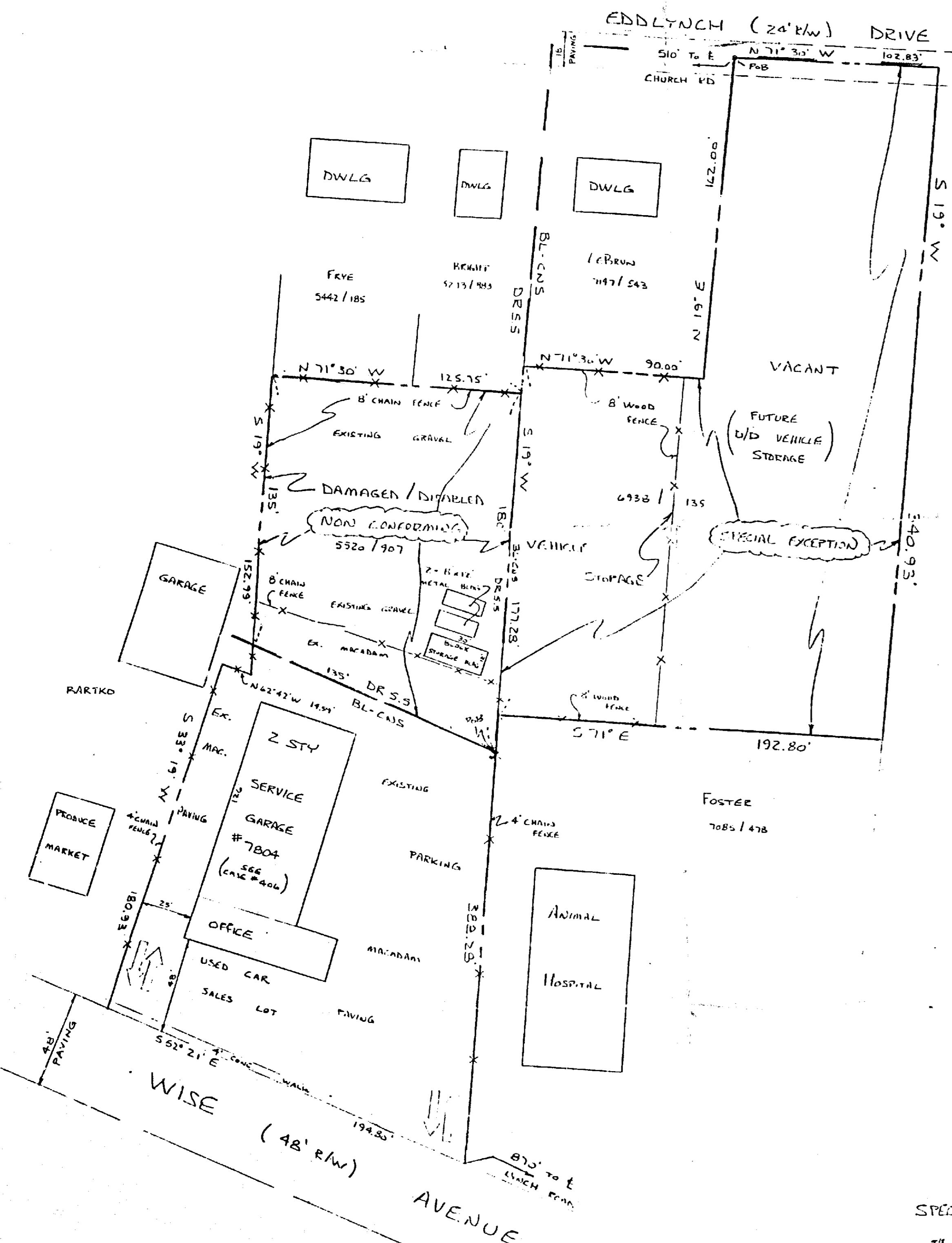
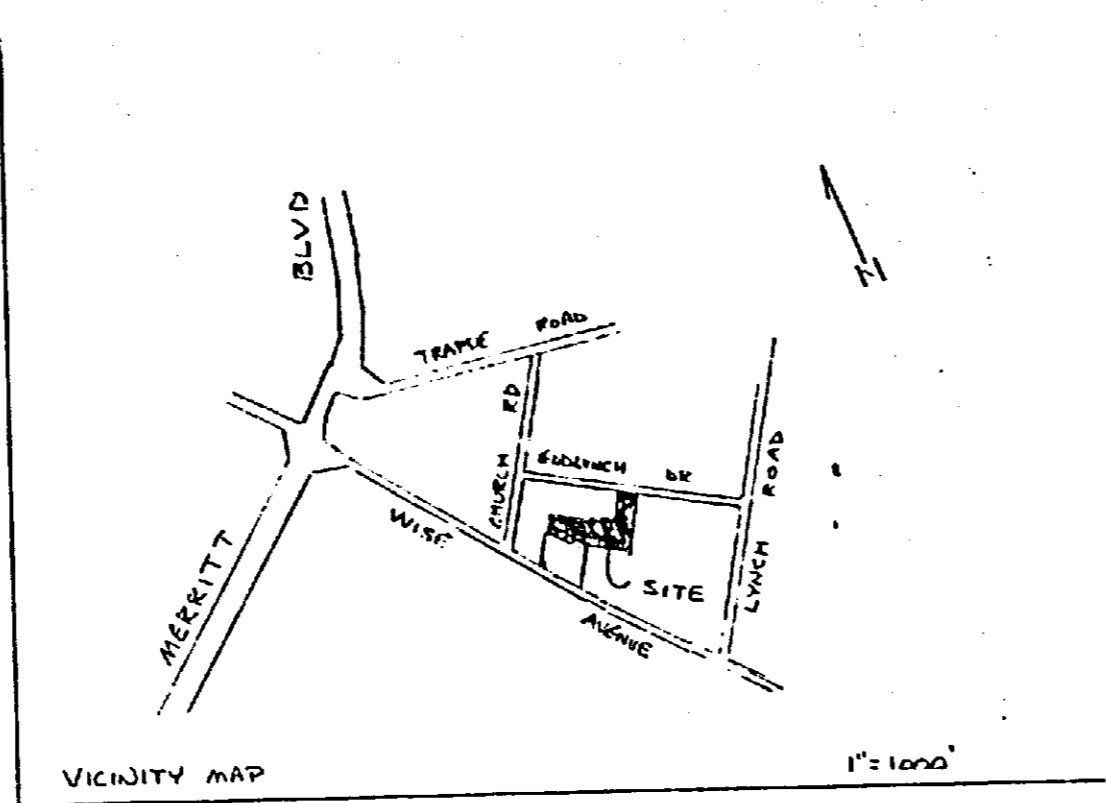
Depending on the ruling on the motions, the case may well be ordered to proceed on testimony and evidence on the scheduled hearing date of August 22, 1989.

Very truly yours,

*William T. Hackett*  
William T. Hackett, Chairman  
County Board of Appeals

cc: Alva Hoopengardner  
Peter Max Zimmerman, Esquire

Exhibit No. 6



OWNER: AL HOOGENGARWER  
7804 WISE AVE  
BALTIMORE, MD 21222

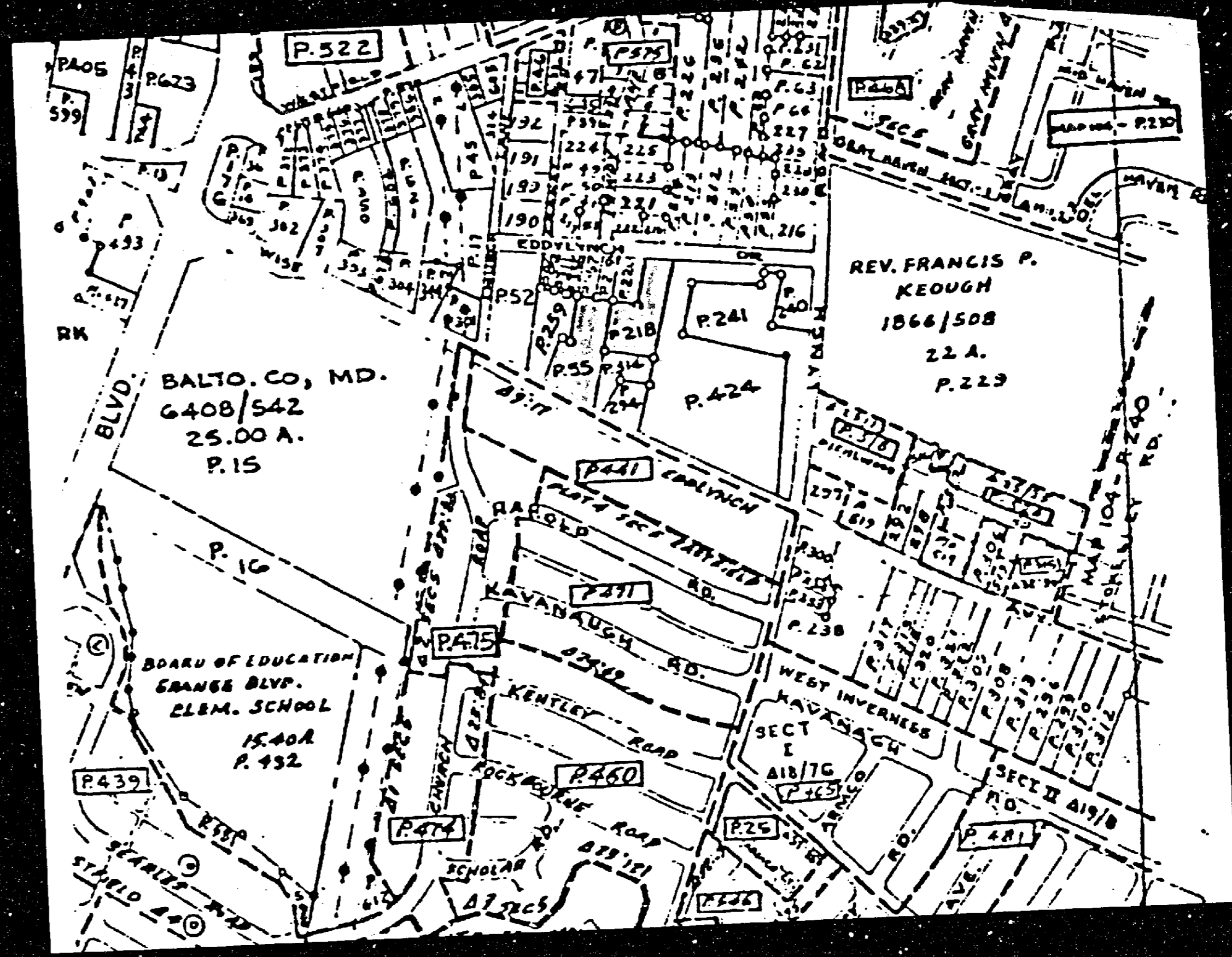
DEED REFERENCE:  
SPECIAL EXCEPTION 7938/135  
BL-CNS 1.17 ACRES  
NON CONFORMING USE 5520/907  
DR-55 20500 S.F. (0.47 AC)

7804 WISE AVENUE  
ZONING PLAT

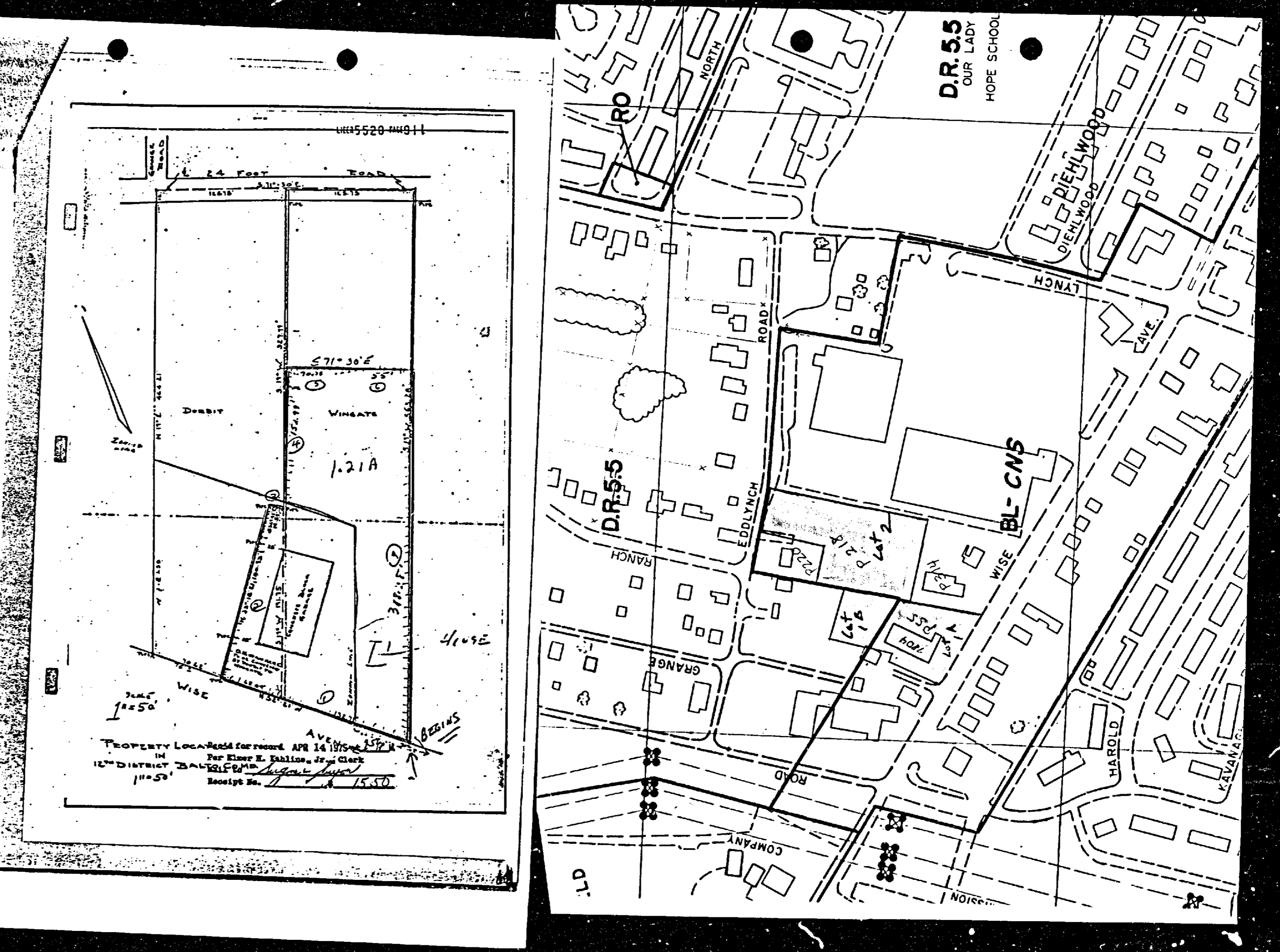
SPECIAL HEARING, SPECIAL EXCEPTION & VARIANCE  
12<sup>TH</sup> ELECTION DISTRICT BALTIMORE COUNTY, MD  
1" = 40' JULY 20, 1978

#32

AZIMUTH CONSULTANTS  
120 CREEKSVILLE RD STE. 105  
HUNT VALLEY, MD 21031  
785-2300



PETITIONER'S  
EXHIBIT 3





Baltimore County  
Zoning Commissioner  
Office of Planning & Zoning  
Towson, Maryland 21204  
(301) 887-3333  
J. Robert Haines  
Zoning Commissioner

December 28, 1988



Dennis F. Rasmussen  
County Executive

Baltimore County Board of Appeals  
County Office Building, Room 315  
Towson, Maryland 21204

RE: Petitions for Special Hearing, Special Exception & Variance  
S/S Eddlynych Drive, 510' E of the c/1 of Church Road  
(7804 Wise Avenue)  
12th Election District, 7th Councilmanic District  
ALVA HOOPENGARDNER, et ux - Petitioners  
Case No. 89-159-SPHXA

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 15, 1988 by Charles Mentzer, 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,

J. Robert Haines  
Zoning Commissioner

JRH:cer

Enclosures

cc: Mr. & Mrs. Alva Hoopengardner  
7804 Wise Avenue, Baltimore, Md. 21222  
Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Md. 21236  
Dr. & Mrs. Dennis Foster, 7810 Wise Avenue, Baltimore, Md. 21222  
Nicholas Commodari, 3807 Bonview Avenue, Baltimore, Md. 21213  
People's Counsel, County Office Bldg., Towson, Md. 21204  
File

89-159-SPHXA

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  
10th day of August, 1988.

J. Robert Haines  
Zoning Commissioner

Received by: James E. Dyer  
Chairman, Zoning Plans  
Advisory Committee  
Petitioner: Alva Hoopengardner, et ux  
Petitioner's Attorney: Charles Mentzer

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

August 24, 1988

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

Dennis F. Rasmussen  
County Executive

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 40, 5, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 23, 25, 26, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39 and 40.

Very truly yours,

Stephen E. Weber, P.E.  
Assistant Traffic Engineer

Mentzer and Mentzer  
Attorneys at Law

August 15, 1989

CHARLES S. MENTZER  
CHARLES E. MENTZER  
Of Counsel  
Abraham Linn

County Board of Appeals of Baltimore County  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: S/S Eddlynych Drive, 500' E of c/1  
of Church Road (7804 Wise Avenue)  
12th Election District 7th Councilmanic District  
vs. Alva Hoopengardner, et ux (Petitioners)  
Case No.: 89-159-SPHXA

Gentlemen:

Mrs. Endrich who is a critical witness as to the continuous use of Lot 1B as a towing and storage area has informed me today that her mother (Mrs. Wingate) the prior owner of the property is very ill and requires constant attention.

Mrs. Endrich will agree to a deposition (if you will authorize it and all parties agree) at her home and all the parties may be present; although, if there are going to be many protestants I would prefer that one person be delegated to represent the group.

If we can't reach an agreement then we will have to request a continuance to another more convenient date.

Mrs. Friedman and Mr. Zimmerman are invited to voice their opinions.

I would appreciate an early reply from everyone as I would like to avoid the expenses associated with preparation if the hearing is going to be continued.

19 AUG 17 PM 12:01

RECEIVED  
COUNTY BOARD OF APPEALS  
GENERAL

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

October 18, 1988

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

Charles Mentzer, Esquire  
7902 Belair Road  
Baltimore, Maryland 21236

MEMBERS

Bureau of Engineering  
Department of Traffic Engineering  
State Roads Commission  
Bureau of Fire Prevention  
Health Department  
Project Planning  
Building Department  
Board of Education  
Zoning Administration  
Industrial Development

Dear Mr. Mentzer:

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. The Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

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

Very truly yours,

James E. Dyer  
Chairman  
Zoning Plans Advisory Committee

JED:dt

cc: Azimuth Consultants  
120 Cockeysville Road  
Suite 105  
Hunt Valley, Maryland 21031

I will make myself available (pending Court conflicts) at anytime anyone is available to take Mrs. Endrich's deposition including evenings, Saturdays or Sundays. We will also pay the costs of transcript copies.

Very truly yours,

Charles Mentzer

CM:le

cc: Alva Hoopengardner

Baltimore County  
Fire Department  
Towson, Maryland 21204-2536  
494-4500

Paul H. Reineke  
Chief

August 18, 1988

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



Dennis F. Rasmussen  
County Executive

Re: Property Owner: Alva & Nadine Hoopengardner

Location: Southside of Eddlynych Dr., 510' E. of c/1 of Church Road

Item No.: 32

Zoning Agenda: Meeting of 8/9/88

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.

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

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

( ) 3. The vehicle dead end condition shown at \_\_\_\_\_ EXCEEDS the maximum allowed by the Fire Department.

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

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

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

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

REVIEWER: *John F. O'Neill* Noted and Approved: Fire Prevention Bureau  
Planning Group  
Special Inspection Division

/s/

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

J. Robert Haines  
Zoning Commissioner

Date: October 26, 1988

Pat Keller, Deputy Director  
Office of Planning and Zoning

Hoopengardner  
SUL.PCT. No. 89-159-SPHXA

The applicant is requesting a special exception to allow the storage of damaged and disabled vehicles in conjunction with a service garage and is requesting a special hearing to establish a non-conforming use on a portion of the parcel. In reference to this request, staff provides the following information:

The applicant's property is split zoned BL-CNS and DR 5.5. The portion of the parcel which contains a two-story service garage, office, used car sales and parking is zoned BL-CNS. The applicant requested a rezoning of the DR 5.5 portion of the parcel to BL-CNS (Issue 7-081) during the comprehensive zoning. The property was not rezoned to BL-CNS by County Council. The expansion of storage of vehicles into the residential area of Eddlynych Drive was not deemed desirable.

The portion of the applicant's parcel that is being requested for special hearing is located along the rear of the service garage and extends into Eddlynych Drive. Eddlynych Drive is considered a residential street. Wise Avenue, which is an extension of Holabird Avenue that runs between Dundalk Avenue and North Point Blvd. functions as an arterial road that has commercial development located along its length. The areas extending behind Wise Avenue are residential in nature and character. The commercial development for the majority of Wise Avenue fronts on Wise Avenue. Commercial development should be concentrated along Wise Avenue and not encouraged to spread into residential communities. Planning related impacts regarding this project involve:

- destabilization of residential community; project extends into residential community with car storage, security fencing and maintenance problems.
- buffer problems; the use of security fencing as the only means of buffering the area regardless of landscaping creates an intrusion or conflict with the residential community.
- character of development; the development proposal is not, nor in likelihood could be in character with the residential neighborhood.
- noise, visual obstruction, interior maintenance, odors, environmental impact; the proposed development will be generating a wide array of commercially operated impacts that will be felt by the adjoining residential community.

Based upon the information provided and analysis conducted, staff recommends denial of the applicant's request.

PK/sf



County Board of Appeals of Baltimore County

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

August 17, 1989

Charles Mentzer, Esquire  
MENTZER AND MENTZER  
7902 Belair Road  
Baltimore, MD 21236

RE: Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

Dear Mr. Mentzer:

The Board is in receipt of your letter of August 15 in which you indicate the unavailability of one of your witnesses for personal reasons. This case has been scheduled, postponed, rescheduled and has been pending before this Board for a long time.

The Board will deny your request for a continuance and will conduct the hearing as scheduled. The Board will at that time naturally consider any motions that you may feel relevant. The Board will accept argument on such motions and any argument that may be presented by the People's Counsel or the protestants.

Depending on the ruling on the motions, the case may well be ordered to proceed on testimony and evidence on the scheduled hearing date of August 22, 1989.

Very truly yours,

William T. Hackett  
William T. Hackett, Chairman  
County Board of Appeals

cc: Alva Hoopengardner  
Peter Max Zimmerman, Esquire

Mentzer and Mentzer  
Attorneys at Law

CHARLES S. MENTZER  
CHARLES E. MENTZER  
Of Counsel  
Abraham Levin

August 21, 1989

REPLY TO  
BALTIMORE OFFICE  
BALTIMORE OFFICE  
7902 Belair Road  
Baltimore, MD 21236  
301 882-4656  
DUNDALK OFFICE  
301 282-4800  
FREDERICK OFFICE  
301 293-2705  
SOUTH BALTIMORE OFFICE  
1301 South Hanover Street  
Baltimore, MD 21230

William T. Hockett, Chairman  
County Board of Appeals of Baltimore County  
County Office Building  
Room 315  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

Dear Mr. Hockett:

Thank you for your letter of August 17th, 1989.

Unfortunately, I had assumed you would postpone the case and scheduled another hearing out of town.

Please take whatever action you deem appropriate.

Very truly yours,  
*Charles Mentzer*  
Charles Mentzer

CM:lej  
cc: Mr. and Mrs. Alva Hoopengardner  
Peter Max Zimmermen, Esquire

62-8-11V 22 91V 68  
RECEIVED  
COUNTY BOARD OF APPEALS  
AUG 22 11 54 AM '89

August 17, 1989

County Board of Appeals of Baltimore County  
County Office Building  
111 W. Chesapeake Ave  
Towson, Md. 21204  
Case # 89-159-SPHXA

I would like to request from being a witness in this case because I have an 81 yr old mother to care for & this is hard thing for me to be in court all day and not at home; also I have nothing to add to this case.

Thank you

*Ruth Ludwig*  
Ruth Ludwig

Enclosed copy of subpoena and copies to Charles Mentzer and also Alva Hoopengardner

RECEIVED  
COUNTY BOARD OF APPEALS  
AUG 21 11 54 AM '89

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

August 22, 1989

Charles Mentzer, Esquire  
7902 Belair Road  
Baltimore, MD 21236

RE: Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

Dear Mr. Mentzer:

Enclosed is a copy of the Order of Dismissal issued this date by the County Board of Appeals in the subject matter.

Sincerely,  
*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

Encl.

cc: Mr. & Mrs. Alva Hoopengardner  
Dr. & Mrs. Dennis Foster  
Mr. Nicholas Commodari  
People's Counsel for Baltimore County  
F. David Fields  
Pat Keller  
J. Robert Haines  
Ann M. Nastarowicz  
James E. Dyer  
Docket Clerk - Zoning  
Arnold Jablon, County Attorney

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

September 20, 1989

Charles Mentzer, Esquire  
7902 Belair Road  
Baltimore, Maryland 21236

Re: Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

Dear Mr. Mentzer:

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. In addition, the cost incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you 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,  
*Linda Lee M. Kuszmaul*  
Linda Lee M. Kuszmaul  
Legal Secretary

Encl.  
cc: Mr. and Mrs. Alva Hoopengardner

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

September 20, 1989

Phyllis C. Friedman, Esquire  
People's Counsel for Baltimore County  
Room 304, County Office Building  
Towson, Maryland 21204

Re: Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

Dear Ms. Friedman:

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,  
*Linda Lee M. Kuszmaul*  
Linda Lee M. Kuszmaul  
Legal Secretary

Encl.  
cc: Dr. & Mrs. Dennis Foster  
Mr. Nicholas Commodari  
F. David Fields  
Pat Keller  
J. Robert Haines  
Ann M. Nastarowicz  
James E. Dyer  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, County Attorney

Mentzer and Mentzer  
Attorneys at Law

CHARLES S. MENTZER  
CHARLES E. MENTZER  
Of Counsel  
Abraham Levin

September 26, 1989

REPLY TO  
BALTIMORE OFFICE  
BALTIMORE OFFICE  
7902 Belair Road  
Baltimore, MD 21236  
301 882-4656  
DUNDALK OFFICE  
301 282-4800  
FREDERICK OFFICE  
301 293-2705  
SOUTH BALTIMORE OFFICE  
1301 South Hanover Street  
Baltimore, MD 21230

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Linda Lee Kuszmaul, Legal Secretary  
County Board of Appeals of Baltimore County  
County Office Building  
Room 315  
111 West Chesapeake Avenue  
Towson, Maryland 21204

Re: Alva Hoopengardner, et ux  
Case No.: 89-158-SPHXA

Dear Ms. Kuszmaul:

This will acknowledge your letter dated September 20, 1989 (a copy is enclosed).

If you will call me or my secretary or write me or my secretary, we will forward to you a check or deliver to you cash in the amount required.

If there is any question regarding this please do not hesitate to contact me.

Very truly yours,  
*Charles Mentzer*  
Charles Mentzer

CM:lej  
cc: Alva Hoopengardner  
County Board of Appeals of Baltimore County

RECEIVED  
COUNTY BOARD OF APPEALS  
SEP 26 11 12 AM '89

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

September 20, 1989

Charles Mentzer, Esquire  
7902 Belair Road  
Baltimore, Maryland 21236

Re: Case No. 89-159-SPHXA  
Alva Hoopengardner, et ux

Dear Mr. Mentzer:

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. In addition, the cost incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you 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,  
*Linda Lee M. Kuszmaul*  
Linda Lee M. Kuszmaul  
Legal Secretary

Encl.  
cc: Mr. and Mrs. Alva Hoopengardner

IN THE MATTER OF THE APPLICATION OF ALVA HOOPENGARDNER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF EDDLYNCH DRIVE, 510' EAST OF CENTERLINE OF CHURCH ROAD (7804 WISE AVENUE) 12TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT ALVA HOOPENGARDNER, ET UX PETITIONERS/PLAINTIFFS

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY  
CG Doc. No. 72  
Folio No. 123  
File No. 89-CG-3323

CASE NO. 89-159-SPHXA

CERTIFICATE OF NOTICE

Madam Clerks:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Maryland 21236, Counsel for Petitioners/Plaintiffs; Mr. and Mrs. Alva Hoopengardner, 7804 Wise Avenue, Baltimore, Maryland 21222, Petitioners/Plaintiffs; Phyllis C. Friedman, Esquire, People's Counsel for Baltimore County, Room 304, County Office Building, Towson, Maryland 21204; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

*Linda Lee M. Kuszmaul*  
Linda Lee M. Kuszmaul, County Board of Appeals  
Room 315, County Office Building  
Towson, Maryland 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Maryland 21236, Counsel for Petitioners/Plaintiffs; Mr. and Mrs. Alva Hoopengardner, 7804 Wise Avenue, Baltimore, Maryland 21222, Petitioners/Plaintiffs; Phyllis C. Friedman, Esquire, People's Counsel for Baltimore County, Room 304, County Office

Alva Hoopengardner, et ux, Case No. 89-159-SPHX  
 File No. 89-CG-3323

Building, Towson, Maryland 21204; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, Maryland 21204, on this 20th day of September, 1989.

*Linda Lee M. Kuzmaul*  
 Linda Lee M. Kuzmaul, County Board of Appeals  
 Room 315, County Office Building  
 Towson, Maryland 21204 (301) 887-3180

CIRCUIT COURT FOR BALTIMORE COUNTY  
 CIVIL GENERAL

DOCKET 72 PAGE 123 CASE NO. 89CG3323 CATEGORY APPEAL

ALVA HOOPENGARDNER, et ux  
 APPELLANT(S)

CHARLES MENTZER  
 7902 Belair Road  
 Baltimore, Maryland 21236  
 882-9595

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY  
 COUNTY BOARD OF APPEALS  
 OF  
 BALTIMORE COUNTY  
 APPELLEE(S)

Phyllis Cole Friedman  
 Peter Max Zimmerman  
 Rm 304, County Office Bldg  
 111 W Chesapeake Ave (4) 887-2188  
 PEOPLE'S COUNSEL FOR BALTO CO



CLOSED

- (1) Sept. 20, 1989 - Appellant's order for Appeal from the Decision/Order of County Board of Appeals, of Baltimore County, Petition, Certificate, and Exhibits fd.
- (2) Sept 20, 1989 - Certificate of notice fd.
- (3) Sept 27, 1989 - App of Phyllis Cole Friedman and Peter Max Zimmerman for the Deft. PEOPLE'S COUNSEL FOR BALTO CO and Same Lay Answer to Petition on Appeal fd.
- (4) Oct 19, 1989 - Certified Copies of Proceeding before the Zoning Commissioner and the Board of Appeals of Baltimore County and Transcript fd.
- (5) Oct 19, 1989 - Notice of Filing of Record fd.
- (6) Nov. 13, 1989 - Appellant's HOOPENGARDNER Memorandum in Compliance with Maryland Rule B12 fd.
- (7) Dec 11, 1989 - PEOPLE'S COUNSEL'S Memorandum fd.
- Feb. 8, 1990. Hon. Leonard S. Jacobson. Appellant (Alva Hoopengardner, et ux) withdraws Appeal in open Court.
- Feb. 8, 1990. Judgment entered in favor of Appellees (People's Council for Baltimore County and County Board of Appeals of Baltimore County) for costs.
- Feb. 8, 1990. Judgment entered.

CV GEN COSTS 89.333  
 CV CLK 80.00  
 LBRY 10.00  
 POST 2.00  
 CHECK TL 72.00  
 #37097 C001 R02 T1113  
 09/20/89

DOCKET 72 PAGE 123 CASE NO. 89CG3323

APPEAL

Petitions for Special Hearing, Special Exception, & Variance  
 S/S Eddlynn Drive, 510' E of the c/1 of Church Road (7804 Wise Avenue)  
 12th Election District - 7th Councilmanic District  
 ALVA HOOPENGARDNER, ET UX - Petitioners  
 Case No. 89-159-SPHX

Petition for Special Hearing  
 Petition for Special Exception

Petition for Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments

Petitioner's Exhibits: 1. Plat to accompany Petitions  
 2. Application for Towing Vehicle Operator's License  
 3. Property Location Drawing

Protestant's Exhibits: 1. Nine 3" x 5" photographs of location

Zoning Commissioner's Order dated November 17, 1988 (Granted with restrictions)

Zoning Commissioner's Amended Order dated December 1, 1988

Notice of Appeal received December 15, 1988 from Charles Mentzer Attorney on behalf of the Petitioners

cc: Mr. & Mrs. Alva Hoopengardner  
 7804 Wise Avenue, Baltimore, Md. 21222

Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Md. 21236

Dr. & Mrs. Dennis Foster, 7810 Wise Avenue, Baltimore, Md. 21222

Nicholas Commodari, 3007-Dennis-Avenue, Baltimore, Md. 21213

People's Counsel of Baltimore County  
 Rm.-304, County-Office-Bldg., Towson, Md. 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
 Patrick Keller, Office of Planning & Zoning  
 J. Robert Haines, Zoning Commissioner  
 Ann M. Mastarowitz, Deputy Zoning Commissioner  
 James E. Dyer, Zoning Supervisor  
 Docket Clerk

ALVA HOOPENGARDNER, ET UX  
 S/S Eddlynn Drive, 510' E of the c/1 of Church Road (7804 Wise Avenue)  
 SE -service garage  
 VAR -to allow outside storage of damaged & disabled vehicles and to approve a modified plan exempting the Petitioner from conditions in 210.12.a (service garage without principal building or containment)

- August 10, 1988 Petition for special hearing for storage of damaged and disabled motor vehicles.
- " " Petition for special exception for service garage.
- " " Petition for variance for storage of damaged and disabled vehicles and service garage without principal building or containment.
- November 17 Order of the Z.C. GRANTING Petitions with restrictions.
- December 1 Amended Order of the Z.C. special exception for service garage for Lot 1A only not 1A and 2 as originally ordered.
- December 15 Order for Appeal from Charles Mentzer, Esq. on behalf of the Petitioner.
- May 9, 1989 Postponed in open hearing and reset for August 22, 1989.
- August 22 Hearing scheduled. At 10:40 a.m. no one present in hearing room.
- " " Opinion and Order of the Board DISMISSING case for lack of appearance and AFFIRMING Z.C.'s Order and Amended Order.
- September 20 Order for Appeal filed in CCT, by Charles Mentzer, Esq. on behalf of the Petitioner; Petition to accompany appeal also filed.
- " " Certificate of notice sent.
- October 19 Transcript of testimony filed; record of proceedings filed.
- February 8, 1990 Appeal withdrawn in open Court by Appellants; JUDGMENT entered in favor of Appellees (People's Council) (Leonard S. Jacobson).

CIRCUIT COURT FOR BALTIMORE COUNTY  
 CIVIL GENERAL

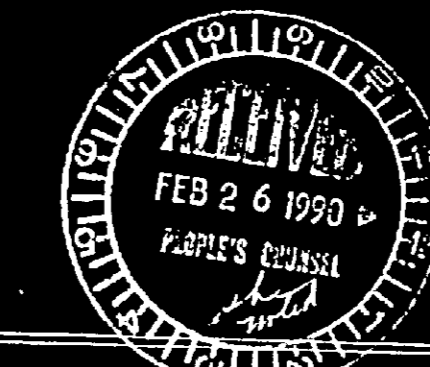
DOCKET 72 PAGE 123 CASE NO. 89CG3323 CATEGORY APPEAL

ALVA HOOPENGARDNER, et ux  
 APPELLANT(S)

CHARLES MENTZER  
 7902 Belair Road  
 Baltimore, Maryland 21236  
 882-9595

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY  
 COUNTY BOARD OF APPEALS  
 OF  
 BALTIMORE COUNTY  
 APPELLEE(S)

Phyllis Cole Friedman  
 Peter Max Zimmerman  
 Rm 304, County Office Bldg  
 111 W Chesapeake Ave (4) 887-2188  
 PEOPLE'S COUNSEL FOR BALTO CO



CLOSED

- (1) Sept. 20, 1989 - Appellant's order for Appeal from the Decision/Order of County Board of Appeals, of Baltimore County, Petition, Certificate, and Exhibits fd.
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- (4) Oct 19, 1989 - Certified Copies of Proceeding before the Zoning Commissioner and the Board of Appeals of Baltimore County and Transcript fd.
- (5) Oct 19, 1989 - Notice of Filing of Record fd.
- (6) Nov. 13, 1989 - Appellant's HOOPENGARDNER Memorandum in Compliance with Maryland Rule B12 fd.
- (7) Dec 11, 1989 - PEOPLE'S COUNSEL'S Memorandum fd.
- Feb. 8, 1990. Hon. Leonard S. Jacobson. Appellant (Alva Hoopengardner, et ux) withdraws Appeal in open Court.
- Feb. 8, 1990. Judgment entered in favor of Appellees (People's Council for Baltimore County and County Board of Appeals of Baltimore County) for costs.
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DOCKET 72 PAGE 123 CASE NO. 89CG3323

Those original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to conforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a conforming use shall be damaged by fire or otherwise to the extent of seventy-five (75) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than one-half (1/2) of the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then reads:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than one-half (1/2) of the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or such abandonment or discontinuance of such nonconforming use for a period of one year or more, or in case

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By Keith J. Johnson

any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) percent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception Office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

Clearly, the use on Lot 1B existed before January 1, 1944. The evidence establishes this fact and there is no evidence to disprove the date. Lot 2 is not nonconforming because the storage of damaged vehicles began in 1986. No testimony was presented as to the nonconforming use of Lot 1A. The Petitioner's testimony concerning Lot 1A was in support of the request for a special exception only.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the non-con-

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forming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

When the claimed non-conforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the non-conforming use, the Zoning Commissioner should consider the following factors:

(a) To what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;

(b) Is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original non-conforming use."

As to Lot 1B, the evidence is clear that the lot has always been used as a storage lot for damaged and disabled motor cars. The use has not changed since before zoning came into effect.

Turning to the issue of the special exception on Lot 1A, it is clear that the B.C.Z.R. permits the use proposed in a B.L. - C.N.S. zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and

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requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

Pursuant to Section 405.3 of the B.C.Z.R., the Zoning Commissioner shall make each of the findings set forth below before granting any special exception required to permit an automotive-service station:

a) That the proposed use will not create a traffic hazard or excessive traffic congestion because of its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern to and from such buildings, or by reason of its location on or near a school, park, playground, or hospital, or crossing to a school, park, playground, or hospital, or other place of public use or assembly;

b) That the use will not adversely affect the general welfare or orderly development of the general neighborhood or area in which the station is proposed, including nearby areas within adjacent political jurisdictions, considering the services required, availability or scarcity of land for other commercial uses, population, character, density, etc.;

c) That the Zoning Commissioner is satisfied that all requirements of this section and all other legal requirements of Baltimore County will be met in operating the proposed service station and that the plans for the use have been reviewed and commented upon by

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those agencies listed below, which are deemed by the Zoning Commissioner to have an appropriate interest in the individual case under consideration, or any other agency deemed by him to have a specific interest therein:

- 1) Department of Public Works
- 2) Buildings Engineer's Office
- 3) Bureau of Traffic Engineering
- 4) Fire Bureau
- 5) State Roads Commission;

d) That, at the time the Petition is heard, there is evidence of the probability of a reasonable public need for the proposed automotive-service station. The Zoning Commissioner shall consider that the presence of one abandoned service station within a one-half mile radius or two such stations within a one mile radius of the site of the proposed service station establishes, absent evidence to the contrary, a prima facie presumption that there is no evidence of the probability of a reasonable public need for such proposed service station. The Zoning Commissioner may find, however, that this prima facie presumption is rebutted by market data or other evidence submitted by the Petitioner.

It is clear from the testimony and evidence presented that the use of the subject property as an automotive service station will not create a traffic hazard or excessive traffic congestion, that its use will not adversely affect the general welfare or orderly development of the surrounding area, and that the use proposed meets the requirements of Section 405.3 of the B.C.Z.R. and all other requirements of the various Baltimore County agencies which may be required to review and comment on proposed uses of this nature. Further, it is clear the property's proposed use as an automotive service station meets a need in the community based on past experience and its present business.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

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- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, there is insufficient evidence to allow a finding that the Petitioners would experience practical difficulty or unreasonable hardship if the requested variances for Lot 1B were denied. There was no testimony presented by Petitioners in support of the requested variances. The Petitioners have failed to show that compliance would unreasonably prevent the use of the property or be unnecessarily burdensome. As indicated earlier, the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles has been established.

After reviewing all of the testimony and evidence presented, it appears that the special hearing and special exception should be granted with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special hearing and special exception should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 17th day of November, 1988 that a special exception for

ORDER RECEIVED FOR FILING  
Date 11/12/88  
By Keith J. Johnson

a service garage operation on Lots 1A and 2, and the nonconforming use of Lot 1B for the storage of damaged and disabled vehicles, all in accordance with Petitioner's Exhibit 1, be approved, and as such the Petitions for Special Hearing and Special Exception be and are hereby GRANTED, subject, however to the following restrictions:

1) The 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 is required. 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) Petitioner shall submit to the Zoning Commissioner's office by no later than March 1, 1989 a new site plan prepared by a registered professional engineer and/or land surveyor, which clearly identifies all buildings, their size and area dimensions, their exact location on the subject property, their distances from all property lines, and any other information as may be required to be a certified site plan.

3) The new site plan shall reflect the dimensions and depth of the current zoning lines which divides Lots 1A and 1B, and shall incorporate the requirements of Section 405.4A and B.

4) Pursuant to Section 500.7 and 502.2, the Zoning Commissioner has the authority to require certain conditions be met in order to bring the property into compliance with the B.C.Z.R. Therefore, Petitioner shall provide landscaping and screening for Lot 1A as may be required by the Baltimore County Landscape Planner. A landscaping plan shall be developed and submitted to the Office of Current Planning and the Zoning Commissioner's Office for final approval by no later than February 10, 1989.

5) Petitioner shall comply with the requirements of Section 405.1A as to the operation of the service garage on Lot 1A.

6) There shall be no licensed, disabled vehicles stored on Lot 2. The Petitioner shall not store any unlicensed, disabled vehicles on Lots 1A and 1B for more than 180 days.

7) The service garage operation on Lot 1A shall be limited to those vehicles awaiting repair and/or ser-

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vice in connection with such service garage operation or those vehicles being offered for sale as used cars.

8) No more than thirty (30) vehicles awaiting service and/or repair in connection with the service garage operation shall be stored on Lot 1B.

9) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

J. Robert Haines  
Zoning Commissioner  
for Baltimore County

JRH:bjs

ORDER RECEIVED FOR FILING  
Date 11/12/88  
By Keith J. Johnson

Item #32  
**PETITION FOR SPECIAL HEARING**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **89-159-SPHXA**

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 the storage of damaged and disabled motor vehicles on the lot at the rear of 7804 Wise Avenue, which is located on D.R. 55 zoned D.R. 55. A UDRCONCORPARE HAS

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: Legal Owner(s):  
(Type or Print Name) **Alva Hoopengardner**  
Signature *[Signature]*  
Address **7804 Wise Avenue**  
City and State **Baltimore, Maryland 21222**

Attorney for Petitioner:  
**Charles Mentzer**  
Address **7804 Wise Avenue, 285-7061**  
City and State **Baltimore, Maryland, 21222**  
Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
**7804 Wise Avenue, 285-7061**  
City and State **Baltimore, Maryland, 21222**  
Attorney's Telephone No.: **(301) 882-9595**

ORDERED By The Zoning Commissioner of Baltimore County, this **10th** day of **August**, 19**88**, 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 **26th** day of **October**, 19**88**, at **9** o'clock **P.**M.

*J. Robert Hines*  
Zoning Commissioner of Baltimore County.

Item #32  
**PETITION FOR SPECIAL EXCEPTION**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **89-159-SPHXA**

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 (storage of damaged and disabled motor vehicles)**.

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: Legal Owner(s):  
(Type or Print Name) **Alva Hoopengardner**  
Signature *[Signature]*  
Address **7804 Wise Avenue**  
City and State **Baltimore, Maryland**

Attorney for Petitioner:  
**Charles Mentzer**  
Address **7804 Wise Avenue, 285-7061**  
City and State **Baltimore, Maryland, 21222**  
Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
**7804 Wise Avenue, 285-7061**  
City and State **Baltimore, Maryland, 21222**  
Attorney's Telephone No.: **(301) 882-9595**

ORDERED By The Zoning Commissioner of Baltimore County, this **10th** day of **August**, 19**88**, 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 **26th** day of **October**, 19**88**, at **9** o'clock **P.**M.

*J. Robert Hines*  
Zoning Commissioner of Baltimore County.

Item #32  
**PETITION FOR ZONING VARIANCE**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: **89-159-SPHXA**

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section **230.12a** To allow outside storage of damaged and disabled vehicles on a lot located at the rear of 7804 Wise Avenue, 230.12a. To approve a modified plan exempting the petitioner from the conditions set forth in 230.12a (service garage without principal building or containment).

The existing storage lot is part of a pre-existing business and because business is growing, this area is needed. For other reasons to be stated at the hearing.

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: Legal Owner(s):  
(Type or Print Name) **Alva Hoopengardner**  
Signature *[Signature]*  
Address **7804 Wise Avenue**  
City and State **Baltimore, Maryland**

Attorney for Petitioner:  
**Charles Mentzer**  
Address **7804 Wise Avenue, 285-7061**  
City and State **Baltimore, Maryland, 21222**  
Name, address and phone number of legal owner, contract purchaser or representative to be contacted  
**7804 Wise Avenue, 285-7061**  
City and State **Baltimore, Maryland, 21222**  
Attorney's Telephone No.: **(301) 882-9595**

ORDERED By The Zoning Commissioner of Baltimore County, this **10th** day of **August**, 19**88**, 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 **26th** day of **October**, 19**88**, at **9** o'clock **P.**M.

*J. Robert Hines*  
Zoning Commissioner of Baltimore County.

ESTIMATED LENGTH OF HEARING - 1/2HR.  
AVAILABLE FOR HEARING - MON./TUES./WED. - NEXT TWO MONTHS  
REVIEWED BY: *[Signature]* DATE *[Date]*



**ZONING DESCRIPTION**  
HOOPENGARDNER - NON-CONFORMING USE

Beginning at a point on the zoning line and on the last or South 19 degrees West 388.28 foot line of that tract of land which by deed dated April 10, 1975 and recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. 5520 folio 907 was conveyed by Norman L. Wingate and Helen D. Wingate, his wife, to Al's Service Center, Inc., said point of beginning being North 19 degrees 00 minutes 00 seconds East 208 feet; or less from the edge of Wise Avenue, a 48' right-of-way, and northeasterly 870' from its centerline intersection with Lynch Road, thence running the following courses:  
1) North 19 degrees 00 minutes 00 seconds East 180 feet;  
2) North 71 degrees 30 minutes 00 seconds West 125.75 feet;  
3) South 19 degrees 00 minutes 00 seconds West 135 feet to a point on the zoning line, thence running with said zoning line;  
4) Southeasterly 135 feet, more or less to the point of beginning.  
Containing 20,500 square feet of land, more or less.

Also known as the rear portion of 7804 Wise Avenue in the 12th Election District.



120 Cockeysville Road / Suite 105 / Hunt Valley, Maryland 21031 / (301) 785-8300



**ZONING DESCRIPTION**  
HOOPENGARDNER - SPECIAL EXCEPTION AND VARIANCE

Beginning at the centerline of Eddlynch Drive, a 24' right-of-way, at a distance of 510' easterly from the centerline of Church Road, thence running the following courses;

- 1) South 19 degrees 00 minutes 00 seconds West 162 feet;
- 2) North 71 degrees 30 minutes 00 seconds West 90 feet;
- 3) South 19 degrees 00 minutes 00 seconds West 177.28 feet;
- 4) South 71 degrees 00 minutes 00 seconds East 192.80 feet;
- 5) North 19 degrees 00 minutes 00 seconds East 340.93 feet to centerline of Eddlynch Drive, thence with said road;
- 6) North 71 degrees 30 minutes 00 seconds West 102.83 feet to the point of beginning.

Containing 1.17 ac. ± or 50,965 square feet of land, more or less.



120 Cockeysville Road / Suite 105 / Hunt Valley, Maryland 21031 / (301) 785-8300

#32  
CIRCUIT COURT FOR BALTIMORE COUNTY  
ASSIGNMENT OFFICE  
COUNTY COURTS BUILDING  
401 Bayview Avenue  
P.O. Box 6754  
Towson, Maryland 21286-6754  
OCTOBER 20, 1988

TO: CHARLES MENTZER, ESQ., PHYLIS C. FRIEDMAN, ESQ., PETER M. ZIMMERMAN, ESQ., COUNTY BOARD OF APPEALS  
RE: NOW JURY - 89-CG-3323 - ALVA HOOPENGARDNER VS. PEOPLE'S COUNSEL FOR BALTIMORE COUNTY ET AL.  
HEARING DATE: THURSDAY, FEBRUARY 8, 1990 @ 9:30 A.M.  
ON THE FOLLOWING: APPEAL: 1/2 to 3/4 hour  
Please see the below notation.  
SETTLEMENTS: If a settlement is reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record in no later than 10 days prior to the hearing date.  
IRON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to confirm calendar. Claims of not receiving notice will not constitute a reason for postponement.  
IF THE ABOVE HEARING DATE IS NOT APPLICABLE TO ANY COURT, A REQUEST FOR A HEARING MUST BE MADE IN WRITING TO THE ASSIGNMENT OFFICE AS SOON AS POSSIBLE WITH A COPY TO THE CLERK OF THE COURT. THIS NOTICE IS NOT VALID UNLESS IT IS FILED WITHIN 10 DAYS OF THE HEARING DATE. THIS NOTICE IS NOT VALID UNLESS IT IS FILED WITHIN 10 DAYS OF THE HEARING DATE.  
RECEIVED  
COUNTY BOARD OF APPEALS  
OCT 24 4 11 PM '88

IN THE MATTER OF THE APPLICATION OF ALVA HOOPENGARDNER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF EDDLYNCH DRIVE, 510' EAST OF CENTERLINE OF CHURCH ROAD (7804 WISE AVENUE) 12TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT  
ALVA HOOPENGARDNER, ET UX PETITIONERS/PLAINTIFFS  
CASE NO. 89-159-SPHXA  
IN THE CIRCUIT COURT FOR BALTIMORE COUNTY  
CG Doc. No. 72  
Folio No. 123  
File No. 89-CG-3323

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:  
And now comes William T. Hackett, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against the Board, herewith returns the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner of Baltimore County:

- ENTRIES FROM DOCKET OF BOARD OF APPEALS OF BALTIMORE COUNTY  
No. 89-159-SPHXA  
August 10, 1988 Petition of Alva Hoopengardner, et ux for special hearing to approve the storage of damaged and disabled motor vehicles on the lot at the rear of 7804 Wise Avenue, which is located on D.R. 5.5 zoned land, as a nonconforming use.  
August 10, 1988 Petition of Alva Hoopengardner, et ux for special exception for service garage (storage of damaged and disabled motor vehicles)  
August 10, 1988 Petition of Alva Hoopengardner, et ux for variance to allow outside storage of damaged and disabled vehicles on a lot at the rear of 7804 Wise Avenue and to approve a modified plan exempting the petitioner from the conditions set forth in containment)  
October 6, 1988 Certificates of Publications in newspapers - filed.  
October 7, 1988 Certificate of Posting of Property - filed.  
October 18, 1988 Comments of Baltimore County Zoning Plans Advisory Committee - filed.  
October 26, 1988 Comments of Baltimore County Director of Planning - filed.

Alva Hoopengardner, et ux, Case No. 89-159-SPHXA  
File No. 89-CG-3323

- At 9:00 a.m. hearing held on Petitions by Zoning Commissioner.  
October 26, 1988 Order of the Zoning Commissioner GRANTING Petitions with restrictions.  
November 17, 1988 Amended Order of the Zoning Commissioner stating that the special exception for a service garage operation was for Lot 1A only, not Lot 1A and 2 as stated in the original Order.  
December 1, 1988 Order for Appeal to the C.B. of A. from Charles Mentzer, Esquire on behalf of the Petitioners.  
December 15, 1988 Postponed in open hearing and reset for August 22, 1989.  
May 9, 1989 Hearing scheduled before board.  
August 22, 1989 By 10:40 a.m. "no one present in the hearing room" Opinion and Order of the Board issued that as the result of a letter filed August 22, 1989 from Counsel for Petitioner and as a result of lack of appearance at hearing it was "ORDERED that the appeal in Case No. 89-159-SPHXA be and the same is DISMISSED; and FURTHER ORDERED that the Zoning Commissioner's Order dated November 17, 1988 and Amended Order dated December 1, 1988 be and the same are AFFIRMED."  
September 20, 1989 Order for Appeal filed in the Circuit Court for Baltimore County by Charles Mentzer, Esquire on behalf of the Petitioners.  
" " " Petition to accompany Order for Appeal filed in the Circuit Court for Baltimore County.  
" " " Certificate of Notice sent to interested parties.  
October 19, 1989 Transcript of testimony filed.  
" " " Petitioners' Exhibit No. 1 - Zoning Commissioner's file.  
October 19, 1989 Record of proceedings filed in the Circuit Court for Baltimore County.  
Record of proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Respectfully submitted,  
*[Signature]*  
Linda Lee P. Hines  
Linda Lee W. Kusznau, County Board of Appeals

cc: Charles Mentzer, Esquire  
Mr. and Mrs. Alva Hoopengardner  
Phyllis C. Friedman, Esquire  
People's Counsel for Baltimore County

IN THE MATTER OF THE APPLICATION OF ALVA HOOPENGARDNER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF EDLYNCH DRIVE, 510' EAST OF CENTERLINE OF CHURCH ROAD (7804 WISE AVENUE) 12TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT ALVA HOOPENGARDNER, ET UX PETITIONERS/PLAINTIFFS

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY  
CG Doc. No. 72  
Folio No. 123  
File No. 89-CG-3323

CASE NO. 89-159-SPHXA

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Maryland 21236, Counsel for Petitioners/Plaintiffs; Mr. and Mrs. Alva Hoopengardner, 7804 Wise Avenue, Baltimore, Maryland 21222, Petitioners/Plaintiffs; Phyllis C. Friedman, Esquire, People's Counsel for Baltimore County, Room 304, County Office Building, Towson, Maryland 21204; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Linda Lee M. Kuszmaul  
Linda Lee M. Kuszmaul, County Board of Appeals  
Room 315, County Office Building  
Towson, Maryland 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Charles Mentzer, Esquire, 7902 Belair Road, Baltimore, Maryland 21236, Counsel for Petitioners/Plaintiffs; Mr. and Mrs. Alva Hoopengardner, 7804 Wise Avenue, Baltimore, Maryland 21222, Petitioners/Plaintiffs; Phyllis C. Friedman, Esquire, People's Counsel for Baltimore County, Room 304, County Office

Alva Hoopengardner, et ux, Case No. 89-159-SPHXA  
File No. 89-CG-3323  
Building, Towson, Maryland 21204; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, Towson, Maryland 21204, on this 20th day of September, 1989.

Linda Lee M. Kuszmaul  
Linda Lee M. Kuszmaul, County Board of Appeals  
Room 315, County Office Building  
Towson, Maryland 21204 (301) 887-3180

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO. 89-CG-3323 72/123

APPELLANT(S) ALVA HOOPENGARDNER et ux FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF EDLYNCH DRIVE, 510' EAST OF CENTERLINE OF CHURCH ROAD 7804 WISE AVENUE 12TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT

APPELLEE(S) COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
CASE NUMBER. 89-159-SPHXA

ORDER FOR APPEAL

Now comes the Appellants, by their attorney, Charles Mentzer, pursuant to Maryland Rule B 1 and B 2 and appeals from the decision of County Board of Appeals, of Baltimore County, dated August 22, 1989 (a copy of which is attached hereto as exhibit 1)

Alva Hoopengardner  
ALVA HOOPENGARDNER

Charles Mentzer  
CHARLES MENTZER  
7902 Belair Road  
Baltimore, Maryland 21236  
(301) 882-9595  
Attorney for Appellants

69 SEP 20 AM 11:15  
RECEIVED  
COUNTY BOARD OF APPEALS

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO.

APPELLANT(S) ALVA HOOPENGARDNER et ux FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE SOUTH SIDE OF EDLYNCH DRIVE, 510' EAST OF CENTERLINE OF CHURCH ROAD 7804 WISE AVENUE 12TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT

APPELLEE(S) COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY  
CASE NUMBER. 89-159-SPHXA

APPELLANTS PETITION IN COMPLIANCE WITH MARYLAND RULE B 2 (e)

Now comes the Appellants, pursuant to Maryland Rule B 2 (e) and files this Petition and in support of same says:

1. The Appellants originally requested from the Baltimore County Office of Planning and Zoning a special hearing to approve the pre-existing non-conforming use of the subject property for the storage of damaged and disabled motor vehicles; a special exception to use the subject property as a service garage; and variances to permit the outside storage of damaged and disabled vehicles on the subject property and to approve a modified plan exempting the Appellants herein from the conditions set forth in section 230.12a of the Baltimore County Zoning Regulations (B.C.Z.R.) relative to the use of the subject property as a service garage without a principal building or containment. (See exhibit 2 (the zoning commissioner's decisions))

2. The Appellants withdrew portions of originally requested special hearing to approve the pre-existing non-conforming use of the subject property for the storage of damaged and disabled motor vehicles; a special exception to use the subject property as a service garage; and variances to permit the outside storage of damaged and disabled vehicles on the subject property and to approve a modified plan exempting the Appellants from the conditions set forth in section 230.12a of the Baltimore County Zoning Regulations (B.C.Z.R.) relative to the use of the subject property as a service garage without a principal building or containment. (See exhibit 2 (the zoning commissioner's decisions))

3. The Zoning Commissioner after several rewrites of his opinion(s) granted portions of Appellants originally requested special hearing to approve the pre-existing non-conforming use of the subject property for the storage of damaged and disabled motor vehicles; a special exception to use the subject property as a service garage; and variances to permit the outside storage of damaged and disabled vehicles on the subject property and to approve a modified plan exempting the Appellants from the conditions set forth in section 230.12a of the Baltimore County Zoning Regulations (B.C.Z.R.) relative to the use of the subject property as a service garage without a principal building or containment with several restrictions. (See exhibit 2 (the zoning commissioner's decisions)).

4. From this the Appellants appealed to the County Board of Appeals of Baltimore County (the Appellees herein) (see Exhibit no 3, the appeal)

5. At the time of the original scheduled hearing at the County Board of Appeals of Baltimore County the Appellants preliminarily advised all persons present that in order to proceed expeditiously it would be necessary for the Appellants to introduce the Baltimore County Office of Planning and Zoning's file and perhaps read from some of the contents therein including an affidavit of the "Critical Witness" one "Ruth Endrich" (See Exhibit 4); a daughter of the prior owners of the subject property and the only witness known to the Appellants who had actual knowledge and who could testify to the use of the property for over forty (40) years and also testify as to the pre-existing non-conforming use of the subject property for the storage of damaged and disabled motor vehicles; an absolutely necessary item of proof in order to obtain continuing approval the pre-existing non-conforming use of the subject property for the storage of damaged and disabled motor vehicles at the "de novo" hearing before the County Board of Appeals of Baltimore County

6. Immediately Deputy Peoples Counsel, Peter Max Zimmerman Esquire "objected" and indicated that he wanted a "Live Witness to Cross-Examine" and indicated that if the County Board of Appeals of Baltimore County "Denied his Request" for a "Live Witness to Cross-Examine" that "he" would probably "appeal"

7. The County Board of Appeals of Baltimore County appeared to be intimidated by the action of Deputy Peoples Counsel, Peter Max Zimmerman Esquire and the County Board of Appeals of Baltimore County "Sustained" Deputy Peoples Counsel, Peter Max Zimmerman

Esquire's "objection" and the County Board of Appeals of Baltimore County continued the case until August 22, 1989 to allow for a "Live Witness, one 'Ruth Endrich' to be Cross-Examined" by Deputy Peoples Counsel, Peter Max Zimmerman Esquire's

8. Thereafter the Appellant requested the County Board of Appeals of Baltimore County to issue a subpoena for the "Critical Witness" one "Ruth Endrich" (See Exhibit 4), which Appellant thereafter had served on the "Critical Witness" one "Ruth Endrich"

9. The Appellant was notified by the "Critical Witness" one "Ruth Endrich" that she would be unable to attend the scheduled hearing on August 22, 1989 and requested that the Appellant request that the County Board of Appeals of Baltimore County either postpone the case until a more convenient date or allow the parties to "depose her", the "Critical Witness" one "Ruth Endrich"

10. The Appellant immediately notified all parties that the "Critical Witness" one "Ruth Endrich" would be unable to attend the scheduled hearing on August 22, 1989 and requested that the County Board of Appeals of Baltimore County either postpone the case until a more convenient date or allow the parties to "depose her", the "Critical Witness" one "Ruth Endrich" (SEE Exhibit 5)

11. The County Board of Appeals of Baltimore County refused to either postpone the case until a more convenient date or allow the parties to "depose her", the "Critical Witness" one "Ruth Endrich" (See Exhibit 6) and issued an "ORDER OF DISMISSAL"

12. From the County Board of Appeals of Baltimore County's refusal to either postpone the case until a more convenient date or allow the parties to "depose her", the "Critical Witness" one

"Ruth Endrich" (See Exhibit 6) and the "ORDER OF DISMISSAL" the Appellant appealed to this Court.

13. Appellants avers that the County Board of Appeals of Baltimore County's refusal to either postpone the case until a more convenient date or allow the parties to "depose her", the "Critical Witness" one "Ruth Endrich" (See Exhibit 6) after The County Board of Appeals of Baltimore County "Sustained" Deputy Peoples Counsel, Peter Max Zimmerman Esquire's "objection" and the County Board of Appeals of Baltimore County continued the case until August 22, 1989 for a "Live Witness to be Cross-Examined" by Deputy Peoples Counsel, Peter Max Zimmerman Esquire and then issuing a "ORDER OF DISMISSAL" while depriving the Appellants of the "Critical Witness" one "Ruth Endrich" the only witness known to the Appellants who could testify to the continued use of the property for over forty (40) years as to the pre-existing non-conforming use of the subject property for the storage of damaged and disabled motor vehicles an absolutely necessary item of proof in order to obtain continuing approval the pre-existing non-conforming use of the subject property for the storage of damaged and disabled motor vehicles at the "de novo" hearing before the County Board of Appeals of Baltimore County was an error and a denial of Appellant's right to due process of law and an arbitrary unreasonable and capricious act on the part of the County Board of Appeals of Baltimore County

14. Appellants avers that after a review of the records it is their belief that they will find other errors and believe that in light of the aforementioned information they should be allowed to amend this Petition at a later time.