IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 +/- SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD, 4TH ELECTION DISTRICT, 3RD COUNCILMANIC DISTRICT

REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL, ET AL, PLAINTIFFS ZONING CASE NO. 90-160-A

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CG Doc. No. 2
* Folio No. 371
* File No. 91-CV-4539

* * * * * * * * * * * * *

ORDER FOR APPEAL

Mr. Clerk:

Please note an appeal of the decision and judgment of this Honorable Court dated May 15, 1992.

Respectfully submitted,

Donald J. Katz
2333 West Joppa Road
Lutherville, Maryland 21093
(410) 494-8885

Attorney for Appellants

RECEIVED AND FILED
92 JUN 16 A 10:04

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 15th June, 1992, a copy of the aforegoing Order for Appeal was mailed postage prepaid to Marvin Singer, Esquire, Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361.

Donald J. Katz

Received for filing on June 15, 1992 at 1:30 p.m.
Robert L. Caplan
Chambers Judge
Costs to be paid to the Clerk on June 16, 1992

92 JUN 17 PM 2:16

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATAGORY APPEAL

6/1/92

ATTORNEYS

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER, FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270+/- SOUTHEAST OF HIGH FALCON ROAD (11309-11311 REISTERSTOWN ROAD)

4th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

Donald J. Katz
Ste. 225 = Greenspring Station
2360 West Joppa Rd.
Lutherville, MD 21093 494-8885

LEONARD STOLER, APPallee

Marvin I. Singer
343 N. Charles Street
21201 727-4700

(1) Sept. 20, 1991 - Appellants' Order for Appeal from the Decision of the County Board of Appeals fd.#90-160-A	CV GEN	COSTS $14436
(2) Sept 23, 1991 - Certificate of Notice fd.	CV CLK	
(3) Sept. 30, 1991 - Petition of Appeal, fd.	E LEGAL	
(4) Oct 18,1991 Transcript of record ,fd. (In G-1)	POST	
(5) Oct 18,1991 Notice of filing of Transcript of record,fd	CHECK TL	
(6) Nov 13, 1991 Appearance of Marvin I. Singer as Attorney for Leonard Stoler and same day Motionto dismiss appeal, fd. (request for hearing) Rec.'d 10/30/91.		
(7) Nov. 19, 1991 - Appellant's Response to Motion to Dismiss and Request for Hearing, fd.		
(8) Jan. 27, 1992 - Appellant's Memorandum in Support of Appeal, fd.		
(9) Feb. 21,1992 - Appellee's Motion to dismiss appeal, request for Hearing, Memorandum, fd		
March 5, 1992 Hon. John G. Turnbull, II. Appeal Hearing is rescheduled for April 7, 1992 at. 9:00 A.M.		

Docket 2 Page 371 Case 91CV4539

CASE NO. 91CV4539

(10) Mar 9, 1992 Appealee's Memorandum, fd. (rec'd 2-28-92)

(11)March 9,1992 - Appellant's response to Motion to dismiss appeal fd

(12) Mar 19, 1992 Appelle's answer to Petition of Appeal, fd.

April 7, 1992 Hon. John G. Turnbull, II. Hearing had. Case held sub-curia. Opinion and Order to be filed.

(13) May 15, 1992 - Opinion and Order of Court that the Board's decision with respect to the sign Variances and the setback Variance is AFFIRMED and the decision regarding the display parking variance is REVERSED. costs of this appeal are to be divided equally among the parties fd. (J.G.T., II).

6/17/92 - APPEALED TO CSA
9/11/92 - TO ANNAPOLIS
9/14/92
11/9/92 - MANDATE APPEAL DISMISSED

#90-160-A LEONARD STOLER
5/15/92 - Judge Turnbull
AFFIRMS C.B. of A. as to setback Variance; REVERSES as to parking Variance

5/15/92

The Circuit Court for Baltimore County
THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(301) 887-2647

IN THE MATTER OF	*	IN THE
THE APPLICATION OF	*	CIRCUIT COURT
LECNARD STOLER, et al	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO.91 CV 4539

* * * * * * * * * * * * *

OPINION AND ORDER

This is an appeal from the Baltimore County Board of Appeals. The Board heard the matter on appeal from a decision of the Zoning Commissioner. The Appellants, herein, are the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG) and Reverend Frederick Hannah (Hannah). The Appellee, herein, is Leonard Stoler.

This case was set for a hearing before this Court on April 7, 1992. Before proceeding to the merits of the appeal, this Court must first rule on Appellee's Motion to Dismiss the appeal. As grounds for which, Appellee presents two points.

First, Appellee argues that Appellants' failure to file a memorandum in support of their appeal within thirty days after being notified by the Clerk of the filing of the record,

FILED MAY 15 1992

warrants dismissal pursuant to Rule B12. "In determining whether dismissal is an appropriate sanction for failing to comply with Rule B12, a trial judge should examine 'the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.'" Gaetano v. Calvert County 310 Md. 121, 127 (1987) citing Md. Rule 1-201. "The purpose of Rule B12 is to inform the opposing parties and the trial court of the issues involved in the case, and the Appellants' arguments on appeal, in sufficient time for the opposition to respond in kind and for the court to make an informed decision." Gaetano at 126.

In the case sub judice, notice of filing of the record was filed on October 18, 1991. Appellant filed its memorandum in support of its appeal on January 27, 1992. The first hearing for this matter was scheduled for March 5, 1992. Appellee's memorandum, although filed with the clerk of the Court, did not make its way to the file folder by March 5. Therefore, the case was reset for April 7, 1992 and Appellee's memorandum did, in fact, make its way to the file folder long before that hearing. This Court has had ample time to review all memoranda filed in this matter. Further, Appellee has been informed of all of the issues involved and of Appellants' arguments. Appellee has had sufficient time to prepare its memorandum, which, combined with Appellants' memorandum, has aided this Court in making an informed decision. This Court finds that the purpose of Rule B12 has been met, and Appellant's failure to timely file a memorandum does not warrant dismissal.

Second, Appellee urges this Court to dismiss the appeal on the ground that Appellants lack standing. The Court will first address the question of whether the ROG has standing.

Section 26-132(a) of the Baltimore County Code provides: "Any person or persons jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any decision of the zoning commissioner shall have the right to appeal therefrom to the county board of appeals." Under subsection (b), "the term 'person aggrieved or feeling aggrieved' includes a duly constituted civic, improvement, or community association if: (1) The property or issue which is the subject of the final order being appealed is: [b] ... of such a nature and kind as to be within the association's discernible and assessable tax base if such exists. The property at issue is located within the boundaries of the ROG, (See T. 148) and thus, within its tax base. The ROG is an aggrieved party. Under Section 26-132, the ROG had standing to appeal to the county board of appeals.

A party may appeal a decision of the county board of appeals "in the manner provided in Article VI of the charter. The pertinent part of the Charter is Section 604, which states: "Within thirty days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal such decision to the Circuit Court of Baltimore County..." The ROG, fitting the criteria for "aggrieved" party, has the right to appeal to the Circuit Court.

This Court finds that the ROG does have standing and accordingly, Appellee's Motion to Dismiss with respect to the ROG is denied.

The inquiry now turns to whether Hannah has standing. Under Section 26-132, he must be "aggrieved," a term which apparently has never been legislatively defined. However, the Court of Appeals has clarified the word:

> "Generally speaking, the decisions indicate, that a person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally. "Bryniarski v. Montgomery Co. 247 Md. 137, 144 (1966) citing DuBay v. Crane, 240 Md. 180, 185 (1965).

There has been no evidence that Hannah has an interest such that he would be "aggrieved." Hannah's position as Zoning Chairperson for the ROG does not confer standing. Under the County Code and the case law, it is clear that Hannah lacks standing. Accordingly, Appellee's Motion to Dismiss, with respect to Hannah's appeal, is granted. The Court will address the merits of the appeal, with the ROG as sole Appellant.

Len Stoler is an automobile dealer with various dealerships. Central to the appeal is the construction of a Lexus automobile dealership facility on Reisterstown Road in Owings Mills. With respect to the construction of the new

facility Len Stoler requested Variances from (1) Section 238.2 to allow a side yard setback of 1.0 feet in lieu of the required 30 feet for a proposed Chrysler building; (2) Section 413.2(f) to permit a double face sign of 139 square feet in lieu of the permitted 100 square feet; (3) Section 413.5(d) to allow a sign height of 27 feet 10 inches in lieu of the maximum of 25 feet and (4) Section 238.1, 238.4 and 303.2 to allow display parking 10 feet from the Reisterstown Road right-of-way, in lieu of the required 53 feet. The requested Variances were granted.

Under Section 307 of the Baltimore County Zoning Regulations, a variance can be granted only in cases where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship. "The standard for granting a variance [is] whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only in strict harmony with the spirit and intent of the zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 Md. 208, 213 1973).

As for the sideyard setback, the ROG is not opposed and the record supports the Board's holding that the setback was essential to avoiding hardships and practical difficulty.

Regarding the sign variances, the Board concluded that "[t]he variances as to the sign are necessary in order to permit erection of a standardized sign required by the manufacturer, of a type readily seen and identifiable." Board's Opinion at 5.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: November 7, 1989

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Colonial Stoler Partnership, Item 19
Zoning Petition No. 90-160-A

RECEIVED
NOV 8 1989
ZONING OFFICE

The Petitioner requests a variance to permit a reduced building setback, outdoor display setback, and sign height and area requirements for the proposed automobile sales facility. The site obtained CRG approval on May 25, 1989 (File No. IV-368).

This office has no objection to the building setback and outdoor display setback variances requested. The site is presently zoned B.R. If it was zoned B.M., which also allows automobile sales facilities, these variances would not be required.

This office can find no hardship or practical difficulty to allow for a sign with a height and area in excess of the requirements and recommends that the sign be scaled down in order to comply with the BCZR.

There are concerns regarding the efficiency of the site layout with regard to the number of entrances, the amount of paving and internal landscaping, the layout and calculation of customer, employee, display and storage spaces on the site.

The eastern entrance designed as a one-way right turn in should be eliminated because of the proximity of the entrance just south on the "Len Stoler Ford Porsche Audi" site and the internal driveways connecting the sites. The space which now supports that entrance could be utilized for new car display.

A check with the Zoning Office determined that the parking calculations determined by General Notes 6, 7, and 8 were to meet the requirements of customer and employee spaces. Of the 97 spaces required, customer spaces should be most convenient to the sales buildings and should be marked as customer only spaces. Spaces to the rear of the building utilized for customer/employee parking should be so marked.

J. Robert Haines
Page 2
November 7, 1989

The elimination of employee only spaces results in an increase of storage spaces and vegetated areas within the site. Storage spaces are not required to meet the minimum 8-1/2 x 18' requirement and are not subject to the access requirements or customer parking. The accompanying site plan provides a layout using 8 x 18' storage spaces and minimum 22' wide access aisles. The area to the northwest of the site, adjacent to Highfalcon Road, shows an increased setback for the paved area and stacked storage spaces. A reduction in aisle widths and revision to the internal parking arrangement results in an increase of internal pervious area and a reduction of grades on that area.

If this layout is accepted by the Zoning Commissioner, this office will recommend that a refinement of the CRG plan be approved.

- Indicate the location of the used car sales office.

- The proposed chain link fence shall be screened with slats. This office recommends the use of wood or PDS or other suitable durable material as determined on the final landscape plan.

  A landscape plan must be submitted for approval prior to the issuance of any building permits.

- It is recommended that customer use not be permitted from the shared access with Hardee's.

- All lighting fixtures used to illuminate the parking area shall be arranged to reflect light away from residential lots and public streets. If lighting after business hours is necessary for security reasons, lower wattage lights should be used in areas adjacent to residential lots and public streets.

- Because of the proximity to adjoining residences, an outdoor paging system should be prohibited.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/pat

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL
PROTECTION AND RESOURCE MANAGEMENT

7/20/89
Date

Zoning Commissioner
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

AUG 1 0 1989

Zoning Item # 19, Zoning Advisory Committee Meeting of July 25, 1989

Property Owner: Leonard Stoler

Location: NE side Reisterstown Rd, 270'(+or-) SE of High Falcon Rd District: 4

Water Supply: metro Sewage Disposal: metro

COMMENTS ARE AS FOLLOWS:

( ) Prior to approval of a Building Permit for construction, renovation and/or installation of equipment for any existing or proposed food service facility, complete plans and specifications must be submitted to the Plans Review Section, Bureau of Regional Community Services, for review and approval.

(✓) Prior to new installation(s) of fuel burning equipment, the owner shall contact the Bureau of Air Quality Management, 887-3775, to obtain requirements for such installation(s) before work begins.

(✓) A permit to construct from the Bureau of Quality Management is required for such items as spray paint processes, underground gasoline storage tank(s) (5,000 gallons or more) and any other equipment or process which exhausts into the atmosphere.

( ) A permit to construct from the Bureau of Air Quality Management is required for any charbroiler generator which has a total cooking surface area of five (5) square feet or more.

( ) Prior to approval of a Building Permit Application for renovations to existing or construction of new health care facilities, complete plans and specifications of the building, food service area and type of equipment to be used for the food service operation must be submitted to the Plans Review and Approval Section, Division of Engineering and Maintenance, State Department of Health and Mental Hygiene for review and approval.

( ) Prior to any new construction or substantial alteration of public swimming pool, wading pool, bathhouse, sauna, whirlpools, hot tubs, water and sewerage facilities or other appurtenances pertaining to health and safety; two (2) copies of plans and specifications must be submitted to the Baltimore County Department of Environmental Protection and Resource Management for review and approval. For more complete information contact the Water Quality Monitoring Section, Bureau of Regional Community Services, 687-6500 x 315.

( ) Prior to approval for a nursery school, owner or applicant must comply with all Baltimore County regulations. For more complete information, contact the Division of Maternal and Child Health.

(✓) If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be in accordance with the State Department of the Environment.

(✓) Prior to razing of existing structure(s), petitioner must contact the Division of Waste Management at 887-3745, regarding removal and/or disposal of potentially hazardous materials and solid wastes. Petitioner must contact the Bureau of Air Quality Management regarding removal of asbestoes, 887-3775.

(✓) Any abandoned underground storage tanks containing gasoline, waste oil, solvents, etc., must have the contents removed by a licensed hauler and tank removed from the property or properly backfilled. Prior to removal or abandonment, owner must contact the Division of Waste Management at 887-3745.

( ) Soil percolation tests, have been ___, must be ___, conducted.
( ) The results are valid until ___.
( ) Soil percolation test results have expired. Petitioner should contact the Division of Water and Sewer to determine whether additional tests are required.

( ) Where water wells are to be used as a source of water supply, a well meeting the minimum Baltimore County Standards must be drilled.

( ) In accordance with Section 13-117 of the Baltimore County Code, the water well yield test
( ) shall be valid until ___.
( ) is not acceptable and must be retested. This must be accomplished prior to conveyance of property and approval of Building Permit Applications.

( ) Prior to occupancy approval, the potability of the water supply must be verified by collection of bacteriological and chemical water samples.

( ) If submission of plans to the County Review Group is required, a Hydrogeological Study and an Environmental Effects Report must be submitted. For more information contact the Division of Environmental Management at 887-3980.

( ) In order to subdivide this property, the owner or developer will be required to comply with the subdivision regulations of the State of Maryland and Baltimore County. If there are any questions regarding the subdivision process, please contact the Land Development Section at 887-2762.

(✓) Others Drainage from interior service bays is to be directed to sanitary sewer via oil separator.

G. D. Zeluff
BUREAU OF WATER QUALITY AND RESOURCE

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

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

February 5, 1990

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

PETITION FOR ZONING VARIANCE
NE side of Reisterstown Road
270' +/- SE of High Falcon Road
11309-11311 Reisterstown Road
4th Election District 3rd Councilmanic District

Leonard Stoler - Petitioner
Case No. 90-160-A

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on January 16, 1990 by Donald J. Katz, Esq., on behalf of Mr. Henry Lewis, Protestant. 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:jat

Enclosures

cc: Donald J. Katz, Esq.
610 Joppa Green I
2324 W. Joppa Road
Lutherville, Md. 21093

Board of Appeals
Case #90-160-A
Page 2

Marvin I. Singer
343 N. Charles Street
Baltimore, Maryland 21201

Mr. Henry Lewis
22 Carraway Road
Reisterstown, Md. 21136

Baxter Smith
Community Times
POB 247
Reisterstown, Md. 21136

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

File

APPEAL

Petition for ZONING VARIANCE
NE side of Reisterstown Road
270' +/- SE of High Falcon Rd.
11309-11311 Reisterstown Road
4th Election District - 3rd Councilmanic District

Leonard Stoler - Petitioner
Case No. 90-160-A

Petition for Zoning Variance

Addendum to Petition for Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments dated October 31, 1989

Petitioner's Exhibits: 1. Site plan & plat

Zoning Commissioner's Order dated 12/15/89 granted with restrictions.

Notice of Appeal received January 16, 1990 from Donald J. Katz, Attorney for Mr. Henry Lewis, Protestant.

List all Names of parties involved

Donald J. Katz, Esq.
610 Joppa Green I
2324 W. Joppa Road
Lutherville, Md. 21093

Marvin I. Singer
343 N. Charles Street
Baltimore, Maryland 21201

Mr. Henry Lewis
22 Carraway Road
Reisterstown, Maryland 21136

Baxter Smith
Community Times
POB 247
Reisterstown, Maryland 21136

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
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, County Attorney

5/1/90 - Following parties notified of hearing set for August 3, 1990 at 1:00 p.m.:

Donald J. Katz, Esq.
Henry Lewis
Marvin Singer, Esq.
Mr. Baxter Smith
People's Counsel
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon

8/02/90 -T/C from D. Katz, counsel for protestants/appellants; matter almost to point of settlement; does not yet have signed agreement; Mr. Katz will appear at 1:00 p.m. on 8/03 to postpone on record pending settlement and ultimate dismissal of appeal by his client. Board notified; M. Sauer to postpone.

8/03/90 -POSTPONED on the record by Acting Chairman Sauer upon request of Donald Katz, Counsel for Appellants; settlement imminent; expects to dismiss appeal within week.

9/20/90 -Letter from M. Singer -agreement not signed by protestants; requests Board to dismiss appeal of protesteants.

9/25/90 -Letter to M. Singer --Board cannot dismiss Protestants' appeal; Board can only set for hearing if agreement cannot be reached (at request of either party).

5/3/91 - Above parties notified of hearing set for August 14, 1991 at 10:00 a.m.

7/25/91 -T/C w/ D. Katz regarding the need for Mr. Lewis to appear at the above hearing since he is no longer the Zoning Chairman of the Reisterstown/Owings Mills/Glyndon Coordinating Council. Confirmed with WTH that new Zoning Chairman can appear at hearing and his status entered on the record and in the file at that time; Mr. Lewis need not appear. kcw

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

September 25, 1990

Marvin I. Singer, Esquire
HOOPER, KEIFER & CORNELL
343 N. Charles Street
Baltimore, MD 21201-4361

RE: Case No. 90-160-A
Leonard Stoler

Dear Mr. Singer:

The Board is in receipt of your letter dated September 18, 1990, in which you respectfully request the appeal in the subject matter be dismissed.

The appeal in this case was instituted by the protestants represented by Donald Jay Katz, Esquire. The Board does not have the authority to dismiss their appeal; rather, only the appellants are authorized to dismiss their own appeal. If you are unable to negotiate an agreement and a dismissal, the Board has no choice but to set the case for hearing.

The Board will also note for your information that the schedule dates now are approaching the Spring of 1991.

Very truly yours,

William T. Hackett

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

cc: Donald Jay Katz, Esquire
People's Counsel for Baltimore County

Baltimore County Government
Department of Public Works

111 West Chesapeake Avenue
Towson, MD 21204

July 09, 1991

Zone F
Hearing 90-160-A
Cur Plan File
No IV-368

Hanna Building Systems, Inc.
115 Lakefront Drive
Huntvalley, Maryland 21030

Attn: Robert W. Hanna Pres.

RE: Stoler " Lexus & Chrysler "

Gentlemen:

The County Review Group sta f met on July 08, 1991, to consider the plan submitted for review.

The submitted plan was determined to be a "Plan Correction". A corrected plan will not be necessary due to the minor corrections proposed, however it is advised, that a letter be submitted to Mr. Bob Hanes or the Zoning Hearing officer, requesting an amendment for the proposed 17 foot extension of the Chrysler Building, on the side lot variance that had been previously obtained.

If you have any questions about this procedure, do not hesitate to call me at 887-3340.

Sincerely,

Leslie C. Schreiber
Refinement Coordinator
Bureau of Public Services

944-3647-364
LCS:lcs
cc: CRG Staff
file

PRESORTED
FIRST-CLASS

County Board of Appeals of Baltimore County
ROOM 315, COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

Mr. Baxter Smith
Community Times
P.O. Box 247
Reisterstown, MD 21136

COMMUNITY TIMES FORWARDING TIME EXPIRED
FORWARD TO NEW ADDRESS
WESTMINSTER, MD 21157-0246
RETURN TO SENDER

LAW OFFICES
HOOPER, KIEFER & CORNELL
343 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4381
(301) 727-4700
FAX: (301) 625-4709

TOWSON OFFICE
409 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4299
823-3010

ARTHUR W. HOOPER
(1895-1976)

RICHARD W. KIEFER
F. DUNCAN CORNELL
MARVIN I. SINGER
IRA R. HIMMEL
WILLIAM L. CLARK
DOROTHY M. BEAMAN

September 18, 1990

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

Re: Leonard Stoler
Case No. 90-160-A

Dear Sir:

The above entitled case was scheduled for hearing on August 3, 1990 but was continued at that time by agreement of the parties, on the basis that the controversy had been resolved. Subsequently, I forwarded to counsel for the protestants/appellants an agreement which addressed the concerns of the parties, together with an order of dismissal. Despite my repeated requests, I have been unable to obtain execution of the agreement nor dismissal of the appeal.

My client is willing to abide by the agreement reached, but is impeded in his efforts to complete development by the pending appeal which continues to cloud the status of the variances which were granted by the Zoning Commissioner. Under these circumstances I would respectfully request the appeal be dismissed, so that my client will no longer be prejudiced by the continuing delay.

Thank you for your consideration in this matter.

Very truly yours,

Marvin I. Singer

MIS:mc
cc: Donald Jay Katz, Esq.
Leonard Stoler

RECEIVED
COUNTY BOARD OF APPEALS
90 SEP 20 PM 12:49

LAW OFFICES
HOOPER, KIEFER & CORNELL
343 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4381
(301) 727-4700
FAX: (301) 625-4709

TOWSON OFFICE
409 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4299
823-3010

ARTHUR W. HOOPER
(1895-1976)

RICHARD W. KIEFER
F. DUNCAN CORNELL
MARVIN I. SINGER
IRA R. HIMMEL
WILLIAM L. CLARK
DOROTHY M. BEAMAN

March 1, 1991

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

RE: Leonard Stoler
Case Number 90-160-A

Dear Sir:

Please schedule the above entitled appeal for hearing at the earliest possible date. Thank you for your kind attention to this request.

Yours very truly,

Marvin I. Singer

MIS/lmf

cc: Donald J. Katz, Esquire
People's Council for Baltimore County

91 MAR -4 AM 11:35

7-17-J-Jed

7/15/91

92-137

hanna
building systems, inc.

July 15, 1991

approved 9D
7/23/91
File in 90-160A

Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management
Baltimore County Government
111 West Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
JUL 15 1991
ZONING OFFICE

RE: Leonard Stoler
Case #90-160-A

Dear Mr. Jablon:

On December 15, 1989 the Zoning Commissioner (Robert Haines) granted a variance in the above referenced case to allow a side yard setback of 1.0 feet in lieu of the required 30 feet for the proposed Chrysler building (Building No. 11309).

We are in the process of filing for the building permit to construct the building and find we need to make a minor adjustment in the proposed building length increasing it by 17 feet to accomodate the interior bay spacing.

On July 8, 1991 we submitted a red line drawing to the County Review Group Staff showing the minor adjustment. Enclosed is a copy of their July 9, 1991 letter indicating that a corrected C.R.G. Plan will NOT be necessary due to the minor corrections proposed; however, they advised that a letter be submitted to your office requesting an amendment for the proposed 17 foot extention of the Chrysler building, on the side lot variance that had been previously granted.

115 LAKEFRONT DRIVE • HUNT VALLEY, MARYLAND 21030 • (301) 771-0220

Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management
Page -2-

Enclosed are two red line prints of the original "Plat to Accompany Petition for Zoning Variances" showing the proposed minor adjustment increasing the building length by 17 feet. Please note that the side yard setback variance is from the interior property line between the owner's (Leonard Stoler) two properties, both of which are existing automobile dealerships, and the area of the proposed 17 foot addition is actually further than 1.0 feet from the side yard setback allowed by the variance.

We hope you will take into consideration the minor nature of this adjustment and approve our request by including the enclosed red line drawings and our cover letter in the file so we can apply for and obtain our building permit.

Thank you for your consideration in this matter.

Sincerely,

Robert W. Hanna
President
RWH:blp

encl.

cc: Leonard Stoler

OFFICE
(301) 494-8885

RESIDENCE
(301) 486-2856

DONALD JAY KATZ
ATTORNEY AT LAW
610 JOPPA GREEN
2324 WEST JOPPA ROAD
LUTHERVILLE, MARYLAND 21093

January 16, 1990

J. Robert Haines, Zoning Commissioner
Baltimore County Office
Of Planning and Zoning
Towson, Maryland 21204

Re: Petition for Zoning Variance
Case No. 90-160-A
Leonard Stoler, Petitioner

Dear Mr. Haines:

Please note an appeal by Mr. Henry Lewis, protestant, on his own behalf and on behalf of the Reisterstown/Owings Mills/Glyndon Coordinating Council from the findings of fact and conclusions of law of the Zoning Commissioner in the above captioned matter.

Also enclosed is a check in the amount of $150.00 to cover the cost of the appeal and notice.

Thank you for your attention to this matter.

Very truly yours,

Donald J. Katz

DJK/dh
Enclosure
cc: Marvin I. Singer, Esquire
cc: Peoples Counsel
cc: Mr. Henry Lewis

Rec: 1/16/90 OFFICE
ZONING

OFFICE
(301) 494-8885

RESIDENCE
(301) 486-2856

TOLL FREE
(800) 321-LEGAL

FAX
(301) 494-0089

DONALD JAY KATZ
ATTORNEY AT LAW
SUITE 225, GREENSPRING STATION
2360 WEST JOPPA ROAD
LUTHERVILLE, MARYLAND 21093

August 13, 1991

HAND DELIVERED

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

RE: Case No. 90-160-A
Leonard Stoler

Dear Mr. Hackett:

This is in follow-up to my recent telephone conversations with Ms. Kathy Weidenhammer of your office.

In that regard, I advised Ms. Weidenhammer that on behalf of the Appellants, we are requesting that Reverend Frederick Hanna be substituted in place of Mr. Henry Lewis as an Appellant in this case. The reason for this requested substitution is that pursuant to the recent elections and appointments by the President of the Reisterstown-Owings Mills-Glyndon Coordinating Council, the Zoning Chairman is now Reverend Frederick Hanna.

If there is any problem with this or my understanding is mistaken with regard to substitution as discussed with Ms. Weidenhammer, please advise.

Mr. Lewis remains an elected member of the Board of Directors of the Reisterstown-Owings Mills-Glyndon Coordinating Council pursuant to his position as Treasurer.

Thank you for your attention to this matter.

Very truly yours,

Donald J. Katz

DJK:bbr 1-wth

cc: Marvin Singer, Esquire

There was ample evidence before the Board that due to the proportionality of the sign to the building and the site. T 120-121, and the topography of the area T 33, 86, 122, 123, 132, practical difficulty and hardship would result. Further, Douglas Kennedy, a civil engineer engaged by Appellee to develop the project, opined that without the variance the only sign permitted by Lexus would be so small such that "you [would] almost bypass the property before you realize you were at the Lexus dealership." T 46 The Board had ample evidence before it to rule as it did, and it correctly applied the law. Accordingly, with respect to the variances discussed above, this Court shall not disturb the Board's decision.

Regarding the Variance for display parking, the Board did not have sufficient evidence before it to grant the Variance. Len Stoler's vague comments about the public expectation of new vehicles at his lot does not necessitate a Variance. The record is lacking evidence of any practical difficulty or hardship that would result but for the Variance. The Board erred.

Accordingly, it is this 15th day of May, 1992,

ORDERED, by the Circuit Court for Baltimore County, that the Board's decision with respect to the sign Variances and the setback Variance is AFFIRMED and the decison regarding the display parking variance is REVERSED. Costs of this appeal are to be divided equally among the parties.

JOHN GRASON TURNBULL, II
JUDGE

Copies sent to: Donald J. Katz, Esquire
Marvin I. Singer, Esquire

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 +/- SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD, 4TH ELECTION DISTRICT, 3RD COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL, ET AL, PLAINTIFFS ZONING CASE NO. 90-160-A	*	CG Doc. No. 2
	*	Folio No. 371
	*	File No. 91-CV-4539

* * * * * * * * * * * * * *

RESPONSE TO MOTION DISMISS APPEAL

COME NOW, the Appellants, Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick Hannah, by their attorney, Donald J. Katz, and for response to the Motion to Dismiss Appeal filed by the Appellee, state as follows:

1. Appellants admit the allegations of Paragraph 1 of the Motion.

2. Appellants timely filed a Petition of Appeal in this case which Petition, in part, indicated the issues involved in this Appeal.

3. Appellants admit that a Memorandum was not filed until on or about January 27, 1992.

4. Although a hearing in this case has been scheduled on several occasions and postponed, none of the postponements were based on the lack of a Memorandum being filed in the case.

5. Appellee had more than the thirty (30) day time period to file its Memorandum, so there is clearly no basis for a claim of prejudice, and none has been alleged.

Appellants submit that any late filing of the Memorandum has not worked against the orderly and efficient administration of justice given the circumstances of this case, and therefore is not a basis for dismissal.

7. Rather, any delay in the hearing of this case resulted from an independent grounds for postponement of prior hearings, and/or the fact that the Clerk's Office has apparently misplaced a number of papers in the file.

8. There have been no adverse consequences as a result of noncompliance, so that in light of the totality of the circumstances and the purpose of the rule, dismissal is not an appropriate sanction in this case. As dismissal is discretionary with the Court, Appellant's submit that under the circumstances of this case, the Motion should be denied.

WHEREFORE, for the aforegoing reasons, Appellant's respectfully request this Honorable Court to deny Appellee's Motion to Dismiss Appeal.

Respectfully submitted,

Donald J. Katz
Suite 225, Greenspring Station
2360 West Joppa Road
Lutherville, Maryland 21093
(410) 494-8885
Attorney for Appellants

MEMORANDUM OF POINTS & AUTHORITIES

In Gaetano v. Calvert County, 310 Md. 121 (1987) the Court of Appeals reversed a dismissal of an appeal for failure to timely file a memorandum under Rule B12.

Appellant's Memorandum appears to argue that the Court found the lack of prejudice as the improper test for whether or not to grant dismissal under Rule B12. It is clear at p.127 the Court did consider whether there was prejudice to either party in reversing the trial court.

The real point of the Court of Appeals decision was whether there was sufficient time for an opposition memorandum and for the Court to make an informed decision. At p.126, the Court clearly indicates:

> "The purpose of Rule B12 is to inform the opposing parties and the trial court of the issues involved in the case, and the appellants' arguments on appeal, in sufficient time for the opposition to respond in kind and for the court to make an informed decision. As we see it, in the circumstances of this case the appellants' late filing of their memorandum did not undermine this purpose one whit".

Appellant's submit that it is on this basis that the Court of Appeals reversed the dismissal. Appellant's further submit that this case is substantially similar to the Gaetano case. Accordingly there is no basis for dismissal.

Donald J. Katz

CERTIFICATE OF SERVICE

This is to certify that a copy of the aforegoing Appellants' Response to Motion to Dismiss Appeal and Memorandum of Points & Authorities was mailed this 9th day of March, 1992, to Marvin Singer, Esquire, Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361.

Donald J. Katz
Attorney for Appellants

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 +/- SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD, 4TH ELECTION DISTRICT, 3RD COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL, ET AL PLAINTIFFS ZONING CASE NO. 90-160-A	*	CG DOC. No. 2
	*	Folio No. 371
	*	File No. 91-CV-4539

* * * * * * * * * * * * * *

ANSWER TO PETITION

Now comes the Appellee, by his attorney, Marvin I. Singer, pursuant to Maryland Rule B9, and without waiving any of the issues or defenses raised in the motions to dismiss previously filed herein, answers the Petition of Appeal and in connection therewith states:

1. The allegations of Paragraphs 1-4 inclusive are admitted.

2. The allegations of Paragraphs 5-9 inclusive are denied.

3. Further answering said Petition, Appellee denies that the pertinent Baltimore County Zoning Regulations are unconstitutional, or that the standards contained therein are in any way vague, overbroad or unlawful.

4. That there was presented before the Board of Appeals substantial and sufficient evidence to support its ruling, thereby making its decision fairly debatable.

5. That the decision by the Board of Appeals was in accord with the evidence and applicable law.

6. That the Board of Appeals properly judged the credibility of witnesses before it and drew proper and well-supported inferences from the evidence presented.

7. That the Board's decision was in accord with the County Master Plan and public policy concerning land planning, land usage and economic development.

8. That the decision of the Board of Appeals was correct in finding that the petition for the requested variances complied with the standards and requirements contained in the Baltimore County Zoning Regulations, including without limitation Sec. 307 thereof.

9. That the decision of the Board of Appeals was consistent with rulings in other cases granting similar variances under comparable circumstances.

10. That the decision of the Board of Appeals was correct for such other reasons as may be assigned at the hearing of this appeal.

WHEREFORE, having answered said Petition of Appeal, Appellee respectfully requests that it be denied and that the Order of the Board of Appeals be affirmed.

Marvin I. Singer
343 North Charles Street
Baltimore, Maryland 21201-4361
(410) 727-4700
Attorney for Appellee

ORDER RECEIVED FOR FILING
Date 8/15/91
By Kathi Schlaufman

ORIGINAL

IN THE MATTER OF * BEFORE THE
LEONARD STOLER
NE/S Reisterstown Road * BOARD OF APPEALS
270' SE of High Falcon Road
* Case No. 90-160-A
* August 14, 1991

* * * * * * *

BEFORE: WILLIAM HACKETT, Chairman
HARRY E. BUCKHEISTER
LYNN MORELAND

APPEARANCES:

MARVIN I. SINGER, Esquire
On behalf of the Petitioner

DONALD G. KATZ, Esquire
On behalf of the Protestant/Appellant

Reported by:

Bonnie L. Winkelman

CERTIFIED COPY OF ORIGINAL
TOWSON REPORTING COMPANY
Court and Deposition Reporting
100 Bellona Avenue
Towson, Maryland 21204
(301) 823-7800

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
W/S York Road, 425' NW of the
c/l of Scott Adams Road * DEPUTY ZONING COMMISSIONER
(10400 York Road)
8th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District
* Case No. 89-221-A
Robert E. Frankel
Petitioner *

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit two (2) roadside signs totaling 235.84 sq.ft. in lieu of the permitted 100 sq.ft. as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared, testified and was represented by Robert J. Steinberg, Esquire. There were no Protestants.

Testimony indicated that the subject property, known as 10400 York Road, consists of 12.108 acres more or less and is zoned B.R.-C.N.S. As of December 30, 1988 Petitioner will be opening a new Acura Dealership, including the sale of used cars, at the subject location. Petitioner requests a sign variance to construct the two pylon signs at the entrance to the site as depicted in Petitioner's Exhibit 1.

Petitioner testified the requested variance is for less signs than the Acura Dealership would prefer in order to remain in keeping with the spirit and intent of the Baltimore County Zoning Regulations (B.C.Z.R.). Petitioner argued that denial of the requested variance would result in practical difficulty. Testimony indicated that the proposed signs, while larger than that permitted under the zoning regulations, are appropriate and in keeping with other signs in the area. Further testimony indicated that the granting of the variance would not result in any detriment to the health, safety or general welfare of the community.

ORDER RECEIVED FOR FILING
Date 8/15/91
By Kathi Schlaufman

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
SW/S Reisterstown Road, 120'
SE of Cedarmere Road * DEPUTY ZONING COMMISSIONER
(9428 Reisterstown Road)
4th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District
* Case No. 88-413-A
Cohen Berger Partnership, et al
Petitioners *

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request variances from Section 413.2(e) to permit four identification signs as follows: Sign #2 of 109 sq.ft.; Sign #4 of 116.22 sq.ft; Sign #5 of 82.25 sq.ft.; Sign #6 of 80.93 sq.ft., all in lieu of the permitted one sign of 150 sq.ft. total; to permit three identification signs to be opposite land zoned residential; from Section 413.2(f) to permit other business signs, namely Sign #1 and Sign #3 to have 226 sq.ft. total (counting both sides), in lieu of the permitted total of 100 sq.ft.; and from Section 413.5(d) to permit a height for Sign #4 of 39.75 feet in lieu of the maximum allowed height of 25 feet, all as more particularly described on Petitioner's Exhibits 1 through 7.

The Petitioners, Cohen Berger Partnership, and Tenants, Heritage Chevrolet, Inc., Heritage Subaru, Inc., Heritage Volkswagen, Inc., and Heritage Dodge, Inc., by Jerome H. Fader, their Executive Vice President, and Steven B. Fader appeared, testified, and were represented by Julius Lichter, Esquire. Harry Connolly of Connolly Signs appeared on behalf of the Petition. The following persons appeared as Protestants: Rev. Frederick J. Hanna; Phyllis L. Daly, representative of the Reisterstown/Owings Mills/Glyndon Council; and Michael Quinn and Dennis R. Orr, representives of the Kingsley Road Community Association.

At the onset of the hearing, the Petitioners, through their Counsel, indicated that they were withdrawing their request for a variance from Section 413.5(d) to permit a height for Sign #4 of 39.75 feet in lieu of the maximum

ORDER RECEIVED FOR FILING
Date 8/15/91
By Kathi Schlaufman

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
SW/S Reisterstown Road, 120'
SE of Cedarmere Road * DEPUTY ZONING COMMISSIONER
(9428 Reisterstown Road)
4th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District
* Case No. 88-413-A
Cohen Berger Partnership, et al
Petitioners *

* * * * * * * * * * *

AMENDED ORDER

WHEREAS, the Order in the above-captioned case dated April 15, 1988 incorrectly indicated that the Petitioner withdrew its request for a variance from Section 413.5(d) to permit a height for Sign #4 of 39.75 feet in lieu of the maximum height permitted of 25 feet; and

WHEREAS, by letter received April 27, 1988, the Petitioner's Counsel indicated that at the hearing the height of Sign #4 was reduced from 39.75 feet to 35.75 feet in lieu of the maximum 25 feet; and

WHEREAS, the letter from Petitioner's Counsel received April 27, 1988 also asked for a clarification as to whether the intent of Restriction #2 in said Order was to prohibit the placement of signs that may be permitted as of right on the buildings as Petitioner intended to place a sign on the facade of each building to clarify the brand of automobile sold from that building, i.e., Chevrolet, Subaru, Volkswagen, and Dodge;

WHEREAS, it was the intent of the Deputy Zoning Commissioner to permit the Petitioner to construct Sign #4 consisting of six letters, each 4'1" x 4'1", which would require a height in excess of 25 feet, and as such, Sign #4 would be approximately 100 sq.ft. per side rather than the 86 sq.ft. granted in the Order dated April 15, 1988;

WHEREAS, the Deputy Zoning Commissioner finds that the granting of the variance as requested for the size of the sign and its location provides adequate clarification as to which brand of automobile is sold from each building;

ORDER RECEIVED FOR FILING
Date 8/15/91
By Kathi Schlaufman

MICROFILMED

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND ZONING VARIANCE - SW/S
Reisterstown Road, 120' SE of * DEPUTY ZONING COMMISSIONER
the SW/S of Cedarmere Road
(9428 Reisterstown Road) * OF BALTIMORE COUNTY
4th Election District
3rd Councilmanic District * Case No. 89-491-SPHA
Cohen Berger Partnership, et al *
Petitioners

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve an amendment to the previously approved site plan in Case No. 88-413-A and to determine if Sign #3 as revised herein would qualify as an identification sign; and variances to permit a total of four (4) existing identification signs in a commercial center totalling 451.47 sq.ft. in lieu of the previously permitted 388 sq.ft. total, and to permit a sign 35 feet in height in lieu of the maximum permitted height of 25 feet, or, in the alternative, to permit a total of five (5) identification signs (totalling 555.47 sq.ft.), all as more particularly described in Petitioner's Exhibit 1.

The Cohen Berger Partnership, as Petitioners and property owner, and the Tenant, Heritage Chevrolet, Inc., by Steven B. Fader, General Counsel, appeared, testified and were represented by Julius W. Lichter, Esquire. There were no Protestants.

Testimony indicated that the subject property, located at Reisterstown Road and Featherbed Lane, consists of 11.03 acres more or less, of which approximately 10 acres is zoned B.M. and 1 acre is zoned D.R. 10.5. Said property has been developed as an auto park and was the subject matter of a previous sign variance hearing in Case No. 88-413-A. On September 14, 1988 Petitioners were granted by the Board of Appeals four (4) identification signs for purposes of identifying Heritage Chevro-

ORDER RECEIVED FOR FILING
Date 8/15/91
By Kathi Schlaufman

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND ZONING VARIANCE
SW/S Reisterstown Rd., 120 ft
SE of Cedermere Road
11234 Reisterstown Road * OF BALTIMORE COUNTY
4th Election District
3rd Councilmanic District * CASE # 91-400-SPHA
Cohen Berger Ltd. Partnership *
Petitioner

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests, pursuant to the Petition for Zoning Variance, variances from Section 413.2(e) of the Baltimore County Zoning Regulations (B.C.Z.R.)to permit a total of six (6) business identification signs totalling 660.2 sq. ft. in lieu of the previously permitted five (5) identification signs totalling 518.47 sq. ft. and, pursuant to the Petition for Special Hearing, permission to amend the previously approved site plan in case No. 89-491-SPHA, as more particularly described on Petitioner's Exhibit No.1.

The Petitioner, by Jerome H. Fader, appeared, testified and was represented by Julius Lichter, Esquire. Mr. and Mrs. Dennis R. Orr appeared as Protestants on behalf of the Kingsley Road Community Association.

Testimony indicated that the subject property known as the Owings Mills Auto Park consists of 11.44 acres +/-, split zoned B.M and is currently improved with the Auto Park, as indicated on Petitioner's Exhibit No. 1.

Proffered testimony indicated that the Heritage Saturn Auto Dealership located within the Auto Park has recently acquired a "Saturn" automobile franchise. Petitioner testified that Saturn Corporation requires all of its franchisees to provide free-standing signage advertising the Saturn brand automobile as a condition of the Saturn dealer agreement (see Petitioner's Exhibit No. 3).

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
W/S York Road opposite
Cinder Road * ZONING COMMISSIONER
(2085 York Road)
8th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District
* Case No. 89-437-A
Nationwide Motor Sales, Inc.
Petitioners *

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit other business signs totalling 168 sq.ft. in lieu of the maximum permitted 100 sq.ft. in accordance with Petitioner's Exhibit 1.

The Petitioners, by Kevin Schaefer, appeared, testified and were represented by Julius W. Lichter, Esquire. Also appearing on behalf of the Petition was Robert E. Nether, Sr.

Based upon the testimony and evidence presented at the hearing, all of which was uncontradicted, in the opinion of the Zoning Commissioner the variance requested, as hereinafter modified, sufficiently complies with the requirements of Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, therefore, should be granted. There is no evidence in the record that to grant the relief would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, a variance should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 11th day of May, 1989 that the Petition for Zoning Variance

ORDER RECEIVED FOR FILING
Date 8/15/91
By Kathi Schlaufman

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
S/S Reisterstown Rd., approx.
200' NW of Tobins Lane * ZONING COMMISSIONER
3rd Election District
3rd Councilmanic District * OF BALTIMORE COUNTY
9610 Reisterstown Road * Case No. 88-162-A
Limited Partnership -
Petitioner *

* * * * * * * * * * *

MEMORANDUM AND ORDER

On July 21, 1987 the Petitioner filed a Petition for Zoning Variance to permit a freestanding sign of 155.2 sq.ft. (77.6 sq.ft. on both sides). Following initial discussion of the Petition at the hearing on September 25, 1987, it was agreed by all parties present that the Petition should be amended. Accordingly, a new hearing was scheduled for December 22, 1987 to hear this matter based on the amended Petitions filed.

The Petitioner herein requests a zoning variance to permit an identification sign of 155 sq.ft. per side in lieu of the permitted 100 sq.ft, and to permit the height of said sign to be 35 feet in lieu of the maximum permitted height of 25 feet, as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared and testified and was represented by Counsel. There were no Protestants.

Based upon the testimony and evidence presented at the hearing, all of which was uncontradicted, it is the opinion of the Zoning Commissioner that the relief requested sufficiently complies with the requirements of Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) and therefore, the variances should be granted. There is no evidence in the record that the subject variances would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

ORDER RECEIVED FOR FILING
Date 8/15/91
By Kathi Schlaufman

MICROFILMED

IN RE: PETITION FOR ZONING VARIANCE
SW/S Reisterstown Road, 220' NW of the c/l of Tobin Lane (9610 Reisterstown Road)
3rd Election District
3rd Councilmanic District

9610 Reisterstown Rd. Ltd. Part.
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-268-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a second, other business sign of 234 sq.ft. total (117 sq.ft. per face) yielding a total of 544 sq.ft. of signage for the subject site in lieu of the maximum permitted 100 sq.ft. and to permit a height above street level of 45 feet in lieu of the maximum permitted 25 feet as more particularly described in Petitioner's Exhibit 1.

The Petitioner, by William Ketterly, appeared, testified, and was represented by Stuart D. Kaplow, Esquire. Also appearing on behalf of the Petition was Richard Truelove, Engineer with AFR Associates, Inc. There were no Protestents.

At the onset of the hearing, Petitioner requested an amendment to the Petition to reduce the size of the proposed second, other business sign from the requested 234 sq.ft. to 122 sq.ft., thereby resulting in a total signage for the site of 432 sq.ft.

Testimony indicated that the subject property, known as 9610 Reisterstown Road, consists of 3.65 acres split zoned B.M. and B.R.-I.M., and is the site of the Koons Lincoln, Mercury/Merkur automobile dealership. Said property was the subject matter of a previous zoning Case No. 88-162-A in which Petitioner was granted a variance for a freestanding sign of 155 sq.ft. (77.6 sq.ft. per side). Testimony indicated the Peti-

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Date 8/29/90
By

90-160-A Petitioner 18

90-160-A Petitioner 19

86-236-A

IN RE: PETITION FOR SPECIAL HEARING
SW/S Reisterstown Road, 220' NW of the c/l of Tobin Lane (9610 Reisterstown Road) - 3rd Election District

Charles C. Resnick, Jr., Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 86-236-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a total of 216 square feet instead of the permitted 100 square feet for three other business signs, as shown on Petitioner's Exhibit 1.

The Petitioner appeared and testified and was represented by Counsel. There were no Protestants.

Testimony indicated that the subject property, zoned B.R.-C.C.C. and located on Tech Road, is improved with Towson Valley Honors and has three other business signs approved in 1976 at a time when the policy of the Zoning Commissioner was to permit only one side of a multi-faced sign. However, this Commissioner has determined that the policy was in violation of the plain language of the statute of the Baltimore County Zoning Regulations (BCZR) and now each side must be counted. Since the policy change is not retroactive, any sign approved under the old policy is permitted as is, its size is changed or it is materially altered.

In the instant case, the subject sign computes to 58 square feet and the other sign computes to 32 square feet. The third sign consists of a [illegible] identification sign containing 36 square feet per side and a Valley Identification sign containing 18 square feet per side. The [illegible] of Towson and must now require separate signs, which they

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Date 8/29/86
By

86-236-A

90-160-A Petitioner 20

IN RE: PETITION FOR SPECIAL HEARING
SW/S Reisterstown Road, 220' NW of the c/l of Tobin Lane (9610 Reisterstown Road)
3rd Election District
3rd Councilmanic District

9610 Reisterstown Rd. Ltd. Part.
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 91-11-SPH

* *

FINDINGS OF FACT AND CONCLUSION OF LAW

The Petitioner herein requests a special hearing to approve modification of certain conditions and restrictions imposed by the Zoning Commissioner in Case No. 90-268-A in the Order of March 12, 1990.

By the said Order of March 12, 1990, certain variances were granted, subject to restrictions.

The Petitioner was represented by Stuart D. Kaplow, Esquire. There was no Protestants. Mr. Kaplow proffered that subsequent to the issuance of the said Order it became apparent that a modification of certain conditions and restrictions was necessary and proper.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 27th day of September, 1990 that the Petition for Special Hearing to determine whether or not the Zoning Commissioner should approve the modification of certain conditions and restrictions imposed by the Zoning Commissioner in Case No. 90-268-A in the Order of March 12, 1990 be and hereby is GRANTED.

IT IS FURTHER ORDERED that the variance in Case No. 90-268-A to permit a second, other business sign of 130 sq.ft. total

ROG Reisterstown~Owings Mills~Glyndon Coordinating Council

August 13, 1991

HAND DELIVERED

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

RE: Case No. 90-160-A
Leonard Stoler

Dear Mr. Hackett:

Frederick Hanna is a duly appointed member of the Board of Directors of Reisterstown-Owings Mills-Glyndon Coordinating Council, pursuant to his appointment as Chairman of the Zoning Committee, and is authorized to testify in my absence on the zoning matter known as In The Matter Of Leonard Stoler, Case No. 90-160-A.

Sincerely,

Charles Stewart
President

DJK:bbr 1-wth2

90-160-A Appellant 1

P.O. Box 117 Reisterstown, Maryland 21136

ROG Reisterstown~Owings Mills~Glyndon Coordinating Council

RESOLVED, that the position of the Reisterstown-Owings Mills-Glyndon Coordinating Council as adopted by the Board of Directors on the zoning matter known as In The Matter Of Leonard Stoler, Case No. 90-160-A is that of opposition to the variances granted by the Zoning Commissioner regarding a certain sign, setback and display parking on the Petitioner's property.

AS WITNESS OUR HANDS AND SEAL THIS 13th DAY OF AUGUST, 1991.

ATTEST:

Donald J. Katz
Corresponding Secretary

REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL

Charles Stewart
President (SEAL)

P.O. Box 117 Reisterstown, Maryland 21136

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

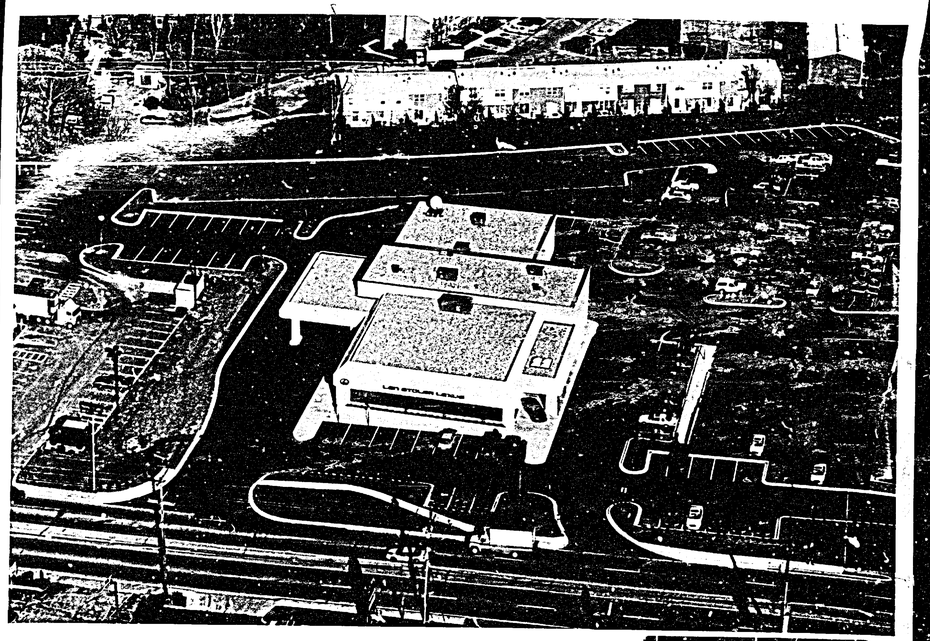
TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly appointed member of the Board of Directors of the Reisterstown-Owings Mills-Glyndon Coordinating Council.

Frederick Hanna
Zoning Committee Chairman

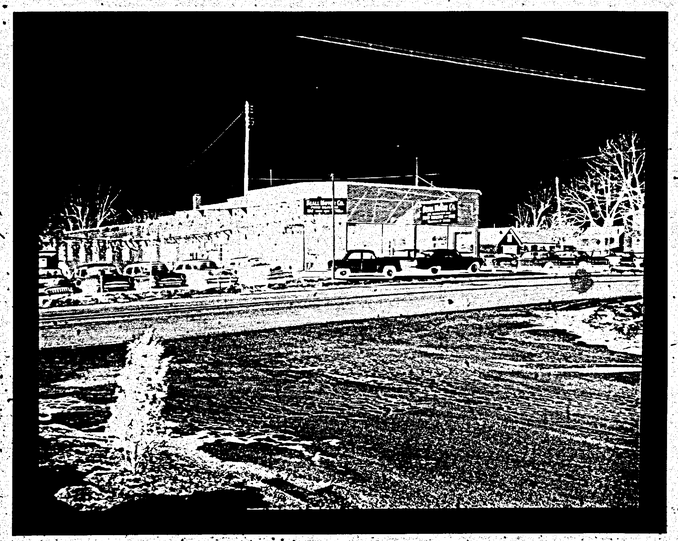
ATTEST:

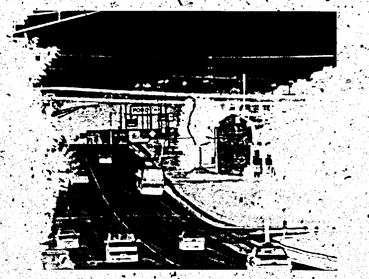
Donald J. Katz
Corresponding Secretary

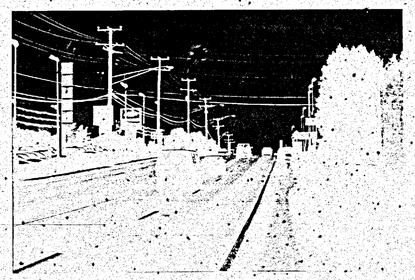


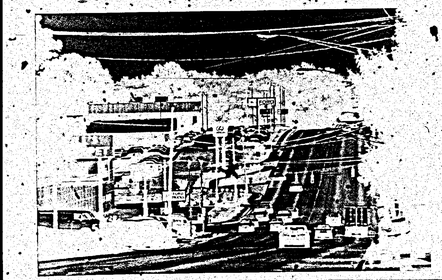
90-160-A Petitioners 10

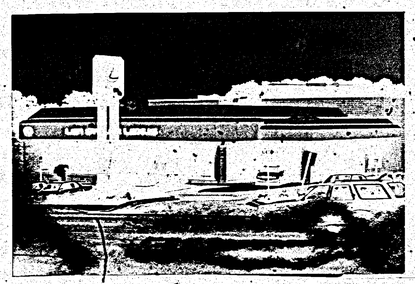
Petitioner's Exhibits (3, 5, 6, 7 & 8)
Photos

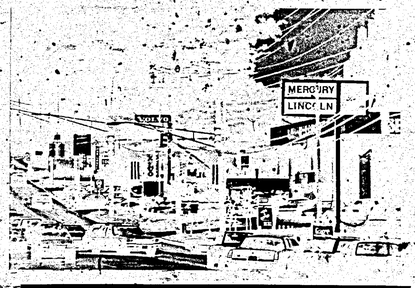


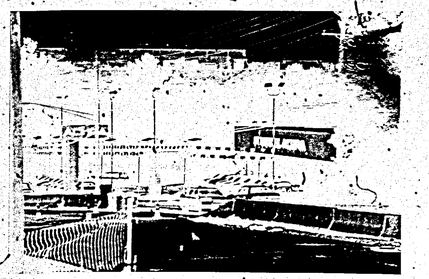


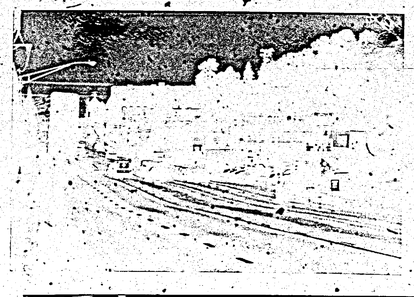


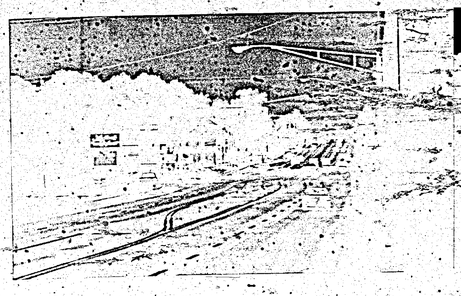


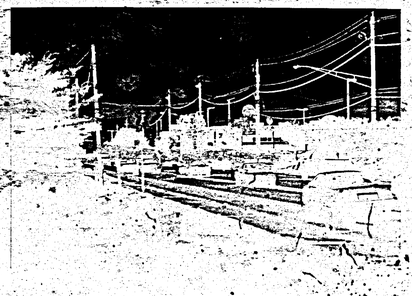


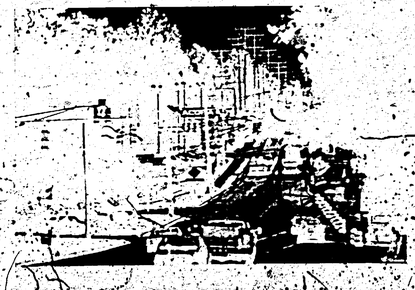


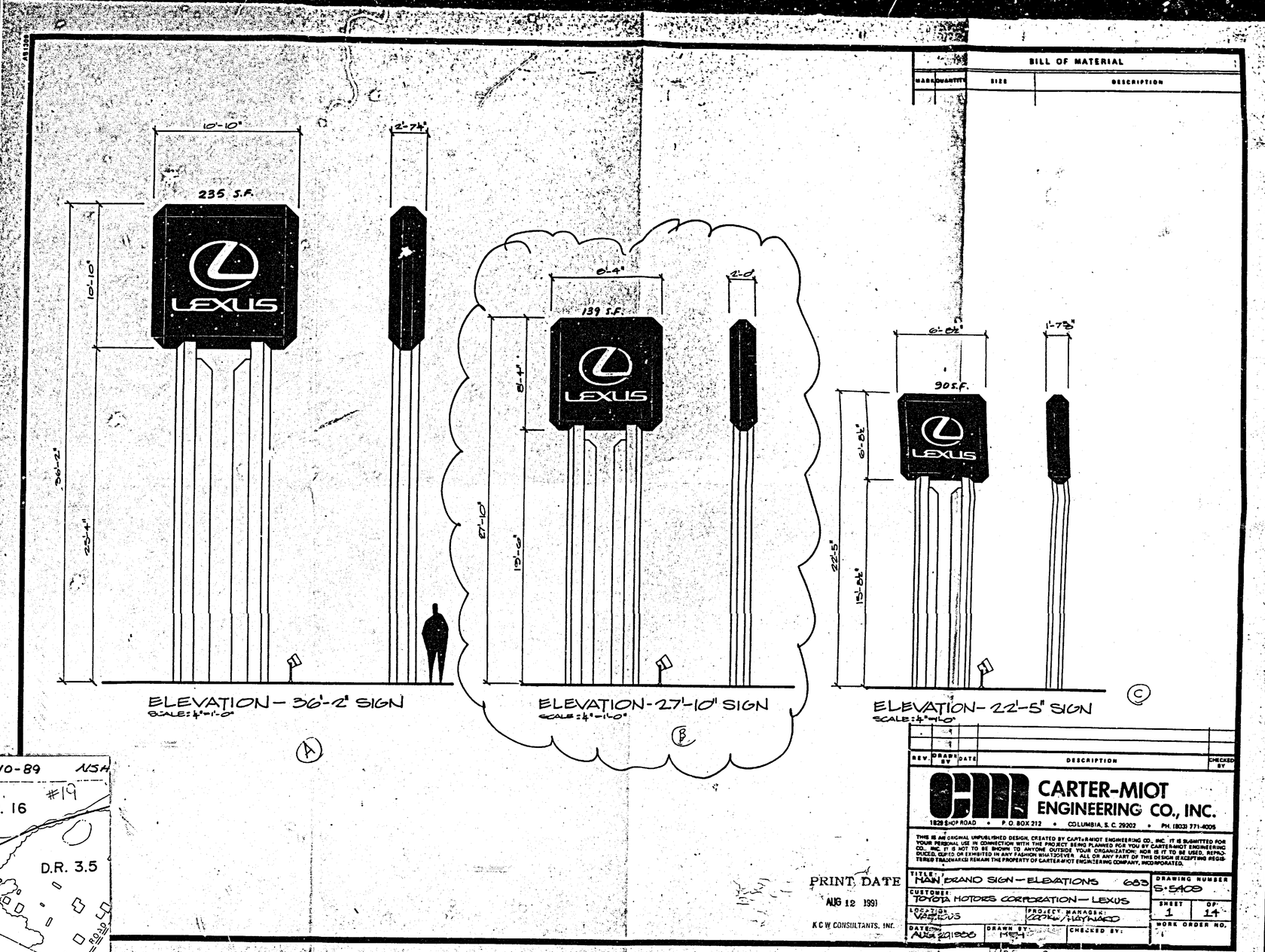












BILL OF MATERIAL

MARK	QUANTITY	SIZE	DESCRIPTION

REV	DRAWN BY	DATE	DESCRIPTION	CHECKED BY

CARTER-MIOT ENGINEERING CO., INC.

1829 SHOP ROAD • P.O. BOX 212 • COLUMBIA, S.C. 29202 • PH. (803) 771-4005

THIS IS AN ORIGINAL UNPUBLISHED DESIGN, CREATED BY CARTER-MIOT ENGINEERING CO., INC. IT IS SUBMITTED FOR YOUR PERSONAL USE IN CONNECTION WITH THE PROJECT BEING PLANNED FOR YOU BY CARTER-MIOT ENGINEERING CO., INC. IT IS NOT TO BE SHOWN TO ANYONE OUTSIDE YOUR ORGANIZATION; NOR IS IT TO BE USED, REPRODUCED, COPIED OR EXHIBITED IN ANY FASHION WHATSOEVER, ALL OR ANY PART OF THIS DESIGN EXCEPTING REGISTERED TRADEMARKS REMAIN THE PROPERTY OF CARTER-MIOT ENGINEERING COMPANY, INCORPORATED.

TITLE: MAIN BRAND SIGN – ELEVATIONS 683

DRAWING NUMBER: S-5408

CUSTOMER: TOYOTA MOTORS CORPORATION – LEXUS

LOCATION: VARIOUS

PROJECT MANAGER: CATHE HAYNARD

SHEET 1 OF 14

DATE: AUG 21 1990

DRAWN BY: MEH

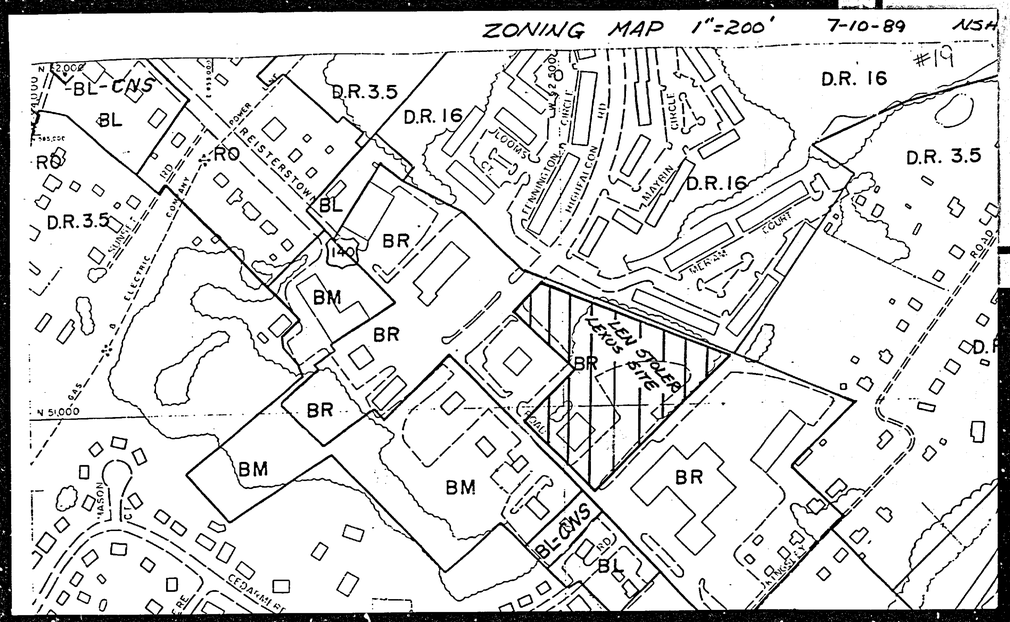
CHECKED BY:

WORK ORDER NO.

PRINT DATE
AUG 12 1991

KCW CONSULTANTS, INC.

90
1760 A Rettmeyer 2



STORMWATER MANAGEMENT ANALYSIS
(Gwynns Falls Watershed)

Existing Conditions

D.A. 'A' A = 1.5 ac. RCN = 80 Tc = 0.10 hrs.
D.A. 'B' A = 3.19 ac. RCN = 86 Tc = 0.20 hrs.
Ex. Q2 = .55 cfs Ex. Q10 = 10.7 cfs Ex. Q100 = 21.2 cfs

Developed Conditions

S.W.M. to be provided by underground facility

Controlled D.A. = 4.06 ac. RCN = 92 Tc = 0.10 hrs.
Dev. 2-yr. Qa = / 4 cfs Dev. 10-yr. Qa = 10.0 cfs Dev. 100-yr. Qa = 21.8 cfs
Uncontrolled D.A. = 0.31 ac. RCN = 75 Tc = 0.10 hrs.
Dev. Q2 = 0.5 cfs Dev. Q10 = 1.2 cfs Dev. Q100 = 2.3 cfs
Tot. Dev. Q2 = 1.3 cfs Tot. Dev. Q10 = 9.6 cfs Tot. Dev. Q100 = 23.2 cfs

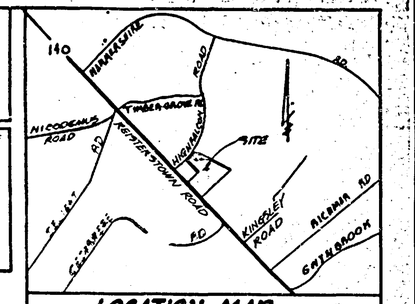
BENCH MARK

BALTO CO. HUB NO 13269 ELEV. 687.97
N 51158.47 W 3289775. R.R. SPIKE IN MACADAM ON SOUTH-WEST SIDE OF REISTERSTOWN ROAD OFF HIGH-FALCON ROAD AT DRIVEWAY TO FAIRWAY MOTORS.

RECOMENDED SEVERE SOIL CONDITION MITIGATNE MEASURES

SEVERE SLOPES PROPOSED MASS GRADING WILL REDUCE SLOPES TO NON-ERODABLE LEVELS

SEVERE HIGH WATER TABLE: ANY GROUNDWATER CONDITION ENCOUNTERED WILL BE INTERCEPTED BY UNDERDRAIN SYSTEM CONNECTED TO PROP. FLOOD STORM DRAIN SYSTEM



LOCATION MAP
SCALE 1"=1000'

SOIL TYPES & LIMITATIONS (BALTIMORE COUNTY SOIL SURVEY MAP NO 26)

AREA (AC.)	SOIL TYPE	SOIL TYPE	HYDRO SOIL GROUP	BLDG. WITH NO BASEMENT	STREETS & PARKING LOTS
0.15 AC.	BaA	BALTI SILT LOAM	D	SEVERE: HIGH WATER TABLE; POOR NATURAL DRAINAGE	SEVERE: HIGH WATER TABLE; POOR NATURAL DRAINAGE
1.1 AC.	GcB2	GLENELG LOAM	B	SLIGHT	MODERATE: SLOPE
0.5 AC.	GnB	GLENVILLE SILT LOAM	C	MODERATE: HIGH WATER TABLE	SEVERE: HIGH WATER TABLE
2.1 AC.	MbC2	MANOR LOAM	B	MODERATE: SLOPE	SEVERE: SLOPE

NOTE: A PLAT WILL BE PREPARED AND PROCESSED TO ELIMINATE THE EXISTING INTERIOR LOT LINES AND CONSOLIDATE THE THREE PARCELS INTO ONE.

PREVIOUS ZONING CASES:
1) 2085 (9-7-51) - DENIAL OF SPECIAL PERMIT FOR A CABIN CAMP.
2) 64-86-R - REZONING FROM R-10 AND R-6 TO R-A.
3) 74-176-A - GRANT OF FRONT AND SIDE YARD VARIANCES. VARIANCES ORIGINALLY AFFIXED FOR, AND GRANTED WILL NOT BE IMPLEMENTED.

GENERAL NOTES

1. AREA: S.H. 8030/45 2.87 ac+ Tax Acct # 04 13 0410100
PARCEL 'B' E.H.K. JR 49/106 S.H. 8067/367 0.56 ac+ Tax Acct # 04 13 0007483
PARCEL 'C' E.H.K. JR 49/106 S.H. 8067/367 0.61 ac+ Tax Acct # 04 9 0074204
Gross Area 4.04 ac+
Highway Widening Area 0.04 ac+
Net Area 4.00 ac+
2. ELECTION DISTRICT: 4
COUNCILMANIC DISTRICT: C-3
CENSUS TRACT: 4042.01
REGIONAL PLANNING DISTRICT: 3068
WATERSHED: Gwynns Falls
SUBSEWERSHED:
3. ZONING: BR & BR-AS
4. EXISTING LAND USE: One parcel was improved with the "Colonial Inn" building and associated parking areas. Parcels 'B' and 'C' of the "Gus Pappas Etal Property" are unimproved (woods and grass).
5. PROPOSED USE: New and used automobile dealerships providing sales and service.
6. BUILDING SETBACKS:

	Required	Proposed
11311 BUILDING:		
Front Yard Average (62'+74')/2=	68'	81'
Side Yard	30'	51'/30'*
Rear Yard	30'	196'
11309 BUILDING:		
Front Yard Average (62+74)/2=	68'	81'
Side Yard	30'	30'/1'*
Rear Yard	30'	292'

* Variance from BCZR 238.2 requested to permit a side yard setback of 1' in lieu of the required 30'.

7. REQUIRED CUSTOMER PARKING:

11311 BUILDING			
Showroom	3138 s.f. x	5/1000	= 15 p.s.
Sales & Service Offices	3618 s.f. x	5/1000	= 18 p.s.
Retail Parts	248 s.f. x	5/1000	= 1 p.s.
Shop Area	4128 s.f. x	3.3/1000	= 13 p.s.
Business Offices	2658 s.f. x	3.3/1000	= 9 p.s.
Parts Storage	1368 s.f. x	3.3/1000	= 4 p.s.
	Total		= 60 p.s.
11309 BUILDING			
Showroom	3688 s.f. x	5/1000	= 15 p.s.
Storage Area (FOR SHEET METAL PARTS)	3828 s.f. x	3.3/1000	= 12 p.s.
	Total		= 25 p.s.
TOTAL NUMBER OF REQUIRED PARKING SPACES			= 97 p.s.

8. PROPOSED CUSTOMER PARKING:
11311 BUILDING:
Shop Area "SERVICE BAYS 18 bays
On-site (NON-BLOCKED) 55 p.s. (INCL 2 H/C)
11309 BUILDING:
On-site (NON-BLOCKED) 29 p.s. (INCL 1 H/C)
TOTAL CUSTOMER PARKING SPACES = 97 p.s.
9. ALL DAMAGED OR DISABLED VEHICLES AND PARTS WILL BE KEPT INSIDE OF BUILDINGS.
9. OTHER PROPOSED PARKING:

New Car Display	18 ps (incl. showrooms)
Used Car Display	15 ps
Employee Parking	39 ps
Storage Parking	27 ps

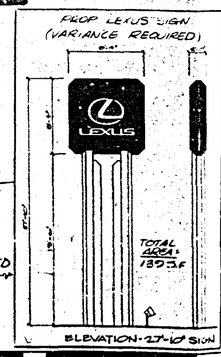
SUBTOTAL OTHER PARKING SPACES = 165 p.s.
TOTAL ON-SITE PARKING = 97 CUSTOMER + 165 OTHER = 262 PS
10. FLOOR AREA RATIO: 19,800 sf ÷ 174,290 sf = 0.11 (≤ 2.0
11. PROPOSED NUMBER OF EMPLOYEES: 40
12. HOURS OF OPERATION: Monday - Friday 8:00 am to 9:00 pm
Saturday 8:00 am to 5:00 pm
13. UTILITIES: Public utilities exist adjacent to the site to serve the proposed improvements.
Ex. 16" Water (Dwg. No. 36-0806)
Ex. 8" Sanitary Sewer (Dwg. No. 70-0324)
Ex. 36" Storm Drain (Dwg. No. 72-0077)
14. LANDSCAPING: A formal Landscape Plan shall be approved by the Office of Planning in accordance with the Landscape Manual.
15. TOPOGRAPHY: Existing topography shown hereon based upon field-run survey by KCW Consultants, Inc., Feb. 1989.
16. There are no existing streams, bodies of water, springs, or 100-year flood-plains located on this site.
17. There are no known historic buildings, archaeologic sites or endangered species habitats located on property.
18. There are no known well or septic areas existing on site.
19. Hydric Soils, BaA, are mapped on this site and a wetland area has been shown hereon. Baltimore County DEPRM has determined these to be "unregulated wetlands".
20. SIGNS: Any signs shall comply with BCZR Section 413 and Zoning Signs Policies for BR zoning. See variances requested
21. LIGHTING: Free-standing (◇) and attached on-buildings (△) are as shown hereon. Lighting shall not be directed towards residential properties and public rights-of-way
22. STORMWATER MANAGEMENT and WATER QUALITY MANAGEMENT: A privately maintained underground storage facility is proposed to provide quantity and quality control for the 2, 10 and 100-year storms (Gwynns Falls Watershed)
23. THERE ARE NO KNOWN HAZARDOUS MATERIAL SITES LOCATED ON THIS PROPERTY.
24. ESTIMATED ADT:
RETAIL: 10,900 S.F. ÷ 50/1000 S.F. = 545
SERVICE: 44.00 S.F. ÷ 30/1000 S.F. = 132
TOTAL ESTIMATED A.D.T. 677
25. NO LEASE LINES BETWEEN "LEXUS" AND "CHRYSLER" DEALERSHIP ARE PROPOSED
26. NO DISPLAY OF AUTOMOBILES, BANNERS TEMP SIGNS, ETC. SHALL BE ALLOWED IN ANY LANDSCAPED AREAS ADJACENT TO THE PUBLIC RIGHTS OF WAY.

VARIANCES REQUESTED

1. BCZR Section 413.2.f - TO PERMIT A DOUBLE FACE SIGN OF 1393 S.F. IN LIEU OF THE ALLOWED 100 SQ.FT. (COUNTING BOTH SIDES AND SURFACES INTEGRATED INTO THE DESIGN), AND NO FREE-STANDING SIGNS ARE PROPOSED FOR CHRYSLER.
2. BCZR Section 413.5.d Variance requested to allow a sign height of 27' 10" in lieu of the required maximum of 25 feet (11311 Building).
3. BCZR Section 238.2 Variance requested to allow a side yard setback of 1.0 feet in lieu of the required 30 feet (11309 Building).
4. BCZR Section 238.1, 303.2, 238.4 Variance requested to allow display parking 10 ft., which is less than 53 ft., from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet.)

PRINT DATE
AUG 12 1991
KCW CONSULTANTS, INC

FROP LEXUS SIGN (VARIANCE REQUIRED)



(TYP.) PARKING SPACE - 9' WIDE x 18' LONG

11275 ADDITIONAL NOTE: ALL PARKING WILL BE PAVED WITH A DURABLE, DUSTLESS SURFACE AND PERMANENTLY STRIPED

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCES

STOLER LEXUS AND CHRYSLER
11309-11311 REISTERSTOWN ROAD (STATE RTE. 140)

4TH ELECTION DISTRICT BALTIMORE CO., MARYLAND

(PARCELS 'B' AND 'C' - SUBDIVISION OF THE "GUS PAPPAS PROPERTY", E.H.K. JR 49/106)

PUBLIC SERVICES CRG. NO. 89084 | PLANNING NO.
SCALE: 1" = 30' | MARCH 15, 1989 | DWG. NO. C.R.G.-1

KCW Consultants, Inc.
Civil Engineers and Land Surveyors
1777 Reisterstown Road
Commercentre, Suite 175
Baltimore, Maryland 21208
(301) 484-0963

STATE OF MARYLAND — DOUGLAS LANE HAMILTON — No. 10748 — REGISTERED PROFESSIONAL ENGINEER

Douglas L. Hamilton

DATE	DESCRIPTION
5.15.89	REVISED PER C.R.G. COMMENTS DATED 5.09.89
7.19.89	REVISED PER C.R.G. COMMENTS 5.15.89

OWNER / DEVELOPER:
COLONIAL - STOLER PARTNERSHIP
11275 REISTERSTOWN ROAD
OWINGS MILLS MARYLAND
ATTN: LEONARD STOLER
PHONE: 301 356-7000

LEXUS

CHRYSLER Plymouth

Petitioner 1

VARIANCES REQUESTED

1. BCZR — SECTION 413.E.f TO PERMIT A DOUBLE/FACE SIGN OF 139 S.F. IN LIEU OF THE ALLOWED 100 SQFT. (COUNTING BOTH SIDES) AND SUPPORTS INTEGRATED INTO THE DESIGN) AND NO FREE-STANDING SIGNS ARE PROPOSED FOR CHRYSLER BLDG.
2. BCZR — Section 413.5.d Variance requested to allow a sign height of 27' 10" in lieu of the required maximum of 25 feet (11311 Building).
3. BCZR — Section 238.2 Variance requested to allow a side yard setback of 1.0 feet in lieu of the required 30 feet (11309 Building).
4. BCZR — Section 238.1, 303.2, 238.4 Variance requested to allow display parking 18 ft., which is less than 53 ft. from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet.)

BENCH MARK

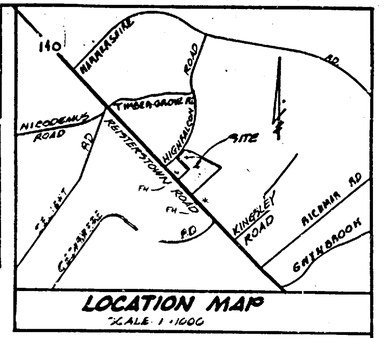
BALTO CO. MD'S NO. 13280 ELEV. 622.97 N 51132.47 W 52897.75. R.R. SPIKE IN MACADAM ON SOUTH-WEST SIDE OF REISTERSTOWN ROAD OFF HIGH-FALCON ROAD AT DRIVEWAY TO FAIR-WAY HOTARY.

RECOMENDED SEVERE SOIL CONDITION MITIGATIVE MEASURES

SEVERE SLOPES: PROPOSED MASS GRADING WILL REDUCE SLOPES TO NON-ERODABLE LEVELS.

SEVERE HIGH WATER TABLE: ANY GROUNDWATER CONDITION ENCOUNTERED WILL BE INTERCEPTED BY UNDERDRAIN SYSTEM CONNECTED TO PROP. CLOSED STORM DRAIN SYSTEM

PREVIOUS ZONING CASES:
2085 (10-7-51)
64-86-R (3-13-64)
74-136A (6-05-74)



LOCATION MAP
SCALE 1"=1000

SOIL TYPES & LIMITATIONS (BALTIMORE COUNTY SOIL SURVEY MAP NO. 26)

AREA (AC.)	SOIL TYPE	SOIL TYPE	HYDRO SOIL GROUP	BLDG. WITH NO BASEMENT	STREETS & PARKING LOTS
0.15 AC.	BaA	BALTI SILT LOAM	D	SEVERE: HIGH WATER TABLE, POOR NATURAL DRAINAGE	SEVERE: HIGH WATER TABLE; POOR NATURAL DRAINAGE
1.1 AC.	GcB2	GLENELG LOAM	B	SLIGHT	MODERATE: SLOPE
0.59 AC.	GnB	GLENVILLE SILT LOAM	C	MODERATE: HIGH WATER TABLE	SEVERE: HIGH WATER TABLE
2.1 AC.	MbC2	MANOR LOAM	B	MODERATE: SLOPE	SEVERE: SLOPE

NOTE: A DEED WILL BE PREPARED AND PROCESSED TO ELIMINATE THE EXISTING INTERIOR LOT LINES AND CONSOLIDATE THE THREE PARCELS INTO ONE.
S.M. 8214/207

PETITIONER'S EXHIBIT 1

GRADING:

The proposed grading shown on this plan meets the requirements set forth by the Baltimore County Department of Environmental Protection and Resource Management and complies with Bill No. 33-88. However, due to building types and layout, some field adjustments may be required. All changes must comply with the above mentioned requirements.

We certify that all grading on this site will be done in accordance with the current grading requirements as set forth by the Baltimore County Department of Environmental Protection and Resource Management and with the requirements specified in Bill No. 33-88.

LEONARD STOLER (COLONIAL-STOLER PARTNERSHIP) — TITLE — DATE

GENERAL

S.M. 8214/207 4.04 AC±
#21-00-02592

1. AREA: ~~S.M. 6036/145 0.89 ac±~~ Tax Acct ~~1 04 3 040100~~
   PARCEL B ~~E.H.K. 48/105 S.M. 6067/367 4.54 ac±~~ Tax Acct ~~1 04 3 007403~~
   PARCEL C ~~E.H.K. 48/106 S.M. 6067/367 0.61 ac±~~ Tax Acct ~~1 04 3 007384~~
   Gross Area 4.04 ac±
   Highway Widening Area 0.04 ac±
   Net Area 4.00 ac±
2. ELECTION DISTRICT: 4
   COUNCILMATIC DISTRICT: C-3
   CENSUS TRACT: 4042.01
   REGIONAL PLANNING DISTRICT: 304B
   WATERSHED: Gwynns Falls
   SUBWATERSHED:
3. ZONING: BR & DR 10
4. EXISTING LAND USE: One parcel was improved with the "Colonial Inn" building and associated parking areas. Parcels 'B' and 'C' of the "Eva Pappas Etal Property" are unimproved (woods and grass).
5. PROPOSED USE: New and used automobile dealerships providing sales and service.
6. BUILDING SETBACKS:

	Required	Proposed
#11311 BUILDING:		
Front Yard Average (62'+74'+112'÷ 4)*	68'	81'
Side Yard	30'	51'/30'
Rear Yard	30'	156'
#11309 BUILDING:		
Front Yard Average	68'	81'
Side Yard	30'	30'/1'*
Rear Yard	30'	292'

* Variance from BCZR 238.2 requested to permit a side yard setback of 1' in lieu of the required 30'.

REQUIRED CUSTOMER PARKING:

#11311 BUILDING

Showroom	5100 s.f. x	5/1000	= 25 p.s.
Sales & Service Offices	2950 s.f. x	5/1000	= 15 p.s.
Retail Parts	400 s.f. x	5/1000	= 1 p.s.
Shop Area	4750 s.f. x 3.3/1000		= 16 p.s.
Business Offices	2628 s.f. x 3.3/1000		= 9 p.s.
Parts Storage	1898 s.f. x 3.3/1000		= 6 p.s.
	18226 SF Total		= 70 p.s.

#11309 BUILDING

Showroom	9250 s.f. x	5/1000	= 13 p.s.
Storage Area (FOR SHEET METAL PARTS)	9750 s.f. x 3.3/1000		= 11 p.s.
	19000 SF Total		= 28 p.s.

TOTAL NUMBER OF REQUIRED PARKING SPACES = 98 p.s.

PROPOSED CUSTOMER PARKING:

#11311 BUILDING:
Shop Area - SERVICE BAYS 10 bays
On-site (NON-ENCLOSED) 60 p.s. (INCL 2 HC)

#11309 BUILDING:
On-site (NON-ENCLOSED) 28 p.s. (INCL 1 HC)

TOTAL CUSTOMER PARKING SPACES = 88 p.s.

27. ALL DAMAGED OR DISABLED VEHICLES AND PARTS WILL BE KEPT INSIDE OF BUILDINGS.

BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
APPROVED FOR GRADING
Date

CORPS OF ENGINEERS PERMIT #3 NABGP SUN 87-1707-3
MD. DEPT OF ENVIRONMENT WATER QUALITY CERTIFICATION 87-WQ-0503

NOTES

9. OTHER PROPOSED PARKING:

New Car Display	18 ps (incl. showrooms)
Used Car Display	15 ps
Employee Parking	39 ps
Storage Parking	54 ps
SUBTOTAL OTHER PARKING SPACES =	126 ps

TOTAL ON-SITE PARKING = 95 CUSTOMER + 162 OTHER = 257 PS

10. FLOOR AREA RATIO: 23,302 sf ÷ 174,200 sf = 0.13 (2.0
11. PROPOSED NUMBER OF EMPLOYEES: 40
12. HOURS OF OPERATION: Monday - Friday 8:00 am to 9:00 pm
    Saturday 8:00 am to 5:00 pm
13. UTILITIES: Public utilities exist adjacent to the site to serve the proposed improvements.
    Ex. 16" Water (Dwg. No. 36-0806)
    Ex. 8" Sanitary Sewer (Dwg. No. 70-0326)
    Ex. 36" Storm Drain (Dwg. No. 72-0077)
14. LANDSCAPING: A formal Landscape Plan shall be approved by the Office of Planning in accordance with the Landscape Manual.
15. TOPOGRAPHY: Existing topography shown hereon based upon field-run survey by KCW Consultants, Inc., Feb. 1989.
16. There are no existing streams, bodies of water, springs, or 100-year flood-plains located on this site.
17. There are no known historic buildings, archaeologic sites or endangered species habitats located on property.
18. There are no known well or septic areas existing on site.
19. Hydric Soils, BaA, are mapped on this site and a wetland area has been shown hereon. Baltimore County DEPRM has declared these to be "unregulated wetlands".
20. SIGNS: Any signs shall comply with BCZR Section 413 and Zoning Signs Policies for BR zoning. See variances requested
21. LIGHTING: Free-standing (○) and attached on-buildings (△) are as shown hereon. Lighting shall not be directed towards residential properties and public rights-of-way
22. STORMWATER MANAGEMENT and WATER QUALITY MANAGEMENT: A privately maintained underground storage facility is proposed to provide quantity and quality control for the 2, 10 and 100-year storms (Gwynns Falls Watershed)
23. THERE ARE NO KNOWN HAZARDOUS MATERIAL SITES LOCATED ON THIS PROPERTY.
24. ESTIMATED ADT:
    RETAIL: 10,900 S.F. x 50/1000 S.F. = 545
    SERVICE: 4400 S.F. x 30/1000 S.F. = 132
    TOTAL ESTIMATED A.D.T. = 677
25. NO LEASE LINES BETWEEN "LEXUS" AND "CHRYSLER" DEALERSHIP ARE PROPOSED.
26. NO DISPLAY OF AUTOMOBILES, BANNERS TETRA SIGNS, ETC., SHALL BE ALLOWED IN ANY LANDSCAPED AREAS ADJACENT TO THE PUBLIC RIGHTS-OF-WAY.
28. CRG # 89084 APPROVED MAY 19, 1989. THIS PLAN IS CONSISTENT WITH THE APPROVED PLAN.

APPROVED: [signature] Chief 5-25-89
Storm Water Management Division
BALTO. CO. DEPT. OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

LIST OF DRAWINGS

G-1 SITE DEVELOPMENT, GRADING AND STORMWATER MANAGEMENT PLAN.
G-2 STORMWATER MANAGEMENT PROFILES AND DETAILS
G-3 STORMWATER MANAGEMENT SPECIFICATIONS AND DETAILS
G-4 SEDIMENT CONTROL PLAN
G-5 SEDIMENT CONTROL DETAILS
G-6 STORM DRAIN AND SANITARY SEWER PROFILES AND DETAILS

ELEVATION - 27'-10" SIGN

KCW Consultants, Inc.
Civil Engineers and Land Surveyors
1777 Reisterstown Road
Commercentre, Suite 175
Baltimore, Maryland 21208
(301) 484-0963

DESIGNED BY: ESH
DRAWN BY: KGS
CHECKED BY: DLK

DOUGLAS LANE KENNEDY No. 10746 REGISTERED PROFESSIONAL ENGINEER

REVISIONS

DATE	DESCRIPTION
10-24-89	LEXUS BLDG. DIMENSIONS PER ARCH. PLAN
8-25-89	ADD HARDEE'S SLOPE EASEMENT
6-19-89	ADD SWM DESIGN DETAILS
5-25-89	REVISED PER C.R.G. COMMENTS DATED 5-25-89
5-19-89	REVISED PER PRE-C.R.G. COMMENTS 5-10-89

OWNER / DEVELOPER:
COLONIAL-STOLER PARTNERSHIP
11275 REISTERSTOWN ROAD
OWINGS MILLS MARYLAND
ATTN: LEONARD STOLER
PHONE: 301 356-7000

SITE DEVELOPMENT, GRADING AND STORMWATER MANAGEMENT PLAN

STOLER LEXUS AND CHRYSLER

11309-11311 REISTERSTOWN ROAD (STATE RTE. 140)

4TH ELECTION DISTRICT BALTIMORE CO., MARYLAND
(PARCELS 'B' AND 'C' - SUBDIVISION OF THE 'EVA PAPPAS PROPERTY', E.H.K. 48/106)
CRG PLAN APPROVED 5-25-89

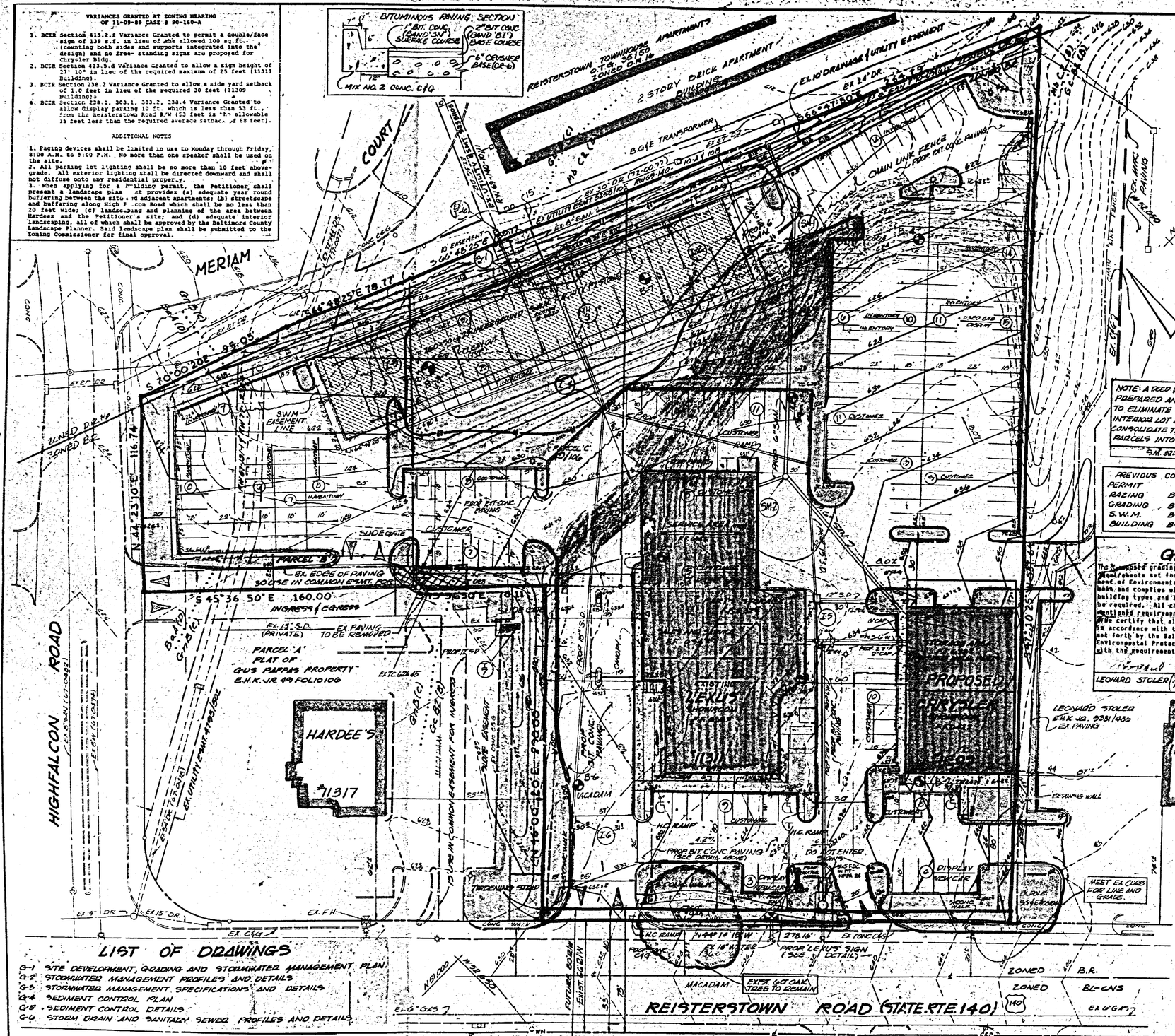
PUBLIC SERVICES C.R.G. NO 89084 — PLANNING NO.
SCALE: 1"=30' — MARCH 13, 1989 — DWG. NO. G-1

VARIANCES GRANTED AT ZONING HEARING OF 11-09-89 CASE # 90-160-A

1. BCZR Section 413.2.f Variance Granted to permit a double/face sign of 139 s.f. in lieu of the allowed 100 sq. ft. (counting both sides and supports integrated into the design) and no free- standing signs are proposed for Chrysler Bldg.
2. BCZR Section 413.5.d Variance Granted to allow a sign height of 29' 10" in lieu of the required maximum of 25 feet (11311 Building).
3. BCZR Section 238.2 Variance Granted to allow a side yard setback of 1.0 feet in lieu of the required 30 feet (11309 Building).
4. BCZR Section 238.1, 303.1, 303.2, 238.4 Variance Granted to allow display parking 10 ft. which is less than 53 ft., from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet).

ADDITIONAL NOTES

1. Paging devices shall be limited in use to Monday through Friday, 8:00 A.M. to 5:00 P.M. No more than one speaker shall be used on the site.
2. All parking lot lighting shall be no more than 10 feet above-grade. All exterior lighting shall be directed downward and shall not diffuse onto any residential property.
3. When applying for a building permit, the Petitioner shall present a landscape plan that provides (a) adequate year round buffering between the site and adjacent apartments; (b) streetscape and buffering along High Falcon Road which shall be no less than 20 feet wide; (c) landscaping and planning of the area between Hardees and the Petitioner's site; and (d) adequate interior landscaping, all of which shall be approved by the Baltimore County Landscape Planner. Said landscape plan shall be submitted to the Zoning Commissioner for final approval.


REISTERSTOWN TOWNHOUSE APARTMENTS
2 STORY BRICK APARTMENT BUILDING
EX. 10' DRAINAGE & UTILITY EASEMENT
EX. 24' DR.
S66°47'30"E 412.02'
BGE TRANSFORMER
CHAIN LINK FENCE
PROP. BIT. CONC. PAVING
EX. ASPHALT PAVING
N 31,000
MERIAM COURT
S 70°00'20" E 95.05'
S 66°48'25"E 78.77'
10' EASEMENT
24' ACCESS EASEMENT
EX. 8" SAN. SEWER
EX. 6" WATER
EX. 12" STORM DRAIN

to maintain or observe the spirit and intent of the regulations and so as to secure the public welfare. McLean, supra at p.214-215. Rather, granting the variances is in disharmony with the spirit and intent of the regulations, and does not secure the public welfare. Dahl, supra, at p.167.

In conclusion, there can be no decision by the Court, but that the variances granted by the Board of Appeals were contrary to the evidence and law. The decision is arbitrary and capricious. Accordingly, the decision of the Board of Appeals granting the variances must be reversed.

Respectfully submitted,

Donald J. Katz
Suite 225, Greenspring Station
2360 West Joppa Road
Lutherville, Maryland 21093
(410) 494-8885

Attorney for Appellants

CERTIFICATE OF SERVICE

This is to certify that a copy of the aforegoing Appellants' Memorandum In Support Of Appeal was mailed this 27th day of January, 1992, to Marvin Singer, Esquire, Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361.

Donald J. Katz

Attorney for Appellants

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 ± SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Doc. No. 2
REISTERSTOWN-OWINGS MILLS GLYNDON COORDINATING COUNCIL, ET AL, PLAINTIFFS ZONING CASE NO. 90-160-A	*	Folio No. 371 File No. 91-CV-4539

* * * * * * * * * * *

MOTION TO DISMISS

Now comes the Appellee, Leonard Stoler , by his attorney, Marvin I. Singer, pursuant to Maryland Rule B9, and moves to dismiss the appeal filed herein by Appellants, Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick J. Hanna, and in connection therewith states:

1. An appeal was noted by Appellants from the Order of the County Board of Appeals of Baltimore County dated August 23, 1991 granting certain zoning variances as requested by Appellee.

2. Said appeal was taken in the names of Reisterstown-Owings Mills-Glyndon Coordinating Council (the "Coordinating Council") and Reverend Frederick J. Hanna.

3. The Coordinating Council is not a proper party to undertake such an appeal and is without standing to do so.

4. Reverend Hanna also lacks standing to enter such an appeal and does not reside in such proximity to the site in question so as to enable him to legally prosecute an appeal.

HOOPER, KIEFER, & CORNELL BALTIMORE, MD 21201

5. The grounds and authorities in support of this motion are set forth in the Memorandum attached hereto and made a part hereof.

WHEREFORE, Appellee respectfully moves that the within appeal be dismissed.

Marvin I. Singer
343 North Charles Street
Baltimore, Maryland 21201
Tel. (301)727-4700
Attorney for Appellee

REQUEST FOR HEARING

Appellee respectfully requests a hearing on the forgoing Motion to Dismiss.

Marvin I. Singer

HOOPER, KIEFER, & CORNELL BALTIMORE, MD 21201

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 ± SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG Doc. No. 2
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ORDER

Upon consideration of the Motion to Dismiss filed herein, and any response thereto, it is Ordered this day of , 1991 by the Circuit Court for Baltimore County that said Motion to Dismiss be and the same is hereby granted.

Judge

HOOPER, KIEFER, & CORNELL BALTIMORE, MD 21201

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 ± SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD, 4TH ELECTION DISTRICT, 3RD COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CG DOC. No. 2
REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL, ET AL PLAINTIFFS ZONING CASE NO. 90-160-A	*	Folio No. 371 File No. 91-CV-4539

* * * * * * * * * * * * * *

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The basis of this motion to dismiss is the failure of Appellants to file a memorandum in support of their appeal for over two (2) months after the required filing date. Maryland Rule B12 imposes the requirement in cases of administrative appeals, in the following words:

> "Within 30 days after being notified by the clerk of the filing of the record, the appellant shall file a memorandum setting forth a concise statement of all issues raised on appeal and argument on each issue, including citations of legal authorities and references to pages of the transcript and exhibits relied on. Within 30 days thereafter any other party desiring to be heard, including the appropriate agency when entitled by law to be a party to the appeal, shall file an answering memorandum in the same form. The appellant may file a reply memorandum within 15 days after the filing of any answering memorandum. This rule shall not apply to appeals from the Workmen's Compensation Commission."

Shortly after adoption of the rule the Court of Special Appeals had occasion to consider its underlying purpose and the effect of any violation. In People's Counsel v. Public Service Commission, 52 Md.App. 715, 415 A.2d 945 (1982), cert. denied 295

Md. 441 (1983), pointed reference was made to the fact that the rule became effective only a little more than one month prior to the due date in that case. Judge Wilner observed that the use of the word "shall" is indicative of mandatory action, but that the rule itself does not specify any particular sanction for violation of its provisions. Holding that the question of dismissal involves the exercise of some degree of discretion by the trial judge, it was there stated at 52 Md.App. 719-721:

> "It has often been said that the Rules of Procedure adopted by the Court of Appeals 'are not guides to the practice of law but precise rubrics "established to promote the orderly and efficient administration of justice and [that they] are to be read and followed."' Countess v. State, 286 Md. 444, 463 (1979), quoting from earlier cases. It has also been made clear that when such a rule says that something 'shall' be done, the Court jolly-well means for it to be done; the direction is a 'mandatory' one and must be obeyed. Cf. In Re James S., 286 Md. 702 (1980), involving a statutory time requirement.
>
> Maryland Rule B12 is such a rule. It is a 'precise rubric' adopted by the Court 'to promote the orderly and efficient administration of justice,' and it is meant to be obeyed. But the rule does not specify or mandate any particular sanction for its violation."
>
> * * * * *
>
> "We would regard dismissal of an administrative appeal as an appropriate, and perhaps even a preferred, sanction for failure to comply with Maryland Rule B12; but we do not believe that it is a mandatory sanction required to be applied indiscriminately in all cases. The trial court, we think had some discretion in the matter. The time period specified in the rule is not jurisdictional in nature, and we regard it of some significance that, in light of the controversy surrounding

> its more or less contemporaneous decision in Hicks (and Johnson v. State, 282 Md. 314 (1978)), the Court of Appeals chose not to specify dismissal as a required sanction."

Ultimately, the Court held that the trial court had not abused its decretion in declining to dismiss the appeal, given the newness of the rule, its limited publication and the appellee's own dereliction in transmitting the record to the wrong court. Id, at 721.

In a later case, Gaetano v. Calvert County, 310 Md. 121, 527 A.2d, 527 A.2d 46 (1987) the Court of Appeals had occasion to consider a late filing under Rule B12. The opinion observed that the Rule is a mandatory procedural rule which must be followed; that the term "shall" is presumed to be mandatory and "denotes an imperative obligation inconsistent with the exercise of discretion." Id, at 124-125. However, because no particular sanction is specified for its violation, the Rule does not require dismissal as a sanction for failure to comply with its provisions. There, the court concluded that no prejudice had been demonstrated, and held that the lower court had failed to utilize the proper test in weighing the question.

> "In sum, the trial judge in this case used the wrong standard for determining whether to grant the appellee's motion to dismiss. In determining whether dismissal is an appropriate sanction for failing to comply with Rule B12, a trial judge should examine 'the consequences of the noncompliance in light of the totality of the circumstances and the purpose of the rule.' Md. Rule 1-201. Of course, because Rule B12 is mandatory, we do

> not rule out the possibility that dismissal in another case may be the appropriate sanction. All we decide today is that this is not such a case. . . . "

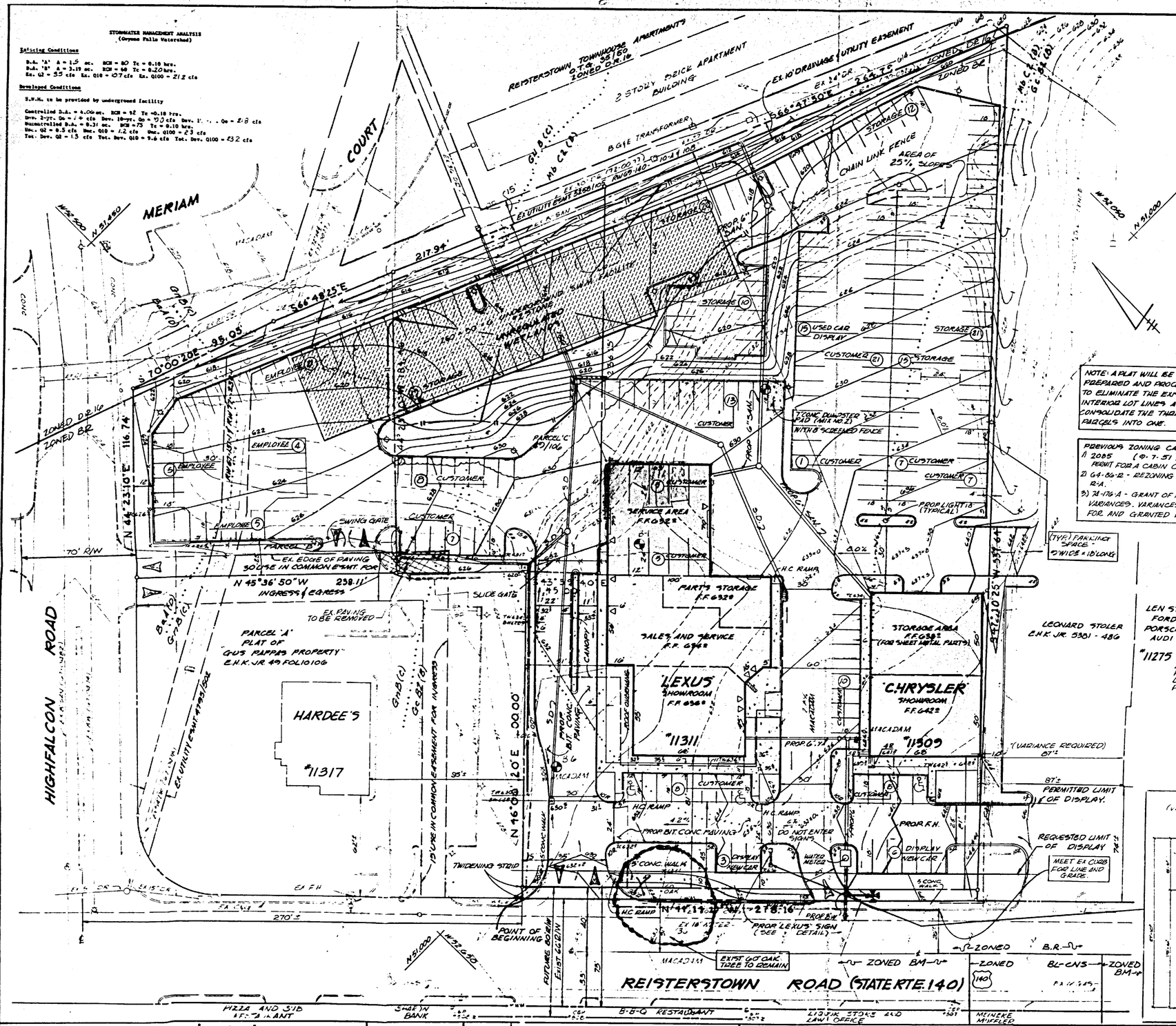
310 Md. at 127.

While dismissal of the appeal is not required, both of our appellate courts have held that compliance with the rule is mandatory. Unless enforcement is implemented. the rule will lose its vitality and the underlying purpose of promoting "the orderly and efficient administration of justice" will remain unfulfilled.

For the reasons advanced herein and on the basis of the authorities cited, dismissal of the appeal herein is respectfully urged.

Respectfully submitted,

Marvin I. Singer
343 North Charles Street
Baltimore, Maryland 21201-4361
(410) 727-4700
Attorney for Appellee


REISTERSTOWN TOWNHOUSE APARTMENTS
2 STORY BRICK APARTMENT BUILDING
EX. 10' DRAINAGE & UTILITY EASEMENT
ZONED DR 16
ZONED BR
S 66°47'50" E 266.75'
EX. 24" CR
MERIAM COURT
N 32°00' W 51.60
S 66°48'25" E 217.94'
S 70°00'20" E 95.05'
N 44°23'10" E 116.74'
EX. UTILITY EASEMENT 3358/105
EX. 15" SAN
UNDERGROUND STORAGE
UNDERGROUND STORMWATER DETENTION
LANDSCAPED WETLANDS
CHAIN LINK FENCE
AREA OF 25% SLOPES
STORAGE (2)
STORAGE (10)
STORAGE (21)
PROP. 6" SAN.
PROP. 8" SAN.
EMPLOYEE (2)
EMPLOYEE (4)
EMPLOYEE (5)
CUSTOMER (1)
CUSTOMER (7)
CUSTOMER (12)
CUSTOMER (13)
CUSTOMER (15)
CUSTOMER (21)
USED CAR DISPLAY
3 TONIC DUMPSTER PAD (MIX NO 2) WITH 8' SCREENED FENCE
PARCEL 'C' 49/106
PARCEL 'B'
70' R/W
EX. EDGE OF PAVING SOURCE IN COMMON EASMT. FOR INGRESS/EGRESS
N 45°36' 50" W 238.11'
INGRESS/EGRESS
SWING GATE
SLIDE GATE
EX. PAVING TO BE REMOVED
PARCEL 'A' PLAT OF "GUS PAPPAS PROPERTY" E.H.K. JR 49 FOL 10106
HARDEE'S
#11317
HIGHFALCON ROAD
15' USE IN COMMON EASEMENT FOR INGRESS
EX. UTILITY EASMT 4795/552
N 16°00'20" E 95.00'
SERVICE AREA F.F.6532
PARTS STORAGE F.F.6529
SALES AND SERVICE F.F. 6545
LEXUS SHOWROOM F.F. 6546
#11311
CHRYSLER SHOWROOM F.F. 6422
#11309 / 6B
STORAGE AREA F.F.6532 (FOR SHEET METAL PARTS)
LEONARD STOLER E.H.K. JR 5381 - 486
LEN STOLER FORD PORSCHE AUDI
#11275
ADDITIONAL NOTE: ALL PARKING WILL BE PAVED WITH A DURABLE, DUSTLESS SURFACE AND PERMANENTLY STRIPED
(TYP.) PARKING SPACE - 9' WIDE x 18' LONG
HC RAMP
HC RAMP 12%
PROP. BIT. CONC. PAVING
PROP. R.H.
PROP. L.H.
PROP. LIGHT
DISPLAY NEW CAR
WATER METER
DO NOT ENTER SIGNS
5' CONC. WALK
TWIDENING STRIP
EX. C&G
EX. F.H.
EX. 18" RCP
EX. 30" RCP
EX. 12" SAN
EX. 8" SAN
EX. 6" SAN
EX. 8" W
EX. 12" W
EX. 6" W
EX. 4" W
EX. 2" GAS
EX. 4" GAS
EX. 6" GAS
EX. 8" GAS
EX. 12" GAS
EX. 16" GAS
EX. 20" GAS
EX. 24" GAS
EX. 30" GAS
EX. 36" GAS
EX. 42" GAS
EX. 48" GAS
EX. 54" GAS
EX. 60" GAS
EX. 66" GAS
EX. 72" GAS
EX. 78" GAS
EX. 84" GAS
EX. 90" GAS
EX. 96" GAS
EX.

VARIANCES REQUESTED

1. BCZR: SECTION 413.E.1 TO PERMIT A DOUBLE FACE SIGN OF 139.5 SF IN LIEU OF THE ALLOWED 100 SQ.FT. (COUNTING BOTH SIDES) AND TRIPODS INTEGRATED INTO THE DESIGN) AND NO FREE-STANDING SIGNS ARE PROPOSED FOR CHRYSLER BLDG.
2. BCZR: Section 413.5.d Variance requested to allow a sign height of 27' 10" in lieu of the required maximum of 25 feet (11311 Building).
3. BCZR: Section 238.2 Variance requested to allow a side yard setback of 1.0 feet in lieu of the required 30 feet (11309 Building).
4. BCZR: Section 238.1, 303.2, 238.4 Variance requested to allow display parking 16 ft. which is less than 53 ft., from the Reisterstown Road R/W (83 feet is the allowable 15 feet less than the required average setback of 68 feet.)

BENCH MARK

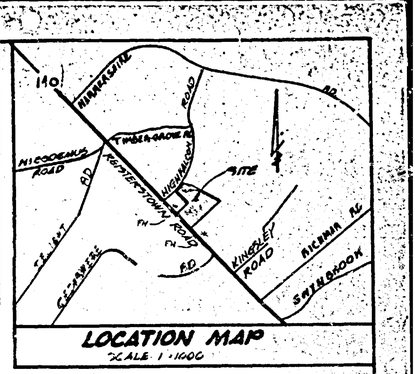
BALTO. CO. HUB NO. 13260 ELEV. 683.97
N 91134.97 W 92897.73. R.R. SPIKE IN MACADAM ON SOUTH-WEST SIDE OF REISTERSTOWN ROAD OFF HIGH-FALCON ROAD AT DRIVEWAY TO FAIRWAY MOTORS.

RECOMENDED SEVERE SOIL CONDITION MITIGATIVE MEASURES

SEVERE SLOPES: PROPOSED MASS GRADING WILL REDUCE SLOPES TO NON-ERODIBLE LEVELS.

SEVERE HIGH WATER TABLE: ANY GROUNDWATER CONDITION ENCOUNTERED WILL BE INTERCEPTED BY UNDERDRAIN SYSTEM CONNECTED TO PROP. CLOSED STM. DRAIN SYSTEM

PREVIOUS ZONING CASES:
2005 (IV-7-51)
64-86-A (III-13-64)
74-136A (VI-05-74)



LOCATION MAP

SCALE: 1"=1000'

SOIL TYPES & LIMITATIONS (BALTIMORE COUNTY SOIL SURVEY MAP NO. 26)

AREA (AC.)	SOIL TYPE	SOIL TYPE	HYDRO SOIL GROUP	BLDG. WITH NO BASEMENT	STREETS & PARKING LOTS
0.15 AC.	BaA	BALTIMORE SILT LOAM	D	SEVERE: HIGH WATER TABLE; POOR NATURAL DRAINAGE	SEVERE: HIGH WATER TABLE; POOR NATURAL DRAINAGE
1.1 AC.	GcB2	GLENELG LOAM	B	SLIGHT	MODERATE: SLOPE
0.5 AC.	GnB	GLENVILLE SILT LOAM	C	MODERATE: HIGH WATER TABLE	SEVERE: HIGH WATER TABLE
2.1 AC.	MbC2	MANOR LOAM	B	MODERATE: SLOPE	SEVERE: SLOPE

NOTE: A DEED WILL BE PREPARED AND PROCESSED TO ELIMINATE THE EXISTING INTERIOR LOT LINES AND CONSOLIDATE THE THREE PARCELS INTO ONE.
S.M. 8214/267

GRADING:-

The proposed grading shown on this plan meets the requirements set forth by the Baltimore County Department of Environmental Protection and Resource Management and complies with Bill No. 33-88. However, due to building types and layout, some field adjustments may be required. All changes must comply with the above mentioned requirements.
We certify that all grading on this site will be done in accordance with the current grading requirements as set forth by the Baltimore County Department of Environmental Protection and Resource Management and with the requirements specified in Bill No. 33-88.

LEONARD STOLER (COLONIAL-STOLER PARTNERSHIP) — TITLE — DATE

LEONARD STOLER E.M.K. JR. 9381/486

LEN STOLER AUDI FORD ROESCUE AUDI #11275

NOTE: A DEED WILL BE PREPARED AND PROCESSED TO ELIMINATE THE EXISTING INTERIOR LOT LINES AND CONSOLIDATE THE THREE PARCELS INTO ONE.
S.M. 8214/267

PARCEL 'B' E.H.K. JR 49/106 S.M. 8067/367 0.54 ac± Tax Acct 1 64-3-067403
PARCEL 'C' E.H.K. JR 49/106 S.M. 8067/367 0.51 ac± Tax Acct 1 64-3-067484
Gross Area 4.04 ac±
Highway Widening Area 0.04 ac±
Net Area 4.00 ac±

GENERAL NOTES

S.M. 8214/267 4 OL AC± #21 00-012592

1. AREA: ~~S.M. 8030/43 2.07 ac±~~ Tax Acct ~~1 64-3-041000~~
2. ELECTION DISTRICT: 4
   COUNCILMATIC DISTRICT: C-3
   CENSUS TRACT: 4042.01
   REGIONAL PLANNING DISTRICT: 304B
   WATERSHED: Gwynns Falls
   SUBSEWERSHED:
3. ZONING: BR & BR-CNS
4. EXISTING LAND USE: One parcel was improved with the "Colonial Inn" building and associated parking areas. Parcels 'B' and 'C' of the "Gus Pappas Etal Property" are unimproved (woods and grass).
5. PROPOSED USE: New and used automobile dealerships providing sales and service.
6. BUILDING SETBACKS:

	Required	Proposed
§11311 BUILDING:		
Front Yard Average (162'+76')/2=	68'	81'
Side Yard	30'	51'/30'
Rear Yard	30'	156'
§11309 BUILDING:		
Front Yard Average	68'	81'
Side Yard	30'	30'/1' *
Rear Yard	30'	292'

* Variance from BCZR 238.2 requested to permit a side yard setback of 1' in lieu of the required 30'.

7. REQUIRED CUSTOMER PARKING:
   §11311 BUILDING
   Showroom 4200 s.f. x 5/1000 = 25 p.s.
   Sales & Service Offices 2400 s.f. x 5/1000 = 13 p.s.
   Retail Parts 300 s.f. x 5/1000 = 1 p.s.
   Shop Area 4750 s.f. x 3.3/1000 = 16 p.s.
   Business Offices 2600 s.f. x 3.3/1000 = 9 p.s.
   Parts Storage 650 s.f. x 3.3/1000 = 6 p.s.
   14,200 SF Total = 70 p.s.
   §11309 BUILDING
   Showroom 3250 s.f. x 5/1000 = 17 p.s.
   Storage Area 9250 s.f. x 3.3/1000 = 31 p.s.
   (FOR SHEET METAL PARTS) 12,500 SF Total = 48 p.s.
   TOTAL NUMBER OF REQUIRED PARKING SPACES = 118 p.s.
8. PROPOSED CUSTOMER PARKING:
   §11311 BUILDING:
   Shop Area - SERVICE BAYS 10 bays
   On-site - (NON-BLOCKED) 60 ps (INCL 2 HC)
   §11309 BUILDING:
   On-site (NON-BLOCKED) 25 ps (INCL 1 H.C.)
   TOTAL CUSTOMER PARKING SPACES = 98 ps
   27. ALL DAMAGED OR DISABLED VEHICLES AND PARTS WILL BE KEPT INSIDE OF BUILDINGS.
9. OTHER PROPOSED PARKING:

New Car Display	18 ps (incl. showroom)	
Used Car Display	15 ps	
Inventory Parking	155 ps	

   SUBTOTAL OTHER PARKING SPACES = 188 ps.
   TOTAL ON-SITE PARKING = 98 CUSTOMER AND OTHER = 286 PS
10. FLOOR AREA RATIO: 23,300 sf - 174,200 sf = 0.13 (c.f.r.)
11. PROPOSED NUMBER OF EMPLOYEES: 40
12. HOURS OF OPERATION: Monday - Friday 8:00 am to 9:00 pm
    Saturday 8:00 am to 5:00 pm
13. UTILITIES: Public utilities exist adjacent to the site to serve the proposed improvements.
    Ex. 16" Water (Dwg. No. 36-0806)
    Ex. 8" Sanitary Sewer (Dwg. No. 70-0324)
    Ex. 36" Storm Drain (Dwg. No. 72-0077)
14. LANDSCAPING: A forest Landscape Plan shall be approved by the Office of Planning in accordance with the Landscape Manual.
15. TOPOGRAPHY: Existing topography shown hereon based upon field-run survey by KCW Consultants, Inc., Feb. 1989.
16. There are no existing streams, bodies of water, springs, or 100-year flood-plains located on this site.
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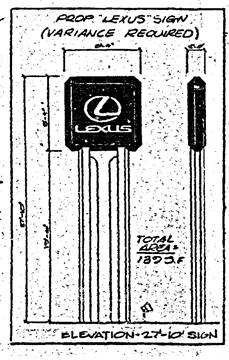
18. There are no known well or septic areas existing on site.
19. Hydric Soils, BaA, are mapped on this site and a wetland area has been shown hereon. Baltimore County DEPRM has determined these to be "unregulated wetlands".
20. SIGNS: Any signs shall comply with BCZR Section 413 and Zoning Signs Policies for BR zoning. No variances requested
21. LIGHTING: Free-standing (⊕) and attached on-buildings (△) are as shown hereon. Lighting shall not be directed towards residential properties and public rights-of-way
22. STORMWATER MANAGEMENT and WATER QUALITY MANAGEMENT: A privately maintained underground storage facility is proposed to provide quantity and quality control for the 2, 10 and 100-year storms (Gwynns Falls Watershed)
23. THERE ARE NO KNOWN HAZARDOUS MATERIAL SITES LOCATED ON THIS PROPERTY.
24. ESTIMATED ADT:
    RETAIL: 10,900 SF ÷ 50/1000 SF = 545
    SERVICE: 14,400 SF ÷ 30/1000 SF = 192
    TOTAL ESTIMATED A.D.T. = 737
25. NO LEASE LINES BETWEEN "LEXUS" AND "CHRYSLER" DEALERSHIP ARE PROPOSED.
26. NO DISPLAY OF AUTOMOBILES, BANNERS, PYLON SIGNS, ETC. SHALL BE ALLOWED IN ANY LANDSCAPED AREAS ADJACENT TO THE PUBLIC RIGHTS-OF-WAY.
28. CRG PLAN APPROVED 5.25.89. THIS PLAN IS CONSISTENT WITH THE APPROVED PLAN.

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
APPROVED FOR GRADING
4/4/89 Date

APPROVED: C.A. Griffith Chief 3-13-89
Storm Water Management Division
BALTO. CO. DEPT. OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

COPIES OF ENGINEERS PERMITS:
NARCO P/N 87-1707-3
MD DEPT. OF ENVIRONMENT WATER QUALITY CERTIFICATION 87-WQ-0149



LIST OF DRAWINGS

G-1 SITE DEVELOPMENT, GRADING AND STORMWATER MANAGEMENT PLAN
G-2 STORMWATER MANAGEMENT PROFILES AND DETAILS
G-3 STORMWATER MANAGEMENT SPECIFICATIONS AND DETAILS
G-4 SEDIMENT CONTROL PLAN
G-5 SEDIMENT CONTROL DETAILS
G-6 STORM DRAIN AND SANITARY SEWER PROFILES AND DETAILS

KCW Consultants, Inc.
Civil Engineers and Land Surveyors
1777 Reisterstown Road
Commercentre, Suite 175
Baltimore, Maryland 21208
(301) 484-0963

DESIGNED BY: ESH
DRAWN BY: KGS
CHECKED BY: DLK

DOUGLAS LANE TEMPLETON — No. 10748 — REGISTERED PROFESSIONAL ENGINEER

REVISIONS

DATE	DESCRIPTION
11.15.89	PROPOSED ADDIT. FOR 11 MANSARD DEPT. COMMENTS 11 NOV 89
10.24.89	LEXUS ELEV. DIMENSIONS PER ARCH PLAN
8.25.89	ADD WARDEE'S SLOPE EASEMENT
6.19.89	ADD SWM DESIGN DETAILS
5.25.89	REVISED PER CRG COMMENTS DATED 5.25.89
5.15.89	REVISED PER DEPRM COMMENTS DATED 5.15.89

OWNER / DEVELOPER:
COLONIAL-STOLER PARTNERSHIP
11275 REISTERSTOWN ROAD
OWINGS MILLS MARYLAND
ATTN: LEONARD STOLER
PHONE: 301 356-7000

LEXUS — CHRYSLER Plymouth

SITE DEVELOPMENT, GRADING AND STORMWATER MANAGEMENT PLAN

STOLER LEXUS AND CHRYSLER

11309-11311 REISTERSTOWN ROAD (STATE RTE. 140)

4TH ELECTION DISTRICT BALTIMORE CO., MARYLAND
(PARCELS 'B' AND 'C' - SUBDIVISION OF THE "GUS PAPPAS PROPERTY", E.H.K. JR 49/106)
CRG PLAN APPROVED 5.25.89

PUBLIC SERVICES CRG NO 89084 | PLANNER'S NO.
SCALE: 1"=30' | MARCH 13, 1989 | DWG. NO: G-1

STORMWATER MANAGEMENT ANALYSIS
(Guyons Falls Watershed)

Existing Conditions

Sub. 'A' A = 1.5 ac. RCN = 80 Tc = 0.10 hrs.
Sub. 'B' A = 3.19 ac. RCN = 68 Tc = 0.20 hrs.
Ex. Q2 = 3.5 cfs Ex. Q10 = 10.7 cfs Ex. Q100 = 21.2 cfs

Developed Conditions

S.W.M. to be provided by underground facility

Controlled Sub. = 4.50± ac. RCN = 92 Tc =0.10 hrs.
Dev. 2-yr. Qe = / cfs Dev. 10-yr. Qe = 0.0 cfs Dev. 100-yr. Qe = 2.8 cfs
Uncontrolled Sub. = 0.31 ac. RCN =75 Tc = 0.10 hrs.
Unc. Q2 = 0.5 cfs Unc. Q10 = 1.2 cfs Unc. Q100 = 2.3 cfs
Tot. Dev. Q2 = 1.5 cfs Tot. Dev. Q10 = 3.6 cfs Tot. Dev. Q100 = 13.2 cfs

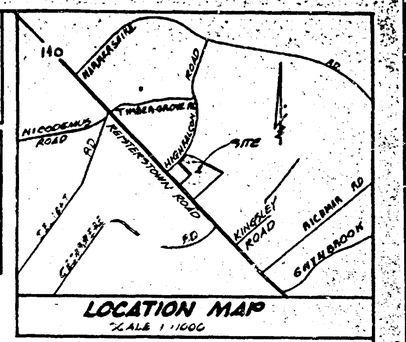
BENCH MARK

BALTO CO. M.G.S NO. 13286 ELEV. 627.97
N 91158.47 W 92857.75, R.R. SPIKE IN
HARDMAN ON SOUTH-WEST SIDE OF
REISTERSTOWN ROAD OFF HIGH-
FALCON ROAD AT DRIVEWAY TO FAIR-
WAY MOTORS.

RECOMENDED SEVERE SOIL CONDITION MITIGATIVE MEASURES

SEVERE SLOPES: PROPOSED MASS GRADING WILL REDUCE SLOPES TO NON-ERODABLE LEVELS

SEVERE HIGH WATER TABLE: ANY GROUNDWATER CONDITION ENCOUNTERED WILL BE INTERCEPTED BY UNDERDRAIN SYSTEM CONNECTED TO PROP. CLOSED STORM DRAIN SYSTEM



LOCATION MAP
SCALE 1"=1000'

SOIL TYPES & LIMITATIONS (BALTIMORE COUNTY SOIL SURVEY MAP NO. 20)

AREA (AC.)	SOIL TYPE	SOIL TYPE	HYDRO SOIL GROUP	BLDG. WITH NO BASEMENT	STREETS & PARKING LOTS
0.15 AC.	BaA	BAILE SILT LOAM	D	SEVERE: HIGH WATER TABLE; POOR NATURAL DRAINAGE	SEVERE: HIGH WATER TABLE; POOR NATURAL DRAINAGE
1.1 AC.	BcB2	BOWMANS LOAM	B	SLIGHT	MODERATE: SLOPE
0.5 AC.	GmB	GLENVILLE SILT LOAM	C	MODERATE: HIGH WATER TABLE	SEVERE: HIGH WATER TABLE
2.1 AC.	MbC2	MANOR LOAM	B	MODERATE: SLOPE	SEVERE: SLOPE

NOTE: A PLAT WILL BE PREPARED AND PROCESSED TO ELIMINATE THE EXISTING INTERIOR LOT LINES AND CONSOLIDATE THE THREE PARCELS INTO ONE.

PREVIOUS ZONING CASES:
1) 2085 (9-7-51) - DENIAL OF SPECIAL PERMIT FOR A CABIN CAMP.
2) 64-86-R - REZONING FROM R-10 AND R-C TO R-A.
3) 74-176-A - GRANT OF FRONT AND SIDE YARD VARIANCES. VARIANCES ORIGINALLY APPLIED FOR AND GRANTED WILL NOT BE IMPLEMENTED

(TYP.) PARKING SPACE 9' WIDE x 18' LONG

GENERAL NOTES

1. AREA: S.H. 6030/45 2.87 ac± Tax Acct # 04 13 047100
PARCEL 'B' E.H.K. JR 49/106 S.H. 6067/367 0.56 ac± Tax Acct # 04 19 007483
PARCEL 'C' E.H.K. JR 49/106 S.H. 6067/367 0.61 ac± Tax Acct # 04 19 007484
Gross Area 4.04 ac±
Highway Widening Area 0.04 ac±
Net Area 4.00 ac±
2. ELECTION DISTRICT: 4
COUNCILMANIC DISTRICT: C-3
CENSUS TRACT: 4062.01
REGIONAL PLANNING DISTRICT: 3068
WATERSHED: Guyons Falls
SUBSEWERSHED:
3. ZONING: BR & DR 10
4. EXISTING LAND USE: One parcel was improved with the "Colonial Inn" building and associated parking areas. Parcels 'B' and 'C' of the "Gus Pappas Etal Property" are unimproved (woods and grass).
5. PROPOSED USE: New and used automobile dealerships providing sales and service.
6. BUILDING SETBACKS:

	Required	Proposed
#11311 BUILDING:		
Front Yard Average (52'+74')/2= 63'		81'
Side Yard	35'	51'/30'
Rear Yard	30'	156'
#11309 BUILDING:		
Front Yard Average (62'+74')/2= 68'		81'
Side Yard	30'	30'/1' *
Rear Yard	30'	292'

* Variance from BCZR 238.2 requested to permit a side yard setback of 1' in lieu of the required 30'.

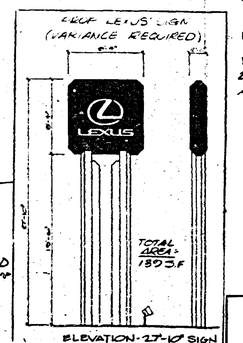
7. REQUIRED CUSTOMER PARKING:

#11311 BUILDING			
Showroom	3720 s.f. x	5/1000	= 19 p.s.
Sales & Service Offices	3630 s.f. x	5/1000	= 18 p.s.
Retail Parts	200 s.f. x	5/1000	= 1 p.s.
Shop Area	4400 s.f. x	3.3/1000	= 15 p.s.
Business Offices	2620 s.f. x	2.3/1000	= 6 p.s.
Parts Storage	1500 s.f. x	3.3/1000	= 5 p.s.
	Total		= 64 p.s.
#11309 BUILDING			
Showroom	3420 s.f. x	5/1000	= 17 p.s.
Storage Area (FOR SHEET METAL PARTS)	3420 s.f. x	3.3/1000	= 11 p.s.
	Total		= 28 p.s.
TOTAL NUMBER OF REQUIRED PARKING SPACES			= 92 p.s.

8. PROPOSED CUSTOMER PARKING:
#11311 BUILDING:
Shop Area - SERVICE BAYS 10 bays
On-site (NON-BLOCKED) 50 p.s. (INCL 2 HC)
#11309 BUILDING:
On-site (NON-BLOCKED) 22 p.s. (INCL 1 HC)
TOTAL CUSTOMER PARKING SPACES = 72 p.s.
27. ALL DAMAGED OR DISABLED VEHICLES AND PARTS WILL BE KEPT INSIDE OF BUILDINGS.
9. OTHER PROPOSED PARKING:
New Car Display 18 p.s. (incl. showroom)
Used Car Display 15 p.s.
Employee Parking 30 p.s.
Storage Parking 27 p.s.
SUBTOTAL OTHER PARKING SPACES = 105 p.s.
TOTAL ON-SITE PARKING = 97 CUSTOMER + 105 OTHER = 202 p.s.
10. FLOOR AREA RATIO: 19,800 s.f. - 174,240 s.f. = 0.11 < 2.0
11. PROPOSED NUMBER OF EMPLOYEES: 40
12. HOURS OF OPERATION: Monday - Friday 8:00 am to 9:00 pm
Saturday 8:00 am to 5:00 pm
13. UTILITIES: Public utilities exist adjacent to the site to serve the proposed improvements.
Ex. 16" Water (Dwg. No. 36-0806)
Ex. 8" Sanitary Sewer (Dwg. No. 70-0326)
Ex. 36" Storm Drain (Dwg. No. 72-0077)
14. LANDSCAPING: A formal Landscape Plan shall be approved by the Office of Planning in accordance with the Landscape Manual.
15. TOPOGRAPHY: Existing topography shown hereon based upon field-run survey by KCW Consultants, Inc., Feb. 1989.
16. There are no existing streams, bodies of water, springs, or 100-year flood-plains located on this site.
17. There are no known historic buildings, archaeologic sites or endangered species habitats located on property.
18. There are no known well or septic areas existing on site.
19. Hydric Soils, BaA, are mapped on this site and a wetland area has been shown hereon. Baltimore County DEPRM has determined these to be "unregulated wetlands".
20. SIGNS: Any signs shall comply with BCZR Section 413 and Zoning Signs Policies for BR zoning. See variances requested
21. LIGHTING: Free-standing (○) and attached on-buildings (△) are as shown hereon. Lighting shall not be directed towards residential properties and public rights-of-way
22. STORMWATER MANAGEMENT and WATER QUALITY MANAGEMENT: A privately maintained underground storage facility is proposed to provide quantity and quality control for the 2, 10 and 100-year storms (Guyons Falls Watershed)
23. THERE ARE NO KNOWN HAZARDOUS MATERIAL SITES LOCATED ON THIS PROPERTY.
24. ESTIMATED ADT:
RETAIL: 10,900 S.F. x 50/1000 S.F. = 545
SERVICE: 4400 S.F. x 30/1000 S.F. = 132
TOTAL ESTIMATED A.D.T. = 677
25. NO LEASE LINES BETWEEN 'LEXUS' AND 'CHRYSLER' DEALERSHIP ARE PROPOSED
26. NO DISPLAY OF AUTOMOBILES, BANNERS, TEMP. SIGNS, ETC. SHALL BE ALLOWED IN ANY LANDSCAPED AREAS ADJACENT TO THE PUBLIC RIGHTS-OF-WAY.

LEN STOLER
FORD
PORSCHE
AUDI
"11275

ADDITIONAL NOTE: ALL PARKING WILL BE PAVED WITH A DURABLE DUSTLESS SURFACE AND PERMANENTLY STRIPED



ELEVATION - 27'-10" SIGN

VARIANCES REQUESTED

1. BCZR Section 413.5.F TO PERMIT A DOUBLE FACE SIGN OF 139 S.F. IN LIEU OF THE ALLOWED 100 SQ.FT. (COUNTING BOTH SIDES AND SURFACES INTERSPACED) INTO THE DESIGN AND NO FREE-STANDING SIGNS ARE PROPOSED FOR CHRYSLER BLDG.
2. BCZR Section 413.5.d Variance requested to allow a sign height of 27' 10" in lieu of the required maximum of 25 feet (11311 Building).
3. BCZR Section 238.2 Variance requested to allow a side yard setback of 1.0 feet in lieu of the required 30 feet (11309 Building).
4. BCZR Section 238.1, 303.2, 238.4 Variance requested to allow display parking 10 ft., which is less than 33 ft., from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet.)

KCW Consultants, Inc.
Civil Engineers and Land Surveyors
1777 Reisterstown Road
Commercentre, Suite 175
Baltimore, Maryland 21208
(301) 484-0963

STATE OF MARYLAND — DOUGLAS LANE KENNEDY — No. 20718 — REGISTERED PROFESSIONAL ENGINEER
Douglas L. Kennedy

DATE	DESCRIPTION
5.25.89	REVISED PER C.R.G. COMMENTS DATED 5.25.89
7.19.89	REVISED PER DEPRM COMMENTS 5.25.89

OWNER / DEVELOPER:
COLONIAL - STOLER PARTNERSHIP
11275 REISTERSTOWN ROAD
OWINGS MILLS MARYLAND
ATTN: LEONARD STOLER
PHONE: 301 356-7000

LEXUS
CHRYSLER
Plymouth

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCES

STOLER 'LEXUS' AND 'CHRYSLER'
'11309-'11311 REISTERSTOWN ROAD (STATE RTE. 140)
4TH ELECTION DISTRICT BALTIMORE CO., MARYLAND
(PARCELS 'B' AND 'C' - SUBDIVISION OF THE 'GUS PAPPAS PROPERTY', E.H.K. JR 49/106)

PUBLIC SERVICES C.R.G. NO. 89084 | PLANNING NO.
SCALE: 1"=30' | MARCH 13, 1989 | DWG. NO C.R.G-1

RSD LINE FOR MINOR ADJUSTMENT 7-15-91

CERTIFICATE OF SERVICE

I hereby certify that prior to the filing of this Answer, a copy hereof was mailed on the 6th day of March, 1992 by first class mail, postage prepaid, to Donald J. Katz, Esquire, Suite 225, Greenspring Station 2360 West Joppa Road, Lutherville, Maryland 21093, Attorney for Appellants.

Marvin I. Singer

LAW OFFICES
HOOPER, KIEFER & CORNELL
343 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4381
(410) 727-4700
FAX: (410) 625-4709

RICHARD W. KIEFER
F. DUNCAN CORNELL
MARVIN I. SINGER
IRA R. NIMMEL
DOROTHY M. BEAMAN

TOWSON OFFICE
405 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4292
(410) 823-3200

ARTHUR U. HOOPER
(1888-1978)

February 28, 1992

Civil Clerk
Circuit Court for
Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Leonard Stoler v.
Reisterstown, et al.
Case No. 91-CV-4539

Gentlemen:

Enclosed is the Answer to Petition to be filed in the above entitled case, which is scheduled to be heard by Judge Turnbull on April 7th. Service was previously made upon counsel for the Appellants, as reflected on the attached certificate of service.

Yours very truly,

Marvin I. Singer

MIS/glb
Enclosure

cc: Judge John G. Turnbull (w/enclosure)

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 +/- SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD, 4TH ELECTION DISTRICT, 3RD COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL, ET AL	*	CG DOC. No. 2
	*	Folio No. 371
PLAINTIFFS ZONING CASE NO. 90-160-A	*	File No. 91-CV-4539

* *

MEMORANDUM ON BEHALF OF APPELLEE

The appeal to this Court is from the action of the Baltimore County Board of Appeals granting certain variances to Appellee in connection with the new construction of a Lexus automobile dealership facility on Reisterstown Road in Owings Mills. Earlier, the Zoning Commissioner had similarly granted the requested variances.

SCOPE OF REVIEW

The principles applicable to the scope of judicial review of appeals in zoning cases have long been established in Maryland. Courts have been especially sensitive not to intrude into the realm occupied by the local zoning authority, and many cases have expressed the limitations by which such review shall be undertaken. A summary of the operative standards was set forth by the Court of Appeals, in ruling upon the grant of a special exception, in Erdman v. Board of Zoning Appeals, 212 Md. 288 at 294-295, 129 A.2d 124 (1957).

> "Of course, it has been stated many times by this Court that the Courts will not substitute their judgment for that of the Board, the legislative body, if the question decided was fairly debatable. It is not the function or right of the Courts to zone or rezone but only to determine whether the legislative body has properly applied the governing law to the facts. If there is room for reasonable debate as to whether the facts justify the action of the Board, such action must be upheld. It is only where there is no room for a reasonable debate or the record is barren of supporting facts that the Courts can declare the legislative action of the Board arbitrary, capricious, discriminatory or an unequal application of the law. If there are substantial facts to justify the action of the Board the Courts must affirm that action. The review by the Courts is very narrow in scope and even though the Courts may not feel the decision of the Board was the best that could be rendered under the circumstances, nevertheless the Courts will not set aside the Board's view of the matter if there is substantial evidence to justify its findings and its action is not arbitrary, capricious or discriminatory." (Citations omitted).

The "fairly debatable" rule is, of course, firmly fixed and may no longer be called into question. In outlining the extent to which our courts have applied that standard, Judge Barnes wrote, in Eger v. Stone, 253 Md. 533 at 542, 253 A.2d 372, 377 (1969):

> ". . . We have made it quite clear that if the issue before the administrative body is 'fairly debatable', that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of private property for public use without the payment of just compensation. (Citations omitted).
>
> "This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. In the instant case, but for the rule, we might well have reached the conclusion reached by the learned lower court, but in enforcing the rule

we are obliged to say that reasonable persons could have reached a different conclusion on the evidence so that the issues were fairly debatable, and hence, the decision of the Board must be sustained."

See also Sembly v. County Board of Appeals, 269 Md. 177, 304 A.2d 814 (1973), Mayor and Council of Rockville v. Stone, 271 Md. 655, 319 A.2d 536, 540 (1974), and Wakefield v. Kraft, 202 Md. 136, 96 A.2d 27 (1953).

It has been stated also that the heart of the fact finding process often is a drawing of inferences from the facts, and the choice between equally permissible inferences belongs solely to the administrative agency. Board of County Commissioners v. Oak Hill Farms, 232 Md. 274, 192 A.2d 761 (1963) and Kirkman v. Montgomery County Council, 251 Md. 273, 247 A.2d 255 (1968). A court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. Succinctly stated: "The test is reasonableness, not rightness." Kirkman, supra, quoting Professor Davis, Administrative Law Treatise (1958), Sec. 29.05, p. 139. The holding by the Court of Appeals in Wakefield v. Kraft, supra, is as vital today as it was then:

> "There was substantial evidence to sustain the County Commissioners; whether that evidence was to be relied on, what inferences were to be drawn from it, and whether those which the Commissioners drew were right or wrong, is of no proper concern to a Court."

202 Md. at 151. The present case illustrates more than an adequate factual basis for the determination by the Board of Appeals, and is thus insulated from attack by Appellants.

STATEMENT OF FACTS

The requested relief in this case concerned the business sign located in the front portion of the property, a building setback variance from the interior property line which divides the subject property from the adjacent lot also owned by Mr. Stoler, and lastly, the display of new automobiles in the front portion of the lot.

The sign is a standardized sign, the design and dimensions of which are dictated by the automobile manufacturer (T. 118-119). The height permitted under the Baltimore County Zoning Regulations is twenty-five feet, and the request was to erect a sign that is two feet, ten inches taller. A variance was requested also to permit the sign to be 139 square feet in size (calculated on the basis of both of the sides), rather than the permitted 100 square feet. As part of its national facility identification program, Lexus makes available three signs of identical design and appearance, differing only as to size and height (T.31, Petitioner's Exhibit 2). As a requirement of the automobile franchise, one of the signs must be used. The largest sign is 36' 2" high and is 10' 10" square in size, the middle one is 27' 10" high and 8' 4" square in size, and the smallest is 15' 8 1/2" high and 6' 8 1/2" square in size (T.31).

Lexus had recommended use of the mid-sized sign that became the subject of two of the requested variances (T.119-120). Mr. Stoler testified that the smallest sign would be out of proportion to the size of the building and the site (T.120-121).

More importantly, the topography to the south prevents the sign from being visible. There are two hills in that direction, the crest of the northernmost one -- the one closer to the Lexus site, is at the center of the adjacent Ford dealership, approximately three hundred twenty feet from the sign in question (T.122,132). A motorist approaching from the south would not be able to clearly see the sign until reaching the crest of that hill, although glimpses of it were possible from the top of the first hill, but then lost on the downhill portion (T.33,123). The evidence indicated that a driver typically requires four hundred feet to decide upon and carry out operations such as parking and turning (T.86). The physical characteristics of the road are depicted in the photographs made a part of the record. It is also significant that a majority of customers approach from the south, where are located the more heavily populated areas of the region (T.108), as well as the Beltway.

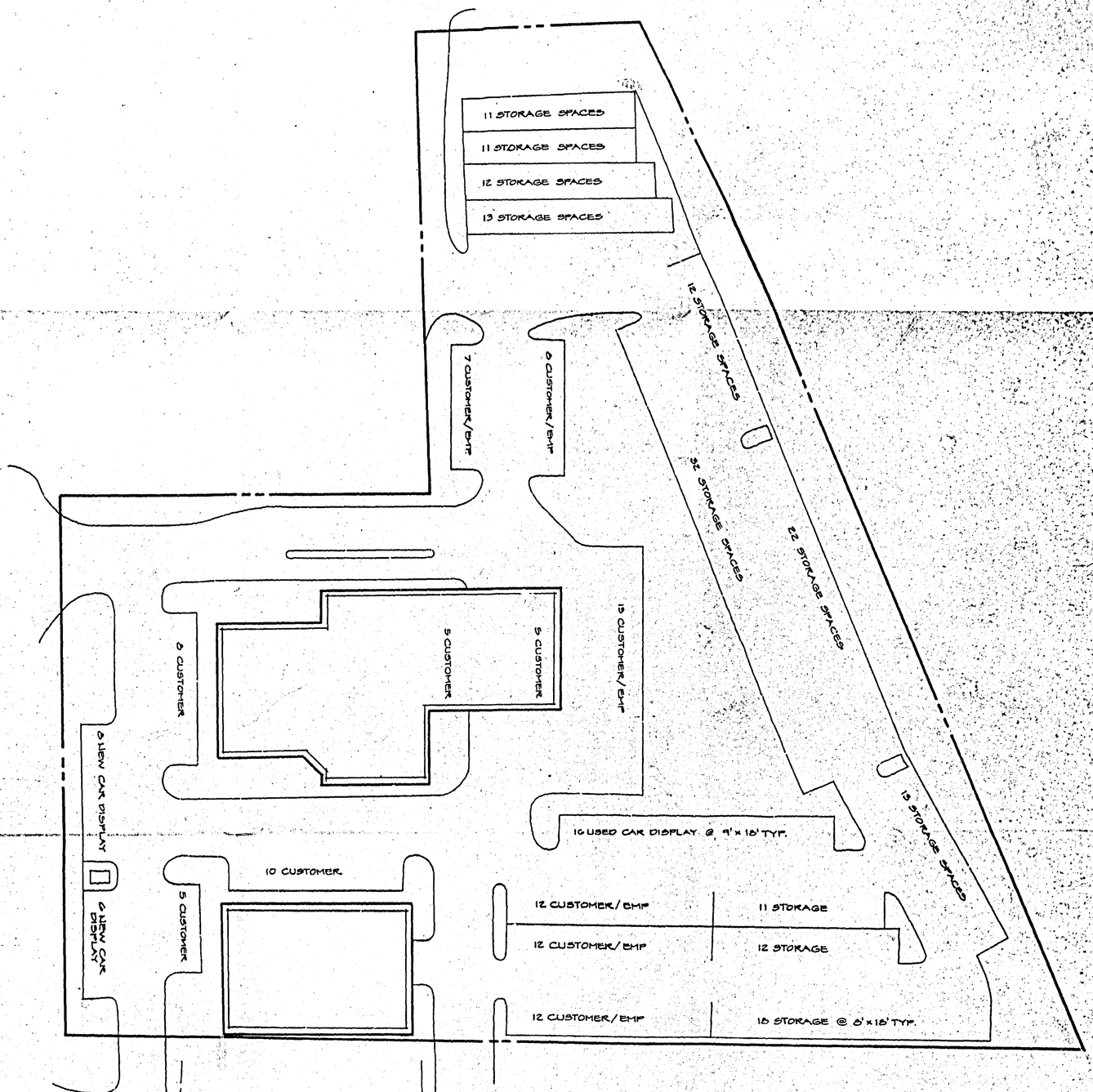
Underscoring the problem with the "sight distance" was the testimony of Douglas Kennedy, the civil engineer engaged by Appellee to develop the project. He stated the southernmost entrance, next to which the Lexus sign is located, was limited to ingress of the site. Egress of vehicles was prohibited because of the proximity of the crest of the hill to the south, which prevented there being a safe sight distance between autos at the two locations (T.24-25). The site plan indicates a sign near that entrance forbidding outward movement onto Reisterstown Road, and

the configuration of the entrance itself is such so as to channel vehicles into the property.

The site in question was previously the location of the Colonial Inn, a building well over a century old which had become run-down and neglected (T.113). The uncontradicted testimony of Mr. Stoler was that the Inn had an identification sign in front which was larger than one hundred square feet, as well as a billboard (erected through the granting of a variance) which was approximately seventy feet high and between seventy-five and eighty feet long (T.113-114). Both had been removed by Appellee.

Mr. Kennedy expressed his opinion as to whether hardship or practical difficulty would be encountered if the smallest of the three Lexus signs were utilized (T.85). He stated that a smaller sign than that requested would be less visible because of the rolling terrain and poor visibility encountered when coming from the southbound direction (T.46). He also opined that with anything smaller a motorist may "almost bypass the property" before realizing that the Lexus dealership was there (T.46, 81).

Another aspect of the requested relief was permission to display new cars in front of the Lexus building and the proposed Chrysler building (3 and 6 vehicles respectively), seventeen feet from the right-of-way. Of particular importance is the fact that automobiles may be located there as a matter of right, whether they be customers' cars or employees' cars (T.25). A variance is only required for display parking, that is new cars, so that the real issue evolves into the type or age of the cars which may be parked


11 STORAGE SPACES
11 STORAGE SPACES
12 STORAGE SPACES
13 STORAGE SPACES
12 STORAGE SPACES
7 CUSTOMER/EMP
8 CUSTOMER/EMP
32 STORAGE SPACES
22 STORAGE SPACES
5 CUSTOMER
5 CUSTOMER
8 CUSTOMER
15 CUSTOMER/EMP
6 NEW CAR DISPLAY
16 USED CAR DISPLAY @ 9'x18' TYP.
13 STORAGE SPACES
10 CUSTOMER
6 NEW CAR DISPLAY
5 CUSTOMER
12 CUSTOMER/EMP
11 STORAGE
12 CUSTOMER/EMP
12 STORAGE
12 CUSTOMER/EMP
16 STORAGE @ 8'x18' TYP.

in the designated spaces. Mr. Kennedy testified that, from a traffic standpoint, the parking of new automobiles, as well as used automobiles or customer parking, would not be a safety hazard or detrimental to traffic passing by (T.77).

Lastly, a variance was requested with respect to the location of the proposed Chrysler building and the side or southern property line, as depicted on the site plan admitted into evidence as Petitioner's Exhibit 1. The sideyard setback is not a contested issue, as Appellants indicated before the Board of Appeals that they had no opposition to that specific variance. (T.9).

Robert Natz testified as an expert in real estate matters, specializing in commercial and industrial real estate. He was knowledgeable about the 1988 comprehensive rezoning for the immediate area in which the subject property is located, and the intent of both the Planning Board and the County Council to create there an intensification of automobile dealerships, including sales and service areas (T.91-93). He pointed to changes in zoning on both sides of Reisterstown Road for the purpose of creating "an automobile business park" (T.91-92), thereby implementing the land use policy adopted by the County (T.93). Mr. Natz was of the opinion that granting the requested variances would not have any detrimental effect upon the value of adjacent properties or other properties in the area, nor any adverse effect upon motorists on Reisterstown Road (T.93-94). He also stated, specifically with reference to the sign, that he felt it would not produce any adverse effect and was in line with the identification used by

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other automotive dealerships in the County (T.94-95). Ultimately, he arrived at the conclusion, based upon his experience, knowledge and training as well as his "socioeconomic activities for an extended period of time in the Owings Mills area and that section of Reisterstown Road," that the granting of the variances would not adversely affect the health, safety or welfare of the community.

Mr. Stoler further testified to receiving a great deal of pressure from the manufacturer with respect to his choice of the sign. Moreover, there was the practical consideration of presenting at least as handsome an appearance in a "display sense" as a nearby competitor (T.140-141).

Appellants argue at some length about aesthetic effects if the variances are granted, but the issue must be considered in a larger context. Previous reference has been made to the deteriorated condition of the Colonial Inn, which has been replaced by the attractive, modern lines of the new Lexus building (T.112-114). The old site also contained a business sign larger than permitted as a matter of right by the Zoning Regulations, and a very large billboard. Both were, of course, removed and the replacement sign sought by Appellee is modest in comparison.

In similar fashion Mr. Stoler's efforts on the nearby tract have produced enormous improvemer to the appearance of the area. Starting in 1968 when he purchased the first building, a small dealership in need of improvement and repair (T.101-104), and the acquisition of adjacent properties that also had been "neglected" and were "dilapidated" and rat infested (T.104-105),

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substantial gains have been achieved in the appearance of the immediate area through new construction and development by Appellee (T.105-107). Petitioner's photographs admitted into evidence depict his properties as they formerly existed and as they appear today, including the Lexus site (Exhibit 10). The improvement in appearance is marked. Reverend Hanna conceded that what is there today is a "great improvement" over what had been there, and that Mr. Stoler had indeed been responsible for such a result along that stretch of Reisterstown Road (T.158).

In order to accommodate the construction requirements for building layout, and to improve the flow of traffic within and from the Lexus site, two additional parcels were purchased (T.20, 115-116). They also provided vehicle access to High Falcon Road, which intersects Reisterstown Road north of the subject property, just beyond the Hardees location. The total investment by Appellee to develop the Lexus site was four and one-half million dollars (T.115). As a necessary ingredient of such development, Appellee has sought the variances in question in order to avoid hardship and practical difficulty in utilization of the property for a business purpose encouraged by County policy and zoning.

Furthermore, Mr. Stoler undertook to landscape an open area on the north side of the Lexus site, which is owned by Hardees, at his sole cost and expense, under an agreement with that fast-food chain (T.20-21, 116-118). Other, extensive landscaping was provided throughout the site.

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With respect to the new car parking in front of the building, there was testimony by Appellee that customer expectations are that new models would be located there, and that an adverse business impact results if prospective customers' competing models can be seen parked (T.126). The location of the building itself, and the associated display parking, was dictated by two factors. One was the program requirements imposed by Lexus for the design and layout of the building; criteria for which there was little flexibility (T.19-20, 124-125). Secondly, the topographical constraints of the land had a significant impact upon the location of the building. Because of the steep slope at the rear, or eastern portion, of the property, and the existence of wetlands which Baltimore County considered "nonviable", the building was not able to be sited further back from the roadway (T.18-20).

In contrast, the sole protesting witness was Reverend Frederick Hanna who stated the basis of the organization's position was a general opposition to relaxation for variances with respect to sign regulations for car dealerships, and that it detracts from general appearances (T.154, 155). The witness admitted on cross examination that the individuals involved in determining the organization's position had not bothered to ascertain any relevant facts before arriving at a conclusion, and were of the opinion that business signs of this nature are not economically necessary for automobile dealers (T.165).

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Appellee demonstrated before the Board, through Exhibits 11-20, a series of zoning decisions granting variances for the height and size of signs throughout the County for automobile dealerships. The closest location among that group was diagonally across Reisterstown Road from the subject property. If the community wishes to have sign regulations changed, the avenues for such action are certainly available through the political process, but new development should not be burdened with restrictions which were not imposed upon similar uses, some located quite nearby.

Section 307 (Variances) of the Baltimore County Zoning Regulations provides, inter alia, that variances are to be granted "only in such manner as to grant relief without substantial injury to public health, safety, and general welfare." In an effort to show compliance with that standard, the Board was referred to the current Baltimore County Master Plan as an expression of official public policy embodying those elements (T.146). The specific goals and recommendations enunciated there are as follows:

Commercial Redevelopment

> As vacant land prices increase, redevelopment of older underutilized parcels in areas already served by public facilities becomes an attractive alternative.
> . . .
>
> Page 48.

Western Sector

* * * *

> In marked contrast to the rural western fringe of this Sector is the new urban center dramatically emerging between the Liberty Road and Reisterstown Road corridors. The Owings Mills Growth Area was formally designated in the 1979 Master Plan. Subsequently, a detailed study was

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prepared for this 13,000-acre area, and was formally adopted in 1984 as an amendment to the County Master Plan.

> Progress in implementing the Plan has been striking. The State and County have invested upwards of one billion dollars just in the transportation facilities and utility lines serving the Growth Area. Private investment has been equally vigorous. The Rouse Company has completed a regional shopping mall on a 126-acre tract in the Owings Mills Town Center. Other development proposals approved to date by the County total more than 12,000 dwelling units and more than 15 million square feet of office, retail and manufacturing floor area. Owings Mills is well on its way to fulfilling its promise for being the County's economic development flagship for the 1990's, and its continuing, orderly growth should help to relieve some of the pressures which the older communities have been experiencing during the 1980's.

Strategic Issues & Recommendations

> The two major strategic land use issues in the Western Sector are the County's continued commitment to the development of the Owings Mills Growth Area, and a clear decision on the basic character and amount of future development in the Patapsco area.
>
> * * * *

Needed Capital Improvements

> Besides the hundreds of millions of dollars for the Northwest Expressway and the Metro Line, the Owings Mills area has received more than $91 million invested by the County in roads and other capital improvements. Additional public investments will be needed to complete major facilities and schedule others so the successful pace of private development can continue. However, the County finds itself with severe budget constraints.
>
> Pages 88 - 89.

Commercial Corridor Improvements

* * * *

North-Central Reisterstown Road

* * * *

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> Baltimore County has maintained a commitment to the merchants along Reisterstown Road and Liberty Road that it will not place or encourage new competing shopping centers throughout the Owings Mills development area. While some minor neighborhood commercial services may be required, it was the object of the Plan to encourage the new residents of Owings Mills to patronize the established businesses along the two corridors.
>
> Baltimore County has essentially kept its promise not to expand business zoning outside the commercial core of the Owings Mills Growth Area. Despite the tremendous business possibilities this has opened for owners of properties along Reisterstown Road, little has been done to date to improve the quality of existing premises. This stretch of the corridor has not put itself in a position to take full advantage of the Growth Area's proximity.
>
> * * * *
>
> Uses with similar problems and goals should be concentrated to provide identity and character. Coordinated efforts of promotion and marketing would facilitate revitalization. A combination of these and other similar actions may be required to improve the profitability of corridor businesses, and enable property owners to provide the quality of commercial services necessary to support expected growth in Owings Mills. The alternative may be a decision to provide the necessary services at key locations inside the growth area itself.
>
> Page 97.

The last cited paragraph is notable in seeking to "enable property owners to provide the quality of commercial services necessary to support expected growth in Owings Mills." Appellee is a good example of bringing improvement to deteriorated and underdeveloped property, but requires these modest variances in order to successfully compete and market his product. For it is only through sustained sales volume, achieved in part through uniform identification programs, that the growth and economic viability needed to pay for such improvements may be secured.

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ARGUMENT

Appellants contend that the action by the Board of Appeals must be "supported by evidence based on undisputed facts" (Appellants' Memorandum, p. 2). Not only is such a position absurd, but it is contrary to well-established Maryland law applying the "fairly debatable" standard, requiring only "substantial evidence" in the record to support a board's finding. County Commissioners v. Zent, 86 Md.App. 745, 752 - 753, 587 A.2d 1205 (1991). The term "fairly debatable" has been defined as whether the agency's "determination involved testimony from which a reasonable man could come to different conclusions". Cox v. Prince George's County, 86 Md.App. 179, 186, 586 A.2d 43 (1991) and cases cited therein. Cox relied upon an earlier decision for the proposition that "no matter how conflicting the evidence or questionable the credibility, court cannot substitute its judgment", id. at 186, and applied that test in affirming the grant of a special exception. Moreover, the decision held that "since administrative agency decisions are prima facie correct and carry a presumption of validity", the court would review the decision there "in the light most favorable to the Council". 86 Md.App. at 187.

In the present case, the Board concluded in its Opinion that "special conditions of this particular site requires relief and that the variances requested will not be detrimental to the public health, safety and general welfare" (Opinion, p. 6). Cited in support of its finding was the testimony of Douglas Kennedy, a

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registered civil engineer, as to the need to conform the development to specific requirements of the auto manufacturers, thus involving a need for variance setbacks. The evidence upon which the Board relied was, in large measure, uncontradicted and gave strong support for its decision, stated thusly:

> ". . . Because of the configuration of the site and the topography of the land on which it is situated, and the need to position buildings as shown on the plan (Petitioner's Exhibit No.1) the setbacks are essential in order to provide relief from hardship and practical difficulty. The variances as to the sign are necessary in order to permit erection of a standardized sign required by the manufacturer, of a type readily seen and identifiable. In regards to the display parking, testimony indicated that the proposed location would not obstruct vision or have a negative effect on traffic on Reisterstown Road."

Opinion, p. 5.

Appellants attack the testimony of Robert Natz on the basis that his expertise involved only commercial and industrial real estate. Such a myopic viewpoint ignores many facets of the real estate industry. The location of residential areas near commercial and industrial uses invariably involves the interaction of one upon the other, including the effects upon their respective values. The availability of roads, the existence of traffic levels and patterns, the availability of utilities and the existence of schools, churches and shopping are examples of conditions which must be considered in connection with the use, modification, or development of all types of real estate. Significantly, Appellants do not comment upon the removal of the large sign and billboard

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previously existing on the Colonial Inn site, nor of the betterment brought about by the construction of the Lexus facility. Appellants' argument with respect to the effect upon the apartment units to the east appears to be that the impact of the minimal variances sought is worse than that which resulted from operation of the previous bar and package liquor store, with its pinball machines and pool tables. The property was then "run down and neglected", with beer bottles being tossed about (T.113). It would not take an expert to conclude that such activities emanating from a commercial use would have a deteriorating effect upon nearby apartments. Nor was it beyond Mr. Natz's scope of expertise to render an opinion as to the effect of the present auto dealership, including its requested variances, upon properties in the area and their values, including the apartment development to the east.

Mr. Stoler expressed the view that because his Lexus customers come from a wide area, including Northern Virginia and Southern Pennsylvania, ready and easy recognition of his facility, through means of the mid-sized sign, was extremely important (T.121). He too testified that a motorist must obtain the crest of the nearest hill in order to clearly see the sign (T.123), and that a smaller sign would not be as effective. Customer perceptions of quality, stability and dependability are at first, based upon the appearance of the dealership. The sign, its design and proportionality to its surroundings, can impart a strong negative message. If that is permitted, there is little question that practical difficultly has been experienced.

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The Board of Appeals found that the present application satisfies the requirements set forth in McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). There, the Court of Appeals rejected an allegation similar to the one found in the instant case, that the requested variance was merely for the convenience of the applicant. The evidence which the Court found sufficient to sustain the variance was summarized in the following manner:

> "That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy for its entire six years; that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance; and that there was only meager evidence to support the contention that a detriment would befall the neighboring property owner."

270 Md. at 215. The evidence in the present case is, at a minimum, at least as sufficient to support the variances as was cited above in McLean. The stability of full occupancy of a building constructed earlier, found to have been aided by the preservation of trees, is akin to the upgrading of the area through new construction by Appellee, assisted by the economic and marketing gains to be derived from the benefits under the requested variances.

Swept aside also in McLean was the contention that an applicant is precluded from asserting "practical difficulty" when charged with knowledge of the need for variance (sideyard requirements in that case) at the time of purchase of the property.

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The Court held the "rule" has less significance where dealing with "practical difficulty" than it does in the event of "hardship" which usually characterizes "use variance" cases. 270 Md. at 215. The variances now before this Court are unquestionably "area variances". 2 Rathkopf, The Law of Zoning and Planning, Sec. 45-1 (3d ed. 1972); Anderson v. Board of Appeals, 22 Md. App. 28, 38, 322 A.2d 220 (1974). Moreover, the need to request such variances did not become apparent, according to the testimony of Mr. Kennedy, until the planning and development process for the site had begun.

In an earlier case dealing with the variance requirements of Sec. 307 of the Baltimore County Zoning Regulations, the Court of Appeals observed that if the requested height variance were in strict accord with the terms of the Regulations, there would, of course, be no occasion for a variance. Loyola Loan Association v. Buschman, 227 Md. 243, 247, 176 A.2d 355 (1961). After making that observation, Judge Brune narrowed the focus of inquiry by stating: "The question is whether it is in strict accord with the spirit and intent of the Regulations." 227 Md. at 247 (Emphasis in original.) One factor upon which the Court relied was that the proposed building and parking facilities there were in accord with the general core parking plan envisaged for the business section of Towson in which the property was located. And after considering soil conditions at the rear of the lot, which had the effect of forcing construction of the building on the front portion of the lot, the Court concluded:

> ". . . This, in turn, prevented solution of its problem by building a four-story building

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> covering a larger part of its lot, which it otherwise could have done without contravening the Regulations. This, we think, presents at least a case of 'practical difficulty' within the meaning of Sec. 307 of the Regulations. To ignore it and to restrict Loyola to a building of uneconomic size where, as here, the Board's findings that there is no injury to the public health, safety and general welfare and that the proposed variance is in strict harmony with the spirit and intent of the Regulations should be upheld, would, we think, place too narrow a construction upon Sec. 307, and would itself impose an unreasonable hardship on the applicant. . . . ."

227 Md. 250-251. The present case also involves development factors such as soil condition and topography, as well as utilization of the property in furtherance of the planning policies enunciated in the Master Plan, all of which contributed to the need for the requested variance.

Earlier reference was made herein to action taken with respect to the granting of variances for the size and height of signs utilized by several automobile dealerships. Appellants offer no valid basis upon which to distinguish those cases from the present one, and the Board of Appeals was consistent with those prior cases in ruling upon the variances herein. Due process requirements mandate even application of laws and regulations controlling the use of property. Commenting upon whether an ordinance was unreasonable or discriminatory, or denied equal protection of law, the Court of Appeals quoted an Oregon case in Wakefield v. Kraft, 202 Md. 136, 143, 96 A.2d 27 (1953), to the following effect:

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> "While the City Council has wide discretion in enacting zoning ordinances, it has no right or authority to place restrictions on one person's property and by mere favor remove such restrictions from another's property. There must be reasonable ground or basis for the discrimination. " (Emphasis supplied.)

The same is true of the administration of zoning laws and regulations.

Over a century ago the Supreme Court considered a claim of discriminatory administration of a zoning ordinance, otherwise fair and legal on its face. In Yick Wo v. Hopkins, 118 U.S. 356 (1886), the Court stated, at pages 373-374:

> "Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practicelly to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution."

It has been stated that "a zoning regulation may be held invalid for the reason that in its operation or application, it is discriminatory and a denial of the equal protection of the laws. This result has been reached where the regulation did not bear alike upon all land within the same territory or district." 82 Am.Jur. 2d, Zoning and Planning - Sec. 14 at page 407. Other authority has found two elements to be necessary in order to hold that different treatment of two tracts of property in the same locale is discriminatory. Firstly, the properties must be similarly situated, and secondly, there must be no reasonable grounds for differentiating between them. Rathkoph, The Law of

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Zoning and Planning, (4th Ed., 1975) Vol. 1A, Sec. 8.01, at page 8-4. The latter authority further stated:

> "It is only where laws are applied differently to different persons under the same or similar circumstances that the equal protection of the law is denied." Id at page 8-3.

Although restrictions on use must be uniform in all areas in a defined class or district under the zoning ordinance, the various areas in the same class need not be contiguous, different areas in a municipality being capable of being put into the same class. Id at page 8-3, n.2 citing Walker v. Town of Elkin, 118 S.E.2d 1 (N.C. 1961). The same author concluded that "the action of imposing restrictions that do not bear alike on all persons living in the same territory under similar conditions and circumstances is discriminatory and will not be upheld. That a zoning statute must be impartially applied as to all property similarly situated is beyond dispute." Rathkopf, The Law of Zoning and Planning, supra at page 8-4, n.7 citing, inter alia, Cassell v. Mayor and City Council of Baltimore, 195 Md. 358, 73 A.2d 486, 490 (1950).

In City of Alexandria v. The Texas Company, 172 Va. 209 (1939), the City of Alexandria forbid the installation and operation of a particular lighting system on a filling station. The court stated that, whereas other filling stations on the same street and in the same neighborhood were allowed the use of floodlights, the appellee was denied such use without reason, concluding at 216:

> "A City may not deny to one owner the privilege of installing on his property the type of lighting which he desires, and grant

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> such a privilege to another property owner of like qualifications under like conditions."

Considering the fact that the most prominent of the approved requests was for an auto dealership diagonally across Reisterstown Road from the Stoler property, it becomes especially clear that even-handed treatment is a requirement of the law.

Appellants refer to the testimony of Reverend Hanna in support of their contentions, but it is readily apparent that the Board of Appeals did not place much reliance upon his assertions. In doing so the Board was exercising a well-established prerogative, namely that a trier of fact is not bound to accept the testimony of any witness even if it is uncontradicted. Schapiro v. Chapman, 70 Md.App. 307, 318, 520 A.2d 1330 (1987).

CONCLUSION

The record developed before the Board of Appeals provided ample and substantial evidence upon which the decision to grant the variances was properly based. Both the spirit and intent of the Regulations were honored, and no demonstration was made that "substantial injury to public health, safety and general welfare" would accrue. To the contrary, Appellee has shown that, at the very least, strict compliance would engender practical difficulty in the operation of his business and the utilization of the property. The granting of the variances would also further important planning and economic policies adopted by Baltimore County.

As the cases make clear, judicial review is restricted and very narrow in scope. Courts will not substitute their

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judgment for that of the administrative body, and will sustain such action if the record discloses substantial facts in support. Thus, if the determination involved testimony from which a reasonable man could come to different conclusions, the issue is deemed to be "fairly debatable" and the action must be upheld. Only where the record is barren of supporting facts may the courts declare the administrative action to be arbitrary, capricious and discriminatory. The record in this case overwhelmingly reveals a strong factual basis for the decision by the Board of Appeals, a decision fully in accord with applicable law. For the reasons assigned and upon the authorities cited herein, the Board's action should be affirmed.

Respectfully submitted,

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(410) 727-4700
Attorney for Appellee

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of February, 1992 a copy of the foregoing Memorandum on Behalf of Appellee was hand delivered to Donald J. Katz, Esquire, Suite 225, Greenspring Station, 2360 West Joppa Road, Lutherville, Maryland 21093, Attorney for Appellants.

Marvin I. Singer

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ARTHUR U. HOOPER
(1895-1976)

February 28, 1992

Civil Clerk
Circuit Court for
Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: Leonard Stoler v.
Reisterstown, et al.
Case No. 91-CV-4539

Gentlemen:

Enclosed is a copy of the Memorandum on Behalf of the Appellee in the above entitled case, which is scheduled to be heard before Judge Turnbull on Thursday, March 5, 1992.

Yours very truly,

Marvin I. Singer

MIS/glb
Enclosure

cc: Judge John G. Turnbull (w/enclosures)

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 +/- SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD, 4TH ELECTION DISTRICT, 3RD COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL, ET AL., PLAINTIFFS ZONING CASE NO. 90-160-A	*	CG Doc. No. 2
	*	Folio No. 371
	*	File No. 91-CV-4539

* * * * * * * * * * * * * * *

APPELLANTS' MEMORANDUM IN SUPPORT OF APPEAL

COME NOW, the Appellants, Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick Hannah, by their attorney, Donald J. Katz, and in support of their Appeal in this case, state as follows:

This case is before the Court on appeal from the Opinion and Order issued by the Baltimore County Board of Appeals in Case No. 90-160-A, Leonard Stoler. The matter was before the Board on appeal from the decision of the Zoning Commissioner, granting a petition for certain variances for setbacks, signage, and display parking, with restrictions. The appeals were taken by the Reisterstown-Owings Mills-Glyndon Coordinating Council (ROG) and their zoning chairperson, also a taxpayer.

The burden of proof requires Stoler, the applicant, to demonstrate facts sufficient to justify the variances as a matter of law. Easter v. City of Baltimore, 195 Md. 395 at p.400 (1949). Generally, the standard for judicial review of zoning decisions is that the action of the zoning board will not be reversed on appeal if there is substantial evidence in the record to support the

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board's finding. If substantial evidence does exist in the record, the matter is considered to be fairly debatable, and the court may not substitute its judgment for that of the board. On the other hand, where the action of the board is not supported by substantial evidence, the board's decision cannot be said to be fairly debatable. Under those circumstances the board's finding falls into the category of being arbitrary, capricious and a denial of due process of law. Neuman v. Mayor of Baltimore, 23 Md.App. 13, 325 A.2d. 146 (1974). See also County Commissioners v. Zent, 86 Md.App. 745 (1991).

Here, however, the general standard of review is qualified by underlying statutory evidentiary requirements applicable to the Board. Section 307.1 of the Baltimore County Zoning Regulations restricts the granting of a variance, requiring that it can only be granted if it is "in strict harmony with the spirit and intent of said height, area, off street parking, or sign regulations, and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare."

Since a variance (including a variance of sign regulations, height, area and off street parking regulations) can be granted only if it is in strict harmony with the spirit and intent of the regulations, the power to grant the variance must be strictly construed. The question then is not merely whether there is substantial evidence that is fairly debatable, but whether the Board of Appeals action is supported by evidence based on undisputed facts. Easter v. City of Baltimore, 195 Md. 395 at

p.400 (1949). The restricted authorization also raises the question of whether the Board has acted beyond the scope of its authority.

In Dahl v. County Board of Appeals, 258 Md. 157 (1970) at p.166-167, the Court of Appeals applied the standards for granting variances under the zoning regulations of Baltimore County, which are virtually the same as those in the instant case.

The Court noted that the Board of Appeals has the power to grant variances from height and area regulations "only in cases where strict compliance with the Zoning Regulations in Baltimore County would result in practical difficulty or unreasonable hardships. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare...." Id. at p.166.

The Court went on to note that the evidence in that case, strikingly similar to that here,

> is such as would lead a reasonable man to the belief that the granting of these variances may well affect the aesthetic ambience of the residentially zoned properties which lie in the immediate area. For this reason we are of the opinion that the granting of these variances would be in disharmony with the "spirit and intent...of...the regulations....
>
> ....[W]e think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. (Citations omitted). As we view the law, we think the granting of the variances by the Board was arbitrary and capricious." Id. at p.167.

In the instant case, Section 307 of the Baltimore County

Zoning Regulations likewise restricts the Board of Appeals to granting variances (from height and area regulations and from sign regulations) "only in cases where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship". The Board itself acknowledged this. Opinion of the Board at p.5. Pursuant to Section 307.1, the additional requirements are also to be strictly construed.

Appellants submit that no evidence was presented sufficient for the Board to grant the variances here appealed, and that the granting of the variances was contrary to law.

The Regulations require that in an Order granting a variance, the Board of Appeals shall set forth a finding of fact and specify the reason or reasons for making the variance. Id.

In its Opinion, at p.5, the Board summarized the evidence.

As to the building setback variances, the Board indicated the basis for its decision granting these specific variances, being the configuration of the cite and the topography of the land on which it is situated, and the need to position buildings as shown on the plan. (The building setback variances are not contested by ROG, except to the extent they relate to the variance sought for display parking.) The Board of Appeals maintained that the building setback variances were essential, in order to provide relief from both hardship and practical difficulty.

However, in its decision granting the other variances requested, regarding signage and display parking, the Board said

only that Stoler met the standards for proving practical difficulty under McLean v. Soley, 270 Md. 208 (1973). As to those variances, the Board did not state that the standards for proving "unreasonable hardship" were met, as it had with the building setbacks. It is submitted that that issue is not before the Court. Assuming arguendo it is, it will be demonstrated below that, as to the sign and display parking variances, the record is devoid of evidence of unreasonable hardship (and practical difficulty), and there is none as a matter of law.

Although the Board's opinion states that Stoler met the standards under McLean, supra, for proving practical difficulty for an area variance, it does so only in a summary and conclusory manner. Although other evidence was summarized, the only evidence specifically relied upon by the Board in support of its Order granting the signage and display parking variances was at p.5 as follows:

> The variances as to the sign are necessary in order to permit erection of a standardized sign required by the manufacturer, of a type readily seen and identifiable. In regards to the display parking, testimony indicated that the proposed location would not obstruct vision or have a negative effect on traffic on Reisterstown Road.

It then leaps to the conclusion that "the special conditions of this particular cite requires relief and that the variances requested will not be detrimental to the public health, safety and general welfare". Opinion of the Board at p.6.

What the Board should have done, but did not do, was decide the case under the specific criteria for proving "practical difficulty" as set forth in McLean, supra at p.214, as follows:

(1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

(2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

(3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The evidence below utterly fails to meet these criteria. A careful examination of the record reveals the Board's decision to be totally unsupported by the evidence.

As to the signage and display parking, pursuant to the first test of McLean, there was no substantial evidence that strict compliance would in any way prevent Stoler from using the property for a permitted purpose, or render conformity unnecessarily burdensome. Absolutely none.

As to the sign variances the Board indicated that they were necessitated "in order to permit erection of a standardized sign required by the manufacturer, of a type readily seen and identifiable". Opinion of the Board at p.5. (Emphasis added).

This finding was clearly erroneous. There was no evidence that the sign height and size variances were "required" by the manufacturer for its standardized sign to be erected.

Douglas L. Kennedy, an expert witness on behalf of Stoler, initially testified that the need for the sign variance had to do with requirements of Lexus, in that certain signs are mandated by

Lexus to be used. He noted, however, that there was a program of three different standard sizes of free standing signs. T. p.29, l.8-20.

Kennedy further testified that the smallest of the three signs had a square footage of 90-square feet and met the criteria of the zoning standards. T. p.32, l.5-9. The second of the three sized signs has a square footage of 139-square feet. Id. Although the manufacturer required the use of one of the three signs, Kennedy testified that the final choice as to which one of the three signs to use was made by Stoler. T. p.33, l.3-5.

Stoler also testified that Lexus required a free standing standardized sign, but admitted that he had the final say over which sign to use, not Lexus. Moreover, he did not think the dealership would have been terminated had he chosen the smaller one. T. p.118, l.15-19, p.119, l.1-2, p.137, l.14-19.

Hence, although there was evidence of a manufacturers' standardized sign being required, there was no evidence that use of a manufacturers standardized sign "required" a variance, as the smaller of the three signs was in compliance. Any such finding is clearly contrary to the evidence in this case. There is simply no evidence that compliance would unreasonably prevent use of the property.

As to the issue of whether strict compliance would render conformity unnecessarily burdensome, the Board indicated in its Opinion that the signage variance was necessary to erect a sign readily seen and identifiable. The Board, at p.3 of its opinion,

said Stoler stressed the need to "overcome topographical hindrances approaching the site over a rolling roadway and in an area of numerous automobile dealers". The evidence and the law dictate the contrary.

Kennedy, the expert witness of behalf of Stoler, testified that, in his view, there would be a hardship if the variance was not granted first, because the visibility of the sign would be limited and second, due to the additional difficulty in having to remove the sign and replace it with something smaller. T. p.60, l.6-10.

As to this latter assertion of hardship - the difficulty of removal and replacement of the sign - the Board permitted Kennedy to testify over objection. T. p.60, l.11-18. Stoler undertook to put up the larger sign prior to a completion of the variance process, and was warned by the Zoning Commissioner that to do so was at his own risk. Thus, any hardship, difficulty or burden incurred in removal and replacement of the sign would be entirely self-inflicted and is no basis for obtaining the variance. The Court of Appeals has explicitly held that a variance may not be granted where the problem complained of, like this one, is self-inflicted. Salisbury Board v. Bounds, 240 Md. 547, 554 (1964). Pem Company v. Baltimore City, 233 Md. 372, 377 (1963), citing Marino v. City of Baltimore, 215 Md. 206 (1957).

As to the claim that visibility is a problem, to the extent it is caused by the "area of numerous automobile dealers" and other dealer signs or sign clutter (T. p.78, l.10-15), the only other

dealer signs on the Lexus side of the road are Stoler's own pre-existing signs. Again, any hardship, difficulty or burden was affirmatively self-inflicted and not grounds for the variance. Salisbury, supra. at p.554-555. Pem, supra.

Moreover, admitting that the height of the sign was not really an issue, Kennedy testified that if the sign were lower than the other signs, it would not be as obscured. T. p.87, l.13-15.

In attempting to prove that visibility of the sign would be limited without the variance, and therefore a hardship or difficulty, Kennedy also testified that a larger sign was needed because there were two hills approaching the property from the south and you lose site of the property as you approach it. T. p.33, l.13-16. Incredibly, to bolster this claim, photographs were allowed to be introduced (over objection to relevancy), which depicted a view to the property having nothing to do with a person's actual approach driving toward the sign. T. p.34-40.

Kennedy also tried prove hardship or difficulty asserting that the grade of the Lexus property is lower than the other properties of Stoler. T. p.41, l.12-15. However, there was no evidence that the grade was a problem unique to this property. The difference in grade is due to a general downhill slope in the area, which equally affects the property similarly situated across the street. This is not a problem that affects the particular premises and is not common to other property in the area. Accordingly, this does not justify the granting of a variance. Easter, supra at p. 400. Gleason v. Keswick Assn., 197 Md. 46, 50 (1950). Serio v. City of

Baltimore, 208 Md. 545, 554 (1955).

As to the claim that better visibility was needed, although Kennedy testified that the smaller sign would be less visible, he never specifically testified that the smaller sign's lesser visibility, in and of itself, constituted a hardship or difficulty. T. p.46, l.4-15; p.60, l.6-10.

There was no factual proof that a smaller sign makes it more difficult to find the location of the facility, just conjecture. When examined as to at what distance one could first see the sign if it were within the zoning regulations, Kennedy testified that he did not know. T. p.82, l.1-9. He also did not know at what point from the dealership the larger sign first became visible, as he had no sequential photograph over one hundred (100) feet. T. p.68, l.7-19.

When asked how he could then state that the required signage presented a practical difficulty within the meaning of the zoning regulations, he admitted he could not say at what distance being unable to see the sign presented a practical difficulty. T. p.82, l.1-9.

Kennedy admitted that he had no evidence that the distance to the sign had any impact in terms of hardship or difficulty. T. p.69, l.17-20. He further admitted that he had no evidence that if a smaller, shorter or lower sign were used that it would have an impact on Stoler's business (T. p.70, l.3-6), and no evidence that a smaller sign would impact in anyway on Stoler's ability to sell cars. T. p.70, l.12-16.

Kennedy said he knew of no standard in the automobile industry for constructing dealerships that established a minimum distance from the dealership for a sign to become visible. T. p.68, l.20 - p.69, l.3.

Kennedy only testified that, in his opinion, one would need approximately 400 feet to make a decision, in traveling and upon seeing the sign, to break and turn into the facility. He said that this was based upon his knowledge of site distance and traffic engineering. T. p.86, l.18-21; p.87, l.1-4. There was no evidence that the smaller sign was not visible from 400 feet.

Having heard the testimony of Kennedy, Stoler then testified he was not aware that the view to the sign should be 400 feet. At first, he indicated this was over the crest of the hill to the south of the property (T. p.122, l.13-20). He estimated that Kingsley Road was about 400 to 425 feet from the Lexus sign and that the crest of the hill was approximately 100 feet less than that. T. p.131, l.16 - p.132, l.4.

However, when shown Exhibit No. 4, a scale drawing, it was revealed that it is approximately 1,000 feet from the south side of the sign to Kingsley Road, not 400 feet. T. p.132, l.12-20; p.133, l.6-8. At 400 feet, traveling north, the crest of the hill and Kingsley Road are already behind and no longer an issue.

Regardless, Stoler admitted that he did not know if it made any difference, in terms of seeing the sign, even from the other side of the hill, if the smaller sign had been used. T. p.135, l.9-10.

Stoler was asked what evidence he had that a smaller sign height and size would unreasonably prevent his use of the property as a car dealership. His only response was that from his experience it would not be as "effective". T. p.138, l.7-14. The fact a variance might make a property more profitable is not a sufficient ground to justify the granting of the variance. Daihl, supra, at p.167. Easter, supra, at p.400.

Finally, when Stoler himself was asked if he could demonstrate any evidence, that strict compliance with the sign size and height requirements would cause him with any practical difficulty or problem, he answered "no". T. p.139, l.1-4.

As to the variance for display parking, the only finding of the Board was that "the proposed location would not obstruct vision or have a negative effect on traffic on Reisterstown Road". Opinion of the Board at p.5. This is of absolutely no relevance to the issue of practical difficulty.The only other reference by the Board was that "such displays are common practice with metropolitan area new car dealers", and that "people expect to see new cars displayed in front of their building." Opinion of the Board at p.3 and 4. These latter points have absolutely nothing to do with granting a variance.

Moreover, the initial burden upon Stoler, as required by Mclean, is to first prove that compliance with the parking setback regulations would unreasonably prevent his use of the property or that compliance would be an unreasonable burden. The Board cites absolutely no evidence of this and makes absolutely no finding of

hardship or practical difficulty regarding the display parking. Not only did Stoler fail to meet the burden of proof, there was simply no supporting evidence. The evidence was totally to the contrary.

Given the setback of the building, there is no evidence and no claim that Stoler is unreasonably prevented from displaying cars within the required setback in front of the building. The building setback variance was requested by Stoler to accommodate additional parking in front of the building. T. p.72, L.10-12. There already was and is customer parking in the rear but, now, not as much. T. p.141, L.13-20. With the building setback further from the road, the additional customer parking originally in the rear simply shifted to the front.

Moreover, the building could have been cited closer to the road. T. p.71, L.19-21. Had Stoler elected to do so, he could have put the display parking closer to the roadway without needing the variance. T. p.64, L.11 through p.65, L.4. Stoler wanted more parking in the front, obviously for convenience. But in doing so, he lost the right to have the display parking as close to the road. The additional parking is supposed to be for customers. If the variance is granted and the display parking area is moved closer to the road, there is nothing preventing Stoler from using the entire front area for display parking, getting more total display parking than he could have. Hence, Stoler wants it both ways, display parking closer to the road and additional display parking.

At present, Stoler also has the option of not putting non-

display vehicles in front of display vehicles. As testified by Kennedy, additional customer parking is available on the side of the building. T. p.73, L.16-20. Consequently, a new car display in compliance with the County setback requirements would not have to be obstructed by non-display parking. The resulting parking situation would certainly improve things aesthetically.

Accordingly, there is no evidance, much less substantial evidence, that compliance with the display parking and signage regulations would be an unreasonable burden or unreasonably prevent use of the property by Stoler. The evidence is not even remotely debatable, in terms of requiring strict compliance. If anything, on this point, it is undisputed against Stoler. Stoler completely and utterly failed to satisfy the first criteria for proving practical difficulty under McLean, supra.

Moving on to the second criteria under McLean, supra, the burden was upon Stoler to present evidence that granting of the variances would do substantial justice, that a lesser relaxation would not give substantial relief to the owner and be more consistent with justice to others in the area. Essentially, the question is, would the granting of these variances result in substantial justice? It is submitted, on numerous grounds, that granting these variances is substantially unjust, and to deny them is in the interest of justice.

As to all of the claimed reasons and needs for granting the variances, they were either self-inflicted, involved claims for variances for personal convenience, or were known about by Stoler

in advance of his plans for the property.

First, as to the issue of topography of the land, even assuming arguendo it were a problem, which it isn't, it is a problem which existed and was clearly observable and within the knowledge of Stoler well in advance of the purchase and the proceedings to obtain the variance. Stoler has been familiar with the property since 1968. T. p.101, L.12-16.

Certainly the existence of the hills leading up to the dealerships is not a hidden condition. As to the references to other dealers and signs in the area, those signs are not only preexisting, they are all Stoler's on the Lexus side of the road.

The testimony of Mr. Kennedy was quite revealing in this regard. He admitted that the real basis for requesting the increased signage was that adjacent to the property were existing signs or existing clutter, which not only were not aesthetically pleasing, but because of their existence, required a larger sign in this case to keep pace with the others and have a sign of equal size. This appears to be the real problem with the "terrain". (T. p.78, L.10-15, p.179, L.2-3). Incredibly, the existing dealer signs on Stoler's side of the road are his own. He is the one who has created the clutter on that side of the road.

It is blantently unjust to grant Stoler a variance for an oversized and higher sign, further compounding the existing sign clutter on his side of the road, which is of his own making.

As to the parking, the request for the shorter setback for display parking was the direct result of the variance sought by

Stoler for the building setback, a condition created by Stoler himself to accommodate more parking in front in the first place. (T. p.71, L.19-21, p.72, L.10-12).

This is not a case where the problems existed or arose prior to the purchase of the property, but could not be foreseen in advance of the request for a variance. Stoler elected to setback the building when it did not have to be, thereby inflicting upon himself any claimed hardship or practical difficulty with the display parking.

Appellants acknowledge that in McLean at p.215, the Court of Appeals did not preclude the grant of an area variance, even though the property owner was charged with prior knowledge of the property sideyard requirements. The Court said that the rule precluding a claim of practical difficulty based on prior knowledge is more strictly applied in a use variance case than in an area variance case, or where there is a concern with practical difficulty rather than hardship. (Stoler did try to claim hardship, even though the Board of Appeals did not find any.)

However, McLean's holding, that prior knowledge does not necessarily preclude an area variance sought on the basis of practical difficulty, is to be distinguished from the instant case. Here, there is not merely the benign knowledge of the zoning restrictions and property's condition. There is conduct affirmatively committed by Stoler which has caused or created the hardship or difficulty being claimed. To the extent the new sign is blocked by existing signage and sign clutter, it is due to

Stoler's existing signage. Also, Stoler has elected to obtain a building setback variance, thereby himself generating the alleged problem with the distance of display parking from the roadway.

The line of cases cited by the Court of Appeals in McLean, Zengerle v. Bd. of Co. Comm'rs., 262 Md. 1 (1971) and Loyola Loan Association v. Buschman, 277 Md. 243 (1961), do not control here. Zengerle (upon which McLean relied), deals with the rule found in Gleason v. Keswick Imp. Assn., 197 Md. 46 (1951), that one who purchases realty intending to apply for a variance from zoning restrictions, cannot claim the restrictions caused undue hardship which entitle the person to the variance.

In Pem Co. v. Baltimore City, 233 Md. 372, 376-77 (1964), the Court of Appeals clearly distinguished that rule under Gleason, (relied upon in Zengerle and, in turn, in McLean), from the altogether different rule, of Marino v. City of Baltimore, 215 Md. 206 (1957), that,

> A variance or special exception will not be granted on the basis of practical difficulties or unnecessary hardships if such were the result of the applicant's own action.

McLean and the cases cited therein only involve the issue of whether a claim of hardship or difficulty is estopped from being raised due to prior notice of conditions. The McLean Court did not address the type of factual background cited in Pem, which over and above notice, involves self-inflicted hardship or difficulty.

In Salisbury Board v. Bounds, 240 Md. 547 (1965), a decision long after Gleason, the Court of Appeals adhered to the rule of Marino, as cited in Pem. The Salisbury case is notably absent from

the Court's discussion in McLean. In Salisbury, at p.554-555, the Court of Appeals, relying on Rathkopf, The Law of Zoning, specifically quoted and applied the relevant rule that:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused solely through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship arising as a result of the act or the owner or his predecessor will be regarded as having been self created, barring relief.
>
> "This rule is simple and of general application in the several states.
>
> "There is a uniform application of the rule in those cases in which there has been an act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the ordinance." (Emphasis in original).

The rule is obviously founded upon the principal that it would be "unjust" to grant a variance under such circumstances. Even assuming arguendo Stoler has any hardship or difficulty, it is also the rule applicable here.

Appellants submit that this rule doesn't just counteract the second test of practical difficulty, it renders the entire question of practical difficulty moot.

McLean pointed out that it was a "close case". The instant case is not. McLean indicated that the rule, that one charged with

knowledge of the condition of the property cannot claim practical difficulty, is "more strictly applied" in use variance cases than area variance cases, and is of "less significance" where there is concern of practical difficulty than in the event of hardship. But even as to the "knowledge rule", the McLean Court did not say that it in no way applied and is of no significance.

In Loyola, supra at p.250, the Court said that although the owner had knowledge of the zoning regulations, it did not know of or discover a subterranean water condition on the property until later. Moreover, the property could not be used economically without the variance being granted, a practical difficulty. In Zengerle, although the property had been purchased intending to apply for an exception, there was no knowledge of the need for an area variance until after the special exception has been granted.

In no case from the Court of Appeals or Court of Special Appeals has any decision been found granting or upholding a variance where, as here, the Petitioner not only has prior knowledge of existing unconcealed conditions, but is personally responsible for the existence of the very conditions being claimed as causing practical difficulty or hardship.

Rather, the Court of Appeals has consistently held that a variance may not be granted where the problem complained of is affirmatively self-inflicted, as is in this case. When coupled with Stoler's actual prior knowledge of the existing conditions, the decision in McLean ("a close case") is unavailing.

The Board permitted Kennedy to testify, over objection, that

one of the claims of difficulty of Stoler would be removal and replacement of the sign. The sign work was done prior to completion of the variance process. Again, such claims of hardship, based on conduct affirmatively self-inflicted, cannot be the basis for a variance. Salisbury Board v. Bounds, 240 Md. 547, 554-5 (1964). Marino v. City of Baltimore, 215 Md. 206 (1957). Pem Company v. Baltimore City, 233 Md. 332, 377 (1964).

According to Kennedy, the whole reason Stoler was unable, under the regulations, to park his display cars as close to the road as he liked, was because of the election to setback the building further from the road to create additional parking space. T. p.64, L.4 through p.65, L.4. Having caused the extended display car setback, Stoler now also wants the convenience of having his display cars closer to the road.

As to the larger sign, Stoler said it all when he said that it was "a matter of proportionality". T. p.135, L.11-14, p.140, L.10-19. Stoler wants a sign convenient to his personal preference. His only other assertion was that having a larger sign might be more effective. Again, the fact that a variance might be more profitable (and therefore a convenience) is not a sufficient ground to justify relaxation of the setback requirements. Daihl, supra at p.167.

A variance can never be granted merely to gratify convenience. To the contrary, when an applicant seeks a variance he has a burden of showing a substantial and urgent necessity. Pem Company v. Baltimore City, 233 Md. 332, 377 (1963). Certainly it would be

unjust to gratify personal preference or convenience under the circumstances here.

On the other side of the coin, granting the variances is not consistent with justice to the other parties in this case, the community and other property owners. The Court should consider that ROG did not oppose the setback variance for the building, which facilitated the development of the property as desired by Stoler. Nevertheless, Stoler wants it all. He not only wants the building setback, he wants the parking to remain close to the road, contrary to the desires and interests of the community.

In summary, there is simply no evidence from which it could be found that justice would be done by granting Stoler these variances, and the Board made no such finding. All of the conditions cited by Stoler were not only known by him in advance, they were self-inflicted and/or a matter of personal convenience. Given the totality of the circumstances, the evidence of Stoler's conduct demonstrates it would be substantially unjust to uphold the variances for Stoler.

Under the circumstances of this case, if the interests of community justice are to be served, there can be no relaxation of the setback and signage requirements. Appellants submit that nothing less than strict adherence to, and enforcement of, the zoning regulations is required, if they are to obtain substantial justice.

The third and final criteria under McLean, for proving practical difficulty, is whether the relief can be granted in such

fashion that the spirit of the ordinance will be observed, and public safety and welfare secured. McLean, supra at p.214-215.

In analyzing this, the burden of proof upon Stoler should be kept in mind. The Baltimore County Zoning Regulations tend to increase this burden, because the variance can be granted only if it is in strict harmony with the spirit and intent of the height, area, setback and sign regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

In Daihl v. Board of County Appeals, supra at p.167, the Court of Appeals addressed the issue of whether granting the relief would strictly observe the spirit of the ordinance and secure the publics' interest in its safety and general welfare. Although the Daihl opinion precedes McLean, the analysis is essentially a restatement of the third criteria under McLean.

In making its analysis, the Court of Appeals weighed the detriment to the applicant against the benefit to the community in maintaining the general plan. The Court in Daihl found the Board of Appeals grant of the variances to be arbitrary and capricious.

In Daihl, the Court, in considering the variances, focused on the extent to which relaxation of the regulations affected the aesthetic ambience of the community. At p.167, the importance the Court of Appeals attaches to this is patent.

Reverend Frederick Hannah testified on behalf of ROG and in his position as Zoning Chairperson. T. p.147, L.6. Hannah testified as to the position of ROG and the view of the community

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 ± SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT * IN THE * CIRCUIT COURT * FOR * BALTIMORE COUNTY * CG Doc. No. 2

REISTERSTOWN-OWINGS MILLS GLYNDON COORDINATING COUNCIL, ET AL, PLAINTIFFS * Folio No. 371 * File No. 91-CV-4539

ZONING CASE NO. 90-160-A

* * * * * * * * *

APPELLEE'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

The attack upon the standing of each of the Appellants is based upon different legal principles, all of which are well-established in Maryland. Because of the differing standards to be applied, the propriety of the appeal by each of the Appellants will be considered in turn. However, it is important to note that the petition of appeal is conspicuously devoid of any factual basis to sustain either Appellant's right to appeal.

REISTERSTOWN-OWINGS MILLS-GLYNDON COORDINATING COUNCIL

The inability of an improvement or civic association to participate as a party in an appeal such as this was expressed by the Court of Appeals in Citizens Planning and Housing Assn. v. County Executive, 273 Md. 333, 345, 329 A.2d 631, 687 (1974). There, the applicable law was summarized in these words:

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"...It has been generally recognized in this State that an association lacks standing to sue where it has no property interest of its own - separate and distinct from that of its individual members - which may be affected by any of the alleged acts under attack..."

Earlier, in a zoning appeal involving approval of a permit for construction of apartments, the incorporated improvement association was dismissed on appeal because it was not sufficiently "interested" to sue, or "aggrieved" to appeal, merely because its members were "interested" or "aggrieved". Windsor Hills Improvement Assn. v. Mayor & City Council of Baltimore, 195 Md. 383, 394, 73 A.2d 531 (1950). And a case existing in Baltimore County also resulted in dismissal of the improvement association, even though the issue was not raised in the circuit court, as the question was considered to be jurisdictional in nature. Southland Hills Improvement Assn. v. Raine, 220 Md. 213, 216-217, 151 A.2d 734 (1959). Another zoning case which is in accord with the principle expressed is County Commissioners of Anne Arundel County v. Fairwinds Beach CLub, 230 Md. 569, 571, 187 A.2d 834 (1963). Further, citing some of the same cases as mentioned herein, civic associations were declared to lack standing to appeal, being neither a taxpayer or an aggrieved party, in Largo Civic Assn. v. Prince George's County, 21 Md. App. 76, 79-80, 318 A.2d 834 (1974).

Those decisions provide ample authority to sustain dismissal of the Reisterstown-Owings Mills-Glyndon Coordinating Council as a party to this appeal. The Petition of Appeal makes no attempt to indicate legal standing

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sufficient to permit the Council to participate in these proceedings, and accordingly it should be dismissed.

REVEREND HANNA

Controlling law limits the ability to appeal from a zoning decision to one who is aggrieved or a taxpayer. Md. Code, Art. 66B, Sec. 4.08 (a) and Md. Rule B3. A review of the Petition of Appeal fails to disclose any basis to support a conclusion that Reverend Hanna has the requisite standing to permit him to prosecute an appeal from the order of the County Board of Appeals. The Board's opinion, at page 4, described Reverend Hanna's role in the following words:

> "The Reverend Frederick J. Hanna, Rector of All Saints Episcopal Church and zoning chairman of the Reisterstown-Owings Mills-Glyndon Coordinating Council, testified as to their general opposition to variances for signs..."

A stronger allegation of standing was made in Kennerly v. Baltimore City, 247 Md.601, 605, 233 A.2d 800 (1967), where the claim of standing, based upon being taxpayers, was found to be insufficient. The Court of Appeals ruled that even though the allegation of taxpayer status was made under oath, "a verified pleading does not of itself constitute evidence of the facts alleged therein." In the present case neither the Order for Appeal nor the Petition of Appeal touches upon the issue of standing. Neither makes a reference to the basis for the parties' participation in the appeal to this Court, nor does either pleading attempt to demonstrate fulfillment of the requirements for standing. No reference is made to either the

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controlling statute or rules. Accordingly, there is a complete absence in the pleadings of any demonstrated right to contest the ruling by the County Board of Appeals.

For the reasons advanced, and upon the authorities cited herein, Appellee respectfully moves that the appeal herein be dismissed.

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Tel: (301)727-4700
Attorney for Appellee

HOOPER, KIEFER, & CORNELL BALTIMORE, MD. 21201

CERTIFICATE OF COMPLIANCE

I hereby certify that copies of the foregoing Motion to Dismiss, Order and Memorandum were hand delivered this 30th day of October, 1991 to Donald J. Katz, Esquire, Suite 225, Greenspring Station, 2360 West Joppa Road, Lutherville, Maryland 21093, attorney for Appellants, and to Michael B. Sauer, Esquire, C/O County Board of Appeals, Room 315, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204, prior to the filing of said Motion to Dismiss, Order and Memorandum with the Circuit Court for Baltimore County.

Marvin I. Singer

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DOROTHY M. BEAMAN

ARTHUR W. HOOPER (1895-1976)

October 30, 1991

Clerk, Circuit Court of Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: In the matter of the application of Leonard Stoler
CG Doc. No. 2
Folio No. 371
File No. 91-CV-4539

Dear Madam Clerk:

Please file in the above titled case enclosed Motion to Dismiss, Order and Memorandum.

Very truly yours,

Marvin I. Singer

MIS:bd
Enclosures

cc: Donald J. Katz (w/enclosures)
Michael B. Sauer (w/enclosures)

HAND DELIVERED TO ALL PARTIES

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 ± SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT * IN THE * CIRCUIT COURT * FOR * BALTIMORE COUNTY * CG Doc. No. 2

REISTERSTOWN-OWINGS MILLS GLYNDON COORDINATING COUNCIL, ET AL, PLAINTIFFS * Folio No. 371 * File No. 91-CV-4539

ZONING CASE NO. 90-160-A

* * * * * * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William T. Hackett, Harry E. Buchheister, Jr., and Lynn B. Moreland, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

No. 90-160-A

August 29, 1989	Petition for Variances filed by Marvin I. Singer, Esquire on behalf of Leonard Stoler for setbacks, signs and display parking.
October 12	Publication in newspapers.
October 18	Certificate of Posting of property.
October 30	Comments of Baltimore County Zoning Plans Advisory Committee.
November 9	Hearing held on Petition by the Zoning Commissioner.

Leonard Stoler, File No. 91-CV-4539
Case No. 90-160-A

December 15	Order of the Zoning Commissioner GRANTING Petition with restrictions.
January 16, 1990	Notice of Appeal received from Donald J. Katz, Esquire on behalf of Mr. Henry Lewis, Protestant/Appellant.
August 14, 1991	Hearing before the Board of Appeals.
August 23	Opinion and Order of the Board GRANTING Petition with restrictions.
September 20	Order for Appeal filed in the Circuit Court for Baltimore County by Donald J. Katz, Esquire on behalf of Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick J. Hanna, Protestants.
September 30	Petition to accompany appeal filed in the Circuit Court for Baltimore County by Mr. Katz.
September 23	Certificate of Notice sent to interested parties.
October 18	Transcript of testimony filed.

Petitioner's Exhibit No. 1 -Site Plan
2 -Engineer's drawing of signage options 8/20/88
3 -Series of photos (A-K)
a-site S-N, E/s of site
b-site S-N, from N/s Reist. Rd. with Heritage dealership
c-site as above
d-site from N-bound Reist. Rd. Heritage & Stoler w/crest of hill
e-site from S-bound Reist. Rd. facing N-bound
f-S-bound lane Reist. Rd., e/s
g-S-bound lane Reist. Rd., to inter. of High Falcon
h-N-bound lane facing S, properties w/s Reist. Rd.
i-N of High Falcon Road looking south
j-Lexus facility from W/s Reist. Road
k-Lexus facility close-up w/sign and 3 spaces display
4 -Site Plan-final revision 4/9/90

as to the effect of the variances on it. T. p.150, L.2-4.

By way of reference, Reverend Hannah's educational background included a Masters in Urbanization which included zoning, traffic and land use. T. p.149, L.1-10. He had been active in the community in matters involving the health and welfare of the community, traffic problems and zoning issues, and had served on the Baltimore County Planning Board. T. p.149, L.2-3.

Hannah testified that the scope of ROG's work in the community, in terms of boundaries, affected an area in which the Stoler property was at the approximate center. Hannah specifically indicated ROG's being a representative association of the community, and that included in its representation was the community next to the site of the Lexus dealership, as well as some further away.

Hannah testified that the community opposed the existing sea of signs. T. p.154, L.1-4. Hannah indicated that it felt the larger signs degraded the community and looked trashy. He indicated that the community noticed that the signs keep on getter bigger and bigger, that there was a mushrooming of automobile signs along that stretch of road and when one comes down over the road, the sea of signs is observed. T. p.155, L.17, p.156, L.3-8.

Hannah indicated that the community was opposed to the display car placement and the size and height of the signs, because they cheapened the atmosphere and environment. T. p. 156, L.18 through p.157, L.4. Ignoring Hannah's testimony, the Board did not even address the issue of community aesthetics.

Hannah testified that his testimony was based on the opinions of the members of the community, as to what was in their best interest, and the community's welfare, those views being based on their living as consumers in the community. T. p.158, L.12-18.

Clearly, the evidence was that the variances substantially adversely affected the aesthetic ambience of the community and properties in the area, insofar as the residential community.

Stoler's witness, Kennedy, did opine that granting the variances would not be detrimental to the public health, safety or welfare (T. p.59, L. 4-6), but was unable to provide any factual evidence for his testimony that there was no detriment to the public welfare by allowing a larger sign variance. (T. p.75, L.15 - p.77, L.12). Rather, Kennedy did not dispute that reduced (i.e. smaller) signage resulted in improved aesthetics, and that the improved aesthetics are for the benefit of the general welfare. T. p.78, L.2-15, p.77, L.10.

Inferentially, can there be any doubt that the reduced presence of display parking is of similar effect. The car displays were referred to by the Board as being "common practice" and in line with "people's expectations of car displays", without any reference to actual setback distances. Kennedy admitted that he did not know whether new car displays at other dealers were based on variances granted or not. T. p.65, L.13-21. Regardless, as with granting the sign variance, this only further compounds the aesthetic detriment to the community.

Implicitly, protection of the aesthetic ambience of the

community was also central to the decision in McLean, only in reverse. While McLean, sets out the general rule for finding practical difficulty, the result is an acknowledged exception. The Court, at p.215, noted the "unique facts of the case." Granting the variance resulted in the preservation of trees, rather than their destruction, an obvious aesthetic benefit.

The variances' effect on the aesthetic ambience of the immediate community area is also a focal point in the pending case.

In considering aesthetics, it is not merely a matter of the isolated effect of Stoler's variances, but the total effect, including the existing surrounding conditions and situation. Stoler's evidence indicated there were already a number of other variances for signage and existing sign clutter.

In Easter v. City of Baltimore, 195 Md. 395, 401 (1949), the issue of the affect of similar conditions and other area variances was presented. As in Daihl, the Court looked at the detriment to the applicant as weighed against the benefit to the community in maintaining the general plan and noted:

> "[W]e think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. It is by these gradual encroachments, individual or relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered...Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree". (Emphasis added. Citations omitted).

Taking into consideration the testimony of Hannah, Stoler's evidence of the admitted adverse aesthetic effect of these variances and the existing surrounding conditions, applying Daihl

and Easter to the case at hand compels a finding of de minimis, if any, detriment to the applicant. On the other hand, the benefit to the community in maintaining the general plan is substantial, as is the detriment in not doing so.

This analysis tends to dovetail with the second criteria of McLean, when testing for practical difficulty, regarding whether justice is being done. In balancing the detriment to the applicant as against the benefit to the community, the scale of substantial justice drops in favor of the Appellants.

The Board is aware that the community, in the first instance, opposed the relaxation of zoning restrictions of this area, when it was rezoned as an auto sales and service corridor in the 1988 Comprehensive Map Process. Opinion of the Board at p.4. Nevertheless, rather than strictly maintain the already relaxed regulation, the Board compounds the injury by granting unwarranted variances, thereby further loosening the restrictions in the recently rezoned area.

Rather than maintain (the strict spirit and intent of) the sign regulations for the benefit of the community (the public), the Board of Appeals did the contrary. It erroneously relied upon, the irrelevant fact that the sign size selected was in keeping with other dealerships in the metropolitan area. It also relied upon other petitions granting sign variances. Opinion of the Board at p.3. T. p.142, L.16 - p.145, L.9.

This was contrary to the Court of Appeals holding in Easter, supra, at p.400:

Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is legislative function that is beyond the domain of the Zoning Board.

It is submitted that this is precisely what has occurred in the past, and continues to occur here. Reference to the evidence, including the other prior zoning variances admitted in evidence, demonstrates that the Board of Appeals is effectively engaging in a function beyond its domain by invariably granting sign variances. Aside from being unsupported by the evidence, as a matter of law, such action is beyond the scope of the Board's authority and must be reversed.

For this Court to continue to uphold the Board's grant of such variances is directly contrary to the Court of Appeals directive in Easter, and in direct contravention of the statutory requirement to maintain the strict harmony of the spirit and intent of the regulations, and strictly maintain the public health, safety and general welfare. It is submitted that there is already substantial injury to same. To further allow this variance effectively nullifies the regulations.

Ultimately, as noted above, the Court in Daihl cited the importance of evidence (or lack of it) of the variances effect on the aesthetic ambience in the immediate area. As the Daihl Court held, at p.167, the evidence was such:

> [A]s would lead a reasonable man to the belief that the granting of these variances may well affect the aesthetic ambience of the residentially zoned properties which lie

in the immediate area. For this reason we are of the opinion that the granting of these variances would be in disharmony with the spirit and intent...of...the regulations....

The Board's opinion acknowledges Stoler's residential neighbors. The Order granting the variances has restrictions, the first of which requires that "lighting shall be no more than ten (10) feet above grade. All exterior lighting shall be directed downward and shall not diffuse onto any residential property". (Opinion of the Board at p.6. Emphasis added. Ssee also T. p.79, L.8-18).

Hence, the proximity of residential property to Stoler's is clear. Notably however, here, as in Daihl, there was no evidence by Stoler of the specific effect on the residential properties in the area.

The Board of Appeals opinion refers to the testimony of Robert Knatz, who was called to testify as an expert witness for Stoler. The Board at p.4 of its Opinion, clearly erroneously cites Knatz's testimony as evidence the variances would not have a detrimental effect on residential property values or the public health, safety and general welfare. As the Board itself noted, Mr. Knatz testified as an expert only in commercial and industrial real estate. His expert testimony was so limited. T. p.91, L.1-2. There was no testimony by Knatz of the effect of the variances on residential properties, nor could there have been, given the scope of his testimony. The Board's finding is clearly erroneous.

Knatz only gave an opinion that the variances would not have a detrimental effect on the value of properties on either side or

adjacent to Stoler's property, in response to a question about the effect of the variances upon other property owners in the area and the district. This must be viewed in light of the limited scope of Knatz's expert testimony. He was never qualified as an expert on residential property and never specifically mentioned it.

Similarly, to the extent Knatz gave opinion that the variances would not adversely affect the health, safety and welfare of the community (T. p.95, L.12-16), this could not pertain to the residential community. His opinion that the granting of the variances would not have a detrimental affect upon travelers or motorists on Reisterstown Road (T. p.93, L.16-19) is also obviously beyond the scope of his expertise.

Knatz's opinion in no way addressed the specific effect on residential property owners and other residential properties in the area. Without it, there is no evidence by Stoler that there is no detriment to the aesthetic ambience of the residentially zoned properties in the immediate area, nor of the effect on residential property values in the immediate area.

Under Daihl, supra, the only conclusion one can reach, as a reasonable person, is that the variances may well affect the aesthetic ambience of the residentially zoned properties in the area, in disharmony with the spirit and intent of the regulations, and contrary to the public general welfare in maintaining the general plan.

The burden of proof is on Stoler and there is simply no substantial evidence in his favor. Stoler failed to provide

substantial evidence that the spirit of the regulations would be observed and the public welfare protected. The only substantial evidence was to the contrary.

In passing, the matter of public safety was addressed. The Board limited its statement to the fact that the location of the display parking would "would not obstruct vision or have a negative affect on traffic on Reisterstown Road". Again, the Board made this finding notwithstanding its acknowledgement of Reverend Hannah's testimony that "display cars so close to a heavily traveled highway could cause a traffic hazard". Opinion of the Board at p.5. Hannah had testified, in the community's view, it represented a threat to their safety. T. p.157. He testified that the community felt that the parking represented a danger, as people tend to brake to look at cars and could get rear ended, and there was no reason why they couldn't go into the lot to see the cars displayed. T. p.155, L.11-15.

Accordingly, Appellants provided a factual basis for the evidence that the variance for the display parking constitutes a threat to the public safety and welfare. Stoler presented no substantial factual evidence that it was not a threat.

Even assuming the evidence on the issue of public safety was debatable, the evidence relative to aesthetics and issue of public welfare wasn't. The third requirement of McLean is not met.

In light of Hannah's testimony, and the limits of Knatz's testimony, there being no testimony contradicting Hannah, the only conclusion one can reach is that the relief cannot be granted so as

Leonard Stoler, File No. 91-CV-4539
Case No. 90-160-A

Petitioner's Exhibit No. 5 -Photographs (A-D)
a-d Koons dealership 9610 Reist. Rd. (d-close-view)
6 -Photographs a-b Nationwide, York Rd.
7 -Photographs a-b Towson Valley Motors
8 -Photographs (A-E)
a-Frankel Acura
b-Frankel Acura & others
c-Frankel Acura long view
d-Frankel Acura close view
e-Timonium Chrysler-Plymouth
9 -Photographs (A-C)
a-Bldg. as purchased by Stoler
b-Bldg. when Beall Motors
c-Bldg. aerial
10 -Photograph -aerial of Lexus property early Winter 1990
11 -89-221-A Z.C. case & decision
12 -88-413-A " " "
13 -88-413-A Amended Order
14 -89-491 Z.C. case & decision
15 -91-400 " " "
16 -89-437-A " " "
17 -88-162-A " " "
18 -90-268-A " " "
19 -91-11 " " "
20 -91-11-SPH" " "

Protestant's Exhibit No. 1 - Rule 8 documents for Reverend Frederick J. Hanna 8/31/91 (3 pages)

October 18, 1991 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,

Linda Lee M. Kuszmaul

Lindalee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland 21204 (301) 887-3180

cc: Donald J. Katz, Esquire
Reisterstown-Owings Mills-Glyndon Coordinating Council
Reverend Frederick J. Hanna
Mr. Henry Lewis, Marvin I. Singer, Esquire, Mr. Leonard Stoler

9-23-91

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270 + SOUTHEAST OF HIGH FALCON ROAD 11309-11311 REISTERSTOWN ROAD) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT * IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

REISTERSTOWN-OWINGS MILLS GLYNDON COORDINATING COUNCIL, ET AL, PLAINTIFFS * Folio No. 371 File No. 91-CV-4539

ZONING CASE NO. 90-160-A

* * * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, William T. Hackett, Harry E. Buchheister, Jr. and Lynn B. Moreland, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, Donald J. Katz, Esquire, Suite 225, Greenspring Station, 2360 West Joppa Road, Lutherville, Maryland 21093, Counsel for Plaintiffs; Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick J. Hanna, c/o Donald J. Katz, Esquire, Suite 225, Greenspring Station, 2360 West Joppa Road, Lutherville, Maryland 21093, Plaintiffs; Marvin I. Singer, Esquire, 343 N. Charles Street, Baltimore, Maryland 21201, Counsel for Defendant; Mr. Leonard Stoler, c/o Marvin I. Singer, Esquire, 343 N. Charles Street, Baltimore, Maryland 21201, Defendant; Mr. Henry Lewis, 22 Carraway Road, Reisterstown, Maryland 21136, Protestant; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake

Leonard Stoler, File No. 91-CV-4539
Case No. 90-160-A

Avenue, 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

Lindalee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to Donald J. Katz, Esquire, Suite 225, Greenspring Station, 2360 West Joppa Road, Lutherville, Maryland 21093, Counsel for Plaintiffs; Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick J. Hanna, c/o Donald J. Katz, Esquire, Suite 225, Greenspring Station, 2360 West Joppa Road, Lutherville, Maryland 21093, Plaintiffs; Marvin I. Singer, Esquire, 343 N. Charles Street, Baltimore, Maryland 21201, Counsel for Defendant; Mr. Leonard Stoler, c/o Marvin I. Singer, Esquire, 343 N. Charles Street, Baltimore, Maryland 21201, Defendant; Mr. Henry Lewis, 22 Carraway Road, Reisterstown, Maryland 21136, Protestant; and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 on this 23rd day of September, 1991.

Linda Lee M. Kuszmaul

Lindalee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Ave., Towson, Maryland 21204 (301) 887-3180

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

September 23, 1991

Marvin I. Singer, Esquire
343 N. Charles Street
Baltimore, Maryland 21201

Re: Case No. 90-160-A (Leonard Stoler)

Dear Mr. Singer:

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

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. Leonard Stoler
Mr. Henry Lewis
Mr. Baxter Smith
P. David Fields
Patrick Keller
Public Services
Lawrence E. Schmidt
Timothy M. Kotroco
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk -Zoning
Arnold Jablon, Director of Zoning Administration

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

September 23, 1991

Donald J. Katz, Esquire
Suite 225, Greenspring Station
2360 West Joppa Road
Lutherville, Maryland 21093

Re: Case No. 90-160-A (Leonard Stoler)

Dear Mr. Katz:

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, all costs 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 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

LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Reisterstown-Owings Mills-Glyndon Coordinating Council
Reverend Frederick J. Hanna

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATIOF OF LEONARD STOLER, FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270'+/- SOUTHEAST OF HIGH FALCON ROAD (11309-11311 REISTERSTOWN ROAD) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT * APPEAL FROM THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY * CASE NO. 90-160-A

* * * * * * * * * * * * * *

PETITION OF APPEAL

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Appeal of the Respondents/Appellants Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick J. Hanna, respectfully represents:

1. That the real property involved in this Appeal is a commercial property with improvements thereon, known as 11309-11311 Reisterstown Road.

2. That Appellee Stoler filed a Request for Variance of the zoning of the property under the Baltimore County Zoning Regulations to permit a double faced sign of 139 square feet in lieu of the permitted 100 square feet, a variance to allow a sign height of 27 feet 10 inches in lieu of the maximum of 25 feet and a variance to allow display parking 10 feet from the Reisterstown Road right of way which is less than 53 feet from the Reisterstown Road right of way and in lieu of the minimum required setback for display parking.

DONALD J. KATZ
ATTORNEY AT LAW
SUITE 225
2360 WEST JOPPA ROAD
LUTHERVILLE, MARYLAND 21093
(301) 666-9305

91 OCT 17 PM 1:57

3. Upon issuing Findings of Fact and Conclusions of Law, the Zoning Commissioner for Baltimore County further issued an Order dated December 15, 1989, granting the variances, to permit a double faced sign of 139 square feet, permit a sign height of 27 feet 10 inches and permit display parking 10 feet from the Reisterstown Road right of way, subject in relevant part to the condition that any further proceeding was at Stoler's own risk pending the finality of Appeals.

4. That pursuant to a timely Appeal to the County Board of Appeals of Baltimore County, the Board, for the reasons set forth in its Opinion and Order dated August 23, 1991 affirmed the variances, permitting a double faced sign of 139 square feet in lieu the permitted 100 square feet, allowing a sign height of 27 feet 10 inches in lieu of the maximum of 25 feet and allowing display parking 10 feet from the Reisterstown Road right of way which is less than 53 feet from the Reisterstown Road right of way and in lieu of the minimum required setback for display parking.

5. That the decision of the County Board of Appeals is erroneous as a matter of law and fact and contrary to law. A copy of the Opinion and Order are attached hereto and incorporated by reference herein.

6. There was no evidence or substantial evidence sufficient to permit the granting of the variances. As to the display parking setback there was no evidence of any hardship or practical difficulty in complying with the required setback. Although there was evidence that the manufacturer required certain signage, there

was no evidence that the size of the signage to be used had to be in variance of the permitted size. The oversized and higher signage variance was merely the personal preference of Stoler. Moreover, there was no evidence that use of smaller and lower signage would result in any loss of business or income so as to cause a practical difficulty or hardship. Further, the County Board of Appeals findings of no detriment to the public health, safety and general welfare are erroneous and contrary to law both procedurally and substantively.

7. There are no other provisions of Maryland law that would permit the variances granted to the property.

8. If the meaning and use of the language "practical difficulty or unreasonable hardship" and the language "detrimental to the public health, safety and general welfare", is permitted to include the zoning variances granted in this case, then the standards are so vague and overbroad as to be unconstitutional, so that the variances granted are unlawful in the first instance.

9. The County Board of Appeals erred for such other reasons as may become apparent from the reading of the record.

WHEREFORE, for the aforegoing reasons, Appellants pray this Honorable Court to reverse the Order of the County Board of Appeals of Baltimore County dated August 23, 1991, reverse the Order of the Zoning Commissioner of Baltimore County date December 15, 1989 and to deny the requested variances.

Respectfully submitted,

Donald J. Katz
Suite 225, Greenspring Station
2360 West Joppa Road
Lutherville, Maryland 21093
(301) 494-8885

Attorney for Appellants/Respondents

CERTIFICATE OF SERVICE

This is to certify that a copy of the aforegoing Petition of Appeal was mailed this 30th day of September, 1991, to Marvin Singer, Esquire, Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361 and Michael B. Sauer, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Donald J. Katz

Attorney for Appellants/Respondents

9-20-91

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER, FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270'+/- SOUTHEAST OF HIGH FALCON ROAD (11309-11311 REISTERSTOWN ROAD)	*	APPEAL FROM THE
	*	COUNTY BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	
	*	CASE NO. 90-160-A
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	2/371 91-CV-4539

* * * * * * * * * * * * * * *

ORDER FOR APPEAL

Mr. Clerk:

Please note an Appeal, on behalf of the Respondents/Appellants Reisterstown-Owings Mills-Glyndon Coordinating Council and Reverend Frederick J. Hanna, from the Opinion and Order of the County Board of Appeals of Baltimore County dated August 23, 1991.

Respectfully submitted,

Donald J. Katz
Suite 225, Greenspring Station
2360 West Joppa Road
Lutherville, Maryland 21093
(301) 494-8885

Attorney for Appellants/Respondents

CERTIFICATE OF COMPLIANCE

This is to certify that prior to filing the Order for Appeal in this case with the Circuit Court for Baltimore County, a copy of the Order for Appeal was hand delivered to the County Board of

DONALD J. KATZ
ATTORNEY AT LAW
SUITE 225
2360 WEST JOPPA ROAD
LUTHERVILLE, MARYLAND 21093
(301) 494-8885

RECEIVED
COUNTY BOARD OF APPEALS

Appeals for Baltimore County at their office located at the County Office Building, Room 315, 111 West Chesapeake Avenue, Towson, Maryland 21204.

Donald J. Katz

Attorney for Appellants/Respondents

CERTIFICATE OF SERVICE

This is to certify that a copy of the aforegoing Order For Appeal and Certificate of Compliance was mailed this 20th day of September, 1991, to Marvin Singer, Esquire, Hooper, Kiefer & Cornell, 343 North Charles Street, Baltimore, Maryland 21201-4361.

Donald J. Katz

Attorney for Appellants/Respondents

IN THE MATTER OF THE APPLICATION OF LEONARD STOLER, FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF REISTERSTOWN ROAD, 270' + SOUTHEAST OF HIGH FALCON ROAD (11309-11311 REISTERSTOWN ROAD)	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	OF
	*	BALTIMORE COUNTY
	*	
4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	CASE NO. 90-160-A

* * * * * * * * * *

OPINION

This matter comes before the Board on an appeal from the decision of the Zoning Commissioner of Baltimore County dated December 15, 1989, granting the property owner's Petition for zoning variances in setbacks, signs and display parking, with restrictions.

Protestants in this matter were the Reisterstown-Owings Mills-Glyndon Coordinating Council, represented by Counsel, who are satisfied with the granted variance setbacks, but opposed to the variances requested for the size of the sign locating the property and for a parking area to display new cars. The appeal to the Board was heard in its entirety on this day.

By way of perspective to this case, the Petitioner/Property Owner, Leonard Stoler, owns a number of automobile dealerships extending along the northeast side of Reisterstown Road in the Third Councilmanic District. Since 1968, the area has become the location of several competing dealerships existing on both sides of the road, all identified by a sign or group of signs. The Appellants in this matter commend Mr. Stoler for the improvements he has brought to a formerly unattractive commercial zone, yet are

alarmed over the proliferation of signs that they feel are oversized and unnecessary, and which they have regularly opposed.

Testifying for the Petitioner, Mr. Douglas Kennedy, registered Civil Engineer and recognized by the Board as an expert in landscape planning, reviewed his involvement with the subject site of four acres and the plan for placing two new car dealerships adjacent to the existing Stoler Ford and Porsche-Audi agencies. Mr. Kennedy testified to the special effort made to retain a large oak tree in front of the property, and to aesthetically landscape property adjacent to the neighboring Hardees Restaurant franchise. Utilizing the two acre site was subject to specific requirements and standards of the Lexus Automobile and Chrysler-Plymouth manufacturers. Those considerations, as testified to by Mr. Kennedy, involved the need for variance setbacks. Additional properties to the rear of the Hardees site were purchased to circumvent non-regulated wetlands on the northwest side of the Stoler property. This acquisition also met Office of Planning directions for increased green spaces in the rear parking area; gave additional parking, and provided an exit to High Falcon Road from the rear of the dealership. In May of 1989, the plan was approved by the County Review Group (CRG), permits acquired and the construction on the site commenced.

Contested by the Appellants is the display of new cars outside the showroom to the front of the building. Whereas customer or employee vehicles may park in this location by right, display cars

so parked require variances from Sections 238 and 303 of the Baltimore County Zoning Regulations (BCZR) to allow display parking 10 feet in lieu of 25 feet from Reisterstown Road. Appellants noted that the display could detract drivers as they passed the Lexus agency and looked to see the new model automobiles. Petitioner rebutted by declaring that such displays are common practice with metropolitan area new car dealers.

In their opposition to placement of an identifier sign of 139 square feet set 27 feet 10 inches above ground level, Appellants contested that the approved dimensions of the County could fulfill all requirements. Petitioner stressed the need to overcome topographical hindrances approaching the site over a rolling roadway and in an area of numerous automobile dealers. Of some significance in this matter was the obstruction to the Lexus building by the large oak tree, and the desire of the Petitioner for a higher sign to circumvent the obstruction. A subsequent tornado eliminated the tree problem.

In selecting from three identical signs of different dimensions, offered by the manufacturer, the Petitioner chose the middle size of 139 square feet as the most appropriate for his Lexus property, and in keeping with other dealerships in the metropolitan area. Counsel for the Appellants question how many of those were legal. The Petitioner subsequently entered into the record nine approved Petitions to the Zoning Commissioner by area auto dealerships requesting variances in the size of signs.

Robert S. Natz, Jr., real estate broker in commercial and industrial properties, and a participant with the Office of Planning in creating a BM zone on Reisterstown Road to accommodate and establish an auto sales and service corridor, opined that granting variances would not have detrimental effect on residential property values or to the public health, safety and general welfare. The size and height requested for the sign was in comparison with other signs in the corridor. Mr. Natz did acknowledge that the Community Council did oppose the zoning in the 1988 Comprehensive Map Process.

Leonard Stoler testified at length as to the beginning of his automobile dealership and its expansion over more than two decades, and the evolvement of multi-make dealerships. Mr. Stoler reviewed the cost factors in managing large dealerships in accordance with the requirement of the industry to maintain a competitive and efficient operation. He specified the essentialness of proper dealership identification and the reason he selected the mid-size sign offered by Lexus. He further emphasized that people expect to see new cars of the manufacturers displayed in front of their building.

The Reverend Frederick J. Hanna, Rector of All Saints Episcopal Church and zoning chairman of the Reisterstown-Owings Mills-Glyndon Coordinating Council, testified as to their general opposition to variances for signs. A former member of the Baltimore County Planning Board, Reverend Hanna pointed to the

"clutter" of signs on the Reisterstown corridor and that regulations should be adhered to. He ascertained that display cars so close to a heavily travelled highway could cause a traffic hazard, and that a "sea of signs" actually causes individual signs to be lost from view. Reverend Hanna suggested a single "Len Stoler" sign with individual signs attached to the face of the building. He further cited that smaller signs would be more acceptable and that the Lexus sign is too tall for the building.

In consideration of the testimony in this case, there is strong evidence pointing to the merit of Petitioner's plan and the zoning variances requested. Because of the configuration of the site and the topography of the land on which it is situated, and the need to position buildings as shown on the plan (Petitioner's Exhibit No. 1) the setbacks are essential in order to provide relief from hardship and practical difficulty. The variances as to the sign are necessary in order to permit erection of a standardized sign required by the manufacturer, of a type readily seen and identifiable. In regards to the display parking, testimony indicated that the proposed location would not obstruct vision or have a negative effect on traffic on Reisterstown Road.

In matter of Petitions for Variance, the Board is compelled to apply the law as found within Section 307 of the BCZR, providing a variance can be granted only in cases where strict compliance with the zoning regulations would result in practical difficulty or

unreasonable hardship. It is obvious that the special conditions of this particular site requires relief and that the variances requested will not be detrimental to the public health, safety and general welfare. As stipulated in McLean v. Soley, 270 Md. (1973), the Petitioner meets the standards specified to prove practical difficulty for an area variance and the relief requested should be granted.

ORDER

It is therefore this 23rd day of August, 1991 by the County Board of Appeals of Baltimore County ORDERED that the requested Petition for Zoning Variances from Section 238.2 to allow a side yard setback of 1.0 feet in lieu of the required 30 feet for building No. 11309; Section 413.2 (f) to permit a double face sign of 139 square feet in lieu of the permitted 100 square feet; Section 413.5 (d) to allow a sign height of 27 feet 10 inches in lieu of the maximum of 25 feet and Sections 238.1, 238.4 and 303.2 to allow display parking 10 feet, which is less than 53 feet from the Reisterstown Road right-of-way be and the same is hereby GRANTED subject to the following restrictions:

1. All parking lot lighting shall be no more than 10 feet above grade. All exterior lighting shall be directed downward and shall not diffuse onto any residential property.

2. Paging devices shall be limited in use to Monday through

Friday, 8:00 a.m. to 5:00 p.m. No more than one speaker shall be used on the site.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Lynn B. Moreland
Lynn B. Moreland

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

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

August 23, 1991

Donald J. Katz, Esquire
610 Joppa Green I
2324 W. Joppa Road
Lutherville, Maryland 21093

Re: Case No. 90-160-A
Len Stoler

Dear Mr. Katz:

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

Sincerely,

LindaLee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

cc: Mr. Henry Lewis
Marvin I. Singer, Esquire
Mr. Baxter Smith
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Timothy M. Kotroco
James E. Dyer
W. Carl Richard, Jr.
Docket Clerk -Zoning
Arnold Jablon - Director of Zoning
Administration

IN RE: PETITION FOR ZONING VARIANCE
NE side of Reisterstown Rd,
270' +/- SE of High Falcon Rd.
11309-11311 Reisterstown Rd.
4th Election District
3rd Councilmanic District
Leonard Stoler
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 90-160-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein request a variance from Section 238.2 to allow a side yard setback of 1.0 feet in lieu of the required 30 feet for building No. 11309; a variance from Section 413.2.f to permit a double face sign of 139 square feet in lieu of the permitted 100 square feet; a variance from Section 413.5.d to allow a sign height of 27 feet 10 inches in lieu of the maximum of 25 feet and a variance from Sections 238.1, 238.4 and 303.2 to allow display parking 10 feet from the Reisterstown Road right of way, in accordance with Petitioner's Exhibit 1.

The Petitioner, Leonard Stoler, appeared, testified and was represented by Marvin I. Singer, Esquire. Appearing on behalf of the Petitioner was Douglas Kennedy, a professional engineer. Appearing as a Protestant was Henry Lewis.

Testimony indicated that the subject property known as 11309-11311 Reisterstown Road is located on the northeast side of Reisterstown Road approximately 270 feet southeast of High Falcon Road. The subject site consists of 4.04 acres +/-, split zoned B.R. and D.R. 16 and is adjacent to the existing Stoler automobile dealership.

The Petitioner testified that he is desirous of constructing a combination Lexus and Chrysler-Plymouth automotive dealership, as indicated on

ORDER RECEIVED FOR FILING
Date 8/23/91
By

Petitioner's Exhibit No. 1, which will be incorporated into the existing Stoler automobile dealership on the adjacent property. The Petitioner testified that the proposed Chrysler showroom building is the result of Chrysler Corporation "requesting" that their product line be displayed separately from the Ford product line, which are currently co-mingled in the existing showroom located on the adjacent parcel. Testimony indicated that the variance requested for the subject showroom is located on an interior boundary line abutting the existing Stoler dealership. The Petitioner testified that the proposed layout provides continuity of design for the entire operation and does not thrust a hardship onto any adjacent properties, in view of the interior nature of the requested variance. The Petitioner testified that he would suffer an undue hardship and practical difficulty if the requested variance were denied. The building, absent the requested variance, would be of insufficient size to accommodate the Chrysler product line. Should the Petitioner be required to move the location of the building, internal circulation problems would result due to the relocation of the building.

The Petitioner has also requested a variance from Sections 238.1, 238.4 and 303.2 of the B.C.Z.R. to permit display parking 10 feet from Reisterstown Road which Petitioner contends is standard merchandising procedure in the industry. Testimony indicated that the proposed location of the display would not obstruct vision along Reisterstown Road or, otherwise, impede traffic along this roadway. Additionally, the Petitioner has requested a variance from Section 413.2.f and 413.5.d to permit a double faced sign of 139 total square feet and a height of 27 square feet 10 inches, along Reisterstown Road, as indicated on Petitioner's Exhibit No. 1. The Petitioner testified that he has agreed, pursuant to community

ORDER RECEIVED FOR FILING
Date
By

request, to permit the existing 60 inch oak tree located along Reisterstown Road to remain. However, the Petitioner asserts that, in view of the large size of this tree, the requested sign variances are necessary to provide adequate visibility to passing motorists. The Petitioner stated that he would suffer an undue hardship and practical difficulty if the requested variances are denied.

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:

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).

It is clear from the testimony that if the variances are granted, such use, as proposed, would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public good.

After due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variances were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variances requested will not be detrimental to the public health, safety and general welfare.

Based upon the testimony and evidence presented at the hearing, all of which was uncontradicted, in the opinion of the Zoning Commissioner the relief requested sufficiently complies with the requirements of Section 307 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, therefore, should be granted. There is no evidence in the record that the subject variance would adversely affect the health, safety and/or general welfare of the public Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 15th day of December, 1989 that variances from Section 238.2 to allow a side yard setback of 1.0 feet in lieu of the required 30 feet for building No. 11309; Section 413.2.f to permit a double face sign of 139 square feet in lieu of the permitted 100 square feet; Section 413.5.d to allow a sign height of 27 feet 10 inches in lieu of the maximum of 25 feet and Section 238.1, 238.4 and 303.2 to allow display parking 10 feet which is less than 53 feet from the Reisterstown right of way, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the

ORDER RECEIVED FOR FILING
Date
By

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) Paging devices shall be limited in use to Monday through Friday, 8:00 A.M. to 5:00 P.M. No more than one speaker shall be used on the site.

3) All parking lot lighting shall be no more than 10 feet above-grade. All exterior lighting shall be directed downward and shall not diffuse onto any residential property.

4) (a) When applying for a building permit, the Petitioner shall provide a landscape plan that provides one adequate year round buffering between the site and adjacent apartments; (b) streetscape and buffering along High Falcon Road which shall be no less than 20 feet wide; (c) landscaping and planning of the area between Hardees and the Petitioner's site; and (d) adequate interior landscaping, all of which shall be approved by the County Landscape Planner. Said landscape plan shall be submitted to the Zoning Commissioner for final approval.

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

JRH:mmn
cc: Peoples Counsel

cc: Mr. Henry Lewis, 22 Caraway Road, Reisterstown, Md. 21136

ORDER RECEIVED FOR FILING
Date
By

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

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

December 14, 1989

Marvin I. Singer, Esquire
343 North Charles Street
Baltimore, Maryland 21201

RE: Petition for Zoning Variance
Case No. 90-160-A
Leonard Stoler, Petitioner

Dear Mr. Singer:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
J. Robert Haines
J. Robert Haines
Zoning Commissioner

JRH:mmn
cc: Peoples Counsel

cc: Mr. Henry Lewis
22 Caraway Road
Reisterstown, Maryland 21136

5. South 66 degrees 48 minutes 25 seconds East 217.94 feet; thence leaving said Parcel "C" and running with and binding on the property of Colonial-Stoler Partnership by Deed S.M. 8030/43,

6. South 66 degrees 47 minutes 30 seconds East 264.79 feet; thence,

7. South 47 degrees 10 minutes 25 seconds West 537.64 feet to the Northeast side of Reisterstown Road (Md. Rte. 140), 66 foot right-of-way; thence running with and binding on said road,

8. North 44 degrees 14 minutes 13 seconds West 278.16 feet to the point of beginning.

Containing 4.04 acres of land more or less.

BEING Parcel "B" and Parcel "C" plat of "Gus Pappas et.al. Property", dated February 10, 1982, and recorded among the Plat Records of Baltimore County in Plat Book E.H.K., Jr. 49, Folio 106, conveyed to Colonial-Stoler Partnership by Deed S.M. 8067/367 and the property of Colonial-Stoler Partnership by Deed S.M. 8030/43.

STATE OF MARYLAND
WILLIAM KENNETH WOODY
No. 10154
REGISTERED
LAND SURVEYOR

2 of 2

#19

PETITION FOR ZONING VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

90-160-A

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 SEE ATTACHED ADDENDUM

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

SEE ATTACHED ADDENDUM

RECEIVED
DATE 11-4-89
BY [illegible]
FILED

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

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

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

Contract Purchaser:

(Type or Print Name)

Signature

Address

City and State

Legal Owner(s):

LEONARD STOLER
(Type or Print Name)

Leonard Stoler for
Signature

COLONIAL - STOLER PARTNERSHIP
(Type or Print Name)

Signature

Attorney for Petitioner:

Marvin I. Singer
(Type or Print Name)

Signature

343 North Charles Street
Address

Baltimore, MD 21201
City and State

Attorney's Telephone No.: 301-727-4700

Address Phone No.

City and State

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

Name

Address Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 26 day of August, 19 89, 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 9 day of Nov, 19 89, at 9:30 o'clock A.M.

Filed on 7/19/89 by ltf
1 HR. Hearing Time
Any Time 2 Day.

J. Robert Haines
Zoning Commissioner of Baltimore County.

(over)

HOOPER, KIEFER, & CORNELL
BALTIMORE, MD 21201

#19

ADDENDUM TO PETITION FOR ZONING VARIANCE

Variances are requested from the following of the Baltimore County Regulations:

1. Sec. 238.2 - To allow a side yard setback of 1.0 feet in lieu of the required 30 feet (11309 Building).

2. Sec. 413.2.f - To permit a double face sign of 139 s.f. in lieu of the permitted 100 square feet and this is counting both sides of the sign.

3. Sec. 413.5.d - To allow a sign height of 27 ft. 10 inches in lieu of the maximum of 25 feet (11311 Building).

4. Sections 238.1, 238.4, and 303.2 - To allow display parking 10 ft., which is less than 53 ft., from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet.)

Because of the configuration and topography of the site, including the location of wetlands on the rear portion thereof, and the need to site the buildings as shown on the accompanying plat, the setback variances are needed in order to afford relief from hardship and practical difficulty. The variances as to the sign are required in order to permit erection of a standardized sign required by the manufacturer, of a type that is readily seen and identifiable; the absence of which would create hardship and practical difficulty.

#19

Douglas L. Kennedy, P.E.
William K. Woody, L.S.

John M. Cosaraquis, E.S. (Ret.)

KCW Consultants, Inc.
Civil Engineers and Land Surveyors
1777 Reisterstown Road
Commercentre, Suite 175
Baltimore, Maryland 21208
(301) 484-0854 / 484-0963

May 30, 1989

PROPERTY OF COLONIAL-STOLER PARTNERSHIP
LIBER 8030, FOLIO 43 AND
LIBER 8067, FOLIO 367
BALTIMORE COUNTY, MARYLAND
DESCRIPTION TO ACCOMPANY
APPLICATION FOR ZONING VARIANCE

BEGINNING FOR THE SAME at a point on the Northeast side of Reisterstown Road (Md. Rte. 140), 66 foot wide, distant 270 feet more or less Southeasterly from the center of High Falcon Road, said point being the Southernmost corner of Parcel "A", plat of "Gus Pappas et.al. Property" dated February 10, 1982 and recorded among the Plat Records of Baltimore County in Plat Book E.H.K., Jr. 49, Folio 106, running thence, binding on said Parcel "A";

1. North 46 degrees 00 minutes 20 seconds East 200.00 feet; thence,
2. North 45 degrees 36 minutes 50 seconds West 238.11 feet to a point on the Northeast side of High Falcon Road; thence binding on the Northeast side of High Falcon Road,
3. North 44 degrees 23 minutes 10 seconds East 116.74 feet to a point; thence leaving High Falcon Road and running with and binding on said Parcel "B" and Parcel "C" of the said plat,
4. South 70 degrees 00 minutes 20 seconds East 95.05 feet; thence,

1 of 2

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

90-160-A

District 4th
Date of Posting 10-18-89
Posted for: Variance
Petitioner: Leonard Stoler
Location of property: N.E. side of Reisterstown Road, 270'+ S.E. of High Falcon Road (11309-11311 Reisterstown Road
Location of Signs: N.E. side of Reisterstown Road in front of subject property
Remarks:
Posted by [signature] Date of return: 10-20-89
Signature
Number of Signs: 1

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 21204 as follows:

Petition for Zoning Variance
Case number: 90-160-A
NE side Reisterstown Road, 270'± SE of High Falcon Rd.
11309-11311 Reisterstown Road
5218 Forge Road
4th Election District
3rd Councilmanic
Petitioner(s):
Leonard Stoler
Hearing Date: Thursday, Nov. 9, 1989 at 9:30 a.m.

Variance: to allow side yard setback of 1 foot in lieu of the required 30 feet (11309 Building); and to permit a double-face sign of 139 square feet in lieu of the permitted 100 square feet and this is counting both sides of the sign; and to allow a sign height of 27 feet, 10 inches in lieu of the maximum of 25 feet (11311 Building); and to allow display parking 10 feet, which is less than 53 feet, from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet).

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.

NOTE:
(If "PHASE II" of the "SNOW EMERGENCY PLAN" is in effect in Baltimore County on the above hearing date, the Hearing will be postponed. In the event of snow, telephone 887-3391 to confirm hearing date.)

J. ROBERT HAINES
Zoning Commissioner of Baltimore County

OJ 10/09 October 12.

CERTIFICATE OF PUBLICATION

TOWSON, MD., Oct. 13, 19 89

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Oct 12, 19 89

THE JEFFERSONIAN,

S. Zeke Orlinsky
Publisher

PO 17280
req M34238
co 90-160-A
price $108.55

CERTIFICATE OF PUBLICATION

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 21204 as follows:

Petition for Zoning Variance
Case number: 90-160-A
NE side Reisterstown Road, 270'± SE of High Falcon Rd.
11309-11311 Reisterstown Road
5218 Forge Road
4th Election District
3rd Councilmanic
Petitioner(s):
Leonard Stoler
Hearing Date: Thursday, Nov. 9, 1989 at 9:30 a.m.

Variance: to allow side yard setback of 1 foot in lieu of the required 30 feet (11309 Building); and to permit a double-face sign of 139 square feet in lieu of the permitted 100 square feet and this is counting both sides of the sign; and to allow a sign height of 27 feet, 10 inches in lieu of the maximum of 25 feet (11311 Building); and to allow display parking 10 feet, which is less than 53 feet, from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet).

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.

NOTE:
(If "PHASE II" of the "SNOW EMERGENCY PLAN" is in effect in Baltimore County on the above hearing date, the Hearing will be postponed. In the event of snow, telephone 887-3391 to confirm hearing date.)

J. ROBERT HAINES
Zoning Commissioner of Baltimore County

OJ 10/09 October 12.

CERTIFICATE OF PUBLICATION

TOWSON, MD. Oct. 13, 19 89

THIS IS TO CERTIFY, that the annexed advertisement was published in the OWINGS MILLS TIMES, a weekly newspaper published in Towson, Baltimore County, Md., appearing on Oct. 12, 19 89

OWINGS MILLS TIMES,

S. Zeke Orlinsky
Publisher

PO 17280
req M34238
co 90-160-A
price $108.55

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

No. [illegible]

DATE 7/12/89 ACCOUNT R-01-615

AMOUNT $ 175.00

RECEIVED FROM: Stoler

FOR: CV Item # 19

[illegible]

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

DATE 10/17/89

Leonard Stoler
Colonial-Stoler Partnership
11275 Reisterstown Road
Owings Mills, Maryland 21117

Re: Petition for Zoning Variance
CASE NUMBER: 90-160-A
NE side Reisterstown Road, 270'± SE of High Falcon Road
11309-11311 Reisterstown Road
4th Election District - 3rd Councilmanic
Petitioner(s): Leonard Stoler
HEARING: THURSDAY, NOVEMBER 9, 1989 at 9:30 a.m.

Dear Mr. Stoler:

Please be advised that $ 242.10 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional $50.00 added to the above amount for each such set not returned.

Very truly yours,
J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

JRHigs

cc: Marvin I. Singer, Esq.
File

NOTE:
(If "PHASE II" of the "SNOW EMERGENCY PLAN" is in effect in Baltimore County on the above hearing date, the Hearing will be postponed. In the event of snow, telephone 887-3391 to confirm hearing date.)

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

J. Robert Haines
Zoning Commissioner

October 23, 1989

Dennis F. Rasmussen
County Executive

BILLING CORRECTION

Leonard Stoler
Colonial- Stoler Partnership
11275 Reisterstown Road
Owings Mills, Maryland 21117

Re: Case Number: 90- 160-A

Petitioner(s): Leonard Stoler

Dear Petitioners:

Please disregard our prior billing dated October 17, 1989. The correct amount of the advertising and posting charges for the above case is $133.55.

Again, the sign(s) and post(s) should be returned and these charges paid on the date of the hearing

Please allow me to apologize for any inconvenience the incorrect billing may have caused.

Very truly yours,

G. G. Stephens
Zoning Office
(301) 887-3391

cc: Marvin I. Singer, Esq.

Baltimore County
Zoning Commisioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

receipt
№ 251

90 160

Date

11/09/89 M9000053

PUBLIC HEARING FEES	QTY	PRICE
080 -POSTING SIGNS / ADVERTISING	1 X	$133.55
	TOTAL:	$133.55

LAST NAME OF OWNER: STOLER

B 013*****13355:b =092A

Cashier Validation:

Please make checks payable to: Baltimore County

Form CA4

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland, 21285-6754

Irene Summers – 887-2660
Civil Assignment Commissioner

Kathy Rushton – 887-2660
Jury Assignments–Civil
General Settlement Conferences

– 887-2661
Non-Jury Assignments–Civil
Special Settlement Conferences

November 21, 1991

TO:

Donald J. Katz, Esq.

Office of Law
Court House-Mezzanine
Towson, MD 21204

Marvin I. Singer, Esq.

County Board of Appeals
of Baltimore County

RE: Non-Jury 91 CV 4539 In The Matter Of: Leonard Stoler

HEARING DATE: Tuesday, January 21, 1992, @ 9:30 a.m.

ON THE FOLLOWING: Appeal: 1½ hours

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

91 NOV 25 A11:57
RECEIVED
COUNTY BOARD OF APPEALS

CASE NO. 91-CV-4539
IN THE MATTER OF THE APPLICATION OF LEONARD STOLER

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE & EXHIBITS.

S. Sanders
Clerk's Office

Date: 10/18/91

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

90-160-A

District 4th
Date of Posting 12-12-90
Posted for: Appeal
Petitioner: Leonard Stoler
Location of property: NE/S of Reisterstown Road 270'± SE of High Falcon Road (11309-11311 Reisterstown Road)
Location of Signs: NE side of Reisterstown Road in front of subject property
Remarks:
Posted by: [signature] Signature
Date of return: 12-16-90
Number of Signs: 1

Baltimore County
Zoning Commisioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

receipt
N. 1220

Date

2/01/90 M9000498

APPEAL FEES	QTY	PRICE
140 -CF ALL OTHER ORDERS	1	$185.00
150 -POSTING SIGNS / ADVERTISING	1	$25.00
	TOTAL:	$150.00

LAST NAME OF OWNER: STOLER

90-160-A

Cashier Validation:

Please make checks payable to: Baltimore County

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

J. Robert Haines
Zoning Commissioner

September 25, 1989

Dennis F. Rasmussen
County Executive

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance
CASE NUMBER: 90-160-A
NE side Reisterstown Road, 270'± SE of High Falcon Road
11309-11311 Reisterstown Road
4th Election District - 3rd Councilmanic
Petitioner(s): Leonard Stoler
HEARING: THURSDAY, NOVEMBER 9, 1989 at 9:30 a.m.

Variance: To allow side yard setback of 1 foot in lieu of the required 30 feet (11309 Building); and to permit a double-face sign of 139 square feet in lieu of the permitted 100 square feet i lieu of the permitted 100 square feet and this is counting both sides of the sign; and to allow a sign height of 27 feet, 10 inches in lieu of the maximum of 25 feet (11311 Building); and to allow display parking 10 feet, which is less than 53 feet, from the Reisterstown Road R/W (53 feet is the allowable 15 feet less than the required average setback of 68 feet).

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.

NOTE:
(If "PHASE II" of the "SNOW EMERGENCY PLAN" is in effect in Baltimore County on the above hearing date, the Hearing will be postponed. In the event of snow, telephone 887-3391 to confirm hearing date.)

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

JRHaigs
cc: Leonard Stoler/Colonial-Stoler Partnership
Marvin I. Singer, Esq.
File

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

HEARING ROOM - Room 301
County Office Bldg.

May 1, 1990

NOTICE OF ASSIGNMENT

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

CASE NO. 90-160-A LEONARD STOLER
NE/s of Reisterstown Rd., 270' ± SE of
High Falcon Rd. (11309-11311 Reisterstown Rd.)
4th Election District
3rd Councilmanic District

VAR-setbacks/signs/display parking

12/15/89 - Z.C.'s Order GRANTING Petition w/restr.'s

ASSIGNED FOR: FRIDAY, AUGUST 3, 1990 at 1:00 p.m.

cc: Donald J. Katz, Esquire Counsel for Mr. Lewis/Protestant/Appellant
Mr. Henry Lewis " "
Marvin I. Singer, Esquire Counsel for Petitioner
Mr. Baxter Smith
Community Times
~~People's Counsel for Baltimore County~~ out per Shirley Hess 5/2/90
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
Legal Secretary

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

HEARING ROOM - Room 301
County Office Bldg.

May 1, 1990

NOTICE OF ASSIGNMENT

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

CASE NO. 90-160-A LEONARD STOLER
NE/s of Reisterstown Rd., 270' ± SE of
High Falcon Rd. (11309-11311 Reisterstown Rd.)
4th Election District
3rd Councilmanic District

VAR-setbacks/signs/display parking

12/15/89 - Z.C.'s Order GRANTING Petition w/restr.'s

ASSIGNED FOR: FRIDAY, AUGUST 3, 1990 at 1:00 p.m.

cc: Donald J. Katz, Esquire Counsel for Mr. Lewis/Protestant/Appellant
Mr. Henry Lewis " "
Marvin I. Singer, Esquire Counsel for Petitioner
Mr. Baxter Smith
Community Times
People's Counsel for Baltimore County
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
Legal Secretary

pfor set 8/3/90

RECEIVED
MAY 0 2 1990
PEOPLE'S COUNSEL

P.C. not involved

90 MAY -2 AM 11:57
RECEIVED
COUNTY BOARD OF APPEALS

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

Hearing Room -
Room 301, County Office Bldg. May 3, 1991

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 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. 90-160-A LEONARD STOLER
NE/S Reisterstown Road, 270' ± SE of
High Falcon Road (11309-11311 Reisterstown Road)
4th Election District
3rd Councilmanic District

VAR-Setbacks/signs/display parking

12/15/89 -Z.C.'s Order GRANTING Petition with restrictions.

ASSIGNED FOR: WEDNESDAY, AUGUST 14, 1991 AT 10:00 a.m.

cc: Donald J. Katz, Esquire Counsel for Protestant/Appellant
Mr. Henry Lewis " "
Marvin I. Singer, Esquire Counsel for Petitioner
Mr. Baxter Smith
P. David Fields
Pat Keller
Public Services
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, Chief Deputy County Attorney

LindaLee M. Kuszmaul
Legal Secretary

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

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

000

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

October 30, 1989

Marvin I. Singer, Esquire
343 North Charles Street
Baltimore, MD 21201

RE: Item No. 19, Case No. 90-160-A
Petitioner: Leonard Stoler, et al
Petition for Zoning Variance

Dear Mr. Singer:

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

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

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,

JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

Nov. 31

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENC

TO: J. Robert Haines
Zoning Commissioner
DATE: October 31, 1989

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Leonard Stoler, Item 19
Zoning Petition No. 90-160

Please be advised that additional time is required to review the subject case. Staff comments will be forwarded as soon as possible.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK:JL:ggl
ZP90/160

11/1/89 mailed copies jw

NOV 0 1 1989

Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

September 18, 1989

RECEIVED
SEP 19 1989
ZONING OFFICE

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

Re: Sign Location
Stater Lexus and Chrysler
N/S Reisterstown Road Md. 140
270' east of Highfalcon Road
(Item #19)

Dear Mr. Haines:

I am responding to the letter written to you by Mr. Creston J. Mills, Jr., Chief, Engineering Access Permits Division, concerning the above item.

An inspection was made on September 14, 1989 by Mr. George Dawson, the Highway Beautification Inspector and found he has no objection to placing the sign as per plans submitted.

The sign cannot be placed on or overhang the State's Right-of-Way.

Sincerely,

Mary I. Benner
Acting Chief
Highway Beautification Section

MIB:jak
cc: Mr. Creston J. Mills, Jr.
Mr. George Dawson

My telephone number is (301)_____
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free

Maryland Department of Transportation
State Highway Administration

Richard H. Trainor
Secretary
Hal Kassoff
Administrator

August 7, 1989

Mr. J. Robert Haines
Bureau of Public Services
County Office Building
Towson, Maryland 21204
Att: James Dyer

RE: Baltimore County
Stoler Lexus and
Chrysler
Zoning meeting 7/25/89
N/S Reisterstown Road
MD 140
270' east of
Highfalcon Road
Item # 19

Dear Mr. Haines:

After reviewing the submittal for a variance to allow a side yard setback of 1' in lieu of the required 30', and to permit a double face sign of 139 square feet in lieu of the permitted 100' square feet and to allow a sign height of 27' 10 inches in lieu of the maximum of 25', we offer the following:

We have forwarded this plan to our Highway Beautification Section c/o Ms. Mary Benner (333-1642), for all comments relative to zoning.

If you have any questions, contact Larry Brocato (333-1350).

Very truly yours,

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

LB/es

cc: KCW Consultants Inc.
Mr. J. Ogle
Ms. Mary Benner w/enc.

RECEIVED
AUG 11 1989
ZONING OFFICE

My telephone number is (301) 333-1350
Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 565-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

RECEIVED
AUG 3 1989
ZONING OFFICE

July 31, 1989

Dennis F. Rasmussen
County Executive

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

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20.

Very truly yours,

Michael S. Flanigan
Traffic Engineer Associate II

MSF/lab

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

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

Your petition has been received and accepted for filing this

26th day of August, 1989.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

Chairman,
Zoning Plans Advisory Committee

Petitioner: Leonard Stoler, et al

Petitioner's Attorney: Marvin I. Singer

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(301) 887-4500

Paul H. Reincke
Chief

JULY 24, 1989

Dennis F. Rasmussen
County Executive

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

RE: Property Owner: LEONARD STOLER

Location: NE SIDE REISTERSTOWN ROAD

Item No.: 19 Zoning Agenda: JULY 25, 1989

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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", 1988 edition prior to occupancy.

REVIEWER: Capt J. Kelly
Planning Group
Special Inspection Division

Noted and Approved: Capt Lt. Fire Brady
Fire Prevention Bureau

JK/KEK

AUG 2 8 1989

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner
DATE: November 24, 1989

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Zoning Petition No. 90-160-A
Colonial-Stoler Partnership
((Stoler "Lexus" and "Chrysler" dated 11/13/89)

I would like to extend a brief note of appreciation for enabling the Office of Planning and Zoning to work with Colonial-Stoler in revising their Stoler "Lexus" and "Chrysler" site plan that had been submitted to CRG and was requesting variances.

Based upon conversations with the petitioner, staff would suggest to the Zoning Commissioner that the revised site plan (see attached) which shows a 20 ft. buffer along Highfalcon Road, more interior landscaping areas, slide gates, and a revised parking lot layout, be considered favorably. The sign proposed (1 of 3 available) which is 139 sq. ft., appears adequate in this particular instance.

Using the revised plan as a basis for comment, staff suggests the following conditions:

- Paging devices shall be limited in use to Monday - Friday, 8:00 a.m. to 5:00 p.m. No more than one speaker shall be used on the site.

- Lighting standards located adjacent to the townhouse apartments (north side of site), shall not be greater than 12 feet in height and directed away from adjoining residences.

- A landscape plan exceeding current regulations that provides; 1) adequate year-round buffering between the site and adjacent apartments shall be provided; 2) streetscape and buffering along Highfalcon Road shall be provided; 3) planting of the area between Hardee's and the petitioner's site shall be landscaped (some of this area may be located on the Hardee's property); and 4) adequate interior landscaping shall also be provided, as approved by the County Landscape Planner.

- A revised CRG plan (refinement) showing the proposed changes shall be submitted to the County for signature and filing.

PK:JL:ggl
Attachment
90160A/ZAC1