

IN THE MATTER OF
THE APPLICATION OF
COUNTY LINE, INC.
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED AT THE INTER-
SECTION OF LIBERTY ROAD AND
VENETIAN ROAD (5905 LIBERTY ROAD)
2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT
COUNTY LINE, INC. -PETITIONER
ZONING CASE NO. 93-276-X

* ON REMAND
* FROM THE
* CIRCUIT COURT FOR
BALTIMORE COUNTY
* Civil Action
No. 93-CV-10476/67/158

**AMENDED ORDER PURSUANT TO CIRCUIT COURT FOR BALTIMORE COUNTY
REMAND PURSUANT TO MANDATE OF THE COURT OF SPECIAL APPEALS**

This matter comes before the Board on remand by Order of the
Circuit Court for Baltimore County dated April 15, 1996 with
direction that the Petition for Special Exception requested by
County Line, Inc., be granted, pursuant to Order by the Court of
Special Appeals dated April 4, 1996.

IT IS THEREFORE this 16th day of August, 1996, by
the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Exception in Zoning Case
No. 93-276-X be and is hereby GRANTED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert O. Schuetz
Robert O. Schuetz, Chairman

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



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

August 16, 1996

Newton A. Williams, Esquire
MOLAN, PLUMBOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-3340

RE: REMAND /Case No. 93-276-X
County Line, Inc.
Civil Action No. 93-CV-10476

Dear Mr. Williams:

Enclosed please find a copy of the Board's Opinion on Remand
issued this date in response to the April 15, 1996 Remand Order of
the Circuit Court for Baltimore County.

Very truly yours,

Charlotte E. Pichler
Kathleen C. Bianco
Legal Administrator

encl

cc: Mr. Barry Parsons, President
County Line, Inc.
Harry L. Chase, Esquire
Mrs. Emily Wolfson
Mrs. Judith Berger
Mr. E. Ray Staggers
Mr. Gerson P. Folen
Mr. Daniel L. Fredericks
Mr. Nathan Silver
People's Counsel for Baltimore County
Pat Keller /Planning Director
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
The Honorable John G. Turnbull, II
Circuit Court for Baltimore County
Clerk of the Court /Case No. 93-CV-10476
Virginia W. Barnhart, County Attorney



**CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL CATEGORY JUDICIAL REVIEW 67/158/93CV10476**

PETITION OF COUNTY LINE, INC.

FOR JUDICIAL REVIEW OF THE DECISION OF THE
COUNTY BOARD OF APPEALS OF BALTIMORE
COUNTY

IN THE MATTER OF THE APPLICATION OF
COUNTY LINE, INC. FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED AT THE INTERSECTION OF
LIBERTY ROAD AND VENETIAN ROAD

BOARD OF APPEALS CASE NO. 93-276-X

COUNTY LINE, INC.
a Body Corporate of the State of Maryland
VS.

WILLIAM T. HACKETT, CHAIRMAN
G. WILLIAM CLARK, ACTING CHAIRMAN
HARRY E. BUCHHEISTER, JR.
ROBERT O. SCHUETZ, being the County
Board of Appeals of Baltimore County
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

ATTORNEYS

Newton A. Williams
700 Court Towers
210 W. Pennsylvania Avenue
21204 823-7800

Harry L. Chase
1100 W. Northern Pkwy.
Suite 124
21210 433-4100

Peter Max Zimmerman
Carole S. Demilio
Room 47, Old Courthouse
400 Washington Ave.
21204 (for People's Counsel)

Stanley J. Schapiro
Michael J. Moran
400 Washington Avenue
21204 887-4420
(atty for Balto. Co. Appeals)

COSTS

dd(1) Nov. 19, 1993 Petition for Judicial Review and Petition for Relief under
the Maryland Open Meetings Act Appellant's Petition for Judicial Review
with exhibit, fd.

tbl(2)*Dec. 13, 1993, Served the County Board of Appeals, 11/22/93,
Affidavit of private process server, fd. (rec'd 11/22/93)

df (3) Jan. 3, 1994 - Petitioner's COUNTY LINE, INC., Response to Petitions fd.
(Filed 12/16/93).

rs(4) Feb. 4, 1994 Answer of de/deds' WILLIAM T. HACKETT, C. WILLIAM CLARK,
HARRY E. BUCHHEISTER, JR. & ROBERT O. SCHUETZ to Petition for

*df (5) Feb. 4, 1994 - Transcript of Record fd. (Filed 2/3/94)

*df (6) Feb. 4, 1994 - Notice of Filing of Record fd. Copies Sent
(Filed 2/3/94).

TRANSCRIPT IN REPLY
FILED FEB 19

Docket 67 Page 158 Case 93CV 10476

True Copy Test
Per Carolyn M. Buford
Assistant Clerk

CASE NO. 93CV-10476 7) Mar 8, 1994 Rec'd 3/3/94 Atlanta memorandum, fd.

(sw) (8) Apr. 7, 1994 People's Counsel's Memorandum,
fd. (received 4/4/96)

*PH(9) Apr 11, 1994 Rec'd 4/8/94 Stipulation extending the time for the Appellee to file the
brief to 4/19/94, fd.

jh(10) April 25, 1994, Appellant's County Line, Inc., Reply Memorandum Pursuant
to Maryland Rule 7-207, fd. (rec'd 4/22/94)

jh(11) April 28, 1994, Brief of Appellees, William T. Hackett, Chairman, C. William
Harry E. Buchheister, Jr. and Robert O. Schuetz, Being The County Board of
Appeals, In Response To Appellants' Maryland Rule 7-207 Brief, fd.(rec'd
4/27/94)

May 17, 1994 Hon. John G. Turnbull, II. Hearing had in re Petition for Judicial Review and
Petition for Relief under Maryland Open Meetings Act Appellant's Petition for Judicial Review
(Pap #1)-Case held sub-curia. Opinion and Order to be filed.

PH(12) Oct 11, 1994 Opinion and Order of Court Granting the Petition of the Appellant, County
Line, Inc., to operate a used car sales area, etc, fd. (JGT, II)

jh(13)* October 24, 1994, Notice of Appeal from the Court of Special Appeal
entering an appeal on behalf of the People's Counsel for Baltimore County,
Gwynn Oak Improvement Association, Robin Hill Community Association,
William Obrecht, individually, and E. Ray Staggers, individually, fd.
(7/49)

Mar(14)* Nov 16, 1994 Correspondence from the People's Counsel for Baltimore
County, fd. (Rec'd 11/7/94)

Mar(15)* Nov 28, 1994 Order of Court from the Court of Special Appeals to
proceed without a Prehearing Conference, fd. (rec'd 11/21/94) (7/49)

JANUARY 5, 1995 - ORIGINAL RECORD AND PROCEEDINGS SENT TO THE COURT OF
SPECIAL APPEALS OF MARYLAND BY CERTIFIED MAIL.

PH(16) Apr 4, 1996 Mandate from the Court of Special Appeals of Maryland vacating judgment
and Remanding case to the Circuit Court for further proceedings, etc, fd

mr (17) Apr. 15, 1996 Opinion and Order of Court Remanding this case to the Board of Appeals
of Baltimore County and that the Board of Appeals shall Grant the special exception
requested by County Line, Inc., fd. (JGT, II)



The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-2847

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
PETITION OF COUNTY LINE, INC.
6101 Reisterstown Road
Baltimore, Maryland 21215

FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF COUNTY
LINE, INC. FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED AT THE INTERSECTION OF
LIBERTY ROAD AND VENETIAN ROAD
(5905 LIBERTY ROAD)
2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

OPINION AND ORDER

This case returns to this court on remand from the Court of
Special Appeals. In accordance with that Court's opinion, it is
this 10th day of April 1996,

ORDERED, that this case be and hereby is remanded to the
Board of Appeals of Baltimore County, and it is further,

FILED APR 15 1996

ORDERED, that the Board of Appeals shall grant the special
exception requested by County Line, Inc.

John Grason Turnbull, II
JOHN GRASON TURNBULL, II
JUDGE

Copies sent to:

Peter Max Zimmerman, Esquire
Carole S. DeMilio, Esquire
Counsel for Petitioner

Newton A. Williams, Esquire
Counsel for Respondent

Harry L. Chase, Esquire
Counsel for Respondent

2/07/96 -AFFIRMED Circuit Court in that
Special Exception should
be GRANTED; REMANDED
to the Circuit Court with order to remand
to CBA with instruction that special
exception is to be GRANTED by Board.

**UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND**

No. 1845
September Term, 1994

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, ET AL.

V.

COUNTY LINE, INC.

Bishop,
*Alpert,
Salmon,

JJ.

Per Curiam

Filed: February 7, 1996

*Alpert, J., participated in the
argument and decision in this
case but retired from the Court
prior to the filing of the
opinion.

Appellant County Line, Inc. (County Line) filed a Special
Exception Petition to establish a used car sales and routine
maintenance area on its property located at 5905 Liberty Road in
Baltimore County. The Zoning Commission of Baltimore County denied
County Line's petition and a timely appeal was filed with the Board
of Appeals of Baltimore County (Board). After a *de novo* hearing on
October 7, 1993, the Board denied the Special Exception request.
County Line filed a petition for judicial review with the Circuit
Court for Baltimore County. The court (Turnbull, J.) held a
hearing on May 17, 1994, reversed the Board, and granted the
Special Exception. Raymond Staggers, individually and as the
President of the Robin Hill Community Association; William
Obrecht, individually and as the President of the Gwynn Oaks
Improvement Association, Inc.; and the People's Counsel for
Baltimore County, all filed timely appeals.

I. FACTS

County Line is the alter ego of Barry Parsons. He owns two
used car lots on Reisterstown Road in Baltimore City, one of them
is approximately parallel to the subject Liberty Road site. If a
special exception were granted, County Line would have a maximum of
41 cars on the site and five or six employees, i.e., a secretary,
a "clean up man," two or three salespersons, and a mechanic.

The subject property is approximately .943 acres and is on the
northwest side of the dividing line between Baltimore City and
Baltimore County. The property fronts on Liberty Road for
approximately 200 feet. Liberty Road is an "automobile oriented

#93-CV-10476

ORIGINAL

1

IN THE MATTER OF
COUNTY LINE, INC.
Intersection Liberty Road
and Ventian Road
(5905 Liberty Road)
2nd Election District
2nd Councilmanic District
* BEFORE THE
* BOARD OF APPEALS
* OF BALTIMORE COUNTY
* Case No. 93-276-X
* October 7, 1993

The above-entitled matter came on for hearing
before the County Board of Appeals of Baltimore County at
Room 48, Old Courthouse, 400 Washington Avenue, Towson,
Maryland at 10:00 a.m., October 7, 1993.

BOARD MEMBERS:

WILLIAM CLARK, Chairman
ROBERT SCHUETZ
HARRY E. BUCHHEISTER

APPEARANCES:

NEWTON A. WILLIAMS, Esquire
HARRY L. CHASE, Esquire
On behalf of Petitioner/Appellant
CAROLE S. DEMILIO, Esquire
On behalf of People's Counsel

Reported by:
Barbara A. Ely, CSR

TOWSON REPORTING COMPANY, INC.

COUNTY LINE, INC.,
VS.
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, ET AL.
* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 93-CV-10476

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS

Towson, Maryland
May 17, 1994

Before:

HONORABLE JOHN GRASON TURNBULL, II, ASSOCIATE JUDGE

APPEARANCES

On Behalf of the Plaintiff:

NEWTON A. WILLIAMS, ESQUIRE
HARRY L. CHASE, ESQUIRE

On Behalf of the Defendant:

CAROLE S. DEMILIO, ESQUIRE
PETER MAX ZIMMERMAN, ESQUIRE
MICHAEL J. MORAN, ESQUIRE

Reported by:

Patricia A. Cirasole
Official Court Reporter
401 Bosley Avenue
Towson, Maryland 21204

\$107.50

RECEIVED AND FILED
95 JAN -3 AM 8:38
CLERK OF COURT
BALTIMORE COUNTY

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Larry Simmons	213	226	--	--
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TOWSON REPORTING COMPANY, INC.

LIBERTY ROAD COMMUNITY COUNCIL, INC.

March 30, 1993

Zoning Commissioner
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Case Number 93-276-X (Item 284)

Dear Zoning Commissioner:

Mr. Harry Chase, attorney for Car Wholesalers, and Mr. Gerson Polun, architect, were at the Liberty Road Community Council, Inc. Board meeting on March 24, 1993.

The Liberty Road Community Council, Inc. Board members voiced their disapproval of the use of the property located at Liberty and Venetian Roads as a used car sales area and for routine maintenance.

We feel that Car Wholesalers or Magic Motors (they used the corporate name of Car Wholesalers at our meeting) did not properly notify the Liberty Road Community Council, Inc., Robin Hills Association, or the Lochearn Improvement Association in a timely manner. This issue should have been brought before the members of our association at a general meeting.

Our organization feels most deeply that Liberty Road is a dumping ground. We feel as an integrated community we have much to be proud of and do not feel that a used car lot does anything aesthetically to improve the Liberty Road area.

We are requesting that the variance not be approved.

Very truly yours,

Vivian Noonan
President
Liberty Road Community Council, Inc.
3674 Cliffmar Road
Baltimore, MD 21244
Office 521-5977
Home 922-8122

cc: [unclear]

Photos PC #2A-2H

County Line Inc

93-276-X



AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Board of Directors) (Zoning Committee) of the LIBERTY ROAD COMMUNITY COUNCIL Association.

ELLA W. CAMPBELL
JUDITH BERGER

ATTEST:

Joseph Berger
Secretary

Vivian Noonan
President

COUNTY LINE, INC.
93 AUG 30 AM 11:22

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (Zoning Committee) of the Robin Hill Community Association.

ATTEST:

Robin Hill Community Association

Joseph Berger
Secretary

E. Ray Staggers
President

DATE: July 27, 1993



MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Brooming Highway • Baltimore, Maryland 21224
(410) 631-3000

William Donald Schaefer
Governor

Robert Perciasepe
Secretary

March 31, 1993

Ms. Ellen Aiken
Liberty Community Council
P.O. Box 31555
Baltimore MD 21207

RE: Case #9-0185 BC
Exxon Station
5905 Liberty Road
Baltimore, Maryland

Dear Ms. Aiken:

I am writing in follow-up to our conversation of March 26, 1993. Our conversation was in regards to the above-referenced Exxon Station. The station is currently undergoing soil remediation by soil vacuum extraction. Our Oil Control Program is supervising this cleanup of gasoline from former leaking underground storage tanks which were removed from this site.

During our conversation you asked if this property could be used or built upon. It is our experience that routine site activities of many different types may proceed despite a soil cleanup. If site construction is to take place however, the construction cannot interfere with the cleanup.

If you should have any additional questions, please feel free to telephone me at (410) 631-3086, or call Mr. Herbert M. Meade, Compliance Remediation Division Chief of the Oil Control Program at (410) 631-3442.

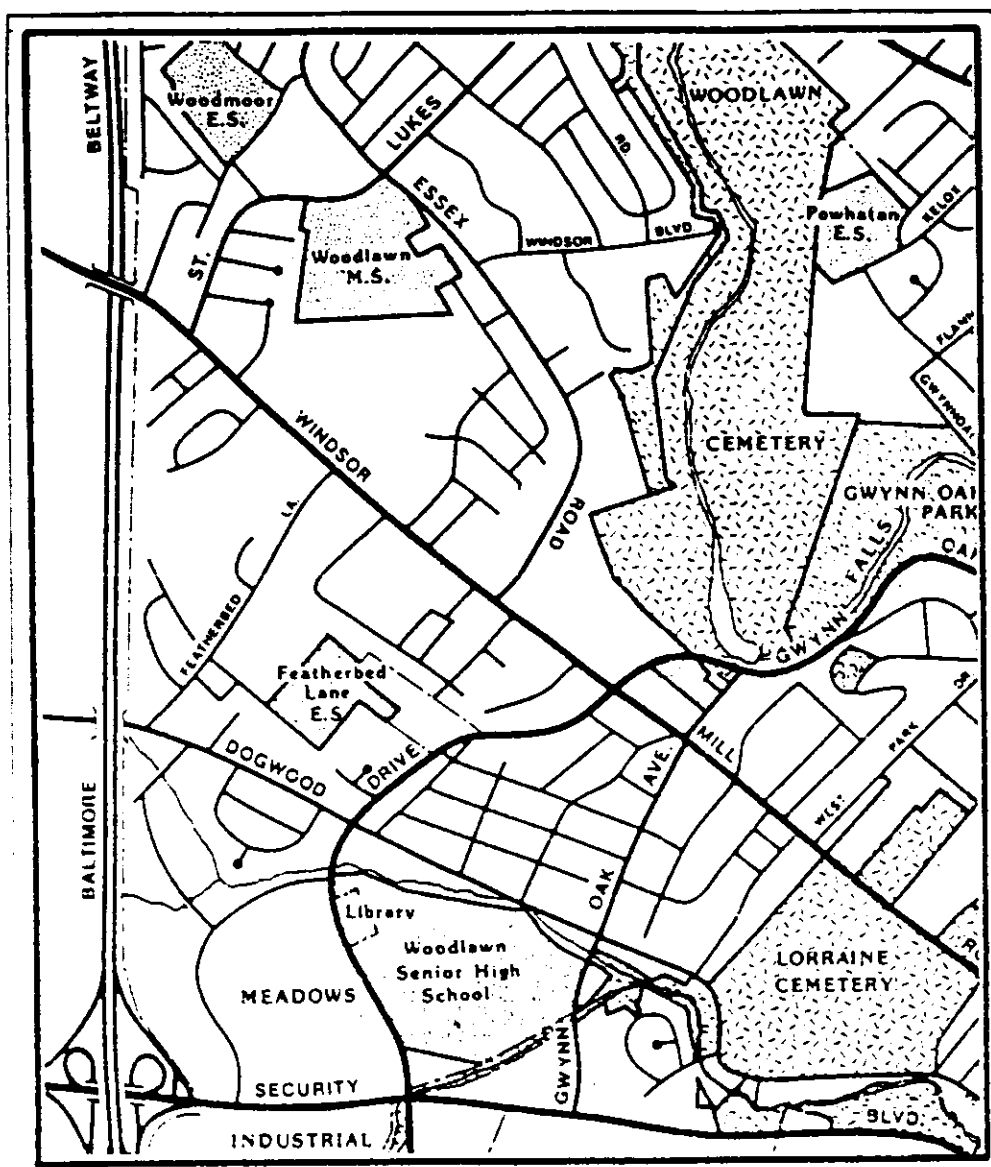
Sincerely,

Ronald Nelson
Deputy Secretary

RN:nlb

"Smoking 'N' Cars Goes On"

People's Counsel
Exh 4



• Baltimore County • Focus on Community •

WOODLAWN/LIBERTY COMMUNITY PLAN

As Adopted By The Baltimore County Council on May 17, 1993 with Amendments

3801 Lochearn Drive
Baltimore, Maryland 21207-6363
October 6, 1993

C. William Clark, Chairman
Baltimore County Board of Appeals
Old Courthouse, room 49
400 Washington Avenue
Towson, Maryland 21204

Honorable Mr. Clark, and Members of the Board,

Regarding case 93-276-X, which is being appealed before you on October 7, 1993, by County Line, Inc. October 7th being a Jewish holiday called Shemini Atzeret, I cannot appear in person. Please consider the following testimony when you review case 93-276-X, 5905 Liberty Road.

This property is key as a gateway to the entire Liberty Road corridor, as it is the first property after one crosses the city-county line. Please consider the guidelines of the Master Plan, and the Liberty Road Action Plan as more than merely advisory, and do not allow a used car lot to mar this gateway site.

Mr. Herbert M. Meade, Chief, Compliance/Remediation Division of the Oil Control Program of the Maryland State Department of the Environment, responded to my request for his opinion allowing for uses other than a used car lot in this locale. Letter attached.

At the present time we have a used car lot in the 6900 block Liberty Road, allowed last year by an appeal of the order of deputy Zoning Commissioner Timothy Kotroco. The owner-operator KMK partnership is presently in violation of two stipulations and one zoning/health violation, per your order of September 11, 1992.

It is now another duty of mine, a totally unpaid volunteer, to monitor these activities. Please do not place another burden on me.

Each special exception that has been allowed on 'my' stretch of Liberty Road has increased my burden of surveillance. That, in itself is unconscionable on the part of the judicial system.

The impact of granting the requests in this case would directly impact the quality of life in this location. A used car lot, ipso facto,

DATE: 10-7-93

PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: County Line, Inc.

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	Community Group You Represent? Basis of Your Concerns
☒	1. E Ray Naggin 6015 W. 1st St. P.O. Box 111111	
☒	5. 3000 W. 1st St. P.O. Box 111111	
☒	6. 3000 W. 1st St. P.O. Box 111111	
☒	2. 3000 W. 1st St. P.O. Box 111111	
☒	10. 3000 W. 1st St. P.O. Box 111111	
☒	9. 3000 W. 1st St. P.O. Box 111111	
☒	3. 3000 W. 1st St. P.O. Box 111111	
☒	7. 3000 W. 1st St. P.O. Box 111111	
☒	8. 3000 W. 1st St. P.O. Box 111111	
☒	4. 3000 W. 1st St. P.O. Box 111111	



10620 Iron Bridge Road, Jessup, MD 20794 (301) 490-4585
Fax: (301) 490-8731

CORRECTIVE ACTION PLAN

EXXON FACILITY #2-6801
5905 LIBERTY ROAD
BALTIMORE, MARYLAND

June 27, 1991

PREPARED FOR: EXXON COMPANY U.S.A.
11350 MC CORMICK ROAD
HUNT VALLEY, MARYLAND 21031

PREPARED BY: GROUNDWATER TECHNOLOGY, INC.
10610 IRON BRIDGE ROAD
JESSUP, MARYLAND 20794

WRITTEN BY:

Michael Ruth
Geologist

Andy
Civil Engineer

REVIEWED BY:

Donald J. Mullis, P.G.
Hydrogeologist
Project Manager

Offices throughout the U.S., Canada and Overseas

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND ZONING VARIANCE - W/S of Liberty Road, 166' E of Sedgewood Road (Lot 2, Subdivision of Sun-Mar Company Property) 2nd Election District 2nd Councilmanic District KMK Partnership - Petitioner

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a special exception to establish a used motor vehicle outdoor sales area in combination with sales office and repair garage on the subject property, pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), and variances from Section 238.2 of the B.C.Z.R. to permit a rear yard building setback of 7 feet in lieu of the required 30 feet and from Section 238.4 of the B.C.Z.R. to permit a vehicle display setback from the front building setback line of 24 feet in lieu of the maximum permitted 15 feet, as more particularly described on Petitioner's Exhibits 1 and 2.

The Petitioner, by Kenneth M. Katz, General Partner, appeared, testified and was represented by E. Scott Moore, Esquire. Also appearing on behalf of the Petitioner was George E. Gavrellis, Land Planning Consultant with Daft-McCone-Walker, Inc. Appearing and testifying as Protestants in the matter were Larry J. Smith, Judith Berger, Vice President of the Lochearn Improvement Association and the Liberty Road Community Council, and Ella White Campbell, President, Liberty Road Community Council, Inc.

Testimony indicated that the subject property, known as Lot 2 of the Subdivision of the Sun-Mar Company Property, consists of a gross area of 0.71 acres zoned B.R.-C.S.A. and is improved with a vacant one-story building. Petitioner has owned the subject property since January 1990.

MEMORANDUM

TO: ALPERT, J., PRESIDING; BISHOP AND SALMON, JJ.
FROM: LESLIE D. GRADET, CLERK
DATE: July 25, 1995
RE: People's Counsel for Baltimore County et al. vs. County Line, Inc. No. 1845, September Term, 1994 Scheduled for argument before this panel on Tuesday, September 5, 1995 in Courtroom No. 2.

By Order dated February 7, 1995, counsel's Joint Motion as to Oversized Exhibits was granted. Attached for your information find a copy of the Motion, this Court's Order, and the oversized exhibit.

LDG:ls

Attachments

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, et al. v. COUNTY LINE, INC.

No. 1845, September Term, 1994

JOINT MOTION AS TO OVERSIZED EXHIBITS

Peter Max Zimmerman, People's Counsel, and Carole S. DeMilio, Deputy People's Counsel, on behalf of themselves, and William Obrecht and Ray E. Staggars, Appellants, and Newton A. Williams, Nolan, Plumhoff & Williams, and Harry L. Chase, on behalf of County Line, Inc., Appellee, jointly respectfully offer this Motion Concerning Oversized Exhibits, for the Court's consideration.

1. That this case involves an appeal from the Decision and Order of the Circuit Court for Baltimore County, (Turnbull, J.), reversing the County Board of Appeal's and granting a requested special exception for a used car lot at a former, closed Exxon station under remediation, on Liberty Road at Flannery Lane in the Woodlawn section of Baltimore County.

2. That the parties are presently working on, through counsel, a Joint Record Extract, pursuant to Rule 8-501 of the Maryland Rules.

3. That there are a number of exhibits which are of blueprint size, including, but not only, Petitioner's Exhibit 1 the Plat To Accompany Special Exception Petition, which is particularly important to the understanding of the case. That this Plat to Accompany Special Exception if reduced will not be legible in adequate detail, particularly as to the typed notes and lettering, which is also very important to the Court's understanding of this Appeal.

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

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commercial artery." It has a five lanes, with two lanes going in a northwesterly direction toward the Baltimore Beltway (Rt. 695), two lanes going southeasterly toward Baltimore City, and a middle turn lane. The property is a corner lot, fronting for 156 feet on Venetian Road on the northwest and on Flannery Lane on the southeast side. Opposite the site on Liberty Road is a closed service station (directly across), a tire store, a pawn shop, and an autobody shop. On the same side of the street as the subject property is an automobile window tinting company and a drycleaners, and across Venetian Road and to the northwest is a McDonald's restaurant. Immediately behind the property, fronting on Flannery Lane, is a Volvo repair and service garage with seven service bays. This facility takes up the entire distance between Flannery Lane and Venetian Road. It is partially enclosed by a stockade fence and acts as a buffer between County Line's property and residences located nearby.

Venetian Road is only approximately 400 feet in length and terminates in a dead end. Attractive single-family residences line Venetian Road behind the Volvo garage.

Flannery Lane is a two-way street that intersects Liberty Road. It is frequently used by persons in the residential community of Robin Hill, which is located southwest of the property. Robin Hill was developed in the 1950s with single-family detached homes and zoned primarily D.R. 5.5 ("density residential 5.5"). Flannery Lane also serves as the gateway to traffic heading into the center of Woodlawn. Immediately behind the Volvo service garage and on the same side of Flannery Lane as the subject property are a row of single-family residential dwellings. Across

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Flannery Lane (southeast of the property) stands a row of townhouses.

The property is improved by a 2,250 square foot building. The building previously served as the office for a gas station. The property was used by the Exxon Corporation (Exxon) as a gasoline service station from the early 1950s to 1989. While in use as a service station, ground water at the site became contaminated by oil. The property was purchased by County Line in 1990. It is now under remediation to remove the ground water contamination. Because of this fact, the parking lot cannot be disturbed, nor can the building be removed until the remediation is concluded by Exxon. Remediation commenced in 1992 and will take between five to fifteen years to complete. While the property is "in remediation," the possible uses of the premises have been reduced.

The property sits lower than the residential and commercial uses situated behind it. The nearest residence to the property on Flannery Lane is approximately fifty feet; the nearest residence on Venetian Road is thirty to forty feet. Because of the topography and the presence of the Volvo facility, most of the subject property cannot be seen by even the closest neighboring residential property owner.

AREA ZONING

As already noted, Flannery Lane intersects Liberty Road at the line dividing Baltimore City and Baltimore County. Proceeding from the City in a northwesterly direction, the first three roadways to intersect Liberty Road are Flannery Lane, Venetian Road, and Tulsa Road, in that order. At the time of the hearing before the Board,

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on both sides of Liberty Road, for a depth of between approximately 150 and 200 feet, all properties between the City line and Tulsa Road were zoned Business Roadside (B.R.) and were in a C.W.S. (Convenience Neighborhood Shopping) "overlay district." At the time of the hearing, there were six commercial overlay districts in Baltimore County and one industrial district. Only two of these districts need here concern us, i.e., C.W.S. and the C.S.A. (Commercial, Supporting Area). The primary practical difference between a C.W.S. district and a C.S.A. district was that the owner of property in a C.W.S. district requires a special exception to operate a gasoline service station, while in a C.S.A. district an owner is allowed to operate a gas station as a right.

At the time of the Board's hearing, Section 259.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) provided that it was the council's intent that the C.W.S. district include, *inter alia*, less than 15 retail stores in total, no department or junior department stores, and that it serve a resident neighborhood population of approximately 10,000 persons or less. Section 259.2e of the B.C.Z.R. provided that a C.S.A. overlay district was to be applied to an area contiguous with commercial core districts¹ or commercial town center districts, which would service commercial areas for community or town center commercial cores.

After the Board had made its decision in this case, and on January 27, 1994, the C.W.S. and C.S.A. overlay districts, along with two other commercial districts, were combined into a new overlay district called the Automotive Service (A.S.) District. The

¹Commercial core districts are intended to support a community of 30,000 to 50,000 people.

5
Baltimore County Council, in enacting this legislative change (Bill No. 172-93), stated:

B. WHILE THE C.T., C.C.C., C.R. AND I.M. DISTRICTS HAVE SPECIAL USE AND BULK REGULATIONS WHICH MAKE EACH ONE UNIQUE, THE REMAINING DISTRICTS (C.W.S., C.S.A., C.S.-1 AND C.S.-2) DO NOT INCLUDE PROVISIONS WHICH MAKE THEM DISTINCT. AS A CONSEQUENCE, THE C.S.A., C.W.S., C.S.-1 AND C.S.-2 DISTRICTS ARE CONSOLIDATED INTO THE AUTOMOTIVE SERVICES (A.S.) DISTRICT.

As a result of the enactment of Bill No. 173-93, the subject property is presently zoned B.R. and is in an A.S. overlay district.

In Baltimore County the only place a used-car operation is permitted, separate from a new-car showroom, is in the B.R. zone with a special exception. B.R. is the heaviest type (most intense) commercial zone in Baltimore County.

The Woodlawn/Liberty Community Plan (the Plan) encompasses a 6.9 square mile area, and the subject property lies within that area. The Plan reads, in relevant part: "The following is a partial list of new uses that will not be permitted within the boundaries of the Woodlawn/Liberty Commercial Plan. Used-car dealers, maintenance garage, liquor stores, service stations, billboards, adult entertainment."

PROPOSED USE

The used car lot as proposed by County Line will have no banners or streamers, no signs, except for one on the side of the building, and will operate between the hours of 9:30 a.m. and 7:00 p.m. on weekdays (closing at 6:00 p.m. on Fridays), and between the hours of 10:00 a.m. and 4:00 p.m. on Saturdays. Although County

6
Line requested a special exception to use the site for routine maintenance, the only maintenance that County Line proposes to perform on the site will be for automobiles that it sells on the site. The existing curb cuts will be reduced from four to two; there will be a thirty-two foot entrance/exit onto Liberty Road and another onto Flannery Lane. There will be no exit or entry points onto Venetian Road from the site. Cars sold from the premises by County Line will be four to five years old and will be in the \$5,000 to \$7,000 price range.

QUESTION PRESENTED

Was the Board's denial of the special exception arbitrary and capricious?

A special exception is "a use which has been legislatively predetermined to be compatible with the uses permitted as of right in a particular zone, the condition being that a zoning body must, in each case, decide under specified statutory standards whether presumptive compatibility in fact exists." *Creswell v. Baltimore Aviation Service, Inc.*, 257 Md. 712, 719 (1970). An administrative body, when presented with a special exception request, must decide whether the neighboring properties and the general neighborhood would be adversely affected by the proposed use, and whether the use is in harmony with the general purpose and intent of the zoning

¹Appellant phrases the issue:

Whether the trial judge usurped the function of the Board of Appeals in reversing the Board's denial of the Special exception.

There is no need to answer this question because we use the same standard of review as the circuit court was required to use. Therefore, we need only determine whether the Board's action was proper. *Board of County Comm'rs. v. Holbrook*, 314 Md. 210, 218 (1988).

7
plan. *Montgomery County v. Marlands Club, Inc.*, 202 Md. 279, 287 (1953). The seminal case on the law of special exceptions is *Schultz v. Pritts*, 291 Md. 1 (1981).

Schultz, *supra*, and its progeny dictate that the standard the zoning authority must apply in determining whether the requested special exception should be denied is "whether there are facts and circumstances that show that the particular use proposed at that particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Sharp v. Howard County Board*, 98 Md. App. 57, 79-80 (1993).

II. STANDARD OF REVIEW

The standard of review to be here applied is "whether a reasoning mind reasonably could have reached the factual conclusion the [Board] reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for [the Board's] judgment." *People's Counsel v. Mangione*, 85 Md. Md. 738, 750 (1991) (quoting *Board of County Commissioners v. Holbrook*, 314 Md. 210, 218 (1988)). We noted in *Mangione*, *supra*, 85 Md. App. at 750 n.9, that this test may alternatively be termed the substantial evidence test: "[S]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion." If the evidence makes the question of harm or disturbance fairly debatable, the matter is one for the Board to decide and should not be second-guessed by an appellate court. *Holbrook*, *supra*, 314 Md. at 218; *Mangione*, *supra*, 85 Md. App. at 750-51. See also *Schultz*, *supra*, 291 Md. at 11.

8
Under the B.R. zone, a special exception may be allowed only so long as the use complies with the ten requirements set forth in Section 502.1 of the B.C.Z.R. County Line indisputably met seven of those requirements. Three requirements are at issue. The relevant three requirements are set forth in Section 502.1 a, b., and g, and in context, read:

502.1--Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- Be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein;
- Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations....

A. Consideration of the C.W.S. Overlay District

The Board found that it "is the last of these requirements [(i.e., Section 502.1(g))] that provides the greatest obstacle to [us] in granting the special exception." In regard to the C.W.S. overlay district, the Board found that:

- The majority of County Line's business (if the special exception were granted) would be "repeat customers" who would come "from [Mr. Parsons's] other two sites located on Reisterstown Road, which is outside the community."
- The C.W.S. overlay district is [designed] to serve a smaller community than that which would be served by the proposed used-car lot.

- The proposed used-car lot would "attract people from well beyond the neighborhood shopping district with a resident neighborhood population of approximately 10,000 people or less."
- The proposed used-car lot "would be contrary to the spirit and intent of the C.W.S. overlay district."

In regard to the C.W.S. overlay zoning, the Board observed:

Even though B.R. zoning would permit the proposed use, on this particular site the County Council saw fit to overlay a C.W.S. district. Section 259.2 of the BCZR contains a statement of the legislative intent for districts, which is entitled Commercial, Neighborhood Shopping, is intended to include, among other things, less than 15 retail stores in total, no department or junior department stores, and to serve a resident neighborhood population of approximately 10,000 persons or less. This should be compared to a C.S.A. district, found in Section 259.2E, which is entitled Commercial, Supporting Area, which allows such districts to be applied to an area contiguous with commercial core districts or commercial town center districts, which will service commercial areas for community or town commercial cores, and overlay the basic zones of B.L., B.M., B.R. and/or N.L. ...

It is clear that the Board's denial of County Line's special exception request was based, in substantial part, on the fact that the property was in a C.W.S. overlay district rather than a C.S.A. district.¹ If the law had not changed since the Board's decision,

¹Several witnesses who appeared before the Board were questioned in regard to the C.W.S./C.S.A. distinction. For example, David Green, was one of appellants' most important witnesses. He testified as an expert community planning specialist with the Baltimore County Office of Planning and Zoning. On cross-examination, he testified as follows:

Q. And in light of the CMS overlay district, the category to which this property falls, do you think that a used car use is inconsistent with the zoning regulations?

A. I think it's inconsistent with the intent of the CMS district that has been placed in a BR zone.

(continued...)

4. That the parties understand that in comparable cases the Court has allowed such material to be furnished to the Court in a quantity less than the fifteen (15) required copies in the Joint Record Extract, and in a non-reduced, separate filing.

5. That the parties hereto respectfully ask the Court to allow the separate filing of full size copies of the Petition to Accompany Special Exception, Petitioner's Exhibit 1 before the Board of Appeals, and would respectfully suggest that four full size copies be filed, an additional copy for the record in the matter, namely three full size copies for the assigned panel.

6. That the Appellant's brief is due February 15, 1995, pursuant to the briefing schedule and Rule 8-502, and thus, the parties hereto must submit the Joint Record Extract at that time pursuant to Rule 8-501.

7. Thus, the parties hereto would respectfully ask as aforesaid that the aforesaid Plat To Accompany Special Exception be separately submitted in a quantity of four full sized copies, be separately numbered, and be allowed to be referred to in the parties' briefs and arguments, as if incorporated in full in reduced size in the Joint Record Extract.

Respectfully submitted,

Peter Max Zimnapman
Peter Max Zimnapman, Esquire
People's Counsel

Carole S. DeMilio
Carole S. DeMilio, Esquire
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204
887-2188
Appellant and Attorney for
Appellants

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

-2-

Newton A. Williams
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Nolan, Plumhoff & Williams, Chtd.
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210 W. Pennsylvania Avenue
Towson, Maryland 21204
823-7800

Harry L. Chase
Harry L. Chase, Esquire
1190 W. Northern Parkway
Suite 124
Baltimore, Maryland 21210
433-4100

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

8820C/NAW

-3-

PEOPLE'S COUNSEL FOR COURT OF SPECIAL APPEALS
BALTIMORE COUNTY, et al. OF MARYLAND
v.
COUNTY LINE, INC.
No. 1845, September Term, 1994 *

ORDER

UPON the foregoing Joint Motion As To Oversized Exhibits it is this 1st day of February, 1995, by the Court of Special Appeals,

ORDERED, that the foregoing Motion, be and it is hereby granted, that Petitioner's Exhibit One, a blue print sized Plat to Accompany Special Exception be separately submitted, not as a part of the Joint Record Extract, in a quantity of four (4) full sized copies, be separately numbered, and be allowed to be referred to in the parties' briefs and arguments, as if incorporated in full in reduced size in the Joint Record Extract.

Alvin M. Miller
CHIEF JUDGE

8820C(4)

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

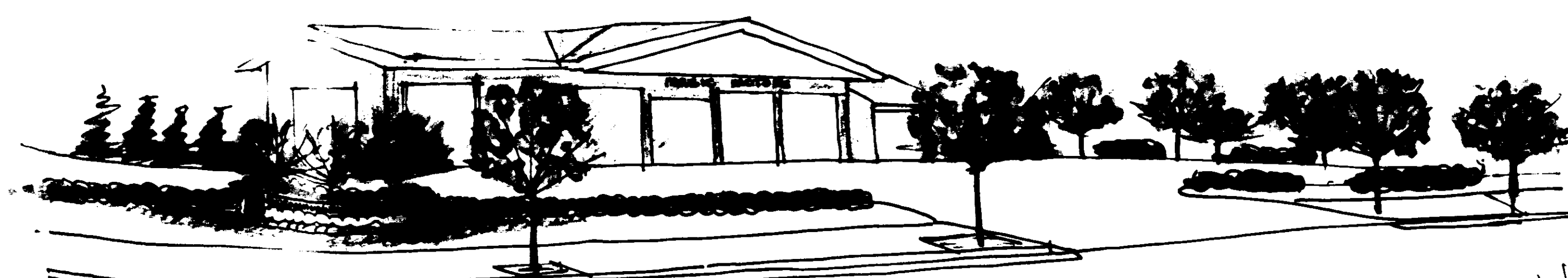
WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
Suite 305
TOWSON, MD 21204
301-494-8931



ADJACENT LAND USE
VOLVO REPAIR GARAGE
WEST OF SITE



Z.C. Plat #6

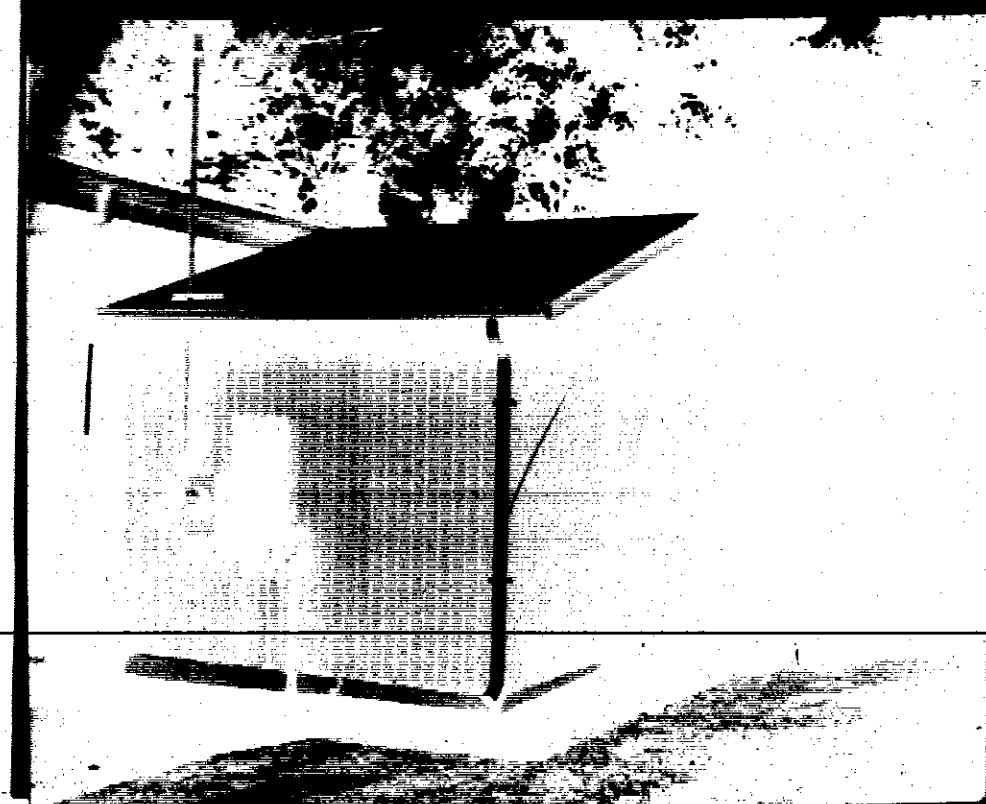
County Line, Inc. 93-CV-10476

Both Sites Leave a Lot to
be desired in the AREA
of Community Awareness open
Shown through pride in appearance
and upkeep of property.

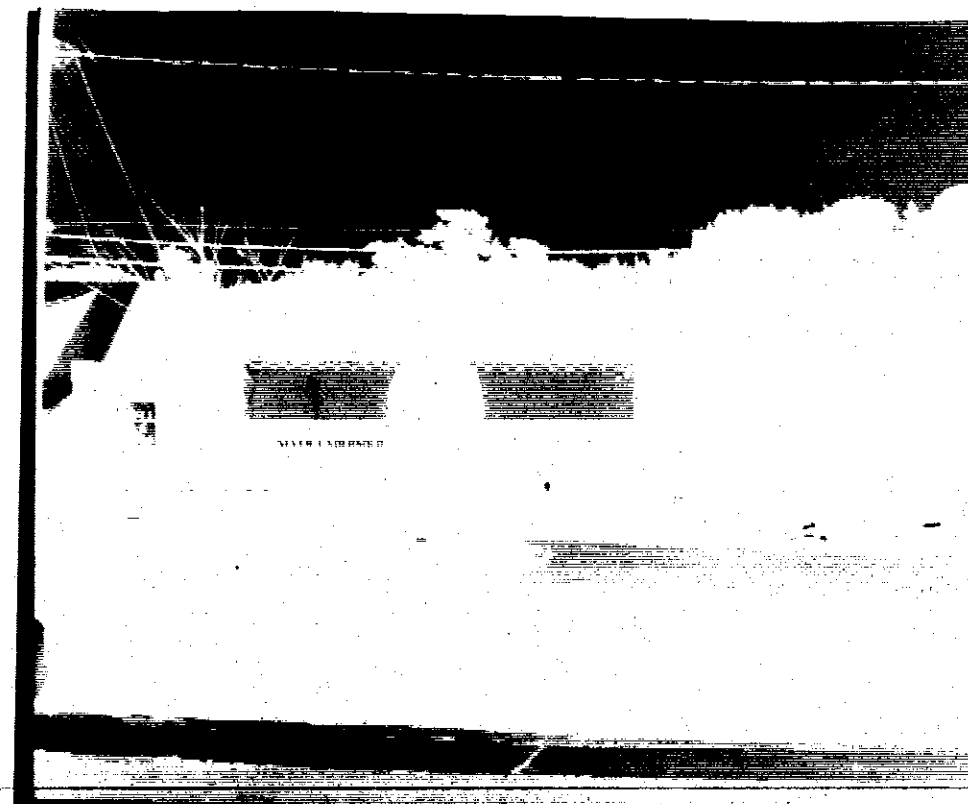
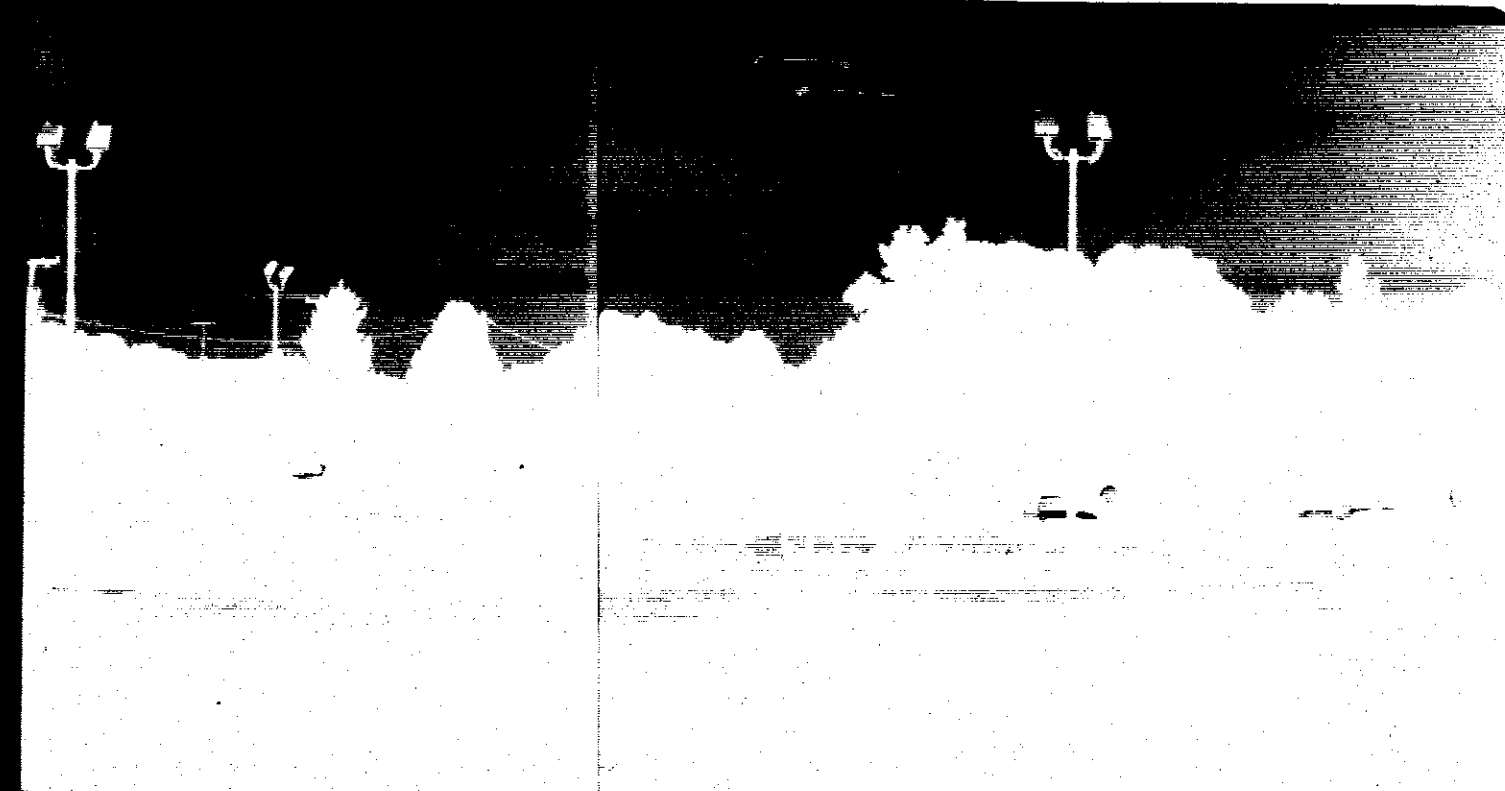
Photographs of the present sites
occupied by the Parsons (both sides
of the street) at their Reisterstown
Road Locations 6100 and 6101

Photographs of the Proposed Site
at Liberty Road & Flannery Lane





A. Subject site, 5905 Liberty Rd.
Elion
B. Remediation Shed.
Case No 93-276-X

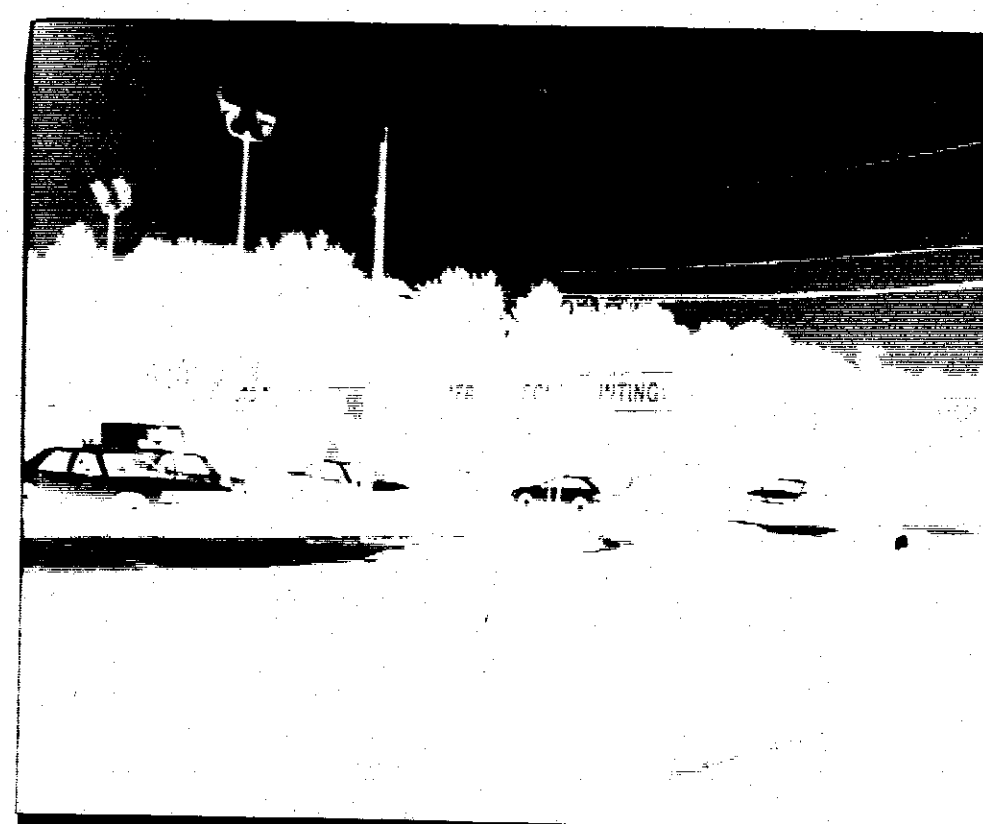


C. Mr. Ture opp. site
on NE 1/5 Liberty Rd.

D.
Closed
Swivel
Station on
N/E side
Opp. Site



E. Body Shop on NE 1/5
of Liberty Rd. -
across from
side



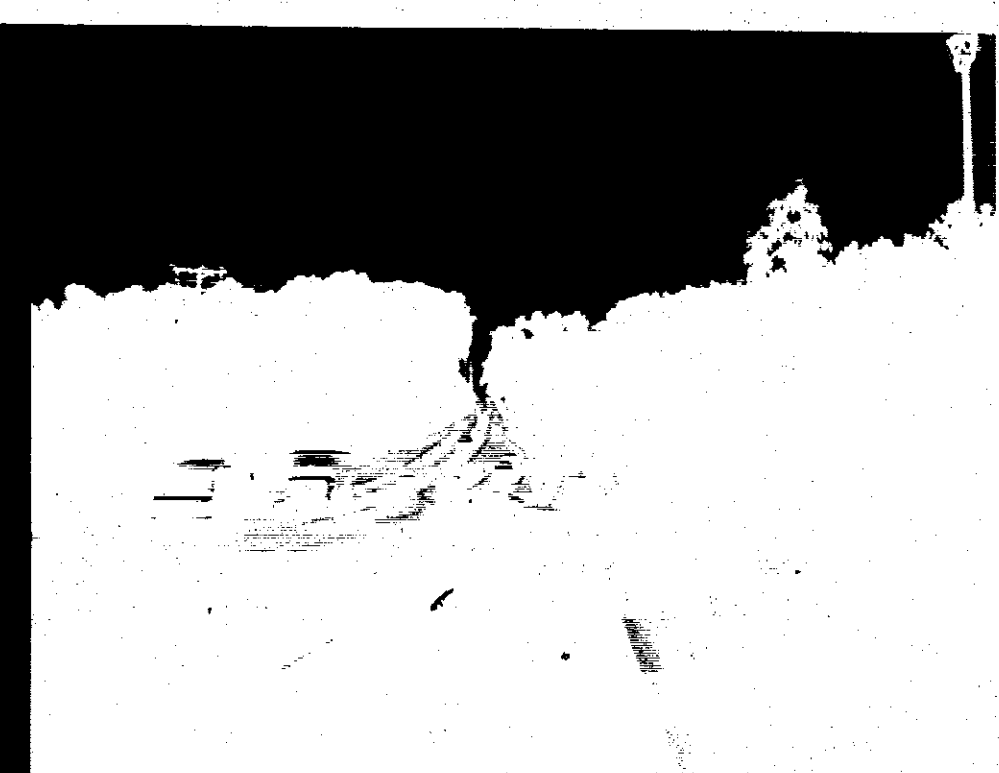
F. Corner of Liberty Rd. +
Vinton Rd. -
auto Tinting Glass.
opp. Site



G. Looking NW on Liberty Rd.
from site at Vinton Rd.



H. Vacant site at City Line
Opp. Property

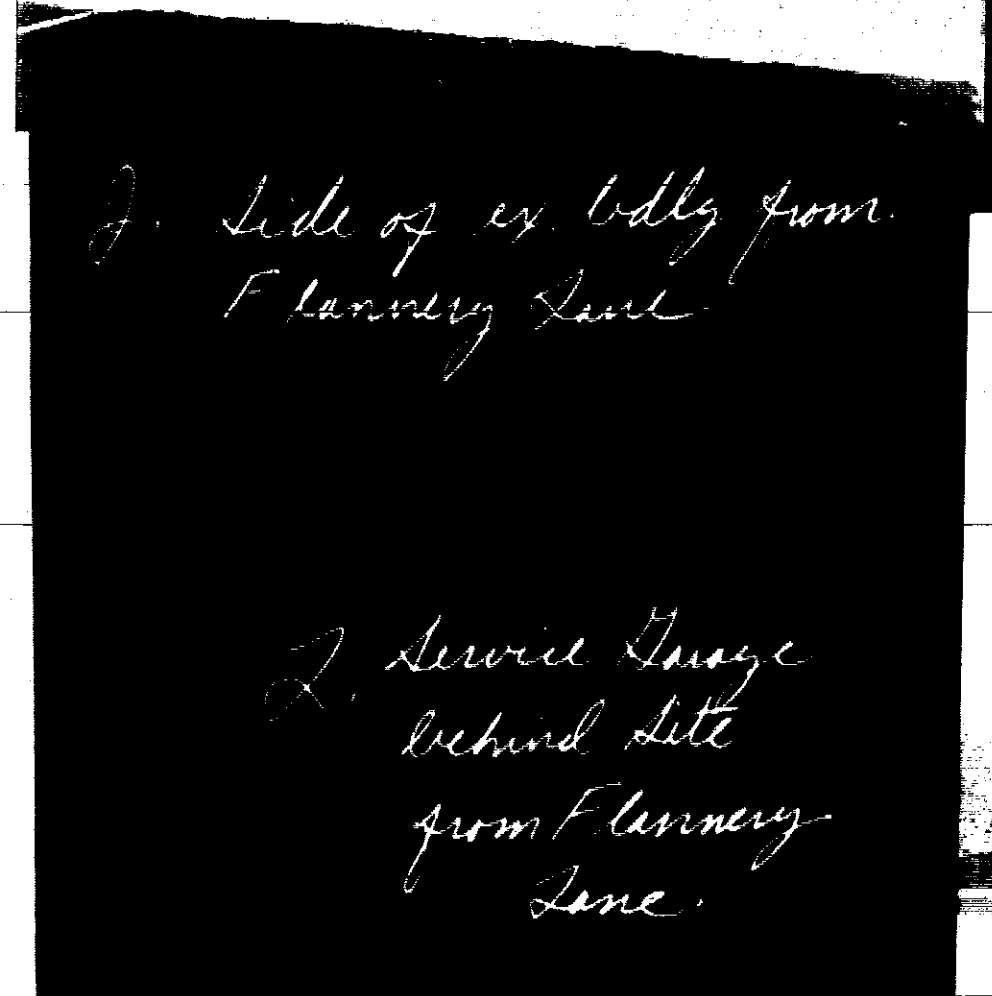


I. Looking SE on Liberty
Rd into City - at
site



J. Side of ex body from
Flannery Lane

K.
R. P.M.
Motors in
near of
site



L. Service Garage
behind site
from Flannery
Lane



M. Front door of 5905
Liberty Rd. - Glass
Excluded by sign



N. Interior of 5905 Liberty Rd. -
Swivel Station and Body
Shop

WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
Suite 305
TOWSON, MD 21204
301-494-8931

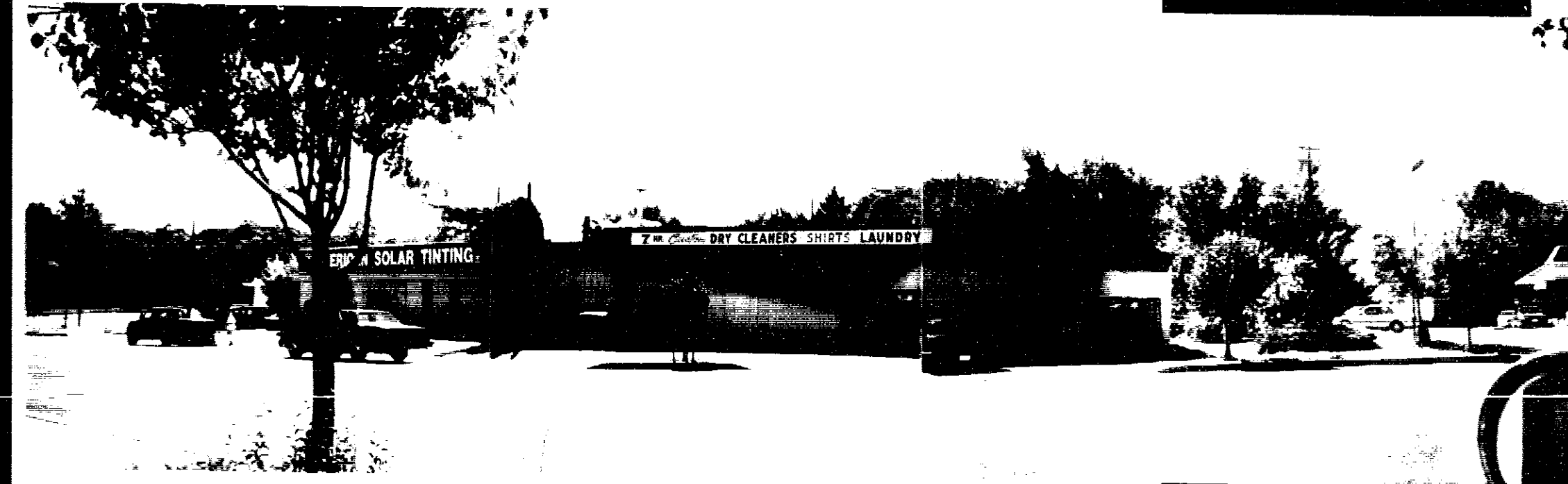


ADJACENT COMMERCIAL LAND USES
EAST SIDE, LIBERTY ROAD

WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
Suite 305
TOWSON, MD 21204
301-494-8931



ADJACENT COMMERCIAL LAND USES
NORTH OF SITE
WEST SIDE, LIBERTY ROAD

WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
Suite 305
TOWSON, MD 21204
301-494-8931



ADJACENT LAND USE
McDONALD'S RESTAURANT
WEST SIDE, LIBERTY ROAD

WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
Suite 305
TOWSON, MD 21204
301-494-8931



EXISTING VOLVO SERVICE GARAGE VIEW FROM FLANNERY LANE



WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
Suite 305
TOWSON, MD 21204
301-494-8931



AREA BEHIND BUILDING SHOWING RELATIONSHIP
BETWEEN SITE AND ADJACENT SERVICE GARAGE

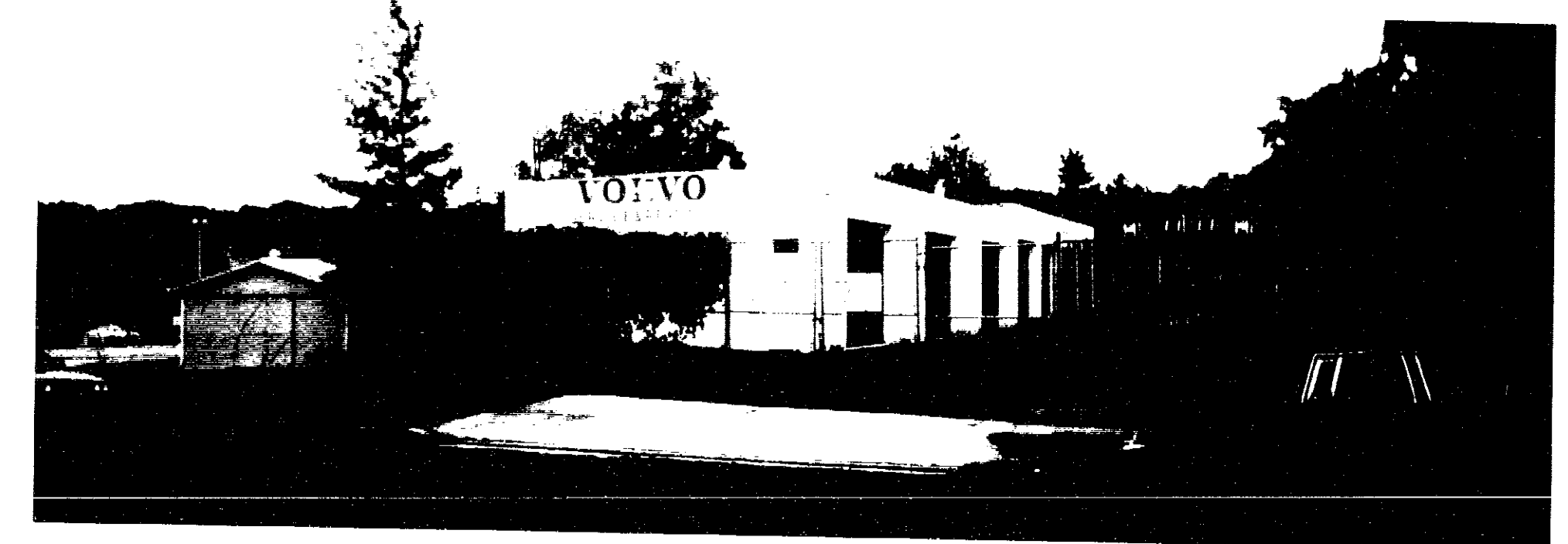
WILLIAM MONK, INC.

LAND USE PLANNING • ENVIRONMENTAL PLANNING • ZONING

CAMPBELL BUILDING
100 W. PENNSYLVANIA AVENUE
Suite 305
TOWSON, MD 21204
301-494-8931



VIEW LOOKING TOWARDS SITE FROM
NEAREST RESIDENCE ON FLANNERY LANE



ALLAM VINTAGE



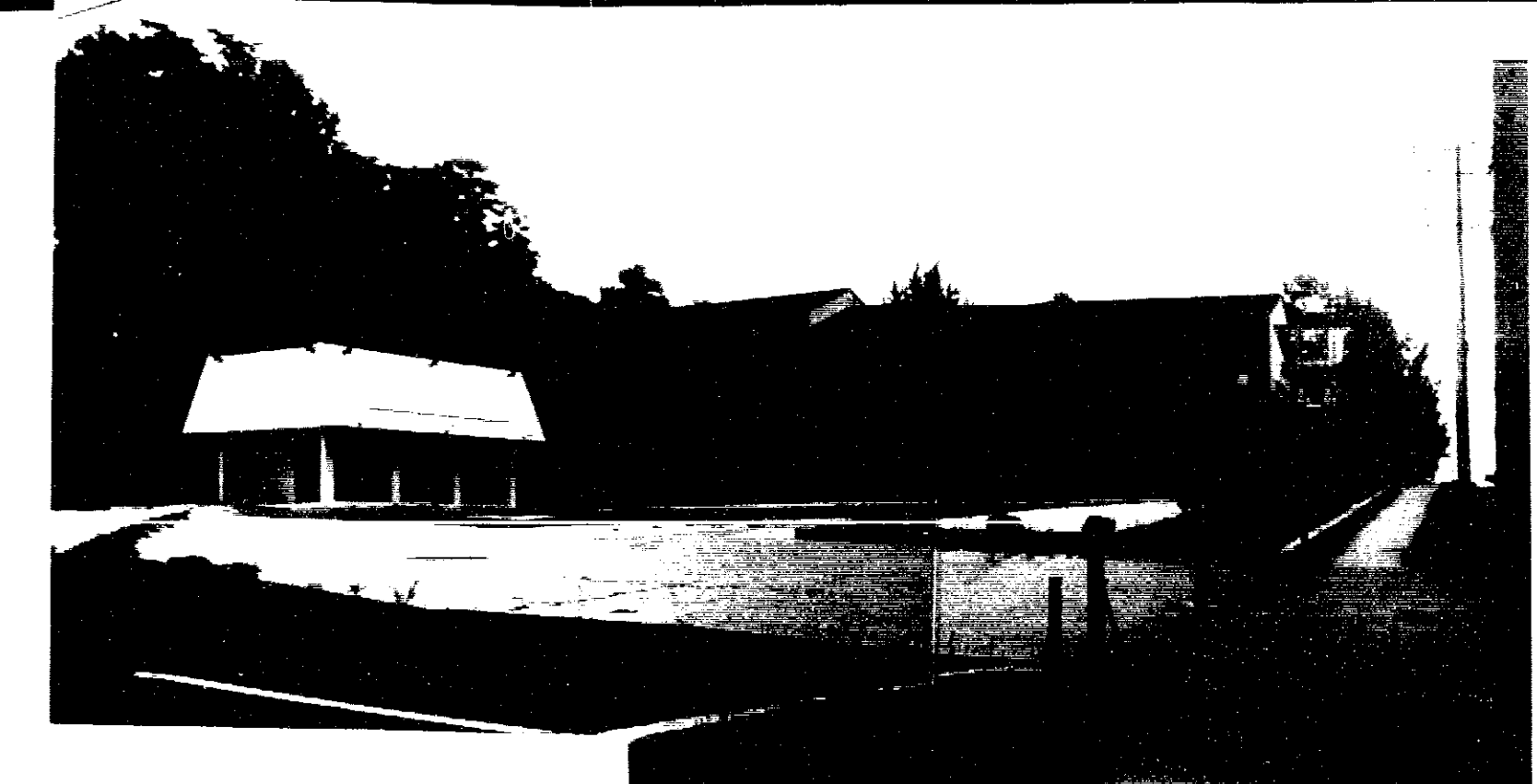
EXISTING VOLVO SERVICE GARAGE VIEW FROM FLANNERY LANE



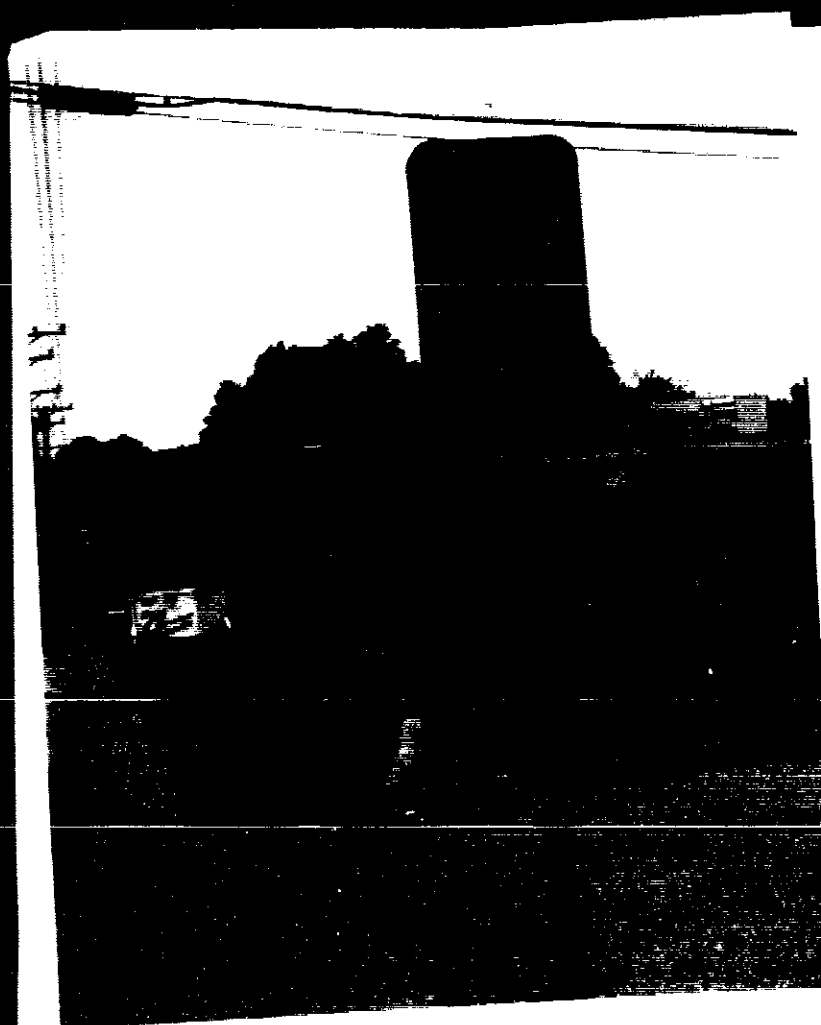
G. Site on NE/S of Liberty Rd.
Granted for used cars
in Case No. 92-220-XA

Parsons - County Line Ave. B. apartment buildings
to rear of same.
Case No 93-276-X.

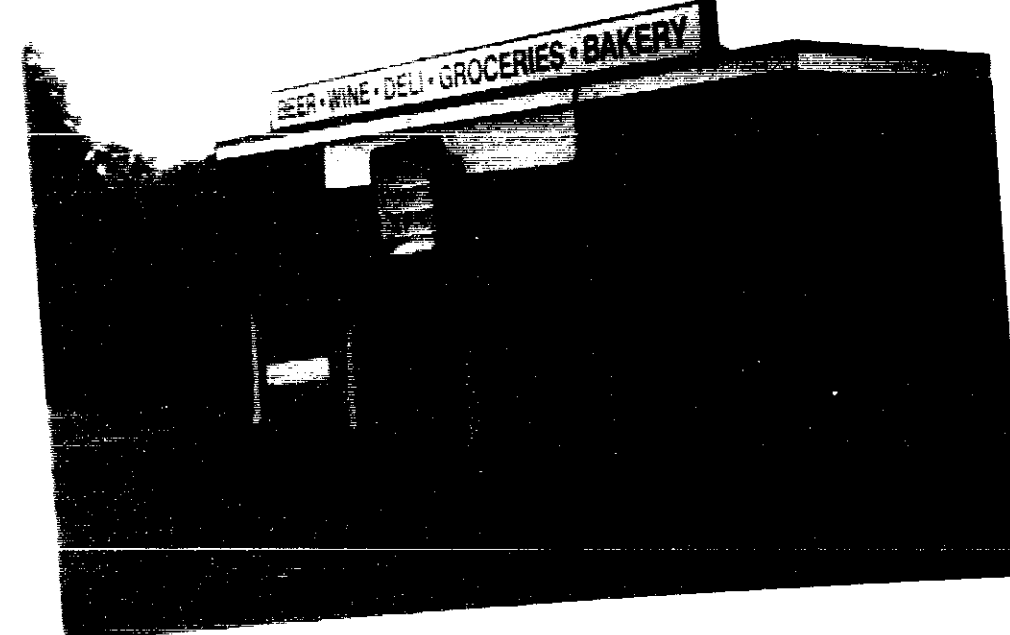
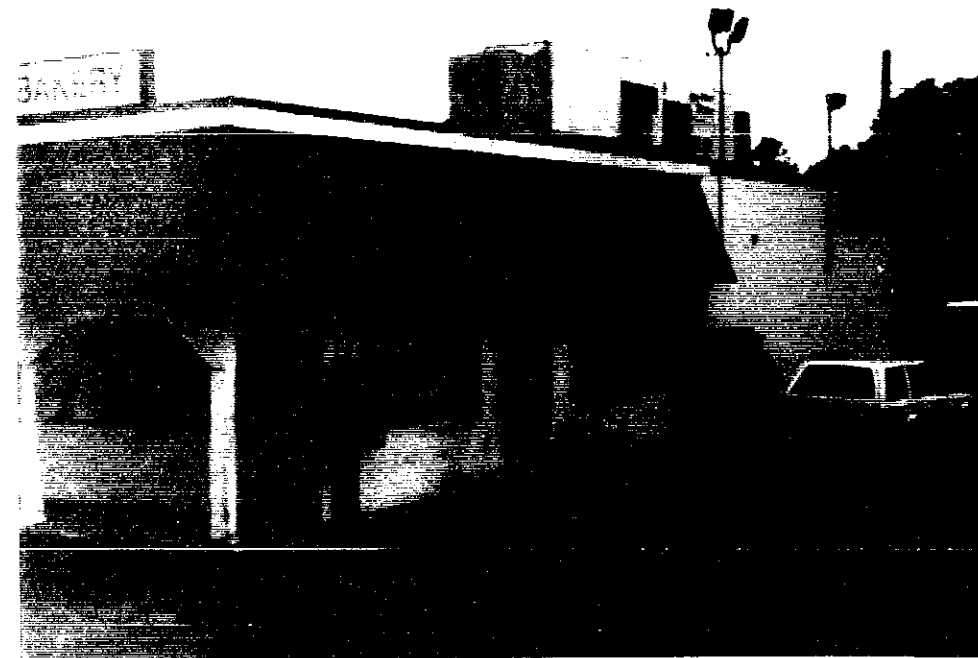
Pictures of Case No 92-220-XA.



C. Site in 6600 Block Liberty Rd. -
note apto. to
South



D & E. - Convenience Store next
to 6600 Block Site - Auto World



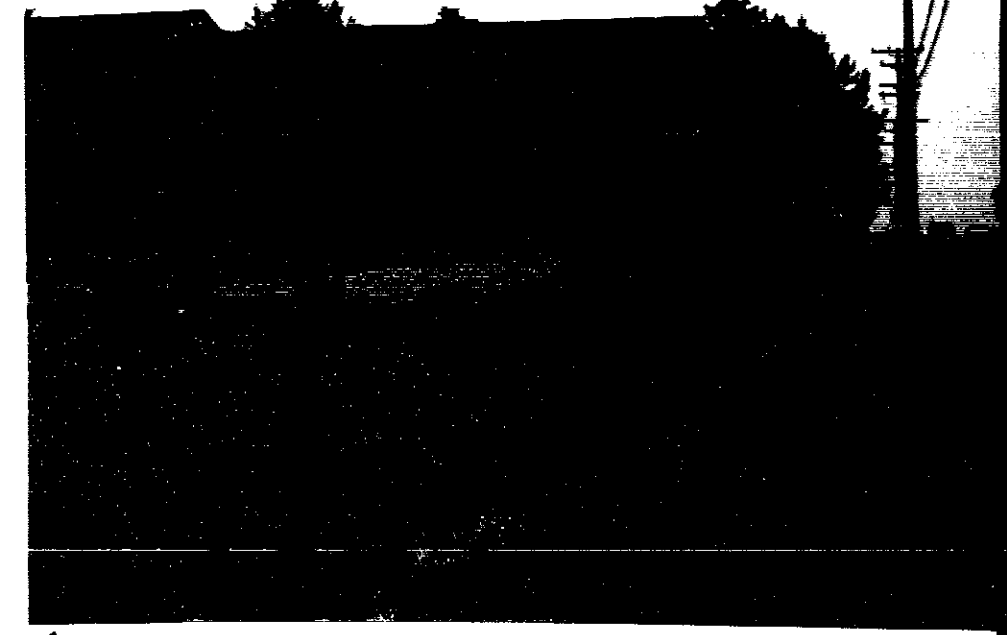
F. Convenience store next
to 6600 Block, Auto World.



H. Md. National Bank. - Opp. 6600 Block.
Site - note houses.



I. NE/C of Auto World Site
- apto. in rear.



J. S/S of Auto World site -
adjoining apto.

69-221-ASPH

PETITION FOR ZONING VARIANCE
FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSION OF BALTIMORE COUNTY

I, the undersigned, owner of the property shown in Baltimore County and which is described in the description attached hereto, and make a petition for a variance from Section 405 of the Zoning Ordinance of Baltimore County, Maryland, to permit a rear yard setback of 10 feet instead of the required 30 feet.

My first request is for an expansion of the rear yard setback of 10 feet instead of the required 30 feet.

My second request is for an expansion of the rear yard setback of 10 feet instead of the required 30 feet.

Property is to be posted and advertised as prescribed by Zoning Regulations. I agree to pay expenses of above hearing, including posting, advertising, and other costs of this petition, and I agree to pay expenses of above hearing, including posting, advertising, and other costs of this petition.

John H. H. H.
Contact Person
Address: 1000 Liberty Road, Baltimore, Maryland 21201
Address: 1000 Liberty Road, Baltimore, Maryland 21201
Address: 1000 Liberty Road, Baltimore, Maryland 21201

ORDERED BY THE Zoning Commissioner of Baltimore County, this 11th day of April, 1969.

It is the order of the Zoning Commission of Baltimore County that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, and that the public hearing be held before the Zoning Commission of Baltimore County on April 16, 1969, at 10:00 A.M. in the County Office Building in Towson, Baltimore County, at the address of the subject property.

BALTIMORE COUNTY MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Ross, Zoning Commissioner, Date: April 12, 1969
FROM: George E. Gorman, Director of Planning

SUBJECT: Petition 69-221-ASPH, Baltimore side of Liberty Road between Flannery Lane and Venable Road. Petition for Variance to permit a rear yard setback of 10 feet instead of the required 30 feet, and to permit a rear yard setback of 10 feet instead of the required 30 feet.

2nd District
HEARING: Wednesday, April 16, 1969 (10:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition. We have not the proposed expansion of the rear yard setback of 10 feet instead of the required 30 feet. We have not the proposed expansion of the rear yard setback of 10 feet instead of the required 30 feet.

GE Gorman

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSION OF BALTIMORE COUNTY

I, the undersigned, owner of the property shown in Baltimore County and which is described in the description attached hereto, and make a petition for a special hearing before the Zoning Commission of Baltimore County to determine whether or not the Zoning Commission and/or Zoning Hearing Board should approve the proposed expansion of the rear yard setback of 10 feet instead of the required 30 feet.

The attached description

Property is to be posted and advertised as prescribed by Zoning Regulations. I agree to pay expenses of above special hearing, including posting, advertising, and other costs of this petition, and I agree to pay expenses of above special hearing, including posting, advertising, and other costs of this petition.

John H. H. H.
Contact Person
Address: 1000 Liberty Road, Baltimore, Maryland 21201
Address: 1000 Liberty Road, Baltimore, Maryland 21201
Address: 1000 Liberty Road, Baltimore, Maryland 21201

ORDERED BY THE Zoning Commissioner of Baltimore County, this 11th day of April, 1969, that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, and that the public hearing be held before the Zoning Commission of Baltimore County on April 16, 1969, at 10:00 A.M. in the County Office Building in Towson, Baltimore County, at the address of the subject property.

Zoning Commission of Baltimore County

The Petition for Variance and Special Hearing for Expansion of Rear Yard Setback, Baltimore side of Liberty Road between Flannery Lane and Venable Road, is hereby filed for the Zoning Commission of Baltimore County.

The petitioners are requesting change in various zoning matters: A. The property on the southwest side of Liberty Road between Flannery Lane and Venable Road in the Second District of Baltimore County.

The first request is for an expansion of the rear yard setback of 10 feet instead of the required 30 feet.

It is the subject of the Zoning Commission's review. The proposed expansion would be a definite improvement and would allow the development to be more in keeping with the surrounding area.

The petitioners also requested the following variances: A. Sec. 23B-2. To permit a rear yard setback of 10 feet instead of the required 30 feet.

B. Sec. 405-4-B. To permit a rear yard setback of 10 feet instead of the required 30 feet.

An effect compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the petitioners and the requested variances would give relief without substantial injury to the public health, safety, or general welfare, and in accordance with Sec. 405-4-B, the above variances should be granted.

It is this 11th day of April, 1969, by the Zoning Commissioner of Baltimore County, ORDERED that the Bureau described property or area should expand from and after the date of this Order.

ORDERED BY THE Zoning Commissioner of Baltimore County, this 11th day of April, 1969.

BY: *John H. H. H.*
Zoning Commissioner

STATE OF MARYLAND
STATE ZONING COMMISSION

300 West Preston Street
Baltimore, Md. 21201

March 12, 1969

Mr. John G. Ross, Zoning Commissioner, County Office Building, Towson, Maryland 21204.
Attest: Mr. Officer L. Myers

Dear Mr. Ross:

This office has reviewed the subject petition and finds that the proposed expansion of the rear yard setback of 10 feet instead of the required 30 feet is a definite improvement and would allow the development to be more in keeping with the surrounding area.

The petitioners also requested the following variances: A. Sec. 23B-2. To permit a rear yard setback of 10 feet instead of the required 30 feet.

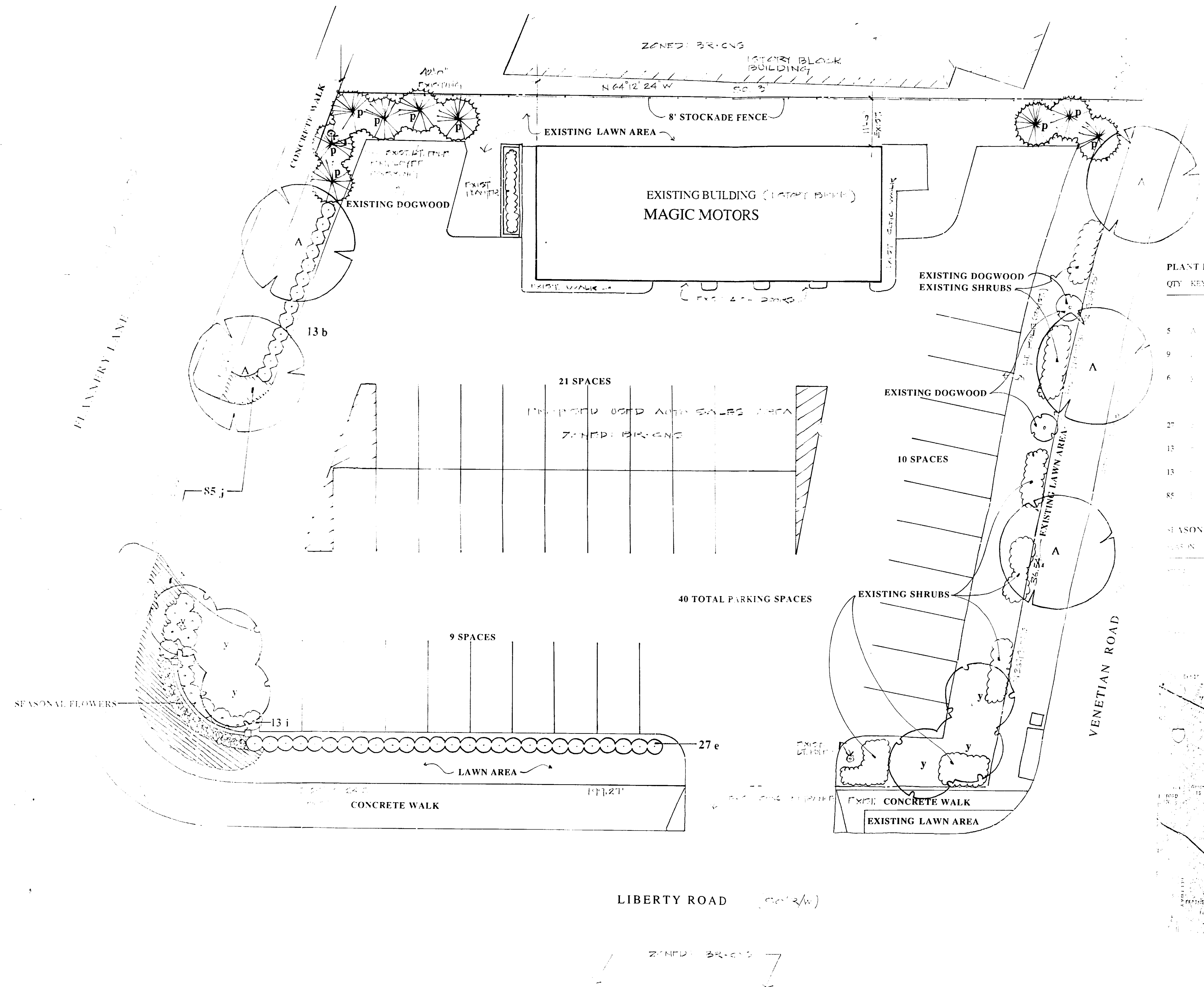
B. Sec. 405-4-B. To permit a rear yard setback of 10 feet instead of the required 30 feet.

An effect compliance with the Baltimore County Zoning Regulations would result in practical difficulty and unreasonable hardship upon the petitioners and the requested variances would give relief without substantial injury to the public health, safety, or general welfare, and in accordance with Sec. 405-4-B, the above variances should be granted.

It is this 11th day of April, 1969, by the Zoning Commissioner of Baltimore County, ORDERED that the Bureau described property or area should expand from and after the date of this Order.

Zoning Commission of Baltimore County

SITE PLAN NOTES
 ZONED BR-C-2
 100% LOT COVERAGE
 100% LOT COVERAGE
 100% LOT COVERAGE



PLANT LIST

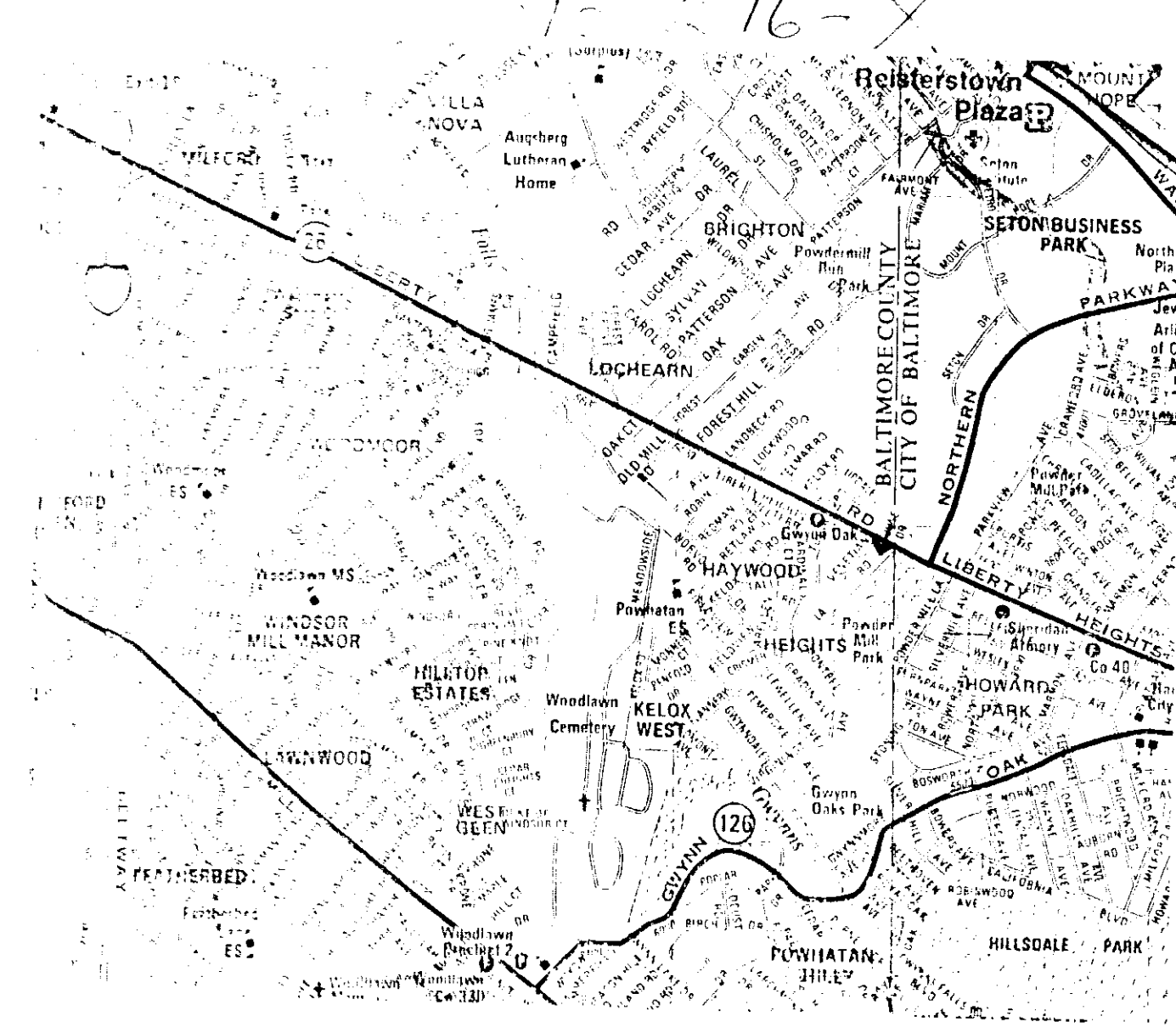
QTY	KEY	BOTANICAL COMMON NAME	SIZE	REMARKS
-----	-----	-----------------------	------	---------

TREES				
5	A	Adiantum Red Sunset	1 1/2" - 2" cal.	B & B Full
9		Red Sunset Maple	10 - 12' ht	
6		Prunella	6 - 7' ht.	B & B Full
6		Prunella	1 1/2 - 2" cal.	B & B Heavy
27		Prunella	15 - 18" ht.	3 & B Full
13		Prunella	18 - 24" ht.	B & B Full
13		Prunella	18 - 24" spd.	B & B Full
13		Prunella	30 - 36" ht.	B & B Full
85		Prunella	30 - 36" spd.	B & B Full
SHRUBS				
27		Prunella	15 - 18" ht.	3 & B Full
13		Prunella	18 - 24" ht.	B & B Full
13		Prunella	18 - 24" spd.	B & B Full
13		Prunella	30 - 36" ht.	B & B Full
85		Prunella	30 - 36" spd.	B & B Full

SEASONAL FLOWER SCHEDULE

QTY	KEY	FLOWER	SIZE	REMARKS
-----	-----	--------	------	---------

1		Flowers	Top size	8" o.c.
1		Flowers	6" pot	12" o.c.
1		Flowers	Flats	8" o.c.
1		Flowers	1 Gal. Cont.	24" o.c.
1		Flowers	1 Gal. Cont.	15" o.c.



LOCATION MAP
 MICROFILM

284

MAGIC MOTORS INC. 5905 LIBERTY ROAD BALTIMORE CO., MD.		LANDSCAPE SITE PLAN SCALE: 1" = 10'		DATE: 2/5/93		SHEET NUMBER: 1	
--	--	--	--	--------------	--	-----------------	--

10020 LITTLE PATUXENT PKWY, SUITE 400 COLUMBIA, MD 21044
 BALTO/301/995-0015 WASH/VA/301/995-0350 FAX: 301/995-0350
 GERSON P. POLUN ASSOCIATES
 ARCHITECTS PLANNERS
 DEVELOPMENT CONSULTANTS

SITE PLAN NOTES
 2ND DISTRICT
 2ND DISTRICT
 AREA: 0.635 AC.

MAY NEED TO LOCATE TREES
 OUTSIDE OF R/W.

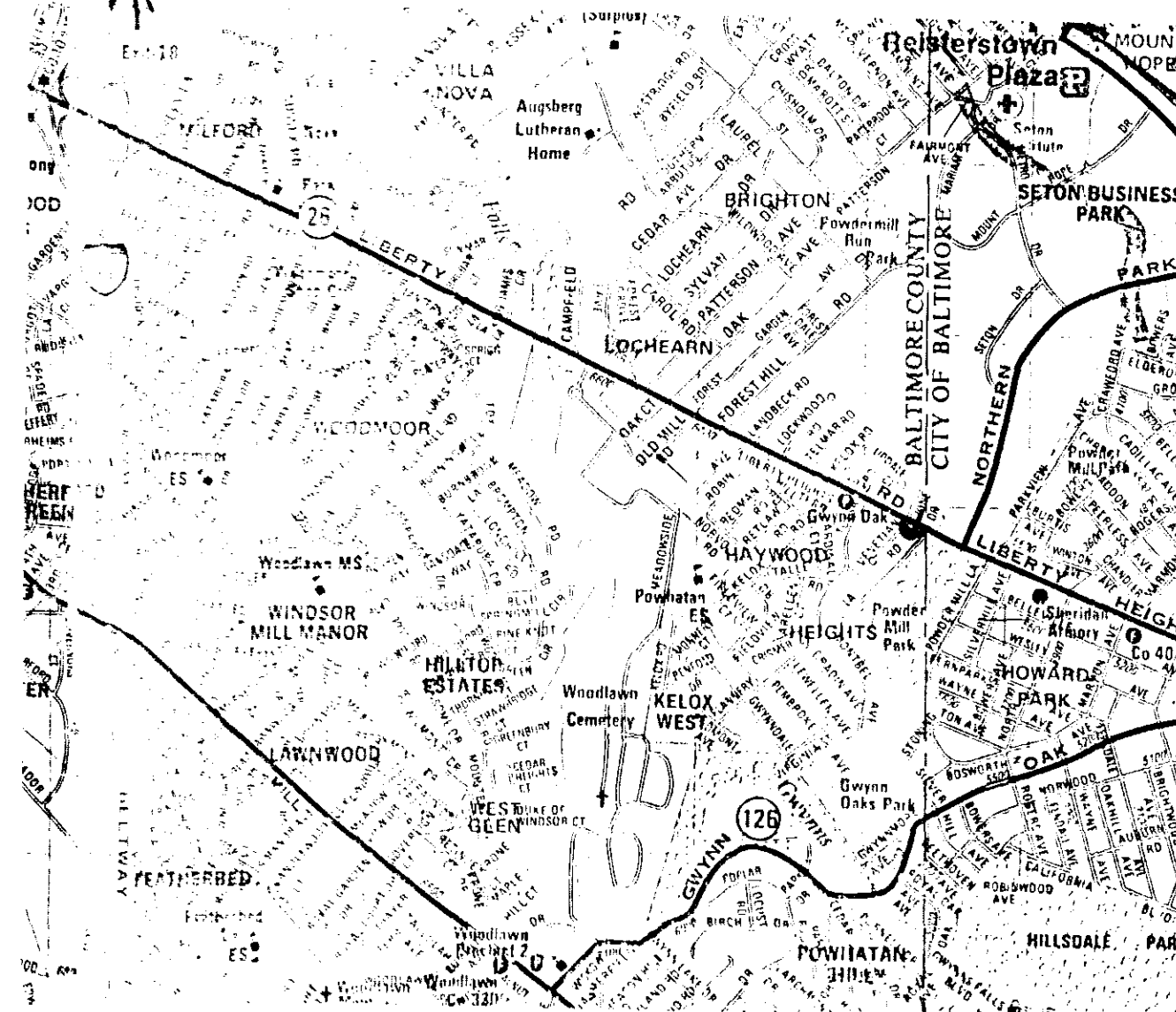
PLANT LIST

QTY	KEY	BOTANICAL	COMMON NAME	SIZE	REMARKS
TREES					
5	A	Acer rubrum 'Red Sunset'	Red Sunset Maple	2-2 1/2" cal.	B & B Full
9	i	Pinus strobus	Scots Pine	10-12' ht.	B & B Full
6	y	Prunus x yedoensis	Yoshino Cherry	6-7' ht.	B & B Full
6	y	Prunus x yedoensis	Yoshino Cherry	1 1/2-2" cal.	B & B Heavy
SHRUBS					
27	e	Eucalyptus kaulsdorffii	'Sieboldiana'	15-18" ht.	3 & B Full
13	b	Eucalyptus alata	'Compacta'	18-24" ht.	B & B Full
13	i	Ilex x merrillii	'Blue Princess'	18-24" ht.	B & B Full
85	i	Ilex x merrillii	'Blue Princess'	30-36" ht.	B & B Full
85	i	Juncus communis	'Sargentii'	12-15" spd.	Cont. Full

SEASONAL FLOWER SCHEDULE

SEASON	FLOWER	SIZE	REMARKS
Spring	Darwin Tulips (Pink)	Top size	8" o.c.
Summer	Geraniums (Red)	6" pot	12" o.c.
Autumn	Impatiens (Red/White)	Flats	8" o.c.
Fall	Crocus (Yellow)	1 Gal. Cont.	24" o.c.
Winter	Onion Cabbage (Purple/White)	1 Gal. Cont.	15" o.c.

LANDSCAPE COMMENTS ON PLAN



LOCATION MAP

MICROFILMED

284

ARCHITECTS • PLANNERS
 DEVELOPMENT • CONSULTANTS

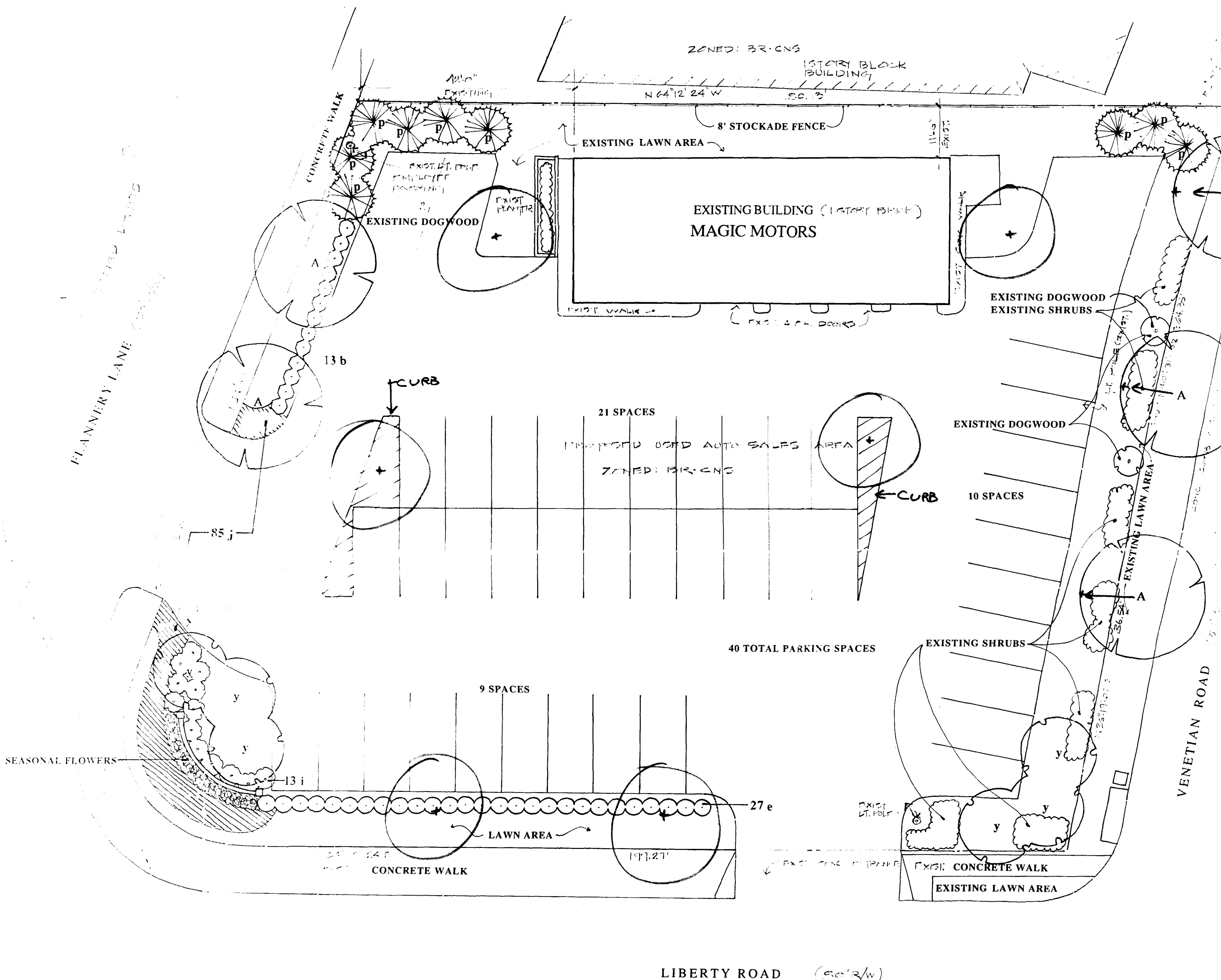
GERSON P. POJUN ASSOCIATES

10220 LITTLE PATUXENT PKWY, SUITE 400 COLUMBIA, MD 21044
 BALTO (301) 995-0015 WASHDC (202) 621-6020 FAX: (301) 995-0350

MAGIC MOTORS INC.
 5905 LIBERTY ROAD
 BALTIMORE CO., MD.

LANDSCAPE SITE PLAN
 SCALE: 1" = 10'

1



Road. From his testimony we find that the proposed use removes most of what one would find objectionable about the operation of a used car lot. He proposes to use no banners or streamers, no signs except for one on the side of the building, to operate between the hours of 9:30 a.m. and 7:00 p.m. on weekdays (closing at 6:00 p.m. on Fridays), and between the hours of 10:00 a.m. and 4:00 p.m. on Saturdays. Even though the Petitioner requested permission to use the site for routine maintenance, we understand that the only maintenance to be performed on the site would be on automobiles which Mr. Parsons proposed to sell from this site. The proposed landscaping and screening would go a long way toward making this site an attractive facility, and certainly would be a vast improvement over the existing abandoned service station. No doubt Mr. Parsons has invested considerable money and energy in acquiring and attempting to improve 5905 Liberty Road so as to remove it from being an eyesore to the community. While his efforts to date should be lauded, that alone cannot serve as a basis to approve the special exception requested. Although the proposed use as described by Mr. Parsons would result in a less intensive use of the site than other uses permitted by the B.R. zone, a factor which does not enter into those requirements found in Section 502.1, we find as a fact from Mr. Parson's testimony that the majority of his business comes from repeat customers. We infer from this that, although he will to some extent advertise, the majority of his customers will be repeat customers from his other two sites located on Reisterstown Road, which is outside the immediate community. One can only speculate as to whether or not, or to what extent, a

need exists within the immediate community for a business selling used cars in the price range of \$5,000 to \$7,000. However, it is clear from Mr. Parson's testimony that he reasonably expects a number of his customers will come from outside of the immediate community.

Even though B.R. zoning would permit the proposed use, on this particular site the County Council saw fit to overlay a C.N.S. district. Section 259.2 of the BCZR contains a statement of the legislative intent for districts, and in Section 259.2B provides that the C.N.S. district, which is entitled Commercial, Neighborhood Shopping, is intended to include, among other things, less than 15 retail stores in total, no department or junior department stores, and to serve a resident neighborhood population of approximately 10,000 persons or less. This should be compared to a C.S.A. district, found in Section 259.2E, which is entitled Commercial, Supporting Area, which allows such districts to be applied to an area contiguous with commercial core districts or commercial town center districts, which will service commercial areas for community or town center commercial cores, and overlie the basic zones of B.L., B.M., B.R. and/or M.L. We find from the testimony, and are persuaded by the opinion rendered by David Green of the Office of Planning & Zoning for Baltimore County, that the C.N.S. overlay district is to serve a smaller community than that which would be serviced by the proposed used car lot in question. We find as a fact that the proposed used car operation expects to, and in our judgement would, attract persons from well beyond the neighborhood shopping district with a resident neighborhood

population of approximately 10,000 persons or less. We find as a fact that the proposed used car lot at this location would be contrary to the spirit and intent of the C.N.S. overlay district. Additionally, on May 17, 1993, the Baltimore County Council adopted the Woodlawn/Liberty Community Plan. Included in that Plan is a partial list of new uses that will not be permitted within the boundaries of the Woodlawn/Liberty Community Plan, which encompasses the subject site. A used car dealer is one of the non-permitted new uses. The effect of the action by the County Council is that the Woodlawn/Liberty Community Plan was on that date adopted and incorporated in the Baltimore County Master Plan, to be used as a guide for the development of the Woodlawn/Liberty area of the County. While this Plan is advisory in nature, it clearly indicates the intent and spirit of the zoning regulations to be applied to proposed uses.

Well-settled law provides that a special exception use is presumptively valid, absent the existence of particular facts or circumstances which negate the presumption. The case of Schultz v. Pritts, 291 Md. 1, 432 A2d 1319 (1981) provides that a special exception should be denied only if the granting of same would have an adverse effect of unique and/or different character than the usual impact that would result if the special exception use were approved elsewhere in the zone. The subject site sits at the intersection of Flannery Lane and Liberty Road, which is not controlled by an electric traffic control device. It sits but a short distance from the end of Northern Parkway, which is a major cross-city thoroughfare. From the testimony, we find that the

the highway department has erected a sign along Northern Parkway that indicates that if someone intends to use Flannery Lane they should not take the continuous right turn lane access from Northern Parkway into Liberty Road but rather should go to the corner of Northern Parkway and at the light, when permitted to do so, turn left so that one may enter the innermost lane of Liberty Road in a northwesterly direction toward Flannery Lane. From the testimony of numerous residents in the area and from those facts, we find that there tends to be congestion at the intersection of Flannery Lane and Liberty Road which is unique in that Flannery Lane serves as the gateway not only to the residential neighborhood of single-family homes existing to the north side of Flannery Lane which crosses the Robin Hill community, but also serves as the gateway to traffic generally headed to the center of Woodlawn. To permit the used car lot and the potential additional traffic which would most likely not be familiar with the traffic patterns already existing in the vicinity of Liberty Road, Flannery Lane and Northern Parkway would, in our opinion, tend to create congestion in the roads, streets or alleys therein. Furthermore, even though Mr. Parsons testified that he rarely, if ever, would permit someone to take a test drive before buying an automobile from one of his businesses, we find it unlikely that he would be able to adequately control that practice. The most likely route for someone to test drive an automobile would be to exit the subject site and to travel either along Venetian Road or Flannery Lane into the neighborhood of the Robin Hill Community Association, which we believe would add additional congestion in the roads and streets. The unique

location of the subject site along the connecting road of Flannery Lane from Liberty Road would not be found elsewhere within the B.R. zone or even the B.R.-C.N.S. zone immediately surrounding the proposed site.

Finally, we received important testimony concerning the proximity and the effect on the residences near 5905 Liberty Road. The evidence conflicts as to whether or not all or a substantial portion of the site can be viewed while standing on the ground upon which the residences are built, particularly in view of the elevation differences and the existence of the Volvo repair shop between the residences and the abandoned gas station. However, the opportunity to view the proposed used car lot is not limited to a momentary, stationary view from someone's property. Clearly, all the residents who live in this community and who access Flannery Lane as a cross-connecting road to their destination would see the used car lot both as they ingress and egress the neighborhood. The evidence conflicts regarding the effect that the proposed use might have on the value of residential dwellings in the vicinity. The evidence is conjecture, at best, although a realistic fear that, due to the number of thefts and incidents of vandalism which Mr. Parsons admits occur at his present lots, such activity might befall the proposed site and its surrounding neighborhood, should the special exception be granted. All of these things on the whole are in our judgement more likely than not to be detrimental to the health, safety and general welfare of the locality involved. All of these things taken together and considered do not persuade us that the proposed use constitutes the type of neighborhood shopping

establishment which the Baltimore County zoning regulations envisage for the subject site, and, accordingly, we will deny the Petition for Special Exception.

ORDER

IT IS THEREFORE this 31 day of Oct, 1993 by the County Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception seeking the approval of a used car sales area and routine maintenance operation for the property known as 5905 Liberty Road be and the same is hereby DENIED.

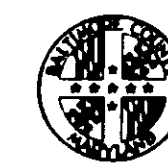
Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William Clark
C. William Clark, Acting Chairman

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

Robert O. Schuetz
Robert O. Schuetz



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

October 21, 1993

Harry L. Chase, Esquire
Suite 124
1190 W. Northern Parkway
Baltimore, MD 21210

RE: Case No. 93-276-X
County Line, Inc.

Dear Mr. Chase:

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

Very truly yours,

Kathleen C. Weidenhammer
Kathleen C. Weidenhammer
Administrative Assistant

encl.

cc: Mr. Barry Parsons, President
County Line, Inc.
Mrs. Emily Wolfson
Mrs. Judith Berger
Mr. E. Ray Staggers
Mr. Daniel Fredericks
Mr. Nathan Silver
People's Counsel for Baltimore County
P. David Fields
Lawrence F. Schmidt
Timothy M. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE THE COUNTY BOARD OF APPEALS
Intersection Liberty Rd. &
Venetian Rd. (5905 Liberty Rd.- : OF BALTIMORE COUNTY
Magic Motors), 2nd Election
Dist., 2nd Councilmanic Dist. : Zoning Case No. 93-276-X
COUNTY LINE, INC., Petitioner :

ENTRY OF APPEARANCE

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

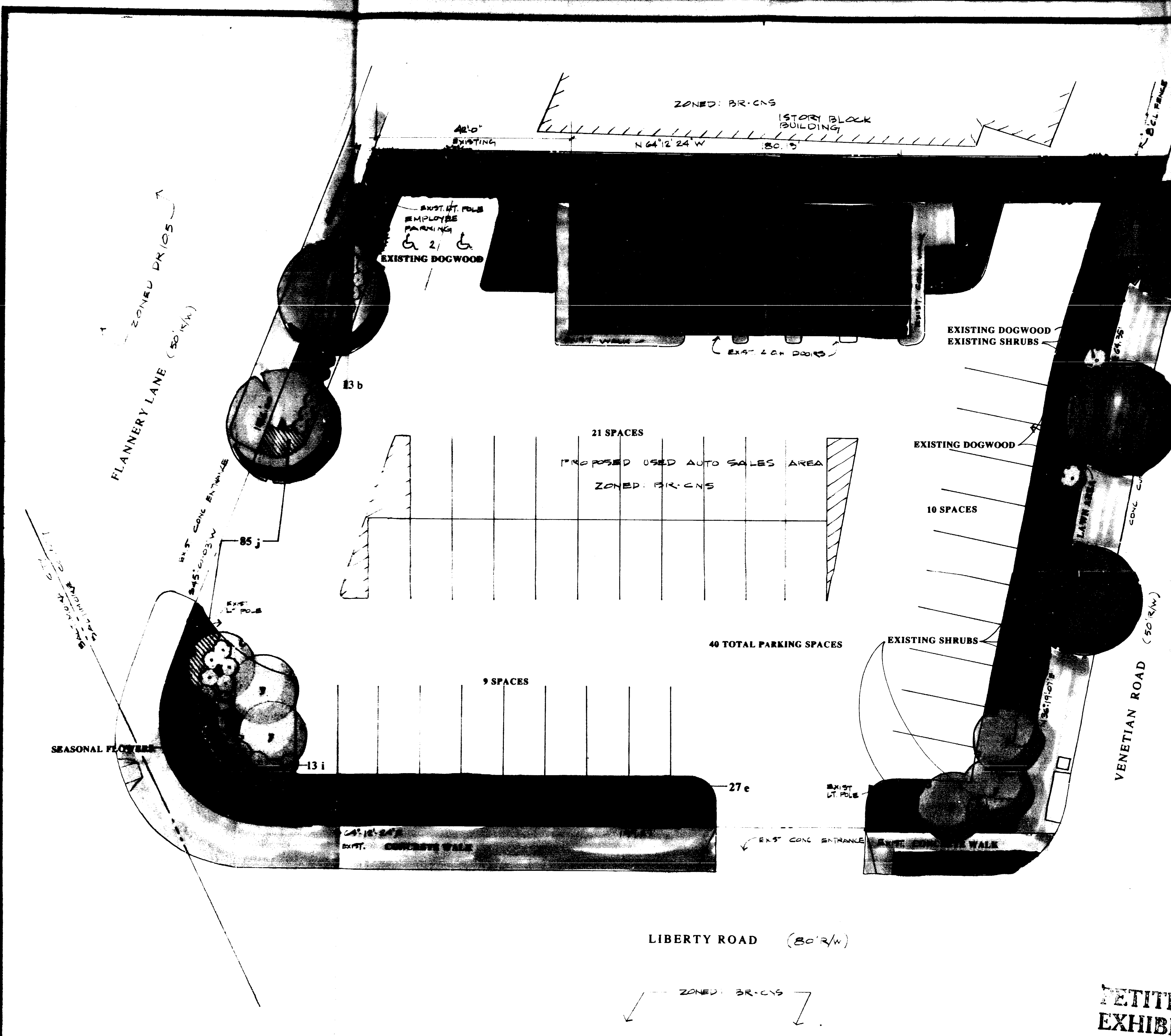
Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Desilio
Carole S. Desilio
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-2188

I HEREBY CERTIFY that on this 18th day of June, 1993, a copy of the foregoing Entry of Appearance was mailed to Harry L. Chase, Esquire, 1190 W. Northern Pkwy., Suite 124, Baltimore, MD 21210, Attorney for Petitioner; Mrs. Emily Wolfson, 8506 Church Lane, Randallstown, MD 21133; Mrs. Judith Berger, 3801 Lochearn Drive, Baltimore, MD 21207-6363; and Mr. E. Ray Staggers, 6 Crismers Court Rd., Baltimore, MD 21207, Protestants.

Peter Max Zimmerman
Peter Max Zimmerman

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COUNTY BOARD OF APPEALS
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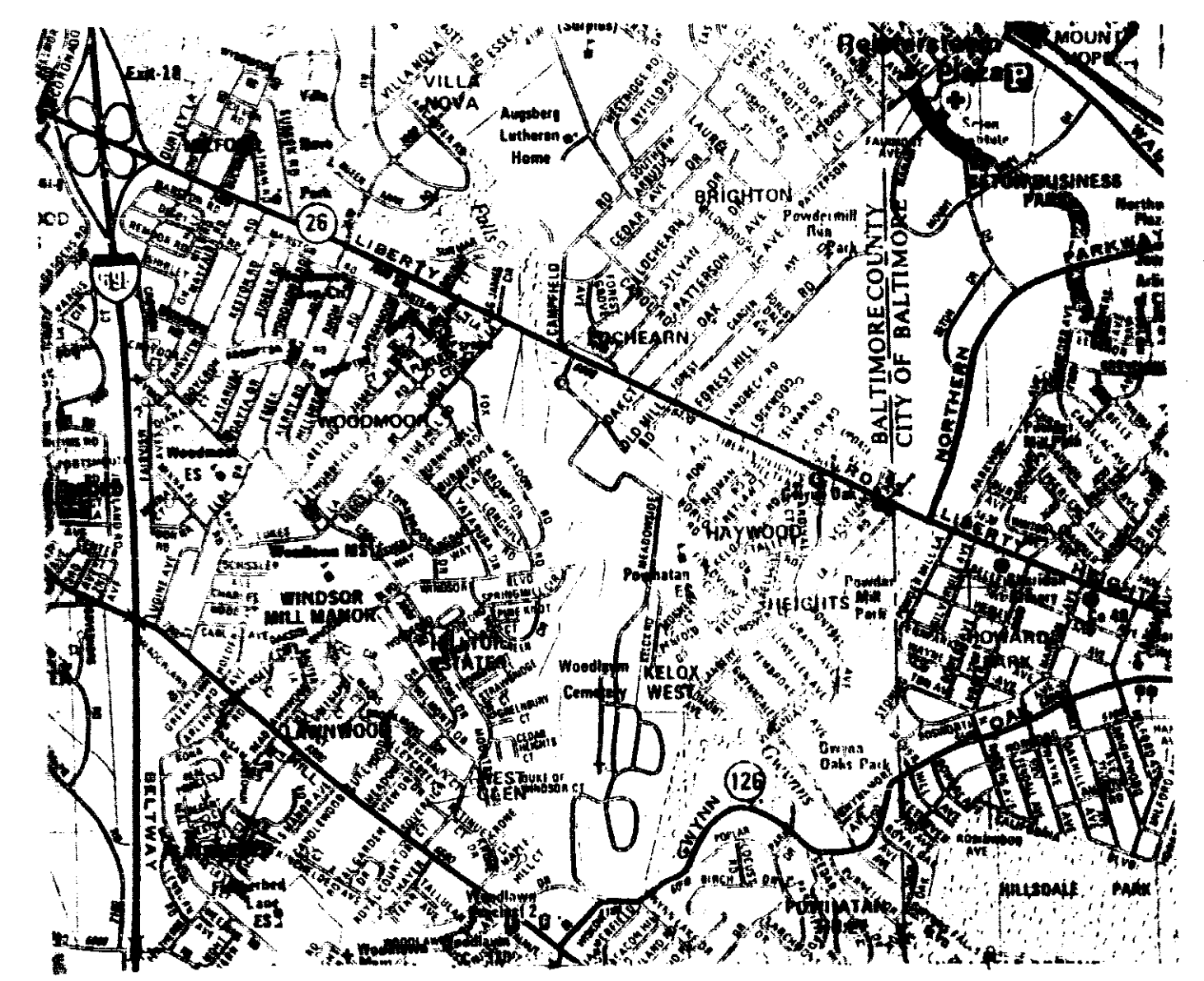
SITE PLAN NOTES
 PROPERTY ZONED: BR
 2ND ELECTION DISTRICT
 2ND COUNCIL DISTRICT
 AREA: 0.6357 AC.

PLANT LIST

QTY	KEY	BOTANICAL / COMMON NAME	SIZE	REMARKS
TREES				
5	A	Acer rubrum 'Red Sunset'	1 1/2" - 2" cal.	B & B Full
		Red Sunset Maple	10 - 12' ht.	
9	F	Pinus strobus	6 - 7' ht.	B & B Full
		Semi-Sheared White Pine		
6	Y	Prunus x yedoensis	1 1/2 - 2" cal.	B & B Heavy
		Yoshino Cherry	8 - 10' ht.	
SHRUBS				
27	e	Euonymus kiautschovicus 'Sieboldiana'	15 - 18" ht.	3 & B Full
		Siebold Euonymus	15 - 18" spd.	
13	b	Euonymus alata 'Compacta'	18 - 24" ht.	B & B Full
		Dwarf Burning Bush	18 - 24" spd.	
13	i	Ilex X meserveae 'Blue Princess'	30 - 36" ht.	B & B Full
		Blue Princess Holly	30 - 36" spd.	
85	j	Juniperus chinensis 'Sargentii'	12 - 15" spd.	Cont. Full

SEASONAL FLOWER SCHEDULE

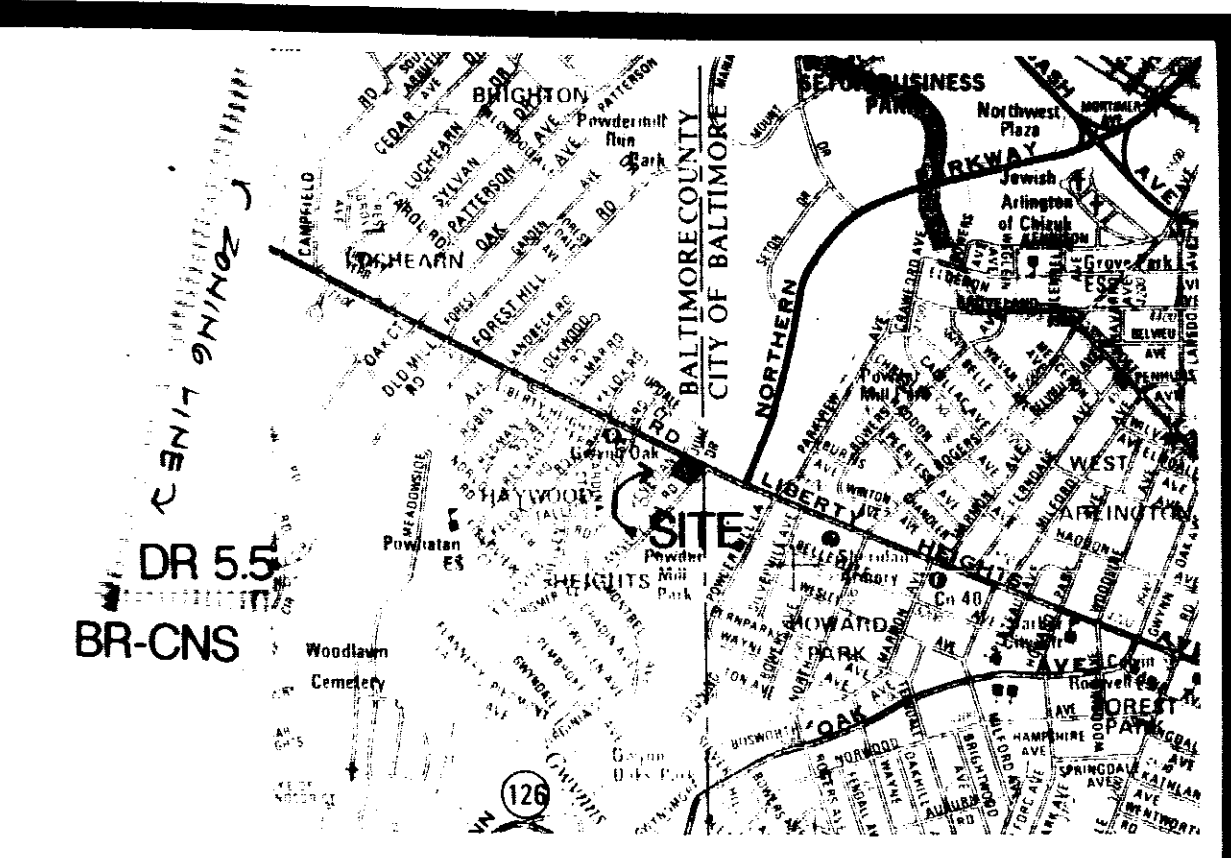
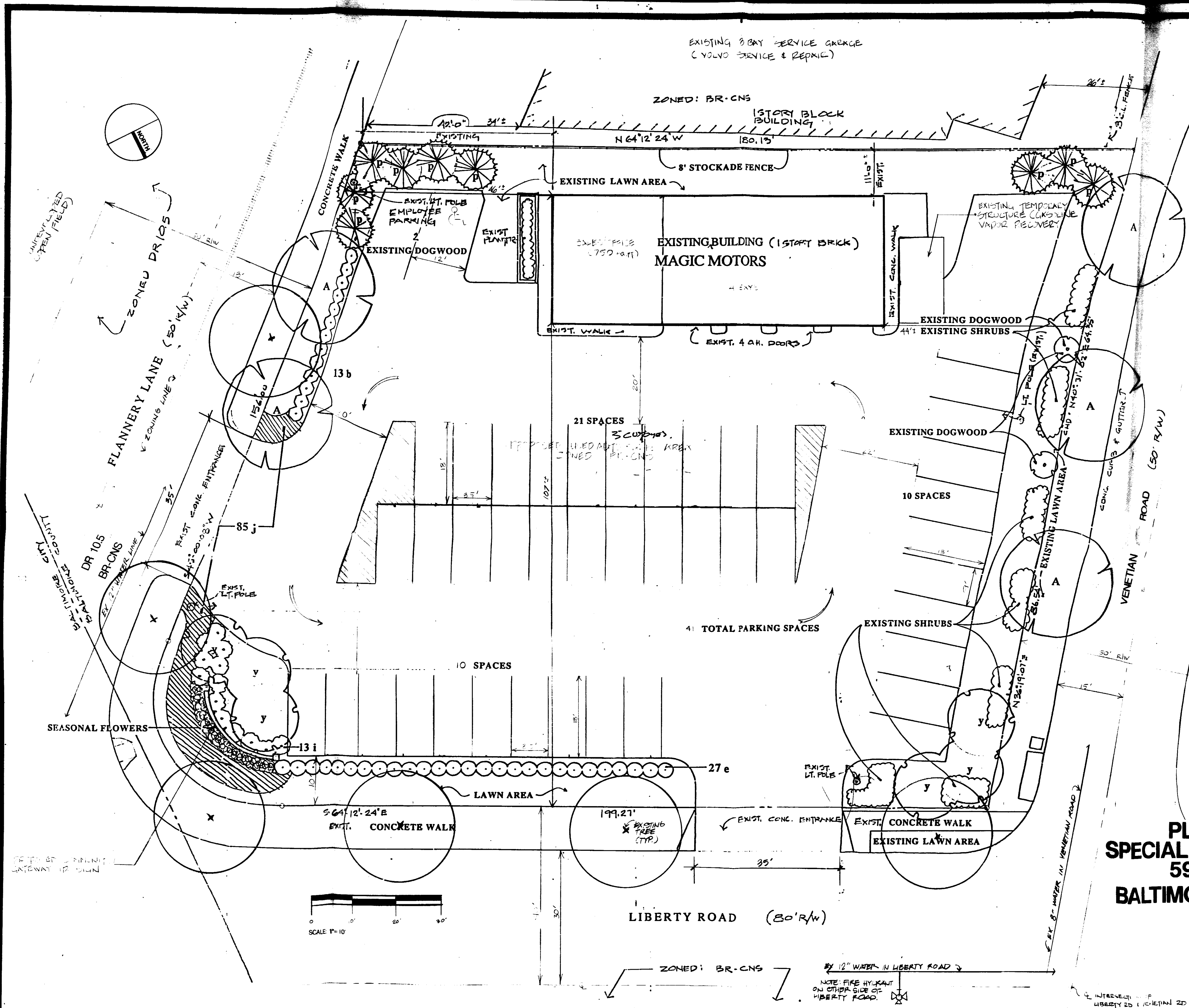
SEASON	FLOWER	SIZE	REMARKS
Spring	Darwin Tulips (Pink)	Top size	8" o.c.
Summer	Geraniums (Red)	6" pot	12" o.c.
	Impatiens (Red / White)	Flats	8" o.c.
Fall	Chrysanthemums (Yellow)	1 Gal. Cont.	24" o.c.
Winter	Orn. Cabbage (Purple / White)	1 Gal. Cont.	15" o.c.



PETITIONER'S EXHIBIT No. 1

LOCATION MAP
 SCALE 1" = 2000'

PROJECT NAME MAGIC MOTORS INC. 5905 LIBERTY ROAD BALTIMORE CO., MD.	SHEET TITLE LANDSCAPE SITE PLAN SCALE - 1" = 10'	DATE 2/29/93	SHEET NUMBER 1
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VICINITY MAP

1. ZONING: EXISTING - BR-CNS; PROPOSED - BR-CNS
2. LOT AREA: NET - 21,484 SQ. FT. (1/2) = .491 AC.; GROSS - 21,484 SQ. FT. (1/2) = .491 AC.
3. EXISTING USE: VACANT, WAS PREVIOUSLY USED AS A SERVICE STATION (1982)
4. PROPOSED USE: USED CAR SALES AND OFFICE, 4 DAY SERVICE GARAGE
5. BUILDING SETBACKS: (NO NEW CONSTRUCTION OR EXPANSION IS PROPOSED)
6. BUILDING AREA: 2,250 SQ. FT.
7. PARKING: REQUIRED - 1/2 DAY & 4 DAY - 12 SPACES; PROVIDED - 21 SPACES
8. UTILITIES: WATER - PUBLIC; SEWER - PUBLIC
9. VARIANCE: NONE
10. SPECIAL EXCEPTION: 93-276X, TO ALLOW A USED CAR SALES AREA AND BUILDING, RECONSTRUCTION, DATED MAY 19, 1993 BY ZONING COMMISSIONER
11. ELECTION DISTRICT: 2
12. COUNCILMANIC DISTRICT: 2
13. CENSUS TRACT: 4024.03
14. WATERED: 26
15. SUBDIVISION: 62
16. DEED REFERENCE: 4994/544
17. PROPERTY ACCOUNT NO.: 1400000121
18. TAX MAP: 18, GRID: 10, PARCELS: 502
19. FLOOR AREA RATIO: MAX. PERMITTED - 2.0; PROPOSED - .054
20. ADPTS: 0.001,000 SQ. FT. = 214.75
21. HEIGHT OF BUILDING: 1 STORY (14' 1/2')
22. MASS TRANSIT ADJUSTMENT: N/A
23. NO CRITICAL AREAS EXIST ON SITE
24. AMENITY OPEN SPACE: N/A
25. SIGNS: NO FREE STANDING SIGN(S) ARE PROPOSED, NO BANNERS
26. PREVIOUS COMMERCIAL PERMIT: NOT AVAILABLE
27. PREVIOUS ZONING HEARINGS:
 1. 89-221 ASH - TO EXPAND SERVICE STATION VARIANCE TO 10,000 SQ. FT. FROM 10,000 TO 10,000. LIGHTING POLE HEIGHT OF 30' IN LIEU OF THE REQUIRED 8' APPROVED 4/17/85.
 2. 1990-51 SPECIAL PERMIT TO CONSTRUCT GASOLINE SERVICE STATION APPROVED JANUARY 24, 1991.

**PLAT TO ACCOMPANY
SPECIAL EXCEPTION APPLICATION
5905 LIBERTY ROAD
BALTIMORE COUNTY, MARYLAND**

WILLIAM MONK, INC.
PLANNING • LANDSCAPE DESIGN
ENVIRONMENTAL RESOURCE MANAGEMENT
COURTHOUSE COMMONS
222 BOSLEY AVENUE, SUITE B.7
TOWSON, MARYLAND 21204
(410) 494-8931

MAGIC MOTORS INC.
5905 LIBERTY ROAD
BALTIMORE CO., MD.

(...continued) . . .

Q. And this is not an adaptable use?

A. No, because it's a CMS zone. Commercial Neighborhood Shopping. Neighborhood Shopping. People don't shop for cars every day. That's not the intent of Neighborhood Shopping.

Q. But you're not telling me -- you are in this business. I'm driving up Liberty Road -- you're not telling the Board that anybody outside of this business can tell the difference between a CSA district and a CMS district?

A. I doubt it seriously.

Q. So if I'm coming out of the city on Liberty Road, I'm not going to know if it's a CMS or CSA, or what it is, am I?

A. No, you're not. You won't know what a CMS or CSA is.

Q. If it was a CSA district, would your department be here in support of it?

MS. DEMILIO (PEOPLE'S COUNSEL): Objection.

THE CHAIRMAN: Overruled.

A. If it was a CSA district, I'm not sure.

. . .

Q. (THE CHAIRMAN) Mr. Green, I'm sorry it's getting late. Do Baltimore County zoning regulations allow for creation of a BR zone without a CMS overlay?

A. Yes.

Q. What was the effect of having a CMS overlay?

A. It's to orient that BR zone towards neighborhood-oriented uses.

Q. It's an advisory type designation; isn't that correct?

A. The wording in "the intent" of the CMS district as opposed to "the requirement."

Q. So it's not actually a requirement? It's not something from which a variance could be granted? It's not something from which a variance need be granted; is that correct?

A. A variance from a CMS district, I'm not sure --

Q. It's not like a use ordinance? It's not an absolute legal requirement that everything in this CMS (continued...)

this arguably might be an important consideration. We are, however, bound to review the Board's actions based on the law that exists when our decision is rendered. As Judge Hammond, for the Court, said in *Yorkdale v. Powell*, 237 Md. 121, 124 (1964):

Maryland consistently has followed the rule that "an appellate court is bound to decide a case according to existing laws, even though a judgment rendered by the court below should be reversed as a consequence," as Judge Markell, for the Court, repeated in *Women's Club v. State Tax Comm.*, 195 Md. 16, 19 (or, it may be noted, even when a judgment wrong when rendered is made right by the change in the law). See also for this proposition that a change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent, *Keller v. State*, 12 Md. 322; *Day v. Day*, 12 Md. 530; *Gordon v. Prince*, 175 Md. 688; *Cockburn v. Children's Society*, 185 Md. 97; and *Tudor Arms Apts. v. Shaffer*, 191 Md. 342.

The rule has been applied in zoning cases (citing cases).

The council gave no indication that it wished anything other than the usual rule to apply. Accordingly, there is now no basis to distinguish between properties that were once located in C.N.S. and C.S.A. districts. There is no provision in the legislation setting up the current A.S. overlay district that would support a

(...continued)

be commercial neighborhood shopping?

A. The intent, the reason for the CMS district -- the reason for the BR zoning decisions and CMS or CSA or CCC is to make it fit with the surrounding community.

Q. (MR. SCHULTZ) May I? Would you consider it a refinement of the BR zoning applicable to what you say is the surrounding area?

Q. Yes.

likely route for someone to test drive an automobile would be to exit the subject site and to travel either along Venetian Road or Flannery Lane into the neighborhood of the Robin Hill Community Association, which we believe would add additional congestion in the roads and streets.

From the evidence produced at the hearing, the Board could have properly inferred that at least some of County Line's likely customers might not be familiar with the intersection but there was no testimony that any motorist had been in the past or was likely in the future to be confused by the traffic pattern. The undisputed evidence was that a sign on Northern Parkway instructed motorists (who intended to make left turns onto Flannery Lane) how to make that maneuver. The confusion about this turn, at least as far as shown by the record, was resolved by the sign on Northern Parkway.

No witness testified that Venetian Road was likely to be used for a test drive. Moreover, there was no circumstantial evidence from which it could legitimately be inferred that customers were likely to test drive cars on Venetian Road. As previously noted, there are no curb cuts onto Venetian Road. To use Venetian Road for a test drive, a customer (unless he was willing to drive over a curb) would have to cross two lanes on Liberty Road, turn left (northwest), proceed a short distance, and then turn left again onto Venetian Road. Such a complicated maneuver cannot be considered likely, especially in view of the fact that Venetian Road dead-ends approximately 400 feet from its intersection with Liberty Road.

There were facts in the record from which it could be inferred that some prospective County Line customers would test drive cars

by exiting onto Flannery Road and turning right. If a motorist turns right, he or she would be going towards the residential area of Robin Hill and, it is reasonable to assume, might actually drive into that community. No witness testified, however, that the portion of Flannery Lane a motorist uses when he or she drives from County Line's property to Robin Hill is now congested or that test drives from the used-car lot would somehow "create congestion." Furthermore, it is important to note, County Line's special exception application was reviewed by the Baltimore County Traffic Engineering Department and the State Highway Administration, and these agencies made no negative comments about the proposed use. Accordingly, we hold that the Board's findings in regard to traffic congestion were not supported by substantial evidence.

B. Visual Dissonance

The Board acknowledged that County Line's used-car lot would be less unsightly than most similar lots and that, even without a special exception, a landowner could utilize the land for uses that were more intense than the proposed one. It stated:

From [Mr. Parson's] testimony we find that the proposed use removes most of what one would find objectionable about the operation of a used car lot. He proposed to use no banners or streamers, no signs except for one on the side of the building, to operate between the hours of 9:30 a.m. and 7:00 p.m. on weekdays (closing at 6:00 p.m. on Fridays), and between the hours of 10:00 a.m. and 4:00 p.m. on Saturdays. Even though the Petitioner requested permission to use the site for routine maintenance, we understand that the only maintenance to be performed on the site would be on automobiles which Mr. Parsons proposed to sell from this site. The proposed landscaping and screening would go a long way toward making this site an attractive

finding that the proposed use would be "against the spirit and intent" of that overlay district. Therefore, the Board's four findings of facts (as set forth above) are all irrelevant.

B. The Woodlawn/Liberty Community Plan

A used-car dealership is one of the non-permitted new uses prohibited by the Plan. The Baltimore County council adopted the Plan on May 17, 1993. The effect of this adoption was that "the Plan" became incorporated in the Baltimore County Master Plan. The Board recognized that the Plan was only a guide for the development of the Woodlawn/Liberty Community. It found that the Plan, nevertheless, indicated "the intent and spirit" of the zoning regulations to be applied to the proposed use.

The Board rightfully looked to the Woodlawn/Liberty Community Plan as a "guide" for community development. Its usefulness as a guide to the "intent and spirit" of the zoning regulations is attenuated by the fact that it purports to prohibit liquor stores, which are permitted, without special exceptions, in the B.R. zone. In other words, a landowner in a B.R. zone would not have to ask any zoning official for permission to build a liquor store within the Woodlawn/Liberty Community. Similarly, at the time of the Board's hearing, a landowner with property zoned B.R. - C.S.A. could build a service station without a special exception. Some property within the area encompassed by the Plan was zoned B.R. - C.S.A., yet the Plan purports to ban any owner of such land from using his or her land for a service station. In any event, as the Board tacitly acknowledged, the Plan does not overrule the property's zoning, or mean that a special exception could

facility, and certainly would be a vast improvement over the existing abandoned service station. No doubt Mr. Parsons has invested considerable money and energy in acquiring and attempting to improve 5905 Liberty Road so as to remove it from being an eyesore to the community. While his efforts to date should be lauded, that alone cannot serve as a basis to approve the special exception requested.

The Board found that it would be "detrimental to the health, safety and welfare of the locality" to grant the special exception because "all the residents who live in this community and who access Flannery Lane as a cross-connecting road to their destination would see the used-car lot both as they ingress and egress the neighborhood." How seeing a valid commercial use of property when passing by could harm anyone's "health, safety or welfare" is unexplained, and in any event, no substantial evidence supported such a finding. If a used-car lot is put anywhere in a B.R. zone, many motorists are bound to see it as they proceed to and from their destinations. This is scarcely a valid basis to conclude that such persons have suffered harm to their health, safety, or welfare. Compare *Schultz v. Prits*, *supra*.

C. Crime/Vandalism and Property Values

County Line called an expert witness who testified that grant of a special exception would not adversely affect property values in the neighborhood. The People's Counsel for Baltimore County called non-expert residents of the neighborhood who testified that they feared that the proposed use would adversely affect the value of their property.

appropriately be denied merely because it conflicted with "the Plan."

III. TRAFFIC CONGESTION

A. Intersection of Flannery Lane and Liberty Road

The intersection of Flannery Lane and Liberty Road is presently congested. The intersection is less than one-half a block from the point where cars exit Northern Parkway onto Liberty Road. Motorists leaving the Parkway, who intend to turn left onto Flannery Lane, are directed by a sign on the Parkway to stay in the center lane rather than in the right, or merge, lane. There is no traffic light controlling the intersection. Prior to putting up the sign, motorists stayed in the merge lane until they were near Flannery Lane, at which point they attempted to turn left -- causing still more congestion.

The Board concluded that the intersection of Flannery Lane and Liberty Road (the intersection) is "unique" because Flannery Lane "serves as the gateway not only to the residential neighborhood of single-family houses" situated on the northwest side of Flannery Lane as it enters into the Robin Hill Community,

but [it] also serves as the gateway to traffic generally headed to the center of Woodlawn. To permit the used car lot and the potential additional traffic which would most likely not be familiar with the traffic patterns already existing in the vicinity of Liberty Road, Flannery Lane and Northern Parkway would, in our opinion, tend to create congestion in the roads, streets or alleys therein. Furthermore, even though Mr. Parsons testified that he rarely, if ever, would permit someone to take a test drive before buying an automobile from one of his businesses, we find it unlikely that he would be able to adequately control that practice. The most

Mr. Parson testified that at his two other lots on Reisterstown Road, he had problems with car theft and vandalism during non-business hours. There was no testimony, however, that presence of the used-car lots on Reisterstown Road caused an increase in crime in the vicinity of these lots.

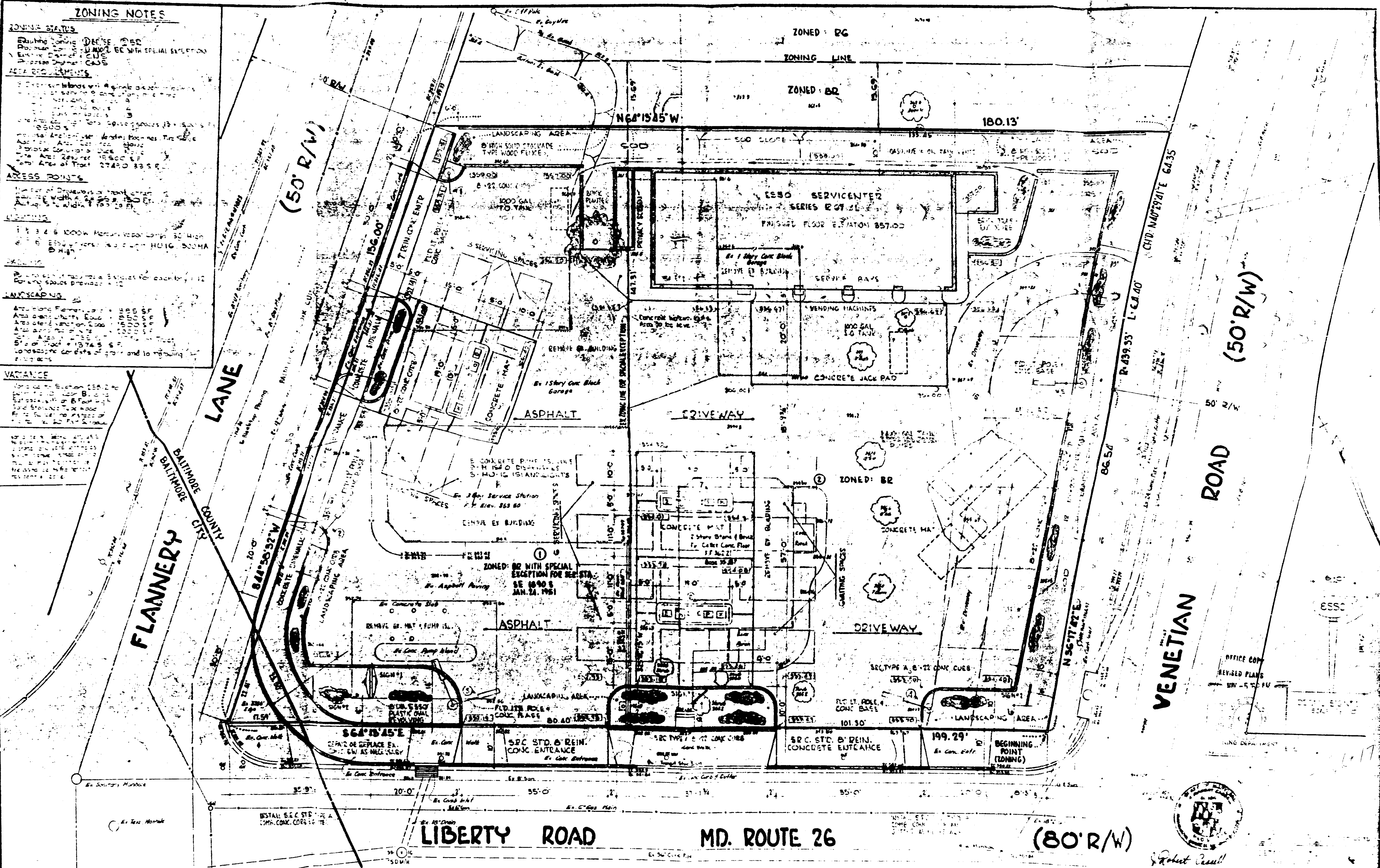
Opponents feared that persons who committed crimes on County Line's property would perhaps scout the neighborhood and also commit crime there. This testimony was entirely based on speculation and conjecture -- not facts.

The Board made no factual finding to resolve the issue as to whether property values would be lower if the special exception were granted, and it acknowledged that the protestants' fears of increased crime was "conjecture, at best." Nevertheless, the Board found that the protestants had a "realistic fear" that,

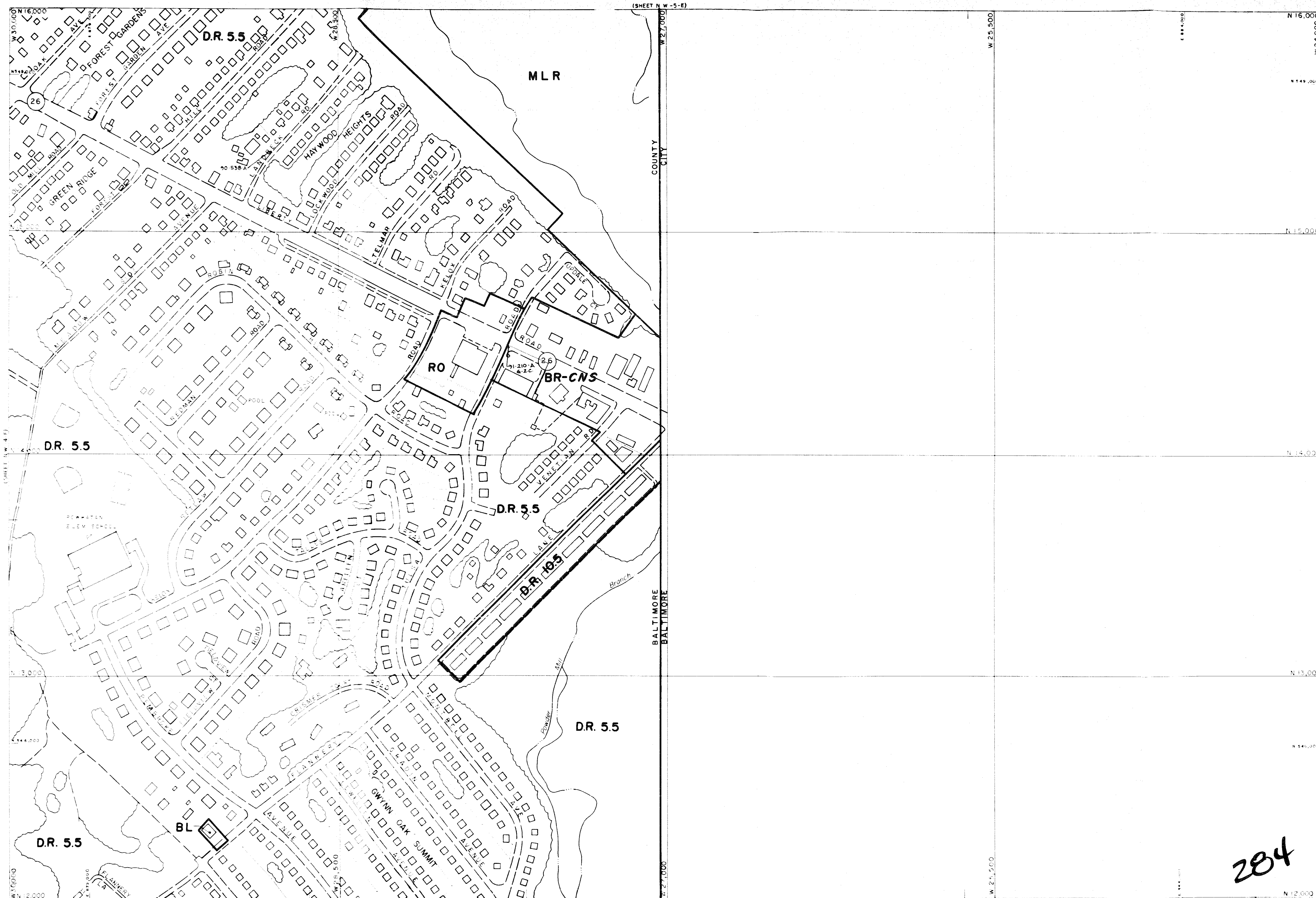
due to the number of thefts and incidents of vandalism which Mr. Parsons admits occur at his present lots, such activity might befall the proposed site and its surrounding neighborhood, should the special exception be granted. All of these things on the whole are in our judgment more likely than not to be detrimental to the health, safety and general welfare of the locality involved. All of these things taken together and considered do not persuade us that the proposed use constitutes the type of neighborhood shopping establishment which the Baltimore County zoning regulations envisage for the subject site and, accordingly, we will deny the petition for special exception.

There was no substantial evidence that crime would increase in the residential neighborhoods if the special exception were granted. An administrative agency cannot legitimately base such a finding on evidence that only amounts to unsupported conjecture.

1 OF 2

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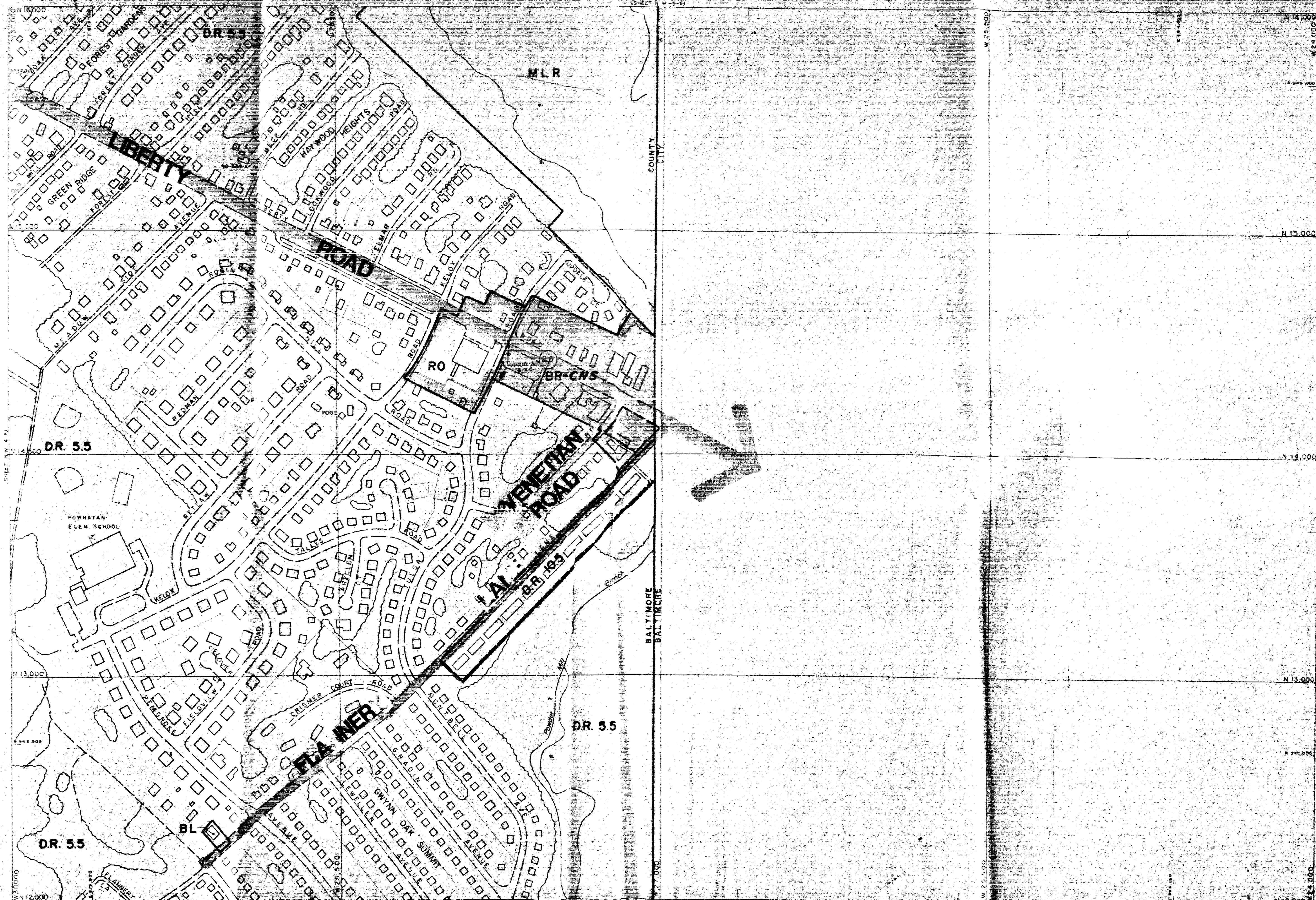
THIS BLUEPRINT IS LOANED TO YOU AND MUST BE RETURNED WHEN IT HAS SERVED THE PURPOSE FOR WHICH IT WAS INTENDED	PREPARED BY MARYLAND SURVEYING AND ENGINEERING CO., INC. SUBSIDIARY OF LYON ASSOCIATES, INC. 6707 WHITE STONE ROAD BALTIMORE COUNTY, MARYLAND 21207 TELEPHONE 301-944-9291	REVISIONS: ZONING LINE INDICATED FEB. 12, 1949 G.R.P. REVISED TO CONFORM TO BALTO CO. BILL 44 FEB. 25, 1949 G.P.P. RELOCATE STAKES TO 6" IN BACK OF H/W LINE FEB. 26, 1949 G.R.P. RELOCATE STOCKADE FENCE, REVISE ELEV. PER COMMENTS APRIL 9, 1949 G.F.F.	HUMBLE OIL & REFINING CO. 7720 YORK ROAD TOWSON, MARYLAND 21204	DRAWN BY 60P CHECKED BY APPROVED BY SCALE 1" = 100'	ZONING PLAN NORTH SIDE LIBERTY ROAD, MD. RTE. 26, BETHA FLANNERY LA. AND VENETIAN RD. LOT 2 BALTIMORE CO. MARYLAND	DATE FEB. 12, 1949 FILE NO. SHEET NO. 1 OF 1 DWG. NO.
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284

K-NW 1988 COMPREHENSIVE ZONING MAP Adopted by the Baltimore County Council Oct. 13, 1988 DR Nos. 144-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88 <i>Deborah A. Howard</i> Chairman, County Council THIS MAP HAS BEEN REVISED IN SELECTED AREAS. TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS BY BUCHART-HORN, INC. BALTIMORE, MD. 21210	BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP	1992 COMPREHENSIVE ZONING MAP Adopted by the Baltimore County Council Oct. 15, 1992 DR Nos. 151-92, 152-92, 153-92, 154-92, 155-92, 156-92, 157-92, 158-92, 159-92 <i>William A. Howard IV</i> Chairman, County Council	SCALE 1" = 200' ± DATE OF PHOTOGRAPHY JANUARY 1986	LOCATION LOCHEARN MICROFILMED	SHEET N.W. 4-E
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93-276-X



K-NW

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

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

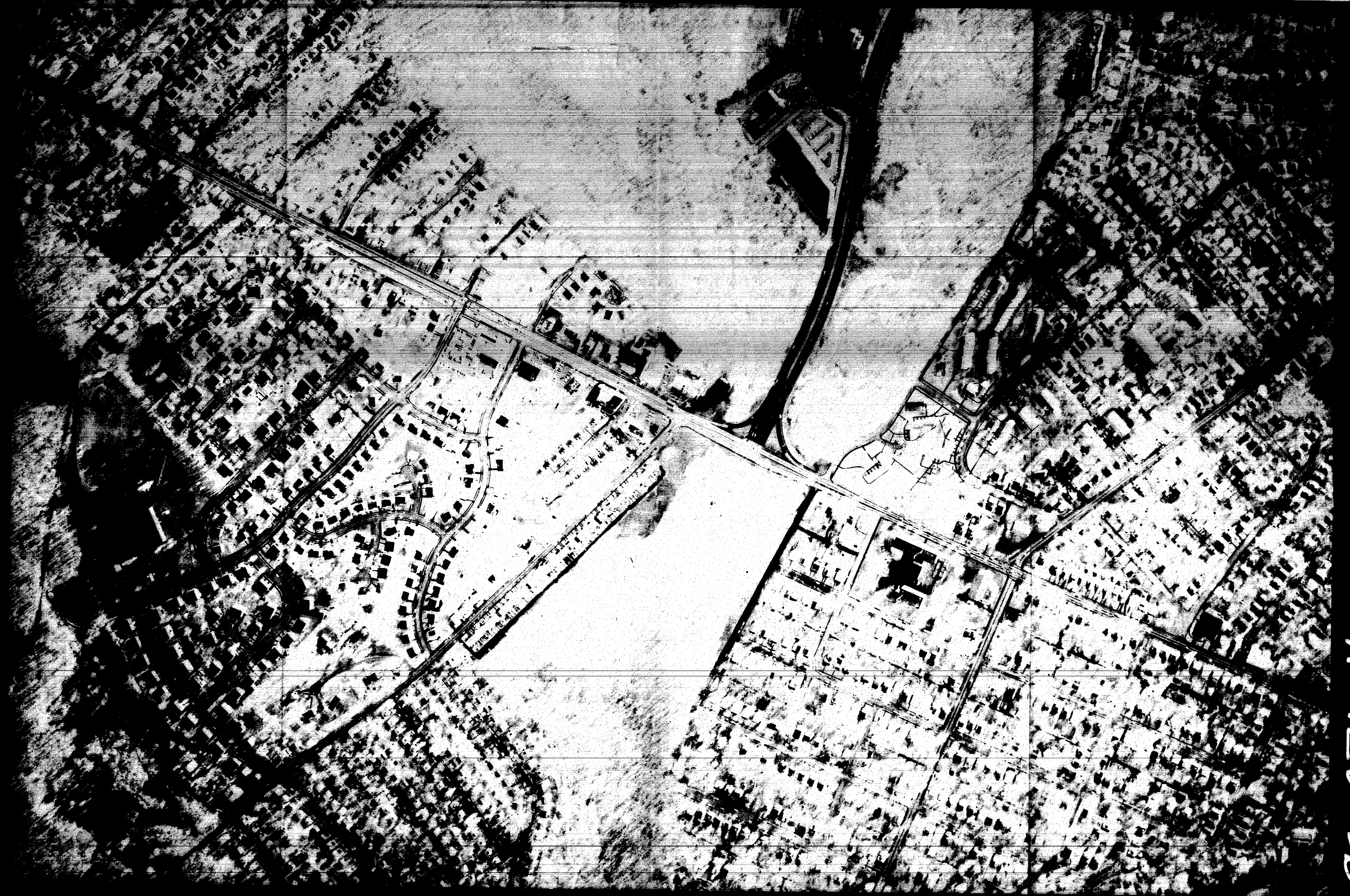
[Signature]
Chairman, County Council

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992

[Signature]
Chairman, County Council

SCALE	LOCATION	SHEET
1" = 200'	LOCHEARN	NW
DATE OF PHOTOGRAPHY		4-E
JANUARY 1986		



BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

SCALE

LOCATION

SHEET

DATE

LOCATION

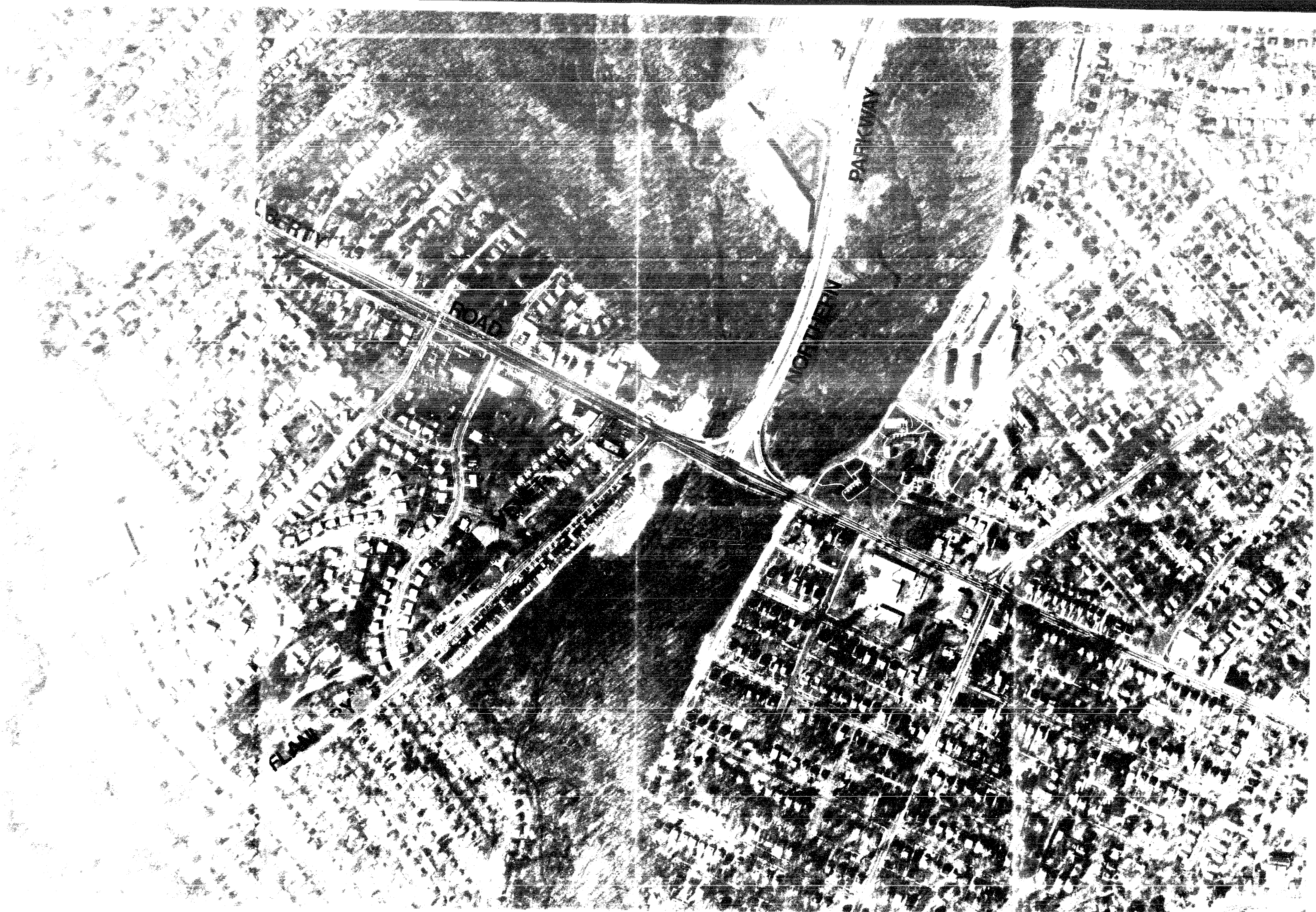
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DATE OF PHOTOGRAPHY

LOCATION

SHEET

93-276-X
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BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

STATE LOCATION SHEET

DATE OF PHOTOGRAPHY
1960
EAST-DEAL
14

IN RE: PETITION FOR SPECIAL EXCEPTION *
Intersection Liberty Road *
and Venetian Road *
5905 Liberty Rd. - Magic Motors *
Election District *
2nd Councilmanic District *
County Line, Inc. *
Petitioner * * *

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY 2nd
Case No. 93-276-X

NOTICE OF APPEAL

Please note an appeal from the Findings of Fact and Conclusion of Law, rendered by the Zoning Commissioner of Baltimore County dated May 19, 1993, to the County Board of Appeals, and forward all papers in connection therewith to the Board for hearing. The Appellant is the Petitioner, County Line, Inc., whose address, c/o Harry L. Chase, 1190 West Northern Parkway, Suite 124, Baltimore, Maryland 21210.

Enclosed is the appeal fee of \$175.00, along with the sign fee of \$35.00.

HARRY L. CHASE
The Belvedere Towers
Suite 124
1190 W. Northern Parkway
Baltimore, Maryland 21210
Phone: (410) 433-4100
Attorney for Petitioner

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4th day of June, 1993, a copy of the foregoing notice of Appeal was mailed,

MICROFILMED

postage prepaid, to Emily Wolfson, Judith Berger, E. Ray Staggers, Protestants.

HARRY L. CHASE

HARRY L. CHASE
Attorney at Law
Suite 124
1190 W. Northern Parkway
Baltimore, Maryland 21210
410 - 433 - 4100
FAX -433 - 4174

June 4, 1993

Zoning Commissioner of Baltimore County
c/o Department of Zoning Administration
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Petition for Special Hearing
County Line, Inc. Petitioner
Case No.: 93-276-X

Dear Sir/Madam:

Enclosed please find Appellant's Notice of Appeal to be filed with regard to the above captioned matter. Also enclosed is this firm's check in the amount of \$210.00 (appeal fee of \$175.00 and sign fee of \$35.00) to cover the costs of same.

Thank you for your assistance in this matter.

Very truly yours,
HARRY L. CHASE

Enclosures
HLC/lls

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IN RE: PETITION FOR SPECIAL EXCEPTION *
Intersection Liberty Road and *
Venetian Road *
5905 Liberty Rd. - Magic Motors *
2nd Election District *
2nd Councilmanic District *
County Line, Inc. *
Petitioner *

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
CASE No. 93-276-X

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Exception for the subject property located at 5905 Liberty Road near the Baltimore City/Baltimore County boundary line. The Petitioner, County Line, Inc., seeks a granting of the Petition to allow a used car sales area and routine maintenance area on the subject site.

Appearing at the public hearing on behalf of the Petition was Barry Parsons, President of the corporate petitioner. Also testifying was Gerson P. Polen, an architect who prepared the site plan. The Petitioner was represented by Harry L. Chase, Esquire. Several individuals appeared in opposition to the plan. They included Emily Wolfson from the Liberty Communities Development Corporation, Judith Berger of the Liberty Road Community Council and E. Ray Staggers, President of the Robin Hill Community Association. Although unable to attend the hearing, correspondence was received in opposition to the Petition from William Obrecht, Co-Chairperson of the Gwynn Oak Improvement Association, Inc.

As to the evidence presented, testimony was received from Mr. Parsons, of County Line, Inc., property owner. He stated that his company acquired the property several years ago. He noted that presently the site is not occupied and is considered an eyesore to the community. Specifically, the

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existing building is boarded up and the unoccupied site is a magnet for trash and debris. Previously, the property was used as a service station. However, the ground has been contaminated by leaking fuel tanks. Due to this contamination, the service station shut down. The Petitioner testified that his company acquired the property under a contract which requires that the former tenant, the Exxon Oil Company, complete cleanup efforts. These efforts are ongoing. Apparently, it will take many years for the fuel and contaminated earth to be completely cleaned up. Further, no additional construction will be permitted until the cleanup is completed.

The Petitioner proposes renovating the existing building to serve as the headquarters/office for a used car sales operation. Mr. Parsons noted that his family has been in the car business for many years and operates used car businesses from several other locations in Baltimore County. Mr. Parsons also stated that he anticipates cooperating fully with the existing businesses and residents in the area. He noted that, although the property fronts Liberty Road, a residential community abuts the rear of the site. Further, this property is located on a stretch of Liberty Road which contains a number of existing commercial uses. These include a nearby McDonald's fast food restaurant, a body shop and similar uses.

Also testifying was Gerson Polen, the architect who prepared the plan. He indicated that he specializes in projects which rehabilitate rundown commercial properties as is the case here. He noted that the Maryland Department of Environmental Protection has issued a violation notice for this property due to the fuel leaks and soil contamination. He echoed the testimony of Mr. Parsons that no additional construction is contemplated because of this contamination, rather that the property will be renovated

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ed to accommodate the proposed new use. Mr. Polen also commented on a number of restrictions to which the Petitioner has agreed, as more fully set forth in a letter received from Petitioner's counsel subsequent to the hearing. Specifically, the Petitioner will agree to restrict the business hours of his operation, will make certain improvements and renovations to the building, will perform only repair and service work on vehicles that are a part of the used car business, etc. In Mr. Polen's view, these restrictions will lessen any adverse impact upon the surrounding locale. Neither Mr. Polen or Mr. Parsons commented directly on Section 502.1 of the B.C.Z.R. and the parameters listed therein.

As to the Protestants, testimony was received from Emily Wolfson of the Liberty Communities Development Corporation. She echoed the Zoning Plans Advisory Committee's comment issued on this proposal by the Office of Planning and Zoning. That comment states that the subject site is identified as part of the Community Conservation Area on the Baltimore County Master Plan and the Woodlawn-Liberty Community Plan. According to those plans, used car dealerships are to be discouraged in these areas. Although these plans are advisory in nature, Ms. Wolfson believes that approval of the special exception in this case would frustrate the County's efforts to rehabilitate the business community located along the Liberty Road corridor. Also testifying was Judith Berger from the Liberty Road Community Council. She noted the heavy traffic congestion on Liberty Road in this area, and believes that this business will contribute to that undesirable situation. Further, she believes the Liberty Road residential communities, which exist in this area, are unique, and that the proposed used car dealership will adversely affect those communities near this property.

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Also testifying was E. Ray Staggers, President of the Robin Hill Community Association. This residential community is located several blocks behind the site when viewed from Liberty Road, and is accessed by the side streets which connect Liberty Road to the residential communities. Mr. Staggers contends that the subject property is a gateway to his community and believes that the project will negatively impact the homes within his community association. His reasons for opposition are fully set forth in a letter received from that community association, which mirrors correspondence received from the Gwynn Oak Improvement Association and Mr. Obrecht.

The use of the subject site as a used car sales area is permitted in a B.R. zone by special exception pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.). As is well settled at law, a special exception use is presumptively valid, absent the existence of particular facts or circumstances which negate the presumption. That is, a special exception is a zoning mechanism which identifies certain uses as permissible in a given zone, but for a showing that particular facts or unique circumstances exist which would render that presumption valid. See, Rockville Fuel and Feed Company, Inc. v. Board of Appeals of the City of Gaithersburg, 257 Md. 183, 262 A.2d 499 (1970).

The test to be applied in determining whether a special exception may be granted is found in Section 502.1 of the B.C.Z.R. Therein, a list of factors are listed which must be applied to the proposed request. Indeed, these are the only factors which are relevant. That is, whether the proposed use is an asset to the community is not an issue. Likewise, the fact that a special exception use might rehabilitate an otherwise vacant property is not germane. Further, a comparison of the proposed use to what is allowed on the property as of right under its zoning classification is

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immaterial. Instead, an evaluation must be undertaken regarding whether the use would adversely affect the surrounding locale in a unique manner, in accordance with the factors listed in Section 502.1 of the B.C.Z.R. Further, the holding of the Court of Appeals in the landmark decision Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) is particularly relevant here. In that case, the Court stated that a special exception should be denied only if the granting of same would have an adverse effect of unique and/or different character than the usual impact that would result if the special exception use were approved elsewhere in the zone. That is, the court observed that certain uses will always have some inherent adverse effect upon the surrounding locale. Only if that impact uniquely affects the surrounding locale, should the Petition for Special Exception be denied.

This standard is particularly relevant in view of the decision reached by Deputy Zoning Commissioner Kotroco in case No. 92-220-XA. In that case, a Petition for Special Exception for a used car sales area was granted at a location on Liberty Road not far from this site. In his opinion, Deputy Commissioner Kotroco's opinion notes that extensive testimony was offered, in that case, that the proposed use would not adversely effect the locale in light of the factors listed in Section 502.1 of the B.C.Z.R. Testimony of this character was not offered at the hearing before me. Additionally, although both cases involve properties which adjoin Liberty Road, there was significant testimony in the case before me regarding the impact of the proposed use on the residential communities which lie near the site. Deputy Zoning Commissioner Kotroco's opinion is silent about whether any residential communities were near the site in that case and/or whether any such communities might be adversely effected. In my view, this distinction is significant in that consideration must be given to the potential impact of

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A review of the testimony before the Board shows that County Line's proposed used-car lot has unattractive attributes and it would be an unwelcome addition to the neighborhood. But the unattractive attributes about which the opponents complain (test drives, vandalism and theft from the lot, an abundance of used cars parked in plain view in a large lot, etc.) are features that would likely be present anywhere in a B.R. - A.S. zone. People driving from their homes who pass a used-car lot are almost bound to see it. Moreover, in this age, vandalism and car thefts at used-car lots are likely to occur because they are a part of life in any modern urban environment. The existence of such every-day, normal attributes of a used-car lot does not justify denial of a special exception. It is presumed that such a use, no matter where located, will have these undesirable attributes, but the use is nevertheless compatible with other uses permitted on any land zoned B.R. in Baltimore County. *Creswell, supra.*

The subject property is in an area that is commercial on all sides. It faces Liberty Road, an automobile oriented commercial artery. It is separated from residential uses by a Volvo service facility. Presently the land is "improved" only by a boarded-up vacant gasoline station. As the Board acknowledges, the proposed use will be an improvement over the property's present status.

Under all these circumstances, if a landowner cannot use this land for a used car lot, it is difficult to envision a used-car lot being permitted anywhere in Baltimore County. A "reasonable mind" simply cannot accept the Board's findings as adequate to support its denial of the special exception.

The trial judge's order "granted" the special exception. Technically, a court has no power to grant a special exception; instead, a court may remand the case to the administrative agency with instructions to grant the special exception. This is the procedure that, on remand, should be followed in this case. The trial court should prepare an order instructing the Board to grant the special exception requested by County Line.

JUDGMENT VACATED;
CASE REMANDED TO THE CIRCUIT COURT
FOR BALTIMORE COUNTY;
COSTS TO BE PAID BY APPELLANTS.

The Circuit Court for Baltimore County

CHAMBERS OF
JOHN GRASON TURNBULL, II
JUDGE

THIRD JUDICIAL CIRCUIT OF MARYLAND

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
(410) 887-2867

PETITION FOR JUDICIAL REVIEW * IN THE
IN THE MATTER OF *
COUNTY LINE, INC. *
FROM THE *
COUNTY BOARD OF APPEALS *
REQUESTED SPECIAL EXCEPTION *
FOR USED CAR SALES *
5905 Liberty Road, at City Line *
CASE NO. 93 CV 10476

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OPINION AND ORDER

This is an Appeal from a decision by the County Board of Appeals denying a special exception for the Appellant, County Line, Inc., to operate a used car sales service on property known as 5905 Liberty Road, Baltimore County, Maryland.

The Court has reviewed the testimony, the exhibits and has heard argument from the parties and finds that the Board's action was arbitrary and capricious in its denial of the special exception, and thus this Court must reverse the decision of the Board of Appeals.

The property in question is zoned BR and a used car operation is permitted by special exception. The BR zoning is the only zoning classification in Baltimore County which allows a used motor vehicle outdoor sales area. The granting of a special exception is governed by the requirements of Section

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The Board has attempted to disregard all the evidence that the proposed use would be in keeping with the other uses in the area and has ignored the testimony and other exhibits.

An applicant for such a special exception use need not show practical difficulty, unnecessary hardship, or great urgency, but only that ... the proposed use would be in general harmony with the zoning plan and would not adversely affect the neighboring properties and the general neighborhood. *Montgomery Co. v. Merlands Club*, 202 Md 279, 290, 96 A.2d 261, 265 (1953). The test is whether the proposed use at the particular location would "have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Shultz v. Pratts*, 291 Md 1, 22, 432 A.2d 1319, 1331 (1982). The record contains no evidence which would rationally permit a finding that the application should be denied. The impression of the Board on this point is not based on any fact in evidence. There was no substantial evidence on which the Board could have based its decision that the granting of a special exception for a used car lot at this location would not be in harmony with the general surrounding area.

While the applicant for a special exception clearly has the burden of adducing testimony which will show that his proposed use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use accords with the general welfare. *Schultz v. Pratts*, 291 Md. 1, 11, 432 A.2d 1319, 1325 (1981), *Rockville*

Fuel v. Board of Appeals, 257 Md. 183, 190, 262 A.2d 499, 503 (1970), *Rockville Crushed Stone v. Montgomery Co.*, 78 Md. App. 176, 191, 552 A.2d 960, 967 (1989).

In *Rockville Crushed Stone, Inc. v. Montgomery Co.*, 78 Md. App. 176, 191, 552 A.2d 960, 967 (1989) the Court held, that "the appellate court may not substitute its judgment for that of the zoning body and should affirm when the latter's decision is [1] supported by substantial evidence. At the same time the Court of Appeals has consistently ruled that the denial of a zoning application may be reversed by an appellate court when the action appealed from is shown to be [2] 'arbitrary, capricious or illegal.'" (Citations omitted)

While this Court may not substitute its judgment for that of the Board of Appeals, overwhelming testimony clearly supports the position that the Board's denial was arbitrary and capricious. Accordingly, this Court reverses the decision of the Board of Appeals and this

7th day of October, 1994, it is,
ORDERED that the Petition for Special Exception requested by the Appellant, County Line, Inc., to operate a used car sales area outdoor at 5905 Liberty Road be, and the same is hereby GRANTED.

JOHN GRASON TURNBULL, II
JUDGE

Copies sent to: Michael J. Moran, Esquire
Newton A. Williams, Esquire
Harry L. Chase, Esquire
Peter M. Zimmerman, Esquire

Baltimore County Government
Office of Law

400 Washington Avenue
Towson, MD 21204

(410) 887-4420
Fax (410) 296-0931

October 13, 1994

Ms. Kathleen Weidenhammer
Administrative Assistant
Baltimore County Board of Appeals
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

RE: County Line, Inc.

Dear Kathi:

I am attaching a copy of the Court's Opinion in the captioned case.

As you will see, the Court did not reach the Open Meetings Law issue as a result of the fact that it reversed the decision of the Board of Appeals on the merits.

Very truly yours,

Michael J. Moran
Assistant County Attorney

MM/jd
Attachment

502.1 of the Baltimore County Zoning Regulation. The Board found that the granting of such a special exception would not comply with three requirements of 502.1, specifically,

- a) Whether the proposed use will be detrimental to the health, safety, or general welfare of the locality involved;
- b) Tend to create congestion in roads, streets or alleys therein; [nor]
- c) Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations.

The Board states in their Opinion, "It is the last of these requirements which provides the greatest obstacle ... in granting the requested special exception." (Op. 3). The Board goes on to state that Mr. Parson's proposed improvements "would go a long way toward making this site an attractive facility, and certainly would be a vast improvement over the existing abandoned service station." (Op. 4). It is clear from the evidence adduced that this property was previously used as a service station, and the current use of the property adjacent to the west, which is behind the subject property, is at minimum a seven bay Volvo garage. The lot south of the subject site is a vacant gasoline service station, and the property to the northwest, similarly zoned BR, is an automobile glass operation. Closely situated businesses include a Mr. Tire store, The Liberty Auto Body Shop, and an automobile window tinting company.

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY
PETITION OF COUNTY LINE, INC.
FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION
OF COUNTY LINE, INC. FOR A SPECIAL
EXCEPTION ON PROPERTY LOCATED AT
THE INTERSECTION OF LIBERTY ROAD
AND VENETIAN ROAD (5905 LIBERTY
ROAD) 2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO. 93-276-X

COUNTY LINE, INC., a body
corporate of the State of Maryland
Petitioner

V.
WILLIAM T. HACKETT, CHAIRMAN
C. WILLIAM CLARK, ACTING CHAIRMAN
HARRY E. BUCHHEISTER, JR.
ROBERT O. SCHUETZ, being the
County Board of Appeals of
Baltimore County

CIVIL ACTION
NO. 93CV10476
CIVIL ACTION
NO. 93CV10476

BRIEF OF APPELLEES, WILLIAM T. HACKETT,
CHAIRMAN, C. WILLIAM CLARK, ACTING CHAIRMAN,
HARRY E. BUCHHEISTER, JR. AND ROBERT O. SCHUETZ,
BEING THE COUNTY BOARD OF APPEALS
IN RESPONSE TO APPELLANTS' MARYLAND RULE 7-207 BRIEF

THE STATEMENT OF THE CASE

Appellants instituted these proceedings originally before the Hearing Examiner when they applied for a special exception to "recycle" a site, formerly an Exxon service station, as a used car lot. The Hearing Examiner denied the special exception. The County Board of Appeals affirmed that decision.

Appellants then noted this appeal to the Circuit Court. Appellants seem to make, generally, three arguments to support their request that this Court reverse the decision of the Board of Appeals. Appellants contend that: (1) the decision of the Board was against the weight of the evidence; (2) the Board misapplied the law; and (3) the Board failed to deliberate publicly, as required by the State Open Meetings Law; See, Maryland State Government Article, 1933, Title 10, Subtitle 5, Section 10-501, et. seq.

THE QUESTIONS PRESENTED

1. IS THE ISSUE OF WHETHER THE BOARD OF APPEALS WAS REQUIRED, PURSUANT TO SECTION 10-501, ET. SEQ. OF THE STATE GOVERNMENT ARTICLE, PRESERVED FOR APPELLATE REVIEW?
2. DID APPELLANTS BY THEIR SILENCE, WAIVE ANY RIGHT THEY MAY HAVE HAD TO A PUBLIC DELIBERATION OF THE CASE BY THE BOARD OF APPEALS?
3. WERE THE APPELLANTS ENTITLED TO A PUBLIC DELIBERATION, PURSUANT TO SECTION 10-501 OF THE STATE GOVERNMENT ARTICLE?

THE STATEMENT OF THE FACTS

Appellees accept the State of Facts, as set forth by Appellants in Paragraph 3 of Appellants' Petition For Judicial Review, except to the extent that Appellees have supplemented or modified those facts in Paragraph 4 of their Answer.

THE ARGUMENT

1. THIS COURT MUST AFFIRM THE DECISION OF THE BOARD OF APPEALS BECAUSE:
 - A. THE ISSUE OF WHETHER THE OPEN MEETINGS LAW IS APPLICABLE TO THE PROCEEDINGS CONDUCTED BY THE BOARD OF APPEALS IS NOT PROPERLY PRESERVED FOR APPELLATE REVIEW.

Appellants seek reversal of the decision of the Board of Appeals based upon their assertion that the Open Meetings Law required the Board to deliberate publicly after the close of the evidence, and that the Board's failure to deliberate publicly violates the Act, requiring reversal. Appellants, however, have not preserved this issue for appellate review. Consequently, there is no ground to reverse the Board for its failure to deliberate publicly.

The case law provides that:

"...A party who knows or should have known that an administrative agency has committed an error and who, despite an opportunity to do so, fails to object in any way or at any time during the course of the administrative proceeding, may not raise an objection for the first time in a judicial review proceeding..."

Cicala v. Disability Rev. Bd. for Prince George's County, 288 Md. 254 (1980); accord, *Heft v. Maryland Racing Commission*, 323 Md. 257 (1991).

Here, Appellants' attorneys either knew or should have known of the existence of the Open Meetings Law. No reason is offered to explain the failure of the Appellants to make the Board aware of Appellants' concern. Accordingly, the issue has not been properly preserved, and this Court must affirm the decision of the Board of Appeals.

- B. EVEN IF THE ISSUE WERE PROPERLY PRESERVED, REVERSAL OF THE BOARD'S DECISION, ON THE MERITS, IS NOT REQUIRED.

Assuming for argument's sake, that the issue of the applicability of the Open Meetings law were preserved, reversal of the Board's decision, on the merits, is not compelled by the

State law. See, Section 10-501(d). In order to void the decision of the Board, the Court would first have to find that the Board willfully failed to comply with the Open Meetings Law, and that no other remedy is adequate; Section 10-501(d)(4). There has been no showing of either. Therefore, automatic reversal of the Board's decision would not follow automatically, if the Court were to hold that the Board had violated the Open Meetings Law.

C. APPELLANTS WAIVED ANY RIGHT THEY HAD TO REQUIRE THE BOARD TO DELIBERATE PUBLICLY

A waiver is a knowing and intelligent relinquishment of a right. *Dahl v. Brunswick Corp.*, 277 Md. 471 (1976). And, a waiver of non-fundamental rights:

"...is governed not by 'knowing and intelligent' standards, but by general waiver principles, the most significant of which is that failure to exercise a prior opportunity to raise an allegation of error generally effects waiver of the right to raise the matter at a later time..." *State v. Torres*, 86 Md. App. 560 (1986).

Appellants were represented by counsel, and now claim, as a basis for reversal, the violation of the Open Meetings Law. The finding of a waiver, from Appellants' silence on the issue, would be appropriate. For example, if Appellants, who must be charged with knowledge of the law, make a tactical decision to not raise the Open Meetings issue before the Board, it would be unfair to allow them to escape the consequences of their election. Appellants might have perceived a benefit to their case if the Board deliberated privately, as opposed to publicly. It would now be unfair to allow Appellants to "have

it both ways." Accordingly, any right that Appellants had to require the Board to deliberate publicly must, by Appellants' silence, be deemed to have been waived.

D. THE OPEN MEETINGS LAW IS INAPPLICABLE. THE BOARD IS SUBJECT TO A NUMERICAL REQUIREMENT ONLY WHEN IT SITS TO TAKE TESTIMONY AND LISTEN TO ORAL ARGUMENT DURING THE APPEAL HEARING. WHEN THE HEARING ENDS, THERE IS NO REQUIREMENT THAT THE BOARD "CONVENE A QUORUM" AS A PRE-CONDITION TO MAKING FINDINGS OF FACT AND CONCLUSIONS OF LAW.

The Court should declare that Subtitle 5, Title 10 of Maryland State Government Article does not apply to the County Board of Appeals after the appeal hearing ends and the panelists assemble, or otherwise communicate, to assess credibility, and make findings of fact and conclusions of law. The only time that the Board is subject to a numerical requirement is when the panel receives testimony and oral argument in the appeal hearing. The Board's Rules Of Practice And Procedure do not require that the Board convene a quorum when the panel assembles or communicates to make legal and factual findings, and the Board does not customarily "convene a quorum" in order to discuss the issues arising out of any given case. In the absence of the condition that a quorum be convened, there is no "meeting" of the Board, and Title 10, Subtitle 5 is inapplicable.

Title 10, Subtitle 5, Section 505, states that:

"Except as otherwise expressly provided in this subtitle, a public body shall meet in open session."

The statute defines the term "meet" in paragraph (g) of Section 10-502:

"... 'Meet' means to convene a quorum of a public body for the consideration or transaction of public business..."

A "quorum" as provided in paragraph (k) consists of either:

- "...a majority of the members of the public body; or
- (2) any different number that law requires."

County Council Bill No. 59-79 provides that:

"Three members of the board of appeals, as designated by the Chairman, shall sit for the purpose of conducting the business of the board."

Rules Of Practice And Procedure Of The County Board Of Appeals, 1c.

Unless a quorum is convened, there is no meeting. Whether a quorum is required turns upon the particular statute or rule under which the public body operates. Absent a meeting, as defined by the Article, Subtitle 5 is inapplicable.

Here, it is clear that the only time the Board is subject to a numerical requirement, of any sort, is when it receives evidence during the evidentiary hearing. Three panelists are

¹A "public body" is defined at Section 10-502(b)(1)(i), (ii).

²The Board has consistently construed the phrase "...sit for the purpose of conducting the business of the board..." to mean the appeal hearing. The administrative interpretation is entitled to some weight and defense.

required to enable the Board to receive evidence and argument in appeal cases. Board Rule 1g. A quorum is neither required by law, rule, ordinance, nor convened in order to discuss the appeal after the hearing is ended. Thus, two panelists may discuss the case in the absence of the third panelist. The Board Rules do not prohibit this. Similarly, discussions might occur between two or more members of different panels regarding similar, but unrelated cases. In these instances, a quorum is neither convened nor required.

In a similar case, the Supreme Court of West Virginia held that the State's "Open Meetings" law required the State Public Service Commission to hold open evidentiary hearings but did not require the Commission to hold public deliberations when the Commissioners assembled to decide the case.³ *Appalachian Power Co. v. Public Service Commission*, 253 S.E.2d 377 (W.Va., 1979). The Supreme Court distinguished the "evidentiary hearing" from the subsequent phase of the quasi-judicial proceedings where the Commissioners would "...meet together, discuss their separate decisions...concur and articulate or render a final decision or judgment...", id. at 381. In pertinent part, the Court noted that:

³West Virginia Code, Section 6-9A-2(4) provided that:

"Meeting means the convening of a governing body of a public body for which a quorum is required in order to make a decision or deliberate toward a decision on any matter."

"...Consultations, deliberations and the process of making a decision might often involve more than a single case, and in this regard indicate the impracticality of making these activities subject to the Act's requirements. Because these activities are informal occurrences in the Commission's day to day operations, there is no requirement of a quorum before these activities can take place or before there can be a 'convening' of a consultation...Conceivably, one commissioner might meet with staff; certainly this would not constitute the convening of a governing body...one commissioner might deliberate alone or engage alone in the process of making a decision, and in such instances there would be no convening of the governing body. Because a quorum is not required at any stage of this continuum and because no stage necessarily involves the convening of the governing body, we find that the definition of meeting does not encompass consultation with staff, deliberations or the process of making a decision. Accordingly, we hold that the Act does not apply to these matters."

Similar considerations are present in this case. First, the Board is subject to a numerical requirement only when it actually receives evidence and argument in an appeal. Second, the same practical considerations are present here that the West Virginia Supreme Court noted. For example, a member of one panel might want to discuss the case with two members of a separate panel, who have an unrelated, but similar case. Convening a quorum is not necessary in order to permit communications between or among panels. The panel is not required to convene a quorum in order to make factual and legal findings. Accordingly, Subtitle 5 does not apply to discussions or consultations that panelists may hold: (1) among themselves; or (2) with other individual members of separate panels.

E. WHEN THE PANELISTS ASSEMBLE OR OTHERWISE COMMUNICATE IN ORDER TO

DECIDE THE APPEAL, THE PANELISTS ARE "...CARRYING OUT...A QUASI-JUDICIAL FUNCTION..." BUT ARE NOT "MEETING" BECAUSE OF THE ABSENCE OF A REQUIREMENT TO CONVEY A QUORUM. ASSEMBLIES FOR THE PURPOSE OF CARRYING OUT A QUASI-JUDICIAL FUNCTION ARE EXPRESSLY EXEMPT FROM SUBTITLE 5, AND THEREFORE, INAPPLICABLE TO THE BOARD WHEN IT ASSEMBLES, OR OTHERWISE COMMUNICATES, TO DECIDE AN APPEAL.

When the panel of the Board, at the end of the appeal case, assembles the evidence and makes factual and legal findings, the panel is "...carrying out...a quasi-judicial function..." and Section 10-503(a)(iii) expressly exempts these types of discussions or conversations from the "Open Meeting" requirement of Section 10-505.

A plain reading of Subtitle 5 leads to the conclusion that the General Assembly intended to make an express exception from the Open Meeting requirement when a public body, after "...meeting to consider...any...zoning matter...", Section 10-503(b)(2), retires to make findings of fact and conclusions of law. A "meeting" of the public body requires a "quorum;" Section 10-502(g); (k). Section 10-503(a) excepts from the operation of Section 10-505:

"(1) A public body when it is carrying out..."

...

(iii) A quasi-judicial function... (emphasis supplied).

The panel of the Board may "meet" when it hears the evidence and legal argument of the parties during the hearing of the appeal. During this time, the Board may be subject to

the "exception to the exception" contained in Section 10-503(b)(2):

"The provisions of this Subtitle apply to a public body when it is meeting to consider..."

(2) ...any zoning matter..."

The panel, however, does not "meet," as that term is defined by the statute, when the panel assembles to assess credibility, make findings of fact and conclusions of law. At that time, the Board's panel is "...carrying out...a quasi-judicial function..." and is expressly exempt from the Open Meeting requirement of Section 10-505.⁴

Section 10-503 balances the public interest in access to the government and the public interest in the integrity of the decision making process. The General Assembly implicitly recognized that judicial, quasi-judicial and executive functions require at least some opportunity for privacy, to

"An administrative agency may exercise different functions. The administrative agency may, at times, exercise legislative power, when for example, it promulgates rules. At other times, the agency may act in a judicial or quasi-judicial capacity when it behaves like a court; i.e., when the agency receives evidence, makes findings of fact, conclusions of law, and issues orders that either affect or adjust the rights of the parties. See generally, Oppenheimer, R., "Administrative Law in Maryland," 2 U.Md.L.Rev. There would seem to be little room for doubt that the Board of Appeals in this case, if not in every case, behaves quasi-judicially because it receives evidence, assesses the credibility of that evidence, finds facts, forms conclusions of law and issues opinions which affect the rights of the parties, and are capable of judicial review, and enforcement.

allow the statutorily constituted decisionmakers time for reflection and/or contention in order to arrive at the correct, or most nearly correct, decision. The public certainly has at least as strong an interest in the public body's achievement of a correct decision in the sensitive matters committed to it as it does in the dissemination and access of information; Federal Deposit Insurance Corp. v. Mallen, 486 U.S. 230, 108 S.Ct. 780, 100 L.Ed.2d 265 (1988) ("...the magnitude of the public interest in a correct decision counsels strongly against any constitutional imperative that might require overly hasty decisionmaking..."). Thus, the General Assembly excepted from the operation of Section 10-505, public bodies when "carrying out" quasi-judicial functions. Quasi-judicial include evidentiary hearings, and discussions or deliberations occurring subsequently, when the public body assesses the evidence and makes factual and legal findings. The General Assembly qualified the broader exemption by virtue of paragraph (b) which subjects the public body to Section 10-505 when it convenes a quorum, or "meets" to consider a zoning issue. The General Assembly intended that the evidentiary sequence of the quasi-judicial proceedings be open to the public, but not the phase of the quasi-judicial proceedings that occur subsequently, which include fact finding and discussions of the public body, necessary to render a decision in the matter.

Common Cause of Utah v. Utah Public Service Commission, 598 P.2d 1312 (Utah, 1979) supports the interpretation of Defendants. In that case, the Supreme Court of Utah, as did

the Supreme Court of West Virginia, observed that the quasi-judicial proceedings at issue actually constituted a continuum, at certain points of which, the Legislature intended the public to have access, pursuant to the public access statute. At other points in the continuum, the Supreme Court observed that the public interest in access to the proceedings should defer, for the time, to the public interest in a "correct" decision, a pre-condition of which is some opportunity for privacy, during which the decisionmakers can engage in a deliberative process that, in effect, "does justice" to the case.

The Court noted the quasi-judicial behavior of the Commission in contested cases⁵ and observed that:

"Consideration of the problem presented...requires a balancing of two competing interests; on the one hand, the obviously desirable object of giving the public...the fullest possible degree of knowledge of the matter under consideration...The other interest to be served is that, after all the evidence has been furnished...the process of analysis, deliberation and arriving at a decision should be permitted to take place in an atmosphere of peace and privacy, free from the possibility of undue pressures from the presence of partisans, so that the Commissioners have the opportunity for a frank and unrestricted discussion and exchange of ideas in order that they can arrive at the best possible decision in the interests of all concerned..."

⁵As did the Commission in Common Cause, the Board of Appeals here can administer oaths, subpoena witnesses, conduct hearings and obtain depositions. Board Rules 4a; b; d; 5a; b; 7a-g. The Board must make written findings, in Baltimore County Charter, Section 603, as did the Commission in Common Cause.

The Utah Supreme Court held that the Legislature intended that the "information obtaining 'phase'...should not be held in private or secret, but should be open to the public..." The Court observed, however, that at the conclusion of the "information obtaining" phase:

"...it is essential that during the 'decision making' or judicial phase, those charged with that duty have the opportunity of discussing and thinking about the matter in private, free from any clamor or pressure, so they can calmly analyze and deliberate upon questions of fact, upon the applicable law, upon considerations of policy, which bear upon the problems with which they are confronted."

Finally, Hamilton v. Verdow, 287 Md. 544 (1980) is instructive upon the question of whether the General Assembly intended to subject deliberations of an agency such as the Board of Appeals, to public scrutiny, when that agency is in the process of assessing credibility, making findings of fact and conclusions of law. Hamilton v. Verdow, involved a situation where the Governor of the State of Maryland claimed that a document prepared by The Honorable Alan M. Wilner in connection with an investigation of Anthony Goode was subject

⁶The Court acknowledged the Commission's argument that "...it is highly desirable that those who are required to perform judicial duties should be permitted to do so in a judicial manner..." The Court agreed with the proposition that "...where judicial powers and duties are conferred, there is necessarily implied therein the prerogative of carrying out those duties in the way the judiciary traditionally functions..." id. at 1315.

to executive privilege⁷, and therefore, not discoverable by the Personal Representative of Jason Verdow's estate. The Court of Appeals ultimately answered the questions certified to it by the United States District Court, replying that the doctrine of executive privilege existed in Maryland, but that an in camera inspection would not be inconsistent with the doctrine. The reasons, however, which support the existence and assertion of an executive privilege are identical to those advanced by the Courts to limit public scrutiny of quasi-judicial behavior of public bodies, at least where those agencies engage in the process of making findings of fact and conclusions of law. Collecting a multitude of Federal authority, the Court synthesized the cases and commentaries and distilled from that amalgam the proposition that:

"...the doctrine of executive privilege in addition to state and military secrets, gives a measure of protection to the deliberative and mental processes of decision makers..." 287 Md. at 538.

Many of the concerns expressed by the Board members in this case find articulation in the decisions collected by the

⁷Title 10, Subtitle 5, Section 10-503(a) also exempts executive functions from the operation of Section 10-505.

⁸Quoting Cox, Executive Privilege, 122 U.Pa.L.Rev. 1383, 1954, the Court observed the need of decisionmakers for privacy in order to encourage candid advice and debate and the necessity of reducing the risk that advisors would be subject to retaliation or criticism from others. The Court also noted that privacy afforded the public officer the opportunity to "think out loud" without fear that her discarded thoughts would become subjects of public discussion.

Court of Appeals. For example, the Court points to other authorities that have remarked how the threat of public pressure and premature dissemination of tentative thoughts and conclusions will temper or foreclose candid, frank exchange of ideas. Hamilton v. Verdow, id., at 559. The collected authorities recognize that the "...fundamental part of the decision process is the analysis of different options and alternatives...", id. at 558, and that "...To the extent that such communications may later be scrutinized by others, the communicative process itself becomes embarrassed...", id. at 560, citing to Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 40 F.R.D. 318 (D.D.C., 1966), aff'd, sub. nom. V.E.B. Carl Zeiss, Jena v. Clark, 384 F.2d 979 (D.C. Cir., 1967).⁹

Surely, the General Assembly did not intend Subtitle 5 to abrogate the doctrine of executive privilege, which itself exists to serve the public interest.¹⁰ It is more reasonable to conclude that the General Assembly recognized the need for privacy, when a public body carried out an executive function, and the salutary effect that such private discussions had for the public interest. Verdow, id. at 556 ("...it is apparent

⁹Also to be noted is the impropriety of probing the mental processes of an administrative officer in reaching his decision. Boehm v. Anne Arundel Co., 54 Md. App. 497 (1983), citing to U.S. v. Morgan, 313 U.S. 409, 61 S.Ct. 999, 85 L.Ed.2d 1429 (1941).

¹⁰The "privilege" of the executive belongs to the public, not to the specific officer, and has been analyzed in that context by the Court. Hamilton v. Verdow, id. at 563.

from the very nature of government that a legitimate necessity exists for protection from disclosure of certain types of...information..." Thus, the General Assembly carved out from the general rule of Section 10-505 an exception. However, the same need for privacy exists when a public body carries out a judicial or quasi-judicial function. Recognizing this, the General Assembly properly extended the exception to cover judicial and quasi-judicial behavior at least where the public body, in a zoning case, makes findings of fact and conclusions of law.

This construction is reasonable and balances the competing public interests of access to the affairs of government and privacy, which is vital to the government if the government is expected to carry out its executive, judicial and quasi-judicial functions effectively. The construction is rational and effective because it permits the public complete access to the evidentiary sequence of the quasi-judicial process, but preserves the privacy of the decisionmakers when the evidentiary hearing ends and the panel undertakes the fact finding sequence of the quasi-judicial proceedings. It is also to be noted that public access is not completely foreclosed from the sequence of the quasi-judicial proceedings in which the panel makes findings of fact and conclusions of law. The Board must issue a Written Opinion, supporting its conclusion with findings and legal conclusions. The Opinion is public. Thus, Section 10-503, if construed as suggested here,

effectively balances competing public interests, permits the government to work, and results in a rational construction.

Stanley J. Schapiro
County Attorney

Michael J. Moran
Assistant County Attorney
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 1994, a copy of the foregoing Brief Of Appellees, William T. Hackett, Chairman, C. William Clark, Acting Chairman, Harry E. Buchheister, Jr. And Robert O. Schuetz, Being The County Board Of Appeals, In Response To Appellants' Maryland Rule 7-208 Brief was hand delivered to:

Newton A. Williams, Esquire
Nolan, Plumhoff & Williams, Chtd.
700 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204

Peter M. Zimmerman, Esquire
People's Counsel
Old Courthouse, Ground Floor
100 Washington Avenue
Towson, Maryland 21204

and mailed, first class mail, postage prepaid, to:

Harry L. Chase, Esquire
Chase & Chase
1190 West Northern Parkway
Suite 124
Baltimore, Maryland 21210

Michael J. Moran
Assistant County Attorney

-18-

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF COUNTY LINE, INC.
6101 Reisterstown Road
Baltimore, MD 21215

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF COUNTY LINE, INC.
FOR A SPECIAL EXCEPTION ON PROPERTY
LOCATED AT THE INTERSECTION OF LIBERTY
ROAD AND VENETIAN ROAD
(5905 LIBERTY ROAD)
2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT
CASE NO. 93-276-X

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come C. William Clark, Robert O. Schuetz, and Harry E. Buchheister, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review 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 Zoning Administration and Development Management and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE OFFICE OF ZONING
ADMINISTRATION & DEVELOPMENT MANAGEMENT AND THE BOARD OF
APPEALS OF BALTIMORE COUNTY**

No. 93-276-X

February 17, 1993 Petition for Special Exception filed by Harry L. Chase, Esquire, on behalf of County Line, Inc., Petitioner, for a special exception for a used car sales area and routine maintenance.

March 4 Publication in newspapers.

93-276-X, County Line, Inc.
File No. 67/158/93-CV-10476

March 12, 1993 Certificate of Posting of property.
March 18 Comments of Baltimore County Zoning Plans Advisory Committee.
April 1 Hearing held on Petition by the Zoning Commissioner.
May 19 Order of the Zoning Commissioner in which the Petition for Special Exception was DENIED.
June 7 Notice of Appeal filed by Harry L. Chase, Esquire, on behalf of County Line, Inc., Petitioner/Appellant.
October 7 Hearing before the Board of Appeals.
October 21 Opinion and Order of the Board in which the Petition for Special Exception seeking approval of a used car sales area and routine maintenance operation was DENIED.
November 19 Petition for Judicial Review filed in the Circuit Court for Baltimore County by County Line, Inc., by its attorneys Newton A. Williams, Esquire, and NOLAN, PLUMHOFF & WILLIAMS, Chartered, and Harry L. Chase and CHASE AND CHASE.
December 8 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
December 9 Certificate of Notice sent to interested parties.
February 3, 1994 Transcript of testimony filed.

Petitioner's Exhibits No. 1 -Plat of 5905 Liberty Road
2 -Aerial Map for Lochearn
3 -Area map of location with zoning
4 -Report of Groundwater Technology (for ID)
5A-N -Photos of site
6 -Three Dimensional Drawing of Site
7A-B -Photos of Commercial Sites on Liberty Road
7C -McDonalds
7D -Photo of Volvo (2)
8 -View of traffic on Liberty Road
9 -Photo of relationship with neighbors
10 -Photo of Closest Neighboring House

93-276-X, County Line, Inc.
File No. 67/158/93-CV-10476

11 -Photo showing light standards and trees
12 -Photo of Venetian Road
13 -Alley & Volvo off Flannery
14 -Zoning Com Case #92-220-XA
15A-I -Photos of Auto Car Sales 1/2 mile from site
16 -Site Plan of Auto World (Liberty Motors)
17 -Zoning Plan between Flannery Lane and Venetian
18 -Photostatic letters (8 pp) regarding Petition Sp Hearing

People's Counsel Exhibits No. 1 -Rule 8 for E. Ray Staggers
2A-H -Photos of Carson's Used Car on Reisterstown Road
3 -Letter from Md Dept of Environment
4 -Woodlawn-Liberty Corr Plan
5 -Letter from Mrs. Berger of Liberty Asso. (For ID)
6 -Sign-In Sheet

February 3, 1994 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,

Kathleen C. Weidenhammer
Administrative Assistant
County Board of Appeals of Baltimore County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Newton A. Williams, Esquire
Harry L. Chase, Esquire
Barry Parsons, President /County Line, Inc.
E. Ray Staggers, et al
People's Counsel for Baltimore County

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF COUNTY LINE, INC.
6101 Reisterstown Road
Baltimore, MD 21215

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

IN THE CASE OF: IN THE MATTER OF
THE APPLICATION OF
COUNTY LINE, INC. FOR A SPECIAL
EXCEPTION ON PROPERTY LOCATED AT THE
INTERSECTION OF LIBERTY ROAD AND
VENETIAN ROAD (5905 LIBERTY ROAD)
2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT
CASE NO. 93-276-X

CERTIFICATE OF NOTICE

Madam Clerk:

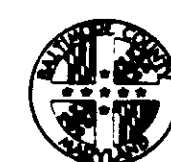
Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, C. William Clark, Harry E. Buchheister, Jr., and Robert O. Schuetz, constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., 700 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204; Harry L. Chase, Esquire, CHASE & CHASE, 1100 W. Northern Parkway, Suite 124, Baltimore, Maryland 21210, Counsel for Petitioner; Barry Parsons, President, County Line, Inc., 6101 Reisterstown Road, Baltimore, Maryland 21215, Petitioner; Mr. E. Ray Staggers, et al, 6 Crismers Court Road, Baltimore, Maryland 21207, Protestants; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

93-276-X/ County Line, Inc.
File No. 67/158/93-CV-10476

Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Newton A. Williams, Esquire, NOLAN, PLUMHOFF & WILLIAMS, CHTD., 700 Court Towers, 210 W. Pennsylvania Avenue, Towson, Maryland 21204; Harry L. Chase, Esquire, CHASE & CHASE, 1100 W. Northern Parkway, Suite 124, Baltimore, Maryland 21210, Counsel for Petitioner; Barry Parsons, President, County Line, Inc., 6101 Reisterstown Road, Baltimore, Maryland 21215, Petitioner; Mr. E. Ray Staggers, et al, 6 Crismers Court Road, Baltimore, Maryland 21207, Protestants; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, on this 9th day of December, 1993.

Charlotte E. Radcliffe
Legal Secretary, County Board
of Appeals, Room 49, Basement -
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

December 9, 1993

Newton A. Williams, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204-5340

Harry L. Chase, Esquire
CHASE & CHASE
Suite 124
1100 W. Northern Parkway
Baltimore, MD 21210

RE: Civil Action No. 93-CV-10476
COUNTY LINE, INC.

Dear Counsel:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty 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 the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

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

Very truly yours,

Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Barry Parsons, President
County Line, Inc.



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

December 9, 1993

Peter Max Zimmerman, Esquire
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
400 Washington Avenue, Room 47
Towson, Maryland 21204

RE: Civil Action No. 93-CV-10476
COUNTY LINE, INC.

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on November 19, 1993 in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

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

Very truly yours,
Charlotte E. Radcliffe
Legal Secretary

Enclosure

cc: Mr. E. Ray Staggers
Mrs. Emily Wolfson
Mrs. Judith Berger
Mr. Gerson P. Polen
Mr. Daniel L. Fredericks
Nathan Silver
P. David Fields
Lawrence E. Schmidt
Timothy M. Kotroco
W. Carl Richards
Docket Clerk /ZADM
Arnold Jablon /ZADM
Stanley J. Schapiro, County Attorney

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
PETITION OF COUNTY LINE, INC.
6101 Reisterstown Road
Baltimore, Maryland 21215

FOR JUDICIAL REVIEW OF THE DECISION
OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE MATTER OF THE APPLICATION OF
COUNTY LINE, INC. FOR A SPECIAL EXCEPTION
ON PROPERTY LOCATED AT THE INTERSECTION
OF LIBERTY ROAD AND VENETIAN ROAD
(5905 LIBERTY ROAD)
2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO. 93-276-X

CIVIL ACTION
NO.

67158/93CV10496

COUNTY LINE, INC.
a body corporate of the State of Maryland
6101 Reisterstown Road
Baltimore, Maryland 21215

Petitioner

v.

WILLIAM T. HACKETT, CHAIRMAN
C. WILLIAM CLARK, ACTING CHAIRMAN
HARRY E. BUCHHEISTER, JR.
ROBERT O. SCHUETZ, et al., comprising the
County Board of Appeals
of Baltimore County

For Cause: Respondent:
William T. Hackett, Chairman
C. William Clark, Esquire Acting Chairman
Harry E. Buchheister, Jr.
Robert O. Schuetz, et al., comprising the
County Board of Appeals
For
Baltimore County
Old Court House, Room 49
Towson, Maryland 21204

APPELLANT'S PETITION FOR JUDICIAL REVIEW
PURSUANT TO MARYLAND RULE 7-203
AND

PETITION FOR RELIEF UNDER
THE MARYLAND OPEN MEETINGS ACT
APPELLANT'S PETITION FOR JUDICIAL REVIEW

County Line, Inc., a body corporate of the State of Maryland, Petitioner before the Board of Appeals, and Appellant herein, by its attorneys Newton A. Williams, Esquire and Nolan, Plunhoffs & Williams, Chartered and Harry L. Chase and Chase and Chase, hereby appeals pursuant to Maryland Rule 7-203 from the Opinion and Order (hereinafter the Opinion and Order) of the County Board of Appeals in the above entitled matter dated October 21, 1993, (a copy of which is attached hereto and incorporated by reference herein), and from each and every part thereof. Further, the Appellant respectfully seeks relief under the Maryland Open Meetings Act, Sections 10-501 to 10-512 of the State Government Article of the Annotated Code of Maryland.

The grounds of the Appeal and Petition are as follows:

1. The Opinion and Order are contrary to law, and to the applicable statutes, rules and regulations, governing special exception uses in Baltimore County, Maryland.
2. That the Opinion and Order of the Board is contrary to the clear cut, and compelling evidence in the case, and a reasonable man, could not, and should not have reached the Opinion and Order which the Board reached based upon the evidence as a whole, contrary to the applicable standard in administrative cases.
3. That the Board erred in its holding and finding on page five of its Opinion, that the CMS District in question, which includes the subject property, was intended to serve as a neighborhood limited to ten thousand persons or less, pursuant

to Section 259.2 of the Regulations. That the Board's errors with regard to the districting include at least the following:

a. That the Board ascribed a greater importance to the CMS District than to the controlling B.R. Zone, and this was and is erroneous and unlawful.

b. That the subject area zoned B.R.-CMS between the City line and a point approximately 750 to 850 feet to the northwest, including the subject site, does not meet the criteria for the CMS District. This area does not include at least one supermarket or grocery store; and (as the Board correctly pointed out at pages two and three of its Opinion and Order), the area is primarily automobile oriented. The service garages, the Mr. Tire Store, the Volvo garage, the automobile tinting operation, and other automobile uses including the two former, now closed service stations, one of which is the subject of this case, were designed to serve a transportation oriented hub at Northern Parkway and Liberty Road, and were not designed, and do not primarily serve a neighborhood of ten thousand persons or less.

c. It should also be carefully noted that the controlling zone is B.R., that is Business Roadside, and that Business Roadside has been traditionally applied to heavier automotive related uses on major arterials, such as Liberty Road, over the years in Baltimore County. The B.R. zoning at the site area is indicative of the automotive nature of the area, and, indeed, the arterially oriented, automotive nature of the area. Furthermore, Baltimore County Planners will

readily concede the Districts under the Zoning Regulations have never served their original purpose; and that districts are largely related in the urban areas only to automotive service station locations. In fact, the districts and auto service station regulations both have a common origin in Bill No. 40, adopted in 1967. Further, the primary difference between a CSA District, and a CMS District is that in a CSA District a service station is available as a matter of right, while in a CMS District a service station requires a special exception.

In fact, there are at least seven CMS districts between the City Line, our site, and Marriottsville Road on Liberty Road to the northwest. Liberty Road continues to serve a dual purpose, and its first, and primary purpose is a major arterial street. In fact, it is a State Highway, designated as Maryland Route 26 over much of its path. Liberty Road is only secondarily a site for neighborhood type of shopping; and as a State Route, Liberty Road is a fit and proper site for a used car sales area, which serves both the immediate area and a larger area, including the motorists passing this transportation hub near the site and using the arterial.

d. That there are numerous closed businesses along Liberty Road from the site at the City Line to Randallstown, and business ventures are continually opening and closing in this troubled corridor. It was and is unlawful, arbitrary and capricious to reject a lawful, established business in this troubled corridor, particularly a used car operation by a reputable dealer with a long established reputation dating to

the 1920's in the northwest Baltimore community. This failure to allow this lawful use is even more flagrant in that the site involves a closed service station now and for the foreseeable future under remediation, which closed station and site could be brought, and should be brought back into productive service to the community.

4. The Board's finding of probable "congestion in road, streets and alleys" is not supportable based upon the evidence, in that the proposed used car lot has limited hours, a very limited clientele, and a limited number of employees. In fact, the evidence was and is that the proposed used car operation would produce substantially less traffic than the former service station which it replaces, or many of the other uses permitted as a matter of right or by special exception in the BR Zone. Further, Mr. Parsons specifically testified that he does not allow test drives as an ordinary matter. As for traffic use for testing used cars on Venetian Drive, it is a dead end street, and the site does not have a curb cut on Venetian Drive.

5. That the subject case was filed, and was first heard by the Zoning Commissioner well prior to the passage by the County Council on May 17, 1993, of the Woodlawn Liberty Community Plan. Once again, the Board ascribed too much importance to this advisory plan, which is directly contrary to the B.R. Zoning of the property, which zone as a part of the Zoning Regulations is the governing law. The long established and dominant automotive related character of the area was also

ignored by the Board, despite clear and compelling evidence of its presence as noted in Paragraph 3 hereof.

6. That the Board's finding that the value and livability of the nearby residences would be affected cannot be supported from the evidence. First of all, the Protestants did not present any expert appraisal testimony. The Petitioners presented the testimony of Mr. Bernard Semon, an expert, respected appraiser who gave numerous reasons why the value would not be affected. Secondly, the homes on Flannery Lane have only a very limited view of the proposed site, which view is to be upgraded by additional landscaping. These homes along Flannery Lane look directly into the eight plus bay Volvo service garage, which service garage screens the majority of the County Line site from these homes, as can be clearly seen in the photographs, Petitioners' Exhibit 5, in the Board and Court's file.

7. That despite the Board's efforts to distinguish this site from other area BR sites, the subject site is not unique as required for a denial under Schultz v. Pritts, 291 Md., 1 (1981). Under the Schultz v. Pritts criteria, the County Council is deemed to have considered, as it surely did, all of the normal attributes of a used car operation, and to have deemed it acceptable on any B.R. site, in the zoning district. Absent viable and legitimate aggravating factors which make it more objectionable at that particular site than any other site in the zoning district, the special exception use is to be granted. In fact, the subject site is more suited

to a used car operation than the Auto World site, favorably decided a short distance to the northwest on Liberty Road in Case No. 93-276X, by the Zoning Commissioner, fully brought out in evidence before the Board. The Commissioner's Decision and Order in that case is in evidence as Petitioner's Exhibit 14, and see the photos, Petitioner's Exhibit 15, and the Auto World Site Plan, Petitioner's Exhibit No. 16.

The Auto World site is not in an automotive oriented area as is the subject property, and the site Auto World is surrounded by residences, that is apartments, on two sides, with residential uses across the street. These factors outweigh the difference in district between CMS and CSA and rendered the subject site a more suitable site for used car sales, and these factors render the Auto World site a less suitable site for used car sales.

Similarly, the reopened, landscaped site as a used car lot is far superior to a closed service station at the Woodlawn gateway, no matter how well the closed station, (under long term remediation) is kept. Despite substantial and uncontradicted evidence offered by the Petitioner, the Board completely ignored the fact that this former closed Exxon Station is under long term cleanup for a ground water pollution problem due to surface or sub-surface spillage or leakage. The net effect, known to the Board, but ignored, is that for a five to seven years or longer period the paving cannot be torn up, and this entire site cannot be redeveloped for other BR uses requiring a larger building. Thus, a used car lot producing

less traffic than a four bay service station would be an asset to the area, putting the site back into active use during the required cleanup still under way. The Board does not even mention this evidence, and this compelling evidence should not have just been totally ignored. It was and is error for the Board to ignore this evidence.

PETITION FOR RELIEF UNDER
MARYLAND OPEN MEETINGS ACT

County Line, Inc., a body corporate of the State of Maryland, Petitioner before the Board of Appeals, and Petitioner herein, hereby seeks relief under the Maryland Open Meetings Act, Sections 10-501 to 10-512 of the State Government Article of the Annotated Code of Maryland, and hereby seeks such relief against William T. Hackett, Chairman, C. William Clark, Acting Chairman, Harry E. Buchheister, Jr., Robert O. Schuetz, and the other members of the County Board of Appeals for Baltimore County, and the grounds of this Petition are as follows:

1. The Petitioner, County Line, Inc., hereby adopts and incorporates by reference Paragraphs One to Seven of the foregoing Appellant's Petition for Judicial Review, pursuant to Maryland Rule 7-203, as if fully set out herein once again.
2. That the Board's Opinion and Order and the deliberations of the Board have violated the Maryland Open Meeting Act Article, Section 10-512 of the State Government Article, of the Annotated Code of Maryland, as well as a binding ruling of this Court in three consolidated cases,

namely The Valley Planning Council, et al. v. Baltimore County, et al., 93CV3628; Northwest Land Corporation v. Baltimore County, et al., 93CV5478; and The Baltimore Sun Company v. William T. Hackett, 93CV5637. A consolidated ruling was issued in these three cases on October 8, 1993, and the Court, by the Honorable Barbara Kerr Howe, that day signed an Order, effective that day October 8, 1993, requiring the Board of Appeals as to all zoning decisions, including special exceptions as in the present case, to confer and deliberate in public, and to reach a decision in public session. This decision was not so reached in a public, scheduled Board session.

The Court's decision and Ruling in these cases is based upon certain provisions of the State Open Meetings Act, Sections 10-501 to 10-512 of the State Government Article of the Annotated Code of Maryland.

That the reasons for that ruling are set out more fully in the attached Opinion of the Court in these three cases dated October 21, 1993, attached hereto and incorporated by reference herein.

3. The relevant chronology of events as to the Board's hearing and decision in this case is as follows:

a. The Board hearing in this matter on October 7, 1993, went on until after 5:30 p.m. or so, and there were no public deliberations at the close of the case.

b. On October 8, 1993, the Circuit Court ruled all deliberations by the Board must occur in public from that

date, ie. October 8, 1993, in the aforesaid zoning cases. None of the parties hereto were advised of this Opinion and Order prior to issuance on October 21, 1993, nor were they notified of any public deliberations by which the Board reached its Opinion and Order of October 21, 1993, all in violation of Section 10-506 of the Open Meetings Act.

c. On October 21, 1993, the Board issued its Opinion and Order denying the requested special exception.

d. Unless the Board immediately conferred on October 7th, all deliberations, ie. meetings or conversations by two or three members of the Board on October 8th or thereafter, were in violation of this Court's Order of October 8, 1993. Further, even before October 8, 1993, all private deliberations from the effective date of the law removing the exemption allowing private deliberations of zoning decisions by the Board on cases such as this one, were and are violative of the State's Open Meeting Laws. Hence, this Opinion and Order by the Board is defective whether arrived at before or after October 21, 1993, if not done in public session, as required since July 1, 1991, by Section 10-503, as amended.

Further, if the Board reached a decision in closed session, then such a closed session is a violation of Sections 10-503 and 10-505 of the Open Meetings Act.

That County Line, Inc., the Petitioner below, and Appellant and Petitioner herein, is entitled under Section 10-510 of the Open Meetings Act, and more specifically under subsection 10-510b.1.(i) to: (a) a determination of the

applicability of this Open Meetings Act to these proceedings by the Board; to (b) under subsection 10-510b.1.(ii), to require the Board to reconsider its decision in scheduled, public session; or (c) under subsection 10-510b.1.(iii), the Court may void the action of the Board if it finds a violation of the Open Meetings Act.

Wherefore, County Line, Inc., the Petitioner below and Appellant and Petitioner herein, respectfully seeks the following relief as the Court may deem appropriate in these related causes, namely:

1. A reversal of the Board's Opinion and Order of October 21, 1993, and the granting of the requested special exception for used car sale area and routine maintenance operation as sought therein.

2. In the alternative, the Appellant County Line, Inc., specifically seeks relief under the Open Meetings Act, and requests pursuant to Section 10-510b(1) thereof the following relief:

a. A determination that the Open Meetings Act was and is applicable to the Board's action in this matter;

b. A requirement that the Board comply with the Open Meetings Law in this matter; and

c. A declaration by the Court that the Board's Decision and Order of October 21, 1993, is voided for failures to meet the requirements of the Open Meetings Act as set out herein; this Petition for Relief having been filed within 45 days after the first date of the alleged violation October 7,

1993, which may have been continuing, and to have occurred up to and including October 21, 1993, the date of the Board's Opinion and Order herein, and, in any case, which violations could not have occurred earlier than October 7, 1993, the date of the Board's single hearing herein.

Newton A. Williams
NEWTON A. WILLIAMS

Nolan, Plunkhoff & Williams
NOLAN, PLUNKHOFF & WILLIAMS, CHTD.
700 Court Towers
210 W. Pennsylvania Avenue
Towson, Maryland 21204
(410) 823-7800

Harry J. Chase
HARRY J. CHASE

Chase & Chase
CHASE & CHASE
1100 W. Northern Parkway
Suite 124
Baltimore, Maryland 21210
(410) 433-4100
Attorneys for Appellant and
Petitioner, County Line, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of November, 1993, a copy of the foregoing Appellant's Petition for Judicial Review Pursuant to Maryland Rule 7-203 and Petition for Relief Under the Maryland Open Meetings Act was mailed postage prepaid to Peter J. Zimmerman, Esquire, People's Counsel for Baltimore County, Stanley Shapiro, Esquire, County Attorney, both Old Court House, Towson, Maryland 21204, and The County Board of Appeals for Baltimore County, Old Courthouse, 400 Washington

LAW OFFICES
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& WILLIAMS,
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& WILLIAMS,
CHARTERED

Avenue, Towson, Maryland 21204, in addition to being personally served by the Sheriff for Baltimore County upon the Board pursuant to the second cause of action, the Petition for Relief Under the Maryland Open Meetings Act, and in addition to mailing by the Clerk of the Circuit Court for Baltimore County to the Board of appeals, pursuant to Maryland Rule 7-202(d)(1).

Newton A. Williams
NEWTON A. WILLIAMS, Attorney
for Appellant and Petitioner,
County Line, Inc.

5703C

IN THE MATTER OF THE
THE APPLICATION OF
COUNTY LINE, INC.
FOR A SPECIAL EXCEPTION ON
PROPERTY LOCATED AT THE INTER-
SECTION OF LIBERTY ROAD AND
VENETIAN RD (5905 LIBERTY RD) *
2ND ELECTION DISTRICT *
2ND COUNCILMANIC DISTRICT *
* * * * *

OPINION

County Line, Inc., filed a Petition seeking the approval of a used car sales area and routine maintenance operation for the property it owns at 5905 Liberty Road. The Board heard testimony from Barry Parsons, President and sole stockholder of County Line, Inc., regarding the proposed use at that site. Additionally, on Petitioner's behalf, the Board heard from Gerson Polen, a licensed architect with expertise in adaptive re-use and renewal of urban sites, and William Monk, a landscape consultant and urban planner. The Board also received testimony from Bernie Semon, an expert in real estate appraising, concerning the effect the proposed use would have on the surrounding neighborhood in terms of residential resale value. In opposition, the Board heard from Ray Staggers, individually and as representative of the Robin Hill Community Association, and Larry Simmons and Vergie Davis, both residents of the neighborhood. Additionally, the Board heard from William O'Briecht of the Gwynn Oak Improvement Association, David Green of the Office of Planning & Zoning, and Eddie Hawkins, Jr., and Daniel Fredericks, both residents of the area. All of People's Counsel's witnesses opposed the proposed use. The Board received numerous documents and photographs into evidence. From this testimony and documentary evidence, we make the following findings of fact.

Case No. 93-276-X County Line, Inc.

2

The subject site consists of a gross area of approximately .943 acre +/- upon which Baltimore County placed B.R. zoning continuously since 1955. A service station of one brand or another existed on the site since 1951. The subject site now resides in an area of B.R.-C.N.S. zoning which encompasses both sides of Liberty Road, beginning at the Baltimore City /Baltimore County line continuing generally one property deep and extending to the intersection of Liberty Road and Tulsa Road. Located across the street from the subject property beginning at the Baltimore City /Baltimore County line is an abandoned and vacant gasoline service station, a Mr. Tire store, a pawn shop, and the Liberty Auto Body Shop. On the same side of the street as the subject property is an automobile window tinting company, a dry cleaners, and, across Venetian Road, is a McDonald's restaurant. Located immediately behind the subject site on Flannery Lane is an automobile mechanical repair facility and service garage consisting of at least seven bays. On the subject site exists an approximately 2,250 square foot building which previously housed the office for an Exxon gas station and four service bays. Next to the Volvo service garage behind the subject site begins a series of single-family residential dwellings. Across the street from the subject site on Flannery Lane, slightly to the southwest of the subject property, exists a row of townhouses. Numerous automobile-oriented commercial facilities are located along Liberty Road, which is a major artery leading from Baltimore City into Baltimore County. The subject site sits at a lower elevation from the residential properties along Flannery Lane, and at a slightly lower elevation

Case No. 93-276-X County Line, Inc.

3

than the Volvo service garage. The service bays of the subject site are oriented toward Liberty Road. Two previous variance cases granted the subject site the permission to allow a lighting pole height of 30 feet in lieu of the permitted 10 feet in Case No. 69-221-ASPH, and permission to build a canopy over the gasoline islands and to permit four signs in Case No. 87-356-SPHA.

The B.R. zone found in Section 236, et seq., of the Baltimore County Zoning Regulations (BCZR) permits a wide variety of roadside business uses and is the only zoning classification in Baltimore County which permits a used motor vehicle outdoor sales area. That use may be allowed only upon the approval of a special exception pursuant to Section 236.4 so long as it complies with the requirements of Section 502.1 regarding special exceptions. Three of the eight enumerated requirements of Section 502.1 provide the issues to be resolved in this case, namely:

- Whether the proposed use will be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein; and
- Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations.

It is the last of these requirements which provides the greatest obstacle to the Board in granting the requested special exception. From Mr. Parson's testimony, we find that his family has been involved in the used car business since the 1920's. His business operates two used car lots on Reisterstown Road, one of them approximately parallel to the subject site but on Reisterstown

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& WILLIAMS,
CHARTERED

this use on residential communities which adjoin the site. As Mr. Staggers testified, the intersection on which this property is located serves as the gateway to these communities.

Based upon these factors, I am persuaded that the Petition should be denied. In my view, the Petitioner has failed to meet its burden under law. There are significant distinctions in the instant case and case No. 92-220-XA, not the least of which is the residential communities which adjoin the subject property.

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 denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 19th day of May, 1993 that the Petition for Special Exception for approval to use the herein described property for a used car sales area and routine maintenance, be and is hereby DENIED.

Lawrence E. Schmidt
LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

ORDER RECEIVED FOR FILING
Date 5/19/93
By [Signature]

MICROFILMED

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1 Date of Posting: 5/11/93
Posted for: [Signature]
Petitioner: [Signature]
Location of property: [Signature]
Location of Sign: [Signature]
Remarks: [Signature]
Posted by: [Signature] Date of return: 5/11/93
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD. 34, 1993

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 34, 1993

THE JEFFERSONIAN,

S. Zake Orlow
Publisher

\$63.22

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

May 19, 1993

Harry L. Chase, Esquire
1190 W. Northern Parkway
Suite 124
Baltimore, Maryland 21210

RE: Petition for Special Exception
Case No. 93-276-X
County Line, Inc.

Dear Mr. Chase:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Exception has been denied, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal 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,
Lawrence E. Schmidt
LAWRENCE E. SCHMIDT
Zoning Commissioner

LES:amn
att.
cc: Mr. Gerson P. Polen
Mr. Barry Parsons, President, County Line, Inc.
Mrs. Emily Wolfson
Mrs. Judith Berger
Mr. E. Ray Staggers

Zoning Administration & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

PETITION OF: County Line, Inc.
CIVIL ACTION # 67/152/93-CV-10476
IN THE MATTER OF COUNTY LINE, INC.

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS, BOARD'S RECORD EXTRACT & TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS

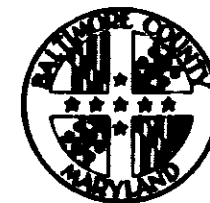
Mary Rose
Clerk's Office
date: 2/3/94

Zoning Administration & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150
Number

Date

Cashier Validation



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 5905 Liberty Road, Baltimore County

which is presently zoned BR-CMS

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

Used car sales area and routine maintenance

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

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

Legal Owner(s)
(Type or Print Name)
Signature
Address
City State Zipcode

County Line, Inc.
Barry Parsons
5905 Liberty Road
Baltimore, MD 21215

City State Zipcode

Address
City State Zipcode

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

Name
Address
City State Zipcode

Phone No.
Office Use Only
Phone No.

ESTIMATED LENGTH OF HEARING
Available for Hearing
the following date: _____ Next Two Months

ALL OTHER DATE

REVIEWED BY: _____ DATE

No REVIEW
2-19-93 WCR

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

Date: 3-15-93

County Line, Inc.
6101 Reisterstown Road
Baltimore, Maryland 21215

RE: CASE NUMBER: 93-276-X (Item 284)
Intersection Liberty Road and Venetian Road
5905 Liberty Road - Magic Motors
2nd Election District - 2nd Councilmember
Petitioner(s): County Line, Inc.
HEARING: THURSDAY, APRIL 1, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Dear Petitioner(s):

Please be advised that \$ 63.22 is due for advertising and posting of the above captioned property and bearing date.

THE ZONING SIGN & POST SET(S) MUST BE 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.

Forward your check for the above fee via return mail to the Zoning Office, (ZADM), County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Please write the case number and hearing date on the check and make same payable to Baltimore County, Maryland. To avoid delay of the a ruling in your case, immediate attention to this matter is suggested.

Bill Johnson
Bill Johnson
DIRECTOR

Harry L. Chase, Esq.

BALTIMORE COUNTY, MARYLAND
OFFICE OF THE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 6/8/93 ACCOUNT R-001-6150
#150
AMOUNT \$ 35.00

RECEIVED FROM: CHASE AND CHASE ATTORNEYS

FOR: COUNTY LINE INC, 5905 LIBERTY RD - SPEC. EX.

3340300093MCHRC \$35.00

VALIDATION OR SIGNATURE OF CASHIER

DATE

BALTIMORE COUNTY, MARYLAND
OFFICE OF THE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 11/27/91 ACCOUNT M-120
AMOUNT \$ 40.00

RECEIVED FROM: Nolan, Plushoff & Williams, Chartered

FOR: #710 - VERIFICATION

Magic Motors
5905 Liberty Road
21215

VALIDATION OR SIGNATURE OF CASHIER

DATE

BALTIMORE COUNTY, MARYLAND
OFFICE OF THE REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

DATE 1-8-92 ACCOUNT R-001-6150
#120
AMOUNT \$ 602.50.00

RECEIVED FROM: HASE AND CHASE ATTORNEYS

FOR: COUNTY LINE INC, 5905 LIBERTY RD - APPEAL

3340300093MCHRC \$602.50.00

VALIDATION OR SIGNATURE OF CASHIER

DATE

DATE



111 West Chesapeake Avenue
Towson, MD 21204

MAR 01 1993

(410) 887-3353

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204 at Room 115, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-276-X (Item 284)
Intersection Liberty Road and Venetian Road
5905 Liberty Road - Magic Motors
2nd Election District - 2nd Councilmanic District
Petitioner(s): County Line, Inc.
HEARING: THURSDAY, APRIL 1, 1993 at 9:00 a.m. in Rm. 115, Old Courthouse.
Special Exception for a used car sales area and routine maintenance.

Arnold Jablon
Director

cc: County Line, Inc.
Harry L. Chase, Esq.

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

July 23, 1993

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. 93-276-X

COUNTY LINE, INC.
Intersection Liberty Road and Venetian Road
(5905 Liberty Road)
2nd Election District
2nd Councilmanic District

SE -To allow used car sales area and routine maintenance area on subject site.

5/19/93 -Z.C.'s Order in which Petition for Special Exception is DENIED.

ASSIGNED FOR: THURSDAY, OCTOBER 7, 1993 at 10:00 a.m.

cc: Harry L. Chase, Esquire Counsel for Petitioner /Appellant
Mr. Barry Parsons, President. Petitioner /Appellant
County Line, Inc.

Mrs. Emily Wolfson
Mrs. Judith Berger
Mr. E. Ray Staggers
Mr. Gerson P. Polen
Mr. Daniel L. Fredericks
Mr. Nathan Silver

People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

Kathleen C. Weidenhammer
Administrative Assistant

Printed with Soybean Ink
on Recycled Paper



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

March 18, 1993

Harry L. Chase, Esquire
1190 W. Northern Parkway STE 124
Baltimore, MD 21210

RE: Case No. 93-276-X, Item No. 284
Petitioner: County Line, Inc.
Petition for Special Exception

Dear Mr. Chase:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, 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 February 17, 1993, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

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2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,

W. Carl Richards, Jr.
Zoning Coordinator

WCR:hek

Enclosures

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: Mr. Arnold Jablon, Director
Zoning Administration and
Development Management

DATE: March 9, 1993

FROM: J. Lawrence Pilson
Development Coordinator, DEPRM

SUBJECT: Zoning Item #284
County Line, Inc., 5905 Liberty Road
Zoning Advisory Committee Meeting of 3/1/93

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

- 1) If lubrication work and oil changes are performed at this location, the method providing for the elimination of waste oil must be accordance with the State Department of the Environment.
- 2) 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.
- 3) In-use underground residential storage tanks located in an area served by well systems must be either removed or precision tested prior to subdivision approval.
- 4) Any commercial underground storage tanks in excess of 110 gallon capacity must be registered with the MD Department of the Environment and must be in compliance with all applicable sections of COMAR 26.10.02-.11, Tank Management.

JLP:mp

ZON. 284/GWRMP

Baltimore County Government
Fire Department



700 East Joppa Road Suite 901
Towson, MD 21286-5500

MARCH 11, 1993

(410) 887-4500

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: COUNTY LINE, INC.

Location: #5905 LIBERTY ROAD

Item No.: +284(WCR) Zoning Agenda: MARCH 1, 1993

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. Jerry P. Phipps
Planning & Inspection Division

JP/KEKH

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

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

DATE: March 11, 1993

SUBJECT: 5905 Liberty Road

INFORMATION:

Item Number: 284

Petitioner: County Line, Inc.

Property Size:

Zoning: B.R.-C.N.S.

Requested Action:

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

Based upon a review of the information provided and the fact that the proposed use is in direct conflict with the Woodlawn Liberty Community Plan, staff recommends that the applicant's request be denied.

Summary

The Baltimore County Master Plan designates this site as being located within a Community Conservation Area. Under the heading of "Community Conservation" on page 28, the Woodlawn Liberty Community Plan, which was adopted by the Planning Board on July 18, 1991, states the following: "[T]he visual quality of the community's major thoroughfares is not as high as that in other parts of the community." Appendix B of the plan addresses the Petitioner's proposed use directly. Under the heading of "Commercial Zones" on page 68, the Plan states, The following is a partial list of new uses that will not be permitted within the boundaries of the Woodlawn-Liberty Community Plan:

used car dealer	liquor stores	billboards
maintenance garages	service stations	adult entertainment

MICROFILMED

It is for this reason that staff recommends the Petition be denied, however, should the request be granted, the following condition should be attached:

- Architectural elevation drawings showing building materials and a landscape plan should be submitted for approval to the Deputy Director of the Planning Office prior to the issuance of any building permits.

Prepared by: Jeffrey M. Long

Division Chief: Campbell

PK/UL:W

SHA Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

March 11, 1993

Ms. Julie Winiarski
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: 284 (WCR)
MD 26
Magic Motors
County Line Incorporated
Special Exception

Dear Ms. Winiarski:

This office has reviewed the plan for the referenced item and we offer the following:

A field inspection of the property reveals that there are actually (2) two existing entrances within the State Highway Administration right-of-way. The proposed entrance indicated on the plan meets SHA standards and specifications. However, the second entrance, which is not indicated on the plan and is located on the southeast quadrant of the property, is closed using metal delineators across the entire entrance.

We request that as a condition of the exception approval, this entrance be removed and permanently closed using SHA Type "A" curb and gutter.

There is an existing inlet located on the east side of the entrance that is to be closed. Any damage to this inlet due to this construction will be the responsibility of the developer.

The closing of the aforementioned entrance shall be subject to the terms and conditions of an access permit issued by this office, with the following submittals required.

- Eight (8) copies of the site plan showing the SHA requirements.
- Completed application.
- Performance bond, letter of credit, or certified check (include Federal ID number or social security number on certified checks only) in the amount of 150% of the actual entrance construction cost (to include the cost of relocating any affected utilities) and in an even thousand dollar increment. These must be made payable to the State of Maryland. (Please note that it takes 6-8 weeks for a certified check to be returned after project completion and SHA final inspection).

My telephone number is 410-333-1350 (Fax# 333-1041)

Teletypewriter for Impaired Hearing or Speech
383-7555 Baltimore Metro - 585-0451 D.C. Metro - 1-800-492-5062 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-0717

Ms. Julie Winiarski
Page Two
March 11, 1993

- An engineering fee check in the amount of \$50.00, made payable to the State of Maryland.
- A letter of authorization from the appropriate agency relative to the relocation of any utilities which may be necessitated by this construction. Or, a letter from the developer acknowledging and agreeing to the financial responsibility for relocating any affected utilities, provided the cost for the utility relocation is included in the surety submitted for the permit.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

John Contestabile
John Contestabile, Chief
Engineering Access Permits
Division

BS/ies

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

June 8, 1993

Mrs. Emily Wolfson
8506 Church Lane
Randallstown, MD 21133

Mrs. Judith Berger
3801 Lochearn Drive
Baltimore, MD 21207-6363

Mr. E. Ray Staggars
6 Crislers Court Road
Baltimore, MD 21207

RE: Petition for Special Exception
Intersection Liberty Road and Venetian Road
(5905 Liberty Road - Magic Motors)
2nd Election District
2nd Councilmanic District
COUNTY LINE, INC. - Petitioner
Case No. 93-276-X

Dear Mrs. Wolfson, Mrs. Berger, and Mr. Staggars:

Please be advised that an appeal of the above-referenced case was filed in this office on June 7, 1993 by Harry L. Chase. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3391.

Sincerely,

Arnold Jablon
ARNOLD JABLON
Director

AD:jaw

cc: Harry L. Chase, Esquire
Mr. Gerson P. Polen
Mr. Barry Parsons, President, County Line, Inc.
People's Counsel

APPEAL
Petition for Special Exception
(Intersection Liberty Road and Venetian Road)
5905 Liberty Road
2nd Election District - 2nd Councilmanic District
COUNTY LINE, INC. - PETITIONER
Case No. 93-276-X

Petition(s) for Special Exception

Description of Property

Certificate of Posting

Certificate of Publication

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Landscape Site Plan

Protestant's Exhibits: 1 - Liberty Rd Community Council (letter)

2 - Community Affidavit

Protestant's Petitions of Protest - Gwynn Oak Improvement Assoc.
Robin Hill Community Association

Protestant's Letters and Photographs of Protest

Zoning Commissioner's Order dated May 19, 1993 (Denied)

Notice of Appeal received on June 7, 1993 from Harry L. Chase

cc: Mrs. Emily Wolfson, 8506 Church Lane, Randallstown, MD 21133
Mrs. Judith Berger, 3801 Lochearn Drive, Baltimore, MD 21207-6363
Mr. E. Ray Staggars, 6 Crislers Court Road, Baltimore, MD 21207
Harry L. Chase, Esquire, Suite 124, 1190 W. Northern Parkway,
Baltimore, MD 21210
Mr. Gerson P. Polen, 10320 Little Patuxent Parkway,
Columbia, MD 21044
Mr. Barry Parsons, President, County Line, Inc., 6101
Reisterstown Road, Baltimore, MD 21215
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
Lawrence E. Schmidt, Zoning Commissioner
W. Carl Richards, Jr., Zoning Coordinator
Docket Clerk
Arnold Jablon, Director of ZADM

COUNTY LINE, INC. #93-276-X
Intersection of Liberty Road
and Venetian Road
(5905 Liberty Road)
2nd Election District
2nd Councilmanic District
SE -Used car sales area and routine maintenance operation

February 17, 1993 Petition for Special Exception filed by Harry L. Chase, Esquire, on behalf of County Line, Inc., Petitioner, for a special exception for a used car sales area and routine maintenance.

April 1 Hearing held on Petition by the Zoning Commissioner.

May 19 Order of the Zoning Commissioner in which the Petition for Special Exception was DENIED.

June 7 Notice of Appeal filed by Harry L. Chase, Esquire, on behalf of County Line, Inc., Petitioner/Appellant.

October 7 Hearing before the Board of Appeals.

October 21 Opinion and Order of the Board in which the Petition for Special Exception seeking approval of a used car sales area and routine maintenance operation was DENIED.

November 19 Petition for Judicial Review filed in the Circuit Court for Baltimore County by County Line, Inc., by its attorneys Newton A. Williams, Esquire, and NOLAN, PLUMHOFF & WILLIAMS, Chartered, and Harry L. Chase and CHASE AND CHASE.

December 8 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

December 9 Certificate of Notice sent to interested parties.

February 3, 1994 Transcript of testimony and Record of Proceedings filed in the Circuit Court.

October 11, 1994 ✓ Opinion and Order of Court GRANTING petition to operate a used car sales area, etc. (Hon. John S. Turnbull, II)

February 7, 1995 ✓ Notice of Appeal filed in CSA by Protestant - Community.

February 7, 1995 ✓ Order issued by the CSA; AFFIRMED CBA -Special Exception should be GRANTED; REMANDED to CBA to REMAND to CBA to grant Special Exception (Bishop, Albert, Baltimore, MD)

April 15 ✓ (In accordance with CSA Opinion) Order issued by CBA case remanded to CBA to GRANT Special Exception (John S. Turnbull, II)

7/23/93 -Notice of Assignment for hearing scheduled for Thursday, October 7, 1993 at 10:00 a.m. sent to following:

Harry L. Chase, Esquire
Mr. Barry Parsons, President
County Line, Inc.
Mrs. Emily Wolfson
Mrs. Judith Berger
Mr. E. Ray Staggars
Mr. Gerson P. Polen
Mr. Daniel L. Fredericks
Mr. Nathan Silver
People's Counsel for Baltimore County
P. David Fields
Lawrence E. Schmidt
Timothy H. Kotroco
W. Carl Richards, Jr. /ZADM
Docket Clerk /ZADM
Arnold Jablon, Director /ZADM

8/30/93 - Rule 8 documents received from the Robin Hill Community Association.

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

March 2, 1993

Harry L. Chase, Esquire
1190 W. Northern Parkway
Suite 124
Baltimore, MD 21210

RE: Preliminary Petition Review (Item #284)
Legal Owner: County Line, Inc.
5905 Liberty Road
2nd Election District

Dear Mr. Chase:

At the request of the attorney/petitioner, the above referenced petition was accepted for filing without a final filing review by the staff. The petition was accepted with the understanding that all zoning issues/filing requirements would be addressed. A subsequent review by the staff has revealed unaddressed zoning issues and/or incomplete information. The following comments are advisory and do not necessarily identify all details and inherent technical zoning requirements necessary for a complete application. As with all petitions filed in this office, it is the final responsibility of the petitioner to make a proper application, address any zoning conflicts and, if necessary, to file revised petition materials. All revisions (including those required by the hearing officer) must be accompanied by a check made out to Baltimore County, Maryland for the \$100.00 revision fee.

- Only 10 copies of site plans were submitted; 12 are required.
- Zone lines must be conspicuously indicated on the plan.
- Existing use of property must be clearly indicated on plan. It is unclear whether "Magic Motors" is the existing or proposed use. Describe the nature of the existing use.
- A parking space typical should appear on the plan and parking calculations which reflect compliance with Section 409 (BCZR) is required.
- Section 409.4.C (BCZR) requires two-way travel lanes to be 22 feet in width. The plan indicates deficient lanes.

MICROFILMED

Harry L. Chase, Esquire
March 2, 1993
Page 2

6. The plan must delineate specifically which spaces will be reserved for customer parking and which will be reserved for used auto sales area. The indicated parking spaces around the perimeter of the property must be designated either "customer parking" or "used auto sales area".
7. Three sealed (original) property descriptions are required; only one was provided.
8. A floor plan (including dimensions) showing the existing layout and use(s) and any proposed changes to such layout and use(s) should be included on the site plan and be consistent with the parking calculations.
9. The reference to "routine maintenance" should be specifically defined on the plan (eg. service garage?). Be advised of Section 105.1 BCRB regarding storage of damaged or disabled motor vehicles.
10. In addition to the above comments, refer to the attached checklist which indicates those items that must be addressed.

If you need further information or have any questions, please do not hesitate to contact me at 887-3391.

Very truly yours,

By: Joseph C. Marney
Planner I

JCM:scj

Enclosures



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 887-3180

June 22, 1993

Mr. Larry Simmons, Secretary
Robin Hills Community Association
6115 Tolles Road
Woodlawn, MD 21207

Re: Appearance before Board of Appeals /
Rule 8 Documents

Dear Mr. Simmons:

In response to your request, enclosed is a copy of the packet prepared by the Office of People's Counsel which includes those documents to be filed in accordance with Rule 8.

Should you have any additional questions, you may want to contact the Office of People's Counsel directly at 887-2188, as we discussed on the telephone.

Very truly yours,

Kathleen C. Weidenhammer
Administrative Assistant

Enclosure



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old Court House
400 Washington Ave.
Towson, MD 21204
(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMIJO
Deputy People's Counsel

MEMORANDUM TO: All Civic Associations DATE: June 22, 1993

FROM: People's Counsel for Baltimore County

SUBJECT: Appearance before the Board of Appeals as
Representative of a Civic Association

Attached to this memorandum is a copy of Rule 8 of the Rules of Practice and Procedure of the County Board of Appeals which governs the appearance before the Board of representatives of civic or improvement associations.

This rule requires the following:

1. That the person who testifies can describe accurately the number of members in the association and the geographic limits of the association; and
2. That the person is authorized to speak for and present the views of the association. This second requirement can only be met by:
 - a. A resolution (in duplicate) adopted by the association at its annual meeting or first meeting of the year signed by the president and attested by the secretary. This resolution must state that the responsibility for review and action of all zoning matters is placed in the board of directors or a duly elected zoning committee; and
 - b. A written affidavit (in duplicate) signed by the president of the association and attested by the secretary that he is currently a duly elected member of the board of directors or zoning committee of that association, or is an attorney appointed to represent the board of directors or zoning committee; and
 - c. A resolution (in duplicate) adopted by the board of directors or zoning committee signed by the president and attested by the secretary stating the position of the association.

For your assistance, we have also attached sample resolutions and affidavits which may be used by your association. They have been reviewed by the Board of Appeals for form, but, of course, the substance remains the responsibility of the community association.

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

Enclosures

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: June 11, 1997
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File: Case No. 93-276-X
COUNTY LINE, INC.
2nd E; 2nd C

As no further appeal has been taken regarding the subject case, we are hereby closing the Board's file and returning same to you herewith. The original file and exhibits will be returned to you by John Almond, Records Manager /CCT.

Attachment (Case File No. 93-276-X)

RECEIVED
COUNTY BOARD OF APPEALS
JUNE 30 PM 3:02
Nolan, Plumhoff & Williams
CHARTERED
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(301) 823-7800
TELEFAX: (410) 298-2785

Mr. Keith Weidenhammer
County Board of Appeals
Court House
Towson Maryland 21204
June 28, 1993
Re: September Trial Schedule
County Line, Inc.
Case No. 93-276-X

Dear Kathy:

Mike Moran and I have just learned from the Court of Special Appeals, that our likely trial/argument date for Cameron Mill are September 7, 9, 10, 13, or 14. Since we will appear at it if the County Line case is not set before Friday, September 17th, since Thursday the 16th is Beth Hochman's according to my calendar. Thanks for your courtesy as usual. Best regards, sincerely, Minton

NEWTON A. WILLIAMS
THOMAS J. KENNER
WILLIAM P. ENGLISH, JR.
STEPHEN J. NOLAN
ROBERT A. BARLEY, JR.
ROBERT S. GUSHKAROW
STEPHEN W. SCHENNING
DOUGLAS L. BURGESS
ROBERT E. CANNILL, JR.
E. BRUCE JONES
J. JOSEPH CURRAN, III

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, COURT TOWERS
210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-5340
(410) 823-7800
TELEFAX: (410) 298-2785

November 21, 1994

Arnold Jablon, Esquire, Director
Zoning Administration Development
and Management
County Office Building
Towson, Maryland 21204

Re: Proposed Opening and Improvement of
Magic Motors Site at 5905 Liberty Road
Pursuant to the Decision of the Circuit
Court on Appeal of Case No. 93-276-X,
Circuit Court No. 93-CV10476

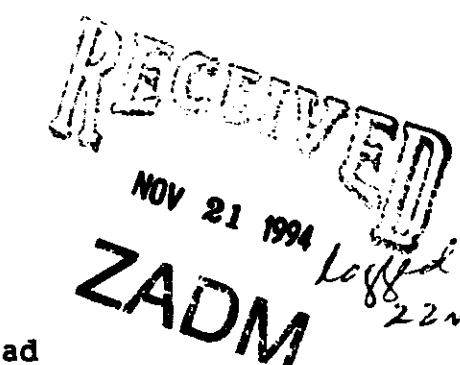
Dear Mr. Jablon:

Recently, namely by the Circuit Court's Opinion and Order of October 7, 1994, Judge John Grason Turnbull, II, recognized that the Board of Appeals improperly denied the requested special exception for a used car sales service facility on the above entitled property.

For your information, a copy of Judge Turnbull's Opinion and Order of October 7, 1994, is enclosed herewith.

The People's Counsel Mr. Zimmerman, has entered a timely appeal to the Court of Special Appeals on behalf of the People's Counsel themselves, the Gwynn Oak Improvement Association, the Robin Hill Community Association, Mr. William Obrecht, and Mr. E. Ray Staggers.

Needless to say this appeal has not yet been scheduled for briefing and argument. In the meanwhile, we wish to make some useful and productive use of this location. This location is a former Exxon service station, under remediation for a relatively minor product leak. Mr. Parsons wishes to utilize the site basically "as is" as to the building, but with some substantial improvements to the landscaping and other site details.



November 21, 1994
Page Two

A copy of Mr. Monk's plan entitled Plat to Accompany Special Exception Application 5905 Liberty Road, can be found in your file. We, however, really do not think it is necessary to review the plan in order for you to confirm that Mr. Parsons may open an operation known as Magic Motors, for used car sales and used car service with an office in the existing office, and utilizing the four service bays for service.

Among other extensive improvements shown on Mr. Monk's plan is a proposal to close the more southwesterly entrance on Flannery Lane, and the southeasterly most entrance on Liberty Road, in a permanent manner, and to extensively landscape and upgrade the site.

I have explained carefully to Mr. Parsons that he is running a risk in doing this, and he clearly understands that if the Court of Special Appeals should decide that Judge Turnbull was wrong, which we do not think will happen, that he would then no longer be able to utilize the site for used car sales and service.

At the present time, the site is cleaned up bi-weekly, the grass cut bi-weekly, and carefully supervised. However, it is boarded up for safety since there have been extensive efforts to break in to the site when vacant. This is not good for Mr. Parsons or the neighborhood.

Confirming that Mr. Parsons may open would have the advantage of putting the site into use, as well as upgrading its appearance, and making it more attractive and more compatible with the neighborhood, no matter what its ultimate use is.

It is our understanding through Mr. Nicholas Commodari who is working on any needed permits, that Permits and Licenses does not treat this as a change of occupancy. The site is presently licensed and approved for service garage and office usage. Essentially what is being proposed for the future with used car sales is much less traffic, no pumping or storing of gasoline or oil products in tanks, and an upgraded landscaping and traffic scheme.

If you consider this an inquiry which requires a \$40.00 letter, as a precaution, our check in the amount of \$40.00 made payable to Baltimore County is enclosed.

IMPORTANT MESSAGE

TO: MK

DATE: 3/3/93 TIME: 12:00 P.M.

WHILE YOU WERE OUT

M: Bill Chase

OP: 433-4100

Area Code & Exchange: 433-4100

TELEPHONED: ☒ PLEASE CALL

CALLED TO SEE YOU: ☒ WILL CALL AGAIN

WANTS TO SEE YOU: ☐ URGENT

RETURNED YOUR CALL: ☐

Message: 5909 Liberty Road

Operator: 433-4174

IMPORTANT MESSAGE

TO: JCM

DATE: 3/17/93 TIME: A.M.

WHILE YOU WERE OUT

M: Bill Chase

OP: 433-4100

Area Code & Exchange: 433-4100

TELEPHONED: ☐ PLEASE CALL

CALLED TO SEE YOU: ☐ WILL CALL AGAIN

WANTS TO SEE YOU: ☐ URGENT

RETURNED YOUR CALL: ☐

Message:

Operator:

Mr. Parsons has been enmeshed in the zoning process for several years now. Time is of the essence, and if this site is to be productively used and brought up to date, we would respectfully ask for a speedy review and approval.

If there is anything further that you or your staff require, please do not hesitate to contact us.

Sincerely yours,
Newton A. Williams
Newton A. Williams

NAM/vrs
Enclosure

cc: Peter J. Zimmerman, Esquire, People's Counsel
Carol S. DeMilio, Deputy, People's Counsel

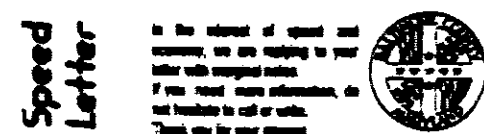
Mr. Carl Richards, ZADM
Mr. John Sullivan, ZADM

Mr. Barry Parsons
Car Wholesalers
6100 Reisterstown Road
Baltimore, Maryland 21215

Mr. William Monk
Courthouse Commons
222 Bosley Avenue, Suite B-7
Towson, Maryland 21204

Mr. Nicholas Commodari

Harry L. Chase, Esquire



November 23, 1994

This office will approve the permits subject to the following 2 restrictions which must be copied on the site plans and included in the permit and zoning case files:

1. That your clients/owners are aware that they are proceeding at their own risk until such time as the appellate process from this Order has expired. If, for any reason, the relief is reversed, the Petitioners would be required to return, and be responsible for returning said property to its original condition immediately.
2. That immediately when and if the appellate process has expired and the relief is granted, the site plans must be revised referencing the case, relief, date and any restrictions for final zoning approval and inclusion in the zoning and permit files.

cc: see above list

WCR:scj

WCR
W. Carl Richards, Jr.
Zoning Supervisor

HARRY L. CHASE
Attorney at Law
Suite 124
1190 W. Northern Parkway
Baltimore, Maryland 21210
410 - 433 - 4100
FAX 433 - 4174

April 12, 1993

The Honorable Lawrence E. Schmidt
Zoning Commissioner
Room 118
Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: 93-276-X (Item 284)
Intersection Liberty Road
and Venetian Road
5905 Liberty Road - Magic Motors

Dear Mr. Schmidt:

As requested at the hearing of April 1, 1993, I am submitted the following list in which my clients intend to agree to do with the above property in order to meet the communities concerns:

1. My client will only keep his business open six days a week, and will close each night at 7:00 p.m.;
2. My client will only perform repair work and service on vehicles that are part of his used car business at that establishment, and will not take on any outside repair work for other vehicles;
3. My client will close one curb cut on Liberty Road and one curve cut on Flannery Lane;

WCR

4. My client will not have any free standing signs and that the only sign will be on the building;

5. My client will not use streamers on the lot in any manner;

6. My client will install special lighting which only lights up the lot and not reflect any lighting on the communities surrounding the lot;

7. My client will dedicate the corner of the property located at Liberty and Flannery Lane to the communities, and will contribute a sign for the communities as a reasonable cost on that corner. Furthermore, my client will be responsible for the landscaping and upkeep of that corner; and

8. Finally, my client will landscape the property on all sides in accordance with his plan, and will maintain same.

Thank you for your kind consideration in this matter.

Very truly yours,

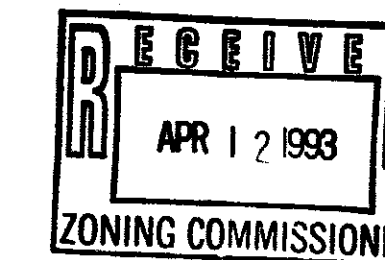
Harry L. Chase
HARRY L. CHASE

cc: Client
Gerson Polen



April 10, 1993

Mr. Larry Schmidt
Zoning Commissioner
Room 113
400 Washington Ave.
Towson, Md. 21204



13-276-X

Re: The Special Exceptions requested for the former Exxon Station at the corner of Liberty Road and Flannery Lane.

Dear Zoning Commissioner Schmidt,

The Gwynn Oak Community Association's northwest boundary is Liberty Road and Flannery Lane.

The Gwynn Oak Community Association strongly opposes the Special Exceptions requested for the former Exxon Station located at the corner of Liberty Road and Flannery Lane.

First, the site is currently contaminated by petroleum and possibly other products. The use of the site for auto repair and the parking of 40 used automobiles will inevitably contribute to further pollution of the site by petroleum products. The washing of the floor of the area where repairs will be made along with the leaking of petroleum products from the used cars are two examples of the way that further contamination will occur.

We strongly believe the site should be cleaned up before any further potential contamination of the site is approved by government.

The proposed use of the site for used cars is counter to the recommendations of a 2 year group which developed the Woodlawn/Liberty Community Plan. The opinion of community leaders from the Liberty Road Corridor was no "new" used car business'.

We also note that there was no posting of the site, or if there was a posting, the sign was immediately removed.

We appreciate your consideration of our comments.

Sincerely,

William Obrecht
William Obrecht
Co-chairperson
2415 Poplar Dr.
Baltimore, Md. 21207

April 12, 1993

Mr. Larry Schmidt
Zoning Commissioner
Room 113
400 Washington Avenue
Towson, Maryland

Dear Commissioner Schmidt:
In response to your generous gesture to allow the Robin Hill Community an opportunity to see and hear the presentation of plans relative to the proposed used car dealership Magic Motors, we thank you.

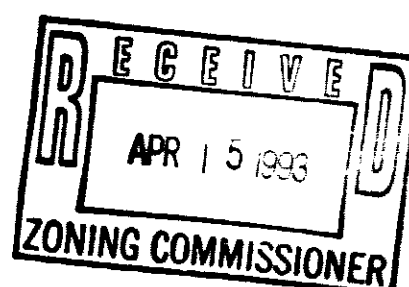
The presentation was given on Wednesday April 7, 1993 at 7:00pm by Mr. Harry Chase and Mr. Gerson Polen, the attorney and architect representing Mr. Parsons, the owner of the property in question.

During the meeting of the Robin Hill Community Association (RHCA) which followed the presentation, the proposed plan was discussed at great length. RHCA voted overwhelmingly to object to the establishment of a used car dealership at the corner of Liberty Road and Flannery Lane. We believed that this venture would have a negative impact on our community and result in serious consequences for the future growth of this area.

As stated in the June 14, 1991 Sun Paper editorial "The Woodlawn-Liberty Road" communities offer convenience and a good housing stock at affordable prices. Their vitality must be protected.

The RHCA joins the total community, the Sun Paper editors and the Baltimore County Office of Planning and Zoning in objecting to the establishment of a used car dealership in the area for the following reasons:

1. There would be a decrease in the attractiveness of the "Gateway" to the Lower Liberty Road Communities of Baltimore County
2. Current Home Owners have stated that they would not have chosen to purchase housing in this community if they had been greeted by the presence of a used car dealership
3. The Woodlawn/Liberty Road community Plan suggests that for commercial development food and drug stores, bakeries, dry cleaners and day-care centers would be among preferred uses, while no increase would be permitted in the number of used-car dealers and service stations
4. Considering the efforts to develop the Woodlawn/Liberty Road Community Plan, it would be unconscionable for a used car dealership to be granted a special exception and zoning variance



As spokesperson for the Robin Hill Community Association, we are very much opposed to this proposal and enclosed are Petitions Of Protest to document our position.

The community associations involved can envision no positive impact on our neighborhoods from such a business that is located at one of the primary entrances to our community in addition to its location being at the boundary line entering Baltimore County.

As stated in the Sun Paper editorial, the racial make-up of our area is now higher than 66 percent Black. This community strongly feels that the same level of unsolicited business exploitation, most often found in areas with predominately Black populations, is about to be visited upon us.

Clearly this is an opportunity for Government to exercise its jurisdictional clout and moral obligation to prevent this from happening to a community that is seeking only the best for its residents.

Since this matter is critical to the well being of this community, please contact me at (410) 944-3329 if additional information is needed.

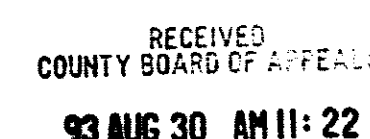
Sincerely,

E. Ray Staggers
President, Robin Hill
Community Association

cc: Roger Hayden, Baltimore County Executive
Melvin Mentz, County Councilman
Editor Baltimore Sun Papers

June 7, 1993

Honorable Roger Hayden
Baltimore County Executive
400 Washington Street
Towson, Maryland 21204



93 AUG 30 AM 11:22

Dear Mr. Hayden,

The Robin Hill Community Association (RHCA) intends to strengthen existing ties with the Baltimore County Government and enhance current relationship with the other Community Associations in the Liberty Road Corridor. Therefore, we are requesting the Baltimore County Council to carefully review the following plan regarding the property once owned by the EXXON Corporation, located at Liberty Road and Northern Parkway (The Gateway To Western Baltimore County), which was a recent issue of community concern, because of a plan to establish a used car lot on the site.

The RHCA recommends that the said property be purchased by Baltimore County (Due To Environmental Reasons) and a Community Resource Center be developed, which would offer all Baltimore County residents and especially the Lower Liberty Road Communities the following:

- A Mini Library (Books from existing branches in Woodlawn and Liberty Road could be checked out or returned here); The site would also serve as a tutoring center
- A sign would be posted, welcoming travelers to Baltimore County and would acknowledge Robin Hill, Gwynndale, Powhatan and Lochern communities
- Resource information regarding recreation, employment, health care initiatives, education and senior citizen programs in Baltimore County would be available to area constituents
- Area Community Based Organizations and Neighborhood Associations could utilize this site for meetings and other events
- Most importantly, this site could serve as a SUB STATION for the County Police and a Headquarters for the various Neighborhood Block Watch Programs that are currently being conducted in this area; traffic control could also be monitored from this key vantage point because of the close proximity to the Baltimore City boundaries

Fortunately, the building on the proposed premises would only require moderate repairs to be converted into offices and a meeting hall. The RHCA and hopefully other community associations in the area would be willing to donate such items as furniture, paint and cleaning materials for this project.

We have a Corps of Volunteers who are committed to all initiatives that may focus on community preservation. In fact, the Robin Hill community is made up of persons from diverse backgrounds, professionals and other hard working individuals who live and thrive in unison for the well being of the entire community. These persons have

committed to provide various services at cost to the County Government or the community.

Thus, we are prepared to assist our neighbors. However we are in need of an appropriate location to conduct our activities. Any assistance you can give us regarding this matter will be greatly appreciated.

Please feel free to call me at (410) 944-3329 or our Secretary, Mr. Larry C. Simmons at (410) 944-4980, should you have questions regarding this matter.

E. Ray Staggers
E. Ray Staggers
President, Robin Hill
Community Association INC.

cc: Honorable Melvin Mintz
Honorable Paula C. Hollinger
Honorable Kweisi Mfume

Board of Appeals
Room 49
Old Court House
Towson, Maryland 21204

Dear Sirs:

I am writing in regard to a closed Exxon station at the corner of Liberty Road and Flannery Lane.

I am very interested in case #93-276X regarding that piece of property and would very much appreciate being informed when this case is going to take place.

Sincerely,

Daniel L. Fredericks
Daniel L. Fredericks
3521 Venetian Road
Baltimore, Maryland 21207

62-11 MD 92 NOV 86
COUNTY BOARD OF APPEALS
RECEIVED

PETITION

We the people of the *Robin Hill Community Assn.*
do strongly protest and object to the proposed location of a
"Used Car Dealership" on the former Exxon Service

Station Site at the corner of Liberty Road and Flannery Lane.

The community associations involved can envision no positive impact on our communities from such a business that is located at one of the **primary entrances** to our community; in addition to its location being at the boundary line entering Baltimore County!

Name (Signature)	Address
<i>Jean Sandifer</i>	3419 Tulsa Rd 21207
<i>Barbara A. Chapman</i>	3419 Tulsa Rd 21207
<i>John B. Sandifer</i>	3419 Tulsa Rd 21207
<i>Michael Murray</i>	3421 Tulsa Rd 21207
<i>Erica M. Murray</i>	3421 Tulsa Rd 21207
<i>JoNitra Hicks</i>	3420 Tulsa Rd 21207
<i>Diane Tucker</i>	3420 Tulsa Rd 21207
<i>John Lightfoot</i>	3419 Flannery Ln 21207
<i>Laura J. Wallis</i>	3422 Tulsa Rd 21207
<i>Clifford M. Callaghan</i>	3417 Tulsa Rd 21207
<i>Vanita R. McCullough</i>	3417 Tulsa Rd 21207
<i>Michael P. Sandifer</i>	3419 Tulsa Rd 21207
<i>Elizabeth K. Elliott</i>	3400 Tulsa Rd 21207
<i>James E. Elliott</i>	3400 Tulsa Rd 21207

4/13/93
E.R.S.
MICROFILMED

BOARD OF EDUCATION OF BALTIMORE COUNTY

OFFICE OF LAW

J. Robert Haines, Esquire
Assistant County Attorney

Telephone 887-4060
Fax 887-4118

INTEROFFICE MEMORANDUM

DATE: April 29, 1996
TO: Baltimore County Board of Appeals
FROM: J. Robert Haines
Re: Case # 93-276-X

These papers were mis-directed to my office. Hopefully, there is no harm to your time tables. Thank you for your time.

*NOT DECIDED
E. ROBERT HAINES*

PETITION

We the people of the *Robin Hill Community Association*
do strongly protest and object to the proposed location of a
"Used Car Dealership" on the former Exxon Service

Station Site at the corner of Liberty Road and Flannery Lane.

The community associations involved can envision no positive impact on our communities from such a business that is located at one of the **primary entrances** to our community; in addition to its location being at the boundary line entering Baltimore County!

Name (Signature)	Address
<i>E. Ray Staggars</i>	6 Crismer's Court Road - 21207
<i>Kenneth Staggars</i>	#6 Crismer's Court Rd - 21207
<i>John M. Lee</i>	1 Crismer Ct. Rd 21207
<i>Doris Lee</i>	1 Crismer Ct Rd 21207
<i>Duane B. Tughrum</i>	5 CRISMER'S CT RD 21207
<i>Marian B. Tughrum</i>	5 Crismer's Ct Rd - 21207
<i>B. P. Ladd</i>	3 Crismer's Ct Rd - 21207
<i>Charles Fletcher</i>	5406 Montclair Ave 21207

4/13/93
E.R.S.

PETITION

We the people of the *Gwynn Oak Improvement Assn.*
do strongly protest and object to the proposed location of a
"Used Car Dealership" on the former Exxon Service

Station Site at the corner of Liberty Road and Flannery Lane.

The community associations involved can envision no positive impact on our communities from such a business that is located at one of the **primary entrances** to our community; in addition to its location being at the boundary line entering Baltimore County!

Name (Signature)	Address
<i>Arthur P. Obrecht</i>	2137 Gwynn Oak Ave 21207
<i>Gary Sawyer</i>	2321 Poplar Drive 21207
<i>Charles Skipped</i>	5406 Poplar Ave 21207
<i>Joseph Organ</i>	2301 Poplar Dr 21207
<i>Bill Obrecht</i>	2415 Poplar Dr 21207
<i>Angelene M. Malcolm</i>	2512 Poplar Dr 21207

PETITION

We the people of the *Robin Hill Community Association*
do strongly protest and object to the proposed location of a
"Used Car Dealership" on the former Exxon Service

Station Site at the corner of Liberty Road and Flannery Lane.

The community associations involved can envision no positive impact on our communities from such a business that is located at one of the **primary entrances** to our community; in addition to its location being at the boundary line entering Baltimore County!

Name (Signature)	Address
<i>Eddie Hawkins Jr.</i>	3402 Cardinal Ct. 21207
<i>Eddie Hawkins III</i>	" " " " "
<i>Harold E. Simmons</i>	3402 Cardinal Ct. 21207
<i>Eric Neuhart</i>	3402 Cardinal Ct. 21207
<i>Santorum Johnson</i>	3402 Cardinal Ct. 21207
<i>Karen B. Butler</i>	3402 Cardinal Ct. 21207
<i>Sharon Butler</i>	3402 Cardinal Ct. 21207
<i>Lanette Williams</i>	3402 Cardinal Ct. 21207
<i>Chris B. Harris</i>	3402 Cardinal Ct. 21207
<i>Mary Nicks</i>	3402 Cardinal Ct. 21207
<i>Allen Nicks</i>	3402 Cardinal Ct. 21207
<i>Jeffrey Nicks</i>	3402 Cardinal Ct. 21207
<i>Kate Nicks</i>	3402 Cardinal Ct. 21207
<i>Shirley P. Simmons</i>	6115 Talles Road.

4/13/93
MICROFILMED E.R.S.