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PETITION OF:
CARVILLE A. LAUENSTEIN
DOUGLAS K. DUNN

FOR JUDICIAL REVIEW OF
DECISION OF:

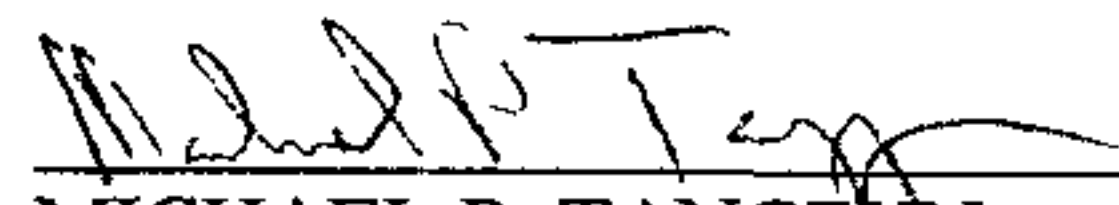
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

IN THE CASE OF:
IN THE MATTER OF THE
APPLICATION OF
THOMAS HARGIS
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE
NORTH WEST CORNER OLD
EASTERN AVE. AND ESSEX
AVENUE (1324 OLD EASTERN
AVENUE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No. 3-C-96-011276
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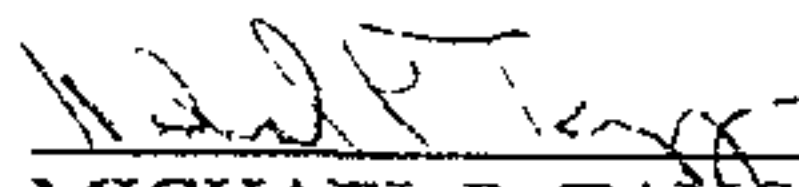
NOTICE OF APPEAL

PLEASE note an appeal on behalf of the Petitioners and Appellants, Carville A. Lauenstein and Douglas K. Dunn, by their attorney, Michael P. Tanczyn, from the Decision of the Circuit Court for Baltimore County (Honorable James T. Smith, Jr.) of September 2, 1997, to the Court of Special Appeals of Maryland.


MICHAEL P. TANCZYN
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Towson, Maryland 21204
(410) 296-8823
Attorney for the Appellants

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of ^{October} September, 1997, a copy of the foregoing Notice of Appeal was mailed, postage prepaid, to C. William Clark, Esq., Nolan, Plumhoff & Williams, CHTD., Suite 700, Nottingham Centre, 502 Washington Avenue, Towson, MD 21204, attorneys for Appellees; and to County Board of Appeals for Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204.



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October 1, 1997

Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204-0754

COPY

Re: Lauenstein, et al/Hargis
Case No. 3-C-96-011276

Dear Sir/Madam:

Enclosed herewith please find Notice of Appeal to be filed in the above-referenced matter,
along with my checks for costs.

Very truly yours,

MICHAEL P. TANCZYN

MPT:pb
Enclosures

cc: Mr. Douglas K. Dunn
C. William Clark, Esq.
County Board of Appeals for Baltimore County ✓

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1/2/97
PETITION OF: CARVILLE A. LAUENSTEIN
DOUGLAS K. DUNN

* IN THE
* CIRCUIT COURT

FOR JUDICIAL REVIEW OF DECISION OF:
COUNTY BOARD OF APPEALS
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IN THE MATTER OF THE
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15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

*
* CASE NO: 3-C-96-011276

* * * * *

OPINION and ORDER

The above captioned case is before the Court on appeal from an Order of the County Board of Appeals (hereinafter "Board") of Baltimore County dated October 7, 1996, which granted Thomas Hargis' (hereinafter "Appellee") Petition for Special Hearing to approve a nonconforming use at 1324 Old Eastern Avenue on the northwest corner of Essex Avenue in the 15th Election District, 5th Councilmanic District. Carville A. Lauenstein and Douglas K. Dunn (hereinafter "Appellants") appealed the decision of the Board. This appeal was heard on April 16, 1997. The Court has reviewed the transcript and the record before the Board, the Order of the majority of the Board, the dissenting opinion, and the Appeal Memoranda.

Appellants raise two issues to be decided by this Court, namely:

I.) Whether the decision of the Board to allow Appellee to continue the non-conforming use of an automotive and truck repair facility as a legal, non-conforming use at the subject site was supported by substantial evidence.

II.) Whether the Board erred in refusing to allow Appellants to present evidence regarding uses on other property owned by Appellee and not part of the property which was the subject of Appellee's Petition for Special Hearing.

Appellee filed a Petition for Special Hearing with the Zoning Commissioner of Baltimore County, who denied the Petition on January 31, 1996. The Petition for Special Hearing was filed to allow Appellee to use the subject property for a service garage, service bays, the sale of kerosene and bulk oil, and for the approval of a canopy overhang. Appellee appealed the order of the Zoning Commissioner to the Board, which took testimony on July 30, 1996. On October 7, 1996, the Board granted Appellee's Petition for Special Hearing. On November 4, 1996, Appellants filed the present appeal in the Circuit Court for Baltimore County.

On appeal, this Court must uphold the decision of the Board if that decision is not premised on an error of law and if the Board's conclusions are supported by substantial evidence. White v. Spring, 109 Md. App. 692, 699 (1996); Umerley V. People's Counsel, 108 Md. App. 497, 503 (1996).

Appellants do not take exception to the law used by the Board in granting the Petition, and in fact, Appellants rely upon the same statutory and case law referenced by the Board in its opinion. *See* Majority Opinion, p.3; Appellant's Memorandum, pp.15-16; Appellee's Memorandum, p.6. The Board, Appellants, and Appellee all agree that Section 104.1 of the Baltimore County Zoning Regulations ("BCZR") controls the first issue presented on appeal. Section 104.1 states:

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

Appellants do not contend that the majority of the Board applied an erroneous standard in their consideration regarding whether the nonconforming use had changed pursuant to Section 104.1 of the BCZR. To the contrary, Appellants agree with the majority of the Board that the test to determine whether a nonconforming use has changed is found in *McKemy v. Baltimore County*, 39 Md. App. 257 (1978). Appellants' Memorandum, p. 18. This Court, consequently, need only determine whether the Board's conclusions were supported by substantial evidence in the record.

As stated above, the Court of Special Appeals in McKemy supra, set forth four factors which must be analyzed in determining whether the current activity on the subject property is within the original nonconforming use. Those four factors are as follows:

- (1) to what extent does the current use of the lot reflect the nature and purpose of the original nonconforming use;
- (2) is the current use merely a different manner of utilizing the original nonconforming

use or does it constitute a use different in character, nature, and kind;
(3) does the current use have a substantially different effect upon the neighborhood; and
(4) is the current use a 'drastic enlargement or extension' of the original nonconforming use.

The Board, in its majority opinion, found that the current use of the subject property satisfied the factors described in McKemy, supra. Appellants contend that the original nonconforming use of a fuel service station was either abandoned or changed to that of a service garage, and that such abandonment or change would dictate that Appellee's Petition to confirm the nonconforming use of the property should be denied. Appellants' Memorandum, p.19; BCZR § 104.1.

A review of the record includes the testimony of Mr. Hargis that he had vehicles serviced at the subject property since 1972, and that he personally knew of the subject property's existence as a service garage back until 1965. T.41-43. Mr. Oronson testified that as early as 1930, he had his car repaired at the subject property. T.89. Mr. Brooks testified that he was born in 1934, and that his father always took his cars to be repaired at the subject property. T.108-109. The Board majority's conclusion that the current nonconforming automobile and truck repairs reflect the nature and purpose of the original nonconforming use and are not different in character, nature, and kind was supported by substantial evidence.¹ The first two factors described in McKemy, supra, were found to be satisfied, and the majority's determination in this regard is supported by the record.

¹ Appellants further argue that the current use of the subject property as a service garage constitutes an abandonment of the original nonconforming use as a fuel service station. As stated in this Opinion, there was substantial evidence to support the Board's conclusion that the prior to 1945 use was that of a service garage, and not merely a fuel service station, and consequently, Appellants' argument that the original nonconforming use was abandoned fails.

The majority of the Board further concluded that the current use of the subject property does not have a substantially different effect on the neighborhood. Majority Opinion, p.4. There was evidence presented to the Board of both increased parking problems and increased tow truck traffic, which Appellants argue have caused community concern with the current use of the subject property. T.128-129, 150-151. As the subject property was used to repair vehicles since 1945, vehicles have been on this property since that time. The problems about which Appellants complain do not cause a different effect upon the neighborhood than was formerly experienced, although there may be an intensification of effect resulting from increase in the number of vehicles in today's society and changes in the law respecting towing vehicles in need of repair. T.213-216. The evidence in the record supports the majority's determination that the third factor in McKemy, supra, was satisfied.

The fourth factor under the *McKemy* test is whether the current use of the subject property is a drastic enlargement or extension of the original nonconforming use. Appellants argue that the original pre-1945 nonconforming use was as a fuel service station, and that the current use is a drastic enlargement or extension as a service garage with a contract towing business, car rentals, car sales or storage of cars with "For Sale" signs, and overnight storage of commercial vehicles. Appellants' Memorandum, pp.21-24.

As noted above, there was substantial evidence presented to the Board to support the majority's determination that the subject property was used as a service garage for the repair of automobiles and trucks prior to 1945. Appellants' contention otherwise has already been addressed in this Court's

discussion of the first and second McKemy factors. Since the use found by the majority was supported by the evidence, Appellee's current similar use of his property does not amount to a drastic extension or enlargement as Appellants argue.

The Board's Opinion and Order does prohibit Appellee from using the subject property as a towing operation, car rental, car sales, and for overnight storage not related to vehicle repairs. Majority Opinion, p.4. The uses prohibited were additional activities conducted by Appellee beyond the service garage use, but they did not change the original non-conforming use of the property. Although the activities prohibited may not be related to the property's non-conforming use as a service garage facility, neither do they mandate a Board finding of drastic enlargement or extension of the original use made of the property. The Board majority was not so persuaded, and their determination in this regard was not clearly erroneous.

In their second issue, Appellants argue that they were prevented from introducing evidence of uses which were occurring on Appellee's property contiguous to the site which was the subject of Appellee's Petition for Hearing. Appellants argue that had they been allowed to introduce such evidence, this evidence would have shown an illegal expansion of the nonconforming use onto other property of Appellee. Specifically, Appellants contend that they would have elicited testimony which would have shown these areas were being used for the manufacture of survey stakes, the storage of vehicle parts and tires, the stripping of vehicles, and the storage of ice cream trucks. Appellants' Memorandum, p.27.

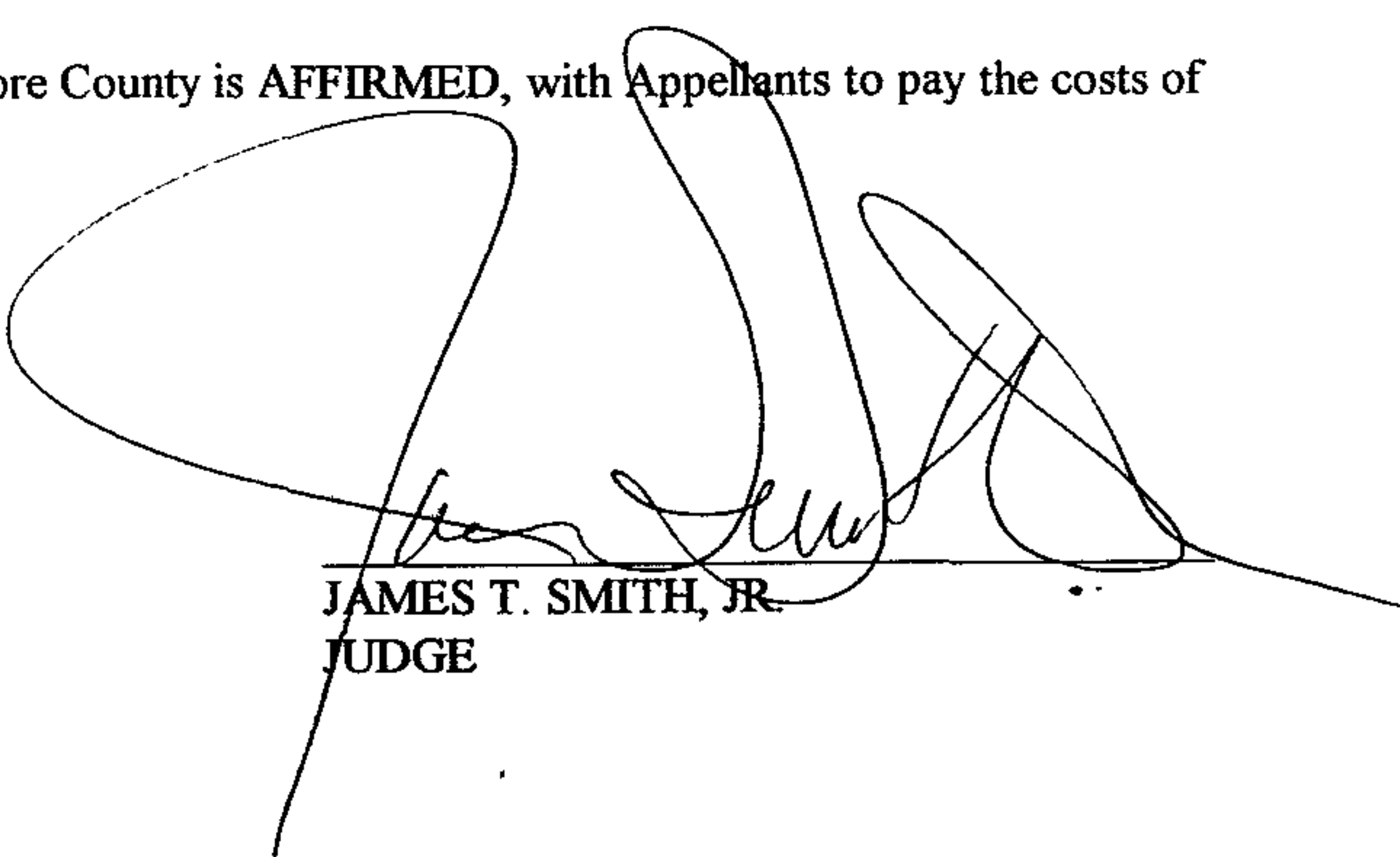
Appellants cite no authority in their memorandum for the proposition that evidence of uses on other property, not part of the property subject to the Petition, is relevant beyond the authority cited in support of their first issue in this appeal. Appellants' Memorandum, p. 26-27.

The memorandum authority cited by Appellants addresses whether a landowner adding to or changing a lawful nonconforming use to a new and different use constitutes a drastic enlargement or extension of the nonconforming use, but does not support Appellants' evidentiary complaint. In oral argument, Appellants additionally cited *Feldstein v. Zoning Board*, 246 Md. 204 (1946), to support their contention that evidence of uses on areas off the subject site are relevant in determining whether the nonconforming use on the subject property has been illegally expanded. *Feldstein* does not stand for this proposition, and therefore is not applicable to this appeal.

In *Feldstein*, the Lavale Zoning Board filed a petition against the owner of a junkyard for an injunction to prevent the extension of that junkyard to the western portion of the junkyard lot. *Id.* at 206. Two issues were presented to the Court of Appeals. The first issue involved whether a certain area of the subject property was used for storage of junk prior to the critical date of institution of the local zoning laws. *Id.* at 210. The second issue addressed whether additional quantity or height added to junk piles constituted an illegal extension of the nonconforming use, or as the chancellor below found, that it was a mere intensification. *Id.* at 210-211. In *Feldstein*, both issues involved uses which occurred on the subject property, namely the property which was put into issue by the Lavale Zoning Board when it sought an injunction against the landowner. In the present appeal, the use evidence which Appellants sought to introduce was not use of the property which was

the subject of Appellee's petition. Feldstein, supra, is distinguishable on its facts, and the Board did not err in failing to admit the proffered evidence.

For the reasons stated above, it is this 2nd day of September, 1997, that the decision of the County Board of Appeals of Baltimore County is AFFIRMED, with Appellants to pay the costs of this appeal.



JAMES T. SMITH, JR.
JUDGE

cc: Michael P. Tanczyn, Esq.
C. William Clark, Esq.

2/28/97
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PETITION OF: Carville A. Lauenstein *
and *
Douglas K. Dunn *
IN THE
CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF: *
FOR
County Board of Appeals *
Of Baltimore County *
BALTIMORE COUNTY
*
*
*
*
IN THE CASE OF: *
IN THE MATTER OF THE *
THE APPLICATION OF THOMAS *
HARGIS, Petitioner, FOR A *
SPECIAL HEARING ON PROPERTY *
LOCATED ON THE NORTHWEST *
CORNER OLD EASTERN AVENUE *
(1324 OLD EASTERN AVENUE) *
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT *
CASE NO. 96-246-SPH *
CIVIL ACTION NO.
03-C-96-011276

* * * * *

APPELLEE'S MEMORANDUM

Thomas Hargis, Appellee, by C. William Clark, and Nolan, Plumhoff & Williams, Chtd., his attorneys, and in accordance with Maryland Rule 7-207, hereby files this Memorandum to assist the Court in considering this Appeal.

QUESTIONS PRESENTED

1. Whether the decision of the County Board of Appeals of Baltimore County approving 1324 Old Eastern Avenue for the non-conforming use as an automobile service garage with canopy and for the sale of kerosene was based on substantial evidence and fairly debatable, and thus, must be upheld on review?

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

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2. Whether the County Board of Appeals of Baltimore County correctly ruled there was no extension nor abandonment of a non-conforming use of 1324 Old Eastern Avenue when the current use of the property represents a permissible intensification of the original use?

3. Whether the Zoning Board properly restricted testimony and evidence to the portion of property in dispute?

STATEMENT OF FACTS

Thomas Hargis filed a Petition on December 14, 1995 to approve a non-conforming use for a service garage, service bays with canopy, and for the sale of fuel. The County Board of Appeals, following public deliberations conducted August 2, 1996, issued an Opinion and Order on October 7, 1996 granting the Petition for Special Hearing.

Salvador "Sam" Fiorenzo purchased 1324 Old Eastern Avenue from Edward Leery in 1931. (T.28) Sam Fiorenzo converted the property from a blacksmith shop to a service garage prior to 1945. (T. 123) Sam sold the service garage to Mark Botsairs in 1972. (T.28) Thomas Hargis purchased the property in 1980 from Mark Botsairs. (T. 27) The deeds recording these events were admitted into evidence. (T. 27, T.28)

Thomas Hargis, the Petitioner and owner of 1324 Old Eastern Avenue (T.26), age 46, has been familiar with the property since his childhood. (T.42) The Petitioner offered a copy of the two-hundred scale zoning map on which he located the site as being within a D.R. 5.5 area as Petitioner's Exhibit No.6. (T.31). He

testified that Sam Fiorenzo, the "neighborhood mechanic", performed general maintenance and serviced automobiles at the site. (T.42) He has personal knowledge that from 1965 to the present date the building has not materially changed. (T.44) Mr. Hargis had his automobiles repaired and serviced at the station since 1972. (T.40) He purchased the station in 1980, renamed it 'Tom's Tire and Auto Center', and operated a service garage on the site for approximately ten (10) years. (T.36)

During the time period that Mr. Hargis operated the service station, he had contracts with two towing operations. (T.213) A law was passed stating that vehicles must be towed by a stationary facility, such as a tow truck, and not by a chain or rope. (T.214)

Further, as a result of a change in the structure of bumpers (from steel and chrome to plastic 'crash' bumpers), the use of hook trucks was discontinued and rollbacks or 'wheel lifts' were put into use. (T.216) Mr. Hargis never intended to pump gas at the site, and removed the underground tanks by order of the Fire Marshal. (T.51) Subsequently, he leased the service station to third parties. (T.37) Mr. Hargis testified that there has been a service station at 1324 Old Eastern Avenue from the time he purchased the property in 1980 to the present date without any vacancies. (T.37)

Frank Oronson, age eighty-three (83), who resides in the neighborhood, testified that the property has been a service garage since before he started driving in 1930. (T.87). Mr. Oronson clearly recalled Mr. Fiorenzo fixing a radiator in his car. (T.

89). He testified that on at least ten (10) occasions he went to the garage and saw Mr. Fiorenzo working on various cars. (T. 89). He further testified that the buildings in use as a service garage today are the same size as when he first started going to the garage and that there was a kerosene pump on the property. (T. 92).

Will Brooks, Sr., born in April of 1934, testified that his father took the family vehicle to the facility for repair and bought kerosene from Mr. Fiorenzo. (T. 109). Mr. Brooks specifically recalled Sam replacing a fan belt. (T. 108)

Ronald Myers, age 62, testified that the property was used as a garage prior to 1945. (T. 104). He described the garage as being in the same location and of the same size since that time. (T. 105).

Billy Smith, a witness for the Appellants, testified that he worked for Mr. Fiorenzo at the property in the 1950's. (T. 138). He recalled people coming to the garage for oil change, grease jobs, and tune-ups. (T. 139). Kerosene and oil were sold at the station during that time. (T. 142).

Bronson Berenback, a retired Baltimore County Police Officer, who served from 1962 until 1984, has lived about a mile and a half from the property for the past forty-eight (48) years. He recalled a Texaco station, which did service work, on the site from approximately 1962 to 1984. (T. 96). Starting in 1987, Mr. Botsairs worked on his car at the facility. (T. 96). Mr. Berenback testified that the buildings, including the canopy, are the same as

they were in 1962(T. 97); that people performed automobile repairs from then until the present time(T.96); and that kerosene was sold at the station during that period(T.98).

ARGUMENT

I. THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY WAS BASED ON SUBSTANTIAL EVIDENCE AND FAIRLY DEBATABLE AND THUS MUST BE UPHELD ON REVIEW

The Court of Special Appeals recently held that "[t]he order of a county zoning authority 'must be upheld on review if it is not premised upon an error of law and if [its] conclusions reasonably may be based upon the facts proven.'" (Emphasis added). Evans v. Shore Communications, 112 Md.App. 284, 298 (1996); (quoting Umerley v. People's Counsel, 108 Md.App. 497, 672 A.2d 173, cert. denied, 342 Md. 584, 678 A.2d 1049 (1996)). Additionally, it held:

...the action of the zoning authority is "fairly debatable" if based on substantial evidence; and that the fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment. (Citations omitted). Id.

Further, the standard of review requires the following three-step analysis:

1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law governing the case. The reviewing court is not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law."

2. Once it is determined that the agency did not err in its determination or interpretation of the

applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...

3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is whether a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]. Id.

First, the order of the County Board of Appeals of Baltimore County (hereinafter referred to as the "Board") was not premised upon an error of law, nor does the Appellant so argue. In determining whether the property was a legal non-conforming use the Board correctly applied the appropriate provisions of the Baltimore County Zoning Regulations (hereinafter referred to as "BCZR") and the factors set forth in McKemy v. Baltimore County, 39 Md.App. 257 (1978).

Additionally, the conclusions of the Board were reasonably based upon the facts proven. What is an extension or enlargement of a non-conforming use is ordinarily one of fact, and in determining it the question in each case must stand on its own facts. Phillips v. Zoning Commissioner, 225 Md. 102, 109 (1961). Appellee produced substantial evidence and testimony to the Board from past and present residents of the community regarding the use of 1324 Old Eastern Avenue as an automobile repair facility. The natural operations of a automobile repair facility include towing,

car rental, car sales, and overnight storage related to repair. From this evidence the Board reached the conclusion that "it is clear that a service station existed on this site for many years prior to the adoption of the D.R. Zoning classifications." (Majority Opinion at 3). The Board's decision must be affirmed.

Finally, the legality of the non-conforming use is at a minimum "fairly debatable" and a reasoning mind reasonably could have reached the Board's factual conclusion that there has been no improper extension or intensification of the non-conforming use. The order of the Board that approval of the Petition for Special Hearing for a non-conforming use of the property for a service garage be granted was not based on an error of law; was reasonably based upon the facts proven through substantial evidence before the Board; and the issue was fairly debatable. Therefore, the order must be affirmed.

II. THE CURRENT USE OF THE PROPERTY REPRESENTS A PERMISSIBLE INTENSIFICATION OF THE ORIGINAL NON-CONFORMING USE

A. Factors Used in Determining Non-conforming Use

Section 104 of the Baltimore County Zoning Regulations provides: "A non-conforming use may continue except as otherwise specifically provided in these Regulation." The Court of Special Appeals in McKemy v. Baltimore County identified four factors to consider when determining what represents a permissible intensification of an original non-conforming use. 39 Md.App. 257, 269-270 (1978). These are:

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

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

(3) does the current use have a substantially different effect upon the neighborhood;

(4) is the current use a drastic enlargement or extension of the original non-conforming use.

First, the original nature and purpose of the property is reflected in the current use. In 1945, the subject area was designated as zone D.R. 5.5 (T.31), which is a residential zoning that does not permit either a fuel service station or a service garage. Therefore, the facility in place in 1945 was a nonconforming use. Today, the BCZR contains two definitions which are applicable to service stations. However, on the critical date of January 2, 1945, the BCZR did not contain any definitions of a service station. This use predated any definitions, therefore none are applicable. It is undisputed that 1324 Old Eastern Avenue was located in a Residential zoning area and was a non-conforming use on the critical date. The property was used as an automobile repair facility and for the sale of kerosene.

Second, the current nature and purpose of use is of the same character, nature and kind as the original use. Natural and logical extensions of a non-conforming use are permissible. Kent County v. Abel, 246 Md. 395 (1967). "An intensification of a non-conforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are

used." Id. Substantial evidence was produced that from 1945 until the present date, automobiles have been serviced at the facility. Naturally, in the intervening fifty-two years, technology has drastically changed the way cars look and operate. For instance, fifty years ago, when engines were not so complex, a mechanic might use a screwdriver to perform a tune-up. This is not so today, nor would it be logical to expect it to be so. Mechanics do not use the same techniques to repair cars today that they did in 1945. The current use of the site is an auto repair facility with natural extensions. It is natural that, while a car is being worked on, an automobile repair facility provide their customer with the use of a rental car. The majority correctly found that "the use of the property at 1324 Old Eastern Avenue reflects the nature and purpose of the original use," albeit to a greater degree. (Majority Opinion at 4).

Third, the use of the property affects the neighborhood in the same manner. One of the tests for determining the existence of a non-conforming use is whether such use was known in the neighborhood. Feldstein v. Zoning Board, 246 Md. 204, 210 (1967). As aforementioned, both parties produced substantial testimony at the hearing from residents of the community demonstrating the properties use as an automobile repair facility. The garage always served the automotive needs of the neighborhood. (T. 3). In Nyburg v. Solmson, the Court of Appeals held that although there was no doubt that the current use of the property in question "had produced a use greatly in excess of the former use, that

intensification was not an extension within the meaning of the Zoning Ordinance." 205 Md. 150, 162 (1954). The nature of an automobile repair facility requires that cars continuously drive in and out of the station. Increase in traffic is a natural by-product to a successful business.

Finally, the current use is not a drastic enlargement or extension of the original non-conforming use. Distinguished from a prohibited extension of a non-conforming use is what the courts look upon as a mere intensification of the existing lawful use. Wilson v. Town of Elkton, 35 Md.App. 417, 426 (1977). In the instant case, the lawful use of the automobile repair facility has at most merely increased or intensified. The building currently operating as an automobile repair facility has not changed materially since 1945. (T. 43). The Court found an extension of non-conforming use where the original building was destroyed and a larger building was built in its place. Fritze v. City of Baltimore, 202 Md. 265 (1952). In the instant case it is undisputed that the footprint of the current building is the same as today as on January 2, 1945. AS required under the McKemy test, there was substantial evidence in the record to support the Board's decision that there has not been an improper expansion and intensification of the property located at 1324 Old Eastern Avenue. The Board correctly ruled that the service garage, as it operates today, meets the requirements of a legal non-conforming use for automotive and truck repairs. (Majority Opinion at 4).

B. The Property Was Not Abandoned

Appellants contend that the property was legally abandoned. Abandonment of non-conforming use property terminates that non-conforming use. Board of Zoning Appeals v. Gue, 217 Md. 16 (1958). Abandonment of a non-conforming use occurs when the use changed or property has been left vacant for a certain time period. Gue, 217 Md. 16 (Non-conforming use property abandoned when property changed from automobile repair facility to welding and manufacturer of iron railings, to destruction of old building and construction of new building, to being vacant for a number of months, and finally to an automobile repair facility); Canada's Tavern v. Glen Echo, 260 Md. 206 (1970) (non-conforming use of property as a restaurant and tavern extinguished when no use whatsoever was made of the premises for approximately a year); Steiff v. Collins, 237 Md. 601 (1965) (abandonment of non-conforming use found where cessation of operation of property as a dairy and bakery for about five years and subsequent utilization of the buildings principally for storage of the company's unusable and unsaleable equipment). As aforementioned, ample testimony was presented before the Board that the property has been used continuously and unabated as a service station since before 1945. The property was not abandoned in any manner.

III. THE COUNTY BOARD OF APPEALS PROPERLY RESTRICTED TESTIMONY AND EVIDENCE TO THE PORTION OF PROPERTY IN DISPUTE

Appellants alleged that their testimony was improperly restricted at the hearing held by the County Board of Appeals on

July 30, 1996. As owner of the property located at 1324 Old Eastern Avenue, Appellee filed a Petition for special exception non-conforming use for service garage, service bays, and sale of fuel with the Zoning Commission of Baltimore County. (Petitioner's E.2); (T. 26). The entire parcel of land owned by the Appellee includes additional land and buildings which are not a part of the present inquiry. The area in question includes the auto repair facility facing Old Eastern Avenue, as well as the pavement in front of the building. (E.7). This section of the property has been continuously used as an auto repair facility since the critical date of January 2, 1945.

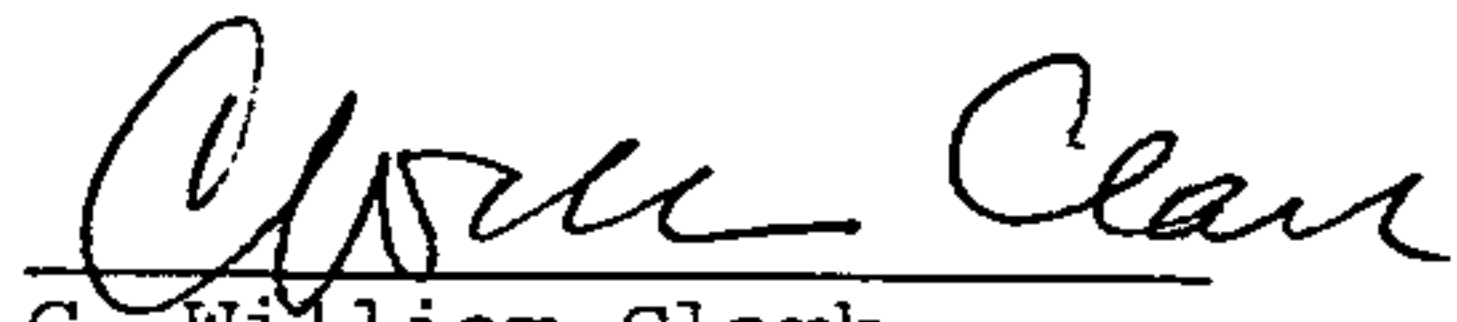
Throughout the Hearing, Appellants continuously referred to portions of the property outside the bounds of the disputed area. As the Chairman noted, the use of this portion of the property was not relevant to the present issue. (T. 68). The non-conforming use was never alleged to have taken place on the entire parcel. (T. 68). The building referred to as the Boarding House is outside the area of inquiry. (T. 67). The ice cream trucks, as illustrated in Protestants Exhibit 13F, were parked on the pavement within the boundaries. All testimony and evidence was properly restricted to past and present use of the relevant portion of the property depicted in Petitioner's Exhibit 7. (T. 68)

Evidence raised in Direct Examination of a witness offered in one's case in chief is within the proper scope of rebuttal. Appellants opened the door to any testimony regarding the usage of the ice cream trucks when they introduced Protestants Exhibit 13F

and 13G. (T. 186). These exhibits are pictures of two ice cream trucks parked on the property. Appellants then testified that the trucks were routinely parked on the property overnight. (T. 187). As the subject was raised by Appellants, it was proper rebuttal.

CONCLUSION

The Appellee requests this Court affirm the decision and Order of the County Board of Appeals and allow the Petitioner's request for a non-conforming use.



C. William Clark
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
502 Washington Avenue
Suite 700, Nottingham Centre
Towson, Maryland 21204

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, 1997, a copy of Appellee's Memorandum was mailed , postage prepaid, to the following:

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Attorney for the Petitioners

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
400 Washington Avenue, Room 47
Towson, Maryland 21204

County Board of Appeals of Baltimore County
Old Courthouse
400 Washington Avenue, Room 49
Towson, Maryland 21204


C. William Clark

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STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
STEPHEN M. SCHENNING
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JAMES D. NOLAN
(RETIRED 1980)
J. EARLE PLUMHOFF
(1940-1988)
RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
823-7850

*ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN NEW JERSEY

February 28, 1997

VIA HAND DELIVERY

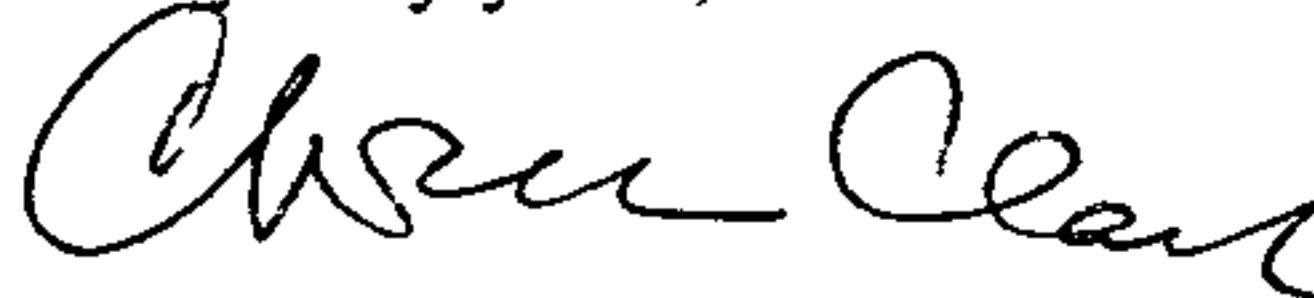
Clerk
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Re: In the Case of: In the Matter of the Application of
Thomas Hargis, Petitioner, for a Special Hearing
on Property Located on the Northwest Corner Old
Eastern Avenue, 15th Election District,
5th Councilmanic District, Case No. 96-246-SPH
Civil Action No.: 03-C-96-011276

Dear Clerk:

Enclosed please find Appellee's Memorandum for filing in the above-mentioned case.
Thank you for your assistance.

Very truly yours,



C. William Clark

CWC/emd

enc.

cc: Michael P. Tanczyn, Esquire w/enc.
Peter Max Zimmerman, Esquire w/enc.

Law Offices
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827
Computer Fax: (410) 296-2848

January 28, 1997

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

Re: Thomas Hargis, Petitioner
County Board of Appeals Decision
Case No. 96-246-SPH

Dear Madam Clerk:

Enclosed please find Appellants' Memorandum in the above matter to be filed. Thank you for your assistance in this regard.

Very truly yours,



Michael P. Tanczyn

MPT/ed
Enclosure

cc: C. William Clark, Esq.
Peter Max Zimmerman, Esq.
County Board of Appeals of Baltimore County
Mr. Carville A. Lauenstein
Mr. Douglas Dunn

IN THE MATTER OF THE	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
<u>THOMAS HARGIS</u>	*	
FOR A SPECIAL HEARING ON		
PROPERTY LOCATED ON THE NORTH-	*	OF
WEST CORNER OLD EASTERN AVENUE		
AND ESSEX AVENUE (1324 OLD	*	BALTIMORE COUNTY
EASTERN AVENUE)		
15TH ELECTION DISTRICT	*	CASE NO. 96-246-SPH
5TH COUNCILMANIC DISTRICT		
* * * *	*	* * * *

MAJORITY OPINION

This matter comes before the Board as an appeal of a decision by the Zoning Commissioner dated January 31, 1996, denying a Special Hearing for approval of a service garage, service bays, and sale of fuel (kerosene and bulk oil), and to approve a canopy overhang on a property zoned D.R. 5.5 as a legal, nonconforming use.

The property is located at 1324 Old Eastern Avenue on the northwest corner of Essex Avenue in the 15th Election District, 5th Councilmanic District. The Petitioner, Thomas Hargis, was represented by counsel, C. William Clark, Esquire. Douglas Dunn represented himself as Protestant.

Petitioner /Appellant Thomas Hargis testified that he purchased the instant property in 1980 from Mark Botsaris as an active service station. He removed the gasoline fuel tanks and pumps on order of the Fire Marshall, and continued to sell kerosene and bulk oil, and do automotive and truck repairs and maintenance. In the early 1990s, Mr. Hargis leased the business and property to Mark MacAlister, who continued in the same type of work.

Several neighbors testified on behalf of the Petitioner and confirmed that a service station had existed and operated on this

site since the 1930s and possibly earlier. Except for some remodeling in the 1950s and 1970s, the building and appearance of the service station remain the same, occupying the same footprint.

Carvelle A. Lauenstein testified as a Protestant. He has lived in the community for 77 years, and he also substantiated that a service station had operated on the subject site since before 1945. Mr. Lauenstein indicated, however, that previously the business had been "quietly run," and now it had increased to a degree that was negatively impacting the community. He noted particularly the towing operation of the service station.

The Reverend Dennis J. McCombs of nearby First Church of Christ Scientist also testified concerning the congestion, traffic hazards, and illegal parking associated with the subject property's auto repair business. Several other neighbors confirmed these problems.

Douglas Dunn testified further that, in addition to a "fleet" of tow trucks, the business also kept some vehicles, notably an ice cream truck, for overnight storage, hooking up to the electrical service for cooling. In addition, Mr. Dunn testified that the business now includes car rental and some car sales as well as extensive repair work. Mr. Dunn submitted a series of photographs (Protestants' Exhibits 11A-G and 17) showing the business activity on the subject site.

Based on the evidence and testimony produced, the subject property is in a D.R. 5.5 zone. The neighborhood surrounding the site is a mix of private houses, churches, a funeral home,

apartments, and other commercial uses. In order for the service garage to function there, it must be established by the Petitioner that a nonconforming use as defined in Section 101 of the Baltimore County Zoning Regulations (BCZR) existed prior to the adoption of the D.R. zoning classification and meets the requirements of Section 104.1 which states:

A nonconforming use as defined in Section 101 may continue except as otherwise specifically provided in these regulations; provided that upon any change from such use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

As a result of testimony from both the Petitioner and his witnesses, as well as the Protestants, it is clear that a service station existed on this site for many years prior to the adoption of the D.R. zoning classification. The Appellant, Thomas Hargis, bought the property aware of problems with the gasoline fuel tanks, had them removed, and did not intend to sell gasoline. He continued uninterrupted to sell kerosene and bulk oil, and to do service work on the premises.

The question before the Board is whether or not this service garage, as it operates today, meets the requirements of a nonconforming use. McKemy v. Baltimore County sets forth the standards for "deciding whether the current activity is within the scope of the nonconforming use": (1) to what extent does the current use of the lot reflect the nature and purpose of the original use; (2) is the current use merely a different manner of utilizing the original nonconforming use, or does it constitute a

use different in character, nature, and kind; (3) does the current use have a substantially different effect on the neighborhood; and (4) is the current use a drastic enlargement or extension of the original nonconforming use.

The majority of this Board is persuaded that the use of the subject property at 1324 Old Eastern Avenue reflects the nature and purpose of the original use; is merely a different manner of utilizing the original use because of the changes in automotive technology; does not have a substantially different effect on the neighborhood; has not expanded beyond the original physical site; and is not a drastic enlargement of the original nonconforming use, with the following exceptions.

The towing operation, car rental, car sales, and overnight storage not related to repair must cease immediately. The business on the property shall be limited to automotive repair as, by uncontradicted testimony, has existed at this site for over 50 years. Further, all vehicles and work done must be contained on the nonconforming use parcel as shown on the survey (Petitioner's Exhibit 7).

Therefore, this Board finds that the property located at 1324 Old Eastern Avenue is, and should continue as, a legal, nonconforming use for automotive and truck repairs, and the Petition for Special Hearing shall be granted, pursuant to the following Order.

O R D E R

IT IS THEREFORE this 7th day of October, 1996 by the

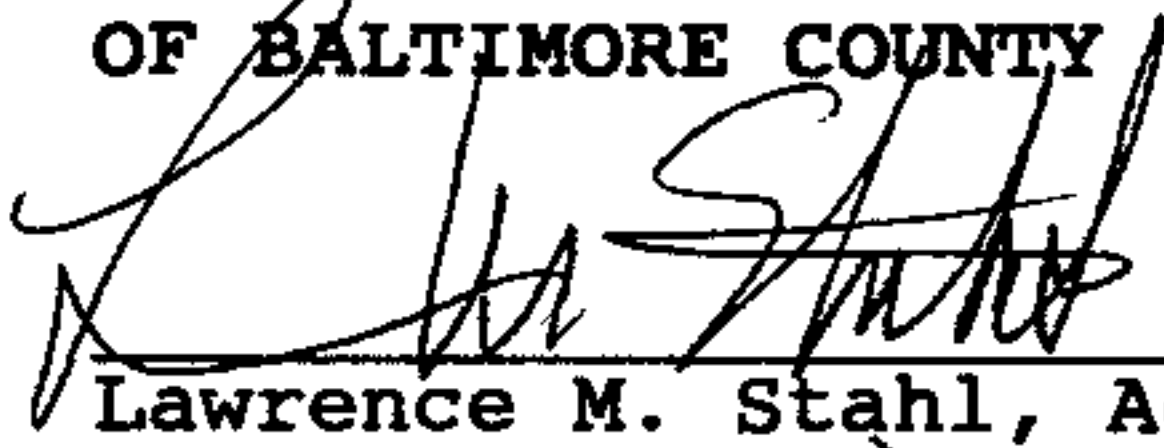
County Board of Appeals of Baltimore County

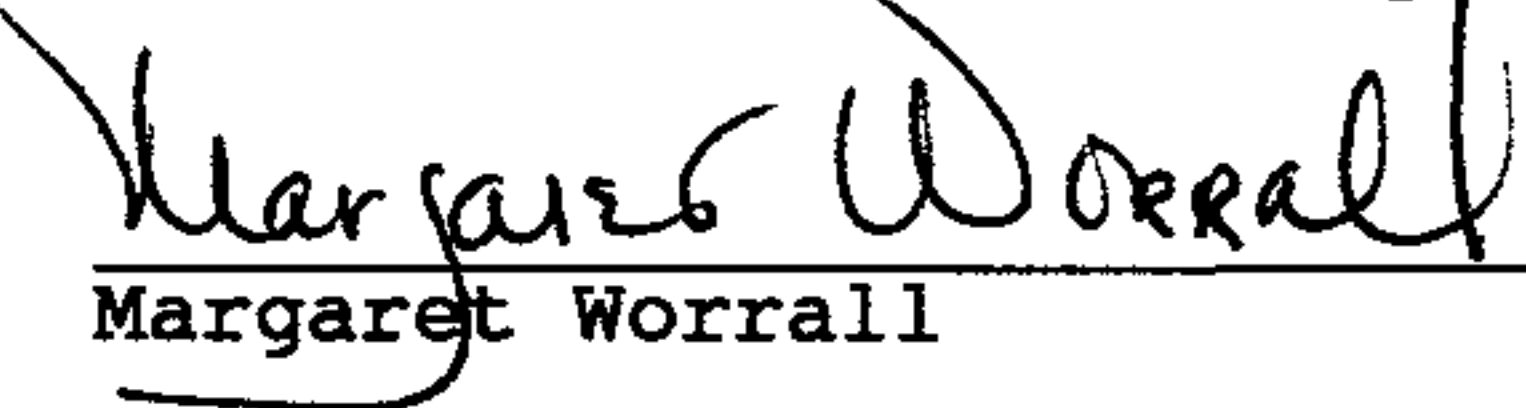
ORDERED that the Petition for Special Hearing filed in Case No. 96-246-SPH to approve a nonconforming use of the subject property for a service garage be and is hereby GRANTED, pursuant to the following restrictions:

1. The towing operation, car rental, car sales, and overnight storage not related to repair must cease immediately;
2. The business on the property shall be limited to automotive repair as has existed at this site for over 50 years; and
3. All vehicles and work done must be contained on the nonconforming use parcel as shown on the survey (Petitioner's Exhibit 7).

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


Lawrence M. Stahl, Acting Chairman


Margaret Worrall

1/28/07

PETITION OF: Carville A. Lauenstein * IN THE
1308 Old Eastern Avenue
Baltimore, Maryland 21221* CIRCUIT COURT FOR

and * BALTIMORE COUNTY

Douglas K. Dunn *
302 East Joppa Road
Apartment 1604 *
Towson, Maryland 21286 *
*
FOR JUDICIAL REVIEW OF THE DECISION OF: *
*
County Board of Appeals
of Baltimore County *
Old Courthouse, Room 49
400 Washington Avenue *
Towson, Maryland 21204
(410) 887-3180 *
*
IN THE CASE OF: IN THE MATTER OF *
THE APPLICATION OF
THOMAS HARGIS, Petitioner*
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE *
NORTHWEST CORNER OLD EASTERN
AVENUE AND ESSEX AVENUE *
(1324 OLD EASTERN AVENUE)
15TH ELECTION DISTRICT *
5TH COUNCILMANIC DISTRICT
CASE NO. 96-246-SPH * CIVIL ACTION NO.
03-C-96-011276

* * * * *

APPELLANTS' MEMORANDUM

NOW COMES, Carville A. Lauenstein and Douglas K. Dunn, Appellants, by Michael P. Tanczyn, Esq., their attorney, and in accordance with Maryland Rule 7-207, hereby files this Memorandum to assist the Court in considering this Appeal.

QUESTIONS PRESENTED

1. Did the County Board of Appeals of Baltimore County illegally, arbitrarily or capriciously approve an extension or expansion or change from an original non-conforming use of a fuel service station to a service garage where the evidence unequivocally shows a legal abandonment of the fuel service station?

2. Did the County Board of Appeals of Baltimore County improperly limit Protestants' presentation of evidence of other uses on the Petitioner's property to illustrate illegal expansion and then arbitrarily allow Petitioner on rebuttal to present evidence of activities on other parts of Petitioner's property outside the original footprint of the fuel service station?

STATEMENT OF THE CASE

A Petition was filed December 14, 1995 by Thomas Hargis to approve a non-conforming use for a service garage, service bays and the sale of fuel, kerosene and bulk oil, and also to approve a canopy overhang. That matter was heard by the Zoning Commissioner on January 17, 1996 and by Order January 31, 1996 the Zoning Commissioner denied the Petition for Special Hearing, further ordering that the said use of the property be discontinued and/or removed in the case of the canopy.

An Appeal was then filed February 23, 1996 by Thomas Hargis and hearing held by the County Board of Appeals of Baltimore County de novo on July 30, 1996. The County Board of Appeals,

following public deliberations conducted August 22, 1996, issued an Opinion and Order on October 7, 1996 granting the Petition for Special Hearing with a Dissenting Opinion filed by one member.

A Petition for Judicial Review was then filed by the Appellants who had participated in the hearings before the Zoning Commissioner and the County Board of Appeals on November 4, 1996.

STATEMENT OF FACTS

Thomas Hargis, the Petitioner and owner of 1324 Old Eastern Avenue, the subject property, (T26) had purchased it from a Mark Botsairs in 1980 (T27) and produced Deeds admitted as Petitioner's Exhibits 3 and 4 dated December 16, 1931 from Edward Leery et ux to Salvador Fiorenzo and dated September 24, 1972 from Salvador Fiorenzo to Marcus Botsairs (T28). He also produced as Petitioner's Exhibit 6 a 200 scale zoning map showing 1324 Old Eastern Avenue, outlined on the zoning map, showing two buildings on the property (T31, T32). He testified one of the buildings was used for automobile service operations now (T32) and the other was a residence where he had tenants upstairs and he resided downstairs (T32). Petitioner's Exhibit 7 prepared by Thomas Phelps & Associates was a survey of the property presented for the zoning map hearing change (T33).

He described the use of the property as a service garage which used to be an old Texaco station and service garage which had three bays and a waiting room in the front building, a brick

residence and another garage and a couple of sheds or outbuildings (T34); that the property had at present an above ground kerosene tank but no gasoline fuel pumps or fuel tanks (T35) which he had removed when Route 702 came through and closed Old Eastern Avenue down (T36); that he had serviced automobiles there between March of 1980 until some time in 1990 (T36) and then leased it out to subsequent tenants and currently to Mark McAllister (T36).

He testified that when he was there from 1980 he serviced trucks, diesels, cars, gasoline engines, lawn mowers, repaired tires, sold tires, did oil changes, grease jobs, fixed motors (T37). He testified that the kerosene tank had been there fifteen (15) years and he had put it there because he didn't trust the tanks that were in the ground, so he brought in Carroll Independent in the early 1980s (T38).

He testified that the canopy that is on the property, approximately 15' X 20', had been there since the 1960s (T39).

He further testified that the prior tenant of Mr. Botsairs, a Dave Sanders, had run the property as a service garage and repairing, but did not sell gasoline (T40).

He testified that he was born in 1949 and would have been 16 in 1965 (T41); that the lift had been on the outside of the building at that time when Sam Fiorenzo owned it (T42); that he recalled changes since 1965 of remodeling, face lifting, including additional brick on the outside (T43).

He testified that the lot was a lot busier now than it used to be (T44), but he believed it was doing the same types of repairs for automobiles as it had previously.

Significantly, Petitioners produced as Petitioners' Exhibit 8 a State Department of Assessments and Taxation ("SDAT") worksheet numbered 19098 for 1324 Old Eastern Avenue (T45, T46) noting the use as a "service station" and that the notations on the SDAT tax collection worksheet for the different years noted (T47) would have correlated to remodeling in the 1970s (T48), where the changes or increases in valuation were shown on the SDAT worksheet.

He admitted on cross-examination that he had removed the underground tanks by order of the Fire Marshall (T51) because they had not been used and were empty, and that when he bought the property he had no intent to pump gasoline (T51); that he was not exactly sure whether it was 8, 9 or 10 years he had claimed to have operated a service garage in the 1980s to the 1990s (T54); that he had testified at the original hearing that a predecessor tenant of Mark Botsairs, David Sanders, had run a junk yard on the site (T55) at which hearing he had apologized for the impact that had on the community.

Protestants' Exhibit 1, a statement from the Department of the Environment of the State of Maryland, admitted at (T52), were shown to Mr. Hargis who acknowledged that the name of the business on that document was "Tom's Tire and Auto Center" (T55).

He testified that he did sell tires (T56); that he considered it primarily a service garage (T57).

Petitioner's second witness, a Frank Oronson, who had lived on Savannah Road since 1950 in Essex (T87), had been born in 1913, being 82 at the time of the hearing (T88, T89). He recalled that 1324 Old Eastern Avenue had been used for oil changes, lubrications, and spark plug changes. He had had a thermostat replaced once (T89). He had been there approximately ten times (T90); but had never left his vehicle overnight for repairs (T91); and that he had bought automobile gasoline there (T93) until it was closed and cars were parked there so you could not pull in and get gasoline (T93). On cross-examination he recalled that the area behind the service station building on the property was the brick house and he recalled no other buildings (T94).

Bronson Berenbrok was Petitioner's next witness (T94). He had lived at Montrose Avenue in Essex for 48 years, a mile and one half from the subject parcel. He recalls this property being a Texaco station with an outdoor lift where service work would have been done (T96) back in 1962; and that in 1987 he had Mr. Botsairs do the grease, oil and filter. So far as changes, he testified the outdoor lift either got a cover on it or they took it out (T97); he had no recollection of the area behind the service station on cross-examination (T99); that there were now many more cars associated with the operation compared to back then, which was one

of the reasons he stopped going there (T100).

Ronald Myers testified, beginning at T101, that he had lived at Hopewell Avenue in Essex about 25 years (T102) and was familiar with the subject site because he hung around with children who lived up the street from the garage. Though he remembers it being a garage he never dealt there (T104). On cross-examination he recalled the area around the service bay property was all woods when he was younger and that he could not say he recalled seeing any tow trucks associated or cars being rented from the property (T106).

Petitioner's next witness, Will Brooks, Sr., beginning at T107, had lived in the area for 11 years, and was familiar with the subject property (T108) which was a mile and a half from his present residence and a mile and a quarter from his childhood home. He testified to a fan belt replacement when he was a child, and he was 62 at the time of hearing (T108).

Joseph Gaydos was next called by the Petitioners, beginning at T111. He had lived in the area from 1981 and that the property had been a mechanics garage; that the property had been still a gas station and kerosene had been sold (T113).

Bill Taylor was called at T115 who, by proffer, would have testified to more of the same things.

Protestants' first witness was Carville Lauenstein, who testified he had been a resident of the immediate area for 44 years

(T121) and had been in this community 77 years (T122); that his property was built at 1308 Eastern Avenue and that this property was then used as a blacksmith's shop (T122), then owned by Mr. Leery who sold it to Sam Fiorenzo who converted it into a gas station and service garage which changed spark plugs, flat tires, and minor repairs (T123). The gas station had had a couple of pumps (T124) and it was a quietly run place and didn't bother anybody in 1945; that there was no towing whatsoever (T125); that he objects to being kept awake half the night by tow trucks (T125) from a number of agencies. He testified that at the time of the hearing in front of his house there were at least five (5) towing trucks operating on a 24 hour basis from this site (T128); that Mr. Hargis' tenant had a big AAA towing sign on the gas and electric pole out in front of the property (T129); that in the early 1950s a cleaning establishment had been run out of part of the building where the gas station was located (T129, T130); that Sam Fiorenzo was involved in little minor repairs; but Sam never repaired an engine because he didn't know how (T132).

Billy Smith was called as the next Protestants' witness (T137). He had lived in the neighborhood since 1950; that he had worked in the early 1950s for Sam Fiorenzo at this site (T138); and that very little automotive work was done at this site, which he described as oil changes, grease jobs, and some tune-ups, because they weren't mechanics; that they would change oil, do grease jobs,

wash cars, but mostly sell gas (T139); and that there was no towing and no tow trucks on the site (T139). When he had worked there, there was a small building with two bays, one where the cars were washed and the other where oil changes were done with a small shed in between where he sold sodas and the bills were paid. There was an outside ramp which was seldom used (T139); and that there is no comparison to what Sam was doing to what Mark's Auto Service and Towing is doing. At the time of hearing he said cars are coming and going all the time, blocking the road and everything, including tow trucks (T140); that he still lived in the neighborhood even after stopping working there (T142); that it was in the late 1950s, early to middle 1960s that it was remodeled (T143); that the small building with a shed was torn down (T143, T144) when he said it was made larger and a canopy was put over the top, but they still didn't do any mechanical work in there except for oil changes and grease jobs.

Dennis J. McCombs was the next Protestants' witness, beginning at T145, who said he was the Pastor of the Baptist Church at 1400 Old Eastern Avenue and he lives at 101 North Essex Avenue, adjacent to the Church for the last 8 years and several weeks (T146); that when he first came there and Mr. Hargis was running the business and it was light auto repair; and in the last three years the operation had become quite a problem for the Church and the community because of the congestion (T146), including parking

difficulties (T147). He testified about a funeral at the Church where they could not get the hearse out of the parking lot because of the way the cars were parked on the street and cited several accidents on the corner leading to a Petition to prohibit parking up and down the street (T147) which Petition was admitted as Protestants' Exhibit 10. He attempted to testify about a business operated in the rear of the site making surveying stakes (T152, T153) to which an objection was sustained.

Virginia Schultz, a Protestants' witness called at T154, had lived in the community for 47 years and testified that now the area around the property was congested and she was concerned about loss of value in the homes (T155); and that when Sam had owned the property he had a garden in the back and very little work like what's going on there now (T156); that there had been no towing operation when Sam had it and she was at that time very few diesel trucks and things around there (T156).

Douglas Dunn was the next Protestants' witness, beginning at T159). At the beginning of his testimony he referred to a permit presented into evidence for a substantial sized building, 800 square feet, the proposed use of which was an expansion of the non-conforming use. On objection by counsel the Board sustained the objection and effectively restricted his testimony to only the original building which fronted on Old Eastern Avenue.

The Board Chairman recited (T161) "....whether or not

additional building or buildings have been or are being used or are supposed to be used for something else is really not a relevant issue."

Mr. Dunn had taken a number of pictures seeking to establish the diverse usage of Petitioner's property (T165). Exhibit 11A, a picture, showed the Church signage, a AAA towing signage, and a trash dumpster located in the street for seven or eight months (T167); that on average he counted between 23 and 25 cars on the subject property which he counted every Saturday, Sunday and Wednesday when he goes to the Church next door (T168). The greatest number of cars he has ever seen on that site was 32 (T168), and the Sunday before the hearing there were 21 cars, a tow truck, a utility van, and two ice cream trucks which were large (T169).

Protestants' Exhibit 11B was a picture of a roll-off truck on site (T170).

Protestants' Exhibit 11C was a picture of a white house with a sign of "Mark's Auto Truck".

Protestants' Exhibit 11D was a picture of another tow truck on the site marked with "M & G Tow Truck" (T171).

Protestants' Exhibit 11E was a picture of the Church next door with a tow truck in front (T171).

He took pictures of the site showing the area of the white fence as Exhibit 11G (T172); and testified as to a fleet of

tow trucks associated with 1324 Old Eastern Avenue as a typical example shown in Exhibit 11B.

Exhibit 11G was a second hook truck disembarking a car onto the property (T173) which operate on a continual basis from 1324 Old Eastern Avenue (T173).

He testified M & G Auto is the owner of 1324 Old Eastern Avenue, who were Mark and George McAllister, whose tow trucks operate from 1324 Old Eastern Avenue (T174).

There is another full sized roll-back vehicle marked "Key Towing" and a huge truck that had operated during the winter of 1996 which he thought looked like a space ship with a semi engine running all the time which could tow any size truck imaginable (T174), and had been there for two to three weeks during the Blizzard of 1996; that his Church's parking lot the day after the Blizzard of 1996 was full of disabled cars from Mark's Auto Service & Towing despite requests of the Church that they not do so (T175), referring to Exhibit 11F which included a sign showing car rentals for cars that were rented from 1324 Old Eastern Avenue.

Exhibit 13A was a photograph of a Mustang on the property with a "For Sale" sign (T180) and a Honda with a "For Sale" sign as Exhibit 13B in front of the Church on Old Eastern Avenue, and Exhibit 13C showing the parking lot trash bin (T182), and Exhibit 13D was a picture of a door panel, a hood, the cover of the back of a pick-up truck, a car seat, a second hood, and a gas tank (T184).

Mr. Dunn testified on the site in the back was an entire engine block, various parts of engines "in various states of dismantle", and some tires with piles of junk (T184).

Exhibit 13F was a stack of tires eight or nine feet tall, taller than Mr. Dunn, that were there on the property in the back on a continual basis (T186).

Pictures of two ice cream trucks are shown in Exhibit 13G which were connected with electric power cords to keep the ice cream cold on the Petitioner's property, which are routinely parked there in the evening according to Mr. Dunn (T187). The certified vehicle registrations for those ice cream trucks showing they were not owned by Mark's Auto Service but were owned by someone else were testified and admitted (T187, T188).

Louis Jones testified as Protestants' next witness, beginning at T208). He had moved into the area about two years before the hearing; when he had first moved in they never had any cars parked in front of their house (T209); but that recently there have been cars parked in front of his house, old cars, junk cars, bad looking cars, that he is ashamed to have seen in front of his house, parked in such a way that it is hazardous for him to leave his driveway or to enter his driveway, which occurred when the No Parking signs went up on Old Eastern Avenue (T209).

Thomas Hargis was called for purposes of rebuttal, beginning at T213. He testified that when he was operating a

station there in the 1980s and vehicles were towed to it four out of six day per week and that he had a contract during that time with two towing companies (T213); that he believed vehicles used to be towed with chains and ropes and safety factors led to the use of tow trucks (T214). He testified regarding the ice cream trucks shown in the photograph in Exhibit 13F (T216), which he testified worked the same way as your freezer or refrigerator would, and when the truck is not running and being serviced they have to be plugged in to provide power (T217). He testified as to the car parts shown in another photograph, Exhibit 13B (T217), that when he operated the place if a customer's car got a hole in the floor he would call a Mr. Carley who owned Eastern Auto and asked him to send up a hood or a door so he could get some metal out of it to use to patch a hole (T218); that the truck cap off a pickup truck turned upside down was abandoned on the site and the tires shown in the pictures are mostly abandoned (T219).

He testified on cross-examination that he had no financial interest in the two ice cream trucks whatsoever (T220).

Erma Veisel was then called as Protestant rebuttal witness, beginning at T226. She testified she had lived in the community since 1972 but her grandparents had bought the property in 1919 so she had been around a long time (T227). She testified that the tow truck shown in Protestants' Exhibit 17 (T228) had been parked overnight on 1322 Old Eastern Avenue as shown as well in

Exhibit 11D with the truck marked M & G Auto as well as being parked many times on the Church parking lot (T230), and at the gas station.

Carville Lauenstein was then recalled (T231) and he testified that he had seen Exhibit 11E, a black hook truck marked M & G Auto, parked many times; that he had seen all three of the tow trucks which had been testified to for the last several years (T234).

ARGUMENT

Issue One

Did the County Board of Appeals of Baltimore County illegally, arbitrarily or capriciously approve an extension or expansion or change from an original non-conforming use of a fuel service station to a service garage where the evidence unequivocally shows a legal abandonment of the fuel service station?

This case turns on the question presented of whether what the Petitioner and all the witnesses have presented to the Court constitutes an established non-conforming use on the effective date of the Zoning Regulations in Baltimore County; namely, January 2, 1945, in accordance with the definition of a non-conforming use as codified in Baltimore County Zoning Regulations ("BCZR") Section 104, which states:

"A non-conforming use as defined in Section 101 may

continue except as otherwise specifically provided in these regulations, provided that upon any change from such non-conforming use to any other use whatsoever, or any abandonment or discontinuance of such non-conforming use for a period of one year or more, the right to continue or resume such non-conforming use shall terminate."

In BCZR Section 101, "Definitions", *Non-Conforming Use* is defined as:

"A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective 'non-conforming' is a non-conforming use."

The other two pertinent definitions in BCZR Section 101 are *Fuel Service Station*, which is defined as:

"A structure or land used or intended to be used for the retail sale of automotive fuel, but not a truck stop. For the purpose of these regulations, any establishment which sells auto fuel retail shall be considered a fuel service station, unless it is classified as a truck stop or trucking facility.

and *Garage, Service* as defined to be:

"A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale."

There is no dispute that on January 2, 1945 a fuel service station existed on the site. There is similarly no dispute since the testimony on this point came from the Petitioner, Thomas Hargis, that when he purchased the property in late 1979 or early 1980, at that time he caused the fuel tanks and fuel servicing pumps to be removed from the property and that from that time forward the property would not meet the definition of a fuel

service station.

The controversy arises as to the first question presented on whether what has occurred at the site was a legitimate or illegitimate expansion or intensification from a fuel service station to a service garage, or alternatively whether the property was always a service garage and just got to be a busier service garage in recent years.

It is well to note as a starting point that the power of the Board to extend a non-conforming use or to approve an extension of a non-conforming use is limited by the zoning ordinance itself. Colati v. Jirout, 186 Md. 652, 47 A.2d 613 (1946). In that case Mr. Colati had appealed an Order prohibiting an expansion or extension of his building. Affirming the Circuit Court Order, the Appellate Court said:

"It is evident that the spirit of the Baltimore City zoning ordinance is against the extension of non-conforming uses. It is generally accepted that a few non-conforming buildings and uses allowed to continue as exceptions to the regulations in order to avoid injustice. It will not be a substantial injury to the community if they are not allowed to multiply where they are harmful or improper; but non-conforming uses should not be perpetuated any longer than necessary, and the Zoning Board should make constant efforts to move them into the use districts where they properly belong."

The Colati decision was quoted with approval in another case testing the boundaries of evolving or expanding non-conforming uses in the case of Fritze v. City of Baltimore, 202 Md. 265, 96 A.2d 4 (1953). In that case the applicants were denied a permit to

build a florist shop on realty which was zoned residential and on which non-conforming greenhouses had existed prior to that time. The Court found in that case, at page 7, that the Board of Zoning Appeals had no authority under the Zoning Ordinance to grant the permit to extend the non-conforming use as requested, reasoning that, while continuance of the greenhouse would be legal, a larger building would be an extension of the non-conforming use and would be contrary to the City's zoning ordinance. The evidence from all the witnesses taken together was that any expansions in the building or enclosures with remodeling in the 1950s, 1960s and 1970s would have increased the size of the non-conforming use.

In the Hargis case, the increase in the footprint of the building is secondary to the change in the use or abandonment of the fuel service station which all agree happened no later than 1980. The leading case on distinguishing between what constitutes a change in the character of the non-conforming use is McKemy v. Baltimore County, 39 Md.App. 257, 385 A.2d 96 (1978). In that case the use in question was that of a parking lot as an accessory to a principal use off site. The Court of Special Appeals set out the four factors utilized in determining whether the current activity is within the scope of the non-conforming use:

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

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

kind;

(3) does the current use have a substantially different effect upon the neighborhood;

(4) is the current use a 'drastic enlargement or extension' of the original non-conforming use."

In applying those factors to the Hargis Petition it is clear that the character of the use originally was as a fuel service station. With the advent of the Zoning Regulations service garages were required to be approved as special exceptions as were fuel service stations in Baltimore County because of the risk of fire or explosion or spread of contaminants or pollutants utilized in the use of property for either. The original fuel service station, until recent decades, provided automotive fuels and accessory incidental light repairs, such as oil changes, lubrications, minor adjustments, and maintenance items such as car washes or waxes.

The testimony of all the witnesses does not contradict such a finding with regard to this property back in 1945; however, there is no question but that the use was abandoned by its owner and that at all times the property has been residential in character. The current use as a service garage with towing, car rental, storage of tires, car parts, and providing overnight or on-going storage for refrigerated ice cream trucks, constitutes a different use in character, nature and kind than that of the neighborhood gas station back in 1945.

The third factor cited in McKemy is whether or not the

current use has a substantially different effect on the neighborhood. All of the Protestants' witnesses testified as to how the increase in towing activity, cars parked on the lots and the 24 hour per day towing operation caused them problems in their use and enjoyment of their homes and their ability to worship at their neighborhood Church.

The fourth characteristic is whether the current use is a drastic enlargement or extension of the original non-conforming use. The original non-conforming use here, in the best light for Petitioner, would be as a fuel service station which sold kerosene from an overhead tank and did minor repairs on the vehicles but mostly pumped gas. The Petitioner's application trying to claim after the fact that the service garage was primary back in 1945 flies in the face of all of the evidence of not only the Petitioner's witnesses but also all the Protestants' witnesses that the property had been utilized primarily as a fuel service station at the time of the adoption of zoning regulations in 1945.

Petitioner's worksheet from SDAT shows that it was considered to be a service station as recently as the late 1970s by the State tax assessor for property land use. The question next is whether the shift from a fuel service station to a service garage represents a legitimate expansion or, in the alternative, whether the abandonment of the fuel service station terminates the non-conforming use.

The case of Boulevard Scrap Company v. City of Baltimore, 213 Md. 6, 130 A.2d 743 (1957), involved the application of a lessee for a permit to use a lot for storage and cutting of scrap metal. Upon disapproval of the application, affirmed at the Circuit level, the Court of Appeals held in affirming that decision that a non-conforming use may not be extended or increased in size and buildings may not be erected or extended on land used as a non-conforming use unless approved by the zoning board. Proposed erection of a building as part of a proposed use of the lot stated in the permit amounted to an extension of a non-conforming use.

In the case of Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16, 141 A.2d 510, the operator of an automobile repair shop on residential land was ordered to cease operating based on a finding of abandonment. The facts of that case were that prior to January 2, 1945 a blacksmith and automobile repair shop had been conducted in a barn on a tract of land 5.82 acres. Appellants purchased the property in 1946 and their tenants continued to operate an automobile repair shop in the barn until 1948 when another building was erected on another part of the property. After obtaining a permit to construct a garage and farm implement accessory building, Appellant tore down the old barn where the auto repairs had been done. The new building was rented to an iron works company engaged in the welding and manufacture of ornamental iron railings until August of 1954. The new building

remained vacant thereafter until December of 1954 when it was rented to Mr. Staines who then conducted an automobile repair shop on the premises until cited by the Deputy Zoning Commissioner to cease his operation. The Court said, at page 513:

"We think that by the explicit terms of the regulation 'any attempt to change from such non-conforming use to a different non-conforming use' the non-conforming use shall cease, the non-conforming use that we have assumed affected the subject property terminated in December of 1954 when there was a change in the use authorized in the light industrial use classification to a use allowed in the E commercial zone."

Such a change occurred in this case when the fuel service station use was abandoned and an intensification and an expansion of the automobile repairs, including towing operations, car rentals, storage of vehicles and repair parts, invaded the residential land of the Petitioner.

The leading case of Phillips v. Zoning Commissioner of Howard County, 225 Md. 102, 169 A.2d 410 (1961), also stands for the principal that mere intensification of non-conforming use is permissible as long as the nature of the use is not substantially changed and that the right of the landowner to continue the same kind of non-conforming use does not confer on him the right subsequently to change or add to use new and different use amounting to drastic enlargement or extension of the prior existing use. The Court said, at page 414:

"It would seem that the power to deny the use of land as a 'junk yard' necessarily included the power to

prohibit the extension or enlargement of an existing non-conforming use as a second hand furniture store and used car lot so as to encompass the added use of the premises as a junk yard for the junking and burning of automobiles. This is so because the spirit underlining zoning regulations is to restrict rather than increase non-conforming uses." Quoting 1 Yokley, *Zoning Law and Practice*, Section 153, 2 Rathkopf, *Law of Zoning and Planning*, Section 59-1, and Colati (Supra).

In like accord, Kent County Planning & Specter v. Abel, 246 Md. 395, 228 A.2d 247 (1967), the Petitioner acting on a building permit obtained from the Planning Commission of Kent County proceeded to enlarge a non-conforming use of land. The Planning inspector sought an injunction which was denied by the Circuit Court. On Appeal the Court of Appeals, in reversing, held the Planning Commission had no authority to issue a permit to enlarge a non-conforming use. The original non-conforming use had been as a marina. The Petitioner sought to supplement the existing piers on adjoining land within 500 feet of an "R" district. The operation of the repair function in a marina was prohibited within 500 feet of an "R" district in Kent County at the time. Despite receiving a permit the Court of Appeals in reversing the Circuit Court on request of the Planning inspector for Kent County said at page 252, quoting with approval Jahnigen v. Stailey, 245 Md. 130, 225 A.2d 277 (1967):

"The basic premise underlying zoning regulations is to restrict rather than expand non-conforming uses. Phillips (Supra); Colati (Supra). However, an intensification of a non-conforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used."

In the instant case the business described by Mr. Hargis as employed by his tenants and as contained in the testimony of the various other witnesses indicates an expansion of the use of the property to now include massive contract towing operations, car rentals, car sales or cars stored with "For Sale" signs, and overnight storage of commercial vehicles. That is, far and away, a deviation from the nature and character of the use back in 1945 as a fuel service station.

The matter of abandonment of a previously approved non-conforming use was treated in the case of Stieff v. Collins, 237 Md. 601, 207 A.2d 489 (1965). There the petitioner had obtained a variance to reconstruct a non-conforming use, including a 25% expansion. The Circuit Court for Anne Arundel County reversed the ruling of the Board of Zoning Appeals which had granted the variance and the Circuit Court decision was affirmed by the Court of Appeals, holding that in that case the evidence was insufficient to establish a warehouse use as a substitute non-conforming use within the ordinance. That case involved the operation of a bakery to produce donuts and a dairy depot for pasteurization and distribution of milk and milk products which had ceased in 1958. Thereafter the dairy plant was partially dismantled and the equipment was either sold or used in other dairy operations of the company except for a small part left in the buildings. Bakery equipment was likewise dismantled and removed within a year

subsequent to discontinuance of its operation. That equipment as well as equipment from other small dairies moved for storage to Baltimore was stored at this location. The buildings were boarded up and locked since operations stopped in 1958 without a watchman. The Petitioner claimed that the subsequent use of the property as a warehouse flowed from the prior non-conforming use. The Court held, at page 491:

"Abandonment in law depends upon the concurrence of two and only two factors: (1) an intention to abandon or relinquish; and (2) some overt act or some failure to act which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment."

There the Court found that the original non-conforming use had been abandoned and in the instant case it is admitted by the Petitioner, Mr. Hargis, that the original non-conforming use (that of a fuel service station) had been abandoned by his own actions in removing the tanks and the pumps in early 1980. He further testified that it was his intent at the time of purchase to do so and he carried out his intent.

The matter of Canada's Tavern, Inc. v. Town of Glen Echo, 260 Md. 206, 271 A.2d 664 (1970), involved an action challenging a Certificate of Occupancy to use buildings in a single family residential zone for non-conforming restaurant purposes. On the facts presented the Department of Inspections issued the Certificate of Occupancy. The Board of Appeals affirmed and, on appeal from the Town, the Montgomery County Circuit reversed, and

the Court of Appeals affirmed the Circuit Court, finding that where a non-conforming restaurant use had ceased for more than six months the use had been abandoned within the meaning of the Montgomery County ordinance.

Here the Petitioner admitted the original non-conforming use had ceased of a fuel service station and contended that the ancillary or accessory repair work had continued at the same level as when the service station had operated. All of the other witnesses' testimony as to increase in traffic, increase in amount of vehicles on the site, the existence of a substantial 24 hour tow truck operation, storage of cars advertised for sale, and overnight storage of large ice cream trucks were new to this site and were causing the problems described in the community.

Issue Two

Did the County Board of Appeals of Baltimore County improperly limit Protestants' presentation of evidence of other uses on the Petitioner's property to illustrate illegal expansion and then arbitrarily allow Petitioner on rebuttal to present evidence of activities on other parts of Petitioner's property outside the original footprint of the fuel service station?

The Board erred as a matter of law in prohibiting the Protestants from presenting evidence as to the Petitioner's use of the property. For the authority that is cited in the first questions presented in considering any expansion of a non-

conforming use there should be a consideration by the Board of evidence as to all the current uses of the Petitioner's property. Despite the fact that a number of witnesses called in Petitioner's case testified that the rest of the property had only included a brick residence and woods back to the critical date of January 2, 1945 when zoning regulations were first in force in Baltimore County, the Protestants were thwarted at numerous points of the proceedings by the rulings of the Chairman of the Board that what the Petitioner was doing on the rest of the property was irrelevant to the issue before the Board at T67 and in sustaining objections of Petitioner's counsel to the testimony of Douglas Dunn, prohibiting his testimony of what other uses were being made of the Petitioner's property; i.e., as a place where survey stakes were manufactured; vehicle parts and tires were stored as junk; where a vehicle striping business was located; and where large ice cream trucks were stored and serviced.

After sustaining all those objections the Board then permitted the Petitioner on presentation of his rebuttal case to testify as to the expanded use of his property beyond the footprint of the original building, wherein Mr. Hargis testified that the overnight storage of the ice cream trucks was part of a maintenance contract for the original area of the service station, even if they were parked to the rear of the building and beyond the footprint of the Petitioner's requested non-conforming use.

The status of the case was that, with that ruling, the Board, having prevented the Protestants from presenting evidence as to all of those other uses on the property which admittedly were not there back in January of 1945, then reversed course and permitted the Petitioner to address the matter of the ice cream trucks on that rear portion of the property. At the very least, if the matter is not otherwise resolved in favor of Protestants, upon consideration of the first questions, the Court should remand this matter for presentation of whatever relevant testimony and evidence the Protestants wish to bring showing the use of the entire property to see whether it constitutes a lawful or illegal expansion by the Petitioner of what was permitted or allowed as a legal non-conforming use in 1945.

CONCLUSION

The Appellants request this Court reverse the decision of the County Board of Appeals on the law and deny the Petitioner's request for a non-conforming use.

In the alternative, the Appellants request the Court reverse and remand the matter for further proceedings before the County Board of Appeals of Baltimore County.


MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this 28th day of January, 1997, a copy of the foregoing was hand delivered to C. William Clark, Esquire, Nolan, Plumhoff & Williams, The Nottingham Center, Suite 700, 502 Washington Avenue, Towson, Maryland, 21204, attorney for Thomas Hargis; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49, Towson, Maryland, 21204.

Michael P. Tanczyn
MICHAEL P. TANCZYN, ESQ.

12/11/96

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF CARVILLE A. LAUENSTEIN
1308 OLD EASTERN AVENUE
BALTIMORE, MARYLAND 21221

AND

DOUGLAS K. DUNN
302 EAST JOPPA ROAD
APARTMENT 1604
TOWSON, MARYLAND 21286

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

CIVIL
ACTION
No. 3-C-96-011276

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF THOMAS HARGIS
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTHWEST CORNER OLD
EASTERN AVENUE AND ESSEX AVENUE
(1324 OLD EASTERN AVENUE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO. 96-246-SPH

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence M. Stahl and Margaret Worrall,
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 Department of Permits and
Development Management and the Board of Appeals of Baltimore
County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

No. 96-246-SPH

December 14, 1995 Petition for Special Hearing filed by John B.
Gontrum, Esquire, on behalf of Thomas Hargis,
to approve a non-conforming use for a service

RECEIVED AND FILED

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CLERK OF THE CIRCUIT COURT

garage, service bays and sale of fuel,
(kerosene and bulk oil), also to approve a
canopy overhang.

December 29, 1995 Certificate of Posting of property.

Publication in newspapers.

January 11, 1996 ZAC Comments.

January 17 Hearing held on Petition by the Zoning
Commissioner.

January 31 Order of the Zoning Commissioner in which
Petition for Special Hearing was DENIED; use
as service garage, service bays, for sale of
fuel and also existing canopy overhand shall
be discontinued/removed.

February 23 Notice of Appeal filed by Thomas Hargis.

April 1 Entry of Appearance by C. William Clark,
Esquire, on behalf of Thomas Hargis.

July 30 Hearing before the Board of Appeals.

August 22 Deliberation conducted by the Board.

October 7 Opinion and Order of majority of the Board in
which the Petition for Special Hearing was
DENIED; Dissenting opinion issued by Mr.
Marks.

November 4 Petition for Judicial Review filed in the
Circuit Court for Baltimore County by Michael
P. Tanczyn, Esquire, on behalf of Carville A.
Lauenstein and Douglas K. Dunn.

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

November 8 Certificate of Notice sent to interested
parties.

December 27, 1996 Transcript of testimony filed.

Petitioner's Exhibits No. 1-Section 101 BCZR
2-Petition for SPH notice
3-Deed -Dec. 16, 1931
4-Deed -Sept. 24, 1972
5-Zoning map F3 1000-scale
6-Zoning map F3 200-scale

7-Survey for CZMP hearing for zoning
change 8/29/94
8-Assess. & Taxation Field Work sheet
19098

Protestant's Exhibits No. 1-MDE Underground leak summary
2-Owner info. sheet 3-8-96
3-Real Prop. System 7-29-96
4-P744 The One Book 1995-96
5-NOT ENTERED (Code Enforcement Report)
6-CZMP application 1996 10/31/95
7-NOT ENTERED (Plat of Property)
8-Bldg. Permit B109211
9-Razing permit
10-Petition collected by Pastor McCombs -
Mars Hill Community
11A-April 1996 - signage & dumpster near
church
B-May 1996 - Site w/ roll-off truck
C-Oct.-Nov. '95 -White house w/ Mark's
Auto Truck
D-May '96 -Site w/ M&G tow-truck
E-Oct. '95 -1st Church w/ tow-truck in
front
F-June '96 -Car CCX (license) w/ car
rental sign
(11A thru 11F -Large /in CBA closet)
G-NOT ENTERED
12- NOT ENTERED (Car rental agreement)
13A-Car for sale (Towson St. Univ.) April
1996
B-April '96 -corner of left side of
service garage
C-Oct. '95 -In front of church -Old
Eastern Avenue
D-Oct. '95 -Old Eastern Avenue, pkg lot
/dumpster
E-Oct. '95 -Essex Avenue & Old Eastern
Avenue cars & service station
F-(2) Ice cream trucks July '96
G-(2) Ice cream trucks July '96
(13A thru 13G -Large /in CBA closet)
14-A&B Certified MVA registration records
15-Petition -taken by Dunn
16-Petition -members of 1st Church of
Christ Scientists
17-Photo July '96 fence in front of Mark's
-both M&G tow-trucks

December 27, 1996 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. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

Charlotte E. Radcliffe

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

cc: Michael Tanczyn, Esquire
Carville A. Lauenstein
Douglas Dunn
C. William Clark, Esquire
Thomas Hargis
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

11/2/96
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF CARVILLE A. LAUENSTEIN
1308 OLD EASTERN AVENUE
BALTIMORE, MARYLAND 21221

AND
DOUGLAS K. DUNN
302 EAST JOPPA ROAD
APARTMENT 1604
TOWSON, MARYLAND 21286

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

CIVIL
ACTION
No. 3-C-96-011276

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF THOMAS HARGIS
FOR A SPECIAL HEARING ON PROPERTY
LOCATED ON THE NORTHWEST CORNER OLD
EASTERN AVENUE AND ESSEX AVENUE
(1324 OLD EASTERN AVENUE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO. 96-246-SPH

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* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Lawrence M. Stahl and Margaret Worrall, constituting the majority of 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, Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Attorney for the Petitioners; Carville A. Lauenstein, 1308 Old Eastern Avenue, Baltimore, Maryland 21221, and Douglas K. Dunn, 302 East Joppa Road, Apartment 1604, Towson, Maryland 21286, Petitioners; Thomas Hargis, 1324 Old Eastern Avenue, Baltimore, Maryland 21221; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, The Nottingham Center, Suite 700, 502 Washington Avenue, Towson, Maryland 21204, Attorney for Thomas Hargis; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington

Avenue, Room 47, Towson, Maryland 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Charlotte E. Radcliffe

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 Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, Maryland 21204, Attorney for the Petitioners; Carville A. Lauenstein, 1308 Old Eastern Avenue, Baltimore, Maryland 21221, and Douglas K. Dunn, 302 East Joppa Road, Apartment 1604, Towson, Maryland 21286, Petitioners; Thomas Hargis, 1324 Old Eastern Avenue, Baltimore, Maryland 21221; C. William Clark, Esquire, NOLAN, PLUMHOFF & WILLIAMS, The Nottingham Center, Suite 700, 502 Washington Avenue, Towson, Maryland 21204, Attorney for Thomas Hargis; Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 8th day of November, 1996.

Charlotte E. Radcliffe

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

1/1/97
PETITION OF:

Carville A. Lauenstein
1308 Old Eastern Avenue
Baltimore, Maryland, 21221

and

Douglas K. Dunn
302 East Joppa Road
Apartment 1604
Towson, Maryland 21286

FOR JUDICIAL REVIEW OF THE DECISION OF:

County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204
(410) 887-3180

IN THE CASE OF:

IN THE MATTER OF
THE APPLICATION OF
THOMAS HARGIS, Petitioner
FOR A SPECIAL HEARING
ON PROPERTY LOCATED ON THE
NORTHWEST CORNER OLD EASTERN
AVENUE AND ESSEX AVENUE
(1324 OLD EASTERN AVENUE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
CASE NO. 96-246-SPH

IN THE
CIRCUIT
COURT FOR
BALTIMORE
COUNTY

CIVIL
ACTION NO.

* * * * *

PETITION

CARVILLE A. LAUENSTEIN and DOUGLAS K. DUNN, Appellants
who participated in the proceedings before the County Board of
Appeals of Baltimore County, by Michael P. Tanczyn, Esq., their
legal counsel, in accordance with Maryland Rule 7-202, hereby
request judicial review of the October 7, 1996 Decision of the

County Board of Appeals of Baltimore County in the above-captioned matter.



MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 296-8823
Attorney for the Appellants

I HEREBY CERTIFY that, on this 4th day of November, 1996, a copy of the foregoing was mailed, postage prepaid, to C. William Clark, Esquire, Nolan, Plumhoff & Williams, The Nottingham Center, Suite 700, 502 Washington Avenue, Towson, Maryland, 21204, attorney for Thomas Hargis; to Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and to County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Room 49, Towson, Maryland, 21204.



MICHAEL P. TANCZYN, ESQ.

10/1/76
IN THE MATTER OF THE
THE APPLICATION OF
THOMAS HARGIS
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE NORTH-
WEST CORNER OLD EASTERN AVENUE
AND ESSEX AVENUE (1324 OLD
EASTERN AVENUE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 96-246-SPH
* * * * *

DISSENTING OPINION

There is no question but that the Petitioner has met the burden of establishing the fact that a service station existed on the subject site prior to the adoption of the D.R. zoning regulations. The testimony of the Petitioner and witnesses for both sides of the issue have clearly attested to that fact. The only question left for the Board to decide, based on the testimony and evidence established on the hearing dates, is whether or not the "nonconforming" use has continued uninterruptedly since that time. Section 104 of the Baltimore County Zoning Regulations (BCZR) states: "A nonconforming use [as defined in Section 101] may continue except as otherwise specifically provided in these regulations provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate." At the time of the Appellant's purchase of the property, there clearly existed a service station. That station at the time of the commencement of the "nonconforming" use sold gasoline products. At some point in time, the gasoline tanks developed leaks, and the Fire Marshall ordered removal because of

environmental concerns. The Appellant purchased the property with full knowledge that the gasoline pumps and storage tanks would have to be removed.

Fully aware of the problem, the Appellant purchased the property and had the tanks removed. The State of Maryland Department of Taxation and Assessment Worksheet, submitted as an exhibit, clearly shows that as of June, 1981 no gasoline was sold on the premises. The Appellant continued to sell kerosene and bulk oil and perform service work on the site. One should note that kerosene is not an automotive fuel, and bulk oil sales generally are not retail in nature. Additionally, testimony clearly shows that the Appellant took on additional usages; i.e., car rentals, towing, and, while disputed, possibly car sales and overnight storage, in an area that was originally designed solely for retail gasoline sales and localized service work. While it may be argued that some of these functions may be accessory to the normal functions of a service station, it is this Board member's dissenting opinion that the interpretation of Section 104 must be one of very narrow and limited construction. Maryland case law permits continuation of a nonconforming use, but does not permit the transmogrification of an approved nonconforming use into a new and different use. The latter constitutes an unlawful extension, even if there is no outward change in the appearance of the facility being used. [National Institute of Health Federal Credit Union v. Hawk 47 Md. App. 189, 422 A2d 55 (1980)] The Baltimore County Zoning Regulations are quite clear that "upon any change

from such nonconforming to any other use, whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

It appears to me that the intent of the County Council was quite clear. "Any change...to any other use, whatsoever...or any discontinuance...for one year or more terminates the nonconforming use." (Emphasis added.) The discontinuance of retail gasoline sales was a significant change. The service station became a service garage; and, as years progressed, changed further into a rental car facility, towing operation, and possibly an overnight storage facility and car sales operation. There is a severe differentiation between a service station and a service garage as defined in Section 101 of the BCZR: Fuel Service Station: "A structure or land used or intended to be used for the retail sale of automotive fuel, but not a truck stop. For the purposes of these regulations, any establishment which sells automotive fuel shall be considered a fuel service station, unless it is classified as a truck stop or trucking facility." Service Garage: "A garage, other than a residential garage, where motor driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale." It is fairly evident to me that the subject site ceased being a service station quite some time ago, and took on a new imagery as a service garage. It has been stated on numerous occasions that the public interest demands the eventual elimination of nonconforming uses because to prolong them indefinitely

contravenes the general purposes of zoning administration.

In Phillips v. Zoning Commissioners of Howard County, 225 Md. 102, 169 A2d 410 (1961) the Court held that: "While it is true that mere intensification of a nonconforming use is permissible so long as the nature of the use is not substantially changed, it is generally recognized that the right of a land owner to continue the same kind of use to what the property was devoted on the critical date does not confer or add to that use a new and different use amounting to a drastic enlargement or extension of the prior use." The majority of the Board has found that the towing operation, car rental, car sales, and overnight storage not related to auto repair must be eliminated from present day usage of the site. In so ordering, the majority has determined that such functions did not exist as of the critical date; and, accordingly, must be a substantive enlargement or extension of the original nonconforming use. In so finding, they have also determined that a change took place in the nonconforming use as originally established. Therefore, if the Code is literally interpreted, this would suggest that the site is presently operating outside of its original nonconforming parameters; and the special hearing should then be denied.

Unlike a variance request, where the Board can grant relief as authorized by statute if certain conditions exist (i.e., peculiar nature or uniqueness of the land or structure; and hardship factors), there is no specific statutory relief afforded the Board where the nonconforming use has been lost due to discontinuance,

abandonment, or enlargement.

By his very actions, the Appellant has disqualified himself for consideration because the nonconforming use has effectively been lost. That having occurred, the Board lacks the statutory authority to legitimize an unlawful use into a lawful use by establishing future regulations dictating discontinuance of certain functions taken on as the years have progressed as ancillary to the business.

In my opinion, there is a significant difference between a fuel service station and a service garage, which constitutes a totally different matter of original nonconforming use utilization, and is significantly different in character, nature, and kind, and furthermore represents a significant enlargement and extension of the original nonconforming use.

Therefore, in my opinion, the Petition for Special Hearing should be denied.



Charles L. Marks

DATE: Oct 7 1996

IN THE MATTER OF THE
THE APPLICATION OF
THOMAS HARGIS
FOR A SPECIAL HEARING ON
PROPERTY LOCATED ON THE NORTH-
WEST CORNER OLD EASTERN AVENUE
AND ESSEX AVENUE (1324 OLD
EASTERN AVENUE)
15TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 96-246-SPH

* * * * *

DISSENTING OPINION

There is no question but that the Petitioner has met the burden of establishing the fact that a service station existed on the subject site prior to the adoption of the D.R. zoning regulations. The testimony of the Petitioner and witnesses for both sides of the issue have clearly attested to that fact. The only question left for the Board to decide, based on the testimony and evidence established on the hearing dates, is whether or not the "nonconforming" use has continued uninterruptedly since that time. Section 104 of the Baltimore County Zoning Regulations (BCZR) states: "A nonconforming use [as defined in Section 101] may continue except as otherwise specifically provided in these regulations provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate." At the time of the Appellant's purchase of the property, there clearly existed a service station. That station at the time of the commencement of the "nonconforming" use sold gasoline products. At some point in time, the gasoline tanks developed leaks, and the Fire Marshall ordered removal because of

environmental concerns. The Appellant purchased the property with full knowledge that the gasoline pumps and storage tanks would have to be removed.

Fully aware of the problem, the Appellant purchased the property and had the tanks removed. The State of Maryland Department of Taxation and Assessment Worksheet, submitted as an exhibit, clearly shows that as of June, 1981 no gasoline was sold on the premises. The Appellant continued to sell kerosene and bulk oil and perform service work on the site. One should note that kerosene is not an automotive fuel, and bulk oil sales generally are not retail in nature. Additionally, testimony clearly shows that the Appellant took on additional usages; i.e., car rentals, towing, and, while disputed, possibly car sales and overnight storage, in an area that was originally designed solely for retail gasoline sales and localized service work. While it may be argued that some of these functions may be accessory to the normal functions of a service station, it is this Board member's dissenting opinion that the interpretation of Section 104 must be one of very narrow and limited construction. Maryland case law permits continuation of a nonconforming use, but does not permit the transmogrification of an approved nonconforming use into a new and different use. The latter constitutes an unlawful extension, even if there is no outward change in the appearance of the facility being used. [National Institute of Health Federal Credit Union v. Hawk 47 Md. App. 189, 422 A2d 55 (1980)] The Baltimore County Zoning Regulations are quite clear that "upon any change

from such nonconforming to any other use, whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

It appears to me that the intent of the County Council was quite clear. "Any change...to any other use, whatsoever...or any discontinuance...for one year or more terminates the nonconforming use." (Emphasis added.) The discontinuance of retail gasoline sales was a significant change. The service station became a service garage; and, as years progressed, changed further into a rental car facility, towing operation, and possibly an overnight storage facility and car sales operation. There is a severe differentiation between a service station and a service garage as defined in Section 101 of the BCZR: Fuel Service Station: "A structure or land used or intended to be used for the retail sale of automotive fuel, but not a truck stop. For the purposes of these regulations, any establishment which sells automotive fuel shall be considered a fuel service station, unless it is classified as a truck stop or trucking facility." Service Garage: "A garage, other than a residential garage, where motor driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale." It is fairly evident to me that the subject site ceased being a service station quite some time ago, and took on a new imagery as a service garage. It has been stated on numerous occasions that the public interest demands the eventual elimination of nonconforming uses because to prolong them indefinitely

contravenes the general purposes of zoning administration.

In Phillips v. Zoning Commissioners of Howard County, 225 Md. 102, 169 A2d 410 (1961) the Court held that: "While it is true that mere intensification of a nonconforming use is permissible so long as the nature of the use is not substantially changed, it is generally recognized that the right of a land owner to continue the same kind of use to what the property was devoted on the critical date does not confer or add to that use a new and different use amounting to a drastic enlargement or extension of the prior use." The majority of the Board has found that the towing operation, car rental, car sales, and overnight storage not related to auto repair must be eliminated from present day usage of the site. In so ordering, the majority has determined that such functions did not exist as of the critical date; and, accordingly, must be a substantive enlargement or extension of the original nonconforming use. In so finding, they have also determined that a change took place in the nonconforming use as originally established. Therefore, if the Code is literally interpreted, this would suggest that the site is presently operating outside of its original nonconforming parameters; and the special hearing should then be denied.

Unlike a variance request, where the Board can grant relief as authorized by statute if certain conditions exist (i.e., peculiar nature or uniqueness of the land or structure; and hardship factors), there is no specific statutory relief afforded the Board where the nonconforming use has been lost due to discontinuance,

abandonment, or enlargement.

By his very actions, the Appellant has disqualified himself for consideration because the nonconforming use has effectively been lost. That having occurred, the Board lacks the statutory authority to legitimize an unlawful use into a lawful use by establishing future regulations dictating discontinuance of certain functions taken on as the years have progressed as ancillary to the business.

In my opinion, there is a significant difference between a fuel service station and a service garage, which constitutes a totally different matter of original nonconforming use utilization, and is significantly different in character, nature, and kind, and furthermore represents a significant enlargement and extension of the original nonconforming use.

Therefore, in my opinion, the Petition for Special Hearing should be denied.



Charles L. Marks

DATE: Oct 7 1996



County Board of Appeals of Baltimore County

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

October 7, 1996

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

RE: Case No. 96-246-SPH
Thomas Hargis -Petitioner

Dear Mr. Clark:

Enclosed please find a copy of the final Majority Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter. Also enclosed is a copy of Mr. Marks' Dissenting Opinion.

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 and Procedure. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe
Kathleen C. Bianco
Legal Administrator

encl.

cc: Thomas Hargis
Douglas Dunn
Lula Gardner
Mary Unfried, Clerk
First Church of Christ Scientist
Virginia D. Skarie
Nancy L. Bagley
Rev. Dennis J. McCombs
Carville A. Lauenstein
Robert and Mary Edge
The Honorable Louis L. DePazzo
Baltimore County Council
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Zoning Commissioner
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



131/96
IN RE: PETITION FOR SPECIAL HEARING
NWC Old Eastern Avenue and Essex
Avenue
1324 Old Eastern Avenue
15th Election District
5th Councilmanic District

Thomas Hargis
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-246-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property located at 1324 Old Eastern Avenue in the Essex section of Baltimore County. The Petition was filed by Thomas Hargis, property owner. Special Hearing relief is requested to approve a nonconforming use of the subject property; for a service garage, service bays and sale of fuel (kerosene and bulk oil) and also to approve a canopy overhang. The subject property and relief sought are more particularly described on the site plan submitted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing held for this case was Thomas Hargis, property owner. Numerous residents of the surrounding locale testified as well as representatives of churches which lay adjacent to the subject property.

As a preliminary matter, the Petitioner requested a continuance of the hearing. As reason therefore, he indicated that he was without legal counsel and desired counsel to represent him. The file showed that John B. Gontrum, Esquire originally represented the Petitioner and is designated as counsel on the Petition. However, by way of a letter dated December 22, 1995, Mr. Gontrum withdrew his appearance. By separate mailing Mr. Gontrum notified the Petitioner directly that he would withdraw his appearance. For reasons explained at the hearing, I denied the request for postponement. Specifically, the file notes that the property is presently

ORDER RECEIVED FOR FILING

Date

By

1/31/96
[Signature]

used for an illegal purpose, namely, conducting the above described business. Said use is improper, absent a finding of a nonconforming use as requested within the Petition. Moreover, a review of the file shows that the business operating the property was the subject of a complaint by a number of neighbors in the summer of 1995. A zoning inspector was dispatched to examine the property at that time. By a letter of August 17, 1995, Inspector Moorefield advised the Petitioner that the use must be discontinued or a Petition for Special Exception filed within 30 days. Notwithstanding these instructions, the Petition was not filed until December 14, 1995, nearly 120 days after Inspector Moorefield's letter. The matter was then scheduled for public hearing which was convened on January 17, 1996.

Although there is no prejudice to the Petitioner if the continuance was granted, there is prejudice to the many citizens who appeared. Many of these individuals took leave from employment and made arrangements to be available at the hearing. Moreover, the continued non-legitimate use arguably adversely impacts the surrounding locale. For these reasons, the request for continuance was denied.

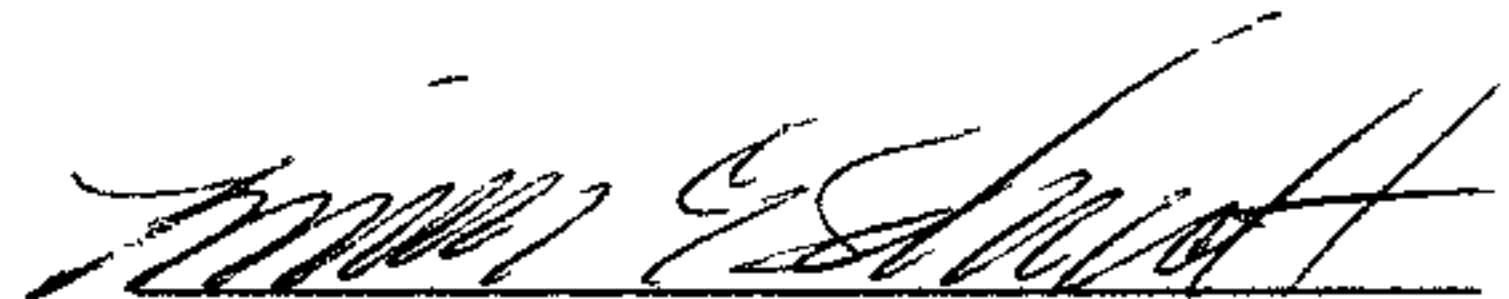
The hearing proceeded and the Petitioner presented little comment and no competent evidence regarding the history of the use of the site. Simply stated, the Petitioner failed to produce the requisite testimony and evidence that the property is a nonconforming use, as defined in Section 101 of the Baltimore County Zoning Regulations (BCZR) and as regulated in Section 104 thereof. There was no testimony that the uses existed prior to the adoption of the D.R. zoning and the same use has been continued uninterruptedly since that time. For these reasons, the Petition must be and will be denied.

RECEIVED FOR FILING
Date 1/31/96
By [Signature]

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 31st day of January, 1996 that, pursuant to the Petition for Special Hearing, approval of a nonconforming use of the subject property; for a service garage, service bays and sale of fuel (kerosene and bulk oil) and also to approve a canopy overhang, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the use of the subject property for a service garage, service bays, for sale of fuel (kerosene and bulk oil) and also the existing canopy overhang shall be discontinued/removed no later than 30 days from the final Order issued in this case.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmm

ORDER RECEIVED FOR FILING
Date 1/31/96
By Mr. Howard

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

January 29, 1996

Mr. Thomas Hargis
1324 Old Eastern Avenue
Baltimore, Maryland 21221

RE: Case No. 96-246-SPH
Petition for Special Hearing
Property: 1324 Old Eastern Avenue

Dear Mr. Hargis:

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

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3353.

Very truly yours,

A handwritten signature in cursive script, reading "Lawrence E. Schmidt".

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmm
encl.
c: Protestants

247



Petition for Special Hearing

96-246-JPH
to the Zoning Commissioner of Baltimore County

for the property located at # Northwest corner of Old Eastern Avenue and
1324 OLD EASTERN AVE. Essex Avenue

which is presently zoned DR5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

A non conforming use for a service garage, service bays and sale of fuel,
(kerosene and bulk oil), also canopy overhang. ALL AS SHOWN ON
THE PROVIDED SITE PLAN

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

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

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

Contract Purchaser/Lessee.

Legal Owner(s)

(Type or Print Name)

Thomas Hargis

(Type or Print Name)

Signature

Signature

Address

(Type or Print Name)

City

State

Zipcode

Signature

Attorney for Petitioner

John B. Gontrum

(Type or Print Name)

Signature

814 Eastern Blvd. (410)686-8274

Address

Phone No

Baltimore

MD

21221

City

State

Zipcode

1324 Old Eastern Avenue (410)391-8774

Address

Phone No

Baltimore

MD

21221

City

State

Zipcode

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

John B. Gontrum

Name

814 Eastern Blvd. (410)686-8274

Address

Baltimore, MD 21221

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

4 HRS

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

DATE

12/14/95



THOMAS E. PHELPS & ASSOCIATES, INC.

945 Barron Avenue
Baltimore, Maryland 21221-5202
(301) 574-6744

LAND SURVEYING

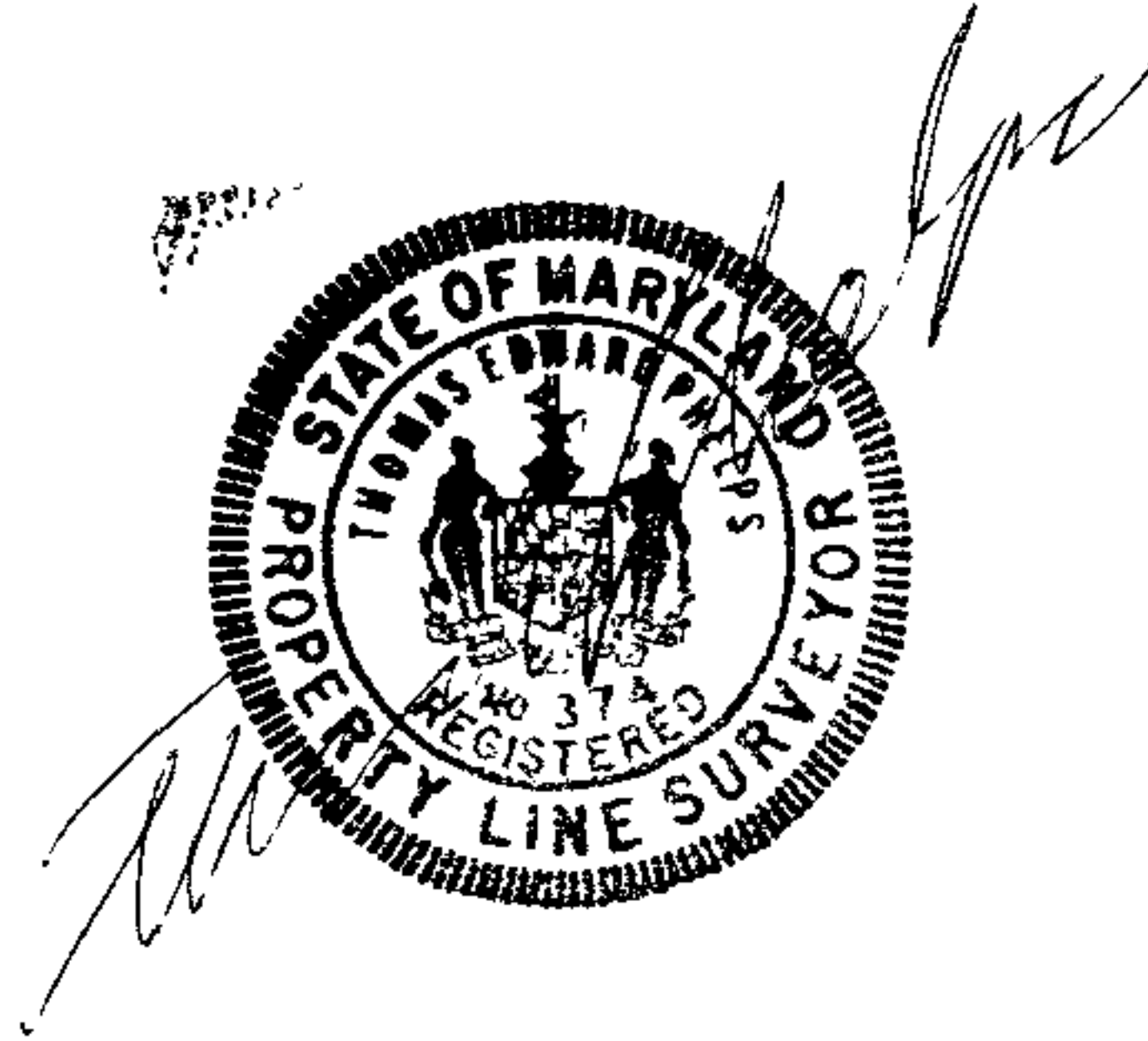
2A7
96-246-SPH
LAND PLANNING

Hargis Property
Zoning Description

Beginning at a point at the northwesterly intersection of Old Eastern Avenue, an 80 foot Right of Way, with Essex Avenue, a 40 foot Right of Way. Thence the following courses and distances, viz;

1. South 83°46'00" West 100.00 feet,
2. North 06°14'00" West 145.00 feet,
3. North 83°46'00" East 100.00 feet, and
4. South 06°14'00" East 145.00 feet to the point of beginning.

Containing 14,500 square feet.



CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/29, 1995

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 12/28, 1995.

THE JEFFERSONIAN,

A. Henrichson

LEGAL AD. - TOWSON

NOTICE OF HEARING
The Zoning Commission of Baltimore County, in accordance with 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 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #96-246-SPH
(Item 247)
1324 Old Eastern Avenue
NWC Old Eastern Avenue and
Essex Avenue
15th Election District
5th Councilmanic
Legal Owner(s):

Thomas Hargis
Special Hearing: to approve a non-conforming use for a service garage, service bays and sale of fuel, (kerosene and bulk oil), also canopy overhang.

Hearing: Wednesday, January 17, 1996 at 9:00 a.m. in Rm. 118, Old Courthouse.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing, Please Call 887-3391.

12/19/94 Dec. 28

c24207

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

075364

DATE 1/1/50 ACCOUNT 1150

AMOUNT \$

RECEIVED FROM: CL. BAL. ST. TIME MFR. INC.

FOR: 96-246-SPH

1/1/50

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. 011175

DATE 1/1/50 ACCOUNT 1150

96-246-SPH
AMOUNT \$ 255.00

RECEIVED FROM: CL. BAL. ST. TIME MFR. INC.

FOR: 1/1/50
1/1/50

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

ZONING APPEAL

PUBLIC HEARING

CASE NUMBER:

96-246-SP-1

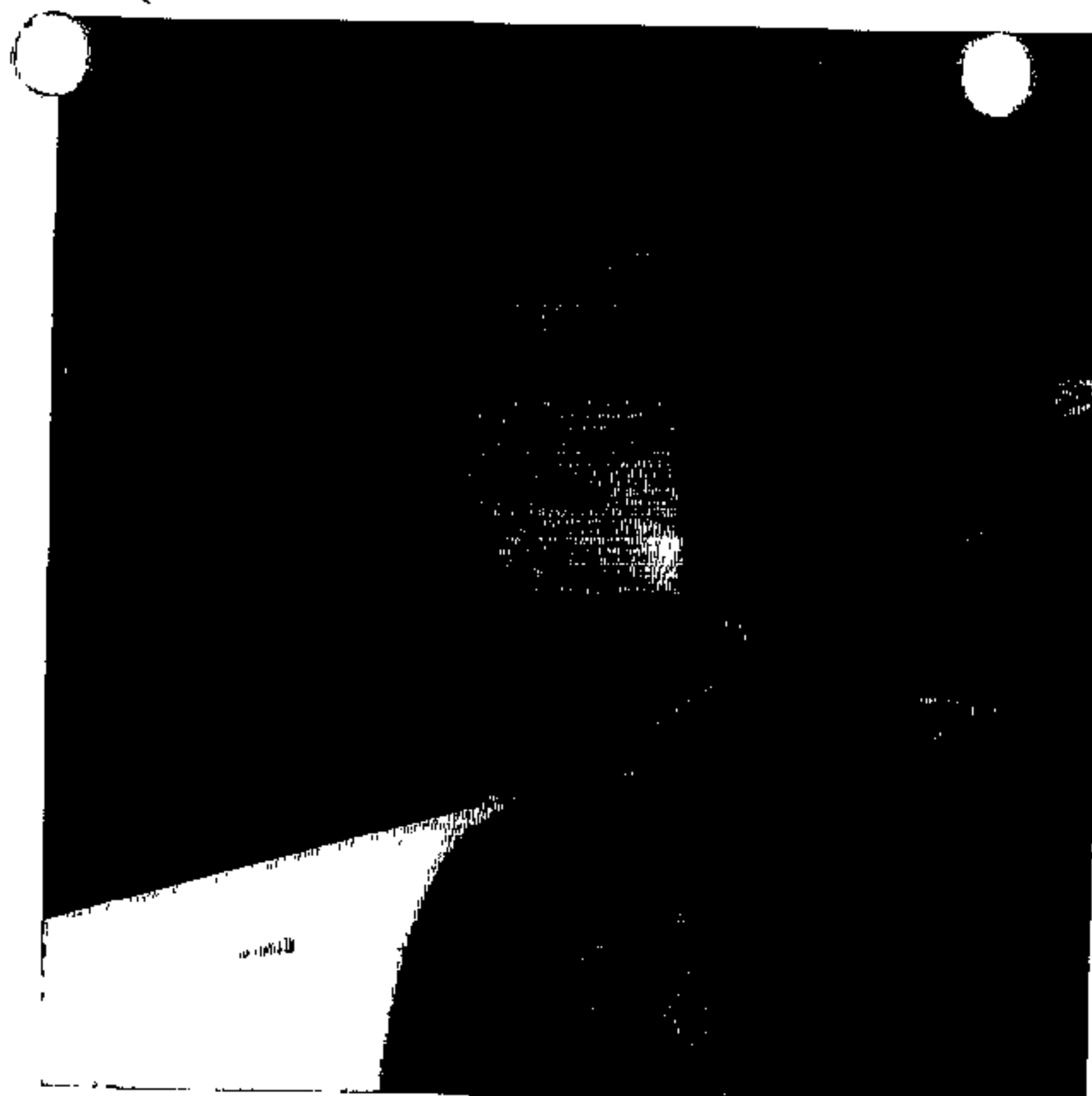
FOR INFORMATION CALL

887-3180

DO NOT REMOVE
UNDER PENALTY OF LAW

BALTIMORE COUNTY BOARD OF APPEALS

UP COMMUNITY



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

96-246-SPH

District 158

Date of Posting 12/29/95

Posted for: Special Hearing

Petitioner: Thomas Hargis

Location of property: 1324 Old Eastern Ave

Location of Signs: Facing roadway on property being zoned

Remarks: _____

Posted by M. Harty
Signature

Date of return: 1/5/96

Number of Signs: 1





Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 247 Petitioner: THOMAS HARGIS

Location: 1324 ~~ST~~ EASTERN BLVD

PLEASE FORWARD ADVERTISING BILL TO:

NAME: THOMAS HARGIS

ADDRESS: 1324 ~~ST~~ EASTERN BLVD

BALTY, MD., 21221

PHONE NUMBER: (410) 686-8274



TO: PUTUXENT PUBLISHING COMPANY
December 28, 1995 Issue - Jeffersonian

Please forward billing to:

Thomas Hargis
1324 Old Eastern Avenue
Baltimore, MD 21221
391-8774

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
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-246-SPH (Item 247)
1324 Old Eastern Avenue
NWC Old Eastern Avenue and Essex Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Thomas Hargis

Special Hearing to approve a non-conforming use for a service garage, service bays and sale of fuel, (kerosene and bulk oil), also canopy overhang.

HEARING: WEDNESDAY, JANUARY 17, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

December 19, 1995

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
or
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 96-246-SPH (Item 247)
1324 Old Eastern Avenue
NWC Old Eastern Avenue and Essex Avenue
15th Election District - 5th Councilmanic
Legal Owner(s): Thomas Hargis

Special Hearing to approve a non-conforming use for a service garage, service bays and sale of fuel, (kerosene and bulk oil), also canopy overhang.

HEARING: WEDNESDAY, JANUARY 17, 1996 at 9:00 a.m. in Room 118, Old Courthouse.

A handwritten signature in cursive script, reading "Arnold Jablon".

Arnold Jablon
Director

cc: Thomas Hargis
John B. Gontrum, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





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

May 23, 1996

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), BOARD'S RULES OF PRACTICE & PROCEDURE, APPENDIX C, BALTIMORE COUNTY CODE .

CASE NO. 96-246-SPH

THOMAS HARGIS -Petitioner
NWC Old Eastern Avenue and Essex Avenue (1324
Old Eastern Avenue)
15th Election District
5th Councilmanic District

SPH -To approve nonconforming use of subject
property for service garage, service bays and
sale of fuel (kerosene and bulk oil); to
approve canopy overhang.

1/31/96 -Z.C.'s Order in which Petition for
Special Hearing was DENIED.

ASSIGNED FOR:

TUESDAY, JULY 30, 1996 at 10:00 a.m.

cc: C. William Clark, Esquire
Thomas Hargis

Counsel for Appellant /Petitioner
Appellant /Petitioner

Ms. Lula Gardner
Mary Unfried, Clerk
First Church of Christ Scientist
Virginia D. Skove
Nancy L. Bagley
Rev. Dennis J. McCombs
Carville A. Lauenstein
Robert and Mary Edge
Douglas K. Dunn
The Honorable Louis L. DePazzo
Baltimore County Council

People's Counsel for Baltimore County
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Kathleen C. Bianco
Administrative Assistant





County Board of Appeals of Baltimore County

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

July 31, 1996

NOTICE OF DELIBERATION

Having concluded the hearing in this matter on July 30, 1996, the Board has scheduled the following date and time for deliberation in the matter of:

THOMAS HARGIS -Petitioner
Case No. 96-246-SPH

DATE AND TIME : Thursday, August 22, 1996 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

cc: C. William Clark, Esquire Counsel for Appellant /Petitioner
Thomas Hargis Appellant /Petitioner

Ms. Lula Gardner
Mary Unfried, Clerk
First Church of Christ Scientist
Virginia D. Skarie
Nancy L. Bagley
Rev. Dennis J. McCombs
Carville A. Lauenstein
Robert and Mary Edge
Douglas K. Dunn

The Honorable Louis L. DePazzo
Baltimore County Council

People's Counsel for Baltimore County
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copies to: L.W.C.

Kathleen C. Bianco
Legal Administrator





Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

January 11, 1996

John B. Gontrum, Esquire
814 Eastern Blvd.
Baltimore, MD 21221

RE: Item No.: 247
Case No.: 96-246-SPH
Petitioner: T. Hargis

Dear Mr. Gontrum:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on December 14, 1995.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/jw
Attachment(s)





**Maryland Department of Transportation
State Highway Administration**

David L. Winstead
Secretary
Hal Kassoff
Administrator

12-22-95

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 249 (JLL)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

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,

for 
Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director DATE: Dec. 29, 1995
Zoning Administration and Development Management

FROM: Robert W. Bowling, P.E., Chief
Development Plans Review

RE: Zoning Advisory Committee Meeting
for January 2, 1996
Items 243, 244, 245, 246, (247), 248 and 249

The Development Plans Review Division has reviewed
the subject zoning items and we have no comments.

RWB:sw

Baltimore County Government
Fire Department



700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410) 887-4880

DATE: 12/29/95

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF DEC. 26, 1995.

Item No.: SEE BELOW

Zoning Agenda:

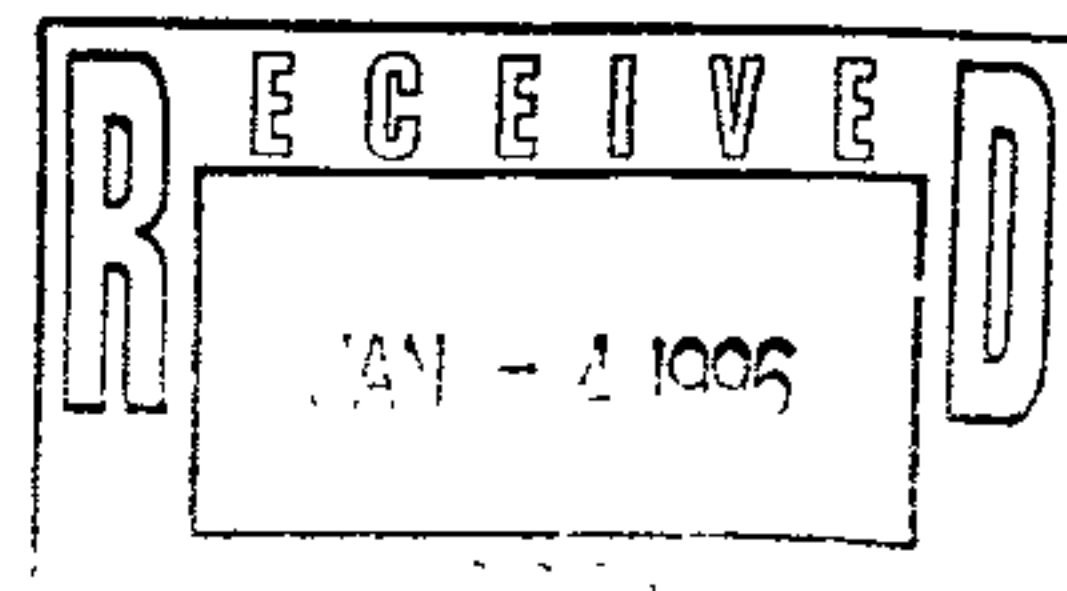
Gentlemen:

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.

8. The Fire Marshal's Office has no comments at this time,
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 243, 244, 245, 246,
247, 248 AND 249.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



B A L T I M O R E C O U N T Y , M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
 Permits and Development
 Management

DATE: January 5, 1996

FROM: Pat Keller, Director
 Office of Planning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning has no comments on the following petition(s):

Item 243, 244, 245, 246, (247) 249 and 250 6

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3480.

Prepared by:

Jeffrey W Long

Division Chief:

Carol L Kerns

PK/JL

RE: PETITION FOR SPECIAL HEARING
1324 Old Eastern Avenue, NWC Old Eastern
Avenue and Essex Avenue, 15th
Election District - 5th Councilmanic

Thomas Hargis
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 96-246-SPH

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice 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. Demilio

CAROLE S. DEMILIO

Deputy People's Counsel

Room 47, Courthouse

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of January, 1996, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, 814 Eastern Boulevard, Baltimore, MD 21221, attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

Code

Enforcement

Baltimore County
Department of Permits & Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3351

B A L T I M O R E C O U N T Y , M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO: Larry E. Schmidt
Zoning Commissioner

DATE: December 28, 1995

FROM: James H. Thompson - BM
Code Enforcement Supervisor

SUBJECT: ITEM NO.: 247
PETITIONER: Thomas Hargis

VIOLATION CASE NO.: C-96-1121

LOCATION OF VIOLATION: 1324 Old Eastern Avenue
Baltimore, Maryland 21221
15th Election District

DEFENDANTS: Thomas Hargis
1324 B Old Eastern Avenue
Baltimore, Maryland 21221

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

NAME _____

ADDRESS

Ms. Lula Gardner

4 Ecoway Court
Baltimore, Maryland 21286

Councilman Louis L. DePazzo

Mail Stop 2201

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

JHT/BM/hek

96-246-SF-11

Wife - 40 - 100 - 5

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: April 1, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton 
Board of Appeals

SUBJECT: **Thomas Hargis**
Case No.: 96-246-SPH
Circuit Court Case No.: 03-C-96-011276

Judge Smith of the Circuit Court issued an Order on 9/8/97 AFFIRMING BOA. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals issued a Mandate on 8/98 by Judge Byrnes affirming decision. Chief Judge Robert Bell denied the writ of certiorari. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED



County Board of Appeals of Baltimore County

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

November 8, 1996

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

RE: Civil Action No. 3-C-96-011276
THOMAS HARGIS

Dear Mr. Tanczyn:

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
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Mr. Carville A. Lauenstein
Mr. Douglas K. Dunn



County Board of Appeals of Baltimore County

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

November 8, 1996

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-96-011276
THOMAS HARGIS

Dear Mr. Clark:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on November 4, 1996, 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).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-96-011276.

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

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Mary Unfried, Clerk	Lula Gardner
First Church of Christ Scientist	Nancy L. Bagley
The Honorable Louis L. DePazzo	Rev. Dennis J. McCombs
Baltimore County Council	Robert and Mary Edge
Pat Keller /Planning	Virginia D. Skarie
People's Counsel for Baltimore County	
Lawrence E. Schmidt /Zoning Commissioner	
Arnold Jablon /PDM	
Virginia W. Barnhart, County Attorney	





Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

February 28, 1996

Ms. Lula Gardner
4 Ecoway Court
Baltimore, MD 21286

Re: Petition for Special
Hearing
NWC Old Eastern Avenue and
Essex Avenue
1324 Old Eastern Avenue
15th Election District
5th Councilmanic District
Thomas Hargis - Petitioner
Case No. 96-246-SPH

Dear Ms. Gardner:

Please be advised that an appeal of the above-referenced case was filed in this office on February 23, 1996 by Thomas Hargis. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, "Board".

If you have any questions concerning this matter, please do not hesitate to contact the Board at 887-3180.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

ARNOLD JABLON, Director
Department of Permits and
Development Management

AJ:nmn

c: Mary Unfried
Virginia D. Skove
Nancy L. Bagley
Rev. Dennis J. McCombs
Carville A. Lauenstein
Robert and Mary Edge
Douglas K. Dunn
Councilman Louis L. DePazzo, MS 2201
People's Counsel MS 2010



APPEAL

Petition for Special Hearing
NWC Old Eastern Avenue and Essex Avenue
1324 Old Eastern Avenue
15th Election District - ~~5th~~ Councilmanic District
Thomas Hargis-Petitioner 7th
Case No. 96-246-SPH

- ✓ Petition for Special Hearing
- ✓ Description of Property
- ✓ Certificate of Posting
- ✓ Entry of Appearance of People's Counsel
- ✓ Zoning Plans Advisory Committee Comments
- ✓ Petitioner(s) and Protestant(s) Sign-In Sheets
- ✓ Petitioner's Exhibit - 1 - Special Hearing Plat
- ✓ Zoning Commissioner's Order dated January 31, 1996 (Denied)
- ✓ Notice of Appeal received on February 23, 1996 from Thomas Hargis -
Petitioner

c: * Thomas Hargis, 1324 Old Eastern Avenue, Baltimore, MD 21221
Ms. Lula Gardner, 4 Ecoway Court, Baltimore, MD 21286
Mary Unfried, Clerk, First Church of Christ Scientist, 1314 Old
Eastern Avenue, Baltimore, MD 21221
SKarie Virginia D. Skove, 302 E. Joppa Road, Baltimore, MD 21286
Nancy L. Bagley, 7602 Old Harford Road, Baltimore, MD 21234
Rev. Dennis J. McCombs, 101 N. Essex Avenue, Baltimore, MD
21221
Carville A. Lauenstein, 1308 Old Eastern Avenue, Baltimore, MD
21221
Robert and Mary Edge, 23 Pelczar Avenue, Baltimore, MD 21221
Douglas K. Dunn, 302 E. Joppa Road #1604, Baltimore, MD 21286
Councilman Louis L. DePazzo, Mail Stop 2201
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

OFFICE PHONE
(410) 828-4148

HOME PHONE
(410) 937-3498

C. William Clark, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Court Towers
210 W. Pennsylvania Avenue
Towson, MD 21204

TOWSON REPORTING COMPANY, INC.
COURT REPORTERS

HEATHER R. McLAUCHLIN

600 BALTIMORE AVENUE
SUITE 201
TOWSON, MARYLAND 21204
(DEPOSITION ROOM AVAILABLE)

No. 96-246-SPH

December 14, 1995	Petition for Special Hearing filed by John B. Gontrum, Esquire, on behalf of Thomas Hargis, to approve a non-conforming use for a service garage, service bays and sale of fuel, (kerosene and bulk oil), also to approve a canopy overhang.
January 17	Hearing held on Petition by Z.C.
January 31	Order of the Zoning Commissioner in which Petition for Special Hearing was DENIED; use as service garage, service bays, for sale of fuel and also existing canopy overhand shall be discontinued/removed.
February 23	Notice of Appeal filed by Thomas Hargis.
April 1	Entry of Appearance by C. William Clark, Esquire, on behalf of Thomas Hargis.
July 30	Hearing before the Board of Appeals.
August 22	Deliberation conducted by the Board.
October 7	Opinion and Order of majority of the Board in which the Petition for Special Hearing was DENIED; Dissenting opinion issued by Mr. Marks.
November 4	Petition for Judicial Review filed in the CCT for Baltimore Co. by Michael P. Tanczyn, Esquire, on behalf of C.A. Lauenstein and Douglas K. Dunn. (copy rec'd by CBA 11/8/96)
November 8	Certificate of Notice sent to interested parties.
December 27, 1996 ✓	Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.
September 8, 1997 ✓ E	Opinion and Order issued by the CCT; decision of the CBA is AFFIRMED (James T. Smith, Jr., J)
October 1 ✓ e	Notice of Appeal to the Court of Special Appeals filed in CCT by Michael P. Tanczyn, Esquire, on behalf of Carville Lauenstein and Douglas Dunn, Appellants / Petitioners.

Case No. 96-246-SPH /Thomas Hargis -Petitioner

4/02/96 -Entry of Appearance filed by C. William Clark, Esquire -
on behalf of Thomas Hargis -Petitioner and legal owner.

5/23/96 -Notice of Assignment for hearing scheduled for Thursday,
July 30, 1996 at 10:00 a.m. sent to following:

C. William Clark, Esquire
Thomas Hargis
Ms. Lula Gardner
Mary Unfried, Clerk
First Church of Christ Scientist
Virginia D. Skove
Nancy L. Bagley
Rev. Dennis J. McCombs
Carville A. Lauenstein
Robert and Mary Edge
Douglas K. Dunn
The Honorable Louis L. DePazzo
Baltimore County Council
People's Counsel for Baltimore County
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

7/22/96 -T/C from Douglas Dunn questioning why appeal sign was not reposted. It was his understanding per Mr. Hargis and his attorney, the sign should be posted no less than 30 days before the CBA hearing and that is why it was taken down in June. Mr. Dunn was informed by CER of the correct time-frame for posting our sign and that sign mad would repost sign this date.

7/29/96 -Three packets of material marked "Community Update" were left with the CBA office this date by Mr. Dunn. These envelopes were sealed and left unopened; appropriate disposition to be determined at the hearing in this matter on 7/30/96. (NOTE: Prior packet of material delivered by Mr. Dunn and contained in the file was given to opposing counsel upon notification on date of delivery.)

7/30/96 -Hearing concluded. Matter to be scheduled for public deliberation and notice sent.

7/31/96 -Notice of Deliberation sent to parties; matter scheduled for deliberation on Thursday, August 22, 1996 at 9:30 a.m. Board sent copy of Notice (L.W.C.)

8/22/96 -Deliberated. Majority decision that nonconforming use does exist (L and W);
Chuck to dissent. Majority decision and dissent to be issued; appellate period
to run from date of written Order.

PHC No. _____

COURT OF SPECIAL APPEALS

CIVIL APPEAL PREHEARING INFORMATION REPORT

- Petition of Carville A. Lauenstein and Douglas K. Dunn
for Judicial Review of the Decision of the County Board
1. **Title of Case:** _____
of Appeals in the Matter of the Application of Thomas Hargis, Petitioner
Which party is Appellant in Court of Special Appeals:
Name Carville A. Lauenstein and Douglas K. Dunn
2. **Names, addresses, and telephone numbers of counsel:**
For Appellant: Michael P. Tanczyn 410-296-8823
606 Baltimore Avenue, Suite 106
Towson, MD 21204
For Appellee: C. William Clark 410-823-7800
Nolan, Plumhoff & Williams, CHTD.
502 Washington Avenue, Suite 700
Towson, MD 21204
3. **Trial Court:** (Circuit) ~~Orphans'~~ Court for Baltimore County
a. Docket No: 03-C-96-011276 c. Trial Judge: James T. Smith, Jr.
b. ~~Jury/Non-Jury/Motion hearing~~
4. **Type of case** (e.g., automobile negligence, workers' compensation, breach of contract, domestic, employment dispute, product liability, property dispute, tax, UCC, zoning, etc.): zoning administrative hearing appeal
5. **Trial**
a. Duration of trial or hearings (days/hours): 1 hour
b. No. of exhibits in evidence: administrative appeal
6. **Judgment**
a. Date of judgment being appealed (if date is other than that shown on docket, please explain): 9/2/97
b. Describe judgment or order being appealed. (Attach a copy of any written opinion of the trial court.) Opinion and Order attached, by which Court affirmed the decision of the County Board of Appeals of Baltimore County finding a nonconforming use while simultaneously prohibiting certain other uses.
c. Did judgment finally dispose of all claims by and against all parties? yes. If not, please explain why judgment is appealable. (See

7. **Post Judgment Motions**

Was post judgment motion under Md. Rule 2-532, 2-533, or 2-534 or request for in banc review under Md. Rule 2-551 filed? no If so, date filed _____ and date of disposition _____.

8. Date appeal noted: 10/1/97

ATTACH COPY OF NOTICE OF APPEAL

9. **Issues on Appeal**

State each issue you intend to raise on appeal, and, as to each, state whether and how the issue was decided by the trial court, whether you anticipate a defense of non-preservation, waiver, or harmless error, and how you propose to respond to any such defense.

see attached statement

10. **Settlement discussions:**

a. Was settlement discussed before trial or hearing which resulted in judgment? no Describe briefly.

b. Was this case submitted to any ADR process (arbitration, mediation, settlement conference, etc.)? no Describe briefly.

c. Has settlement been discussed since judgment? no Describe briefly.

11. **Record Extract**

Given the number of papers and exhibits and the likely size of any transcript, do you anticipate that the record extract will exceed 100 pages in length? yes If so, state whether the deferred record extract procedure authorized in Md. Rule 8-501(1) would be appropriate and, if not, why. yes

12. **Custody, adoption, guardianship cases**

Is this appeal from an order (1) granting or denying a petition for adoption, guardianship terminating parental rights, or guardianship of the person of a minor or disabled person, or (2) granting, denying, or establishing custody of or visitation with a minor child? no If so, state whether the expedited appeal provision of Md. Rule 8-207(b) is applicable and, if not, why.

9. ISSUES ON APPEAL

1. The Circuit Court erred in ruling the County Board of Appeals did not misapply the law in approving a nonconforming use for a service garage where the evidence before the Board unequivocally shows the legal abandonment of a fuel service station, representing a change in use.

2. The Circuit Court erred in finding the County Board of Appeals did not illegally, arbitrarily or capriciously approve an expansion or change from an original nonconforming use of a fuel service station to a service garage while simultaneously prohibiting other uses at the site which represented changes or expansions of prohibited uses beyond those claimed to be originally nonconforming.

3. The Circuit Court erred in finding the County Board of Appeals of Baltimore County properly prohibited Appellants' (Protestants below) presentation of evidence of other uses on Petitioner's property to illustrate illegal expansions which the Board then recognized existed by prohibiting them in its Order, while arbitrarily allowing Petitioner, on rebuttal, to present evidence of activities on other parts of Petitioner's property outside the original footprint of the fuel service station on the remainder of Petitioner's tract.

4. The Circuit Court erred in affirming the County Board of Appeals' decision recognizing and extending a nonconforming use not favored in the law which violated the provisions of the zoning ordinance itself concerning extension or expansion or change of nonconforming uses.

We do not anticipate a defense of non-preservation, waiver, or harmless error being raised as to any of these issues which were raised before the Court. The Court decided, as to the first issue, that a service garage use as a principal use was an expansion of an accessory use of a fuel service station. As to the second issue, the Court noted that the Board of Appeals had included in its Order a prohibition on other uses found not to be allowed under the original fuel service station as a proper resolution of Protestants' complaints. As to the third issue, the Court ruled that the Board was not in error in allowing Petitioner to, on rebuttal, talk about areas beyond their limited site plan, while prohibiting Protestants from testifying as to the uses on the remainder of Petitioner's tract, all of which was a single tract of the same dimension at the time the Petitioner claimed a nonconforming use began.

13. Motions cases

If this appeal is from the granting of a motion to dismiss or for summary judgment N/A

- a. Was the proceeding recorded? (See Md. Rule 1224) _____
- b. If the proceeding was recorded:
- (1) How long did the hearing on the motion last? _____
- (2) If a transcript of the proceeding is not necessary to the appeal, state why.

14. Settlement or Scheduling Conference

- a. Would a prehearing conference be helpful in settling or limiting issues? yes
- b. Do you see a need for an administrative conference to resolve any special issues regarding the record, briefing, or scheduling?
no If so, state (1) the issues and (2) whether you have discussed them with opposing counsel.

NOTICE

A prehearing conference is designed to encourage the parties to reach a voluntary settlement before incurring the expenses of securing a transcript and preparing and printing briefs, or, if that is not possible, to consider limiting the issues, the option of an expedited appeal pursuant to Md. Rule 8-207, and any special scheduling or briefing problems. Please set forth succinctly any additional information and attach any documents that will assist the Court and the parties in these regards. Information concerning settlement negotiations will be kept confidential.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Report was mailed to:

C. William Clark, Esq., 502 Washington Avenue, Suite 700, Towson, MD 21204
Peter Max Zimmerman, Esq., Baltimore County People's Counsel, 400 Washington Avenue, Room 47, Towson, MD 21204
County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, MD 21204

10/6/97

Date

Signed Michael P. Tančzyn

Circuit Court for BALTIMORE COUNTY
City or County

CIVIL—NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111. A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY: ☒ PLAINTIFF ☐ DEFENDANT CASE NUMBER: _____ (Clerk to insert)

CASE NAME: CARVILLE A. LAUENSTEIN & DOUGLAS K. DUNN COUNTY BOARD OF APPEALS
Plaintiff Defendant

JURY DEMAND: ☐ Yes ☒ No Anticipated length of trial: _____ hours or _____ days

RELATED CASE PENDING? ☐ Yes ☒ No If yes, Case #(s), if known: _____

HAS ALTERNATIVE DISPUTE RESOLUTION (ADR): Been Tried? ☐ Yes ☒ No
Requested? ☐ Yes ☒ No

If yes, specify: _____

Special Requirements? ☐ Interpreter/communication impairment
☐ Other ADA accommodation: _____

NATURE OF ACTION (CHECK ONE BOX)		DAMAGES / RELIEF	
TORTS ☐ Motor Tort ☐ Premises Liability ☐ Assault & Battery ☐ Product Liability ☐ Professional Malpractice ☐ Wrongful Death ☐ Business & Commercial ☐ Libel & Slander ☐ False Arrest/Imprisonment ☐ Nuisance ☐ Toxic Torts ☐ Fraud ☐ Malicious Prosecution ☐ Lead Paint ☐ Asbestos ☐ Other _____	LABOR ☐ Workers' Comp. ☐ Wrongful Discharge ☐ EEO ☐ Other _____ CONTRACTS ☐ Insurance ☐ Confessed Judgment ☐ Other _____ REAL PROPERTY ☐ Judicial Sale ☐ Condemnation ☐ Landlord Tenant ☐ Other _____ OTHER ☐ Civil Rights ☐ Environmental ☐ ADA ☒ Other/Judicial Review	A. TORTS Actual Damages ☐ Under \$7,500 ☐ \$7,500 - \$50,000 ☐ \$50,000 - \$100,000 ☐ Over \$100,000 ☐ Medical Bills \$ _____ ☐ Property Damages \$ _____ ☐ Wage Loss \$ _____	B. CONTRACTS ☐ Under \$10,000 ☐ \$10,000 - \$20,000 ☐ Over \$20,000 C. NONMONETARY RELIEF ☐ Declaratory Judgment ☐ Injunction ☐ Other _____

TRACK REQUEST

With the exception of Baltimore County, Baltimore City, and Prince George's County, please fill in the estimated **LENGTH OF TRIAL**. THIS CASE WILL THEN BE TRACKED ACCORDINGLY.

☐ 1/2 day of trial or less
☐ 1 day of trial time
☐ 2 days of trial time
☐ 3 days of trial time
☐ More than 3 days of trial time

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE SEE REVERSE SIDE OF FORM FOR INSTRUCTIONS.

Date: 11/4/96

Signature: [Signature]

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (check only one)

- | | |
|---|---|
| ☐ Expedited | Trial 60 to 120 days from notice. Non-jury matters. |
| ☐ Standard-Short | Trial seven months from Defendant's response. Includes torts with actual damages up to \$7,500; contract claims up to \$20,000; condemnations; injunctions and declaratory judgments. |
| ☐ Standard-Medium | Trial 12 months from Defendant's response. Includes torts with actual damages over \$7,500 and under \$50,000, and contract claims over \$20,000. |
| ☐ Standard-Complex | Trial 18 months from Defendant's response. Includes complex cases requiring prolonged discovery with actual damages in excess of \$50,000. |
| ☐ Lead Paint | Trial per model order. |
| ☐ Asbestos | Events and deadlines set by individual judge. |
| ☐ Protracted Cases | Complex cases designated by the Administrative Judge. |

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

- | | |
|------------------------------------|---|
| ☐ TRACK I | Cases having Judicially-assessed values under \$25,000. |
| ☐ TRACK II | Cases having Judicially-assessed values greater than \$25,000 but not complex litigation. |
| ☐ TRACK III | Non-jury. |
| ☐ TRACK IV | Statutory Priority Jury Track. |
| ☐ TRACK V | Complex Litigation (Business, Tort, Orphan's Court Appeals). |

LIABILITY FACTORS

- | | |
|---|---|
| ☐ Rear-end | ☐ Left-hand Turn |
| ☐ Slip and Fall | ☐ Other: _____ |
| ☐ Intersection | |
| ☐ Changing Lanes | |

INJURY FACTORS

- | | |
|---|---|
| ☐ Soft Tissue | ☐ Herniated Disk |
| ☐ Broken Bones | ☐ Severe Head Injury |
| ☐ Joint Damages
(knee, ankle, etc.) | ☐ Other: _____ |

CIRCUIT COURT FOR BALTIMORE COUNTY

- | | |
|---|---|
| ☒ Expedited
(Trial Date-90 days) | Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus. |
| ☐ Standard
(Trial Date-240 days) | Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases. |
| ☐ Extended Standard
(Trial Date-345 days) | Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency. |
| ☐ Complex
(Trial Date-450 days) | Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases. |



OFFICE OF

Clerk of the Circuit Court for Baltimore County

COUNTY COURTS BUILDING, TOWSON, MARYLAND 21204

SUZANNE MENSCH

Clerk

887-2998

To: MICHAEL P. TANCZYN, ESQ.
606 BALTIMORE AVENUE, SUITE 106
TOWSON, MARYLAND 21204
(4100) 296-8823

Date: OCTOBER 1, 1997

Re: CARVILLE A. LAUENSTEIN &
DOUGLAS K. DUNN

VS.

COUNMTY BOARD OF APPEALS

Dear: MR. TANCZYN:

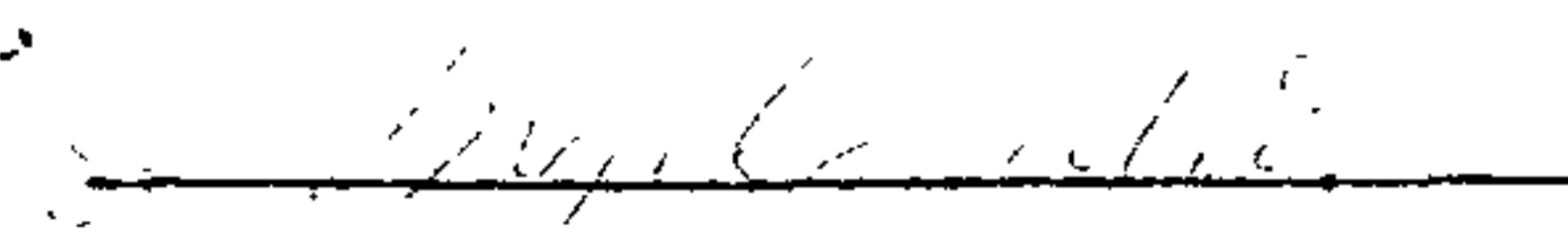
Case No.: 3-C-96-011276

Enclosed is a Prehearing Information Report Which must be filed within the time set forth in Md. Rule 8-205. This form together with a copy of the notice of appeal must be sent to the Clerk, Court of Special Appeals Of Maryland, Courts of Appeal Building, 361 Rowe Blvd. and Taylor Ave., Annapolis, Md 21401-1699.

Unless a copy of the transcript(s) of testimony is already on file, you must order in writing from the Court Stenographer (with a copy of that order to the Appeals Clerk of the Circuit Court for Baltimore County for inclusion in the record), a transcript of all testimony within the time set forth in Md. Rule 8-411.

You have a right to inspect the record in this office Monday through Friday between the hours of 8:30 and 4:30. Prior to the transmittal of the record to the Court of Special Appeals, you must deposit with this office a check or money order made payable to the Clerk, Circuit Court for Baltimore County, in the total amount of \$110.00,

NOTE: THE FILING FEE IN THE AMOUNT OF \$110.00 HAS BEEN PAID TO THE CLERK, Very Truly Yours,
CIRCUIT COURT FOR
BALTIMORE COUNTY.


MRS. ANGEL JULIO, APPEALS CLERK

887-3090

383-7555 TTY NO. BALTO. • 585-0451 TTY NO. WASH.

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

Case Number: 03-C-96-011276

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse/Room 49
400 Washington Avenue
Towson, MD 21204

03-C-96-011276

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

N O T I C E O F R E C O R D

Case Number: 03-C-96-011276
Old Case number: 96-246-SPH
C I V I L

In The Matter Of: Application Of Thomas Hargis, Petitioner

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 27th day of December, 1996.

Suzanne Mensh



Suzanne Mensh
Clerk of the Circuit Court, per J.H.

Date issued: 12/30/96

TO: BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse/Room 49
400 Washington Avenue
Towson, MD 21204

12/30/96

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MD 21285-6754

Board Of Appeals Of Baltimore County
Old Courthouse/Room 49
400 Washington Avenue
Towson MD 21204

Assignment Date: 01/13/97

Case Title: In The Matter Of: Application Of Thomas Hargis, Petitioner
Case No: 03-C-96-011276 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 01/28/97
 2. All Motions (excluding Motions in Limine) are due by..... 03/07/97
 3. TRIAL DATE is..... 04/16/97
- Civil Non-Jury Trial; Start Time: 09.30AM; To Be Assigned, Appeal: 1 hour

Honorable John Grason Turnbull II
County Administrative Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponements must be submitted in writing with a copy to all counsel/parties involved. All requests for postponements of cases filed after October 1, 1994 must be approved by the Administrative Judge.

Settlement Conference (Room 507): All counsel and their clients **MUST** attend the settlement conference in person. All insurance representatives **MUST** attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M D Relay Service, (800) 735-2258.

Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial.

cc: Michael P Tanczyn Esq
cc: Carl William Clark
Issue Date 01/13/97

CARVILLE LAUENSTEIN

VS

THOMAS HARGIS

*
*
*
*
*

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
CIVIL
DOCKET SM
CASE NO C 96 11276

I N D E X

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EXHIBITS UNDER SEPARATE COVER

RECEIVED
COUNTY BOARD OF APPEALS

98 FEB -2 AM 9:21

Per CCT
RECORD TO CSA
1-28-98

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

01/28/98

Case Number: 03-C-96-011276 AE
Date Filed: 11/04/96
Status: Closed/Active
Reference Number: 96-246-SPH
Judge Assigned: To Be Assigned,

In The Matter Of: Application Of Thomas Hargis, Petitioner

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Reference Number	96-246-SPH

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Entered
RES 001	Hargis, Thomas Capacity - Petitioner	CT DO 09/11/97 11/04/96
Attorney 0020817	Clark, C William Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue Nottingham Center; S- 700 Towson, MD 21204 (410)823-7800	
PET 001	Lauenstein, Carville A	CT DO 09/11/97 11/04/96
Attorney 0012544	Tanczyn, Michael P Michael P. Tanczyn, P A 606 Baltimore Avenue Suite 106 Baltimore, MD 21204 (410)296-8823	
PET 002	Dunn, Douglas K	CT DO 09/11/97 11/04/96
Attorney 0012544	Tanczyn, Michael P Michael P Tanczyn, P A	

606 Baltimore Avenue
 Suite 106
 Baltimore, MD 21204
 (410)296-8823

Type Num	Name(Last,First,Mid,Title)	Entered
ITP 001	Board Of Appeals Of Baltimore County Old Courthouse/Room 49 400 Washington Avenue Towson, MD 21204	CT DO 09/11/97 11/04/96

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L	Day	Of	RsIt	By	ResultDt	Jdg	T	Notice	Rec
04/16/97	09:30A	001	yes	CIVI	TJB		01	/01	CON	C	04/16/97	JTS	P		Y
Stenographer(s) Kathleen A Trainor															

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned.	J	11/04/96		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID
001000	Petition for Judicial Review ...for a special hearing on property located on the northwest corner Old Eastern Avenue and Essex Avenue (1324 Old Eastern Avenue), 15th Election District, 5th Councilmanic District, Case No. 96-246-SPH	11/04/96		TBA	PET001		09/11/97	DA LG
001001	Answer	12/10/96	12/06/96	TBA	RES001		09/11/97	PH LG
002000	Certificate Notice	11/13/96	11/08/96	TBA	000		09/11/97	JH LG
003000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	PET001 12/30/96		12/30/96	JH JH
004000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	PET002 12/30/96		12/30/96	JH JH
005000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	ITP001 12/30/96		12/30/96	JH JH
006000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	RES001 12/30/96		12/30/96	JH JH
007000	Transcript of Record from Adm Agency	12/30/96	12/27/96	TBA	000		09/11/97	JH LG

**

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID
008000	Notice - Recpt of Record of Proceedings ** copies sent	12/30/96	12/27/96	TBA	000		09/11/97	JH LG
009000	Scheduling Order	01/13/97	01/13/97	TBA	000	01/13/97	01/13/97	JD JD
010000	Memorandum and Douglas Dunn	01/30/97	01/28/97	TBA	PET001		09/11/97	PH LG
011000	Memorandum	03/04/97	02/28/97	TBA	RES001		03/04/97	PH PH
012000	Open Court Proceeding April 16, 1997 Hon James T. Smith Jr. Hearing had. Decision held sub-curia. Opinion and Order to be filed.	04/16/97		JTS	000		09/11/97	BH LG
013000	Opinion & Order affirming decision	09/08/97		JTS	000	Ruled	09/08/97	LG LG
014000	Invoice #5610 sent to Michael P Tanczyn	09/09/97		TBA	000		09/11/97	LG LG
015000	sent Docket entries to Board of Appeals	09/09/97		TBA	000		09/11/97	LC LG
016000	Notice of Appeal to COSA or COA ** 9/101 Filed by PET001-Lauenstein, Carville A, PET002-Dunn, Douglas K	10/01/97	10/01/97	TBA	PET001			JH JH
017000	*Order From COSA For Prehearing Conference	11/13/97	11/13/97	TBA	000			CB CB
018000	*Order from COSA that time within which a transcript must be ordered pursuant to MD Rule 8-411(b)(1) and the record prepared and filed shall begin to run from date of this Order (12/16/97) per Judge James R Eyler	12/19/97	12/18/97	TBA	000		12/19/97	DR DR
019000	Original Record sent to COSA of maryland by certified mail on 1-28-98. with exhibits from box 469	01/28/98		TBA	000			CC CC

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
1YRT	One Year Tickle (Jud	CLOSED	11/04/97	365	no	no	DAAA	D
1ANS	1st Answer Tickle	CLOSED	12/06/96	0	no	no	DANS	D

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
SLTR	Set List For Trial	DONE	12/06/96	0	yes	yes	1ANS	T
EXPU	Exhibit Pickup Notice	DONE	11/10/97	30	no	yes		

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp	Dt	Dis	By
Offered By	ITP	001	Board Of Appeals Of Baltimore							
000		B	RETURNED TO ZOANIN	B		09/25/97	P		JA	
000		B	box 469/transcript	B						

DIFFERENTIATED CASE MANAGEMENT
TRACKS AND MILESTONES

Track : R1 Description EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 01/13/97 Order Date : 01/13/97
Start Date 01/13/97 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322C	01/28/97	09/11/97	CLOSED	
All Motions (excluding Motions in Limine	03/07/97	09/11/97	CLOSED	
TRIAL DATE is	04/16/97	04/13/97	04/16/97	REACHED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

09/09/97

Case Number: 03-C-96-011276 AE
Date Filed: 11/04/96
Status: Open/Active
Reference Number: 96-246-SPH
Judge Assigned: To Be Assigned,

In The Matter Of: Application Of Thomas Hargis, Petitioner

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Reference Number	96-246-SPH

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Dispo	Entered
RES 001	Hargis, Thomas Capacity : Petitioner Attorney: 0020817 Clark, C William Nolan, Plumhoff & Williams, Chartered Suite 700, Court Towers 210 W Pennsylvania Avenue Towson, MD 21204 (410)823-7800		11/04/96
PET 001	Lauenstein, Carville A Attorney: 0012544 Tanczyn, Michael P Michael P Tanczyn, P.A. Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		11/04/96
PET 002	Dunn, Douglas K Attorney 0012544 Tanczyn, Michael P Michael P. Tanczyn, P.A. Suite 106		11/04/96

97 SEP 10 PM 1:17
RECEIVED
COUNTY BOARD OF APPEALS

606 Baltimore Avenue
 Baltimore, MD 21204
 (410)296-8823

Type Num	Name(Last,First,Mid,Title)	Dispo	Entered
ITP 001	Board Of Appeals Of Baltimore County Old Courthouse/Room 49 400 Washington Avenue Towson, MD 21204		11/04/96

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg L	Day	Of	Rslt	By	ResultDt	Jdg T	Notice	Rec
04/16/97	09:30A	001	yes	CIVI	TJB	01	/01	CON	C	04/16/97	JTS	P	Y
Stenographer(s). Kathleen A. Trainor													

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned.	J	11/04/96		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
001000	Petition for Judicial Review ...for a special hearing on property located on the northwest corner Old Eastern Avenue and Essex Avenue (1324 Old Eastern Avenue), 15th Election District, 5th Councilmanic District, Case No. 96-246-SPH.	11/04/96		TBA	PET001			DA DA
001001	Answer	12/10/96	12/06/96	TBA	RES001			PH PH
002000	Certificate Notice	11/13/96	11/08/96	TBA	000			JH JH
003000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	PET001	12/30/96	12/30/96	JH JH
004000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	PET002	12/30/96	12/30/96	JH JH
005000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	ITP001	12/30/96	12/30/96	JH JH
006000	Notice of Appeal Sent	12/30/96	12/30/96	TBA	RES001	12/30/96	12/30/96	JH JH
007000	Transcript of Record from Adm Agency **	12/30/96	12/27/96	TBA	000			JH JH

Num/Seq	Description	Filed	Received	Party	Routed	Ruling	Closed	User ID
008000	Notice - Recpt of Record of Proceedings ** copies sent.	12/30/96	12/27/96	TBA	000			JH JH
009000	Scheduling Order	01/13/97	01/13/97	TBA	000	01/13/97	01/13/97	JD JD
010000	Memorandum and Douglas Dunn	01/30/97	01/28/97	TBA	PET001			PH PH
011000	Memorandum	03/04/97	02/28/97	TBA	RES001		03/04/97	PH PH
012000	Open Court Proceeding April 16, 1997 Hon James T Smith Jr. Hearing had. Decision held sub-curia Opinion and Order to be filed	04/16/97		JTS	000			BH PH
013000	Opinion & Order affirming decision	09/08/97		JTS	000	Ruled	09/08/97	LG LG
014000	Invoice #5610 sent to Michael P Tanczyn	09/09/97		TBA	000			LG LG
015000	sent Docket entries to Board of Appeals	09/09/97		TBA	000			LC LC

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
1YRT	One Year Tickle (Jud	OPEN	11/04/97	365	no	no	DAAA	D
1ANS	1st Answer Tickle	OPEN	12/06/96	0	no	no	DANS	D
SLTR	Set List For Trial	DONE	12/06/96	0	yes	yes	1ANS	T

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
000		ITP 001	Board Of Appeals Of Baltimore					
		B	BOX 469 ZOANING EX		B			

DIFFERENTIATED CASE MANAGEMENT
TRACKS AND MILESTONES

Track	R1	Description: EXPEDITED APPEAL TRACK	Custom. Yes
Assign Date:	01/13/97	Order Date	01/13/97
Start Date :	01/13/97	Remove Date	

03-C-96-011276 Date: 09/09/97 Time: 10:42

Page: 4

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		01/28/97		OPEN
All Motions (excluding Motions in Limine		03/07/97		OPEN
TRIAL DATE is	04/16/97	04/13/97	04/16/97	REACHED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

11/22/04

Case Number: 03-C-96-011276 AE
Date Filed: 11/04/1996
Status: Closed/Active
Case Flag:
Judge Assigned: To Be Assigned,
Location :

In The Matter Of: Application Of Thomas Hargis, Petitioner

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Reference Number	96-246-SPH
Case Folder ID	C96011276V01
	C9611276

INVOLVED PARTIES

Type Num	Name(Last,First Mid,Title)	Addr Str/End	Pty Disp Addr Update	Entered
PET 001	Lauenstein Carville A		CT DO 09/11/97	11/04/96
		Party ID 0118320		
Mail	1308 Old Eastern Avenue Baltimore, MD 21221	11/04/96		
Attorney	0012544 Tanczyn, Michael P Michael P Tanczyn, P A 606 Baltimore Avenue Suite 106 Baltimore, MD 21204 (410)296-8823			11/04/96

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty Disp Addr Update	Entered
PET 002	Dunn, Douglas K		CT DO 09/11/97	11/04/96
		Party ID 0118322		
Mail	302 East Joppa Road Apartment 1604 Towson, MD 21286	11/04/96		
Attorney	0012544 Tanczyn, Michael P Michael P Tanczyn, P A. 606 Baltimore Avenue Suite 106 Baltimore, MD 21204 (410)296-8823			11/04/96
RES 001	Hargis Thomas		CT DO 09/11/97	11/04/96
		Party ID 0118344		
	Capacity - Petitioner			
Attorney	0020817 Clark, C William Nolan, Plumhoff & Williams, Chartered 502 Washington Avenue Nottingham Center Ste 700 Towson, MD 21204-4528 (410)823-7800			11/04/96
ITP 001	Board Of Appeals Of Baltimore County		CT DO 09/11/97	11/04/96
		Party ID 0118325		
Mail	Old Courthouse/Room 49 400 Washington Avenue Towson, MD 21204	11/04/96		

CALENDAR EVENTS

Date	Time	Dur	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
04/16/97	09 30A	01H	Civil Non-Jury Trial	Y	TJB	01 /01	JD BH
	Conclude		04/16/97 C J Smith, Jr	Y			
	Stenographer(s)		Kathleen A Papesh				

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User
09/11/97	D0	Decree or Order	CT	AFTER TRIAL/HEARING	

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned.	J	11/04/96		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000	Petition for Judicial Review for a special hearing on property located on the northwest corner Old Eastern Avenue and Essex Avenue (1324 Old Eastern Avenue), 15th Election District, 5th Councilmanic District Case No 96-246-SPH	11/04/96	11/04/96	PET001	TBA	09/11/97	DA LG
0001001	Answer	12/06/96	12/10/96	RES001	TBA	09/11/97	PH LG
0002000	Certificate Notice	11/08/96	11/13/96	000	TBA	09/11/97	JBj LG
0003000	Notice of Appeal Sent	12/30/96	12/30/96	PET001	TBA	12/30/96	JBj JBj
0004000	Notice of Appeal Sent	12/30/96	12/30/96	PET002	TBA	12/30/96	JBj JBj
0005000	Notice of Appeal Sent	12/30/96	12/30/96	ITP001	TBA	12/30/96	JBj JBj
0006000	Notice of Appeal Sent	12/30/96	12/30/96	RES001	TBA	12/30/96	JBj JBj
0007000	Transcript of Record from Adm Agency **	12/27/96	12/30/96	000	TBA	09/11/97	JBj LG
0008000	Notice - Recpt of Record of Proceedings ** copies sent	12/27/96	12/30/96	000	TBA	09/11/97	JBj LG
0009000	Scheduling Order	01/13/97	01/13/97	000	TBA	01/13/97	JD JD
0010000	Memorandum and Douglas Dunn	01/28/97	01/30/97	PET001	TBA	09/11/97	PH LG
0011000	Memorandum	02/28/97	03/04/97	RES001	TBA	03/04/97	PH PH
0012000	Open Court Proceeding April 16, 1997 Hon James T Smith Jr Hearing had. Decision held sub-curia Opinion and Order to be filed	04/16/97	04/16/97	000	JTS	09/11/97	BH LG
0013000	Opinion Order affirming decision	09/08/97	09/08/97	000	JTS Ruled	09/08/97	LG LG

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0014000	Invoice #5610 sent to Michael P Tanczyn	09/09/97	09/09/97	000	TBA	09/11/97	LG LG
0015000	sent Docket entries to Board of Appeals	09/09/97	09/09/97	000	TBA	09/11/97	LC LG
0016000	Notice of Appeal to COSA or COA ** 9/101 Filed by PET001-Lauenstein, Carville A, PET002-Dunn, Douglas K	10/01/97	10/01/97	PET001	TBA		JBj JBj
0017000	*Order From COSA For Prehearing Conference	11/13/97	11/13/97	000	TBA		CB CB
0018000	*Order from COSA that time within which a transcript must be ordered pursuant to MD Rule 8-411(b)(1) and the record prepared and filed shall begin to run from date of this Order (12/16/97) per Judge James R Eyler	12/18/97	12/19/97	000	TBA	12/19/97	DR DR
0019000	Original Record sent to COSA of Maryland by certified mail on 1-28-98, with exhibits from box 469	01/28/98	01/28/98	000	TBA		CC CC
0020000	Petition for Judicial Review	10/09/98	10/09/98	000	TBA		DR DR
0021000	**Acknowledgement from COA of petition for writ of certiorari (09/98) No 465	10/08/98	10/09/98	000	TBA		DR DR
0022000	Mandate DISPOSITION OF APPEAL IN COURT OF SPECIAL APPEALS August 21 1998 Unreported Opinion by Byrnes, J Judgment affirmed Appellants to pay costs September 21 1998 Mandate Issued	10/15/98	10/16/98	000	TBA		DFF DFF
0023000	Order from COA denying writ of certiorari per Chief Judge Robert M Bell	12/14/98	12/16/98	000	TBA	12/16/98	DR DR

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1ANS	1st Answer Tickle	CLOSED	12/06/96	0	no	no	DANS	D	001	001
1YRT	One Year Tickle (Jud	CLOSED	11/04/97	365	no	no	DAAA	D	000	000
1YRT	One Year Tickle (Jud	OPEN	10/09/99	365	no	no	DAAA	D	000	000
DEXH	Destroy Exhibits	OPEN	12/12/04	33	no	no	U643	F	000	000
EXPU	Exhibit Pickup Notice	DONE	11/10/97	30	no	yes			000	000

03-C-96-011276 Date: 11/22/04 Time: 07:53

Page: 5

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
SLTR	Set List For Trial	DONE	12/06/96	0	yes	yes	1ANS	T	001	001

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp	Dt	Dis	By
Offered By	ITP	001	Board Of Appeals Of Baltimore							
000		B	RETURNED TO ZOANIN	B		09/25/97	P		JA	
000		B	RETURNED\							

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track	R1	Description	EXPEDITED APPEAL TRACK	Custom	Yes
Assign Date	01/13/97	Order Date	01/13/97		
Start Date	01/13/97	Remove Date			

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322	01/28/97	09/11/97	CLOSED	
All Motions (excluding Motions in Limine	03/07/97	09/11/97	CLOSED	
TRIAL DATE is	04/16/97	04/13/97	04/16/97	REACHED



County Board of Appeals of Baltimore County

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

October 11, 1996

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

RE: Case No. 96-246-SPH
Thomas Hargis -Petitioner

Dear Mr. Tanczyn:

Pursuant to your request, enclosed is a copy of the Minutes of
Deliberation from the above-entitled matter.

Very truly yours,

KS/ 10/11/96

Kathleen C. Bianco
Legal Administrator

Enclosure

cc: Mr. Douglas Dunn



COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Thomas Hargis -Petitioner
Case No. 96-246-SPH

DATE : August 22, 1996 @ 10:20 a.m.

BOARD /PANEL : Lawrence M. Stahl (LMS)
Charles L. Marks (CLM)
Margaret Worrall (MW)

SECRETARY : Kathleen C. Bianco
Legal Administrator

Among those present at the deliberation were C. William Clark, Esquire, on behalf of Appellant /Petitioner; and Douglas K. Dunn, Protestant. People's Counsel did not participate in these proceedings.

PURPOSE --to deliberate issues and matter presented to the Board; testimony and evidence received July 30, 1996. Written Opinion and Order to be issued by the Board.

LMS: This deliberation session is called to order on Thomas Hargis and the petition made in Case No. 96-246-SPH. This is, as I said, the deliberation section -- we certainly welcome visitors and guests, reminding all that officially none of you are here. We are bound by law to have an open deliberation on certain matters before this Board, such as this one, and so that we are clear before we move on, there are no comments, responses, reactions to what we say -- in terms of what goes on here, you are really not here. The three of us will discuss what goes on. Personally, I'm not happy for any number of reasons -- I put this on the record each time -- it overly personalizes the deliberation; inhibits the free flow of questions and information between members. I note that all the deliberation boards I have been on have overcome that -- I find that although it's intent was probably good -- probably very good idea that should have been talked about and then put away. My only real thought to finish on would be that since we are a creation of counsel rule and court decision in terms of what we are to do here -- would be curious to see if our brothers and sisters in the appellate courts would apply the same to their deliberations.

I note with happiness that the appellate courts have removed development plans from open deliberation. They have cracked open that door; I hope someone proceeds to kick it open.

Our rules and regulations, as they now are, we have open deliberation process and we'll not get into that.

CLM: I will start off by saying that my conclusions are based on the notes I've taken at the hearing, a complete review of the exhibits, giving appropriate weight I felt both reasonable and proper, appropriate statutes and case law.

The statute to apply is simple - 101 of the BCZR which defines nonconforming use as a legal use that does not conform to use regulations for the zone in which it is located or to a special regulation applicable to such a use. Specifically named use described by nonconforming is a nonconforming use.

Based on the evidence and testimony produced, the subject property is in D.R. 5.5 zone. In order to function there, it must be established by the Petitioner that a nonconforming use as defined by 101 existed prior to the adoption of the D.R. zone classification, and meets the requirements of 104.1 of the BCZR which states:

A nonconforming use as defined in section 101 may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

It's a well established principle anchored in law that the owner/ operator of a nonconforming use has the burden to produce why nonconforming use existed in the first place and (2) nonconforming use has been continuous. Also fundamental principle that the right to maintain a nonconforming use does not depend upon the ownership of the land on which situated; the right attaches to the land itself.

Based upon what I have heard and seen, there is no doubt that a service station had existed on the site for many years prior to the adoption of the D.R. zone classification, as far back as 1930s and up to 1945. The only question as I view it is whether or not the use was changed, abandoned or discontinued for a period of one year or more. Mr. Hargis testified at length concerning prior ownership, his ownership, and present ownership.

It's a mixed neighborhood of private homes, churches, funeral home, apartments and other commercial uses. It's near 702 and Old Eastern Avenue. At one point, it was a Texaco service station containing three bay lifts, car repairs, and so forth. Now only kerosene and bulk oil is sold on the premises.

Appellant testified that the gasoline tanks had been removed from some time ago. Appellant bought the property, aware of tanks leaking; removed by fire marshall; did not intend to

sell gas. In June of 1981, no gas was being sold at this location.

Witnesses produced by Appellant substantiated existence of a service station prior to the D.R. zoning. All appeared to be familiar with the property and its usage. All purchased gas there before the pumps were closed. They testified as to service work and continuing nature of service work performed on the premises. Some have purchased kerosene.

Protestants produced witnesses; changes in facility; prolonged parking; noise; motor work; and numerous other objections to what they considered drastic changes.

Mr. Clark indicated in closing arguments that the Board must examine and weigh the testimony and evidence to determine if abandoned, discontinued or changed to any other use whatsoever, being mindful of the service station and outgrowth of business.

While mindful of judicial decisions to vested rights in use of land, neither the courts or legislature have lost sight of nonconforming uses -- and generally plans for their elimination. Legislation and Court decisions dictate firm negative view of nonconforming uses with view to their eventual elimination.

As in County Council, Prince George's County v. Gardner, 293 Md 259: "Nonconforming uses...[quoted through 'injure property values']. Maryland case law allows continuing nonconforming use but does not permit transferring to a different use. The latter constitutes unlawful extension even if no change in appearance of facility being used.

The occupant's use of the property must not substantially change from predecessor's use. Depends on whether there is a difference in character, quality and degree of use and effect on neighborhood.

In the 1930s and 1940s, typical service station such as Texaco was a familiar sight and probably fit present day definition of BCZR 101:

A structure or land used or intended to be used for the retail sale of automotive fuel, but not a truck stop. For the purpose of these regulations, any establishment which sells auto fuel retail shall be considered a fuel service station, unless it is classified as a truck stop or trucking facility.

Fuel servicing space on fuel station site -- that I believe is the key element missing in this case. What may one time have qualified as nonconforming fuel service station is now service

garage. There is a very significant difference between nonconforming fuel service station and service garage. Fuel service stations make oil changes, repairs, etc., relative to automobiles and as a practical matter, it is sometimes necessary to retain vehicles overnight and engage in car rental service and inhouse towing.

Modern day technology has also allowed those stations to do more -- no ancillary services are provided at all except sale of fast foods and personal commodities. But common trend is the retail sale of automotive fuel.

If that is all they did, it would be fuel service station--it's a key element missing in this case. At the time of nonconforming use, it was primarily a fuel service station -- gas requirements could be met; emphasis on retail sale of fuel with ancillary services provided such as minor repairs, oil changes, etc. Kerosene is not automotive fuel. Petitioner clearly testified that he never intended to sell retail gas and removal of tanks whether mandated by Fire Marshall or not; indicated that the subject site vested from fuel service station to service garage; that change had effect on use of the property. The primary focus of business is one of a service garage which is a facility where motor travel vehicles are stored, repaired and so forth.

For these reasons, I believe that the Petition for Special Hearing for a nonconforming use for service garage, etc., and also to approve canopy overhead should be denied by the Board.

LMS: Without belaboring the point, the law as you have set out as nonconforming use is appropriate -- for almost many of the same reasons I will disagree with you. Here is my evaluation.

There is no question that this property was used almost from its commercial inception for motor vehicle related care. Very carefully chosen sentence -- care in the 1920s, '30s, and '40s was like most things 40 to 50 to 60 years ago; clear, easy basic definition. This place was not referred to as a gas station; it was "Sam's." It was the guy in the neighborhood; everything got done there; gas, kerosene, car was fixed, bike fixed; anything that travelled on rubber wheels got done in that place. Over the course of the years, technology and reality have changed that and although I have no problem with the fact that if you have a nonconforming use that can no longer do this -- by the definition which they continued to do what they did, to maintain and take care of cars in the '20s, '30s and '40s -- repair work, put things in a car, parts on car, fixed parts there --- affected things, albeit simply, but they did it.

Over the course of time because of changes in technology and

marketing, split off what's done on cars because of marketing -- now places where you can buy sandwiches, coke and gas. This was not the case years ago. The advent of fuel only type of arrangement is relatively new -- umbrella activity. There was discussion of bays being built or not being built -- bays taken down -- different type of repairs being done; the one thread through all this is people have always done what was needed to fix and work on cars at that location; all the way from the beginning.

Even the protestants had cars fixed and maintained that same thread and say those things went on there always. There have been no physical changes -- somebody indicated they changed the facade, but almost did not even change footprint.

I agree that -- and definitions we are going by now -- fuel station and service station -- did not exist when they began there; no need for a definition; no difference between those things. All done under one umbrella. Because the economy has changed, marketing changed, business climate changed, some parts of that business were disturbed. Decision to take out the tanks and not to sell gasoline was not because somebody decided for any reason other than it was leaking and not economically viable to continue; can they go back and do that again? No, they cannot. But while that went on, none of the repair things that went on ever stopped. Has nature changed? Most certainly. Where you crawled under the engine, it's a different world; but this does not mean that the guys who fixed my dad's car are different from today -- but it requires different things to make those repairs happen. I don't need only pliers and my ears; look at a bunch of dials.

It's simply what has happened technologically in our lives. So nature of repair business has never changed. I find it hard to see that just because it got more complicated...still a business and still have to do the job right -- has not changed the fact that you are still doing what Sam did with ears and pliers in 1929 or 1930. Having said that, I think there's a very gray line as to permitted extension and intensification as opposed to change in character.

Let's take them separately. First, and there are four if you count extra equipment -- no problems with that.

Tow trucks -- there is an increase now I think everyone agrees; increase in tow truck activity on the premises more than there was. Intensification of that. Not so concerned about the fact that they are still towing vehicles there; sure it was done over the last 30 or 40 years. Willing to presume that one of those methods was used. The question is has it become a towing business or is it still ancillary to the repair business. I found it interesting -- always wondered why and where roll-back trucks -- reason is because of

bumpers; technological reasons and reasons in the code regarding insurance responsibilities -- is gas station's responsibility, etc.

I think towing -- getting a vehicle there -- is not the issue; I think what kind of vehicle they have bothers me more because they have both kinds but now I understand why they have both kinds. Should there be a towing business there? Absolutely not. Is it that by towing vehicles from point A to point B? Absolutely not. Can they tow vehicles to that location, and if they cannot fix it there, can they tow it to point B? Or for example, body shop -- I'm convinced there is no body shop there -- let's say they fixed the engine; now needs body repair work. They tow to the place that does body work -- continuation of their thing. I can live with that. But unless it's specifically directed to the work of repair, it should be done. Should only be done in context of what they do there.

Second area of concern -- rental -- there should not be and never has been any rental business there. There should not be rental business there; use which does not comply under nonconformance. People who do repairs do rent cars. Can rationalize why it would be a good idea. And if the property owner had the right to do it there, well let him. I don't believe it was ever done there. Not willing to take that jump that you have to rent a car in order to do someone's repair work. Not part and parcel. Not activity that's always been done. Thirty years ago you did not do that. You walked or went to a neighbor, and so forth. Were not rental systems then.

It may make sense from a subjective point of view, but that's not why we are here. The rental activities have to stop. As a practical matter, arrangements can be worked out with another rental agency. It's what they will have to do. It does not fit the rationale.

Plugging in of electric -- and we had no testimony to the contrary that it does not recharge anything; simply to maintain what was in truck while repairs are being done. I'm bothered by that because, again, I want to be consistent. It's not maintaining items -- and storing and safeguarding items in the repair, for which the repairs are being done -- no testimony that it existed in the earlier station. No proffer of it; no testimony about it; not something that they always did there as opposed to the towing. If the truck went there, no testimony that Sam would take care of storage; not in business of safeguarding contents. I'm willing to be swayed on that one; does not meet consistency test.

Finally, there was some testimony of signs for sale. Never a place to sell cars; not nonconforming use; no cars should be

sold or advertised for sale on that property; no signs existing whether on the cars, near the cars, etc., alluding to sale of cars on the premises. Applying same standard -- I understand the explanation, but any addition that would entice someone to come ask should be removed. Not a business carried out there.

I'm in a position where I am applying a simple criteria -- what was done in the past, and what is needed to do now to continue to do that -- simply in terms of technology of repair work. Holds up; consistent; makes sense. You are in a residential area; not even written on the windows of the cars there. It's the duty of the property owner to see that only proper use is done.

I don't think there should be any storage. No difference between that and allowing people to unload and store there. Tow truck has already been covered as being directly related to what goes on; willing to say that repair tasks are continuing nonconforming use and should be allowed.

MW: I agree that the question is whether or not the service garage conforms with the requirements of nonconforming use; been defined by both of you, and as especially Larry pointed out -- both Petitioner and Protestants agree -- it has been operated on site for more than 50 years, certainly before 1945. As was pointed out, in 1980 after Hargis bought it -- tanks were removed; repair and service continued. Now these activities are supplemented by car rental, towing and overnight storage.

I could find no significant difference between service station and service garage. Found a most interesting argument reached in McKemy v. Baltimore County, deciding whether current activity is within the scope of nonconforming use. It appears to me that is what we are being asked to determine: (1) to what extent does current use of lot reflect nature of original use; (2) is current use really different manner of using original use; (3) does current use have substantially different effect on the neighborhood; and (4) is it drastic enlargement of original use.

It's my opinion that the service garage was not a problem in the community when limited to car repairs; what it always did. It was true between 1980 and 1991 when Mr. Hargis operated it. Car rental, overnight storage and car towing have gone over the edge of drastic enlargement. However, I agree with Larry; do not agree he should be put out of a business operating for more than 50 years; agree with Larry that nonconforming use does not include precisely four elements I have indicated in my notes -- that the towing, car rental, overnight storage not related to car repairs, and car sales not related. I believe our Order should indicate that nonconforming use continues but is limited to automobile

repairs. But all vehicles and work done must be contained on the site plan recognized as nonconforming use parcel.

The physical building did not change, but overflow into neighborhood has created problem.

LMS: As far as towing, differentiated between towing cars to there --

MW: I agree with you that broken cars have to get there.

CLM: I respect what my colleagues have stated; but I believe you have to go back to basics. Upon any change from such nonconforming use -- County Council very wisely put it "whatsoever" -- did not stop there-- intention to eliminate nonconforming uses. If I follow your reasoning, there has been a change in the use of the building.

Towing business, car rental services, etc., are different from the nonconforming use. I do not believe it's under the purview of this Board to include what items must be discontinued if they did not exist when it came into existence. The County Council wanted to narrow nonconforming uses and prohibit any use except that which existed.

LMS: I do not disagree but I think my reading of it is that when the use changes from a service station to something else -- whatsoever -- that nonconforming use ends. We do not have here -- nonconforming use which has continued; additional uses being added to the property -- those additional uses -- I don't believe the fact that because the owner adds something to the continuing nonconforming use that has the effect of voiding the appropriate nonconforming use.

It does not change the fact that repair use continues. It behooves us to say you cannot use it for that purpose, but I do not believe that if you add, change or do anything it wipes everything out.

CLM: I interpret literally -- whatsoever means whatsoever.

LMS: Any extension from the nonconforming use should be nixed. It's a nonconforming use but there have been other things added which are not nonconforming uses. They should be wiped away.

CLM: I don't agree, Larry.

MW: I looked at that, too, Chuck. When you step over a certain point, you wipe yourself off the map. In the cases I read, that did not seem to be the way others interpreted it. That's why I...

Deliberation /Thomas Hargis -Petitioner /96-246-SPH

LMS: Other cases were that additions where nonconforming uses were wiped out was where the nature changed completely. I could not find anything that simply because there had been a change while maintaining basic nonconforming use -- this wiped out the nonconforming use.

MW: If this property had been just a car rental agency...

LMS: Let's say it was a facility where you could store your vehicle and rent another vehicle so your car could be taken to a repair place -- entirely different use -- no repair work. Then it would be wiped out. They did not stop nonconforming use; just pushed it too far.

CLM: I still disagree. I'll write minority opinion.

LMS: There will be an opinion issued in writing. And again, the rights of appeal are from the date of the written decision and would be 30 days from the issuance of that written decision and filed with the Circuit Court for Baltimore County.

This deliberation is concluded.

Respectfully submitted,


Kathleen C. Bianco
Administrative Assistant

Law Offices
MICHAEL P. TANCZYN, P.A.

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Towson, Maryland 21204
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October 2, 1997

Steve Terrine
Court Reporter
County Courts Building, Mezzanine
401 Bosley Avenue
Towson, MD 21204-0754

Re: Petition of Carville A. Lauenstein, et al
In The Matter Of Thomas Hargis
Case No. 3-C-96-011276

Dear Mr. Terrine:

Please prepare a transcript of the hearing held before Judge Smith in this case on April 16, 1997, as an appeal was filed on October 1, 1997. Please let me know when it is completed and the cost of same, and we will pay you.

I would also appreciate if you would let me know whether there will be a problem in transcribing this within the time required by the rules.

Thank you for your cooperation.

Very truly yours,

MICHAEL P. TANCZYN

MPT:pb

cc: Mr. Douglas Dunn

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October 6, 1997

RECEIVED
COUNTY BOARD OF APPEALS
97 OCT -8 PM 6:19

Clerk
Court of Special Appeals of Maryland
Courts of Appeal Building
361 Rowe Blvd. and Taylor Avenue
Annapolis, MD 21401-1699

COPY

Re: Petition of Carville A. Lauenstein
and Douglas K. Dunn
In the Matter of Thomas Hargis

Dear Madam Clerk:

Enclosed herewith please find the Prehearing Information Report with copies of the Circuit Court's Opinion and Order dated September 2, 1997, and the time stamped Notice of Appeal, along with the form from the Appeals Clerk, which we ask you to file in this matter.

The transcript created before the Trial Court has been ordered pursuant to Maryland Rule 8-411. A copy of that request letter is attached as well.

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

Very truly yours,

MICHAEL P. TANCZYN

MPT:pb
Enclosures

cc: Mr. Douglas K. Dunn
C. William Clark, Esq.
Peter Max Zimmerman, Esq.
County Board of Appeals of Baltimore County

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October 8, 1996

Kathleen C. Bianco, Legal Administrator
County Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21286

Re: Thomas Hargis, Petitioner
Case No. 96-246-SPH

Dear Ms.  Bianco:

I have been retained by the Protestants below. If possible, could we obtain a copy of the minutes of the deliberation of the Board if you have them? If there is any charge for that, please let us know and we will be happy to pay it.

Very truly yours,



Michael P. Tanczyn

MPT/ed

cc: Mr. Douglas Dunn

10/11/96

Law Offices
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Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
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November 11, 1996

Ms. Charlotte Radcliffe
County Board of Appeals for Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21286

Re: Thomas Hargis, Petitioner
Board of Appeals Case No. 96-246-SPH
Civil Action No. 03-C-96-011276

Dear Ms. Radcliffe:

Thank you for your letter of November 8, 1996. It is my understanding that the transcript has already been ordered, paid for and received. Please let me know if there is anything else which needs to be done by the Appellants in order to insure timely transmission of the record to the Circuit Court in this matter.

Very truly yours,


Michael P. Tanczyn

MPT/ed

cc: Mr. Douglas Dunn

NEWTON A. WILLIAMS
THOMAS J. RENNER
WILLIAM R. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
STEPHEN M. SCHENNING
DOUGLAS L. BURGESS
ROBERT E. CAHILL, JR.
C. WILLIAM CLARK
E. BRUCE JONES**
J. JOSEPH CURRAN, III
STUART A. SCHATZ

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JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
823-

*ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN NEW JERSEY

1 April 1996

Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Attention: Mrs. Kathleen C. Bianco

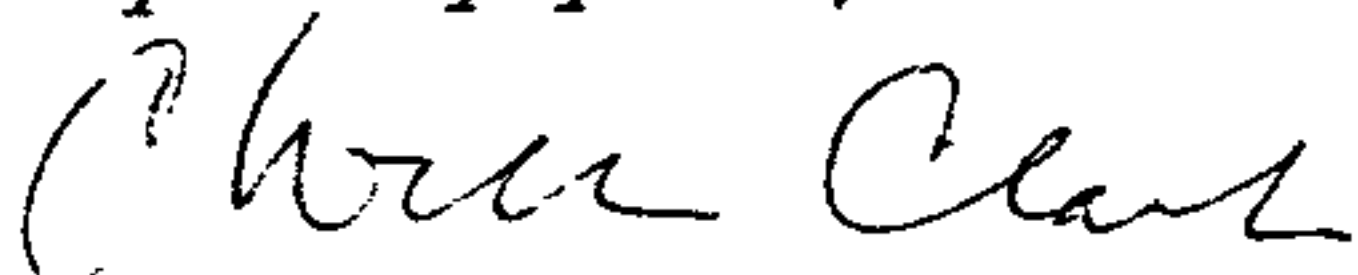
Re: Thomas Hargis
1324 Old Eastern Avenue
Appeal to Board of Appeals
from the Zoning Commissioner's Opinion and Order
Case No. 96-246-SPH

Dear Mrs. Bianco:

With regard to the above-captioned matter, please enter the appearance of C. William Clark, Esquire and Nolan, Plumhoff & Williams, Chartered, on behalf of Thomas Hargis, the legal owner of the above-captioned property.

Thank you for your anticipated cooperation. Should you have any questions and/or concerns, please feel free to contact me.

Very truly yours,


C. William Clark

/mh

55 APR -9 10 12:35

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November 6, 1996

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

Re: Thomas Hargis, Petitioner
County Board of Appeals Decision
Case No. 96-246-SPH

Dear Madam Clerk:

Enclosed please find Petition for Judicial Review in the above matter together with our check in payment of the filing fee for same.

Very truly yours,

MPT
Michael P. Tanczyn

MPT/ed
Enclosures

cc: C. William Clark, Esq.
Peter Max Zimmerman, Esq.
County Board of Appeals of Baltimore County
Mr. Carville A. Lauenstein
Mr. Douglas Dunn

*Chen
Fiji paper
Hargis case
Awaiting District
Court copy
X.*

NEWTON A WILLIAMS
THOMAS J RENNER
WILLIAM P ENGLEHART, JR
STEPHEN J NOLAN*
ROBERT L HANLEY, JR
ROBERT S GLUSHAKOW
STEPHEN M SCHENNING
DOUGLAS L BURGESS
ROBERT E CAHILL, JR
C WILLIAM CLARK
E BRUCE JONES**
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WRITER S DIRECT DIAL
823-

*ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN NEW JERSEY

1 April 1996

Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Attention: Mrs. Kathleen C. Bianco

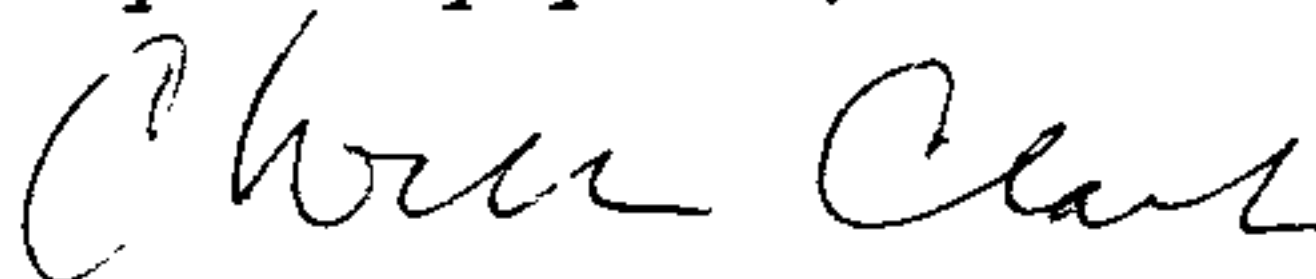
Re: Thomas Hargis
1324 Old Eastern Avenue
Appeal to Board of Appeals
from the Zoning Commissioner's Opinion and Order
Case No. 96-246-SPH

Dear Mrs. Bianco:

With regard to the above-captioned matter, please enter the appearance of C. William Clark, Esquire and Nolan, Plumhoff & Williams, Chartered, on behalf of Thomas Hargis, the legal owner of the above-captioned property.

Thank you for your anticipated cooperation. Should you have any questions and/or concerns, please feel free to contact me.

Very truly yours,


C. William Clark

/mh

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(410) 686-0118 FAX

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Towson, Maryland 21204
(410) 825-0711

ELIZABETH A. VANNI
MICHAEL J. KIRWIN

December 22, 1995

* Also Admitted in the District of Columbia

Arnold Jablon, Director
Baltimore County
Department of Permits and Development Management
County Office Building
111 West Chesapeake Ave.
Towson, MD 21204

Re: Case Number 96-246-SPH
1324 Old Eastern Ave.
Legal Owner: Thomas Hargis
Special Hearing date: 1/17/96
RGM File No.: 95.3028

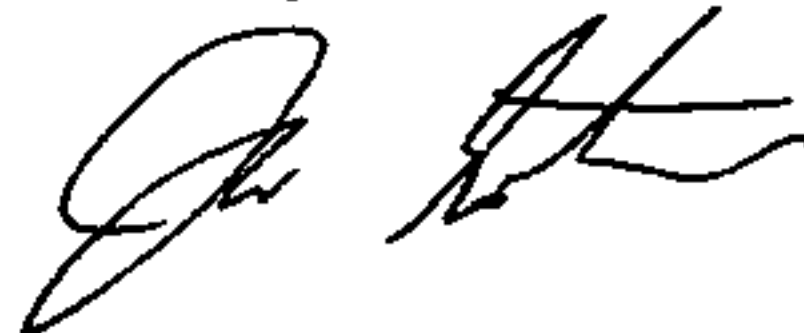
Dear Mr. Jablon:

Please be advised that I am hereby withdrawing my appearance on behalf of the Petitioner, Thomas Hargis. I have notified the Petitioner via first class mail of my intentions.

By copy of this letter to Mr. Hargis, I am notifying him to seek counsel for representation of the January 17, 1996 Special Hearing date.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



John B. Gontrum

JBG/bjb

cc: Thomas Hargis

96-8

1/2/96

to file

Romadka, Gontrum & McLaughlin, P.A.

814 Eastern Boulevard
Baltimore, Maryland 21221
(410) 686-8274
(410) 686-0118 FAX

ROBERT J. ROMADKA
JOHN B. GONTRUM
J. MICHAEL McLAUGHLIN, Jr.*

Towson Office:
307 W. Allegheny Avenue
Towson, Maryland 21204
(410) 825-0711

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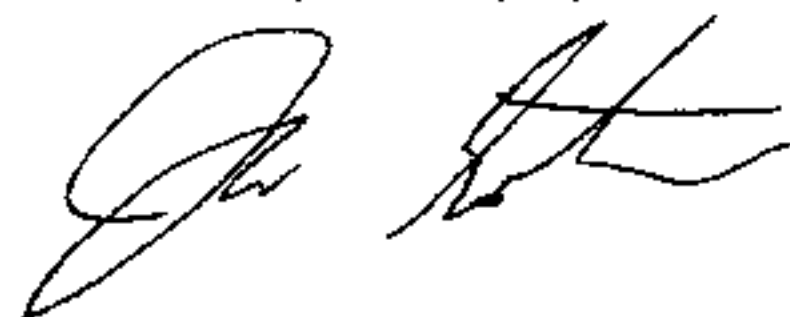
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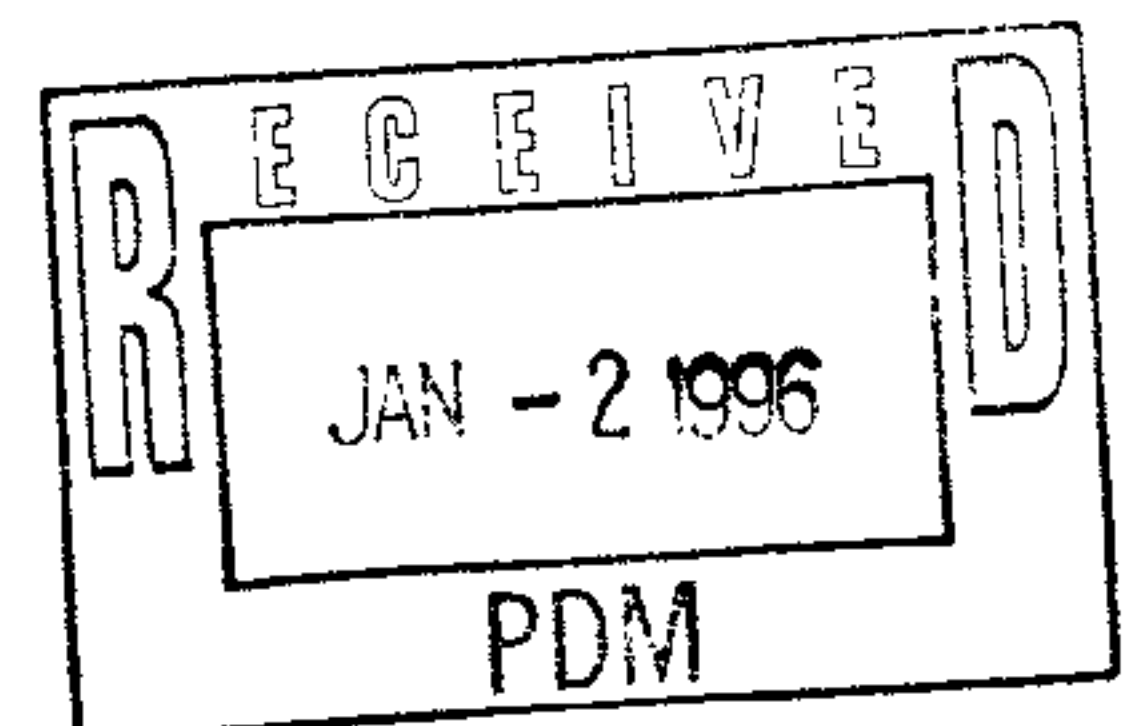
Very truly yours,



John B. Gontrum

JBG/bjb

cc: Thomas Hargis



February 23, 1996

Dear Zoning Commissioner:

I, Thomas Hargis, wish to appeal Case# 96-246-SPH, regarding property 1324 Old Eastern Ave., Baltimore, MD. 21221.

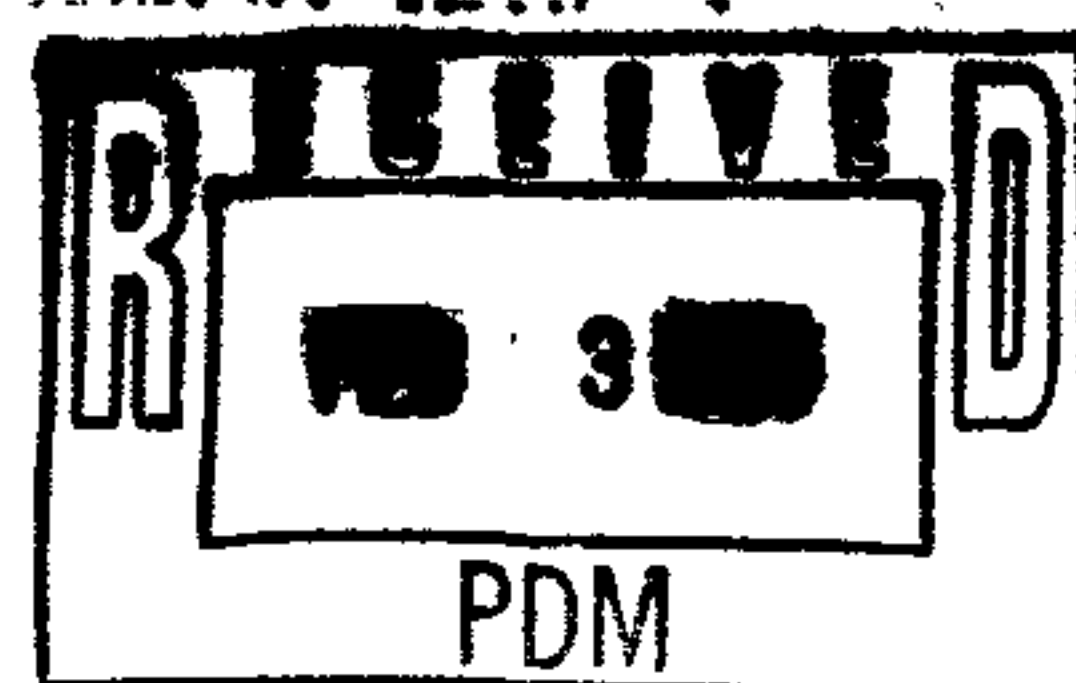
I have presented a check for the amount of \$ 210.⁰⁰.

Please set this hearing for appeal at your earliest convenience.

Thank you.

Sincerely Yours,

Thomas Hargis
Thomas Hargis



PETITION OF: Carville A. Lauenstein
and Douglas K. Dunn

CIVIL ACTION # 3-C-96-011276

IN THE MATTER OF THOMAS HARGIS

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

Dina Gilmore
Clerk's Office

~~at~~ Date: 12-27-96

February 23, 1996

Dear Zoning Commissioner:

I, Thomas Hargis, wish to appeal Case# 96-246-SPH, regarding property 1324 Old Eastern Ave., Baltimore, MD. 21221.

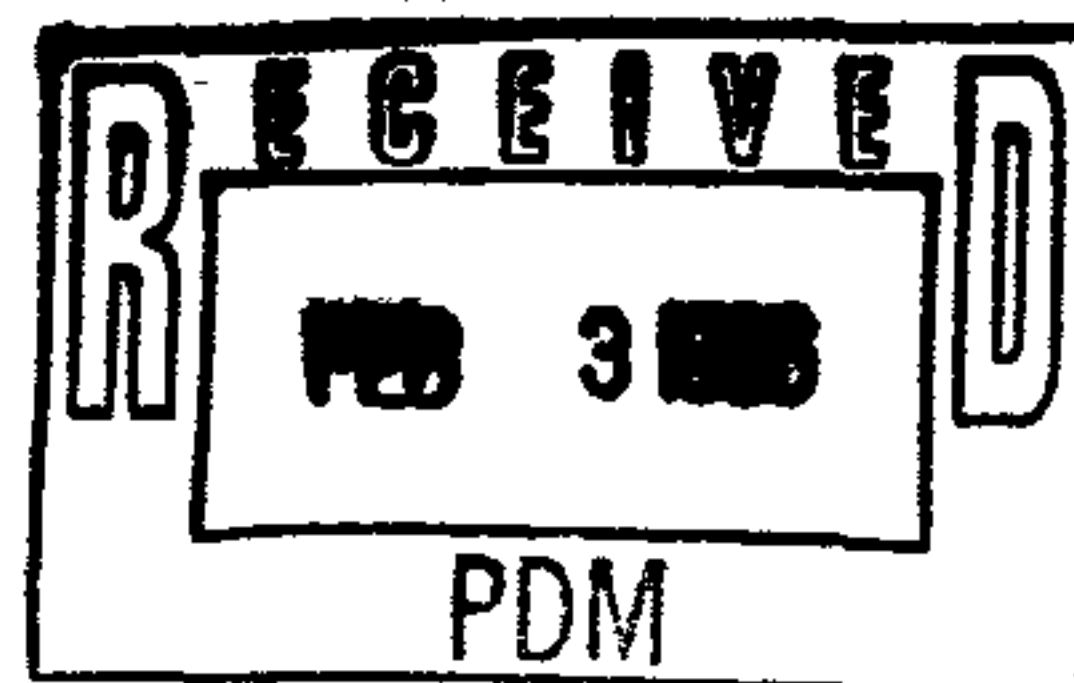
I have presented a check for the amount of \$ 210.⁰⁰.

Please set this hearing for appeal at your earliest convenience.

Thank you.

Sincerely Yours,

Thomas Hargis
Thomas Hargis



MARS HILL BAPTIST CHURCH

1400 Eastern Avenue
Baltimore, Maryland 21221
(410) 686-1617
Dennis J. McCombs, Pastor

the church with a heart



Dear Neighbor,

As you know for some time we have been addressing the parking and safety issues that have arisen as a result of Marks Auto Repair Shop at 1322 Old Eastern Avenue. We have been somewhat successful in our attempts to address the issue and as a result of our efforts parking along Essex Avenue and portions of Old Eastern Avenue has been restricted. However, there are still some issues that need to be resolved concerning the use of the property.

As you are aware we met in Towson in January for a special hearing before the Zoning Commission. This hearing was the result of the Zoning Board's response to our concerns about the use of the property. The assistance of Lou Depazzo and his office were also quite helpful in bringing this about. This issue is still not settled and there will be another hearing. This hearing will most likely take place in July. We need your help. As someone who lives in this neighborhood I am concerned about the safety of our families and about the appearance of our neighborhood. That is why this information is being distributed to you at this time. Please take time to read it and talk about it with your neighbors.

Soon we will be asking you to help us in this effort. You can help by calling your County Councilman's office, the office of the County Executive, the Zoning Board, and by attending the hearing when it takes place. You will be contacted when the hearing date is set and it is my hope that together we can make a difference for our neighborhood.

Thank You,

Rev. Dennis J. McCombs
Pastor: Mars Hill Baptist Church



**Bringing Knowledge To Light
... And Light To The World**

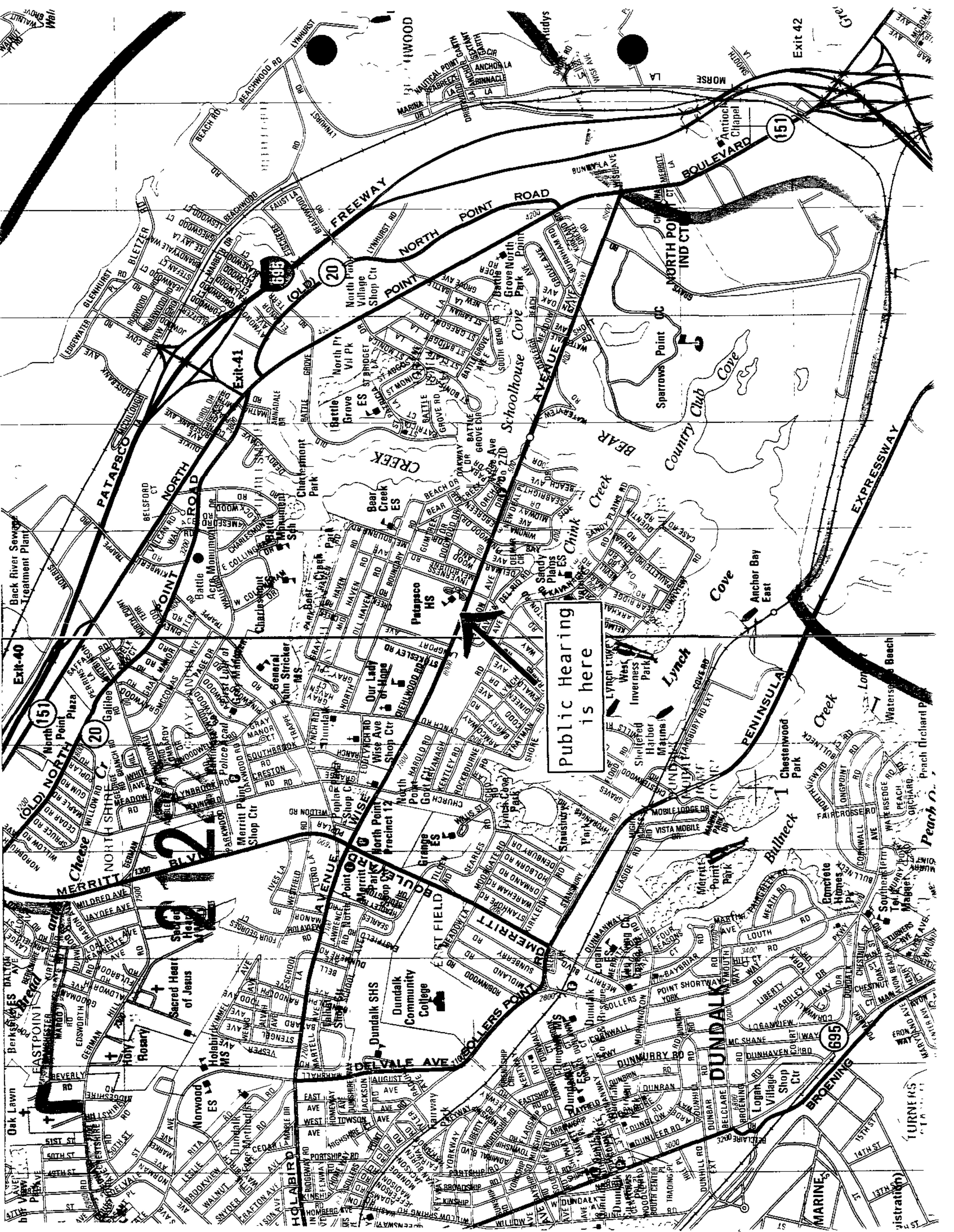
● ●

Please tape this to your refrigerator

BALTIMORE COUNTY PLANNING BOARD
PUBLIC HEARING

Tuesday
APRIL 30, 1996
7:30 PM

PATAPSCO
HIGH SCHOOL
IN THE AUDITORIUM
8100 Wise Avenue
(see map provided)



Public Hearing
is here

Mars Hill
DR 5.5 Ad Hoc Committee

P.O. Box 10643
Towson, MD 21285

April 16, 1996

Dear Neighbor,

"Mark's gotta go! Mark's gotta go!"

exclaimed a neighbor of yours as she exuberantly greeted one of the volunteers who collected signatures in opposition to the approval of a "nonconforming use" for Mark's Auto Service. This particular person was a professional photographer. There are many other professions and trades represented in the community in and around Mars Hill, as well as a number of public servants. (One such public servant works close to County Executive Dutch Ruppersberger). Even with such a diversity of backgrounds and experiences, an **overwhelming majority** of you felt strongly as your neighbor said, "Mark's gotta go!"

Most of the reasons people offered for signing the petitions had to do with the parking of vehicles along Old Eastern Avenue, particularly near entrances to side streets where such vehicles represent a very real danger for people trying to turn into the fast moving traffic along Old Eastern Avenue. Some people were dismayed about how little the owner of Mark's Auto Service and Mr. Hargis, the property owner, seemed to care about the community in which they make a living. One person even expressed the thought that surrounding property values were effectively lowered by the unsightliness of the lot and the condition of the cars being parked throughout the neighborhood.

Whatever their reason, almost every household in the neighborhood has signed one of the three petitions, and many others from the two churches also signed.

The Special Hearing was held on January 17, 1996, before Baltimore County Zoning Commissioner Lawrence E. Schmidt **who denied the petition**. A copy of that decision is included in this community update.

As Acting Chairperson for the Ad Hoc Committee, I would like to personally thank one of our members, the good Reverend Dennis McCombs, Pastor of the Mars Hill Baptist Church, for his help in collecting signatures, and especially for the moral and spiritual leadership he brings to this effort.

Your Baltimore County Councilman, Lou Depazzo, must also be thanked for his impartial and unswerving commitment to do what is best for the entire Mars Hill community. Mr. Depazzo's office was instrumental in getting Inspector Moorefield to issue a "CODE VIOLATION NOTICE" requiring a Special Hearing to prove a legal nonconforming use at 1324 Old Eastern Avenue. Without him, we would not have had our day in court. (It should be noted that our friend George from the Councilman's office has been closely monitoring this case for almost a year now).

There were about 16 members of the community at the hearing. We certainly want to thank those persons for making the effort to be there, but we need more support from the community. A large crowd of people showing up at a public hearing makes a statement like nothing else can. There is simply *nothing* that impresses county officials more than when community members take time to attend public hearings.

The owner of that property, Mr. Thomas Hargis, has appealed the decision of the Zoning Commissioner. No date has been set for the appeal, although it is expected to be sometime in July.

Now the owner has petitioned the Baltimore County Planning Board to have the property rezoned. This petition is an entirely separate action from the nonconforming use petition. Either petition could result in Mark's Auto Service being allowed to continue to do business in Mars Hill area indefinitely. ***The purpose of this Community Update is to encourage you to be at the Baltimore County Planning Board public hearing on Tuesday, April 30, 1996 at 7:30 PM, in the Patapsco High School auditorium to oppose rezoning Mark's Auto Service. If the owner of the property succeeds in rezoning it through what is called the "Comprehensive Zoning Map Process" (or CZMP for short), the decision of the Zoning Commissioner to deny his petition for "nonconforming use" and the accompanying order to close down Mark's Auto Service will be meaningless.***

To fight this action a number of individuals in the community, including representatives from both churches in the area, as well as persons who live in the neighborhood, have formed an ad hoc committee called the "Mars Hill DR 5.5 Ad Hoc Committee". "DR 5.5" like "nonconforming use" is technical jargon which simply means that the property where Mark's Auto Service does business was supposed to revert to being somebody's backyard if it ever stopped being a neighborhood filling station, and we'd like to see that happen. To quote from a letter Councilman Depazzo recently sent to a member of the Ad Hoc Committee, "neither I nor my staff will rest until the problems presented at Mark's Garage are eliminated. No community should be subjected to the abuse and insensitivity as the neighbors, churches, and general public have endured for too long".

The abuse to which Councilman Depazzo refers has a twenty year history. We say it is time for Mars Hill to reclaim that property, and it is our aim and intention to put a stop to the zoning violations which have led to this grotesque situation. We simply will not yield to threats and intimidation. Despite whatever has happened in the past, we have the full support of our elected

officials and of the police (who called me to express their sympathies in what could only be described as a clear and unequivocal show of support for the work of the Ad Hoc Committee). But in some respects, this is like the Old West, my friend. It's up to you to protect your property value, to put a stop to the reckless endangerment of your family, friends, and neighbors trying to enter the traffic flow on Old Eastern Avenue without being able to see oncoming traffic, to return a sense of respect for the rule of law, and a personal sense of responsibility for the beauty and safety of the neighborhood in which we live and worship. The time to act is now!

The support is there. We can win. But we simply cannot do it without **you**. Our Ad Hoc Committee is meaningless without a body of people from the community to represent. There are just two meetings you need to attend to see and support the Mars Hill DR 5.5 Ad Hoc Committee in action. The first meeting is in a couple weeks. Please come. A map giving directions on how to get to the Patapsco High School is enclosed, but you need to make sure that you are there promptly at 7:30 PM. On the advise of the Seventh District Community Planner, Mr. Jeff Mayhew, the Mars Hill DR 5.5 Ad Hoc Committee has nominated a spokesperson to represent the community. Usually individuals are allotted about three minutes to speak in favor of, or in opposition to, an issue. However, by yielding some of that time to a spokesperson, we can make a powerful 15 minute presentation that the Planning Board will most certainly remember throughout the remainder of the CZMP. However, this in no way precludes individuals from speaking out. Indeed, if you feel strongly about the issue, we want you to tell the Planning Board. The spokesperson only needs 15 minutes for an initial presentation. That requires just 4 persons to yield their time. Do not yield your time, if you want to speak. After the initial presentation of facts by our spokesperson, he will ask for a show of hands of those persons who are there in opposition to issue 7-045. At that time, anybody who did not yield their time may speak. However, in the event that our presence is formidable (i.e. a lot of people show up), it would be in our best interest to respect the fact that the Planning Board has many

other issues to hear besides 7-045. Use your best judgment the night of the hearing whether or not you have something substantially different to add to what has already been said.

A word about the "NO PARKING" signs recently posted throughout the community. This is not a victory. These unglamorous signs are a line of last defense, and they only serve to push the problem from one area of the Mars Hill community to another. If you live on a street where the "NO PARKING" signs have been posted, please remember that there are other people and families now suffering because of your signs. Cars are now parked along Old Eastern Avenue much further away from Mark's Auto Service than ever before. ***The "NO PARKING" signs simply do not alleviate the problem, they just relocate it.*** I look forward to seeing you at the public hearing, and to the day when, as a neighborhood, we can request the removal of those parking signs, and celebrate a ***real*** victory.

- Acting Chairperson

*"approval of a nonconforming
use of subject property
[Mark's Auto Service] ... is
hereby denied"*

Baltimore County Zoning Commissioner
Lawrence E. Schmidt

The attached cover letter from the office of the Zoning Commissioner and the decision to deny the "nonconforming use" was sent to each of the members of the community who attended the Special Hearing. That decision is under appeal. Now the owner of the property, in an entirely separate action, is petitioning The Baltimore County Planning Board to rezone the property where Mark's Auto Service is located. It is up to the community at large to persuade the Planning Board that such a decision would be detrimental to the community as a whole. This is a very formal process called the "Comprehensive Zoning Map Process" (or CZMP for short) that happens once every four years. Your opportunity to speak is at the public hearing on April 30, 1996 at 7:30 PM in the auditorium of the Patapsco High School. In the absence of any meaningful opposition, the Planning Board may assume a tacit approval of the petition to rezone. This is a numbers game where head count is all important. Please be there!

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

January 29, 1996

Mr. Thomas Hargis
1324 Old Eastern Avenue
Baltimore, Maryland 21221

RE: Case No. 96-246-SPH
Petition for Special Hearing
Property: 1324 Old Eastern Avenue

Dear Mr. Hargis:

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

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3353.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmm
encl.
c: Protestants

IN RE: PETITION FOR SPECIAL HEARING
NWC Old Eastern Avenue and Essex
Avenue
1324 Old Eastern Avenue
15th Election District
5th Councilmanic District

Thomas Hargis
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 96-246-SPH

* * * * *
FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property located at 1324 Old Eastern Avenue in the Essex section of Baltimore County. The Petition was filed by Thomas Hargis, property owner. Special Hearing relief is requested to approve a nonconforming use of the subject property; for a service garage, service bays and sale of fuel (kerosene and bulk oil) and also to approve a canopy overhang. The subject property and relief sought are more particularly described on the site plan submitted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing held for this case was Thomas Hargis, property owner. Numerous residents of the surrounding locale testified as well as representatives of churches which lay adjacent to the subject property.

As a preliminary matter, the Petitioner requested a continuance of the hearing. As reason therefore, he indicated that he was without legal counsel and desired counsel to represent him. The file showed that John B. Gontrum, Esquire originally represented the Petitioner and is designated as counsel on the Petition. However, by way of a letter dated December 22, 1995, Mr. Gontrum withdrew his appearance. By separate mailing Mr. Gontrum notified the Petitioner directly that he would withdraw his appearance. For reasons explained at the hearing, I denied the request for postponement. Specifically, the file notes that the property is presently

February 23, 1996

Dear Zoning Commissioner:

I, Thomas Hargis, wish to appeal Case# 96-246-SPH, regarding property 1324 Old Eastern Ave., Baltimore, MD. 21221.

I have presented a check for the amount of \$ 210.⁰⁰.

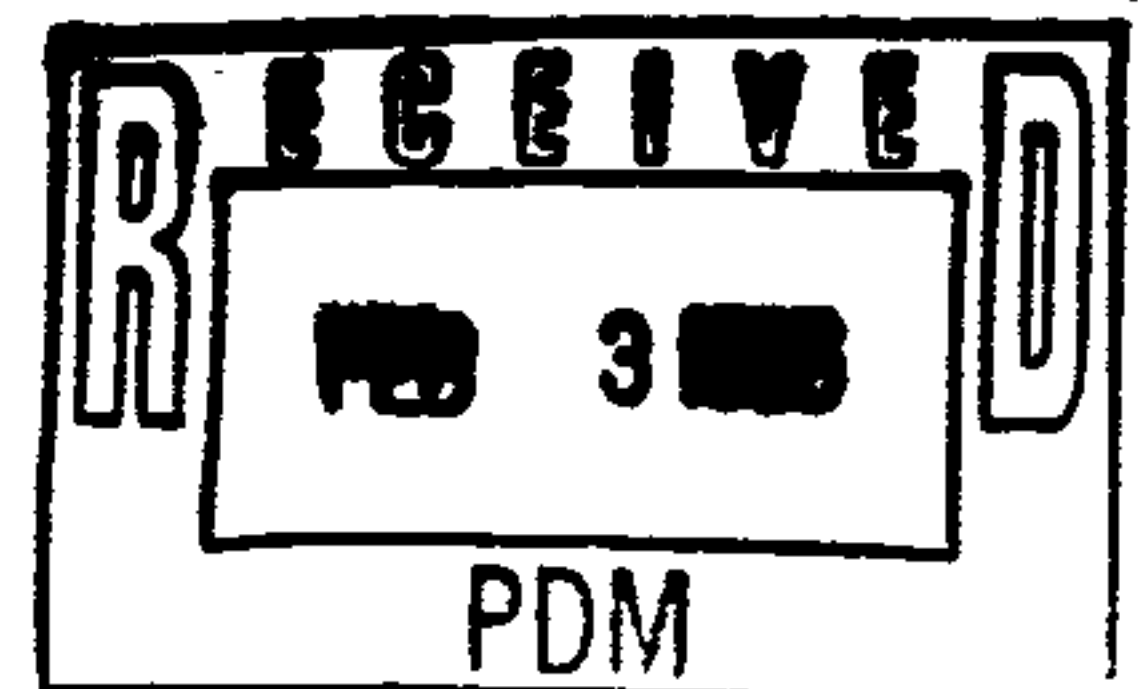
Please set this hearing for appeal at your earliest convenience.

Thank you.

Sincerely Yours,

Thomas Hargis
Thomas Hargis

This is the letter to the Zoning Commissioner appealing his decision to deny the "nonconforming use". More about this later in the next COMMUNITY UPDATE which will be delivered to your home sometime in late June.



BALTIMORE COUNTY OFFICE OF PLANNING

COMMUNITY PLANNERS BY COUNCILMANIC DISTRICT

Gary Kearns, Chief, Community Planning Division
Patricia Beere, Assistant to the Chief, CZMP Manager

For information about issues in your area, please contact your Area Planner at 887-3480

DISTRICT	PLANNER	COMMUNITY
1	William Hughey	Catonsville, Arbutus, Lansdowne, Baltimore Highlands
2	Dave Green	Pikesville, Randallstown, Woodlawn
3	William Hughey	Reisterstown, Owings Mills, Rural area west of Falls Rd.
3	Jeffrey Long	Hereford, Sparks, Rural area east of Falls Rd and north of Hunt Valley
3	Kathy Schlabach	Timonium, Hunt Valley, Cockeysville
4	Diana Itter	Towson, Lutherville, Ruxton
5	Jack Dillon	Perry Hall, Essex, Back River, Bowleys Quarters, Kingsville
6	Dennis Wertz	Parkville, Overlea, White Marsh, Jacksonville
7	Jeff Mayhew	Rosedale, Dundalk, North Point, Edgemere

last modified 5/4/95



Jeff Mayhew is our
Community Planner

PUBLIC NOTICE COMPREHENSIVE ZONING

Pursuant to Section 26-123c of the Baltimore County Code, 1988, as amended, notice is hereby given that the Baltimore County Planning Board will hold public hearings on the 1996 Comprehensive zoning Issue Maps at the following times and places:

First Councilmanic District

Tuesday, April 2, 7:30 pm
Lansdowne High School, 3800 Hollins Ferry Road, Baltimore, Maryland

Second Councilmanic District

Tuesday, April 16, 7:30pm
Randallstown High School, 4000 Offutt Road, Randallstown, Maryland

Third Councilmanic District

Tuesday, April 23, 7:30pm
Owings Mill High School, 124 Tollgate Rd. Owings Mills, Maryland

Fourth

Tue
Dul

Fifth

Thu
Per

Sixth

Mars Hill and the surrounding area are in the "Seventh Councilmanic District", usually referred to as simply the Seventh District. Mr. Louis L. Depazzo is your elected representative (Councilman) for the Seventh District on the Baltimore County Council. This page (and several others in this package) was printed from the Internet. It is a schedule of public hearings for the 1996 Comprehensive Zoning Map Process (CZMP). See you there!

Thursday, April 25, 7:30pm
Loch Raven High School, Cromwell Bridge & Cowpens Rds, Towson, Maryland

Seventh Councilmanic District

Tuesday, April 30, 7:30pm
Patapsco High School, 8100 Wise Avenue, Baltimore, Maryland

At each hearing, verbal testimony will be taken only on the issues in the respective Councilmanic District. Written testimony may be submitted on any issues at any time up to May 3, 1996; such comments will be made a permanent part of the file. The preliminary report of the Planning Board, consisting of the proposed Maps and accompanying summary Log of the Issues is available for public inspection at the Office of Planning, Room 406, County Courts Building, Towson (887-3480), and in the following public libraries: Catonsville, Cockeysville, Essex, Hereford, North Point, Parkville, Perry Hall, Pikesville, Randallstown, Reisterstown, Rosedale, Towson, and White Marsh.

Arnold F. "Pat" Keller, III
Secretary

Our Issue
number is
7-045

CZMP Log of Issues 7th District

...b.md.us/centers/baltcogov/planning/dist7.html

COMPREHENSIVE ZONING MAP PROCESS

LOG OF ISSUES SEVENTH DISTRICT

ISSUE NUMBER: 7-045

APPLICANT NAME: Thomas Hargis

LOCATION: Northwest corner of Essex Ave. and Old Eastern Ave.
(1324 Old Eastern Ave.).

Existing Zoning

DR 5.5 0.333

Total Acres 0.333

Requested Zoning

BLR

or

BL

or

BM 0.333

Total Acres 0.333

Staff Recommendations

DR 5.5 0.333

Total Acres: 0.333

STATEMENT OF REASONS FOR RECLASSIFICATION

THOMAS HARGIS

The subject property has been used as a service station and as a service garage for many decades. In 1979 a site plan was approved for the property as a non-conforming use for the service station with a depiction of the existing building and the service bays. Only the gas pumps have been eliminated, and service work on the automobiles has continued without interruption.

In recent years the property has been leased to a service operation that, if anything, has been too successful, and the lot has become too crowded. I have been working with the tenant to have some of the business shifted to an alternate location.

Because the site is non-conforming, improvements to the site have been difficult to finance. As the property owner I would be willing to enter into restrictions as to the future look and use of the site. The real issue, of course, is affordability, but as the property sits, it is difficult to finance change. I would be more than willing to consider a change of use if the lease permits and if the county development requirements for releasing to less intense uses are not cost prohibitive. For that reason a number of possible zones are listed.

The property is located between institutional uses, and has existed as a commercial property for almost 60 years. It is as much of an institution as the buildings surrounding it, and if properly maintained, I believe that continued commercial usage of the site is appropriate.

This is a required document submitted by the Petitioner, Thomas Hargis. The "Statement of Reasons for Reclassification" explains to the Zoning Board why the Petitioner thinks the property should be rezoned.

Write or call Mr. Mayhew to let him know how **strongly** you feel about the petition to rezone Mark's Auto Service.

Mr. Jeff Mayhew, Community Planner

**Office of Planning
401 Bosley Avenue
Towson, Maryland 21204**

(410) 887-3480

Write or call your Councilman to express your gratitude ***because he is the first elected official to do something about this!***

Mr. Louis L. DePazzo, Councilman

**North Point Government Center
7701 Wise Avenue
Dundalk, Maryland 21222**

(410) 887-7174

Please send a copy of any letter you write to the Ad Hoc committee so that we may present it to the Board of Appeals in July.

**Mars Hill DR 5.5 Ad Hoc Committee
P.O. Box 10643
Towson, Maryland 21285**

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

Thomas Hargis

ADDRESS

1324 Old Eastern Ave 21221



PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

Mary Unfried, Clerk

First Church of Christ Scientists Essex
1324 Old Eastern Avenue
21221

Virginia A Skene

302 E Joppa Rd - Baltimore

Nancy L Bagley

7602 Old Harford Rd 21234 21286

Lula T Gardner

4000 Mt Towson MD 21212

Rev Dennis M Conbe

101 N Essex Ave. Balt MD 21221

Carroll A Himmstein

1309 Old Eastern Ave 21221

Robert B. Edge

23 Pelican Ave 21221
Pelezar

Mary C Edge

23 Pelican Ave. 21221

DOUGLAS K DUNN

302 E. JOPPA RD #1604 21286.

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

Mary Unfried, Clerk

First Church of Christ Scientists Essex
1324 Old Eastern Avenue

Virginia A Skene
Nancy L Bagley

302 E Joppa Rd - Baltimore
7602 Old Harford Rd 21234 21286

Lula T Gardner

40 Conway Pl Towson MD 21286

Rev Donnie M. Goble

101 N Essex Ave. Balto MD 21221

Carroll A. Hancaster

1309 Old Eastern Ave 21221

Robert B. Edge

23 Pelican Ave 21221

Mary C. Edge

23 Pelican Ave. 21221

DOUGLAS K DUNN

302 E. JOPPA RD #1604

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

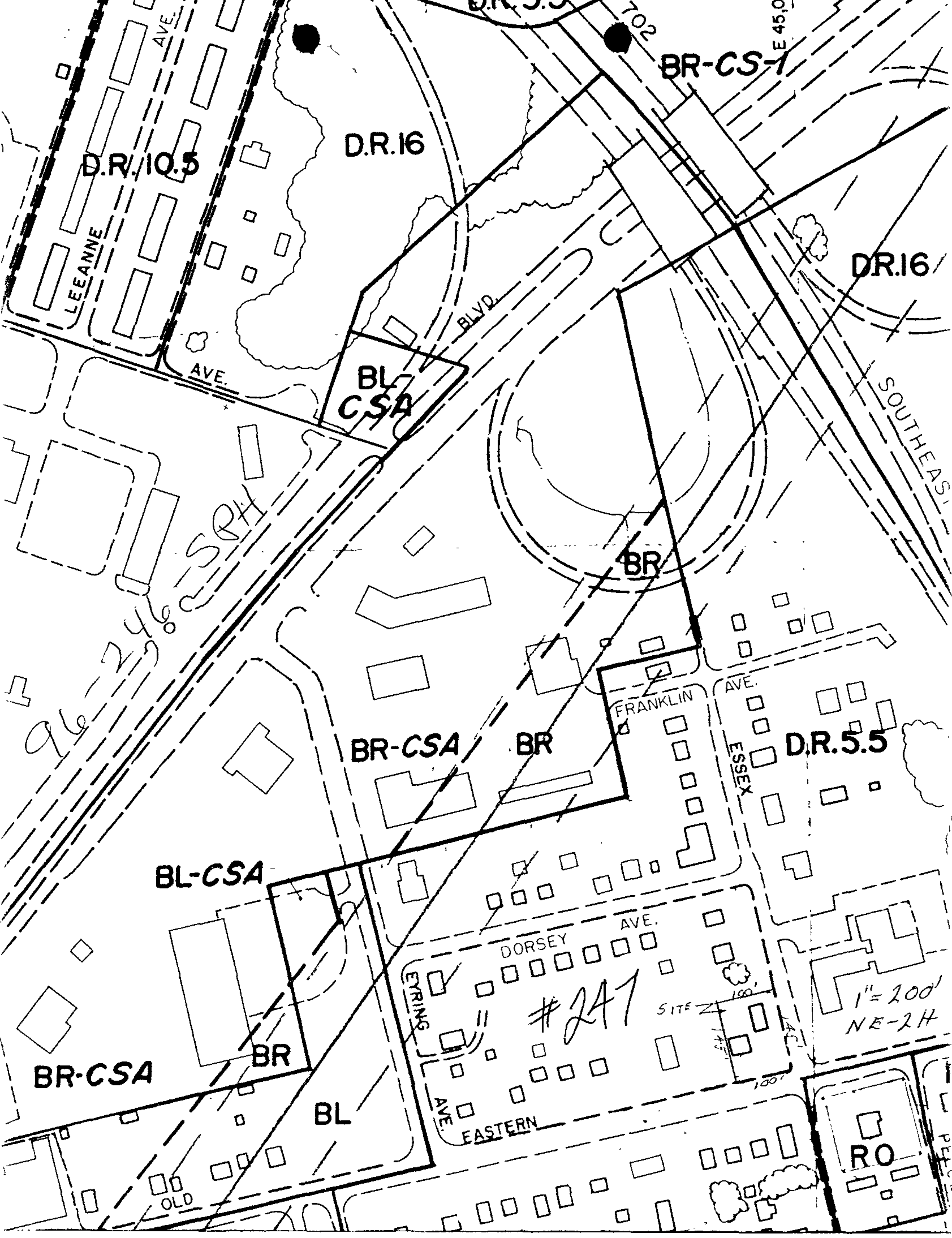
NAME

Thomas Hargis

ADDRESS

1324 Old Eastern Ave 27221





D.R. 10.5

D.R. 16

BR-CS-7

DR.16

BL
CSA

BR

BR-CSA

BR

D.R. 5.5

BL-CSA

BR

BR-CSA

BL

DORSEY

AVE.

ERING

AVE.

EASTERN

FRANKLIN

AVE.

ESSEX

#247

SITE

1"=200'
NE-2H

RO

OLD

IN RE: * BEFORE THE
PETITION FOR SPECIAL HEARING
NWC Old Eastern Avenue * BOARD OF APPEALS
and Essex Avenue
1324 Old Eastern Avenue * OF BALTIMORE COUNTY

THOMAS HARGIS, Petitioner * July 30, 1996
Case No. 96-246-SPH
* * * * *

The above-entitled matter came on for hearing

before the Board of Appeals of Baltimore County on

July 30th, 1996, at 10:25 a.m.

* * * * *

BEFORE:

LAWRENCE M. STAHL, Chairman
CHARLES L. MARKS
MARGARET WORRALL

APPEARANCES:

C. WILLIAM CLARK, Esquire
On behalf of Petitioner Thomas Hargis

Reported by:

Heather R. McLauchlin

1 IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

2
3 PETITION OF:

4 CARVILLE A. LAUENSTEIN
5 DOUGLAS K. DUNN

6 FOR JUDICIAL REVIEW OF DECISION OF:

7 COUNTY BOARD OF APPEALS OF
8 BALTIMORE COUNTY

9 IN THE CASE OF:
10 IN THE MATTER OF THOMAS HARGIS

Case Number: C-96-011276

11 * * * * *

12 REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
13 Hearing

14 Towson, Maryland
15 April 16, 1997

16 BEFORE: THE HONORABLE JAMES T. SMITH, JR., Associate Judge

17 APPEARANCES:

18
19 On Behalf of the Appellants:
20 MICHAEL P. TANCZYN, ESQUIRE

21 On Behalf of the Respondent:
22 C. WILLIAM CLARK, ESQUIRE

23
24
25 Reported By: Kathleen A. Papesh

98 JAN 21 AM 8:29

or other open areas; e) below-grade floor space upon which are situated accessory heating or air conditioning plants or other accessory mechanical or electrical utility equipment; f) below-grade floor space used for accessory off-street parking spaces. As used in this definition, the terms "above-grade" and "below-grade" shall refer to the grade of the street to which the major pedestrian access is established, at the place of access. [Bill No. 111, 1968.]

Floor Area, Gross: The sum of the gross horizontal areas of all floors of a building, measured from the exterior faces of exterior walls and from the center line of walls separating two or more buildings, but not including floor space used for off-street parking, or any space where the floor-to-ceiling height is less than six feet. This term does not include any floor space in a basement or cellar which is used exclusively for storage or upon which are situated accessory heating or air conditioning equipment or other accessory mechanical or electrical utility equipment, nor does it include any floor space in an atrium or lobby which is not leasable to or occupied by individual tenants. [Bill No. 26, 1988.]

Floor Area Ratio: The total adjusted gross floor area of buildings on a site divided by the gross area of the site. [Bill No. 56, 1961; No. 111, 1968.]

Freeway: A motorway or portion thereof which: is, or is intended, for both intra- and inter-metropolitan travel; has or is intended to have a center median strip and a total of four or more lanes for moving traffic; is designed or intended for traffic speeds of at least 60 miles per hour; has no access to abutting private property; has no grade-intersections with other motorways; and has been designated as a freeway by the Planning Board. [Bill No. 40, 1967.]

Fuel Servicing Space: On an automotive-service station site, any one of the maximum number of spaces on which cars may be situated simultaneously while being fueled. [Bill No. 40, 1967.]

Garage, Community: A structure or series of structures for the storage of automobiles of residents of the neighborhood, and not used for making repairs. [B.C.Z.R., 1955.]

Garage, Residential: An accessory building, portion of a main building, or building attached thereto, used for storage of private motor vehicles. [B.C.Z.R., 1955; Bill No. 70, 1988.]

Garage, Service: A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale. [B.C.Z.R., 1955.]

Garden Center: A place of business where garden related products, horticultural materials or produce are sold to the retail customer. A garden center may include a nursery or controlled-environment structures. [Bill No. 41, 1992.]

Pet. #2



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at

Northwest corner of Old Eastern Avenue and
Essex Avenue

which is presently zoned

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

A non conforming use for a service garage, service bays and sale of fuel.

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

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

Contract Purchaser/Lessee

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner.

John B. Gontrum

(Type or Print Name)

Signature

814 Eastern Blvd.

Address

(410) 686-8274

Phone No

Baltimore

City

MD

State

21221

Zipcode

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

Legal Owner(s)

Thomas Hargis

(Type or Print Name)

Signature

(Type or Print Name)

Signature

1324 Old Eastern Avenue

Address

(410) 391-8774

Phone No

Baltimore

City

MD

State

21221

Zipcode

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

John B. Gontrum

Name

814 Eastern Blvd.

Address

(410) 686-8274

Baltimore, MD 21221

Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

DATE

Per. # 3

on the north 59 degrees east 100 $\frac{1}{2}$ perches line of that part of said tract of land heretofore conveyed by George M Gill trustee to Thomas Gorsuch by deed bearing date August 2 1861 and recorded in Liber 3 H C No 33 folio 27 &c thence running with and bounding on said line north 59 degrees east 42 $\frac{1}{2}$ perches to the end thereof thence still bounding on the outlines of said part conveyed as aforesaid the two following courses and distances South 38 $\frac{1}{2}$ degrees east (being erroneously called south 30 $\frac{1}{2}$ degrees east in said original deed) 116 perches to a stone and thence south 2 $\frac{1}{2}$ degrees east 131 perches to the place of beginning Containing 94 $\frac{1}{2}$ acres and 24 square perches of land more or less

Saving and excepting therefrom two parcels of ground containing about twenty-six acres described in a Partial Release of Mortgage from Clarence E Bladwin to Henry H Roberts and wife dated December 16th 1922 and recorded among the Mortgage Records of Baltimore County in Liber W P C No 536 folio 584 &c

Being the same land and premises which by deed dated February 8th 1921 and recorded among the Land Records of Baltimore County in Liber W P C No 536 folio 464 &c was conveyed by Thomas H Robinson attorney to the said Henry H Roberts and Elizabeth M Roberts his wife

Together with the improvements thereon and the rights and appurtenances thereto belonging or appertaining

To have and to hold the above granted property unto the said Second National Bank of Towson a body corporate its successors and assigns forever in fee simple

As witness my hand and seal the the day and year first above written
Test
Mary G Kone
Elmer J Cook (SEAL)
Assignee

State of Maryland Baltimore County to wit

I Hereby certify that on this 21st day of January 1932 before me the subscriber a Notary Public of the State of Maryland in and for Baltimore County aforesaid personally appeared Elmer J Cook assignee and acknowledged the foregoing deed to be his act

As witness my hand and Notarial Seal
(Notarial Seal) Mary G Kone
Notary Public

Recorded Jan 27 1932 at 2.30 P M and Exd per Louis McL Merryman Clerk

RECORDED 1932

4168 : This Deed made this 16th day of December in the year one thousand
Edward Leary & Wf : nine hundred and thirty-one by and between Edward Leary and Maggie
Deed to : Leary his wife of Baltimore County in the State of Maryland of the
Salvatore Fiorenza & Wf : first part and Salvatore Fiorenza and Caterina Fiorenza his wife
: of the second part

Witnesseth that in consideration of the sum of five dollars and other good and valuable considerations this day paid the receipt whereof is hereby acknowledged the said Edward Leary and Maggie Leary his wife do grant and convey unto the said Salvatore Fiorenza and Caterina Fiorenza his wife as tenants by the entireties their assigns the survivor of them and the heirs and assigns of such survivor in fee simple all that lot of ground situate lying and being in Baltimore County aforesaid and described as follows that is to say

Beginning at a stone set at the northwest corner of Eastern Avenue and Essex Avenue said point being south eighty-three degrees (83°) forty-six minutes (46') west fourteen hundred forty-five and four-tenths (1445.05) feet along the north side of Eastern Avenue from a point where it intersects one of the lines of that lot conveyed to O G and E E Holbrook dated November 2 1886 and recorded among the Land Records of Baltimore County in Liber J W S

Pet. #4

LIBER 5304 PAGE 726

FEE-SIMPLE DEED — INDIVIDUAL GRANTOR AND GRANTEE — 40

This Deed, Made this 29th day of September

In the year one thousand nine hundred and Seventy-two-7 by and between Salvatore
Fiorenza -----

-----, of the first part, and

Marcus M. Botsaris ----- OCT-2-72 -- 1788748 -- ***339.00
OCT-2-72 1788748 -- ***200.00
of the second part. OCT-2-72 1788738 -- ***132.00
OCT-2-72 1788728 -- *****7.00

Witnesseth, that in consideration of the sum of Five (\$5.00) Dollars and other
good and valuable considerations, the receipt of which is hereby
acknowledged -----

the said Salvatore Fiorenza -----

does hereby grant and convey unto the said Marcus M. Botsaris, his -----

heirs and assigns, -----

in fee simple, all ----- that ----- lot(x) of ground, situate, lying and being in

Baltimore County -----, State of Maryland, and described as follows, that is to say:—

Beginning for the same at a stone at the northwest corner of Eastern
Avenue and Essex Avenue said point being South 83 degrees 46 minutes West
1445.05 feet along the north side of Eastern Avenue from a point where it
intersects one of the lines of the lot conveyed to O.G. and E.H. Holbrock
in a Deed dated November 2, 1886 and recorded among the Land Records of
Baltimore County in Liber JWS 155, folio 407 and running thence from said
beginning point North 6 degrees 14 minutes West 145 feet along the west side
of Essex Avenue thence/ ^{South} 83 degrees 46 minutes West 100 feet thence South 6
degrees 14 minutes East 145 feet to the north side of Eastern Avenue thence
along said avenue North 83 degrees 46 minutes East 100 feet to the place of
beginning. The improvements thereon being known as B24 Old Eastern Avenue.
BEING the same lot of ground which by Deed dated December 16, 1931 and
recorded among the Land Records of Baltimore County in Liber LMCLM 887, folio
444 was granted and conveyed by Edward Leary and wife unto Salvatore Fiorenza
and Caterina Fiorenza, his wife. The said Caterina Fiorenza departed this
life on or about the 24th day of September, 1964.

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot of ground -----and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Marcus M. Botsaris, his -----

----- heirs and assigns, -----

----- in fee simple.

And the said party of the first part hereby covenants that he has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that he will warrant specially the property granted and that he will execute such further assurances of the same as may be requisite.

Witness the hand and seal of said grantor.

TEST:

Alfred L. Brennan
Alfred L. Brennan

Salvatore Fiorenza [SEAL]
Salvatore Fiorenza
----- [SEAL]

State of Maryland, County of Baltimore -----, to wit:

I HEREBY CERTIFY, That on this 29th day of September -----, 19 72, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County -----, personally appeared Salvatore Fiorenza -----

known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

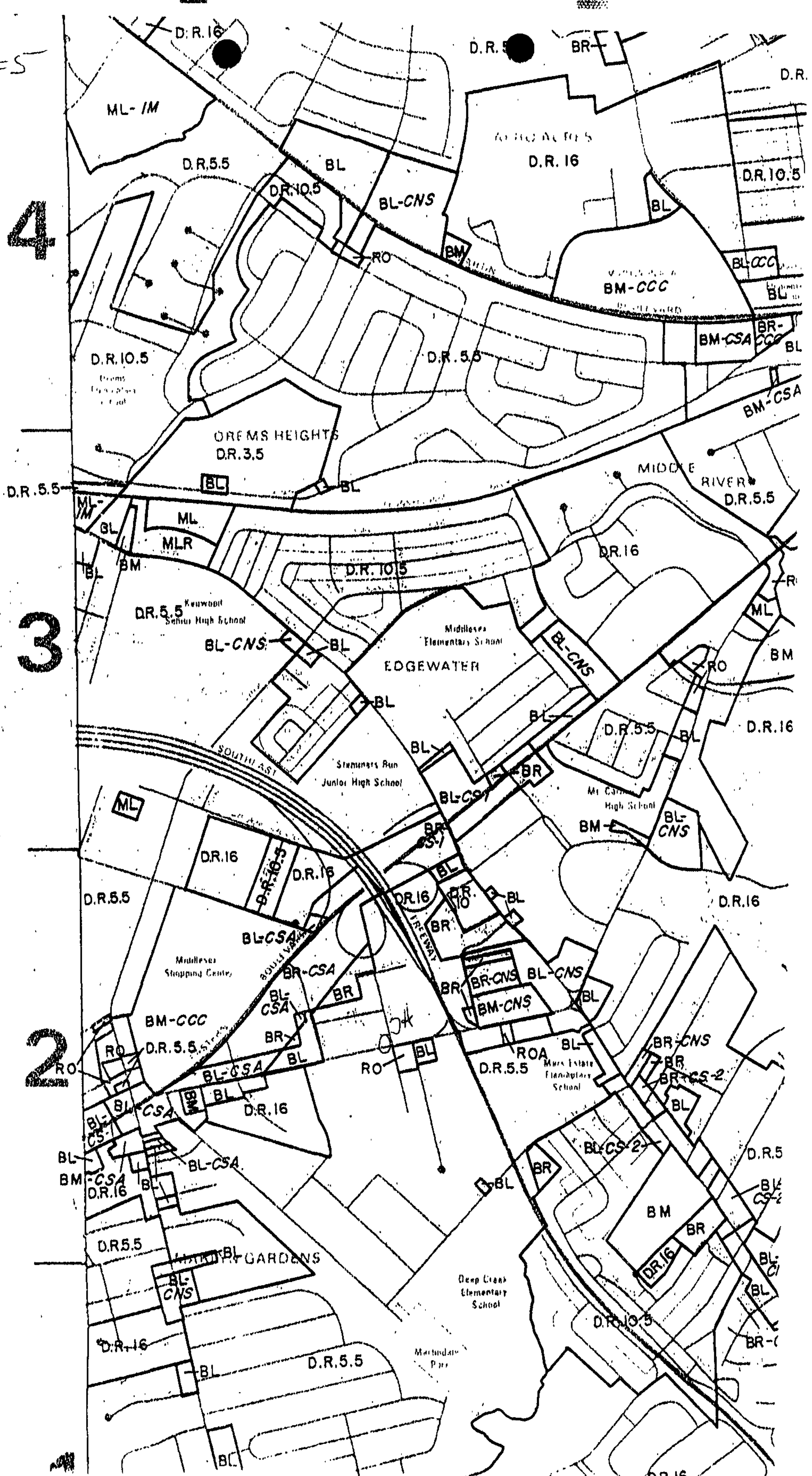
My Commission expires:

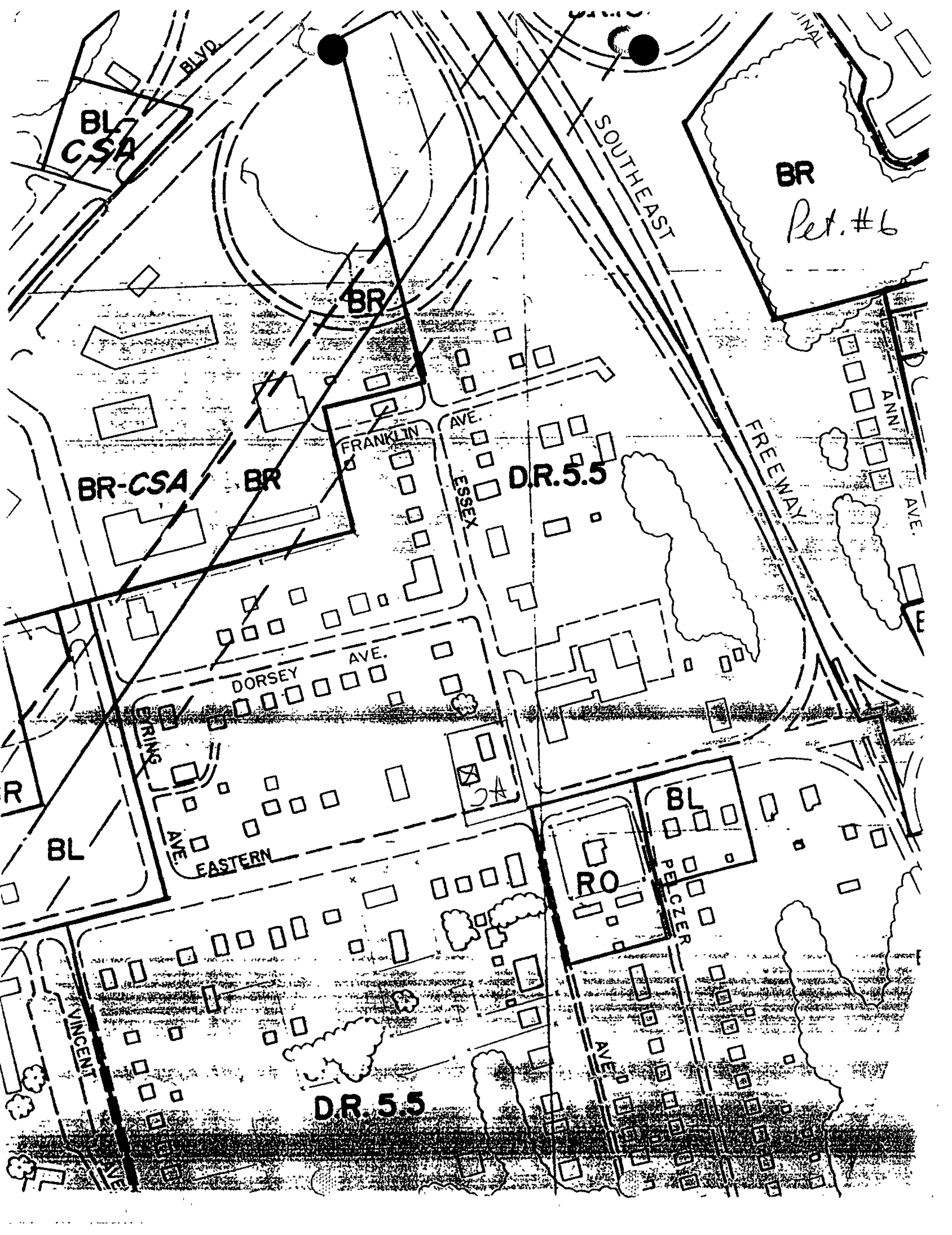
July 1, 1974



Alfred L. Brennan
Alfred L. Brennan Notary Public 10
Rec'd for record OCT 2 1972 at 12 PM
Per Elmer H. Kahline, Jr., Clerk
Mail to Brennan & Brennan
Receipt No. 7.00

2





BL
CSA

BLVD.

BR

BR

Ret. #6

BR-CSA

BR

FRANKLIN

AVE.

DR. 5.5

ESSEX

FREQUENCY

ANN

AVE.

DORSEY

AVE.

BRING

AVE.

EASTERN

BL

BL

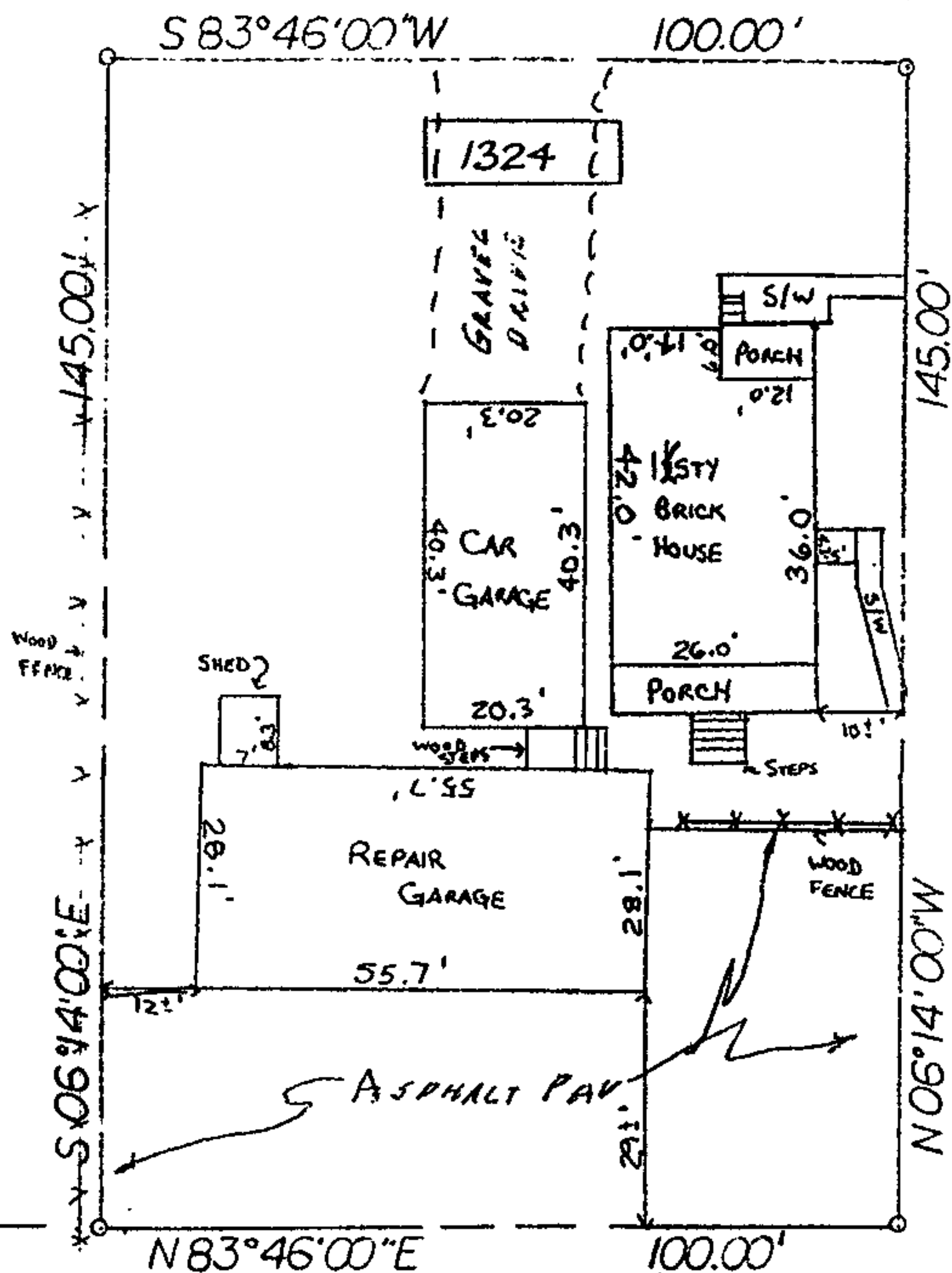
RO

PACZER

VINCENT

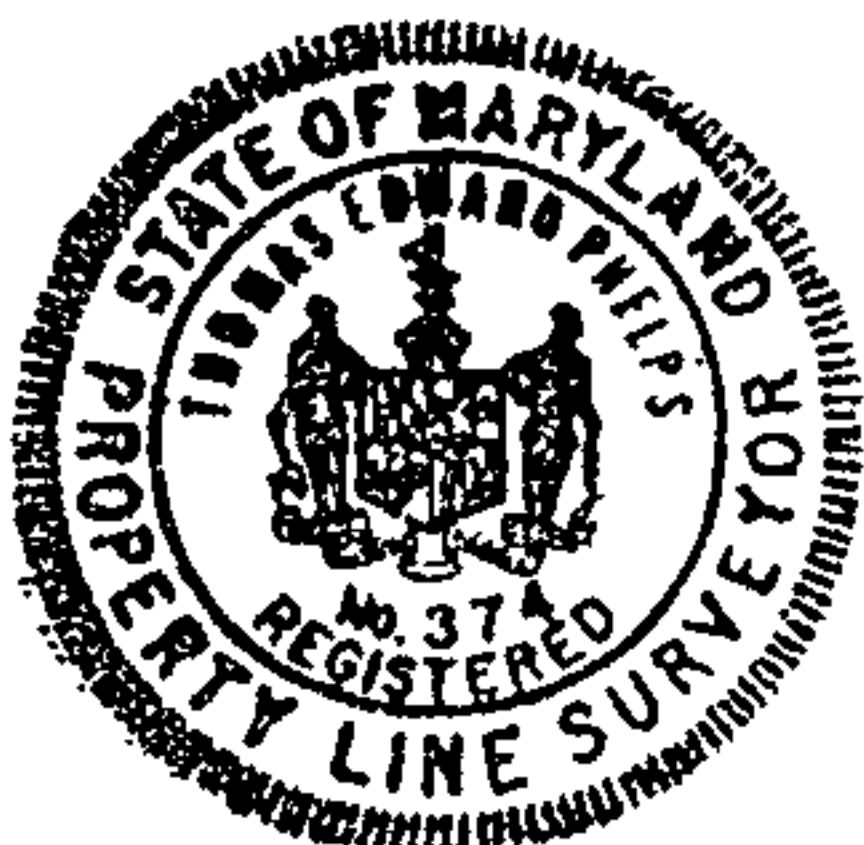
DR. 5.5

AVE.



ESSEX AVENUE 40'R/W

OLD EASTERN AVENUE 80' R/W



THOMAS E. PHELPS AND ASSOCIATES, INC.
REGISTERED PROPERTY LINE SURVEYORS
945 BARRON AVENUE
BALTIMORE, MARYLAND 21221
OFFICE: (301) 574-8744

Scale 1"=30'... Date 8-22-94..

Remarks:

B1011

Pet #8
15/1-3

City No. 15-06-201150

TEXACO STA

STATE OF MARYLAND

19098

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

FIELD WORK SHEET FOR COMMERCIAL PROPERTY

Dist.	Map	Block	Parcel	Use	Building	of	Buildings
15		10/219 72	19	19	19	19	19
Actual Cost		41000					
Ind. Market							
Reported Income							
Gross Sales							
Building No.	Phy. Cond.	FAIR	Dimensions				
Use SERVICE STA	Date Built	1953 REMODEL	Perm.	166			Ht.
Type CB - STL OLD	Grade	AV	1970	Sq. Ft.	1540		
Stories 1	STYLE			Cu. Ft.			
Exterior	Interior		Service Features				
Foundation CB	Walls		Plumbing (2) TR				
Basement NO	Floors		Heating CHA-OL				
Walls CB BRICK 3 SIDES	Partitions		Air Cond. N/C				
Roof							
CA4-11	13.460		6/78	BRICK TRIM 111@ 25.50 = 28			
Page	Rate 2.50	Base Value					
Other Charges							
Walks							
Paving 45904 @ .30 = 13771 x 1.43 =	1964-70% = 589	1979-80	1982-83 FCV	1985-86 FCV	1988-89 FCV	19	19
Fences							
Lighting							
BASE BLDG. TOTAL	42350	20728	23558	23558	23558	23558	23558
Style Adj.							
Story Adj.							
Grade Adj.							
Local/Time Adj.							
Reproduction Cost	42350	46503	59755	69943	77435		
Depreciation - 50%		35%	40%	-45%	-48%	3-170	
Value	21175	30227	25773	35460	40260		
Assessed Value	(12700)	(15100)	(35773)				
LAND	12250						
IMP	22600						
	34850						

Remarks:

CANOPY OVER GAS ISLAND

24 x 22 = 528

50%

6/81 TEXACO SVC ST. - NO GAS

2640

1979-80

- 40% 1064

60% 1584

(850)

1982-83 FCV

1985-86 FCV

(1700)

88-89 FCV

11/86-#63

1/90-#78

TOMS AUTO

RESIDENCE AREA

Prot. #1

REGISTRATION #

UNDERGROUND LEAK SUMMARY AND TANK CLOSURE

HSWMA CASE # 90-2347 BA

DATE OPENED 5-22-90

DATE CLOSED 5-22-90

FILE NAME Tom's Tire & Auto Center

INSPECTOR'S INITIALS RB

TYPE OF CASE:

- A) PULL
B) INSTALLATION
C) SURFACE
D) LEAK INVESTIGATION

- E) COMPLIANCE CHECK
F) TANK TEST FAILURE
G) ABANDONMENT IN PLACE
H) OTHER

SPILL AFFECTED:

- A) GROUNDWATERS
B) DOMESTIC WELLS
C) SURFACE WATERS
D) A BUILDING
E) STORM DRAIN
F) SANITARY LINE

- G) UTILITY WORK OR LINES
H) REACHED ADJOINING PROPERTY
I) NONE/OTHER (SPECIFY)
J) SOILS

OWNER OF SYSTEM:

- A) MAJOR OIL COMPANY
B) LOCAL OIL COMPANY
C) PRIVATELY OWNED
SERVICE STATION
D) GOVERNMENT FACILITY
E) MARINA

- F) PRIVATE RESIDENT
G) APARTMENT
H) SCHOOL
I) COMMERCIAL BUSINESS
J) OTHER (SPECIFY)

IF UNDER TYPE OF CASE ITEM B, C OR E IS CHECKED, DO NOT FILL IN CHART BELOW
WERE OBSERVATION WELLS INSTALLED? YES NO NUMBER OF WELLS

	CAPACITY OF TANK	TANK TYPE	LINE TYPE	AGE	PRODUCT	STATUS OF TANK	LEAK FOUND
1	4000	A	A	E	A	B	A
2	4000	A	A	E	A	B	H
3	2000	A	A	E	A	B	H
4	2000	A	A	E	A	B	H
5							
6							
7							
8							
9							
10							
11							

REVIEWED BY

CODES ON REVERSE SIDE

CODES FOR USE ON REVERSE SIDE:

TYPE:

- | | |
|---------------------------------|---------------|
| A) STEEL | D) OTHER |
| B) FIBERGLASS | E) CLAD STEEL |
| C) CATHODICALLY PROTECTED STEEL | |

AGE:

- | | |
|------------------|------------------|
| A) 1 - 5 YEARS | D) 16 - 20 YEARS |
| B) 6 - 10 YEARS | E) OVER 20 YEARS |
| C) 11 - 15 YEARS | |

PRODUCT:

- | | |
|-------------|--------------|
| A) GASOLINE | G) JET FUEL |
| B) #2 OIL | H) WASTE OIL |
| C) KEROSENE | I) ASPHALT |
| D) #4 OIL | J) OTHER |
| E) #5 OIL | K) DIESEL |
| F) #6 OIL | |

LEAK FOUND IN:

- | | |
|----------------|-------------------|
| A) TANK | F) FILL PIPE |
| B) SUPPLY LINE | G) AIR POCKET |
| C) RETURN LINE | H) NONE |
| D) VENT LINE | I) OTHER |
| E) FITTINGS | J) FLEX CONNECTOR |

STATUS:

- | | |
|---------------|-----------------------|
| A) IN SERVICE | C) ABANDONED IN PLACE |
| B) REMOVED | |

M.D.A.T. REAL PROPERTY SYSTEM
BALTIMORE COUNTY

03/08/96

OWNER INFORMATION

DISTRICT: 15 ACCT NO: 1506201150

USE: COMMERCIAL

OWNER NAME: HARGIS THOMAS

MAILING ADDRESS: 1324 OLD EASTERN AV
BALTIMORE

MD 21221

PRINCIPAL
RESIDENCE
YES

TRANSFERRED

FROM: HARGIS THOMAS

DATE: 03/22/91 PRICE: \$0

DEED REFERENCE: 1) / 8739. 386
2)

POTENTIAL TAX LIABILITY

* NONE *

TAX EXEMPT: NO

PRESS: <F1> LOCATION INFO <F2> VALUE INFO

<F6> SELECT NEXT PROPERTY

M.D.A.T. REAL PROPERTY SYSTEM
BALTIMORE COUNTY

03/08/96

LOCATION INFORMATION

DISTRICT: 15 ACCT NO: 1506201150

NAME: HARGIS THOMAS

USE: COMMERCIAL

PREMISE ADDRESS
1324 OLD EASTERN AVE

ZONING

LEGAL DESCRIPTION
LT 18-19
NE COR ESSEX AV
ESSEX

MAP	GRID	PARCEL	SUBDIV	SECT	BLOCK	LOT	GROUP
97	2	371		C	F		82

PLAT NO :
PLAT REF: 9/ 74

SPECIAL TAX AREAS -

PRIMARY STRUCTURE DATA
YEAR BUILT ENCLOSED AREA
0000

PROPERTY LAND AREA
14,500.00 SF

COUNTY
USE
20

PRESS: <F1> OWNER INFO <F2> VALUE INFO

<F6> SELECT NEXT PROPERTY

M.D.A.T. REAL PROPERTY SYSTEM
BALTIMORE COUNTY

03/08/96

VALUE INFORMATION

DISTRICT: 15 ACCT NO: 1506201150

NAME: HARGIS THOMAS

USE: COMMERCIAL

	BASE VALUE	CURRENT VALUE AS OF 01/01/94	PHASE-IN VALUE AS OF 07/01/96	PHASE-IN ASSESSMENTS AS OF 07/01/95	PHASE-IN ASSESSMENTS AS OF 07/01/96
LAND :	84,500	127,000			
IMPTS :	85,640	98,000			
TOTAL :	170,140	225,000	225,000	82,680	90,000

PREF LAND: 0 0 0 0 0

PARTIAL EXEMPT ASSESSMENTS
CODE 07/01/95 07/01/96
COUNTY 000 0 0

STATE 000
MUNICIPAL 000

0 0
0 . 0

PRESS: <F1> OWNER INFO <F2> LOCATION INFO

<F6> SELECT NEXT PROPERTY

OWNER INFORMATION

M.D.A.T. REAL PROPERTY SYSTEM
BALTIMORE COUNTY

07/29/96

Plot #3

DISTRICT: 15 ACCT NO: 1513400380

USE: RESIDENTIAL

OWNER NAME: HARGIS THOMAS
STOPFORD LYNNE
MAILING ADDRESS: 825 WOODROW AV
BALTIMORE

MD 21221

TRANSFERRED
FROM: FROST DONALD L

DATE: 02/18/93 PRICE: \$132,000

DEED REFERENCE: 1) / 9606/ 398
2)

POTENTIAL TAX LIABILITY

* NONE *

TAX EXEMPT: NO

PRESS: <F1> LOCATION INFO <F2> VALUE INFO

<F6> SELECT NEXT PROPERTY

LOCATION INFORMATION

M.D.A.T. REAL PROPERTY SYSTEM
BALTIMORE COUNTY

07/29/96

DISTRICT: 15 ACCT NO: 1513400380
NAME: HARGIS THOMAS

USE: RESIDENTIAL

PREMISE ADDRESS
825 WOODROW AVE

ZONING

LEGAL DESCRIPTION

DEEP CREEK AVENUE PARK

MAP GRID PARCEL SUBDIV SECT BLOCK LOT GROUP
97 15 366 33 82PLAT NO :
PLAT REF: 7, 2

SPECIAL TAX AREAS -

PRIMARY STRUCTURE DATA
YEAR BUILT ENCLOSED AREA
1924 1,020 SFPROPERTY LAND AREA
10,260.00 SFCOUNTY
USE
34

PRESS: <F1> OWNER INFO <F2> VALUE INFO

<F6> SELECT NEXT PROPERTY

VALUE INFORMATION

M.D.A.T. REAL PROPERTY SYSTEM
BALTIMORE COUNTY

07/29/96

DISTRICT: 15 ACCT NO: 1513400380
NAME: HARGIS THOMAS

USE: RESIDENTIAL

	BASE VALUE	CURRENT VALUE AS OF 01/01/94	PHASE-IN VALUE AS OF 07/01/96	PHASE-IN ASSESSMENTS AS OF 07/01/95	AS OF 07/01/96
LAND :	103,810	98,060			
IMPTS :	28,880	29,410			
TOTAL :	132,690	127,470	127,470	50,980	50,980

PREF LAND: 0 0 0 0 0

PARTIAL EXEMPT ASSESSMENTS

CODE 07/01/95 07/01/96

COUNTY 000 0 0

STATE 000 0 0
MUNICIPAL 000 0 0

PRESS: <F1> OWNER INFO <F2> LOCATION INFO
<F6> SELECT NEXT PROPERTY

M.D.A.T. REAL PROPERTY SYSTEM 07/29/96
OWNER INFORMATION BALTIMORE COUNTY

DISTRICT: 15 ACCT NO: 1506201150

USE: COMMERCIAL

OWNER NAME: HARGIS THOMAS

PRINCIPAL
RESIDENCE
YES

MAILING ADDRESS: 1324 OLD EASTERN AV
BALTIMORE MD 21221

TRANSFERRED

FROM: HARGIS THOMAS

DATE: 03/22/91 PRICE: \$0

DEED REFERENCE: 1) / 8739/ 386
2)

POTENTIAL TAX LIABILITY

* NONE *

TAX EXEMPT: NO

PRESS: <F1> LOCATION INFO <F2> VALUE INFO <F5> RETURN TO LIST SCRIN
<F6> SELECT NEXT PROPERTY

M.D.A.T. REAL PROPERTY SYSTEM 07/29/96
VALUE INFORMATION BALTIMORE COUNTY

DISTRICT: 15 ACCT NO: 1506201150

NAME: HARGIS THOMAS

USE: COMMERCIAL

	BASE VALUE	CURRENT VALUE AS OF 01/01/94	PHASE-IN VALUE AS OF 07/01/96	PHASE-IN ASSESSMENTS AS OF 07/01/95	AS OF 07/01/96
LAND :	84,500	127,000			
IMPTS :	85,640	98,000			
TOTAL :	170,140	225,000	225,000	82,680	90,000

PREF LAND: 0 0 0 0 0

PARTIAL EXEMPT ASSESSMENTS

	CODE	07/01/95	07/01/96
COUNTY	000	0	0
STATE	000	0	0
MUNICIPAL	000	0	0

PRESS: <F1> OWNER INFO <F2> LOCATION INFO <F5> RETURN TO LIST SCRIN
<F6> SELECT NEXT PROPERTY

M.D.A.T. REAL PROPERTY SYSTEM 07/29/96
LOCATION INFORMATION BALTIMORE COUNTY

DISTRICT: 15 ACCT NO: 1506201150

NAME: HARGIS THOMAS

USE: COMMERCIAL

PREMISE ADDRESS
1324 OLD EASTERN AVE

ZONING

LEGAL DESCRIPTION
LT 18-19
NE COR ESSEX AV
ESSEX

97

2

371

C

F

82

PLAT NO :

PLAT REF:

7/ 74

SPECIAL TAX AREAS -

PRIMARY STRUCTURE DATA
YEAR BUILT ENCLOSED AREA
0000

PROPERTY LAND AREA
14,500.00 SF

COUNTY
USE
20

PRESS: <F1> OWNER INFO <F2> VALUE INFO

<F5> RETURN TO LIST SCRIN

<F6> SELECT NEXT PROPERTY

PARKING STRIPING

CO INC.

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striping • seal coating

PARKING AREA CLEANING

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PROMPT 7 DAY SERVICE
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823 EAST BALTIMORE STREET BALTIMORE, MARYLAND 21202

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ADVANCE BUSINESS SYSTEMS & SUPPLY COMPANY

10755 York Rd Cockeysville----- 252-4800
Cashman M A Plumbing & Heating Inc
Ellicott City----- 465-4227
Columbia Business Systems
10233 Westleigh Dr Columbia----- 997-5928
Enoch John J Inc
Short Term Rentals
5525 Harford Rd Baltimore----- 254-0800
Monroe Systems For Business
8967 Yellow Brick Rd Rosedale----- 574-8989

OLYMPIA --

AUTHORIZED SALES & SERVICE
MARYLAND OFFICE SYSTEMS INC
8515 Loch Raven Blvd Towson----- 661-0830

WHITAKER BROTHERS BUSINESS MACHINES INC

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SALES • SERVICE • RENTALS
GSA/D.O.D. APPROVED
DESTROYIT • INTIMUS • GBC
SHREDDEX • POWERSHRED • WJ
1504 Joh Avenue
Baltimore MD----- 410-536-5200

PAPER TOWEL HOLDERS & DISPENSERS

United Sanitary
1901 N Howard St Baltimore----- 539-2305

PAPER TOWELS

Eagle Paper & Chemical Co Inc
809 W Baltimore St Baltimore----- 837-4040
UNISOURCE-MONUMENTAL PAPER COMPANY
Serving Metro Balto DC VA----- 945-1370
United Sanitary
1901 N Howard St Baltimore----- 539-2305

Paper-Waste

SEE Waste Paper

Paperhangers

SEE Paper Hangers

YOUR AD IN THE YELLOW PAGES
IS ANOTHER STORE WINDOW.

PARACHUTE JUMPING INSTRUCTION

AFF EAST INC/SKYDIVE CHAMBERSBURG
Toll Free----- 800 526-3497

PARALEGALS

Maryland Paralegal Associates
231 St Paul Place Baltimore----- 837-7575
Paralegal Offices Of Albert Carter
636 N Gilmore St Baltimore----- 625-1536

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10895 Guilford Rd Anple Jctn----- 880-4828

Garbage Gobblers Inc

12456 Wolbert Way Bradshaw----- 538-5223

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825 Woodrow Av Essex----- 391-0863

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9119 Hines Rd Baltimore----- 256-8320

CONTINUED NEXT COLUMN

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113 N Collington Av Baltimore----- 301 470-7027

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47 Lerner Ct Perry Hall----- 301 688-2516

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Pro-Mark Inc 126 Church Ln Cockeysville----- 666-3310

Site Works Construction Co Inc

1862 Jackson Grove Rd Odenton----- 551-5255

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Withdrawal from social activities. Excessive anger. These could be the first warning signs of a mental illness. Unfortunately, most of us don't recognize the signs. Which is tragic. Because mental illness can be treated. In fact, 2 out of 3 people who get help, get better. For a free booklet about mental illness, call the National Mental Health Association:

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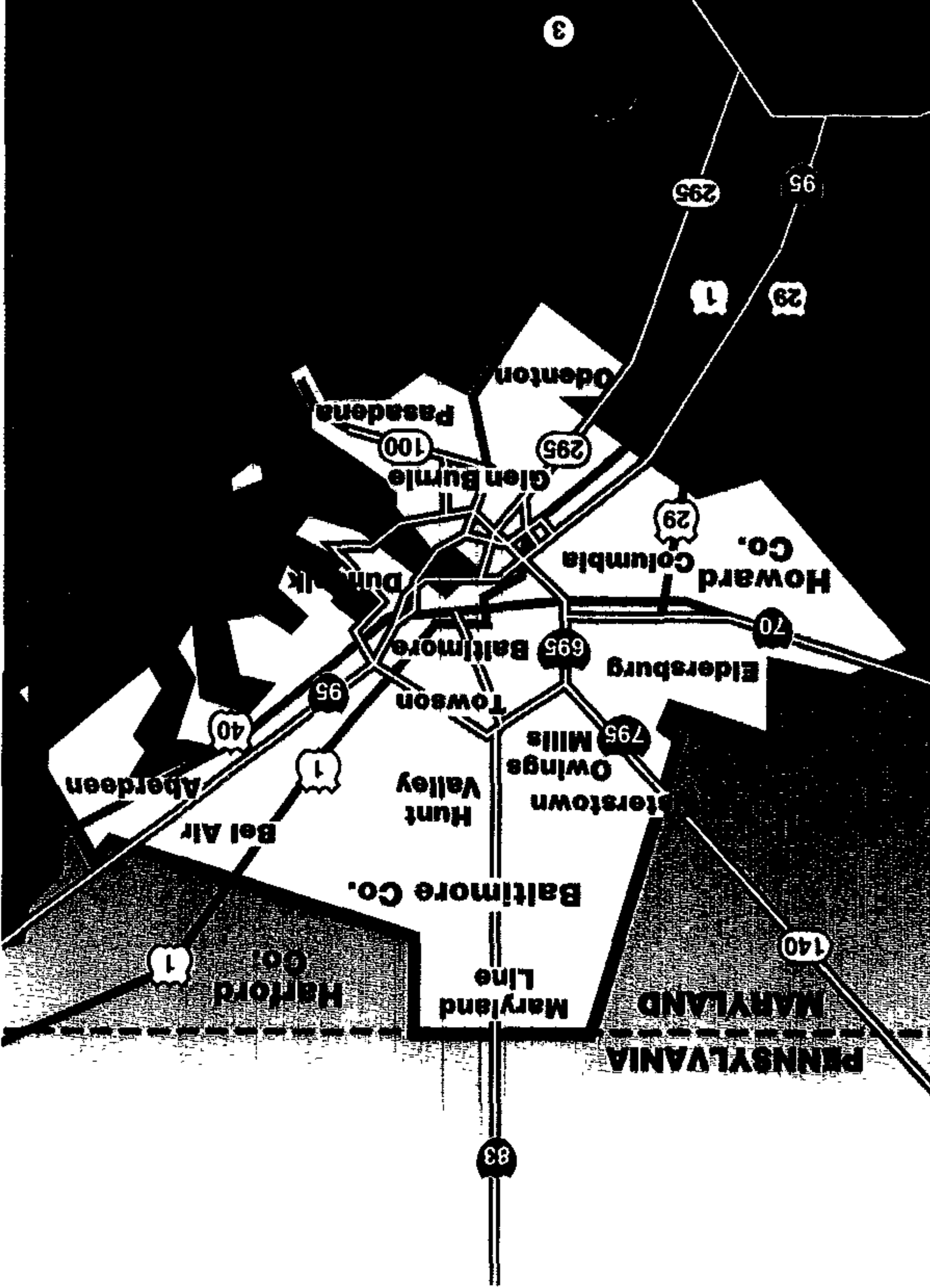
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Plot #6

Baltimore County Office of Planning
401 Bosley Avenue Towson Maryland 21204
(410) 887-3480

1996 COMPREHENSIVE ZONING MAP APPLICATION

This form and required material must be presented in person

Issue No. <u>9-CAS</u> Council District <u>7th</u> Planner <u>Dr. H. Mayhew</u>		OFFICE USE ONLY Received on <u>10 / 31 / 98</u> Fee (non-refundable) <u>500.00</u> Receipt No. <u>012432</u>
---	--	---

APPLICANT INFORMATION

Thomas Hargis
1. Name

N/A
2. Organization (if applicable)

825 Woodrow Ave.
3. Mailing Address

Baltimore, MD 21221
4. City, State, Zip

H (410) 389-9086 (Beeper)
B (410) 391-8774 (Work)
5. Home, Business Phone

John B. Gontrum, Esq.
6. Attorney or Representative

Romadka, Gontrum & McLaughlin, P.A.
Firm name (if applicable)

814 Eastern Blvd.
Address

Baltimore, MD 21221
City, State, Zip

(410) 686-8274
Business Phone Number

PROPERTY INFORMATION

Thomas Hargis
7. Property Owner's Name

0.3329 Acres
9. Acreage of Property

1 5 1 5 0 6 2 0 1 1 5 0
11. Election Dist. (2 digit) Property tax number (10 digit)

Election Dist. (2 digit) Property tax number (10 digit)

Election Dist. (2 digit) Property tax number (10 digit)

1324 Old Eastern Ave 21221
8. Property Street Address Zip

N.W. Corner
@ Essex Avenue and Old Eastern Ave.

10. Distance to nearest street/intersection (name street)
Map 97 / P. 371

12. Property tax map number / parcel number

Property tax map number / parcel number

Property tax map number / parcel number

RECLASSIFICATION INFORMATION

0.3329 Acres
13. Acreage of land requested for rezoning

0.3329 Acres D.R. 5.5.
15. Existing zoning (acres per zone)

Service Garage & light bus.
17. Existing Use of Parcel

F-3 N.E. 2-H
19. 1000' scale zoning map no. 200' scale zoning map no.

79-329-V
14. Zoning History (issue/case #, year, type)

~~0.3329 Acres~~ 0.3329 Acres B.M. or B.L. or B.L.R.
16. Requested zoning (acres per zone)

Light bus, or service garage
18. Proposed Use of Site

THE INFORMATION SHOWN ON THIS FORM IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE

(SIGNATURE)

OWNER ACKNOWLEDGEMENT: Are you the owner? N Y X If yes, review and sign below.

- I hereby grant permission to Baltimore County for any required inspections of my property in regard to the subject zoning request.
- I hereby acknowledge that if any rezoning occurs, a change in the property tax assessment and/or transfer taxes may result for which the property owner would be responsible. Further, I understand that if this zoning request is granted, it does not guarantee the issuance of plan approval or building permit. At the time of development processing, all County, State, and Federal requirements in effect at that time must be satisfied.
- I hereby acknowledge that the raising of an issue in no way guarantees that the requested zoning will be applied to the parcel by the County Council upon adoption of the Comprehensive Zoning Map.

Thomas Hargis
Owner Name (Please Print)

Signature



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES

TOWSON, MARYLAND 21204

John R. Ring
BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B109211 CONTROL #: C-1983-91 DIST: 15 PREC: 17
DATE ISSUED: 10/16/91 TAX ACCOUNT #: 1506201150 CLASS: 20

PLANS: CONST 0 PLOT T R PLAT DATA 0 ELEC NO PLUM NO
LOCATION: 1324 OLD EASTERN AVE
SUBDIVISION: ESSEX

OWNERS INFORMATION

NAME: HARGIS, THOMAS
ADDR: 1324 OLD EASTERN AVE 21221

TENANT:

CONTR: OWNER

ENGR:

SELLR:

WORK: CONSTRUCT 20X40X23=800SF STORAGE SHED ON SIDE
OF PROPERTY. REPLACES SAME SIZE SHED IN SAME
LOCATION RAZED UNDER PERMIT #B109213
PLANS & DATA SHEETS WAIVED. G.M. 10/16/91.
REISSUED TO CORRECT CONTROL & SHOW RA PERMIT

BLDG CODE: BOCA CODE

RESIDENTIAL CATEGORY

ESTIMATED PROPOSED USE

10,000.00 EXISTING USE

TYPE OF IMPRV: NEW BUILDING CONSTRUCTION

USE: SERVICE STATION, REPAIR GARAGE

FOUNDATION: BLOCK

SEWAGE: PUBLIC EXIST

BASEMENT: NONE

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 100/100X145/145

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: 40/40

SIDE STR SETB:

REAR SETB: NC

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES.

Prot. # 9



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES
TOWSON, MARYLAND 21204

John R. Reing
BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B109213 CONTROL #: RA DIST: 15 PREC: 17
DATE ISSUED: 10/16/91 TAX ACCOUNT #: 1516201150 CLASS: 20

PLANS: CONST. & ERECT. OF SERVICE STATION & STORAGE SHED
LOCATION: 1324 OLD EASTERN AVE
SUBDIVISION: ESSEX

OWNERS INFORMATION

NAME: HARGIS, THOMAS
ADDR: 1324 OLD EASTERN AVE 21221

TENANT:

CONTR: OWNER

ENGNR:

SELLR:

WORK: RAZE 20X40X2340X23=800SF STORAGE SHED ON SIDE
OF PROPERTY. TO BE TORN DOWN AND DEBRIS HAULED
TO APPR. SANITARY LANDFILL. REFER TO B109211
C-1983-91 FOR NEW CONST. PERMIT EXPIRES 90 DAYS
FROM ISSUE DATE. WORK HAS BEEN COMPLETED.

BLDG. CODE: BOCA CODE
RESIDENTIAL CATEGORY:

OWNERSHIP: PRIVATELY OWNED

ESTIMATED \$ PROPOSED USE: SERVICE STATION & STORAGE SHED TO BE RAZED
1,000.00 EXISTING USE: SERVICE STATION & STORAGE SHED

TYPE OF IMPRV: WRECKING

USE: INDUSTRIAL STORAGE BUILDING

FOUNDATION: BLOCK

SEWAGE: PUBLIC EXIST

BASEMENT: NONE

WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 100/100X145/145

FRONT STREET:

SIDE STREET:

FRONT SETB: NC

SIDE SETB: NC/NC

SIDE STR SETB:

REAR SETB: NC

Prot # 10

PETITION

We the undersigned residents of the neighborhood surrounding the property located at 1322 Old Eastern Avenue and known as Marks Auto Repair, are signing this petition as a means of expressing our disapproval of the request to rezone this property. This property is currently being used as an auto repair shop and we feel that rezoning it to allow for the sale of petroleum products will only make a bad situation even worse.

We as a neighborhood we have been dealing with the current operators of the garage for over two years. In that time we have had to enlist the assistance of our County Councilman Lewis DePazzo, the County Executive Mr. Ruppertsberger and the Traffic Engineer's Office. The operators of this facility, and the owner of the property, have had a total disregard for the safety of those who live around the business. For years they parked wherever they wanted to and left vehicles parked along the streets for weeks at a time. It was only after we enlisted the assistance of those mentioned above that the parking and traffic problems were somewhat resolved.

The business property is so full of vehicles waiting to be worked on that the owners of the business continually park their overflow along the streets until they can move them onto the lot. We find it particularly difficult to see how adding gasoline pumps could even be possible unless more of these vehicles are moved off the lot and parked along the streets.

We feel that for these reasons and out of a continued concern for the safety of those who live in this neighborhood that this request not be approved.

Sincerely,

NAME:

ADDRESS:

PHONE:

Beth Ann Holbrook	6 N Essex Ave	686-8346
Ma Martin	307 Townsend Rd.	687-4385
Don J McComb	101 N. Essex Ave	686-0605
Jillanne McCombs	101 N. Essex Ave	686-0605
Christine D McCombs	101 N. Essex Ave	1086-0605
Alice Harsl	100 N ESSEX AVE	391-4603
C Eschway	6 N. ESSEX AVE	410-682-4732
J. H. Schuch	1325 Dorsey Ave	682-5009
Jean Schuch	1325 DORSEY AVE	682-5009
John D Kolodziej	1323 Dorsey Ave.	574-3597
Vince Dab-7	1321 Dorsey Ave	682-5925
Mary E Dabecce	1321 Dorsey Ave	682 5925
Lena Williams	1324 DORSEY AVE	686 0964
Mary Jane Huber	102 N. Essex Ave	687-4665
Gary R. Briggs	1204 EASTERN AVE	577-9546
Loretta Briggs	104 N. Essex Ave	686-9549
J. Mark Briggs	106 N. ESSEX AVE.	687-4335
Richard L. Stuck	1407 Franklin Ave	687-4368

Prot. 14A

REQUEST FOR MOTOR VEHICLE ADMINISTRATION RECORDS

 Maryland Department of Transportation MOTOR VEHICLE ADMINISTRATION 8601 RITCHIE HIGHWAY, N.E. GLEN BURNIE, MARYLAND 21062	☐ \$ 5.00 NON-CERTIFIED RECORD	☐ GR	☐ CK
	☒ \$10.00 CERTIFIED RECORD	☒ C	☐ CC

PLEASE COMPLETE THE INFORMATION AS APPLICABLE

TYPE OF RECORD:

- ☐ 3 Year Driving Record
- ☐ Complete Driving Record (All information in MVA Data Base). Available to: Individual of Record, Defendant's Attorney, Police or Judicial System, and Authorized Representatives of any Federal, State, or Local Government.
- ☐ Application For Driver's License/Identification Card
- ☐ Title Record
- ☒ Registration Record
- ☐ Other _____

DRIVER LICENSE NO. / SOUNDEX NO.		DATE OF BIRTH	
LAST NAME		FIRST	FULL MIDDLE NAME
ADDRESS IN FULL		CITY	STATE ZIPCODE
TITLE NO.	TAG NO. 8059 25M	VEHICLE IDENTIFICATION NO.	
REASON FOR REQUEST			
PRINTED NAME OF REQUESTOR DOUGLAS K DUNN		SIGNATURE OF REQUESTOR	AGENCY

ATTORNEY'S REQUEST: I do hereby certify I am the attorney for the individual whose complete driving record is being requested.

Attorney's Signature

1/16/2305

Complete this section only if record is to be mailed.
PLEASE TYPE FULL NAME AND ADDRESS BELOW.

MD DRIVER'S LICENSE

TYPE OF ID ACCEPTED

D-500-149-465-351

SOUNDEX NO.

OTHER NO.

VERIFIED BY



DR-57 (7-95)

203 MVA 7-29-962304

\$10.00 C

RG15F

PWT 14 B

REQUEST FOR MOTOR VEHICLE ADMINISTRATION RECORDS



Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6801 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

☐ \$ 5.00 NON-CERTIFIED RECORD
☒ \$10.00 CERTIFIED RECORD

GR CK
CC

PLEASE COMPLETE THE INFORMATION AS APPLICABLE

TYPE OF RECORD:

- ☐ 3 Year Driving Record
- ☐ Complete Driving Record (All information in MVA Data Base). Available to: Individual of Record, Defendant's Attorney, Police or Judicial System, and Authorized Representatives of any Federal, State, or Local Government.
- ☐ Application For Driver's License/Identification Card
- ☐ Title Record
- ☒ Registration Record
- ☐ Other _____

DRIVER LICENSE NO. / SOUNDEX NO.		DATE OF BIRTH	
LAST NAME		FIRST	FULL MIDDLE NAME
ADDRESS IN FULL		CITY	STATE ZIPCODE
TITLE NO.	TAG NO. 59B 181	VEHICLE IDENTIFICATION NO.	
REASON FOR REQUEST			
PRINTED NAME OF REQUESTOR DOUGLAS K. DUNN		SIGNATURE OF REQUESTOR <i>Douglas K. Dunn</i>	AGENCY

ATTORNEY'S REQUEST: I do hereby certify I am the attorney for the individual whose complete driving record is being requested.

Attorney's Signature

Complete this section only if record is to be mailed.
PLEASE TYPE FULL NAME AND ADDRESS BELOW.

MD DRIVER'S LICENSE
TYPE OF ID ACCEPTED

D-500-149-465-351
SOUNDEX NO.

OTHER NO.

VERIFIED BY



DR-57 (7-95)

Regist

Prot. # 15

PETITION

We the undersigned residents of the neighborhood surrounding the property located at 1322 Old Eastern Avenue and known as Marks Auto Repair, are signing this petition as a means of expressing our disapproval of the request to rezone this property. This property is currently being used as an auto repair shop and we feel that rezoning it to allow for the sale of petroleum products will only make a bad situation even worse.

We as a neighborhood we have been dealing with the current operators of the garage for over two years. In that time we have had to enlist the assistance of our County Councilman Lewis DePazzo, the County Executive Mr. Ruppertsberger and the Traffic Engineer's Office. The operators of this facility, and the owner of the property, have had a total disregard for the safety of those who live around the business. For years they parked wherever they wanted to and left vehicles parked along the streets for weeks at a time. It was only after we enlisted the assistance of those mentioned above that the parking and traffic problems were somewhat resolved.

The business property is so full of vehicles waiting to be worked on that the owners of the business continually park their overflow along the streets until they can move them onto the lot. We find it particularly difficult to see how adding gasoline pumps could even be possible unless more of these vehicles are moved off the lot and parked along the streets.

We feel that for these reasons and out of a continued concern for the safety of those who live in this neighborhood that this request not be approved.

Sincerely,

NAME:

ADDRESS:

PHONE:

Y. A. A. A. A.	656 Essex Ave	686-0238
William A. A.	656 Essex Ave	686-0238
Anna A.	656 Essex Ave	780-1707
Woodrow V. A.	656 Essex Ave	780-1707
Mary A.	1325 Old Eastern Ave	574-7375
Margaret A.	1303 Eastern Ave	686-7397
Carroll A. A.	1308 Old Eastern Ave (21)	687-1075
Mrs. Dan E. A.	1308 Old Eastern Ave	687-1075
William C. A.	1306 Old Eastern Ave	391-3149
William C. A.	1306 Old Eastern Ave	391-3149
James C. A.	1304 Old Eastern Ave	687-9325
William C. A.	1306 Old Eastern Ave	391-3149
Sam A.	1302 Old Eastern Ave	687-0924
James A.	1306 Old Eastern Ave	686-7388
Shirley A. A.	1204 Eastern Ave	574-0546
John A.	1204 Eastern Ave	574-0546
Larry A. A.	1204 Eastern Ave	574-0546
Norma A.	1204 Old Eastern Ave	682-2319

Prot. #16

PETITION

We the undersigned members of 1st Church of Christ, Scientist, Essex, located adjacent to the property at 1322 Old Eastern Avenue and known as Marks Auto Repair, are signing this petition as a means of expressing our disapproval of the request to rezone this property. This property is currently being used as an auto repair shop and we feel that rezoning it to allow for the sale of petroleum products will only make a bad situation worse.

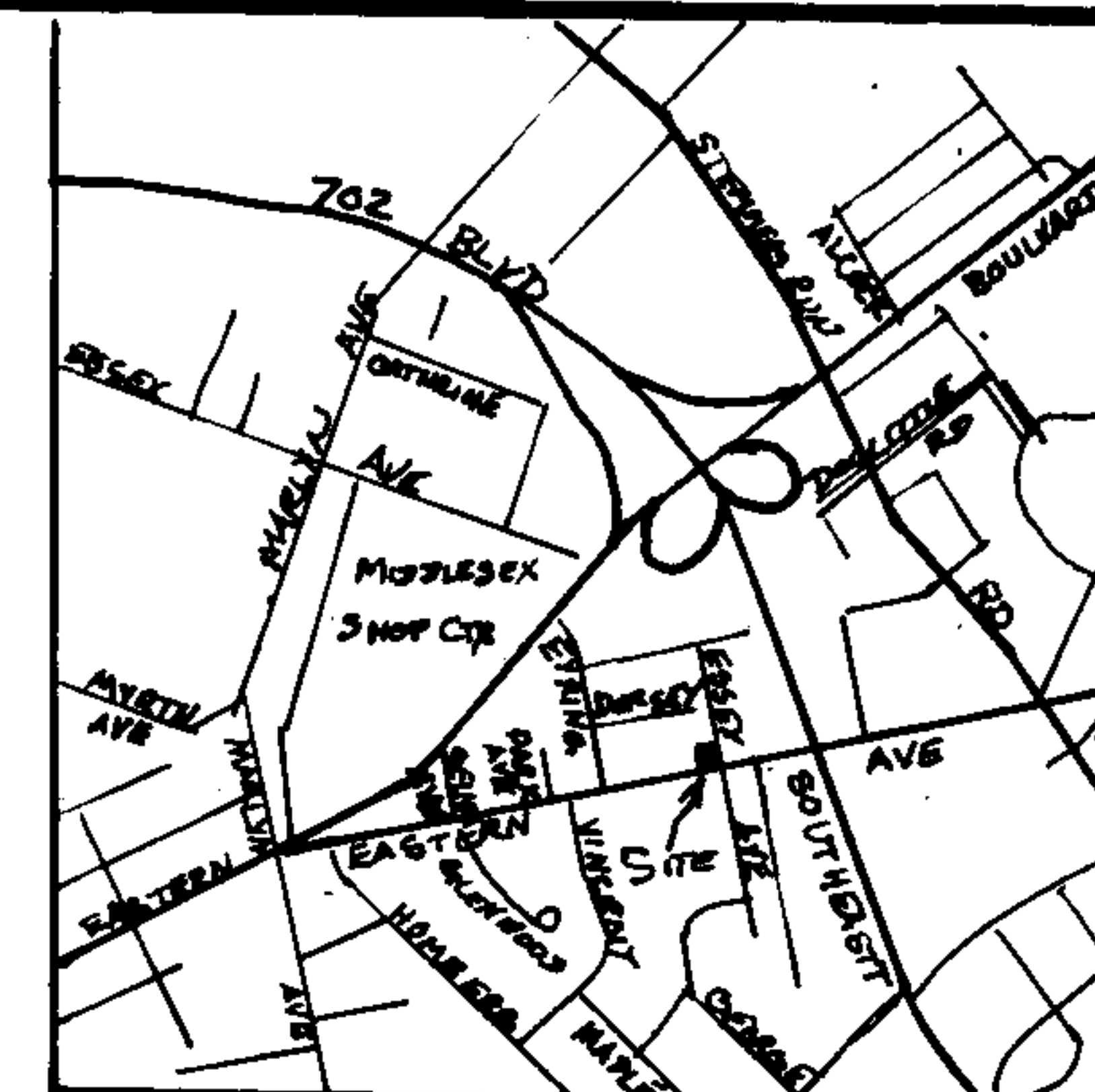
As a church, we have been dealing with the current operators of the garage for over two years. During that time we have had many occasions to speak with them concerning the dozens of vehicles which surround the business. For over a year, cars awaiting service routinely lined the street in front of our church for days and weeks at a time, limiting our use of the street for services, making egress from our parking lot dangerous due to limited visibility, and creating an unsightly appearance. We finally were forced to request and obtain no parking signs for the portion of Eastern Ave. in front of the church, thus depriving Marks and ourselves the opportunity for on street parking. While this has relieved us from having the cars parked in front of our church, it has only relocated the problem to other parts of the street, and has not solved the problem for the community as a whole.

We fail to see how the addition of gasoline pumps could in any way be viewed as a benefit to either the garage or the community, as this could only force more parked cars onto the streets surrounding the station. For the reasons outlined above, and for the overall betterment and safety of the community, we ask that the request for rezoning be disallowed.

Sincerely,

[illegible]





SCALE 1" = 2,000'

NOTES

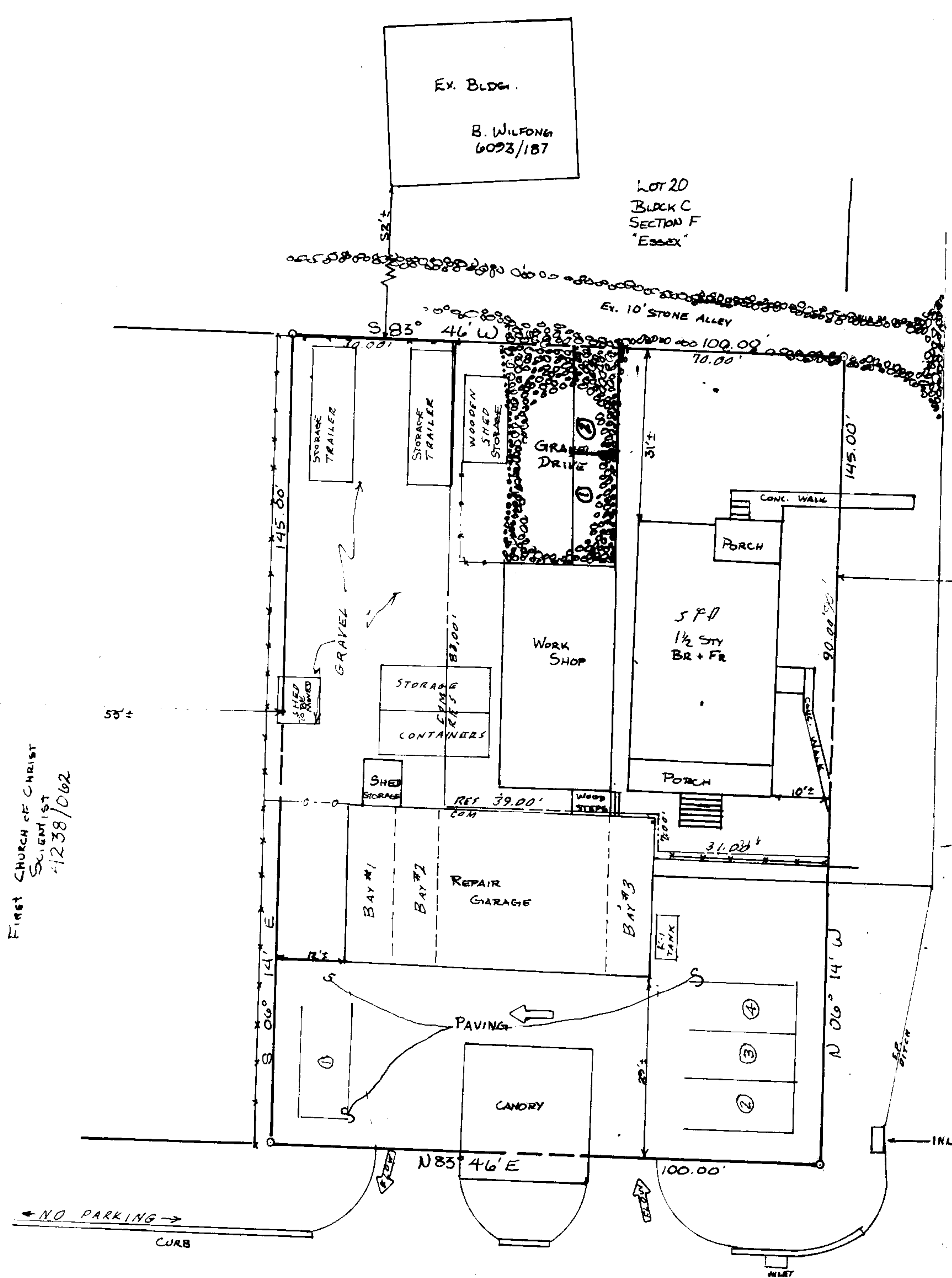
- 1) PROPERTY IS ZONED DR 5.5
- 2) PROPERTY IS NOT IN C.B.C.A.
- 3) ELECTION DISTRICT - 15
- 4) COUNCILMANIC DISTRICT - 5
- 5) CENSUS TRACT - 4503.01
- 6) REGIONAL PLANNING DISTRICT - 328
- 7) RESIDENTIAL AREA - 6,027 Sq. Ft.
- 8) COMMERCIAL AREA - 8,473 Sq. Ft.
- 9) SERVICE GARAGE AREA = 55' x 29' = 1,595 sq. ft.
- 10) PARKING REQUIRED = $1,595 \div 3.3 = 1,000 = 5.26$ OR 6 SPACES
- 11) STREET PARKING NOT PART OF SPECIAL HEARING
- 12) GARAGE IS NOT PART OF SPECIAL HEARING.
- 13) HEARING TO COVER DISPENSING K1 FUEL

AVENUE 40'
ESSEX

96-246-SPH

247

NE 24



OLD EASTERN AVENUE 80'

OWNER:
THOMAS HARGIS (410) 391-1706 HOME
1324 OLD EASTERN AVE. 391-0863 WORK
BALTO., MD 21221
8730/386
#15 06201150
DR 5.5

Pet No 1

THOMAS E. PHELPS + ASSO., INC. 945 BARRON AVENUE BALTO., MARYLAND 21221 PHONE: (410) 574-6744		
SPECIAL HEARING PLAT NONCONFORMING SPECIAL USE 1: SERVICE GARAGE 1324 OLD EASTERN AVENUE BALTIMORE CO., MARYLAND 21221		
DRAWN BY: TWV	SCALE: 1" = 20'	95276
CHECK BY: T.E.P.	DATE 11-9-95	

REVISIONS		
NO.	DATE	DESCRIPTION
1		PER CO. NOTES