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

DATE: January 29, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE**

The following cases have been finalized and closed in the Board of Appeals, therefore, I am returning the files to your office.

CASE NUMBER	NAME	DISPOSITION
CBA-00-141	DALE KIRK STAMMER LUCAS	CIRCUIT COURT AFFIRMED BOA CASE NO.: 03-C-04-4802.
97-87-SPH	EXECUTIVE AUTO PAINT & REPAIR, INC.	CIRCUIT COURT AND THE COURT OF SPECIAL APPEALS AFFIRMED THE BOA CASE NO.: 03-C-98-104.
98-191-SPH	MICHALE ZULLO, ET AL	CIRCUIT COURT GRANTED A VOLUNTARILY DISMISSAL 03-C-98-10326.
02-462-SPH	TERRY GERAHTY, ET AL	CIRCUIT COURT AND COURT OF SPECIAL APPEAL AFFIRMED THE BOARD. 03-C-04-13235.

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C96-5915

Sharon Rohrbaugh, Charlotte Pine, Kathy Tyler, and the Long Green Valley Association,	*	IN THE CIRCUIT COURT
	*	FOR
PLAINTIFFS	*	BALTIMORE COUNTY
v.	*	CIVIL ACTION
Orville Jones 9533 Belair Road Baltimore, Maryland 21236	*	Case Number:
And	*	
Executive Auto Paint and Repair, Inc 13580 Fork Road Baldwin, Maryland 21013	*	
Serve On: Paul Weber 4825 Hydes Road Hydes, Maryland 21082	*	
DEFENDANTS	*	

Case: 03-C-96-005915
CF-Civil Fili 80.00
Appearance Fee 10.00
TOTAL $90.00

COMMENT:
rohrbaugh vs jones

Receipt #199600009607
Cashier: PA CCBACOF068
06/13/96 11:05am

COMPLAINT FOR INJUNCTIVE RELIEF

The Plaintiffs, Sharon Rohrbaugh, *et al.*, by J. Carroll Holzer and Holzer and Lee, sue the Defendants, Orville Jones and Executive Auto Paint and Repair, Inc., for Injunctive relief, pursuant to Maryland Rules BB70(c)(d) and BB74, and says:

1. Plaintiffs are adjacent and adjoining property owners to the Defendants and taxpayers of Baltimore County, Maryland, owning and occupying homes in the area known as Baldwin and Long Green Valley.

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Cert Sph
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LAW OFFICE
HOLZER AND LEE
05 WASHINGTON AVENUE
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2. Defendant Orville Jones is the owner of 1.056 acres of commercial property zoned B.L.-C.R., known as 13523 Long Green Pike, located near the intersection of Long Green Pike and Fork Roads in Baldwin.

3. Defendant Jones was unable to utilize his commercially zoned property at 13523 Long Green Pike to support the septic system necessary to construct and use a commercial building placed thereon. Defendant Jones contracted with Defendant Executive Auto Paint and Repair, Inc., (hereinafter "Executive"), an adjacent property owner, to utilize Executive's property zoned RC-2, for the installation of Defendant Jones' septic system to support his commercial building.

4. The Plaintiffs objected to the extension of Jones' commercial operation onto property zoned RC-2, owned by Executive Auto Paint and Repair, Defendant. The Plaintiffs made reasonable efforts to voice their concern about the Defendants' illegal activity and to express their objection to any intrusion onto land zoned RC-2 to support a commercial enterprise. These objections took the form of inquiries to Baltimore County and correspondence to appropriate county agencies, objecting and expressing their concern in regard to Defendants' actions. All of these objections occurred prior to Plaintiffs' filing their Petition for Special Hearing. Even after Plaintiffs filed their Petition with the Zoning Commissioner, Defendants failed to request their own Special Hearing to resolve the issue raised by Plaintiffs in letters, phone calls to county officials and their Petition for Special Hearing. After being alerted on numerous occasions and over a long period of time, the Defendants failed to comply with the law and the BCZR's. Plaintiffs' Petition alleged violation of the BCZR's on the part of both Defendants. (**Exh. A**, attached hereto and incorporated herein).

5. The Zoning Commissioner of Baltimore County found Defendants' use of RC-2 property was an illegal one under the Baltimore County Zoning Regulations (**Exhibit B**, Baltimore County Zoning Commissioner's Decision, attached hereto and incorporated herein).

6. On appeal, the Baltimore County Board of Appeals likewise found Defendants' use of RC-2 property was a violation of the B.C.Z.R. (**Exhibit C**, CBA Decision, attached hereto and incorporated herein).

7. Although finding a violation of the County's zoning regulations, both the Zoning Commissioner and the CBA denied the Plaintiffs' request to stop Defendants' illegal zoning use, on the basis of estoppel; Plaintiffs appealed that portion of the CBA decision to the Circuit Court for Baltimore County.

8. The Circuit Court for Baltimore County, by decision dated March 7, 1996, the Honorable James T. Smith reversed the finding of estoppel against the Plaintiffs as a matter of law and permitted Plaintiffs to institute this action to enforce the Zoning Regulations of Baltimore County (**Exhibit D**, Opinion and Order of Judge Smith, attached hereto and incorporated herein). This decision has become final; Defendants did not file a timely appeal.

9. This is an action for an Interlocutory and Final Injunction pursuant to Maryland Rules BB70(c)(d) and BB74 against the Defendants for utilizing their property in a manner determined by the Zoning Commissioner, the CBA and the Circuit Court to be in violation of the Baltimore County Zoning Regulations as found in **Exhibits B, C,** and **D**.

10. The Plaintiffs have standing as adjacent and adjoining property owners to bring this action against the Defendants.

11. The Plaintiffs' request for Injunctive Relief is based upon the Baltimore County Code, Section 26-120 (see **Exhibit E**). The Plaintiffs are persons whose properties are adjacent to the violation and are being affected by this violation and are specifically damaged. Plaintiffs further allege that Defendant's use of his buildings and septic system on Defendant's property, in violation of the Baltimore County Zoning Regulations, may be enjoined by this Court.

12. The Defendants, by their activity of utilizing RC-2 property for Jones' commercial septic system is causing irreparable harm and damage to the Plaintiffs' rights and enjoyment of their property.

13. Defendants have indicated an intent to continue the zoning violation as described in **Exhibits B, C**, and **D**; therefore, Plaintiffs would respectfully request this Honorable Court grant an Interlocutory and Final Injunction prohibiting the Defendants from continuing the current zoning violation on said property.

14. The Plaintiffs have no adequate remedy of law.

15. The Plaintiffs allege that they will succeed on the merits for the reason that the Baltimore County Zoning Regulations do not permit the use of RC property to support a commercial use as found by the Zoning Commissioner, the CBA and the Circuit Court for Baltimore County.

16. Plaintiffs are sustaining irreparable harm by the Defendants' continued violation of the Baltimore County Zoning Regulations.

17. Plaintiffs suggest that the public interest is not served by the continuation of zoning violations to the Baltimore County Zoning Regulations wherein substantial and irreparable harm flows to the citizens of Baltimore County as a result of Defendants' violations.

WHEREFORE, Plaintiffs request that this Court grant the following relief:

A. An Interlocutory and Final Injunction prohibiting Defendants from utilizing their property in violation of the Baltimore County Zoning Regulations as previously set forth.

B. Such other and further relief as the interest of justice to the Plaintiffs may require.

Respectfully submitted,

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Plaintiffs

A:\Complaints\LGVA.Inj

IN THE MATTER OF	*	BEFORE THE
ORVILLE JONES 13523 Long Green Pike	*	ZONING COMMISSIONER
Property Owner	*	FOR
	*	BALTIMORE COUNTY
v.	*	Case No.: 93-93 SPH
LONG GREEN VALLEY ASSOCIATION, et al.	*	
Petitioners	*	

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

PETITION FOR SPECIAL HEARING

Facts

The Petitioners, Long Green Valley Association, The Greater Kingsville Civic Association and the individuals listed by name in the Petition for Special Hearing, questioned whether or not the Zoning Commissioner pursuant to Section 500.7 of the Baltimore County Zoning Regulations could approve the use of property zoned R.C. 2 and owned by Executive Auto Paint and Repair, Inc., to support a waste disposal system for a commercially zoned property (BL-CR) known as 13523 Long Green Pike owned by Orville Jones.

The property originally contained what was historically known as "Long Green Hotel." However, that building was completely razed with a new building constructed on basically the footprint of the former Long Green Hotel. The new building will contain a number of businesses including a "High's" store

Exh. A

RECEIVED
2 3 1993
ZONING COMMISSIONER

LAW OFFICES
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& LEE
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on the premises. Evidence established before the Zoning Commissioner that because of the activities of the property owner, the existing septic tank could not be used and an alternative "mound system" which could have been utilized by the property owner was destroyed as a result of compaction of the soil by agents of the property owner.

Petitioners presented Petitioner's Exhibit 1, the vicinity map which locates a septic field and septic reserve area on property owned by Executive Auto Paint and Repair, Inc. Exhibit 1 shows a two inch PCV pipe will be used to convey the pumped wastewater and sewage from the proposed septic tank upgrade to the septic reserve area on the R.C. 2 property. The pipe will cross not only the property owned by Orville Jones, but will cross a separate parcel of property owned by Executive Auto Paint and Repair, Inc. and finally utilize the R.C. 2 property of Executive.

Petitioners submitted the zoning maps for the two (2) properties in question, as well as a Deed dated May 12, 1992 between Executive Auto Paint and Repair, Inc. and Orville Jones. The Deed required Jones to pay the sum of $25,000.00 for an easement area from Executive to Jones described on the Plat, with the agreement terminating six (6) months after the services of 13523 Long Green Pike with public sewer.

Issues

The Petitioners raised the issues attached as Exhibit A to the Petition for Special Hearing raising the following:

1. That Section 1A01.2(b) B.C.Z.R. does not permit a waste disposal system not accessory to a structure on an R.C. zoned property as a use permitted as of right.

2. That Section 1A01.2(c) B.C.Z.R. does not provide for uses being granted by Special Exception for waste disposal systems not accessory to an existing building on an R.C. zoned property.

3. R.C. 2 zones do not permit utilization of such zones for, and in support of, commercial operations and that such uses are violations of Section 1A00.1; further it is in violation of the spirit and intent of such R.C. zones.

4. That such use of a waste disposal system is in violation of Section 1A00.2(a), (c).

5. That such approval by the County in this case is in violation of Kowalski v. Lamar, 25 Md. App. 493 (1975), wherein the Court interpreting the Baltimore County Zoning Regulations stated "any use other than those permitted and being carried on as a right or by Special Exception is prohibited."

6. That the waste disposal system on R.C. zoned property owned by Executive Auto is a "use" and that it is not accessory, in that "an accessory use must be customarily incidental to the principal use, serving no other principal use." In the instant case, the waste disposal system on Executive Auto property is not accessory to any principal use on that property.

Argument

The Petitioners presented the unrebutted testimony of Norman Gerber who testified as follows:

Gerber, after qualifying as an expert in Urban Planning and the Baltimore County Zoning Regulations, and as a former Baltimore County Planning Director indicated that he had reviewed all of the Plats and reports filed with the County including the Planning Office, the Department of Public Works and DEPRM. He reviewed all the comments by the County officials and re-examined the Baltimore County Zoning Regulations. Mr. Gerber reviewed the Master Plan, inspected the site and analyzed other zoning cases to determine the customary use and policy of Baltimore County.

Finally, he discussed these issues with County staff in the Office of Zoning Administration and DEPRM. Gerber then opined that the use of the septic system serving the commercial building was not permitted and in conflict with the Baltimore

County Zoning Regulations. He opined that the septic system is not located on the same lot as the business zone. By definition, the septic system cannot be an accessory use for this building by the Baltimore County Zoning Regulations. It can only be considered a principal use, not permitted in the R.C. Zone.

Further, that Baltimore County Zoning Regulations are of inclusive construction. Therefore, a use must be permitted by right or by Special Exception. Gerber testified that the Baltimore County Zoning Regulations do not permit a septic system as a principal use in the R.C. 2 Zone either as of right or by Special Exception.

Gerber further opined that a septic system is a land use and referred to the definition from the "Illustrated Book of Definitions" by Moskowitz and Lindbloom which defined land use as "land as occupied or utilized." He testified that this handbook and these definitions have been used by the Baltimore County Planning Office.

Gerber further testified that the definition of "use" contained in Zoning Regulations for Harford, Anne Arundel Counties and Fairfax County, Virginia have all been interpreted essentially that "use is the way the land is being used." This section of the R.C. 2 farm property is being dedicated to a septic system to support a commercial use in a business zone. Gerber referred again to the case of Kowalski v. Lemar to support his conclusion.

Gerber further opined that in his review of the previous County decisions dealing with the use of R.C. property or residentially zoned property, to support business activities such as parking, stormwater management pond and septic or sewerage disposal areas that in all of those cases, a Petition for Special Hearing was held to determine the appropriateness of that use. Petitioners point out that in the instant case this present dilemma was occasioned by the fact that the property owner did not petition for a Special Hearing to determine his rights to use R.C. 2 property to support his commercial use on B.L.C.R. property.

Gerber further responded to a series of four (4) alleged cases offered by the property owner to establish legitimacy and precedent for his position. Gerber analyzed the four (4) initial examples submitted by Jones to support his claim:

1. The Ridge Country Store.
2. Hereford Plaza.
3. Chestnut Ridge Country Store.
4. Parker Building.

Gerber concluded that all of those situations were dissimilar to the Long Green Hotel property owned by Orville Jones in that in all cases the commercial use and the septic system are located on property under the same ownership. Whereas, in the instant case, it is clear that the commercial use and the septic system are on properties owned by different entities and zoned for different uses.

Finally, he concluded that none of the septic systems in the four (4) above examples were located on properties zoned R.C. 2. They were in R.C. 5 zoned property or other residential zones which is a significant factor in and of itself. The legislative intent of R.C. 2 differs from that of R.C. 5.

In rebuttal, Gerber was also presented by the Property Owner with four (4) additional examples of alleged precedent cases. They are:

1. The Manor Shopping Center.
2. Kentucky Fried Chicken.
3. 9721 Belair Road.
4. Harford Road Building.

(Case references are contained in the Record for all four (4) of these cases).

In reviewing all of these properties, Gerber concluded again, that they did not affect his opinion in this case and that they were all distinguishable in that none of them were on R.C. 2 Zone property. They also were on the same lot under one ownership.

Finally, Gerber referred to the Helix Health Systems case, Case No.: 92-186 SPH, previously authored by the Zoning Commissioner in which he analyzed the definition of accessory

use or structure within Section 101 of the Baltimore County Zoning Regulations. In that case, the Zoning Commissioner concluded that an incinerator located on the same lot at Franklin Square Hospital could not serve as an accessory use of Union Memorial Hospital because the hospitals were two (2) separate and different entities. An accessory use for Franklin Square Hospital had to be on the Franklin Square Hospital site.

The Zoning Commissioner concluded, "clearly, the geographical differences preclude such a determination for such an accessory use to exist, it must, by definition be located within the same property as the principal use." This opinion was upheld by the Baltimore County Board of Appeals in the above case in a subsequent order dated July 29, 1992 by the CBA.

In summary, then, for all the above reasons, the Zoning Commissioner should find this sewerage disposal area to be in violation of the aforesaid Baltimore County Zoning Regulations.

Response

During the course of the hearing, the property owner, Orville Jones, endeavored to make the following arguments:

First, he argued that Section 1A01.2.B.5 permits this private septic system (which is clearly depicted as a private septic system in the Deed of May 12, 1992) as being a "sewer main" and thereby permitted as of right. Petitioners

respectfully suggest that under no reasonable interpretation can this private septic system be considered as a matter of right on the basis that it is a sewer main. Certainly, this private sysyem is not "a main." The remaining arguments by the Petitioner made on this point are contained in the record.

Second, the property owner raised the timeliness of this matter. The Zoning Commissioner, during the course of this portion of the argument accurately analyzed there is no triggering mechanism in the Code to initiate this matter before the Zoning Commissioner. Factually, the Petitioners indicated that until the Deed was recorded on May 12, 1992, that they were not aware of this avoidance of the zoning laws of Baltimore County.

In fact, the alleged expenses incurred by the property owner would not have been expended had he followed the proper procedure of petitioning for a Special Hearing. Furthermore, the Petitioners should not be penalized because the property owner did not follow the appropriate and proper method for resolving this issue.

Third, the property owner argued that equitably this matter of land use should not be raised by the Petitioners at this point. As the Court of Special Appeals pointed out in United Parcel Service, Inc., et al. v. People's Counsel for Baltimore County, 93 Md. App. 59 (1992), laches is not an

1997-0087

appropriate defense for an illegal use. Baltimore County and the Petitioners cannot be estopped from enforcing the Baltimore County Zoning Regulations if there is a violation.

Fourth, the property owner raised the issue of whether pursuant to Section 500.7 of Baltimore County Zoning Regulations, the Zoning Commissioner has jurisdiction in this matter. The Petitioners' cited numerous cases to support the proposition that Section 500.7 is a broad Section providing the Zoning Commissioner the right to enforce the Baltimore County Zoning Regulations.

In a review of Section 500.7, the Zoning Commissioner shall

> "have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all Zoning Regulations... The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported any non-conforming use on any premise or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these Regulations."

The Zoning Commissioner in Case No.: 92-357 SPH, a Petition for Special Hearing, Cromwell Bridge Road, Brookview Estates, previously determined that such language provided broad and sweeping authority to conduct such a hearing and

found that he had authority pursuant to this Section to entertain the merits of a Petition necessary for the proper enforcement of the Zoning Regulations.

Finally, Jones presented no evidence for support of his point on other than Property Owner Exhibits 3-10.

Petitioners would submit that all of these alleged prior cases of precedent are easily distinguishable and of no significant importance to the issue presented by the Petitioners herein.

WHEREFORE, Petitioners respectfully request the Zoning Commissioner to enforce the Baltimore County Zoning Regulations; to deny permission to utilize R.C. 2 zoned property owned by Executive Auto to serve as a waste disposal area for property owned by Oliver Jones and zoned B.L.C.R. as an impermissible use of the property owned by Executive Auto; and to further require compliance with the Baltimore County Zoning Regulations by the legal owner, Oliver Jones as it relates to the store currently being operated on the B.L.C.R. zone property.

J. CARROLL HOLZER, Esquire
Holzer, Maher, Demilio & Lee
305 West Chesapeake Avenue
Suite 105
Towson, Maryland 21204
410-825-6960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 1993, a copy of the aforegoing Petition for Special Hearing was mailed, postage pre-paid to: John Gontrum, Esquire, Romadka, Gontrum & McLaughlin, 814 Eastern Boulevard, Baltimore, Maryland 21221 and Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47, Court House, 400 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

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IN RE: PETITION FOR SPECIAL HEARING
SE/S Long Green Pike, 170' SW
of the c/l of Fork Road
(13523 Long Green Pike)
11th Election District
6th Councilmanic District

Long Green Valley Assoc., et al
Petitioners

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 93-93-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing originally filed by the Long Green Valley Association, the Greater Kingsville Civic Association, and various individuals who reside near the property which is the subject of this Petition. At the beginning of the public hearing held for this case, the Greater Kingsville Civic Association withdrew as a Petitioner. Thus, the matter proceeded through the efforts of the Long Green Valley Association and those individuals previously referred to above and designated on the Petition. The Petition seeks a determination as to whether approval should be given to permit the use of adjoining property, zoned R.C. 2 and owned by Executive Auto and Paint Repair, Inc., to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-C.R. The subject property and waste disposal system are more particularly described on Petitioner's Exhibit 2.

The vast majority of zoning petitions filed in Baltimore County are submitted by or on behalf of the owner of the property which is the subject of the Petition. However, the instant case arises for consideration in a different manner. As noted above, the Petition has been filed by the local community associations and a number of interested parties as individuals. The relief which they request pertains not to a property

Exh. B

owned by them but located within the geographic boundaries of the Long Green Valley Association.

At the hearing held in this matter, the Petitioners were represented by J. Carroll Holzer, Esquire. The property owner, Orville Jones, was represented by John Gontrum, Esquire. The parties and their counsel appeared at the public hearing held for this case at which time testimony and evidence were taken as to the issues presented. Subsequently, counsel submitted lengthy memoranda in support of their respective positions.

FINDINGS OF FACT

As is the case with many cases which present difficult legal issues, the facts in the instant case are relatively simple and largely not in dispute. As noted above, Mr. Jones owns the subject property at 13523 Long Green Pike located near the quiet country community of Baldwin. The property is located near the intersection of Long Green Pike and Fork Road. As is the case with similar commercially hubbed rural areas in Baltimore County, the subject property serves as part of the small commercial center of a rural locale. That is, although the subject property and some abutting properties are zoned for business/commercial use, this is largely an agricultural area zoned R.C. 2. The property is approximately 1.056 acres in area, is roughly square shaped, and is improved with a commercial building.

Testimony and evidence presented was that Mr. Jones acquired the subject property in April 1987 at public auction. The building located thereon at that time was built in 1904. The building was previously known as the Long Green Hotel and existed as a hotel/general store for many years. Subsequent to his acquisition, Mr. Jones decided to raze the building and replace same with another commercial use. A new building was

constructed which now houses a High's dairy store, a dentist's office and a laundromat. Further, a small parking area is provided.

The thrust of the case relates to the septic system proposed for this site. Being rural in location, the property does not enjoy public water and sewer service. Apparently, Mr. Jones originally intended that sewage disposal for the subject property would be accomplished by way of a septic system which would be situated entirely on the property. (See Jones' Exhibit 6, letter from the State of Maryland, Department of the Environment dated July 28, 1988). Specifically, Mr. Jones intended to install a sand mound sewage disposal system. Unfortunately, however, this system was never installed. Although governmental approval had been given (see letter dated October 5, 1989 from the Baltimore County Department of Environmental Protection and Resource Management {DEPRM}), the proposed sand mound septic system was rendered unusable due to disturbance of the site by heavy equipment during construction of the new building. Thus, Mr. Jones was forced to look for an alternative to satisfy his sewage disposal needs. In fact, a stop work order was issued by Baltimore County on March 29, 1991 until a suitable alternative could be found to replace the proposed system.

After exploring the options, a suitable alternative was offered by Mr. Jones in the latter portion of 1991. Specifically, the property owner reached agreement with Baltimore County to construct a private septic system on an adjacent unimproved property, pursuant to a recorded easement reserving the property for that one use. Correspondence from the Maryland Department of Natural Resources (DNR) dated November 27, 1991, and from DEPRM, dated August 26, 1991, describes the particulars of the proposed system and the County's agreement that same is appropriate and acceptable

to the reviewing government authorities. It is of particular note that the surrounding residents were well aware of these plans. Specifically, testimony and evidence received included a letter from the Long Green Valley Association to DEPRM dated November 25, 1991. That letter questioned the wisdom and propriety of the proposed off-site septic system. Mr. Jones, who received a copy of that letter, responded both to DEPRM and the Long Green Valley Association by way of his letter dated December 17, 1991. DEPRM likewise responded to Long Green Valley Association's concerns by way of correspondence dated January 2, 1992. Further, the record discloses correspondence from DEPRM to Ms. Charlotte Pine of the Long Green Valley Association on November 20, 1991. Based on this exchange of correspondence, it is clear that all concerned were well aware of Mr. Jones' proposed alternative. As noted in DEPRM's letter of January 2, 1992, the County's stop work order "will be rescinded upon compliance with all requirements set forth...and recordation of the necessary sewage disposal area easements in the Land Records of Baltimore County." Clearly, the Long Green Valley Association and its members were aware that the County and State had given their blessing to the proposed alternative septic system. Armed with the County's approval, Mr. Jones then went about the process of obtaining the necessary easements from the adjoining property owner, Executive Auto Paint and Repair, Inc. As noted above, this adjoining tract is zoned R.C. 2 and is unimproved.

Testimony and evidence presented was that Mr. Jones negotiated with Executive Auto Paint and Repair, Inc. and consummated the agreement to obtain the necessary easements. A deed was recorded among the Land Records of Baltimore County at Liber 9171, Page 356, evidencing that agreement. The deed provides that Mr. Jones was provided the right to con-

struct, lay and maintain a private septic system, in, on, through, and across the land owned by Executive Auto Paint and Repair, Inc. This easement was more fully described on a site plan of the subject property which was attached thereto. Apparently, the easement was not conditional. Moreover, Mr. Jones paid the sum of $25,000 for said easement. The easement was to continue until such time as Mr. Jones' property at 13523 Long Green Pike could be serviced with a public sewer line.

Having obtained and recorded the necessary easements, and having obtained governmental approval, Mr. Jones then went about constructing the septic system. Testimony and evidence received was that the system has been substantially completed. The High's store and dentist's office are apparently now up and running.

The instant case arose in approximately September 1992 when the Petitioners filed the subject Petition for Special Hearing. It is to be noted that this filing was made approximately four months after Mr. Jones executed and recorded the subject easement and over nine months after the County's exchange of correspondence with the community advising them of the County's approval of the proposed off-site sewage disposal system.

Having recited these facts, attention must now be given to the numerous issues presented herein. Those issues will be addressed in turn.

1) IS THIS CASE PROPERLY BEFORE THE ZONING COMMISSIONER?

As the litigants and their counsel were no doubt well aware during their presentation of the case before me, I actively participated at the Board of Appeals' level in the case entitled United Parcel Service, Inc. v. Peoples' Counsel for Baltimore County, 93 Md. App. 59, 611 A2d 993 (1992) which is presently pending on a writ of certiorari before the Maryland Court of Appeals. Since my appointment to my present position, I am

frequently reminded of the language of my dissenting opinion in that case, the opinion of the Honorable Joseph Murphy of the Circuit Court of Maryland for Baltimore County, and the reported decision by the Court of Special Appeals of Maryland. In their memoranda, the parties in the instant case quoted the law and facts discussed in UPS and their applicability to this matter. Both sides cite this case in discussing the issue as to whether the Zoning Commissioner can properly hear this case. In considering that question, one must be mindful of the form in which the original cases were brought. The instant case is now before me as Zoning Commissioner. UPS originally reared its head for the first time in the quasi-judicial review process before the County Board of Appeals. These cases have arisen differently and are easily distinguishable. Long Green Hotel is not UPS.

The Petition brought in the instant case is properly before me pursuant to the language set forth in Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). Therein, a broad and sweeping statement of authority is provided to the Zoning Commissioner. It is specifically provided that he "shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations..." Further on, the Section provides that such authority "shall include the right of any interested party to petition the Zoning Commissioner for a public hearing...to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations." As it relates to my jurisdiction under this section, the timing of the Petitioner's request is meaningless. Unlike UPS, the instant case does not come before me as an appeal or for review of a prior decision. The authority conferred in Section 500.7 of the B.C.Z.R. is broad indeed. The case is properly

before me under the proposed Petition for Special Hearing from a pure jurisdictional standpoint.

2) IS THE PROPOSED SEPTIC SYSTEM A "USE" OF LAND?

The essential issue to be addressed in this case is whether the proposed septic system can be permitted under the circumstances described above. Specifically, can a private septic system be installed on an adjoining piece of property, not owned by the property owner of the land being so served, when the subject property is zoned B.L. and the subservient property is zoned R.C. 2? Before determining this issue, a resolution of whether the proposed septic system is indeed a use is necessary.

The term "use" is not defined in Section 101 of the B.C.Z.R. In such a case, the regulations require the reader to consult with the definition found in Webster's Third New International Dictionary. Therein, the term "use" is defined and enjoys a lengthy list of definitions which occupy an entire column. The definitions include "the legal enjoyment of property that consists in its employment, occupation, exercise or practice," and "the benefit in law of one or more persons, specifically, the benefit of or the profit arising from lands and tenements to which legal title is held by a person, or the act or practice of using something." Clearly, these definitions suggest a broad scope of the term "use". The property owner suggests that the proposed septic system is not a use because it is entirely underground and that the surface of the land may still be used for livestock, grazing, and similar agricultural purposes. However, this argument is too narrow in scope. Coal and diamond mining, as well as oil drilling, are all clearly uses of land, notwithstanding the fact that the specific activity entails a subterranean effort. Thus, it is clear that Mr. Jones' installation of a septic system, for the privilege of which he

paid the property owner $25,000, constitutes a use of the Executive Auto Paint and Repair, Inc. parcel.

3) IS THE SEPTIC SYSTEM USE PERMITTED ON THE R.C.2 PARCEL OWNED BY EXECUTIVE AUTO PAINT AND REPAIR, INC.?

A great amount of testimony and legal argument was presented about this issue. The Petitioners aver that the proposed use of the property is not permitted by the B.C.Z.R. and is thus, illegal. Mr. Jones argues that the use is properly permitted under a variety of theories.

As is well settled, the B.C.Z.R. are inclusive; that is, only designated uses are allowed. If a particular use is not specifically delineated as permissible by right or special exception, it is not allowed. This conclusion is well settled and is stated both within the regulations and at law. Specifically, Section 102.1 of the B.C.Z.R. provides that "No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations..." (emphasis added). Further, the Appellate Court's construction of this language is clear.

In an early and leading case before the Court of Special Appeals, the inclusive nature of the B.C.Z.R. was discussed. (See Kowalski v. Lamar, 25 Md. App. 493, 334 A2d. 536 (1975). Therein, the Court comprehensively discussed the B.C.Z.R. and noted that, "any use other than those permitted and being carried on as of right or by special exception is prohibited." Kowalski, Page 539. Thus, it is clear that the use must be identified in the B.C.Z.R. as being permissible by right or by special exception in order to be legitimate.

Moreover, Section 1A01.2.B of the B.C.Z.R. identifies uses permitted as of right in an R.C. 2 zone. Private septic systems are not specifi-

cally listed in that Section. Additionally, Section 1A01.2.C, identifies uses permitted in an R.C. 2 zone by special exception. Again, a private septic system is not listed therein. Thus, by the clear meaning of the words used to describe the enumerated uses allowed by right or special exception, a private septic system (as a primary use of the property) is not permitted in an R.C. 2 zone.

Unable to locate specifically identified private septic systems within Sections 1A01.2.B or 2.C, the property owner attempts to carve a niche for the subject use under Section 1A01.2.B.5 of the B.C.Z.R. Therein, certain "utility type" uses are permitted as of right in an R.C. 2 zone. The Section permits telephone, telegraph, electric power or other lines or cable, as well as underground gas, water or sewer mains or storm drains as of right in an R.C. 2 zone. The property owner avers that this language should be expanded to not only include public utilities, but private systems as well. As stated in Mr. Jones' memoranda, individual septic system facilities serve the same purpose and function as larger, public facilities.

Although appreciative of these arguments, I believe that the property owner has improperly expanded the scope of permitted uses under Section 1A01.2.B.5 of the B.C.Z.R. Clearly, the precise terms used therein include **only** public utilities. It is a cardinal rule of statutory construction that the natural and ordinary import of the words used should be given to effectuate the real and actual intent of the Legislature. See State v. Fabritz, 276 Md. 416 (1975). The words of this Section, read in accordance with their clear meaning, no doubt contemplates public services and utilities will be permitted to occupy R.C. 2 zoned land. Further, although sewer mains are not defined in the B.C.Z.R., Webster's

defines "mains" as "a pipe, duct or circuit to or from which leads tributary branches of a utility system and which carries their combined flow." Thus, sewer mains are part of a larger system and clearly accommodate a public as opposed to a private service. The language in this Section is clear; only public utilities are allowed. Thus, the property owner's reliance on and attempted expansion of this Section are misplaced.

While both litigants agreed that private septic systems were not precisely identified as permitted uses in the B.C.Z.R., substantial testimony, evidence and argument was offered regarding similar cases considered by this Office, the appellate courts of this State, and Courts of other jurisdictions. A review of those authorities are helpful in determining whether a private septic system is permissible in this instance.

Both parties cite one of the few reported decisions on point with the subject case. That case arose in Stamford, Connecticut and wound its way through the appellate process to the Supreme Court of Connecticut. (See Silitschanu v. Groesbeck, 208 Conn. 312, 543 A2d. 737 (1988). In that case, a similar issue was presented. Mr. Silitschanu, and others, owned real property in Stamford that was in close proximity to property owned by Mr. Groesbeck. Mr. Silitschanu and his partners desired to construct a three-story office building on the commercially zoned land with its appurtenant septic system to be located on an adjoining residential lot. The propriety of the construction of the proposed septic system was at issue. The Supreme Court of Connecticut concluded that the septic system in fact, was a structure (use) within the local zoning code. Further, since that use was not specifically authorized, it was not permitted.

This case was referenced with favor in an unreported decision by our own Court of Special Appeals. In GLP Development v. Maryland National

Capital Park and Planning Commission (No. 1755, September term, 1989) the Court acknowledged the Silitschanu decision and found same persuasive in the case before it. As were the facts in Silitschanu and the instant case, the property owner in the GLP Development case owned a commercially zoned tract which was proposed for development with commercial buildings, a septic system tank, parking and driveways. An adjoining parcel, zoned Rural-Cluster, was proposed to house the underground septic field consisting of filtering pipes for sewage disposal. The Court of Special Appeals affirmed the decision of the local planning board and concluded that the residentially zoned land could not be used for commercial purposes.

The Court in the GLP Development case also referenced the Court of Appeals' decision in Leimbach Construction Company v. City of Baltimore, 257 Md. 635 (1970). In this case, the Court of Appeals affirmed the judgment of the lower court which disallowed a commercial use on residentially zoned property. In that instance, the property owner proposed construction of a driveway over residential land to service the commercial property. In Leimbach, the Court concluded that said use was impermissible.

Thus, it appears that the uniform appellate decisions cited above, as applied to the instant case, would prohibit Mr. Jones' private septic field in his neighbor's R.C. 2 property.

Notwithstanding the absence of this particular use in the B.C.Z.R., and the apparent unanimity of the appellate decisions referenced above prohibiting said use, the property owner submits yet another argument to support its claim that the use is permitted. This argument centers upon the claim that the proposed septic system is accessory to the commercial development and should therefore be permitted. As authority for this proposition, Mr. Jones cites the prior practices and decisions of the

Zoning Office and similar agencies of Baltimore County. As to DEPRM's practices in the past, they cannot be considered authoritative or binding upon me. There appears no doubt that in certain other instances, DEPRM has approved arrangements which allow storm water management systems and similar uses on adjacent properties to serve an abutting commercial development. There is no doubt that this practice may be sound for environmental purposes. In fact, it appears in the instant case that Mr. Jones' solution to his septic disposal woes is appropriate. The proposed off-site septic system has been approved by both the Maryland Department of Natural Resources (DNR) as well as Baltimore County's Department of Environmental Protection and Resource Management (DEPRM). From a technical environmental standpoint, the proposed system may be the most proper alternative. However, the fact that it works from a DEPRM standpoint and that similar practices have been employed at other locations in Baltimore County does not impact the issue before me. As I see it, this is a case of first impression presenting a novel question before this Office. Whether DEPRM or the Office of Planning and Zoning or other County agencies believe this to be a good approach is not persuasive; rather, the issue is presented in the context of a permitted use pursuant to the purview of the B.C.Z.R.

Nonetheless, there are similar cases which have been adjudged by this Office. Although not precedent, prior construction of the B.C.Z.R. by past Zoning Commissioner's is helpful. Two such cases were presented for my review and examination, namely, In Re: Marris B. Langford, et al, Case No. 85-321-SPH, and In Re: Walter Windsor, Case No. 85-326-XSPH. I have reviewed both cases thoroughly. Well reasoned and comprehensive opinions were offered in both instances by then Zoning Commissioner Arnold Jablon. In both cases, the Petitioner owned a commercial property and an

adjacent residential tract. In Windsor, the Petitioner desired placement of a storm water management pond on a D.R. 3.5 zoned property to serve an adjacent R.O. tract. In Langford, the Petitioner proposed to construct a Class C office building on an O-1 parcel with the storm water management pond serving said building on the D.R. 2 zoned portion of the site. In both instances, Commissioner Jablon approved the proposed use. He determined that the proposed use was proper as an accessory use. Mr. Jones urges that I adopt the same course in this case.

Accessory uses are defined in Section 101 of the B.C.Z.R. Therein, the term is defined as "A use or structure which: a) is customarily incident, subordinate to and serves a principal use and structure; b) is subordinate in area, extent or purpose to the principal use or structure; c) is located on the same lot as the principal use or structure served; and, d) contributes to the comfort, convenience and necessity of occupants, business or industry in the principal use or structure served." Clearly, the proposed septic system complies with subsections (a), (b) and (d) of the definition. That is, the septic system is there only to serve the commercial use on the Jones' tract, is subordinate to same, and contributes to the comfort, convenience and necessity of the business located thereon. The problem for Mr. Jones is whether the use complies with subsection (c) which requires that same be located on the same lot.

I considered a similar issue in a prior zoning case entitled In Re: Helix Health System, Case No. 92-186-SPH. Therein, I considered whether two hospitals located at opposite ends of the County, could share an incinerator located on one of the hospital's campuses. I concluded that said incinerator use, although accessory to the hospital on whose property the incinerator was located, could not be used as an accessory use to the

other hospital. That is, in that the incinerator was not located on the same lot as the principal use or structure served, it could not be accessory thereto.

The same logic must be applied here. The Jones' property is clearly defined on the site plan submitted at the hearing and contained in the metes and bounds description thereof. The septic system is not located within that lot, but is located off-site. Thus, it cannot be an accessory use or structure under the plain meaning of the words set forth in the definition.

The property owner attempts to save this argument by noting the easement acquired by Mr. Jones in May, 1992. He argues that this easement, in effect, makes the adjacent strip of land owned by Executive Auto Paint and Repair, Inc. part and parcel of the same lot owned by Mr. Jones. Without delving into the nature of easements at length, I must conclude that the property owner's position here is erroneous. A lot of record is likewise defined in the B.C.Z.R. as "a parcel of land with boundaries as recorded in the Land Records of Baltimore County..." Although Mr Jones has an easement in his neighbor's property, he does not own same in fee. The easement allows him only to use a portion of the property for a permitted purpose. It does not convey title. It does not make that portion of the property conveyed the same lot as Mr. Jones' tract. Thus, for all of these reasons, the use is not accessory.

4) ARE BALTIMORE COUNTY AND/OR THE PETITIONERS ESTOPPED FROM ENFORCING A PROHIBITION OF THE USE?

I have concluded that the case is properly before me as Zoning Commissioner pursuant to the broad authority set forth in Section 500.7 of the B.C.Z.R. I have likewise concluded that the septic system is in fact

a use of the Executive Auto Paint and Repair, Inc. parcel. Further, it is not permitted as of right in the R.C. 2 zone, not allowed by special exception, does not fall within any of the definitions of such permitted or special exception uses in the B.C.Z.R., and is not accessory to the Jones' property. For all of these reasons, the proposed septic system is illegal. However, can the Petitioners or Baltimore County force a termination of the use of the system? The answer must be no.

As the rescitation of the facts above makes clear, the septic system alternative proposed for the adjacent tract was not Mr. Jones' first choice in regard to development of his property. He originally proposed a septic system within the four corners of the Long Green Hotel site. Only when this sytem was not workable and public utilities were not available did Mr. Jones look elsewhere. Further, there has clearly been extensive governmental review of the propriety of Mr. Jones' suggested alternative. The record of the case is clear that extensive governmental reviews were undertaken before the project was approved. Further, it is clear the Petitioners were aware of this activity. The record contains copies of correspondence by and between DEPRM and the Long Green Valley Association. Despite these reviews and concerns, however, it was not until September 1992 that the instant Petition was filed. This was well after Mr. Jones had spent a significant sum to acquire an easement on the Executive Auto Paint and Repair, Inc. property and constructed the septic system. In fact, the system has now been completed and the property is being used for commercial purposes. Although I have jurisdiction to consider the issues presented, equitable estoppel prohibits the Petitioners and the County's insistence that this use be terminated. The doctrine of an equitable estoppel has been defined as "...the effect of the voluntary conduct of

the party whereby he is absolutely procluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, contract or remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, contract or remedy." Salisbury Beauty Schools v. State Board, 268 Md. 32, 300 A2d 367 (1973). "Equitable estoppel operates to prevent a party from asserting his rights under a general technical rule of law, when that party has so conducted himself that it would be contrary to equity and good conscience to allow him to do so." Fitch v. Double "U" Sales Corp., 212 Md. 324, 129 A2d 93 (1957). There is no settled rule as to when equitable estoppel should be applied. However, it can be applied against municipalities. See Kent Co. Planning Inspector v. Abel, 246 Md. 395, 228 A2d. 247 (1967).

As noted above, the facts presented in the record of this case are clear regarding the ongoing review and ultimate approval of the proposed septic system by Baltimore County. The knowledge of the Petitioners in this process are also clear. Despite this knowledge and participation, neither Baltimore County nor the Petitioners objected. No Petition for Special Hearing was filed until well after the fact. There must be some sense of fundamental fairness in the interpretation and enforcement of the B.C.Z.R. Property owners in Baltimore County must be assured that if they openly consult with their neighbors and undergo the scrutiny of the State and local review process, that their actions will be upheld as permissible. Therefore, notwithstanding my conclusion that the proposed use (actually implemented use) is illegal, I cannot in good conscience penalize Mr. Jones

based upon the facts and record presented. Thus, the Petition for Special Hearing must be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 24th day of August, 1993 that approval should be given to the use of adjoining property zoned R.C. 2 and owned by Executive Auto and Paint Repair, Inc. to support a waste disposal system for the subject commercial property, known as 13523 Long Green Pike, zoned B.L.-C.R., in accordance with Jones' Exhibit 5, and as such, the Petition for Special Hearing is hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

IN THE MATTER OF THE THE APPLICATION OF LONG GREEN VALLEY ASSN.,ET AL FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST SIDE LONG GREEN PIKE, 170' SOUTHWEST OF C/L OF FORK ROAD (13523 LONG GREEN PIKE) 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 93-93-SPH

* * * * * * * * *

O P I N I O N

This matter comes before the Board of Appeals on an appeal of the Zoning Commissioner's decision to deny the Petition for Special Hearing brought by the Long Green Valley Association, et al. The issue before the Zoning Commissioner was to determine whether or not to allow the use of R.C.-2 zoned property for a sewage disposal system of an adjacent commercially zoned property. While the Zoning Commissioner determined the use to be illegal, he denied the special hearing on the basis of the doctrine of equitable estoppel, ruling that the Petitioner and the County were well aware of the property owner's intentions and processes and were therefore precluded from terminating the then already implemented use. Hence, the Petitioner brought the appeal to the Zoning Commissioner's ruling.

This case was heard de novo in an open hearing in two days, in which testimony and evidence were presented. Long Green Valley Association, et al, Petitioners, were represented by J. Carroll Holzer, Esquire; Orville Jones, property owner, was represented by John Gontrum, Esquire; and, People's Counsel for Baltimore County participated in the proceedings. At the conclusion of the hearings, counsel submitted memoranda in support of their positions, in lieu of closing arguments.

Exh. C

Before discussing the facts of this case, the issue of whether the County Board of Appeals has proper authority to hear the case should be addressed. During opening statements and again at the start of presentation of the property owner's case, Mr. Gontrum moved for dismissal on the grounds that the Petitioners have no interest in the property. The motion was denied from the bench, indicating that the Petitioners, while successful in the legal interpretation provided by the Zoning Commissioner, are an agrieved party by virtue of the denial of the Petition for Special Hearing. Thus, the motion was properly denied and the case was brought.

The facts in this case are relatively simple and, for the most part, not in dispute. Mr. Orville Jones owns the subject property, 13523 Long Green Pike, near Baldwin, Maryland. Mr. Jones, purchasing the property at public auction, has owned the property since April of 1987. The subject property and several adjacent and nearby properties along Long Green Pike and Fork Road are zoned for business/commercial use in a cluster of such properties near the intersection of those roads. The surrounding area is largely agricultural uses in the R.C.-2 zone. The property is 1.056 acres, nearly square-shaped and improved with a building which is occupied by a convenience store, a dentist's office and a laundromat, along with associated parking area.

A building known as the Long Green Hotel existed on the property at the time Mr. Jones acquired it. After acquisition of the property, Mr. Jones decided to raze the existing structure and replace it after first attempting to alter the structure, as shown in evidence of the permits issued beginning in 1989 forward to the

Certificates of Occupancy obtained in 1992. The then-existing hotel was ultimately razed and a new building constructed by Mr. Jones. Throughout the entire process and, as it most concerns this case, during the several months preceding new construction, the Petitioners were made aware of all progress as shown in letters introduced as Property Owner's Exhibits 1, 2, 3 and 4 under Petitioner's witness Mr. Edward R. Blanton, an attorney and area resident and member of the community association. From January of 1992 until after October 1, 1992, the Petitioners did not correspond with Mr. Jones concerning the project. In Property Owner's Exhibit 4, the Department of Environmental Protection and Resource Management (DEPRM) indicated clearly to the Petitioners, the stop-work order "will be rescinded upon compliance with all requirements set forth --- and recordation of the necessary sewage disposal area easements in the Land Records of Baltimore." (emphasis added). It is clear to this Board that Long Green Valley Association and its members were well aware that the County and State had approved and, in fact, provided input to the options available to Mr. Jones and the conditions for his moving forward. Thus, Mr. Jones proceeded to procure easements from the adjoining property owner, Executive Auto Paint and Repair, Inc., for $25,000; said easements would cease upon the connection of Mr. Jones' property to public sewer when provided by the County. The Executive Auto Paint and Repair, Inc. site is zoned R.C.-2 and is unimproved.

The crux of this case concerns the need for the aforementioned easements to handle the subject site's septic requirements. Mr.

Jones' property does not have public sewer service. Due to site constraints and environmental concerns as related to a nearby stream, Mr. Jones originally agreed to install a septic system using innovative technology in constructing a sand mound sewage disposal system. Due to heavy equipment traffic on the construction site, the ground where the sand mound system was to have gone was severely compacted, leaving the area unusable to such purpose. Thus, the County issued a stop-work order on March 29, 1991 until such time as a suitable alternative could be found to replace the planned sand mound system.

Mr. Jones reached an agreement with Baltimore County and the State of Maryland Department of Natural Resources to allow Mr. Jones to continue work on-site pursuant to his procurement of the aforementioned easements from Executive Auto Paint and Repair, Inc. Since Mr. Jones had acted in good faith in corresponding with the Long Green Valley Association prior to said agreement and because Mr. Jones intended to comply with any and all requirements of the County and State authorities, he naturally proceeded to close the agreement with Executive Auto in order to effect the work. In the absence of such easements as to allow for off-site sewage disposal, this Board recognizes the probability that the subject site would be useless as currently zoned until such time as public sewer service is brought to the property. By virtue of his having obtained the easements and DEPRM approved, Mr. Jones constructed the septic system and finished the new building, which is occupied.

All three counsel presented lengthy, well-written memoranda to support their respective positions. Their writings raise several

issues to be addressed here.

First, does the Board of Appeals have jurisdiction in this case. As discussed earlier, the Board ruled from the bench that by virtue of the Zoning Commissioner's denial of the Petition for Special Hearing, the Petitioner is an agrieved party with rights of appeal to this Board pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.).

Second, is the now-installed septic system a "use" of the land? The term "use" is not defined in Section 101 the B.C.Z.R. As such, we are required by Section 101 of the B.C.Z.R. to accept the definition contained in Webster's Third New-International Dictionary. The definitions include "...the legal enjoyment of property that consists in its employment, occupation, exercise, or practice..." and "the benefit in law of one or more persons, specifically, the benefit of or the profit arising from lands and tenements to which legal title is held by a person, or the act or practice of using something." Expert testimony from Norman Gerber includes his opinion that septic is a land use. Further, planning and zoning expert Paul Solomon, the former Director of Agricultural Preservation Programs for Baltimore County, pointed to COMAR 26.4.03.G in defining septic as having a single user within the property. Mr. Jones argues that the system is entirely underground, thus not having an impact on the possible R.C.-2 uses already enjoyed. As Mr. Gerber opined, this Board finds it unlikely that heavy farm machinery should travel over the septic field. Further, he indicated that the easement obtained by Mr. Jones is a right of use, not tantamount to ownership. Therefore,

clearly the now-installed septic system is a use of the land.

Third, is the septic system use permitted in the R.C.-2 zone? Mr. Jones' position is that the use is permitted either by right, special exception or as an accessory use by right or special exception or as an accessory use by right or special exception. The property owner's opinion is flawed. The B.C.Z.R., Section 1A01.2C, identifies uses permitted in an R.C.-2 zone by special exception. In neither section do the B.C.Z.R. identify private septic systems as a permitted use.

Mr. Jones asserts that if a septic field qualifies as a regulated use, then it is permitted as of right in an R.C.-2 zone, asserting that the septic system falls under the term "underground conduits" found in Section 1A02.2B.5 of the B.C.Z.R. However, as expert witness Paul Solomon pointed-out in testimony, the application of the term "conduits" is to public facilities and that a septic system for an allowed use under R.C.-2 would be allowable, but that a septic system for a commercially zoned site is considered a private "extension" of the commercial site. Expert witness Norman Gerber opined that the septic field in this case is a principal use in the R.C.-2 zone and is therefore not allowed; as a principal use the field is not in the realm of public facilities as he interprets the term "underground conduits" to mean. This Board is persuaded by expert witnesses in this issue.

Mr. Jones also asserts that the septic field is an acceptable accessory use. B.C.Z.R., Section 101, defines "accessory use" as, "A use or structure which: a) is customarily incident, subordinate to and serves a principal use and structure; b) is subordinate in

area, extent or purpose to the principal use or structure; c) is located on the same lot as the principal use or structure served; and d) contributes to the comfort, convenience, and necessity of occupants, business or industry in the principal use or structure served." On the face, the septic field appears to meet subsections (a), (b) and (d) of the definition. However, as indicated by Mr. Gerber, by virtue of its existence in an area granted by easement and that easements are provided as a right of use, this septic field may be considered a principal use, thereby disqualifying the system under subsection (a). Regarding the applicability of subsection (c), clearly the septic system is not within the same lot as the structure it serves. By virtue of the procurement of easements for the purpose of constructing his septic system, Mr. Jones attempts to assert that his rights of ownership of said easement are similar to those he would have if he held the easement area in fee. As a fact, he does not own the area in fee; therefore, he does not have rights of ownership. As expressed by Mr. Gerber, the easement is a granted right of use, not tantamount to ownership and that ownership is required to assert rights under zoning regulations. The cases to which Mr. Jones refers to draw parallels to this issue are cases where a Petitioner owned a commercial property and an adjacent residential tract. By virtue of dissimilar ownership of the site and easement area, Mr. Jones' argument cannot be applied here. In the case in Re: Helix Health System, Case No. 92-186-SPH, where common ownership of non-abutting properties was used as the basis for construction of an incinerator to serve both properties, the lot on which the incinerator rested

could not be used as an accessory to the principle use on the other property. As such, the same standard applies here regardless of ownership.

Finally, Mr. Jones asserts that the septic field is an uncontrolled excavation in the R.C.-2 zone and is therefore allowable. There is ample, overwhelming evidence and testimony, as well as discussion herein, which persuades this Board to find that the septic system is a structure, which, for the purposes of regulation and construction, is engineered to be anything but uncontrolled excavation and consider his point moot. The septic system in the R.C.-2 zone to support a commercially-zoned property is simply not allowed.

The fourth, and final issue, is the question of estoppel. The evidence presented in this case clearly indicates that Mr. Jones intended to construct his septic system on his property, if that option was feasible. As a result of site difficulties, Mr. Jones sought reasonable alternatives to working on-site. The record is clear: Mr. Jones made certain that appropriate Government authorities were represented in review of possible alternatives, to the best of his knowledge and abilities. As indicated by Robert Powell (DEPRM), the Office Planning and Zoning (OPZ) was contacted and apprised of the planned work; the OPZ response was to rescind the stop-work order then in place. During cross-examination, Mr. Gerber testified that OPZ routinely makes comments on development plans and that, in fact, comments are solicited. When asked by the Board if there exists any requirement for septic approval by OPZ, Mr. Gerber answered no, the septic projects are approved by DEPRM.

Mr. Jones also made certain that the Petitioner's concerns

were addressed, even going so far as to write to the Long Green Valley Association (LGVA) in response to letters written by LGVA to the County. The record is replete with letters between LGVA and the County, as well as letters between Mr. Jones, LGVA and the County. Clearly, LGVA had ample notice to pursue any concerns it had over a long period; yet LGVA did nothing after receiving a letter dated January 2, 1992 from DEPRM, which outlined the intent of DEPRM to rescind the stop-work order under certain conditions. Not until nine months later did LGVA raise an issue, after Mr. Jones had spent literally hundreds of thousands of dollars to obtain the easement, construct the septic field and finish the building.

The doctrine of equitable estoppel in zoning cases is recognized in Maryland. This case is an issue of timeliness and fundamental fairness. This Board is persuaded by Mr. Jones' argument that the LGVA, led by attorneys Charlotte Pine and Edward Blanton, was well aware of the then-proposed site to be used for the septic system, as well as the conditions necessary for lifting the stop-work order. LGVA did not respond to Mr. Jones' letter of December 17, 1991, nor to the DEPRM letter of January 2, 1992. Over ninety days elapsed between Mr. Jones's resumption of construction and the filing of the Petition for Special Hearing. The LGVA and the County are therefore estopped from pursuing the Petition.

Despite the Board's findings that the implemented use of adjacent R.C.-2 zoned property to support a septic system for commercially-zoned property is illegal, the Board finds that Mr. Jones acted fairly and openly with all concerned parties and that

the County, through its actions, and the LGVA, through its inaction, are estopped. Therefore this Board shall deny the Petition for Special Hearing.

O R D E R

IT IS THEREFORE this 26th day of October, 1994 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing be and is hereby **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett

William T. Hackett, Chairman

C. William Clark

C. William Clark

Robert O. Schuetz

Robert O. Schuetz

PETITION OF SHARON RORBAUGH, CHARLOTTE PINE, KATHY TYLER And LONG GREEN VALLEY ASSOC. FOR JUDICIAL REVIEW OF THE DECISION OF THE BALTIMORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY IN THE CASE OF ORVILLE JONES, HIGHS OF BALTIMORE, INC. PETITION FOR SPECIAL HEARING	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO. 94-CV-10257

OPINION and ORDER

Hearing was held on appeals from a decision of the Board of Appeals (hereinafter referred to as "Board") dated October 26, 1994 filed by Sharon Rohrbaugh, Charlotte Pine, Kathy Tyler, Appellants (hereinafter sometimes referred to as "Individual Appellants") and by Long Green Valley Association, Appellant (hereinafter sometimes referred to as "Association Appellant") and on behalf of People's Counsel for Baltimore County, Appellant (hereinafter referred to as "People's Counsel") and Answer

Exh. D

thereto filed on behalf of Orville Jones, Appellee (hereinafter referred to as "Appellee") on May 15, 1995. Thereafter, pursuant to Order of this Court, re-hearing and oral argument was held on October 24, 1995. Counsel for Baltimore County appeared at both hearings and adopted and supported Appellee's position in this appeal. The Court reviewed the various Memoranda submitted by counsel for all parties and the transcript of the proceedings before the Board.

The Individual Appellants, Association Appellant and People's Counsel all posit two questions in their appeals, namely:

1) Whether a septic system connected to a commercially zoned convenience store is a legal use in the agricultural zones; and

2) Whether the estoppel doctrine may excuse or allow the continuation of such an illegal use.

The Individual Appellants and the Association Appellant filed their Petition for Judicial Review on November 9, 1994 pursuant to Rule 7-202 of the Maryland Rules and identified the issues described above in their appeal Memoranda. The Board, in its Opinion affirming the Zoning Commissioner, found that Baltimore County, through its actions, and the Association Appellant, through its inaction, were estopped and denied the Petition for Special Hearing. The Zoning Commissioner likewise had denied Petitioner's (some of the Appellants) request for special hearing, refused to order cessation of what the Zoning Commissioner determined was an illegal use, and, on the contrary, granted approval of Appellee's illegal use of adjoining RC2 property to support a waste disposal system on Appellee's adjacent commercial property known as 13523 Long Green Pike.

On November 17, 1994, People's Counsel, consistent with and pursuant to Rule 7-203(b) filed a Petition for Judicial Review of the Board's decision, which filing was within ten days of the filing of the original Petition for Judicial Review by the Individual and Association Appellants.

Appellee, on the other hand, did not file a Petition for Judicial Review, but, pursuant to Maryland Rule 7-204, filed an answer to the Petitions for Judicial Review filed by Appellants, indicating his intention to continue to participate in the case. On April 6, 1995, Appellee filed a Memorandum raising five issues, namely:

> 1) Was this case to declare the existing septic system serving the Jones' property improperly brought under the Special Hearing Procedure of Sec. 500.7 of the Baltimore County Zoning Regulations (BCZR)?; and
>
> 2) Did the Zoning Commissioner and the Board properly apply estoppel considerations to the case?; and
>
> 3) Are septic drainage field uses properly regulated as zoning uses under the Baltimore County Zoning Code?; and
>
> 4) Are septic draining fields "conduits" or "sewer mains" permitted as of right in the RC2 zones?; and
>
> 5) Is a septic drainage field an accessory use or can it be considered an accessory use permitted in an RC2 zone even though it serves a commercial building?

Appellee's first issue seems to be a challenge to the standing of Appellants to request a special hearing pursuant to Section 500.7 of the Baltimore County Zoning Regulations. Since Appellee did not file a Petition for Judicial Review, and since this issue was in no way raised by Appellants in their Petition, the issue of Appellants' standing is not before this Court in this appeal. In the exercise of caution, however, it may be that Appellee is contending that this issue presents a question of

jurisdiction. It will be addressed, therefore, but only briefly in this Opinion.

Section 500.7 of the Baltimore County Zoning Regulations provides that:

> "the said Zoning Commissioner shall have the power to conduct such other hearings and pass such Orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported non-conforming use on any premises or to determine any rights whatsoever of such person and any property in Baltimore County insofar as they are affected by these regulations."

Although "interested persons" can request a special hearing, it is not the exclusive method of using Sec. 500.7 of the Baltimore County Zoning Regulations. The Zoning Commissioner has the power in his discretion to conduct special hearings pursuant to the very regulation itself. As stated by the Zoinng Commissioner on page 6 of his opinion:

> "The Petition brought in the instant case is properly before me pursuant to the language as set forth in Sec. 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). Therein, a broad and sweeping statement of authority is provided to the Zoning Commissioner. It is specifically provided that he 'shall have the power to conduct such other hearings and pass such Orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations ...' Further on, the section provides that such authority 'shall include the right of any interested party to petition the Zoning Commissioner for a public hearing... to determine any rights whatsoever of such persons and any property in Baltimore County insofar as they are affected by these regulations.' As it relates to my jurisdiction under this Section, the timing of the Petitioner's request is meaningless... . The authority conferred in Sec. 500.7 of the B.C. Z. R. is broad indeed. The case is properly before me under the proposed Petition for Special Hearing from a pure jurisdictional standpoint."

The Zoning Commissioner has broad discretion to grant a special hearing pursuant to Sec. 500.7 of the BCZR, and the Board, on Appellants' appeal from the Zoning Commissioner's decision, was correct in denying Appellee's Motion to Dismiss that appeal.

Appellee refers the Court to Baltimore County Code Sections 26-121 and following, which sections deal with penalties for zoning violations and injunctive proceedings. There is nothing in the Baltimore County Code, however, which indicates any preemption which would preclude the Zoning Commissioner from conducting a special hearing pursuant to Section 500.7 of the BCZR.

It should be noted that both the Zoning Commissioner and the Board in rendering their decisions, indicated respectively that the "Petition for Special Hearing is hereby DENIED." What the Zoning Commissioner explained, and the Board obviously meant, and counsel for all parties agreed at the rehearing on October 24, 1995, was that the respective decisions denied any zoning order to stop Appellee's illegal land use, not that the request for special hearing was denied.

Both the Zoning Commissioner and the Board conducted the special hearing and, in fact, both decided the substantive issue presented to them as Appellants contend the issue should have been decided. Appellants' complaint is not with the decision of the Zoning Commissioner and the Board that a septic system connected to a commercially zoned use of an adjacent property is not a legal use allowed in an RC2 zone. Appellants' complaint relates to the finding by the Zoning Commissioner, affirmed by the Board, that Appellants are estopped from obtaining the relief through the Baltimore

County's zoning authority of an order directing Appellee to cease and desist his illegal use of the RC2 land.

This brings the Court to the next problem with this appeal, namely, that the first issue raised by Appellants in their Memoranda is not really an issue for Appellants on appeal, as both the Zoning Commissioner and the Board found in favor of Appellants' position, namely, that a septic system in an agricultural zone which is connected to an adjacent commercially zoned convenience store is an illegal land use . Both the Zoning Commissioner and the Board so found. Appellants have nothing about which to complain on appeal as to their first issue and their appeals as to this issue should be dismissed.

Since Appellants raised this issue, however, Appellee, in its answer to Appellants' Petition for Judicial Review, has raised three issues of his own which are related to this issue, namely, Appellee's Issues No. 3, 4 and 5 described above. Because Appellee may have been misled by Appellants' raising of the issue of illegal land use in an RC2 zone and, as a result, Appellee may not have filed his own Petition for Judicial Review and/or because once an issue is raised, even if raised by the party who prevailed below, such issue may be subject to review as to complaints of the other party to the appeal, this Court will address Appellees' third, fourth and fifth issues presented.

As to Appellees third and fifth issues, it is undisputed that the term "use" is not defined in the Definitions Section 101 of the Baltimore County Zoning Regulations. If not specifically defined, Sec. 101 BCZR provides that the definition set forth in the most recent edition of Webster's Third New

International Dictionary shall be utilized. The "Use" definitions in Webster's include "...the legal enjoyment of property that consists in its employment, occupation, exercise ..." and "the benefit in law of one or more persons, specifically the benefit of or the profit arising from lands and tenements to which legal title is held by a person or the act or practice of using something."

The Board, in affirming the decision of the Zoning Commissioner, followed the requirements of the BCZR and determined that Appellee's installed septic system was a "use" of the RC2 land. This determination was consistent with the definitions in Webster's Third New International Dictionary and was supported in the record by the expert testimony of Norman Gerber and Paul Solomon. As a "use" of property, Appellee's proposed use is subject to the Baltimore County Zoning Regulations, and the BCZR makes no provision for Appellee's proposed use by right or special exception, or as an accessory use by right or special exception.

As held in Kowalski vs. Lamar, 25 Md.App. 493, 498 (1975). "any use other than those permitted and being carried on as of right or by special exception is prohibited." Section 102.1 of the Baltimore County Zoning Regulations provides that "no land shall be used except in conformity with these regulations..." Section 1A01.2B identifies uses permitted as of right in the RC2 Zone. Private septic systems are not so permitted as primary uses.

Accessory use is defined in Section 101 of the BCZR as "a use... which...c) is located on the same lot as the principal use or structure served..." It is undisputed that the septic system in this case was installed on an RC-2 property adjacent to Appellee's commercial site over which Appellee had

acquired an easement for the commercial site's septic drainage field. By definition, Appellee's septic system cannot qualify as an "accessory use."

Appellee also fails with regard to his fourth contention. Septic drainage fields are just not "conduits" or "sewer mains" which are permitted as of right in RC2 zones. Section 1A01.2B5 of the BCZR does provide for the following uses permitted as of right in all RC2 zones, namely: "Telephone, telegraph, electrical power or other lines with cables, provided that any such line or cable is underground; underground gas, water or sewer mains or storm drains; or other underground conduits, except interstate or international pipelines." The Board determined that Appellee's septic system failed to fall within the definitions "underground conduits" or "sewer main". This determination is supported by expert testimony in the record, is not clearly erroneous, and is not erroneous as a matter of law.

The Court will now get to the real issue raised in this appeal, Appellants' Issue No. 2 and Issue No. 2 raised in Appellee's Answer. Appellee's subject property is a 1.056 acre tract improved by a building occupied by a convenience store, dentist office and laundry mat with associated parking . It is located at 13523 Long Green Pike. Prior to the new construction, Appellee razed an existing structure. In light of site constraints and environmental concerns related to a nearby stream, Appellee originally agreed to install a sand mound sewer disposal system on his commercial property. Due to heavy equipment traffic on the construction site, the ground where the sand mound system was to have been installed was severely compacted, leaving the area unusable for such purpose. As a result, Baltimore County issued a Stop Work Order on Appellee's new construction on March

29,1991 until such time as a suitable alternative could be found to replace the planned sand mound sewer disposal system. (Board's Opinion pp. 3-4)

In its Opinion, the Board noted the interest of Individual Appellants and the Association Appellant in the septic system installation related to Appellee's construction on his commercial site. The Board found that Appellants were aware of all matters regarding Appellee's septic system installation as evidenced by a letter dated November 20, 1991 from Rocky Powell, Division Chief of the Environmental Impact Review Division of the Department of Environmental Protection and Resource Management (Property Owner's Exhibit No. 1), a letter dated November 25, 1991 from R. Bayly Buck, Vice-President of the Association Appellant (Property Owner's Exhibit No. 2), and a letter dated January 2, 1992 to R. Bayly Buck, Vice-President of the Association Appellant from Robert J. Aschenbrenner, Director of the Division of Groundwater Management (Property Owner's Exhibit No. 4). This last correspondence advised the Association Appellant that the Stop Work Order issued on March 29, 1991 would be rescinded upon Appellee's compliance with all the requirements set forth in a certain letter dated August 26, 1991 to Appellee from Rocky O. Powell, Chief of the Environmental Impact Review Division (Property Owner's Exhibit No. 10) and recordation of the necessary sewage disposal area easements among the land records of Baltimore County. Mr. Aschenbrenner's letter (Property Owner's Exhibit No. 4) concludes with the statement "when the aforementioned requirements are met, a new sewage disposal system design will be issued by this Division, the Stop Work Order rescinded, and the construction work allowed to proceed as per the approved building permit."

The letter to R. Bayly Buck, Vice-President of the Association Appellant dated January 2, 1992 (Property Owner's Exhibit No. 4) advised in paragraph (3) that "3) Conversations with representatives of the Office of Planning and Zoning revealed that use of a separate RC2 zoned property for waste disposal property via a deeded easement would be permitted for this site " and in paragraph (5) stated as follows, namely "(5) Your concerns regarding the location of the force main and the absorption field in relationship to the stream and wetlands were addressed in a letter dated November 20,1991 to Ms. Charlotte Pine (attached)."

On page nine of its Opinion, the Board summarized its finding in support of its determination that Appellants are estopped. The Board found that Appellee had made certain that appropriate government authorities were represented in the review of all possible alternatives to construction of a septic system on his property, that Robert Powell of the Department of Environmental Protection and Resource Management and the Office of Planning and Zoning had been contacted and had approved the septic system installation, all of which information had been timely made known to Appellants, that Appellants had been kept apprised of all developments from as early as the fall of 1991, that Appellant Association raised no official complaint until nine months after the letter dated January 2, 1992 (Property Owner's Exhibit No. 4) and not until over ninety days passed from the rescinding of the Stop Work Order and resumption of construction by Appellee, all after Appellee had spent literally hundreds of thousands of dollars to obtain an easement, construct the septic field and finish his building. The Board concluded that Association Appellant had ample notice and opportunity to pursue any concerns it had over an extensive period of time but that Association Appellant did nothing until September of 1992 when it filed its Petition for Special Hearing.

Although sounding in "laches", the Board concluded that the Association Appellant, through its inaction, was "estopped" and, as to all Appellants denied the Petition for Special Hearing, which was actually a denial of any zoning relief to Appellants. Strangely, the Board made no mention of the Individual Appellants in its Opinion, although the Board's Opinion was captioned "In the Matter of the Application of Long Green Valley Association, et al. for a Special Hearing...."

The record before the Zoning Commissioner indicates that the Petition was filed on behalf of the Long Green Valley Association and various individuals incorporated in the attached Petitioner's list, which list included the names of Charlotte Pine and Sharon Rohrbaugh, both of whom, along with Kathy Tyler, appealed to the Board and ultimately to this Court. The Board made no factual findings to support estoppel of the Individual Appellants, and as to Sharon Rohrbaugh, would have been hard pressed to hold her accountable for any inaction during the summer of 1992 when she was at the beach. (Vol. 1,T11)

The Board's finding of estoppel against the Individual Appellants and the Association Appellant is not supported by substantial evidence in the record and is clearly erroneous. Although the Board had the legal authority to consider the issue of equitable estoppel, see Relay vs. Sycamore, 105 Md.App. 701, the Board erred as a matter of law in finding equitable estoppel against the Appellants.

As explained in Fitch vs. Double "U" Sales Corporation, 212 Md. 324, at 338,

> Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which may have otherwise existed, either of property,

> of contract or of remedy against another person who has in good faith relied upon such conduct and has been led thereby to change his position for the worse, and who on his part acquired some corresponding right, either of property, of contract or of remedy. Whatever may be the real intention of the parties making the representation, it is absolutely essential that this representation, whether consisting of words, acts or silence, should be believed and relied upon as the inducement or action by the party who claims the benefit of the estoppel and that, so relying upon it and induced by it, he should have taken some action. The cases all agree that there can be no estoppel unless the party who alleges it relied upon the representation and was induced to act by it and thus relying and induced took some action on that representation.... Unless the party against whom the doctrine has been invoked has been guilty of some unconscientious, inequitable or fraudulent act of commission or omission upon which another has relied, and has been misled to his injury, the doctrine will not be applied. "

The Board, in its Opinion , made no findings as to any representations of the Individual Appellants or the Association Appellant, whether words, acts or silence, nor any findings as to Appellee's reliance nor as to any right in Appellee to rely. The Board merely concluded that Appellants had been kept apprised of what was going on with the property and the septic problem, and had delayed taking any action to request a special hearing until approximately ninety days after the lifting of the Stop Work Order and Appellee's resumption of construction. Although sounding more like laches, this inaction is the basis of the Board's determination that Appellants are equitably estopped. This basis is insufficient as a matter of law, especially in light of Appellee's own right to file a Petition for Special Hearing to determine whether he had the legal right to install a septic drainage field on the adjacent RC2 land for his commercial building prior to easement acquisition and the expenditure of his financial resources.

There is nothing in the record that Appellee in any way relied upon or was induced to proceed with construction by any inaction on the part of Appellants. Appellee immediately resumed construction upon the lifting of the Stop Work Order, obviously in response to the lifting of the Order by Baltimore County. The 90 day delay about which the Board speaks, had not yet even occurred. The easement had been acquired even before the lifting of the Stop Work Order and was in part the basis for lifting that Order. The Board made no findings of fact as to any reliance or inducement of Appellee by reason of Appellants' failure to take action until September of 1992, and the record is devoid of any such evidence. Appellants could not be equitably estopped.

As to the estoppel found against Baltimore County, however, the evidence is significantly different. As the Board mentions on page three of its Opinion, Baltimore County was intimately involved in resolving the septic problem related to Appellee's commercial site. The Board references Property Owner's Exhibit No. 3, wherein the Director of the Division of Groundwater Management in effect approves the sewage disposal system about which Appellants complain. Property Owner's Exhibit No. 4 goes on to make clear that, when Appellee complies with all the requirements of a prior letter dated August 26, 1991, and records the necessary sewage disposal easement in the land records of Baltimore County, a new sewage disposal system design will be issued, the Stop Work Order rescinded and construction allowed to proceed as per the approved building permit. The Board further found that Appellee moved forward with the project on the conditions required by Baltimore County, and procured an easement from an adjoining property owner at an expense to Appellee of $25,000. In addition, Appellee installed the system pursuant to the new sewage disposal system design issued by the Division of Ground Water Management of Baltimore County (Property Owner's

.bit No. 4). Having complied with all the County requirements, the Stop Work Order was lifted altimore County, the approved septic system installed, and construction completed on Appellee's mercial building. (Board's Opinion p. 4)

lready mentioned, the Board had the lawful authority to consider the issue of zoning estoppel nst Baltimore County. In fact, at oral argument, counsel for Baltimore County joined in ellee's position on the estoppel issue. In Fitch vs. Double "U" Sales Corporation, supra, 339, Court of Appeals said "equitable estoppel operates to prevent a party from asserting his rights r a general technical rule of law, when that party has so conducted himself that it would be ary to equity and good conscience to allow him to do so."

scussing when equitable estoppel is available against a municipal corporation, the Court of eals in Permanent Finance Corporation vs. Montgomery County, 308 Md. 239, quoted from z vs. Parr, 164 Md. 222 at 227, "a municipality may be estopped by the act of its officers if done n the scope and in the course of their authority or employment, but estoppel does not arise d the act be in violation of law."

llants contend that Baltimore County cannot be estopped because, based on the Board's nination that the septic drainage field is a use not permitted by right or special exception in an one, allowing said use would be allowing an act in violation of the law. People's Counsel cites well vs. Ward, 102 Md.App. 691, in support of its contention that equitable estoppel is not ble against the County because of the illegal use which would thereby be allowed to Appellee.

People's Counsel overlooks the factual distinctions between Cromwell and the instant case, which distinctions were obviously important to the Court of Appeals which quoted in the Cromwell opinion from Lipsitz vs. Parr, 164 Md. 222, at p. 724, "so, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act... it is not estopped by the unauthorized or wrongful act of its officer... in issuing a permit that is forbidden by the explicit terms of the ordinance ... (additional citations)". (Emphasis supplied) As already noted, the Board made reference to many actions of Baltimore County which ratified and sanctioned Appellee's acts.

As is clear from the decision in Permanent Finance Corporation vs. Montgomery County, supra, which is cited with approval in Relay vs. Sycamore, supra, whether equitable estoppel is available against the government depends upon the nature of the government's involvement , the nature of the reliance, and the nature of the law being violated.

In Permanent Financial Corporation v. Montgomery County, supra, a developer undertook construction of an office building pursuant to the authority of a building permit issued by Montgomery County. Eight and one-half months and more than $2,000,000 later, when the building was under roof, the county suspended the building permit and issued a Stop Work Order on the grounds that the building violated statutory height limitations. One of the height limitation issues concerned the interpretation of "habitable space". Although the Court of Appeals affirmed the Board's determination of the definition of "habitable space', which determination resulted in the construction being in violation of the height restrictions, the Court of Appeals reversed the Board and

determined that the County was estopped from contending that the fourth floor of the building violated the height limitations of the Montgomery County Code.

In support of its action, the Court of Appeals observed that the definitional section was not clear and unambiguous within the meaning of the Montgomery County Code and was open to at least two reasonable and debatable interpretations. The Court of Appeals further pointed out at p. 251 of its Opinion, "we further conclude that the County shared the interpretation given this Section by Permanent at the time of the issuance of the building permit, and the County had consistently applied that interpretation for a significant period of time prior thereto." The Court of Appeals pointed out that when Montgomery County issued the Stop Work Order against Permanent, even after being asked for the specifics of the violations alleged by the County, the County never suggested that the building through its fourth floor violated any height restrictions. The Court also observed that, at the initial hearing, the Assistant County Attorney informed the Board that the County's interpretation of "non-inhabitable structures" varied from that of the Planning Commission and interested neighbor.

The appellate court in Permanent Financial Corporation, supra, found that Permanent had clearly relied upon the interpretation that the County had given to the height limitation in its design of the building, that the measurement of the building as shown on the plans submitted with the application was 43 feet to the top of the fourth floor, that Permanent designed and built its building to a height of 43 feet through the 4th floor in reliance upon the long-standing interpretation of the County and that this interpretation, while subsequently found by the Board of Appeals to be incorrect, was nevertheless reasonable and debatable. The Court concluded on pages 252-253 of its Opinion, "this

being the case, and Permanent having expended substantial funds in reliance upon the permit, it would be inequitable to now permit the County to require the removal of the fourth floor."

In Offen vs. County Council, 96 Md. App. 526, the Court of Special Appeals remanded the case for determination whether Prince George's County was estopped from applying the down zoning of a particular property in connection with validly enacted comprehensive rezoning of the County, which rezoning served as the basis for denial of the issuance of a building permit for the subject property. The Court of Special Appeals ignored the circumstance, that, in the event on remand an estoppel of the County was found by reason of egregious actions of public officials in stalling the issuance of permits prior to the comprehensive rezoning, the post comprehensive rezoning issuance of permits for development of the subject property would be in violation of the zoning classification then applicable to the subject property.

Throughout its Opinion, the Board made reference to Exhibits which fully supported Baltimore County's involvement in both the design and approval of the septic drainage field installed by Appellee on the adjacent RC2 property. Baltimore County conditioned the lifting of the Stop Work Order on Appellee's compliance with these requirements, namely, acquisition of the easement and installation of the septic drainage field in accordance with Baltimore County's approved design.

Prior to authorizing Appellee to proceed with the work necessary to acquire the easement and build the functioning septic system, Rocky Powell, Representative of the Department of Environmental Protection and Resource Management consulted with the Office of Planning and Zoning .(Vol.

2T,81-82; Property Owner's Exhibit 4 and 23) Carl Richards, Supervisor of Zoning Administration and Development Management, approved the drainage field on the adjacent RC2 property. (Vol. 2T,98-99) Mr. Richards' responsibility included the review of plans and applications for development that are submitted for determination of compliance with zoning regulations. The Board had the testimony of Carl Richards that request for approval of Appellee's septic field was similar to previously approved facilities in other earlier zoning hearings and was not a matter regulated by zoning. (Vol. 2T,100-103)

The observation of the Court of Appeals in Permanent Financial Corporation, supra, at p. 252 is just as applicable to Appellees' permit, where the Court stated "...it is at least clear that ... the decision to issue the permit was not the result of oversight by the County, but rather was consistent with its practice." Carl Richards' testimony supports the Board's determination that Appellee acted fairly and openly with Baltimore County and the County, through its actions, is estopped to take action against him for doing precisely what Baltimore County required him to do.

For the reasons stated herein, the decision of the Board of Appeals is hereby AFFIRMED, excepting as to the issue of estoppel of the Appellants to seek relief independently of Baltimore County's zoning enforcement powers, as to which determination the Board is hereby REVERSED . The right of the Individual Appellants, the Association Appellant and/or People's Counsel for Baltimore County to seek injunctive relief as suggested in Judge Cathell's footnote on page 83 in his dissent in United Parcel vs. People's Counsel, 93 Md. App. 59, is left to another day and another balancing of equities by another court. Baltimore County, however, is estopped to undertake any zoning enforcement

proceedings against Appellee in connection with Appellee's septic drainage field use of his easement in the RC2 zone. The court costs of this appeal shall be paid by Appellee.

JAMES T. SMITH, JR., JUDGE

March 7, 1996
DATE

JTS/ss
Copy: J. Carroll Holzer, Esq.
Nancy West, Esq.
Peter Max Zimmerman, Esq.
John B. Gontrum, Esq.

Baltimore County
Department of Permits and
Development Management

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

September 24, 1996

Gerard King Stevens, Esquire
Fisher & Winner L.L.P.
315 North Charles Street
Baltimore, MD 21201-4325

RE: Item No.: 87
Case No.: 97-87-SPH
Petitioner: Paul D. Weber

Dear Mr. Stevens:

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 August 22, 1996.

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 Roslyn Eubanks in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

Printed with Soybean Ink
on Recycled Paper

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: September 16, 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 Nos. 85 & 87

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 887-3495.

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

PK/JL

ITEM85/PZONE/TXTJWL

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

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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 887-3495.

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

PK/JL

ITEM85/PZONE/TXTJWL

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

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development Management

Date: September 13, 1996

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for September 9, 1996
Item No. 087

The Development Plans Review Division has reviewed the subject zoning item. The existing entrances should be reduced in width to a maximum of 35 feet wide each.

RWB:HJO:jrb

cc: File

ZONE25D

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

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: Sep. 6, 91

FROM: R. Bruce Seeley
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: Sep 3 / 91

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s:

81
82
83
84
87
88
90
454
475

RBS:sp

BRUCE2/DEPRM/TXTSBP

Baltimore County Government
Fire Department

700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410) 887-4880

DATE: 09/05/96

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

RE: Property Owner: EXCUTIVE AUTO PAINT & REPAIR INC.

Location: SEC FORK RD. AND LONG GREEN PK. (13580 FORK RD.)

Item No.: 089 Zoning Agenda: SPECIAL HEARING

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.

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

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

SEP 9 1996

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

cc: File

Printed with Soybean Ink
on Recycled Paper

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Parker F. Williams
Administrator

8-30-96

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

RE: Baltimore County
Item No. 087 (JLL)

Dear Ms. Eubanks:

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 410-545-5581 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Bob Small

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

Inter-Office Correspondence

TO: C. Marks
T. Melvin
H. Buchheister

DATE: December 24, 1997

FROM: Kathi

SUBJECT: Petitioner's Opposition to Motion to Reconsider /filed by Stephen J. Nolan, Esquire on behalf of Petitioner /Executive Auto Paint and Repair, Inc.

On December 16th, a copy of Protestants' Motion to Reconsider was forwarded to you, along with a copy of the Notice of Assignment for the Motion only hearing scheduled for Tuesday, January 6, 1998, at 1:00 p.m. With regard to that hearing, attached is a copy of Mr. Nolan's response to this Motion which was filed on December 23, 1997.

Should you have any questions regarding the above, or need any additional information, please call me.

kathi

Attachment

file copy

PETITION PROBLEMS

#81 --- RT

1. Need authorization for person to sign for legal owner.
2. Need title of person signing for contract purchaser.

#82 --- CAM

1. No review information on bottom of petition form.

#85 --- MJK

1. Can't read printed name of contract purchaser.

#87 --- JLL

1. Need telephone number for attorney.

#88 --- JLL

1. Need authorization for person who signed for attorney.
2. Need telephone number for legal owner.

#93 --- JCM

1. No hardship or practical difficulty on petition form.
2. Notary section is incomplete.

8/27/96

Baltimore County
Department of Permits and
Development Management

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

March 3, 1997

Gerard King Stevens, Esquire
Fisher & Winner L.L.P.
315 North Charles Street
Baltimore, MD 21201-4325

RE: Petition for Special Hearing
SEC Fork Road and Long Green Pike
(13580 Fork Road)
11th Election District
6th Councilmanic District
Executive Auto Paint and Repair, Inc. - Petitioner
Case No. 97-87-SPH

Dear Mr. Stevens:

Please be advised that an appeal of the above-referenced case was filed in this office on February 10, 1997 by J. Carroll Holzer, Esquire on behalf of Long Green Valley Association, Charlotte Pine, Katherine Gabriel, Sharon Rohrbaugh, and Carol Trela. 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 call 887-3180.

Sincerely,

ARNOLD JABLON
Director

AJ:rye

c: Stephen J. Nolan, Esquire
People's Counsel

Printed with Soybean Ink
on Recycled Paper

APPEAL

Petition for Special Hearing
SEC Fork Road and Long Green Pike
(13580 Fork Road)
11th Election District - 6th Councilmanic District
Executive Auto Paint and Repair, Inc. - Petitioner
Case No. 97-87-SPH

✓Petition for Special Hearing

✓Description of Property

✓Certificate of Posting

✓Certificate of Publication

✓ Entry of Appearance of People's Counsel

✓Zoning Advisory Committee Comments

✓Petitioners and Protestants Sign-In Sheets

Petitioners' Exhibits:
✓1 - Plat to Accompany Special Hearing
✓2 - Zoning Map of Baltimore County, MD
✓3 - Aerial Map
✓4 - Aerial Map
✓5 - Photographic Map
✓6 - Photograph
✓7A-7D - Four Photographs
8 - Exhibit Not Found
✓9 - Letter from MVA Licensing & Consumer Services
✓10 - Correction Notice for Alleged Zoning Violation

Protestants' Exhibits:
✓1 - Copy of an Article About Millie and Jack Peterson
✓2 - Petition Opposing Zoning Changes
3-7 - Exhibits Not Found
✓8 - Copy of Carroll Manor Hey Day Flyer
9-10 - Exhibits Not Found
✓11 - Eight Photographs
✓12 - Petition In Support of Petitioner

✓Letter in Support of Petitioner dated December 11, 1996

✓Petitioner's Hearing Memorandum dated December 20, 1996 from Stephen J. Nolan, Esquire

✓87 Letters in Opposition of Petitioner

✓Zoning Commissioner's Order dated January 16, 1997 (Granted)

✓Notice of Appeal received on February 10, 1997 from J. Carroll Holzer, Esquire on behalf of Long Green Valley Association, Charlotte Pine, Katherine Gabriel, Sharon Rohrbaugh, and Carol Trela

c: Stephen J. Nolan, Esquire, Nottingham Centre, Suite 700, 502 Washington Avenue, Towson, MD 21204
✱J. Carroll Holzer, Esquire, 305 Washington Avenue, Suite 502, Towson, MD 21204
Gerard K. Stevens, Esquire, Fisher and Winner, LLP, 315 N. Charles Street, Baltimore, MD 21201-4325
Mr. Paul D. Weber, 4825 Hydes Road, Hydes, MD 21082
People's Counsel of Baltimore County, M.S. 2010

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

Appellants /Protestants:

Carol Trela	5433 Patterson Road	Baldwin	21013
Sharon Rohrbaugh	13558 Fork Road	Baldwin	21013
Charlotte Pine	13310 Fork Road	Baldwin	21013
Long Green Valley Assn.	P.O. Box 91	Baldwin	21013
Katherine Gabriel	12601 Long Green Pike	Glen Arm, MD	21057

Case No. 97-87-SPH — SPH -Approval of site as existing nonconforming use for used car sales.

1/16/97 -Zoning Commissioner's Order in which requested relief was **GRANTED**.

5/09/97 -Notice of Assignment for hearing scheduled for Thursday, July 10, 1997 at 10:00 a.m. sent to following:

J. Carroll Holzer, Esquire
Long Green Valley Association
Charlotte Pine
Katherine Gabriel
Sharon Rohrbaugh
Carol Trela
Stephen J. Nolan, Esquire
Paul D. Weber, President
Executive Auto Paint & Repair
Gerald K. Stevens, Esquire
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

Following addresses found on petitions in file:

Carol Trela	5433 Patterson Road	Baldwin 21013
Sharon Rohrbaugh	13558 Fork Road	Baldwin 21013
Charlotte Pine	13310 Fork Road	Baldwin 21013
Long Green Valley Assn.	P.O. Box 91	Baldwin 21013
Katherine Gabriel	12601 Long Green Pike	Glen Arm, MD 21057

5/14/97 -Telephone conversation with S. Nolan regarding need for additional hearing day in order to complete this matter based upon hearing below. T/C with both C. Holzer and S. Nolan -- confirmed availability on 8/14/97; to send amended notice to include both dates.

5/15/97 -Amended Notice of Assignment /To add Day #2 -- sent to parties; scheduled for Thursday, July 10 and Thursday, August 14, 1997 at 10:00.

7/10/97 -Hearing Day #1; continued to 8/14/97 for Hearing Day #2. Petitioner's Hearing Memorandum filed prior to start of hearing this date by Stephen J. Nolan, Esquire.

8/14/97 -Hearing concluded. Memos due from counsel 9/15/97; deliberation to be scheduled (C.M.B.)

8/15/97 -Notice of Deliberation sent to parties; scheduled for Thursday, September 25, 1997 at 9:30 a.m.

CASE #: 97-87-SPH **IN THE MATTER OF: EXECUTIVE AUTO PAINT & REPAIR, INC. -Petitioners 13580 Fork Road 11th Election District; 6th Councilmanic District**

9/15/97 -Protestants' Memorandum in Lieu of Final Argument filed by Long Green Valley Association, Inc., Charlotte Pine, Carol Trela, Bartlett Regan, Sharon Rohrbaugh, and Tom Vance, individual Protestants.
- Petitioner's Post Hearing Memorandum filed by Stephen J. Nolan, Esquire, on behalf of Executive Auto Paint & Repair, Inc., Petitioner.

COPIES OF ABOVE MEMOS TO BOARD MEMBERS: C.B.M.

9/24/97 -Letter from S. Nolan regarding Protestants' Memo (stamped "Received Post-Hearing Day One").

9/25/97 -Deliberation as scheduled; Petition for Special Hearing granted by CBA; Order to be issued. Minutes prepared and in file. C.B.M.

12/08/97 -Board's Opinion and Order issued (CBM).

12/10/97 -Motion to Reconsider filed by J. Carroll Holzer on behalf of Protestants Long Green Valley Assn., Inc.; Charlotte Pine, Carol Trela, Bartlett Regan, Sharon Rohrbaugh and Tom Vance, individual Protestants.

12/15/97 -T/Cs to both Mr. Holzer and Mr. Nolan. Motion hearing on Mr. Holzer's Motion to be scheduled for Tuesday, January 6, 1998 at 1:00 p.m. (panel C.B.M.). Mr. Holzer is unable to appear before the Board in the a.m. that date since he is scheduled to appear before the Court of Special Appeals that morning. Thus, this motion hearing has been set for the afternoon docket before the Board.

12/23/97 -Petitioner's Opposition to Motion to Reconsider filed by S. Nolan on behalf of Petitioner. Copies to CBM.

1/06/97 -Hearing concluded /motion only /argument on Motion to Reconsider. Deliberation following brief recess same date. Motion to Reconsider DENIED. Written Ruling to be issued by Board (C.B.M.)

1/08/98 -Courtesy copy of Petition for Judicial Review received from Mr. Holzer; Petition filed in Circuit Court for Baltimore County 1/06/98.

Executive Auto Paint & Repair, Inc. 96-87-SPH

Civil Action No. 3-C-98-00104

July 30, 1996	Petition for Special Hearing filed by Gerard King Stevens, Esquire, on behalf of Paul D. Weber, President of Executive Auto Paint & Repair, Inc., to approve an existing nonconforming use for used car sales, in accordance with BCZR Sec. 104.1.
October 1	Hearing held on Petition by the Zoning Commissioner.
January 16, 1997	Order of the Zoning Commissioner in which Petition for Special Hearing was GRANTED.
February 10	Notice of Appeal filed J. Carroll Holzer, Esquire, on behalf Protestants -- Long Green Valley Association, Charlotte Pine, Katherine Gabriel, Sharon Rohrbaugh, and Carol Trela.
July 10 August 14	Hearing before the Board of Appeals (Day #1). Hearing before the Board of Appeals (Day #2 - concluded).
September 15	Protestants' Memorandum in lieu of Final Argument filed by J. Carroll Holzer, Esquire.
September 15	Petitioner's Post Hearing Memorandum filed by Stephen J. Nolan, Esquire.
September 25	Deliberation conducted by the Board.
December 8	Opinion and Order issued by the Board; Petition for SPH is GRANTED.
December 10	Motion to Reconsider filed by J. Carroll Holzer, Esquire, for Protestants.
December 23	Petitioner's Opposition to Motion to Reconsider filed by Steve Nolan, Esquire, on behalf of Petitioner.
January 6, 1998	Motion hearing held and deliberation conducted by the Board. Motion to Reconsider *DENIED*. *Ruling on* Motion to Reconsider issued by the Board on January 15, 1998.
January 6 ✓E	Petition for Judicial Review filed in the CCT for Baltimore County by J. Carroll Holzer, Esq., on behalf of Protestants. (rec'd 1/9/99)
March 3 ✓	Record of Proceedings and transcript of testimony filed in the Circuit Court for Baltimore County.
September 30 ✓E	Opinion issued by CCt; CBA decision is AFFIRMED (John Turnbull, J).
October 22 ✓E	Notice of Appeal filed in CSA by Holzer for Long Green Valley etal.
June 22, 1999 ✓E	Opinion issued by CSA; CCt dec. is AFFIRMED (Davis, Byrnes, Bishop).

County Board of Appeals of Baltimore County

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

RECEIVED
JAN 14 1998
98-183
PDM

TO WCR

January 13, 1998

Stephen J. Nolan, Esquire
NOLAN, PLUMHOFF & WILLIAMS, CHTD.
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

RE: Civil Action No. 3-C-98-00104
EXECUTIVE AUTO PAINT AND REPAIR, INC.

Dear Mr. Nolan:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on January 6, 1998, 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-98-00104.

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: Paul D. Weber /Executive Auto
Gerald K. Stevens, Esquire
People's Counsel for Baltimore County
Lawrence E. Schmidt /ZC
Pat Keller /Planning
~~Arnold~~ Jablon, Director /PDM
Virginia W. Barnhart, Co. Atty

Printed with Soybean Ink
on Recycled Paper

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

RECEIVED
COUNTY BOARD OF APPEALS
98 MAR -6 PM 3:51

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

Case Number: 03-C-98-000104
Old Case number:
C I V I L

In The Matter of: Long Green Valley Assn Inc , et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 3rd day of March, 1997.

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

Date issued: 03/05/98

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Ave
Towson, MD 21204

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

County Board Of Appeals Of Baltimore County
400 Washington Ave
Towson MD 21204

Assignment Date: 03/09/98

EXEC. AUTO

Case Title: In The Matter of: Long Green Valley Assn Inc , et al
Case No: 03-C-98-000104 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..... 03/24/98
2. All Motions (excluding Motions in Limine) are due by..... 08/05/98
3. TRIAL DATE is..... 09/14/98
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1 - 1 1/2 HOURS APPEAL NOTE; AGREED DATE.

Honorable John Grason Turnbull II
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 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: Stephen J Nolan Esq
cc: J Carroll Holzer Esq
Reissue Date 07/02/98

RECEIVED
COUNTY BOARD OF APPEALS
98 JUL -7 PM 2:17

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

February 27, 1998

BILLED TO:

J. Carroll Holzer, Esquire
HOLZER & LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

*Cost of certified documents in Case No. 97-87-SPH.....$57.00

(Petition for Judicial Review filed in Circuit Court /Civil Action No. 3-C-98-00104/Executive Auto Paint & Repair, Inc.)

Petition of: Long Green Valley Assn., Inc.,
Charlotte Pine, Carol Trela,
Bartlett Regan, Sharon Rohrbaugh,
and Tom Vance

MAKE CHECK PAYABLE TO: Baltimore County, Maryland

REMIT TO:

County Board of Appeals
Room 49 - Basement
Old Courthouse
400 Washington Avenue
Towson, MD 21204

* PLEASE NOTE THAT THESE COSTS ARE SEPARATE AND DISTINCT FROM ANY AMOUNT PAID BY YOU FOR THE TRANSCRIPT.

Printed with Soybean Ink
on Recycled Paper

IN THE MATTER OF:	*	COUNTY BOARD OF APPEALS
EXECUTIVE AUTO PAINT	*	OF BALTIMORE COUNTY
AND REPAIR, INC.	*	
	*	Case No. 97-87-SPH

* *

AFFIDAVIT OF CARL E. KRESS

I, Carl Edward Kress, am over 18 years of age and competent to testify in the above proceedings and say as follows:

1. My recollection in the above matter of Executive Auto Paint and Repair, Inc. is that in 1952 the building now known as Wood Refinisher was operated by one Charles Snavely. Snavely had a John Deere dealership in the building and Snavely sold it to Wes Burrell. While Wes Burrell owned the building, it burned down.

2. The wood building was rebuilt and replaced by a cement block building. Wes Burrell then sold the business to Mitten Preston who named it Preston Implement Company. Preston Implement Company moved its office and business into the Executive Auto building.

3. In 1960, I bought equipment from Preston from the lot known as Executive Auto. I bought a chopper and other equipment. I also recall buying a John Deere 630 and a John Deere 730 from Preston from 1960 to 1970. I worked at Lang Valley Farm at the time.

4. Mr. Preston also had another place of business at Aldona in Churchville, Maryland. He gave up both of these businesses and moved to a new building at Route 22 in Churchville.

I solemnly declare and affirm under the penalty of perjury that the herein attached testimony is mine, true and correct to the best of my knowledge, information and belief.

10-28-97 — Date

Carl E. Kress — Carl E. Kress

A:/Affidavit/Kress.Aff

IN THE MATTER OF: EXECUTIVE AUTO PAINT & REPAIR, INC., Petitioner, 13580 Fork Road 11th Election District 6th Councilmanic District Long Green Valley Association, et al., Appellants.	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 97-87-SPH Hearing dates: 7/10/97 & 8/14/97

RECEIVED
COUNTY BOARD OF APPEALS
97 AUG -8 AM 11:40

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

To **Law Offices of James A. Pine**
c/o Charlotte W. Pine, Esquire
607 Baltimore Avenue
Baltimore, MD 21204

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and or objects only; (**X**) Personally appear and produce documents or objects; at the County Board of Appeals of Baltimore County, Old Courthouse, Room 48, 400 Washington Ave., Towson, Maryland 21204 on Thursday, the 14th day of August, 1996, at 10:00 a.m.

YOU ARE COMMANDED TO produce the following documents or objects:
All legal files or records for Clayton Motors, Inc., Clayton Auto Sales, Inc., Stanley Clayton, Jr., and Stanley Clayton, Sr., including, but not limited to, automobile dealer licensing application(s), Baltimore County statements of zoning approval, and all other related documents which may evidence or establish the dealer licensing of Clayton Motors, Inc. in or about 1970.

Subpoena requested by (**X**) Petitioner; and any questions should be referred to: Gerard King Stevens, Esquire, Fisher & Winner, LLP, 315 N. Charles St., Baltimore, MD 21201 (410) 385-2000.

Date Issued: _____ Charlotte E. Radcliffe
Clerk

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

SHERIFF'S RETURN

( ) Served and copy delivered on date indicated below.
( ) Unserved, by reason of _____.
Date:_____Fee:$_____ _____
SHERIFF

ORIGINAL AND ONE COPY NEEDED FOR EACH WITNESS

F:\WPDOCS\GKS\EXECAUTO\SUBPOENA

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

COUNTY BOARD OF APPEALS
RECEIVED
97 AUG 12 PM 2:02

AFFIDAVIT OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES:

1. That I am above the age of 18 years and am not a party to this action.

2. That I personally served **ADAM WEBER, SR.**at

HIS DRIVEWAY, 13821 BALDWIN MILL RD
BALDWIN, MD

on the 6TH day of AUGUST, 1997, @ 8 A.M. (P.M.) with a copy of the Subpoena for the County Board of Appeals of Baltimore County.

I HEREBY DECLARE AND AFFIRM under penalties of perjury that the aforegoing is true to the best of my knowledge, information and belief.

_____(SEAL)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this ____ day of _____, 1997, a copy of the foregoing Affidavit of Service was mailed to Carroll Holzer, Esq., at 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Long Green Valley Association, and a copy to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

_____

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL 30 PM 12: 35

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on **Thursday, the 14th day of August, 1997, at 10:00 A.M. at Hearing Room #48**, located at County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

WITNESS: **ADAM WEBER, SR.**
ADDRESS: 13821 Baldwin Mill Road
Baldwin, Maryland 21013

CARROLL HOLZER, ESQUIRE
305 Washington Avenue, Suite 502
Towson, Maryland 21204
Tel. (410) 825-6961
Attorney for
LONG GREEN VALLEY ASSOCIATION

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Kathy Bianco
KATHY BIANCO
County Board of Appeals of Baltimore County

SHERIFF'S RETURN

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

Date:_____ Fee: $_____

_____
SHERIFF

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

RECEIVED
COUNTY BOARD OF APPEALS
97 AUG 12 PM 2:02

AFFIDAVIT OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES:

1. That I am above the age of 18 years and am not a party to this action.

2. That I personally served **CHRISTINE PIKA** at

Her Home 733 Record Road
Fallston Maryland 21047

on the 9TH day of AUGUST, 1997, @ 11 A.M./~~P.M.~~ with a copy of the Subpoena for the County Board of Appeals of Baltimore County.

I HEREBY DECLARE AND AFFIRM under penalties of perjury that the aforegoing is true to the best of my knowledge, information and belief.

_____(SEAL)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this ____ day of _____, 1997, a copy of the foregoing Affidavit of Service was mailed to Carroll Holzer, Esq., at 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Long Green Valley Association, and a copy to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

_____

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL 30 PM 12: 35

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on **Thursday, the 14th day of August, 1997, at 10:00 A.M. at Hearing Room #48**, located at County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

WITNESS: **CHRISTINE PIKA**
ADDRESS: 733 Record Road
Fallston, Maryland 21047

CARROLL HOLZER, ESQUIRE
305 Washington Avenue, Suite 502
Towson, Maryland 21204
Tel. (410) 825-6961
Attorney for
LONG GREEN VALLEY ASSOCIATION

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Kathy Bianco
KATHY BIANCO
County Board of Appeals of Baltimore County

SHERIFF'S RETURN

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

Date:_____ Fee: $_____

_____
SHERIFF

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

RECEIVED
COUNTY BOARD OF APPEALS
97 AUG 12 PM 2:02

AFFIDAVIT OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES:

1. That I am above the age of 18 years and am not a party to this action.

2. That I personally served **SALVATORE GLORIOSO, JR** at

HIS HOME, 2914 HARFORD RD HYDES, MD

on the 6TH day of AUGUST, 1997, @ 7 A.M./P.M. with a copy of the Subpoena for the County Board of Appeals of Baltimore County.

I HEREBY DECLARE AND AFFIRM under penalties of perjury that the aforegoing is true to the best of my knowledge, information and belief.

_____(SEAL)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this ____ day of _____, 1997, a copy of the foregoing Affidavit of Service was mailed to Carroll Holzer, Esq., at 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Long Green Valley Association, and a copy to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

_____

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL 30 PM 12:34

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on **Thursday, the 14th day of August, 1997, at 10:00 A.M. at Hearing Room #48**, located at County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

WITNESS: **SALVATORE GLORIOSO, JR.**
ADDRESS: 2914 Harford Road
Hydes, Maryland 21082

CARROLL HOLZER, ESQUIRE
305 Washington Avenue, Suite 502
Towson, Maryland 21204
Tel. (410) 825-6961
Attorney for
LONG GREEN VALLEY ASSOCIATION

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Kathy Bianco
KATHY BIANCO
County Board of Appeals of Baltimore County

SHERIFF'S RETURN

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

Date:_____ Fee: $_____

_____
SHERIFF

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

AFFIDAVIT OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES:

1. That I am above the age of 18 years and am not a party to this action.

2. That I personally served **BARTLETT C. REGAN** at

FORK & HARFORD RD - CITGO STATION - FORK, MD

on the 27th day of July, 1997, @ 2PM ~~A.M./~~P.M. with a copy of the Subpoena for the County Board of Appeals of Baltimore County.

I HEREBY DECLARE AND AFFIRM under penalties of perjury that the aforegoing is true to the best of my knowledge, information and belief.

H Bartlett (SEAL)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27th day of July, 1997, a copy of the foregoing Affidavit of Service was mailed to Carroll Holzer, Esq., at 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Long Green Valley Association, and a copy to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

H Bartlett

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC. **13580 Fork Road** **Baldwin, MD 21013** **11th Election District;** **6th Councilmanic District**	*	**COUNTY BOARD OF APPEALS** **BALTIMORE COUNTY** **CIVIL CASE NO.97-87-SPH**
Petitioners	*	

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on **Thursday, the 14th day of August, 1997, at 10:00 A.M. at Hearing Room #48**, located at County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL 25 PM 1:33

WITNESS: **BARTLETT C. REGAN**
ADDRESS: CVS Pharmacy
6516 Landover Road, Landover, Maryland 20785

CARROLL HOLZER, ESQUIRE
305 Washington Avenue, Suite 502
Towson, Maryland 21204
Tel. (410) 825-6961
Attorney for
LONG GREEN VALLEY ASSOCIATION

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Kathy Bianco
KATHY BIANCO
County Board of Appeals of Baltimore County

SHERIFF'S RETURN

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

Date:_____ Fee: $_____

_____
SHERIFF

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC.	*	**COUNTY BOARD OF APPEALS**
13580 Fork Road	*	**BALTIMORE COUNTY**
Baldwin, MD 21013		
11th Election District;	*	**CIVIL CASE NO.97-87-SPH**
6th Councilmanic District		
Petitioners	*	

AFFIDAVIT OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES:

1. That I am above the age of 18 years and am not a party to this action.

2. That I personally served **ROBERT E. JOY** at

Towson Maryland

on the 31 day of July, 1997, @ 1:50 ~~A.M.~~/P.M. with a copy of the Subpoena for the County Board of Appeals of Baltimore County.

I HEREBY DECLARE AND AFFIRM under penalties of perjury that the aforegoing is true to the best of my knowledge, information and belief.

Charlotte W. Pine (SEAL)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 31 day of July, 1997, a copy of the foregoing Affidavit of Service was mailed to Carroll Holzer, Esq., at 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Attorney for Long Green Valley Association, and a copy to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland 21204.

Charlotte W Pine

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL 30 PM 12: 35

IN THE MATTER OF:	*	**BEFORE THE**
EXECUTIVE AUTO PAINT & REPAIR, INC. **13580 Fork Road** **Baldwin, MD 21013** **11th Election District;** **6th Councilmanic District**	*	**COUNTY BOARD OF APPEALS** **BALTIMORE COUNTY**
Petitioners	*	**CIVIL CASE NO.97-87-SPH**

SUBPOENA

Please issue a Subpoena to the following named witness to appear before the County Board of Appeals of Baltimore County at the hearing for the matter captioned above on **Thursday, the 14th day of August, 1997, at 10:00 A.M. at Hearing Room #48**, located at County Board of Appeals of Baltimore County, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, and continuing thereafter as necessary for such witness' testimony and as scheduled by the Board.

WITNESS: **ROBERT E. JOY**
ADDRESS: 11 Center Place
Dundalk, Maryland 21222

CARROLL HOLZER, ESQUIRE
305 Washington Avenue, Suite 502
Towson, Maryland 21204
Tel. (410) 825-6961
Attorney for
LONG GREEN VALLEY ASSOCIATION

The witness named above is hereby ordered to so appear before the County Board of Appeals. The Board requests the Sheriff to issue the summons set forth herein.

Kathy Bianco
KATHY BIANCO
County Board of Appeals of Baltimore County

SHERIFF'S RETURN

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

Date:_____ Fee: $_____

_____
SHERIFF

CIRCUIT COURT FOR BALTIMORE COUNTY
Clerk of the Circuit Court,
Suzanne Mensh
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754

Received From: J C Holzer
Address: 305 Washington Ave
Suite 502
Towson, MD 21204

03-C-98-000104

Clerk Fee - Civil Filing Fee - New Case CK	$80.00
Appearance Fee CK	$10.00
Sub Total	$90.00

----MOP----------	AMOUNT----
CK	$90.00
TOTAL DUE	$90.00
CASH RECEIVED	$0.00
CASH DUE	$0.00
CHANGE	$0.00

COMMENT:
Long Green Valley Assn

Receipt #199800000233
Cashier: BH CCBACOP067
01/06/98 2:40pm

PETITION OF: Long Green Valley Assn., etal

CIVIL ACTION # 3-C-98-00104

IN THE MATTER OF EXECUTIVE AUTO PAINT & REPAIR, INC.

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

Lisa Gilmore
Clerk's Office

Date: 3/3/98

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

August 15, 1997

NOTICE OF DELIBERATION

Having concluded this matter after two days of hearing (July 10 and August 14, 1997), public deliberation has been scheduled by the Board as follows:

EXECUTIVE AUTO PAINT & REPAIR, INC. -Petitioner
CASE NO. 97-87-SPH

DATE AND TIME : Thursday, September 25, 1997 @ 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

(NOTE: CLOSING MEMOS ARE DUE FROM COUNSEL ON MONDAY, SEPTEMBER 15, 1997; please submit Original and three (3) copies.)

Kathleen C. Bianco
Administrator

cc: Counsel for Appellants : J. Carroll Holzer, Esquire
Appellants : Long Green Valley Association
Charlotte Pine
Katherine Gabriel
Sharon Rohrbaugh
Carol Trela

Counsel for Petitioner : Stephen J. Nolan, Esquire
Petitioner : Paul D. Weber, President
Executive Auto Paint & Repair

Gerald K. Stevens, Esquire

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

Copied: C.M.B.

Printed with Soybean Ink
on Recycled Paper

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:	Executive Auto Paint & Repair, Inc. Case No. 97-87-SPH		
DATE	:	September 25, 1997 @ 9:30 a.m.	
BOARD /PANEL	:	Charles L. Marks, Acting Chairman	(CLM)
		Thomas P. Melvin	(TPM)
		Harry E. Buchheister, Jr.	(HEB)
SECRETARY	:	Kathleen C. Bianco Administrator	

Among those present at the deliberation were J. Carroll Holzer, Esquire, Counsel for Appellants /Protestants; and Stephen J. Nolan, Esquire, Counsel for Petitioner. People's Counsel did not participate in these proceedings.

CLM: The Board of Appeals is in its scheduled session for public deliberation relative to the matter of Executive Auto Paint and Repair, Inc., Case No. 97-87-SPH.

Preliminarily, let me say that this has been one of the most difficult cases I have personally had to decide in my two plus years on the Board and required an extensive amount of research on my part, and I'm sure on the part of my associates, to come to a conclusion.

Let me further say that each member has independently reviewed his notes, the transcript provided and exhibits in the file, and those documents marked "For ID Only." The Board members have not discussed this case among themselves and reached their own conclusions based upon the testimony, evidence, facts of the case, and applicable statutory and case law; acknowledged the presence in this case of two very skilled attorneys who made their presentations and submitted briefs.

Having said that, since I chaired the hearings, I will start off first.

The subject site itself is roughly 3 acres in total area divided into two parcels, 1 and 2. Parcel 1 is the subject of the special hearing and constitutes a tract adjacent to Long Green Pike, Baldwin Mill Road, Pleasantville Road, and Fork Road, constituting 1.273 total acres, presently zoned B.L.-C.R. and B.R., with 1.75 acres being B.R. and smaller .098 zoned B.L.-C.R. Undoubtedly it is one of the most favorable commercial properties in the area; one-story block building; in the rear is a small addition and small shed. In the rear

also is a one-story building used for upholstery business and another small shed.

Zoning came in January 1945. At that time, the zoning regulations allowed "E" to be used for any purpose except those uses specifically identified under the 1945 regulations. Use for car repairs and sales was permitted. It was changed in 1955; regulations extensively rewritten; "E" was eliminated and B.L. and B.R. substituted. In 1955 auto sales was permitted by special exception per 236.4 of 1955 regulations in B.R. zone.

B.L. did not permit automotive sales area. No request for special exception as to the B.R. portion of the site. Based on evidence and testimony, there is evidence that sales began in 1940's, when "E". However, because of the 1955 regulations, Petitioner has the burden of proving that the current nonconforming use has existed since 1955, and has continued uninterrupted and continuously since the adoption of the regulations, with no improper expansion as compared to permitted intensification.

Initially, I think we need to consider nonconforming uses in general. Through the passage of time, 42 years in this case, it's more and more difficult for nonconforming use Petitioners to establish use when contested simply because of witness verification and evidentiary proof. I suspect the County Council had that fact in mind when the legislation was passed in 1955. Judicially speaking, Maryland courts have found that nonconforming uses limit effectiveness of land use, contribute to urban blight, and do injure property values, and so forth.

If a nonconforming use is inconsistent with land use by zoning regulations, the nonconforming user is required to prove essential elements of right to continue; must prove it existed prior to enactment of ordinances. The right to maintain use does not depend upon ownership or tenancy of the land; the right attaches to the land itself, not current owner.

Certain factors must be taken into consideration. Along with Petitioner meeting burden of proof, we must also be cognizant of the fact that any case heard by this Board may be appealed and of the standards upon which that court will be examining this Board's decision. That review is found in Gray v. Anne Arundel County.

- Did the Board recognize and apply correct principles of law
- If the Board did not err in legal analysis, are

factual findings supported by evidence or by such relevant evidence that a reasonable mind would find that it supports conclusion

- Has the agency applied the law to the facts. Could a reasoning mind have reached the decision reached by the agency.

I bring this up only because of the many conflicts within the testimony taken at the hearing and the evidence offered. The Board is obligated to judge the credibility of each witness and apply each Board member's knowledge through experience and training to the evidence presented. Petitioner offered several witnesses in support. Reading my notes and the transcript, I find this testimony convincing. Here is a gentleman (86 years old) who has been a resident of the Valley since 1951. He testified at length in what I considered to be sharp, clear and convincing manner. He spoke of a garage and Petitioner's Exhibit 7 as the present location of Executive Auto.

Mr. Breidenbaugh described a block building and facility across the road; they had cars on the lot; clearly pointing to lot on exhibit and the display area within Petitioner's Exhibit 2, between Long Green and Fork Road. Clearly, a commercial operation was in existence on the south side of Fork; cars being sold in 1953; cars have always been sold on that land, and in fact, he had purchased a car in 1952. Recalled various ownerships.

Mr. Cypull testified for Petitioner; resident since 1941, or roughly 56 years. Prior to March 30, 1955, used car sales took place on the property; knew of no abandonment or expansion in area or use. "It always has been pretty much the same."

Mr. Elwood lives 2.5 miles from the subject site. His recollection goes back to 1954 and Reed. His brother dated Reed's daughter; remembers cars along Fork Road. Even during the period of 3 years in the Marines, he came home frequently and the site had always sold used cars. It had not changed significantly.

Mr. Clayton resides in Florida. He was a resident of Maryland from 1948 to 1979; testified to used car sales at site and purchase in 1970. His first recollection of the Reed business was in 1954; related Reed business in Carroll Manor Hayday booklet /exhibit 8. Purchased - C&D were moving out. Cars were always sold; photos entered clearly show old cars on the property left by previous tenant. When he purchased the

property, only the concrete building was there. Mr. Clayton stated there was no interruption in the use of the property for used car sales to 1979 when it was sold to Mr. Weber; gas service was discontinued after the crunch.

Mr. Carter lived in the area since 1971. He is the past president of the Long Green Association. I found it very significant that no citations about the property had ever been issued by Long Green.

Mr. Weber testified at length of his ownership; bought in 1979. Lived on Hyde Road 47 years. Had investigated the property -- auto service, paint and used cars on site; Exhibit 15 - Zoning office indicated business was properly zoned for motor vehicles sales. Described operation and placement of used cars. No intention to display expansion beyond split rail fence. Same operation from 1979 to the present time. Always dealing with some kind of used car sales, auto repair, painting and used car sales.

Upholstery is not part of his operation; that nonconforming area is encompassed by dark blue line.

Mr. Edwards - lived on Fork Road from July 1975. Described uses conducted on property opposite his on the south side of Fork Road. Testified to no cessation or abandonment; nature of work was similar in nature. He also indicated there was no effect in his mind of detrimental nature to community. He had purchased cars at arm's length; did not recall John Deere dealership.

The Protestants offered Ms. Gabriel (moved to area in 1978); her position is that the site is not a used car lot but handles majority of painting and repairs and is not in conformity with the general area. She seemed less concerned with the nonconforming use, but that approval would create overextension of commercialization in the area, greater than that present in 1978. She discussed general mailings and the Long Green Board meetings opposed to nonconforming use issue.

While I firmly believe Ms. Gabriel is sincere, I personally found her testimony to be rambling and not responsive to Mr. Nolan's questions.

Ms. Trela lives one mile away; related personal experience with Mr. Weber. Her basic concern - her testimony was not so much with nonconforming use but increase in activity over the past two years; double number of cars taken and definite commercial expansion. Concerned about increase in car usages

and not being parked in parcel 3 and tow trucks.

Mr. Regan lives one mile away; testified to telephone listings; entered into evidence.

Mr. Glorioso lived in general area. Familiar with the site and of John Deere dealership which was in evidence at site. He believed that John Deere dealership existed in the block building and then it became vacant and unused. It was his impression that Mr. Weber had expanded the business; when Clayton was there, it was smaller. He had previously given help to the community association in the case of the Methodist church; was subpoenaed before this Board.

Ms. Pica testified; mother of Mr. Glorioso.

Ms. Rohrbaugh -- it had been smaller operation and was not consistent with nonconforming status but had been enlarged; also as to impact on community.

On rebuttal, Mr. Edwards was familiar with the property but not John Deere on the site, or Preston Implement Company.

Counsel for Protestants presented data and evidence regarding chain of title. The important date, again, is March 30, 1955, when the County Council adopted legislation regarding nonconforming uses. First listing in September 1956, Exhibit 5A, and Counsel for Protestants argues is it reasonable to assume that used car business was there and without telephone service? Probable answer is no. September 1955 directory may well have gone to press between March 1955 and September 1955, and Reed's may not have had an opportunity to enter into regular book or yellow pages.

Motor sales shown per Carroll Manor Hayday - September 28, 1956; clearly the business was in operation with Fork number.

The first listing for Reed in 1957 directory - Baldwin; June 1960 no listing, but does list Preston at the same telephone number; 1960 - 1965 -- listing for Preston Implement but none for Reed; 1966 - 1969 -- have neither; 1970 -- Claytons purchased property - as confirmed by Court records -- documentation relative to directory is prospective, but not necessarily conclusive.

I reviewed exhibit #7 admitted for ID only referencing Preston Implement in Baldwin, Maryland, and dealership papers in early 1960s. Was in existence, but no further address is listed; value of such an exhibit is difficult.

As I've indicated before, this is not an easy one. It's probably the most difficult I have had to make -based on the testimony and documents and lots of inconsistencies.

The Board is constrained to recognize facts that nonconforming uses are anachronisms - in a time and place they should not be; existence tempered by landowner's right of use and constitutional guarantees. That is why provision was made. The burden does rest with the Petitioner to establish that the requirements of regs are satisfied. This Board, as a finder of fact, examines credibility of each witness, and with knowledge, training and daily experience as to the evidence, and inferring from facts. Therefore, if a review is taken by higher court, that body will not substitute its judgement for that of this Board when the record is debatable; will support our decision.

To that end, I find the Petitioner has met his burden post 1955, and existing as of March 30, 1955, and meets 104.1 of the zoning regulations to the present time.

At least from what I heard at the hearing, Protestants appeared more concerned with the expansion of the business rather than the nonconforming use issues. If there were legitimate concerns, surely they would have questioned the operation long before this point in time. When you consider the goals and objectives in their mailings, this is an important factor.

As to intensification and expansion of use -- I have read the McKemy case in which a four-prong test was established to determine whether current activity is in scope -- and I find that the current use of that property reflects original use; not different in character, nature or kind; nor does it have substantially different effect; not enlarged or expanded.

All of this will be addressed in the Opinion of the Board, whether by majority or dissent.

HEB: My colleague has certainly made a comprehensive introduction to the setting of the case at this location, and the concerns before us. Protestants in this hearing contest that Petitioners have failed to prove under 104 that the use of the property as a used car lot did not exist as such in March of 1955.

Factually, if it did exist, was it continuous and uninterrupted thereafter -- particularly in 1960 - 1970. Protestants also contend that if nonconforming use had been

permitted, the different operators violated 104.3 of the zoning regulations when they expanded operation with additional buildings, land and activities.

This case has involved numerous witnesses giving testimony on a recall of their memory of circumstances going back 30 or more years; what they saw, experienced personally on the subject property, or observed as they travelled through the intersection of Fork Road and Long Green Pike, 1950s to 1979 up to the present time.

There is also some confusion as to in which location of the intersecting roads equipment sales get carried out. I make special note of testimony of Mr. Breidenbaugh, a nearby resident since 1951, familiar with the area since 1918; worked as mechanic in the block building across from subject site, selling and servicing farm machinery.

Mr. Breidenbaugh testified of the different times from the 1930s to 1950s when he worked in the village of Baldwin, across the street from the subject site. Cars were being sold on south side Fork Road; he bought a car there in 1952.

Mr. Cypull also recalled cars being sold on the subject site as early as 1940s and up to March 1955. He observed no abandonment of the used car sales on site after 1955. He said it was "always the same...," sometimes more cars; sometimes less.

Used car sales was permitted under "E" zone applicable prior to new zoning regulations effective March 30, 1955. After March 1955, the right was nonconforming use in B.R. zone as long as it remained uninterrupted and was consistently the same operation.

It is my opinion that there has been convincing testimony that since Reed purchased it in 1954 a nonconforming use existed on the property then and when the zoning regulations were amended March 30, 1955. The question then must be address: whether nonconforming operation was uninterrupted and continuous since 1955.

Protestants' search by Mr. Regan of telephone records of operators of business provided supposition; no telephone with address on Fork Road for periods of time exceeding one year. Protestants claim no phone until September 1956, 18 months after purchasing the property. Without a telephone, the conclusion is that a used car service was not operating.

Under regulations of 104, any discontinuation of a nonconforming use of more than a year would terminate the use. However, this information granted by Mr. Regan contradicted the testimony of Mr. Elwood who testified that he visited Reed Auto Sales regularly in 1954, and worked there part-time in 1955 and 1956. Mr. Regan's research of listings on microfilm for 1954 to 1964 was an exceptional effort to determine whether used car service garage was continuous. Findings of change in some listings and omissions in 1960s were uncovered. However, Mr. Regan's research seemed inconclusive and incomplete as search for owner of the property.

Mr. Clayton told of existence of C & D when his father purchased the site. Also testified to Mr. Reed and St. Clair Auto in Jarrettsville who displayed cars on the site.

I feel that these conditions negate the conclusion that the business had been discontinued during the 1960s as based on a telephone survey; casts doubts on the validity of telephone information versus testimony of witnesses living nearby.

Conflicting testimony and recollections of 50 plus years of existence of 13580 Fork Road as used car site were confusing in this case. Regarding testimony of farm implement company and John Deere dealership from 1960 to 1965 - Witnesses for both sides agree to existence of Preston Company at the general location of Fork and Long Green and Baldwin Mill Road. But there was question as to whether on the north side or south side.

Mr. Elwood testified that tractor sales were across the road from the site, where the building for refinishing is located. Mr. Elwood was certain that Preston Implement Company was never on the subject site, and contradicted Mr. Glorioso who stated he picked up tractor parts.

A recent inquiry of John Deere by Protestants did not satisfy the address of Preston Company nor make any reference to 13580 Fork Road. Mr. Elwood testified of his earliest memories as 1954 and 1955 and as a high school student working part-time for Mr. Reed. After years in the Marines - often stopped in to see Mr. Reed - in the 1960s auxiliary buildings on the site today were not there up until the time he joined the Marines.

Mr. Clayton recalled the business of auto service and sale of used cars and trucks - 1954. In 1970, he and father purchased from Mr. Reed - the used car business was a going concern; C & D Automotive.

From the testimony of different witnesses for the Petitioner and for Protestants, it is my deduction that the sale of cars was continuous with cars on the site being sold, with service in some shape or form, thereby maintaining the nonconforming use for the property.

Another aspect -- whether there was addition and expansion of the use. Section 104.3 states that any change from subject nonconforming use shall terminate right to continue. Mr. Clayton testified that the only improvement on the property was the concrete building in 1970 when they purchased the site. He also described use of site for auto display; B.L. parcel later purchased by Weber; was used by Clayton for display of special interest cars with property owner's permission; always cars there; sold retail and wholesale from 1970 to 1979.

The nonconforming status of the property when he met with Pine in 1970 - zoned clearly for used cars. Mr. Clayton admitted to adding sheds back of the main building, as well as upholstery shop and shed. The one-story shed was later put in place on the site by Mr. Weber.

Clayton's main business - buying and selling cars but he serviced cars for customers. The subject site was the same in 1996 as it was in 1979, but could not draw any comparison from 1955 to 1970.

When Mr. Weber purchased the property from Mr. Clayton in 1979, he understood that it was a lawful nonconforming use for used car sales-- obtained the proper licensing and Baltimore County approval.

Only 25% increase in building footprint; Mr. Clayton's additions increased square foot of site. Are additions unlawful extension of a nonconforming use or a permitted intensification of use -- factors to be considered in determining whether expansion is in the scope of nonconforming use.

Mr. Weber testified he had no intention to expand display of used cars, in respect for the Valley where he has lived all his life; no display lights, banners, streamers; has not done so for the past 18 years; use of site in 1979 - no drastic enlargement or expansion.

Mr. Edwards testified as to his observance of the used car operation over 22 years, as a nearby neighbor. He remarked that current use is similar to past years. He has not

observed any drastic enlargement over 22 years. Executive Auto has always been clean and well-maintained. In light of McKemy to determine whether changes are in scope -- it is obvious that improvements to the site since 1955 have been added over those 40 years - have not brought drastic enlargement or expansion of nonconforming use.

I surmise that use today is merely a different manner of bringing efficiency to the site utilizing the original nonconforming use; not different in character; same as always.

It is my opinion that the Petition for Special Hearing is reasonable and should be granted for the property to continue as a legal nonconforming use.

TPM: Mr. Marks and Harry laid out what I have, but I want to generalize.

Breidenbaugh, Cypull and Elwood testified as to prior to 1955: Breidenbaugh as early as 1952 while working as a mechanic - presence of sales; remained familiar with property and pretty much remains the same.

Mr. Cypull - used cars going on prior to 1955 and uninterrupted; for sale signs in car windows.

Mr. Elwood - familiar back to 1954 as Reed's Motors; worked there part time 1955 to 1957; cars were displayed along Fork Road - three rows.

Discontinuance was brought up by Glorioso and Pica; 1960-1965 Preston Implement. I could find no evidence re existence on the subject property; was in Baldwin, Maryland.

Mr. Clayton purchased the property with his father in 1970 from C & D. Continued up until 1979 when he sold to Mr. Weber. Occasionally displayed prize cars on the property owned on the corner. Mr. Weber testified he also sold used cars continuously on the subject property; same low-key manner as when bought from Clayton; no lights, displays or banners.

Mr. Weber testified that he bought the property in May 1979.

With all facts, I believe that 104.1, that the nonconforming use has existed uninterrupted and continuous to today. I am in total agreement with Mr. Marks and Harry.

CLM: It seems like the Board's decision is unanimous in that the special hearing should be granted; as nonconforming use in

existence at the subject site.

I would just like to comment that this has not been an easy case for the Board to decide. I've spent a lot of time reviewing this case. Each Board member took into account the credibility of the witnesses. That's not to say they are not honest; but motivation was for another factor, and inferences taken from the facts that may be in controversy.

We will prepare a written order to be put out in prompt fashion; may appeal to the Circuit Court for Baltimore County within 30 days.

Thank you all; this hearing is adjourned.

* * * * * * * * *

Respectfully submitted,

Kathleen C. Bianco
Legal Administrator

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

DATE: January 25, 2002

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

FROM: Theresa R. Shelton trs
Board of Appeals

SUBJECT: **Executive Auto Paint & Repair, Inc.**
97-87-SPH
Circuit Court Case No.: 3-C-98-00104

Judge Turnbull of the Circuit Court issued a Memorandum Opinion and Order on September 29, 1998 AFFIRMING the Board of Appeals. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals AFFIRMED the decision by the Circuit Court. 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

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

DATE: January 29, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE**

The following cases have been finalized and closed in the Board of Appeals, therefore, I am returning the files to your office.

CASE NUMBER	NAME	DISPOSITION
CBA-00-141	DALE KIRK STAMMER LUCAS	CIRCUIT COURT AFFIRMED BOA CASE NO.: 03-C-04-4802.
97-87-SPH	EXECUTIVE AUTO PAINT & REPAIR, INC.	CIRCUIT COURT AND THE COURT OF SPECIAL APPEALS AFFIRMED THE BOA CASE NO.: 03-C-98-104.
98-191-SPH	MICHALE ZULLO, ET AL	CIRCUIT COURT GRANTED A VOLUNTARILY DISMISSAL 03-C-98-10326.
02-462-SPH	TERRY GERAHTY, ET AL	CIRCUIT COURT AND COURT OF SPECIAL APPEAL AFFIRMED THE BOARD. 03-C-04-13235.

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

DATE: January 29, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE**

The following cases have been finalized and closed in the Board of Appeal, therefore, I am returning your files to your office.

CASE NUMBER	NAME	DISPOSITION
97-087-SPH	Executive Auto Paint & Repair, Inc.	On January 6, 1998 an appeal of the Board's decision in this case was filed with the Circuit Court for Baltimore County and on September 30, 1998 the Circuit Court affirmed the Board's decision. An appeal of the Circuit Court's decision was filed on October 22, 1998 with the Court of Special Appeals. The court issued a mandate in the case *AFFIRMING* the Circuit Court on September 1, 1999.

LAW OFFICES
FISHER & WINNER, LLP
315 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4325
(410) 385-2000
FAX (410) 727-1362

SAMUEL J. FISHER (1886-1971)
ALLAN H. FISHER, JR. (1922-1994)
CHARLES S. WINNER
LOUIS I. KAPLAN
CAROL L. RUBIN
GERARD KING STEVENS *
STUART LEVINE

NORMAN L. SMITH
ERIC M. NEWMAN
LAUREN EVERS MCCOMAS **

OF COUNSEL
HOWARD I. GETLAN
DAVID W. BRITTON, JR.

* ALSO ADMITTED IN D.C.
** ALSO ADMITTED IN VIRGINIA

TOWSON OFFICE
401 WASHINGTON AVENUE, SUITE 900
TOWSON, MARYLAND 21204-4806
(410) 823-0173

WASHINGTON AREA OFFICE
6701 DEMOCRACY BOULEVARD
BETHESDA, MARYLAND 20817
(301) 585-3444

BETTY D. YOST-PRESSER
PARALEGAL

JUNE L. COLDWELL
GUARDIANSHIP ADMINISTRATOR

August 8, 1997

VIA HAND DELIVERY
Clerk
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Petition for Special Hearing; SEC Fork Road and Long Green Pike (13580 Fork Road, Baldwin, MD 21013); 11th Election District; 6th Councilman District; Petitioner: Executive Auto Paint & Repair, Inc.; Case No. 97-87-SPH

Dear Sir/Madam:

Enclosed for your consideration and filing is an Application for Issuance of Subpoena, with attached Subpoena, in the above-captioned matter. Please notify us as soon as the Subpoena has been executed by the Board. **Please note that a hearing is scheduled in this matter for Thursday, August 14, 1997.**

Thank you for your assistance in this matter.

Very truly yours,

Gerard King Stevens

GKS/lli
Enclosures
cc: J. Carroll Holzer, Esquire (w/encl.)
Stephen J. Nolan, Esquire (w/encl.)
People's Counsel for Baltimore County (w/encl.)
Mr. Paul Webber (w/encl.)

F:\WPDOCS\GKS\EXECAUTO\BDCLERK.LTR

RECEIVED
COUNTY BOARD OF APPEALS
97 AUG -8 AM 11:39

96-5207
GS

LAW OFFICES
FISHER & WINNER, LLP
315 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201-4325
(410) 385-2000
FAX (410) 727-1362

TOWSON OFFICE
401 WASHINGTON AVENUE, SUITE 900
TOWSON, MARYLAND 21204-4806
(410) 823-0173

WASHINGTON AREA OFFICE
6701 DEMOCRACY BOULEVARD
BETHESDA, MARYLAND 20817
(301) 585-3444

SAMUEL J. FISHER (1886-1971)
ALLAN H. FISHER, JR. (1922-1994)
CHARLES S. WINNER
LOUIS I. KAPLAN
CAROL L. RUBIN
GERARD KING STEVENS *
STUART LEVINE

NORMAN L. SMITH
ERIC M. NEWMAN
LAUREN EVERS MCCOMAS **

OF COUNSEL
HOWARD I. GETLAN
DAVID W. BRITTON, JR.

BETTY D. YOST-PRESSER
PARALEGAL

JUNE L. COLDWELL
GUARDIANSHIP ADMINISTRATOR

* ALSO ADMITTED IN D.C.
** ALSO ADMITTED IN VIRGINIA

9/25/96
9
JO GS
→ attempt will
suggested
noted to the
party before
P/P ok'd - all
rules dates agreed
upon

September 24, 1996

Zoning Commissioner of Baltimore County
Development Processing County Office
Baltimore County Courts Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Special Hearing to Approve Existing Non-Conforming Use
Case No. 97-87-SP8 (Item 87)
Location: 13580 Fork Road, Baldwin, MD 21013

Dear Sir/Madam:

The above-captioned matter was scheduled for a hearing on Tuesday, October 1, 1996 at 2:00 p.m. in Room 118, Old Courthouse. I am listed as the attorney of record for the Petitioner.

On Monday, September 23, 1996, I received a call from your offices. I was advised that J. Carroll Holzer had entered his appearance on behalf of the Long Green Valley Civic Association, Inc. in the proceedings and that he had requested a postponement of the hearing. As of this writing, I have not received either the entry of appearance or a copy of the request for postponement. However, apparently the request for the postponement has been granted by the Zoning Commissioner of Baltimore County.

This is therefor to confirm that there will be no hearing on October 1, 1996. It is my further understanding that we will be advised of the proposed new hearing date in order that we may comply with all mandatory notice requirements.

Very truly yours,

Gerard King Stevens

SEP 25 1996

GKS/lli
cc: J. Carroll Holzer, Esquire
Mr. Richard Matz, P.E.
Mr. Paul Webber

F:\WPDOCS\GKS\EXECAUTO\ZONING.LTR

NEWTON A. WILLIAMS
THOMAS J. RENNER
WILLIAM P. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
DOUGLAS L. BURGESS
ROBERT E. CAHILL, JR.
C. WILLIAM CLARK
E. BRUCE JONES**
STUART A. SCHADT

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

LAW OFFICES
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX (410) 296-2765

JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
823 - 7856

August 29, 1997

VIA HAND DELIVERY
Mrs. Kathleen Bianco
Administrative Assistant
Board of Appeals of Baltimore County
Room 49 - Courthouse
400 Washington Avenue
Towson, Maryland 21204

Re: Executive Auto Paint & Repair, Inc.
Case No.: 97-87-SPH

Dear Mrs. Bianco:

9-5-97 - Prot. ex. #7 PLACED BACK IN EXHIBIT PACKAGE BY C. Radcliffe.

I am enclosing herewith the **original** copy of Protestants Exhibit #7 which was dropped off at our office by Carolyn Peatt in order that we could make a copy of same. Please return these original copies to the County's file.

Thank you for your assistance in this matter.

Very truly yours,

Steve Nolan

Stephen J. Nolan

SJN:mao
encl.

C \OFFICE\WPWIN\WPDOCS\SJN.WPD

NEWTON A. WILLIAMS
THOMAS J. RENNER
WILLIAM R. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
STEPHEN M. SCHENNING
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*ALSO ADMITTED IN D.C.
**ALSO ADMITTED IN NEW JERSEY

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JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
823-7853

March 5, 1997

Board of Appeals of Baltimore County
Room 49 - Court House
400 Washington Avenue
Towson, Maryland 21204

Re: Executive Auto Paint and Repair, Inc.
Petition for Special Hearing
Case No.: 97-87-SPH

Dear Sir/Madam:

Enclosed for filing in the above-captioned matter, please find an original and one (1) copy of a Notice to Enter Appearance of Appellee's Counsel. Kindly date stamp the extra copy and return the same to me.

Thank you for your assistance in this matter.

Very truly yours,

Stephen J. Nolan

SJN:mao
encl.

cc: J. Carroll Holzer, Esquire
Mr. Paul Weber, President
Executive Auto Paint and Repair, Inc.

96-563-A

10/29/96 CF To OS Have OK Note + Carroll pick number date

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

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JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
823-

October 28, 1996

Honorable Arnold Jablon
Director
Baltimore County Department of
Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Nonconforming Use Hearing
Case No.: 97-87SPH (Item 87)
13580 Fork Road
SEC Fork Road and Long Green Pike
11th Election District - 6th Councilmanic District
Legal Owner: Executive Auto Paint & Repair, Inc.

Dear Mr. Jablon:

Reference is made to the Notice of Reassignment dated October 15, 1996 concerning the above-entitled non-conforming use case which is scheduled for a hearing on Friday, November 8, 1996 at 9:00 a.m. in Room 106 of the County Office Building.

Since this attorney was retained only as recently as October 25 by the legal owner in connection with the above case, I am respectfully requesting a continuance for approximately thirty (30) days so that I can adequately prepare for the hearing.

I am forwarding a copy of this request for continuance to J. Carroll Holzer, Esquire, the attorney for the protestants. Thank you for your kind consideration of this letter.

Very truly yours,

Stephen J. Nolan

Stephen J. Nolan

cc: Executive Auto Paint & Repair, Inc. (via telefax #592-3930)
Gerard King Stevens, Esquire (via telefax #727-1362)
J. Carroll Holzer, Esquire (via telefax #825-4923)
Richard E. Matz, Esquire (via telefax #653-7953)
Gwen Stephens, Hearing Docket Clerk

RECEIVED
OCT 29 1996
PDM

7/19/99
of
to wcp
just in file,
I got already

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

THE 508 BUILDING
508 FAIRMOUNT AVE.
TOWSON, MD 21286
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@BCPL.NET

File

July 14, 1999
#6972

Arnold Jablon, Director
Department of Permits &
Development Management
County Office Building
Towson, MD 21204

Re: In the Matter of the Application of
Executive Auto Paint & Repair, Inc. For a Special Hearing
CBA Case No. 97-87-SPH

Dear Mr. Jablon:

Please be advised that in the above captioned case the Court of Special Appeals in an unreported decision dated June 22nd, 1999 made a decision which effects the extent of the CBA approved non-conforming use permitted by Executive Auto Paint & Repair, Inc. at the above property location at 13580 Fork Road in Baldwin, Baltimore County. Because of the Court of Special Appeals ruling, it is clear that the non-conforming use does "not include additional buildings that we have concluded are permissible uses, but not associated with Appellee's used car sales business". The Court of Special Appeals affirmed the Board's opinion with the proviso that "the additional buildings on the property do not qualify as part of the non-conforming use". I would appreciate your putting this unreported decision in the file so that for any future reference or zoning violation claims, your records will contain a complete history of this case.

Thank you for your attention to this matter.

Very truly yours,

J. Carroll Holzer

cc: Long Green Valley Association
Charlotte Pine, President

C:\My Documents\Letters\Executive Auto Paint.doc

99-1895

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
THOMAS J. LEE

J. HOWARD HOLZER
1907-1989

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923

CARROLL COUNTY OFFICE
1315 LIBERTY ROAD
ELDERSBURG, MD 21784
(410) 795-8556
FAX: (410) 795-5535

Sine
Due
Case
10/1/96

September 20, 1996

HAND DELIVERED

Mr. Lawrence Schmidt
Zoning Commissioner for Baltimore County
Old Courthouse
400 Washington Ave.
Towson, Maryland, 21204

RECEIVED
SEP 20 1996
ZONING COMMISSIONER

Re: Case No. 97-87-SPH (Item 87)

Dear Commissioner Schmidt:

On behalf of my clients, the Long Green Valley Association, please enter my appearance in the above captioned matter to approve, through a Petition for Special Hearing by Executive Auto for a non-conforming use for used car sales.

The case has been set in for October 1, 1996 at 2:00 p.m. Because I am already scheduled to appear before the Board of Appeals on that day in Case No. CBA-96-128 (Balmuckety Gardens), I must respectfully request that Case No. 97-87-SPH be postponed to a later date. If you have any questions, please call me at 825-6961.

Very truly yours,

J. Carroll Holzer

JCH:clg
cc: Long Green Valley Assn.
Dir. of Permits and Development Management

T/C Gerald King Stevens, Esq.
9/23/96
bjp

SPENCER T. SMITH
4202 Antique Lane
Glen Arm, Maryland 21057
(410) 592-8245

August 11, 1997

Baltimore County Board of Appeals
Old Court House
400 Washington Avenue
Towson, Maryland

Re: Executive Auto Paint and Repair/Baldwin, Maryland

Gentlemen:

Shortly after I relocated to Maryland in 1989, my 1981 Omega required body work. A neighbor recommended Paul Weber's company (a recommendation based on an excellent reputation which Mr. Weber has earned) and I proceeded to get that car repaired by him. Since then, I have had major work done by him on a 1987 Blazer that was rear ended, on a 1983 Regency that was side swiped and on a 1991 Blazer that suffered a wound that I inflicted. Through these events I have gotten to know Mr. Weber. He is a good person. He is a good neighbor. His property has always been maintained in good order. Cars are always presented neatly and some years ago Mr. Weber improved the appearance of his building. He provides a service to his community repairing cars and supplying reasonably priced, good used cars. He is a successful entrepreneur.

Mr. Weber certainly deserves to be treated with fairness. He has earned such treatment. Our laws require that he be treated with fundamental fairness.

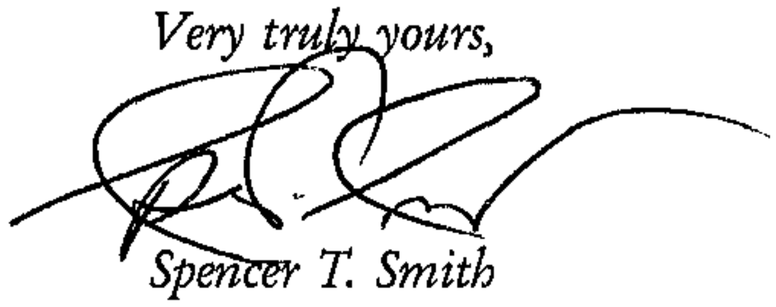
Why then, does this County act on letters from fictitious people.

Why then, does this County start a hearing against a business that is unchanged in character for years. I have lived here for almost eight years and I have noticed no change, except for the above referred to beautification project, during that time and from the reports I have read in the papers this is true for forty years. Should this not have made it very unlikely that there would be any basis for these fictitious complaints. Isn't the reasonable assumption to be drawn from these facts that Mr. Weber was in the right. And if this is the case why would this county adopt a process that subjected Mr. Weber to huge expense. Shouldn't these facts have placed a heavy burden on these fictitious people. Why didn't the county tell these people to prove that no used car business existed back at the time when zoning rules changed. Why didn't the county put the burden on these people to show that some substantial change had occurred or was about to occur. Certainly the county could have found people, like the people that Mr. Weber has found, that would have shown that the starting of this proceeding with its huge expense to Mr. Weber, was not proper. Certainly Mr.

Weber had the right to put blacktop down to formalize a parking area that has existed for 40 years. Government should protect people who like Mr. Weber are most likely in the right and should put financial burdens on people who, like these fictitious people, who are most likely wrong.

Starting this proceeding was cheap. For Mr. Weber to defend himself, it will cost a great deal of money and I find this infliction of financial harm outrageous. I would suggest that Mr. Weber's costs be assessed to these complainants whose purpose is to make life difficult enough that Mr. Weber will move. He deserves better.

Very truly yours,



Spencer T. Smith

A:\WEBER.LTR

Baltimore County
Zoning Board of Appeals
Old Court House
Towson, Maryland 21204

July 7,1997

Attn: Zoning Director

Dear Sir:

For the past 24 years, I have observed the functioning of Executive Auto Sales and Repair, which is presently owned and operated by Mr. Paul Weber. Mr. Weber has always run his business in a respectable manner and its presence has always been an asset to the community. I understand that this business has been functioning in a similar way since sometime in the 40's. I conjecture that if it was still in existence another fifty years, the same individuals that constantly harass Executive Auto would be preserving it like they attempted to do to the old eyesore of a store where the High's Store is today.

I request that Mr.Weber receive Non-conforming Status to his zoning for his business, Executive Auto. I do respect and support the need for the Long Green Valley Association in the preservation of the rural legacy of our valley. However, I along with many of my close neighbors, do not feel that the LGVA is justified in it's persistent attack on Mr.Weber and his business, especially in respect to his zoning status. If you would like to discuss this request, please feel free to contact me.

Sincerely,

Michael L. DiPaula D.D.S.
Fox Folly Farm
13713 Pleasantville Rd.
Baldwin, Maryland 21013

(410)592-8733

cc: Paul Weber

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL 10 PM 12:33

HARRY LANGREHR
4948 SWEET AIR RD.
BALDWIN, MD. 21013

July 3, 1997

Dear County Board of Appeals,

I am 60 yrs old, and as long as I can remember Executive Auto has been a used car lot & repair shop. It is a neat & clean operation, & I support it.

The Long Green Va. Assoc. needs some Community Service work to do. This will keep them occupied & may be they won't have idle time to harrass the community.

Thanks for Listning

Harry M Langrehr.

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL -7 PM 3:25

RECEIVED
COUNTY BOARD OF APPEALS
97 JUN 20 PM 1:54

RECEIVED
POST-APPEAL
June 18, 1997

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

	NAME	ADDRESS
	Stephen J Nolan	502 Washington Ave. Ste 700, Towson 21204
	STEPHEN J. NOLAN	315 N. CHARLES ST, Balto, Md 21201
	Gerard K. Stevens	Colbert Matz Rosenfelt, 3723 Old Court Rd #206 Baltimore 21208
	Robert S Rosenfelt, P.E.	4825 Hydes Rd Hydes Md 21082
	Paul Weber	
	Teresa Breidenbaugh BREIDENBAUGH	12631 Manor Rd Hydes Md 21082
	Deborah Weber	4825 Hydes Rd. Hydes Md. 21082
	Theodore Cypull CYPULL	13801 Pleasantville Rd.
	Richard Plaine PLAINE	3320 Noble St. Balto MD. 21224
	Opulle Don Jones JONES	9533 Belair Rd. Balto Md 21235
	Stanley R Clayton CLAYTON	563 Longwood Cr. Oldsmar, Fla 34677
*	Thomas N. Kelly	13330 Long Green Pike Hyde 21082
*	ELIZABETH B. KELLY	13330 Long Green Pike Hyde 21082
*	JOHN H EDWARDS	13575 FORK RD BALDWIN MD 21013
*	CHARLOTTE L. EDWARDS	13575 FORK R.D. BALDWIN, MD 21013
*	William E. Ellwood	12343 Long Green Pk. Glen Arm 21057
*	DOROTHY A. BARBER	5520 SWEET AIR RD., BALDWIN 21013
	HARRY P. BARBER	5520 SWEET AIR RD, BALDWIN 21013
*	RUDY F. FISCHER	12234 LONG GREEN PIKE, GLEN ARM, MD. 21057
*	A. LAURENCE BARTLETT II	13717 BALDWIN MILL RD.
	AGNES T. BARTLETT	BALDWIN, MD. 21013
*	Robert Crockett	4809 Long Green Rd Long Green MD 21092
	Lewis Yoder LEWIS YODER	4663 Long Green Rd. Long Green Md

Printed with Soybean Ink on Recycled Paper

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
*CAROL TRELA	5433 PATTERSON Rd BALDWIN MD 21013
*SHARON ROHRBAUGH	13558 FORK RD. BALDWIN, MD.
* PAT VERDECCHIA	9 FORK SPRINGS COURT BALDWIN 21013
* GERALD STANK	6102 FORK WOODS RD BALDWIN 21013
LARRY R. ROHRBAUGH	13558 FORK RD BALDWIN MD 21013
DOUGLAS H. WAIRE	12 FORK SPRINGS CT. BALDWIN MD 21013
MEREDITH S FISCHER	12234 LONG GREEN PIKE GLEN ARM 21057
RUDOLPH F FISCHER Jr	12236 LONG GREEN PIKE GLEN ARM 21057
Susanne Emory	5525 Glen Arm Rd. Glen Arm 21057
* Cathy Ebert	12815 KANES RD. Glen Arm 21057
Kelly Harkless	12815 Kanes Rd. Glen Arm 21057
MICHAEL HARKLESS	12815 KANES RD. GLEN ARM 21057
* BARTLETT C. REGAN	6037 CHURCH LANE HYDES 21082
ROBERT L NELSON JR	6012 FORK WOODS RD 21013
* LOIS NELSON	6012 Fork Woods Rd 21013
* RICHARD W ROTH SR	3 FORK SPRINGS COURT 21013
DARYL GRIFFITH	13546 FORK ROAD BALDWIN 21013
Darlene Valentine	13524 FORK RD BALDWIN 21013
Richard T. Walter	13514 Fork Rd Baldwin 21013

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
JIM EDSALL	6017 FORK WOODS RD
EMORY NORRIS	7 FORK SPRINGS OK

STANDARD OF REVIEW

(*Umerley,* 108 Md. App. 497)

1. Did the agency recognize and apply correct principles of law governing the case?

2. Are the agency's factual findings supported by "substantial evidence"?

3. Whether a reasoning mind could reasonably have reached the conclusion reached by the agency ["great deference must be accorded to the agency"]

B. Z. C. R.

1948 Code

- Site zoned "E Commercial"
- Regs were Negative in nature - i.e. commercial use allowed unless specifically forbidden

- New and used car sales permitted as a matter of right

March 30, 1955 Regs. - used car sales permitted only in BR zone by special exception.

Sec. 104.1 - Nonconforming use may continue unless abandonment or discontinuance for one year or more

PRE-MARCH 30, 1955 USE OF SITE

Credible evidence

- Board found pre-March 30, 1955 use for used car sales

- EVIDENCE -
  - ♦ L. Breidenbaugh - In '52 he bought used car
    - marked *Pet. Ex. 2*
  - ♦ T. Cypull - <u>Prior</u> to 3/30/55
    - marked *Pet. Ex. 2*
  - ♦ Wm. Elwood - Recalled Reed's used car lot in '54
    - <u>Before</u> he worked there in Sept. '55
  - ♦ A. Weber, Sr. - Involved only 2 days with site in '53
  - ♦ S. Clayton - Recalled Reed's in '54

POST- MARCH 30, 1955 CONTINUOUS USE

- Board found uninterrupted use

- EVIDENCE -
  - L. Breidenbaugh - Since '53 used car sales have always been going on
  - T. Cypull - No abandonment or discontinuation
  - Wm. Elwood - Reed's used car sales
    - '54 to '68: never vacant
  - S. Clayton - Reed's in '54
    - *Pet. Ex. 8* (4/28/56)
    - St. Clair Motors
    - C&D Automotive
    - Purchased in '70 as going concern (advice from Pine)
    - No interruption 1970-79

POST-MARCH 30, 1955 (cont'd)

- P. Weber - Purchased going concern
  - Proper MVA licensing and B.Co. zoning approval (*Pet. Ex. ~~15~~ 10*)
  - No complaints prior to 9/22/95
  - Never displayed lights, banners or streamers
  - No change in character, nature or kind of used car sales
- J. Edwards - Most affected neighbor, 22 yrs. opposite site
  - Since '75 no signif. change in use
  - No substantial different effect on property

PROTESTANTS' WITNESSES, etc.

- Board: "...not as convincing or compelling as those offered by Petitioners."

- Phone "directories [were] not necessarily conclusive."

- S. Glorioso recalled Preston Implement Co. in early '60's but equivocated re" used car sales also being there

- Compare Wm. Elwood who testified re: tractor dealership on opposite corner

- Also compare T. Cypull re: no "other kind of operation" conducted at this site

- Majority had concern re: future expansion

McKEMY TEST

1. To what extent does current use reflect the purpose/nature of original nonconforming use;

2. Is 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 nonconforming use?

BOARD: Petitioner's "witnesses . . . were far more convincing than . . . Protestants in establishing [McKemy] requirements. . ."

SUFFICIENT EVIDENCE SUPPORTS BOARD'S FINDING OF NO DRASTIC ENLARGMENT

- Permissive intensif. is Fact Question

- Current use of lot is consistent with original use as of 3/30/55

  Source: Breidenbaugh, Cypull, Ellwood, Clayton, Carter, Edwards and Weber

- "Outbuildings" were never shown to be p/o the lawful, nonconforming use for used car sales

- Service garage/upholst'y shop are permitted by right in B.R.

- ***BOARD: "for a subst. number of yrs., since the 1970's, no one has questioned the validity of the operation or that it was operating within the parameter permitted by law."***

OUTCOME

- Board properly recognized and applied law

- Board's findings are supported by substantial evidence

- A reasoning mind could reasonably have reached same conclusion [& 3 did]

- Exec. Auto is entitled to protection afforded by BCZR re: lawful, nonconforming use

- Appellee requests AFFIRMANCE.

In the Circuit Court
for Baltimore County
Case No.: 3-C-98-00104

Argument of

Appellee Executive Auto Paint & Repair, Inc.

Re: 13580 Fork Road
Baldwin, MD

September 14, 1998

CASE HISTORY

Sept. 22, 1995 - Alleged zoning viol. complaint

Aug. 22, 1996 - Exec.'s Petition for Spec. Hrg.

Dec. 20, 1996 - Zoning Comm's Hearing

Jan. 16, 1997 - Z.C. Order of Approval

Feb. 10, 1997 - Notice of Appeal

July 10, Aug. 14, 1997 - Board of Appeals Hearing

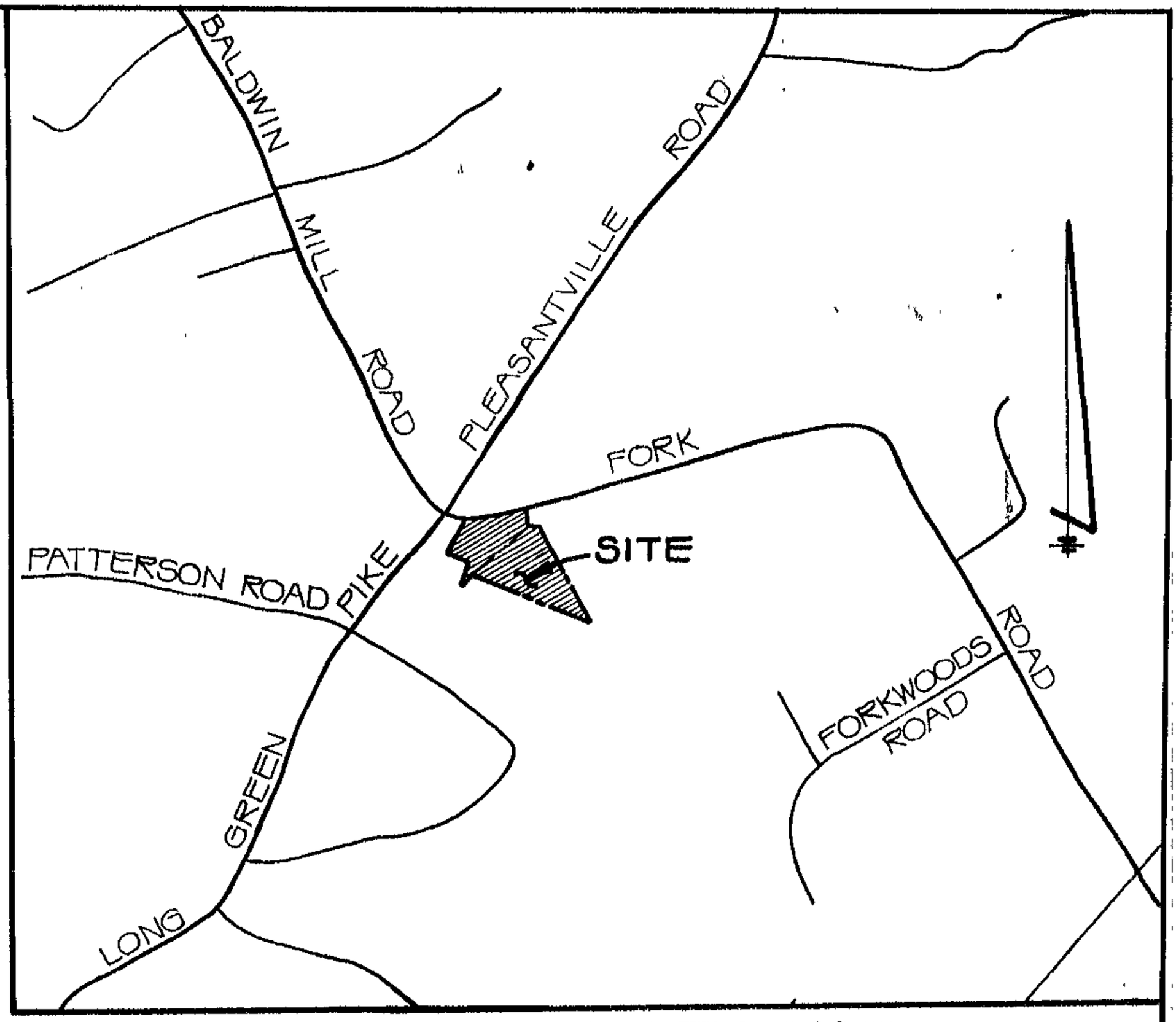
Sept. 25, 1997 - Board held open deliberations

Dec. 8, 1997 - Unanimous Bd. Order and Opinion (24p.)

Jan. 6, 1998 - Hrg. on Motion to Reconsider

Jan. 15, 1998 - Bd. Ruling denying Motion

97-87-SPH



VICINITY MAP

SCALE: 1" = 1,000'

Case No. 97-87-SPH

Executive Auto Paint and Repair, Inc. - Petitioner

SE/c Fork Road and Long Green Pike
(13580 Fork Road)

11th Election District Appealed: 2/10/97

(see attached copy of
vicinity map)

DS" - LOT 21
EN A GREWENIG
03677

EX. WIRE FENC

535.33'

Petitioner's Exhibit 15

CV# 476256

MOTOR VEHICLE ADMINISTRATION
Licensing & Consumer Services
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062 48

☑ $ 5.00 NON-CERTIFIED RECORD
(for personal or general use)

☒ $10.00 CERTIFIED RECORD
(for official use)

☑ CASH 5.00 + CV
☐ CHECK #
☐ GRATIS

CS-224 (8-92)

TYPE OF RECORD REQUESTED

- ☒ DEALER FILE
- ☐ SALESMAN FILE
- ☐ PROFESSIONAL DRIVING SCHOOL FILE
- ☐ INSTRUCTOR FILE
- ☐ TITLE SERVICE AGENTS
- ☐ AUTOMOTIVE DISMANTLER & RECYCLER FILE
- ☐ SCRAP PROCESSOR FILE
- ☐ COMPLAINT CASE
- ☐ OTHER: _____

I/WE CERTIFY, UNDER PENALTY OF PERJURY, THAT THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT, TO THE BEST OF MY/OUR KNOWLEDGE, INFORMATION AND BELIEF.

NAME(S) OF RECORD REQUESTED:
Executive Auto Paint & Repair, Inc.

ADDRESS:
1358D Fork Road, Baldwin, Md. 21013

NAME OF PERSON REQUESTING RECORD:
Gerard F. Stevens, Attorney

ADDRESS:
315 No Charles St., Balto, Md. 21201

AGENCY OR BUSINESS REPRESENTED:
Fisher & Winner, Attorney, for Exec.

SIGNATURE: _____ **DATE:** 9/16/96

REASON FOR REQUEST:
Zoning Violation / Petition for Non-Conforming Use

APPROVED BY: _____ **DATE:** 9/20/96

062 MVA 9/20/96#600 $10.00 C

MVA

Maryland Department of Transportation

MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

CERTIFICATE NO.
7162

By virtue of the authority vested in me, as Administrator of Motor Vehicles, under the provisions of the Maryland Vehicle Laws, I do hereby certify that the following described document(s), a copy of which is attached hereto, is a true copy taken from the original, now on file, and part of the records of this agency.

ATTACHED IS A TRUE COPY OF THE ZONING REQUIRED FOR THE LICENSING OF:
EXECUTIVE AUTO PAINT & REPAIR, INC. LOCATED AT 13580 FORK ROAD
BALDWIN, MARYLAND 21013

In testimony whereof, I hereto subscribe my name, and affix the seal of the Office of the Motor Vehicle Administration of the State of Maryland, this date SEPTEMBER 20, 1996 mah.

Ronald L. Freeland

ADMINISTRATOR OF MOTOR VEHICLES

C CK

CS-143 (9-95)

Maryland Department of Transportation
Motor Vehicle Administration

September 5, 1979

CS-2

Balt. Metro County Office of
Planning & Zoning
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: EXECUTIVE AUTO
13580 York Road
Baldwin, Maryland 21013
592-8880

Gentlemen:

The above referenced has applied to this Administration for a license to conduct the type of business indicated below:

X Motor Vehicle Dealer (Used Car Dealer)

Auto Wrecker

Scrap Processor

Driver Training School

Transporter (Vehicle repair, remodeling, painting, etc.)

Inasmuch as they are located in your jurisdiction, we are requesting that you supply us with zoning verification. Another attached self-addressed envelope may be utilized when submitting this information. Your cooperation in this matter is greatly appreciated.

Very truly yours,

Mrs. B. Kazmarek
Dealer Licensing & Consumer Services

I certify that the above referenced X is not ___ is proposed to conduct the type of business indicated below

Signature

Date

January 2, 1945

ADOPTED BY THE COUNTY COMMISSIONERS
OF BALTIMORE COUNTY,
Enabling Acts of the General Assembly of Maryland:

Session of 1941, Chapter 247

Session of 1943, Chapter 877

Session of 1945, Chapter 502

Session of 1947, Chapter 915

CHRISTIAN H. KAHL,
President

JOHN R. HAUT

BREMEN A. TRAIL

County Commissioners
of Baltimore County

Codified Sept. 1, 1948 by

CHAS. H. DOING
Zoning Commissioner of Baltimore County.

32. Trailer: A vehicle used, or intended for use as a conveyance upon the public street or highways, so designed, constructed, reconstructed, or added to by means of portable accessories in such manner as will permit the occupancy thereof as a movable dwelling or sleeping place.

33. Trailer Camp: Any land upon which, habitually or infrequently, one or more trailer or house cars, when detached from its automobile, or means of locomotion, or a combined car and house trailer, are placed or located, and whether or not used for occupancy as dwelling or otherwise, and shall include any structure or building used as a service building for such camp or intended for use as a part of the equipment of such camp.

34. Wayside Stand: A temporary structure including tables, or other method for display and sale of farm products or commodities.

35. Yard: An open space on the same lot asthe building and unoccupied and unobstructed from the ground up (except such accessory buildings, or projections as are expressly permitted in these regulations) and not including a court.

36. Yard, Front: A yard extending across the full width of the lot and measured between the front lot line and the foundation wall of the building.

37. Yard, Rear: A yard extending across the full width of the lot measured between the rear lot line and the main building.

38. Yard, Side: A yard extending from the front yard to the rear yard and measured from the side lot line to the building.

39. Zone: An area for which the regulations governing the use of buildings and land are identical.

SECTION II—ZONES

For the purposes of these regulations, the County is hereby divided into Seven (7) Zones as follows:

"A" Residence Zone - - - (Cottage)
"B" Residence Zone - (Semi-detached)
"C" Residence Zone - - (Apartment)
"D" Residence Zone - - - (Group)
"E" Commercial Zone.
"F" Light Industrial Zone.
"G" Heavy Industrial Zone.

SECTION III—"A" RESIDENCE ZONE

A. Use Regulations: In any "A" Residence Zone, except as hereinafter expressly provided, no building or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:

1. Church, parochial school, convent or monastery.

2. Dwelling, single family.

3. Dwelling, two-family.

4. Farming and buildings incidental thereto.

5. Home Occupations, provided that no sign or signs shall be displayed on the lot so used exceeding a total of two square feet in area, not projecting more than one foot beyond the building, and not illuminated.

3. Side Yard: Same as in "B" Residence Zone as set forth in Section IV, except in case of apartments, width of side yards shall be increased above 7 feet minimum by four inches for each foot of building height over forty feet.

4. Rear Yard: There shall be a rear yard having a minimum depth of twenty feet measured from the rear lot line, such depth to be increased by four inches for each foot of building height over forty feet.

5. Courts: Apartment building courts shall have a minimum width of fourteen feet plus four inches for each foot of building height over forty feet.

6. Automobile garage or parking space shall be provided adjacent to all apartment buildings sufficient in area to accomodate one car for each housekeeping unit; not more than 50% of the rear yard to be counted as any part of said parking space.

SECTION VI—"D" RESIDENCE ZONE

A. Use Regulations: Except as hereinafter expressly provided, no building or structure or land shall be used and no building or structure shall be hereafter erected, altered, repaired or used except for one or more of the following uses:

1. Any use permitted in the "C" Residence Zone; any such use to be subject to the same conditions and limitations as provided in Section V.

2. Group houses.

B. Height Regulations: Same as "B" Residence Zone.

C. Area Regulations: The minimum dimensions of yards and minimum lot area per dwelling unit, except as provided in Section IX, shall be as follows:

1. Lot Area: The minimum width of dwelling units shall be sixteen feet between centers of partition walls, and the minimum lot area per dwelling unit shall be fourteen hundred and forty square feet.

2. Front Yard: Minimum front yard shall be as hereinbefore specified in "C" Residence Zone.

3. Side Yard: There shall be a side yard of not less than ten feet along each side of each group of dwelling units.

4. Rear Yard: There shall be a rear yard having a minimum depth of twenty-five feet.

5. Accessory Buildings: Accessory buildings shall be permitted without restrictions as to setback from division line of dwelling units or rear property lines.

6. No group house shall contain more than seven single or two-family dwellings.

SECTION VII—"E" COMMERCIAL ZONE

A. Use Regulations: Except as expressly provided in subsequent sections, any building or structure or land may be used and any building or structure may be hereafter erected, altered, repaired or used for any use or uses except the following:

1. Arsenal.

2. Automobile dismantling or storage of motor vehicles not in running order.

3. Brick, tile, terra cotta, concrete and cinder block manufacturing.

4. Coke Ovens.

5. Cooperage.

6. Contractor's plant for preparation of materials.
7. Creosote manufacture or treatment.
8. Dump, either public or private, for disposal of refuse.
9. Exterminators and insect poisons manufacture.
10. Gasoline Service (Filling) Station.
11. Junk Yard.
12. Machine Shop or Woodworking Plant.
13. Poultry; commercial killing, dressing and storage.
14. Railroad yard or round house.
15. Storage or baling of scrap paper or rags.
16. Any use listed under Section VIII, "A".
17. Any kind of manufacture other than manufacturing clearly and exclusively incident to a retail business conducted in the main building on the lot.
18. All other use for which a special permit is required as hereinafter provided.

B. Height Regulations: Building height unlimited.

C. Area Regulations:

1. The front building line of commercial buildings shall be the front lot line and the side building line shall be the side lot line, provided, however, that when more than 50 per cent of the frontage on one side of any street, between two intersecting streets, is improved with permanent buildings constructed of fire resisting materials and built on a uniform line at a distance from the street line different from that which would be established by this section, then such different setback line shall be deemed to be established by usage and shall prevail. Also provided, however, that the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, shall have the right to require such front and side setbacks as shall be deemed necessary to prevent congestion in the roads, streets or alleys and hazards from fire, panic or other dangers. These setbacks and front yard requirements shall apply also to signs, gasoline pumps and other service station equipment and to articles and structures of every nature whether fixed or movable.

2. No show window shall extend more than 42 inches beyond the building line and in no case shall a show window extend beyond the front or side street lines.

3. In all cases where property shall hereafter be laid out and designated for commercial use, there shall be an alley at least 20 feet wide provided in the rear or not less than 10 feet wide on side of such commercial property. Such rear alley shall have unobstructed access its full width to a public street.

D. Signs: No sign shall extend more than 42 inches beyond the building line nor shall any sign be placed at a height less than 8 feet above the surface of the sidewalk or parking and in no case shall a sign extend beyond the front or side street lines.

1. The total area of all signs in connection with a single commercial building shall not exceed 100 square feet provided, however, that in case of a corner building an additional 100 square feet of sign area may be displayed facing the side street.

2. Flush signs or signs not extending more than 42 inches beyond the building line and not exceeding 8 feet in height, shall not require a special permit.

3. All signs other than those allowed by this section shall require a special permit as hereinafter provided.

E. All residential structure shall comply with area requirements for such structures as hereinbefore set forth.

38. Tanning, curing or storage of leather, raw hides, or skins.

39. Tar distillation or manufacture.

40. Tar roofing or tar waterproofing manufacture.

41. Wool pulling and scouring.

42. Yeast plant.

43. Any other use which the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, finds to be noxious or offensive by reason of the emission of odor, dust, smoke, gas, or noise as to be adverse to these regulations or inappropriate to the area affected and detrimental to the health, safety and morals thereof.

B. Height Regulations: Same as in "E" Commercial Zone as set forth in Section VII-B.

C. Area Regulations: Same as in "E" Commercial Zone, Section VII, excepting that all residential structures shall comply with area requirements for such structures as hereinbefore set forth.

SECTION IX—"G" HEAVY INDUSTRIAL ZONE

A. Use Regulations: In the "G" Heavy Industrial Zone, buildings, structures and land may be used, erected, altered or repaired for any use whatsoever, except the following:

1. Abbatoir.

2. Celluloid manufacture or treatment.

3. Fat rendering.

4. Fertilizer manufacture,

5. Gunpowder, fireworks or explosives manufacture or storage.

6. Incineration or reduction of dead animals, offal or garbage.

7. Junk yard.

8. Stockyards.

B. Height Regulations: Building height unlimited.

C. Area Regulations: The front building line of industrial buildings shall be the front lot line and the side building line shall be the side lot line, provided, however, that when more than 50 per cent of the frontage on one side of any street, between two intersecting streets, is improved with permanent buildings constructed of fire resisting materials and built on a uniform line at a distance from the street line different from that which would be established by this section, then such different setback line shall be deemed to be established by usage and shall prevail. Also provided, however, that the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, shall have the right to require such front and side setbacks as shall be deemed necessary to prevent congestion in the roads, streets or alleys and hazard from fire, panic or other dangers. These setbacks and front yard requirements shall apply also to signs, gasoline pumps and other service station equipment and to articles and structures of every nature whether fixed or movable.

SECTION X—GENERAL EXCEPTIONS TO USE AND AREA REQUIREMENTS

A. The aforegoing yard and court requirements shall be subject to the following general exceptions:

1. A lot having a width of less than fifty feet at the front building line and which corresponds in location and lot lines with a lot on a plat or in a deed adopted or recorded prior to the adoption of these regulations, may have minimum side yards five feet in width along each side lot line, except in case of corner lot the side yard along the side street shall not be less than eleven feet.

2. Every part of a required yard or court shall be open and unobstructed from its lowest point to the sky, except that uncovered porches, fire escapes, open stairways and chimneys may be permitted where same are so placed as not to obstruct light and ventilation.

3. Steps and uninclosed porches may extend beyond the front building line not to exceed nine feet and shall not exceed one story in height.

B. The Zoning Commissioner of Baltimore County and the Board of Zoning Appeals, upon appeal, shall have and they are hereby given the power to grant exceptions to area, building, location and height regulations in cases where strict compliance with the Zoning Regulations heretofore adopted for Baltimore County would result in practical difficulty, or unnecessary or unreasonable hardship. However, any such exception or exceptions shall only be granted in strict harmony with the spirit and intent of said regulations, and only in such manner as to grant relief without substantial injury to the public health, safety, morals and general welfare. Before granting any such exception the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for an exception in the same manner as in the case of a petition for reclassification. Any order granting an exception shall contain a finding of fact setting forth and specifying the reason or reasons for making such exception, subject, however, to the right of appeal to the Board of Zoning Appeals as heretofore provided by the Zoning Regulations.

SECTION XI—NON-CONFORMING USES

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

SECTION XII—BOUNDARIES OF ZONES

Where uncertainty exists with respect to the boundaries of the various Zones shown on the zoning maps, the following rules shall apply:

1. Unless otherwise shown on the map, the zone boundaries are either streets or alleys, and where a boundary line on the map is approximately along a street or alley line, said street or alley shall be construed to be the boundary.

2. Unless otherwise shown on the maps, the zone boundary lines are intended to be record lot lines, and where a zone boundary line on the map is approximately along a record lot line, said record lot line is intended to be the boundary.

3. Whenever a portion of any zone is indicated upon the zoning map as a strip parallelling a public or dedicated street, the width of this strip, unless delineated on said map by lot lines, or otherwise, shall be assumed to be 150 feet measured at right angles from the line of the street to which it is parallel and adjacent.

SECTION XIII—POWERS RELATIVE TO SPECIAL EXCEPTIONS AND SPECIAL PERMITS

It is hereby determined that the inherent character of the hereinafter mentioned uses require that they be carried on in districts or areas to which they do not conform, or such uses have a peculiar tendency to impair the health, safety and morals of the public, and such uses may be permitted only upon a special permit granted by the Zoning Commissioner, subject to appeal to the Board of Zoning Appeals:

A. In any residential zone a special permit shall be required for the following particular uses:

1. Amusement Park.

2. Antique Shop (operated as a home occupation).

3. Airport.
4. Commercial chicken raising and housing.
5. Commercial greenhouses.
6. Commercial transmitting or broadcasting station.
7. Country club.
8. Dance pavilion.
9. Dog kennels.
10. Horticultural nursery.
11. Hospital.
12. Private club.
13. Private school.
14. Public swimming pool.
15. Riding Academy.
16. Sanitarium.
17. Storage Yard (contractors).
18. Boat Yard and/or Marine Railway for sale, repair and storage of water craft, not exceeding sixty (60) feet in length on tidal waters.
19. Vegetable packing or canning house.
20. Commercial race track or course for contests or exhibitions of any kind.
21. Storage of dynamite or like explosives in lots not exceeding twenty-five (25) tons.
22. Undertaking business or establishment or funeral home.

Provided, however, that the area of such land so to be used and the setbacks of any buildings or structures shall be subject to approval of the Zoning Commissioner or the Board of Zoning Appeals, upon appeal.

B. In any residential zone a special permit shall be required for the following particular uses:

1. Golf driving course (including miniature golf).
2. Rifle range.
3. Rock quarry.
4. Sand, gravel, iron ore or clay pit.
5. Skeet or trap shooting range.

Provided, however, that any such use, (under this paragraph B) shall be a temporary use of vacant land and shall be subject to such restrictions and safeguards which may be deemed necessary by the Zoning Commissioner, or the Board of Zoning Appeals, upon appeal, to protect the respective properties in the vicinity and any such use shall not impair the use of such properties in accordance with the zone plan embodied in these regulations and the zoning maps in connection therewith.

C. In any residential zone a special permit shall be required for use of land for automobile parking, subject to the following regulations:

(a) Land to be used for ~~any~~ such use must be adjoining or across an alley from a lot in a commercial zone.

(b) Parking must be limited to the use of patrons of the building or enterprise on said lot in the commercial zone.

(c) No charge may be made for parking on said lot.

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham
President

Robert B. Hamill
Augustine J. Muller
County Commissioners of Baltimore County

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

BALTIMORE COUNTY

ZONING REGULATIONS

or of his testimony is that he was unsure whether knowledge of the side agreement would have affected his willingness to sign the Tall agreement. We think a jury question was presented. We cannot conclude that failure to disclose the agreement to Krigbaum was inconsequential as a matter of law. Failure to disclose the side agreement could give rise to a claim for breach of duty, and there was a jury question as to whether Gilley had disclosed the agreement to Mutual. The trial court therefore erred in striking such allegations.

REPRESENTATION OF INTERESTS ADVERSE TO MUTUAL

Mutual alleged that Gilley breached its duty by:

"[r]epresenting interests adverse to Mutual in the leasing and sale of Mutual's property in that it negotiated on behalf of Mutual's lessee, sought to promote interests of purchasers, Leonard H. Tall, and the American Red Cross, all when [Gilley] had conflicting duties to promote the best interests of Mutual."

Mutual also alleged a breach of duty by failing to disclose the nature of such representation. The court struck those allegations, and Mutual claims error.

[8] Mutual does not provide argument pertaining to these assignments of error in its brief. We presume that the allegations refer to a statement in a fee addendum attached to the 1979 listing agreement between Mutual and Red Cross, which stated that "the Gilley Company represented both parties on this lease." The statement referred to the original lease between Red Cross and Mutual. However, the instant case is based entirely on the *sale* of Mutual's property. The earlier lease agreement is not at issue.[6] The trial court was justified in striking the allegations as to Gilley's representation of adverse interests. It was also justified in excluding testimony concerning that lease agreement.

Reversed and remanded for a new trial.[7]

6. The lease agreement was attached to the 1979 listing agreement for sale of the warehouse, because Mutual still owed Gilley its commission for obtaining the lease and was to pay that commission from the proceeds of sale.

7. Because of the disposition we make of this case, we need not consider Mutual's assignment of error claiming that the court should have granted its motion for mistrial

59 Or.App. 177

MILCREST CORPORATION, an Oregon corporation, Respondent,

v.

CLACKAMAS COUNTY, a municipal corporation, Sylvia Murthe, Jean Baker, Victor Bringle, Mike Churchill, Jim Whitfield, Vernon L. Becker, Wendell H. Harmon, Willis B. Eppers and Adell Eppers, Donald G. Kirkpatrick and Annamay P. Kirkpatrick, Kermit Kunst, Jerry E. Marks and Leslie J. Marks, Richard M. Bleile, Hugo Paul and Harriett Paul, John B. Fergison and Lauren L. Fergison, Eugene M. Barger and Karen K. Barger, and R. R. Robert Dawes, Defendants,

Portland Metropolitan Area Local Government Boundary Commission, Metropolitan Service District, and Oregon Land Use Project, Inc., an Oregon *nonprofit* corporation, Appellants.

No. 79-11-41; CA A22184.

Court of Appeals of Oregon.

Argued and Submitted June 23, 1982.

Decided Sept. 15, 1982

Developer which was involved with a planned unit development not conforming with comprehensive plan adopted by county after it approved the development, brought action for declaratory judgment. The Circuit Court, Clackamas County, Richard D.

Barber, J., entered decree declaring that developer had vested right to proceed with a 660-acre planned unit development, and appeal was taken. The Court of Appeals, Richardson, P.J., held that: (1) the case was justiciable; (2) developer had acquired a vested right in a nonconforming use; (3) developer's vested rights did not include any vested right with respect to 220-acre addition to the original 440-acre site; (4) developer's vested rights to develop 440-acre site was not abandoned when developer obtained approval of the revised 660-acre PUD; but (5) Circuit Court did not have authority to issue mandatory injunction directing governmental bodies to exercise their powers in particular manner.

Affirmed as modified and remanded for further proceedings.

1. Zoning and Planning ⇐741

Case, in which a boundary commission and others appealed from decree declaring that developer had vested right to proceed with planned unit development not conforming with comprehensive plan adopted by county after it approved the development, was justiciable under circumstances in which, though defendant county was not a party to the appeal and it was up to the county to take the final action consisting of recognition that conditions precedent to recording of final plat had been satisfied, is was necessary for the commission to approve formation of a county service district to operate sewage treatment plant for the project in order for developer to satisfy the conditions.

2. Zoning and Planning ⇐325

Where, with respect to planned unit development which did not conform with comprehensive plan adopted by county after it approved the development, the developer had substantially commenced the project, had made substantial expenditures, had acted in good faith and could not use the development that had taken place for conforming alternative uses from which developer could obtain a reasonable economic return, developer had acquired a vested right in a nonconforming use.

3. Zoning and Planning ⇐325

Developer's vested rights in planned unit development, which did not conform with comprehensive plan adopted by county after it approved the development, did not include any vested right with respect to 220-acre addition to the original 440-acre site where, though developer had perceived the 660 acres as a unitary project and all preparations and development anywhere in the 660 acres as furthering completion of the whole project, little or nothing relating to the development actually occurred on the 220 acres before comprehensive plan was developed or before developer lost its interest in that area.

4. Zoning and Planning ⇐336

Developer's vested right to develop 440-acre planned unit development, which did not conform with comprehensive plan adopted by county after it approved the development, was not abandoned when developer obtained approval of a revised 660-acre PUD where the general plan concept, density factors and other aspects of the 440 and 660-acre projects were substantially the same and where, though county's action approving the revised project was recorded as adopting the "current plan and proposal in lieu of the previously adopted plan," both developer and county regarded the revised PUD as an expansion and not as a replacement of the original PUD.

5. Injunction ⇐74

Circuit court did not have authority to issue mandatory injunction directing governmental bodies to exercise their powers in particular manner, rather than directing only that they not refuse to take those actions on grounds inconsistent with the existence of plaintiff developer's nonconforming use.

Frank W. Ostrander, Jr., Asst. Atty. Gen., Portland, argued the cause for appellant Portland Metropolitan Area Local Government Boundary Commission. With him on the briefs were Dave Frohnmayer, Atty.

Gen., Stanton F. Long, Deputy Atty. Gen. and William F. Gary, Sol. Gen., Salem.

Robert E. Stacey, Jr., Portland, argued the cause for appellants Oregon Land Use Project, Inc. and Metropolitan Service District. With him on the briefs was Michael A. Holstun, Portland.

James A. Cox, Lake Oswego, and David J. Buono, Portland, argued the cause for respondent. On the brief were David J. Buono and Lindstedt & Buono, P.C., Portland.

Before RICHARDSON, P.J., and THORNTON and VAN HOOMISSEN, JJ.

RICHARDSON, Presiding Judge.

This is a declaratory judgment action in which defendants[1] appeal from the trial court's decree that plaintiff has a vested right to proceed with a 660-acre planned unit development (PUD). The PUD was approved by Clackamas County before the county adopted its comprehensive plan and does not conform with the plan. We modify the trial court's decree and affirm it as modified.[2]

In January, 1969, the county planning commission approved plaintiff's application for a PUD on a 440-acre site owned by plaintiff. The project was to include approximately 1000 living units, a dam, a lake, a nine-hole golf course and commercial and support facilities. In October, 1969, the county approved preliminary plats for the two subdivisions comprising the PUD. The conditions the county had imposed when it approved the preliminary plats were satisfied by the end of the year, and a final plat for one of the subdivisions was filed in December.

During 1969 and 1970, partly in response to suggestions by county planning personnel, plaintiff decided to expand the original PUD. Plaintiff therefore acquired options to purchase or contract interests in 220 acres of land adjoining the original 440-acre site. The 220 acres consisted of parcels under five separate ownerships. In August, 1970, plaintiff submitted a revised PUD application for the entire 660-acre tract. The revised project was substantially similar to the original one in its details. The most notable difference was that the number of dwelling units was increased to 1,573. The county approved the application and, later, approved the preliminary plat for the additional 220-acre area. The approval was subject to a number of conditions, including a requirement that the final plat be recorded within one year after the approval of the preliminary plat. The final plat has not been recorded, but plaintiff has made and the county has approved timely applications to extend the time for its recording.

Between 1969 and August, 1974, when the county adopted its comprehensive plan, plaintiff completed or substantially completed construction of the dam and the lake bed, filling of the lake, and other design and developmental work. Plaintiff had made expenditures for design, engineering and construction that exceeded $600,000 by the time the comprehensive plan was adopted. Plaintiff's total investment in the project as of that time exceeded one million dollars.

Beginning in late 1971 or early 1972, plaintiff encountered problems in obtaining governmental approvals necessary for further development. That, together with national economic conditions, resulted in financial problems for plaintiff, which in turn led to plaintiff's loss of its options and interests in the 220 acres that were added to the PUD by the 1970 revision. Plaintiff never acquired title to any of the 220 acres, and it has no remaining contractual rights in that area.

The trial court decreed

1. The appealing defendants are Portland Metropolitan Area Local Government Boundary Commission, Metropolitan Service District and Oregon Land Use Project, Inc. In the trial court, Clackamas County and a number of individuals were also defendants. Except where otherwise noted, the term "defendants" in this opinion refers to the appellants. Where relevant, the term "plaintiff" as used here includes plaintiff's predecessors.

2. Our review is *de novo*. *See Webber v. Clackamas County*, 42 Or.App. 151, 153, n. 1, 600 P.2d 448, *rev. den.* 288 Or. 81 (1979).

"* * * that there exists a vested right to develop the 660 acres of land described in Exhibits A and B attached hereto, in accordance with the approved site development plan and revised site development plan, and that said vested right shall run with the land."

In addition, the court ruled

"* * * that defendants Clackamas County, Portland Metropolitan Area Local Govern. Boundary Commission and Metropolitan Service District are enjoined from denying or opposing the formation of the Clackamas County Sanitary Service District, are enjoined from interfering with the orderly development of the Clackamas County Sanitary Service District and further are enjoined from otherwise interfering with the exercise of the vested right to develop said land as the Beaver Lake Planned Unit Development pursuant to the prior approvals * * *."

[1] Although not raised by the parties, the initial question is whether the controversy is a justiciable one in its present posture. *See Brown v. Oregon State Bar*, 293 Or. 446, 648 P.2d 1289 (1982). Clackamas County is not a party to the appeal.[3] *See* note 1, *supra*. Therefore, arguably, the county would be bound by the trial court's decree regardless of any decision we render. The county's 1969 and 1970 actions are the source of the nonconforming use in which plaintiff claims vested rights. The *final* action necessary to enable plaintiff to consummate the use—recognition that the conditions *precedent to recording of the final* plat have been satisfied—is for the county to take. It appears, however, that action by at least one of the appealing defendants is necessary in order for plaintiff to satisfy the conditions. The formation of a county service district to operate the sewage treatment plant for the project must be approved by defendant Boundary Commission. In February, 1979, the Boundary Commission denied approval for the formation of a service district. We conclude that there is an actual controversy between plaintiff and one or more of the appealing defendants, and we turn to the merits.

[2] Defendants challenge the trial court's *findings to the effect* that plaintiff incurred substantial expenses toward completion of the project, that the project is compatible with the surrounding area and that there is no available and conforming alternative use of the property from which plaintiff can obtain a reasonable return on its investment. We agree with the trial court that plaintiff substantially commenced the project, made substantial expenditures, acted in good faith and cannot use the development that has taken place for conforming alternative uses from which plaintiff can obtain a reasonable economic return. We therefore agree that plaintiff has acquired a vested right in a nonconforming use. *See Clackamas Co. v. Holmes*, 265 Or. 193, 508 P.2d 190 (1973); *Eklund v. Clackamas County*, 36 Or.App. 73, 583 P.2d 567 (1978).

[3] The questions defendants raise requiring more extensive discussion are: (1) *What* use did plaintiff acquire vested rights in and (2) has that use been abandoned? Specifically, defendants argue that plaintiff "abandoned" the 220 acres added to the original PUD in 1970 and that the 660-acre revised PUD was approved in lieu of the original 440-acre project and differed in substance from it, principally in that the number of living units was substantially increased. Defendants contend that the 220 acres "constituted integral parts" of the only PUD which now exists or in which vested rights could now be claimed; that "[p]laintiff's abandonment of integral portions of the 1970 approval left it without an approval on which to rely"; and that "[t]he 440-acre project or plan was essentially abandoned and never was raised again until it was conveniently resurrected in the course of this proceeding in an attempt to *fall back on it*."

Plaintiff responds that the "vested right to develop the * * * PUD was clearly established prior to the loss of the 220 acres";

3. The county also appears to have agreed with plaintiff's contentions in the trial proceedings.

that plaintiff "never intended to abandon the project or abandon the 220 acres as part of the project"; [4] and that vested rights run with the land and are not "dependent upon ownership." The trial court agreed and concluded that there had been no abandonment of the right to develop the 660 acres and that the right "runs with the entire 660 acres of the subject land."

In our view, the question is not whether plaintiff *abandoned* vested rights to develop the 220 acres but whether the vested rights plaintiff *acquired* ever included the 220 acres. We conclude that they did not. The reasons discussed earlier for finding plaintiff to have acquired vested rights in *some* use are singularly inapplicable to the 220 acres. The vast preponderance of plaintiff's design and engineering expenditures, and virtually all the construction expenditures, were exclusively referable to the original 440 acres. Correspondingly, there was no substantial commencement of construction on the 220-acre addition. Alternative uses of the 220 acres, consistent with the county's comprehensive plan, remain available; indeed, there has been no cognizable development of the 220 acres that is consistent with the *nonconforming* use. Finally, plaintiff can claim no entitlement to a reasonable return on its investment in property in which it has no remaining interest.

It is true that, beyond a certain point in time, plaintiff perceived the 660 acres as a unitary project and all preparations and development anywhere in the 660 acre area as furthering completion of the whole project. However, it is also true that little or nothing related to the PUD actually occurred on the 220 acres before the comprehensive plan was adopted or before plaintiff lost its interest in that area. As things now stand, nothing connected with the PUD can occur there.

[4] We conclude that plaintiff proved a vested right to develop only the original 440 acres. The question remains whether plaintiff abandoned that right by applying for and obtaining approval of the revised PUD. We conclude that it did not. Assuming arguendo that plaintiff could be found to have abandoned the vested rights in its use of the 440 acres if there were substantial differences between the projects approved in 1969 and 1970, we disagree with defendants that there were such differences. The 50 percent increase in dwelling units under the revised PUD was not a substantial change from the original project in light of the fact that the territory included in the revised project was 50 percent greater. As plaintiff points out, the general plan concept, density factor and other aspects of the 1969 and 1970 projects were substantially the same.

Defendants' other arguments in support of their abandonment theory are unpersuasive. For example, they point to the fact that the county's action approving the revised project was recorded as adopting the "current plan and proposal *in lieu of* the previously adopted plan." (Emphasis added.) That argument is largely semantic. The record shows clearly that both plaintiff and the county regarded the 1970 application and approval as an expansion and not as a replacement of the PUD approved the previous year.

We therefore modify the trial court's decree to declare that plaintiff has vested rights in the nonconforming development only of the original 440 acres. The decree must be modified in another respect. As noted earlier, the trial court's decree declared the existence of a vested right and enjoined defendants from taking certain actions. Defendants do not specifically challenge the injunction portion of the decree. We are nevertheless unable to affirm the injunction.

[5] The relief given exceeded the trial court's authority. Although stated in the

4. Plaintiff states:

"* * * In fact, the owners of the 220 acres subsequently signed a writing for plaintiff to submit to the County Board of Commissioners acknowledging their consent to the continuation of the project."

The owners did not acquire any vested right in the nonconforming use under these facts.

negative, the injunction is in effect mandatory and directs governmental bodies to exercise their powers in a particular manner. The mandatory injunction would require the governmental bodies to take certain actions rather than directing only that they not refuse to take those actions on grounds inconsistent with the existence of plaintiff's nonconforming use (*e.g.*, that the use violates *current* plan or zoning designations). We also note that the approval of formation of a service district by the Boundary Commission may not be comparable, for purposes of appropriate injunctive relief in a vested rights case, to a city's or county's issuance of a permit to proceed with an established nonconforming use. We therefore vacate the injunction and instruct the trial court to reconsider on remand what, if any, injunctive relief is appropriate here.[5]

Decree modified to declare that plaintiff has vested rights to proceed with the nonconforming use on only the 440 acres included in the 1969 PUD application; injunction vacated; affirmed as modified and remanded for further proceedings and for entry of an amended decree consistent with this opinion.

59 Or.App. 185

In the Matter of the COMPENSATION OF Carroll PAINE, Claimant.

Carroll PAINE, Petitioner,

v.

WIDING TRANSPORTATION, Respondent.

No. 80-06329; CA A22657.

Court of Appeals of Oregon.

Argued and Submitted April 21, 1982.

Decided Sept. 15, 1982.

Claimant appealed for review of an order of the Workers' Compensation Board holding that closure of his claim was proper and awarding permanent partial disability. The Court of Appeals, Richardson, P. J., held that: (1) employer's insurance carrier, in closing claimant's claim, properly followed statutory procedure on basis of all medical reports in existence, including treating physician's general concurrence that closure was appropriate; (2) statutorily required approval by treating physician of claimant's return to regular employment bore only on need for determination order to close claim; (3) medical reports following closure did not indicate that claim should have been reopened or should have remained open; and (4) claimant had not met burden of establishing that his injury resulted in permanent total disability.

Affirmed.

1. Workers' Compensation ⇐1042

Improper or premature closure of claim for workers' compensation benefits may subject insurance carrier to statutory penalties. ORS 656.262(9).

2. Workers' Compensation ⇐1042

Employer's insurance carrier, in closing workers' compensation claimant's claim, properly followed statutory procedure on basis of all medical reports in existence, including general concurrence of claimant's treating physician that closure was appropriate, where payments continued until termination was authorized by determination order. ORS 656.268(2).

3. Workers' Compensation ⇐1042

Statutorily required approval by treating physician of workers' compensation claimant's return to regular employment bore only on need for determination order to close claim. ORS 656.268(2).

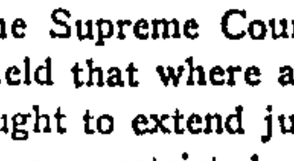
4. Workers' Compensation ⇐1042

Medical report, following closure of claim for workers' compensation benefits, did not indicate that claim should have been

5. The parties have not addressed that issue in their arguments in this court.

these circumstances, any error in the charge on the issue of negligence was cured by the general verdict. *Meglio* v. *Comeau*, 137 Conn. 551, 554, 79 A.2d 187; Hasler v. T. H. Canty & Co., 138 Conn. 343, 346, 84 A.2d 577; Messier v. Zanglis, 144 Conn. 449, 455, 133 A.2d 619.

There is no error.



147 Conn. 469

John P. PETRILLO

v.

BOARD OF ZONING APPEALS OF the TOWN OF NORTH HAVEN.

Supreme Court of Errors of Connecticut.

June 14, 1960.

Application by proprietor of junkyard for permission to extend yard operations to adjoining land and for certificates of approval for junkyard and for a used car lot on adjoining land. The Court of Common Pleas, New Haven County, Barber, J., reversed on appeal the action of the board of zoning appeals which had denied the applications and the board appealed. The Supreme Court of Errors, Murphy, J., held that where area in which proprietor sought to extend junkyard operations had been restricted against such operations by zoning commission, zoning board of appeals lacked authority, when acting within framework of statute covering the licensing of junkyards to grant a variance from zoning commission restriction.

Judgment set aside and case remanded with directions.

Appellee filed a motion for reargument which was denied.

1. Licenses ⇐16(11)

Statute governing the location, operation and licensing of motor vehicle junkyards is a licensing statute enacted under the police power of the state for their proper regulation. C.G.S.A. §§ 21–16 to 21–18, 21–23.

2. Licenses ⇐22

Zoning board of appeals, in acting upon an application for a certificate of approval of location for either a motor vehicle junkyard or a used car business, acts under the statutes regulating locations and licenses for these particular businesses and not under the local zoning regulations or zoning statutes. C.G.S.A. §§ 8–1 et seq., 14–54, 21–16 to 21–18, 21–23.

3. Licenses ⇐22

Zoning board of appeals, when acting within the procedures provided by legislature for the licensing of junkyards, performs dual function of certifying that proposed location is not within a district restricted by zoning commission against junkyards and of conducting public hearings to determine the suitability of the proposed location, but may not change the bounds of restricted districts as established by zoning commission. C.G.S.A. §§ 21–16 to 21–18, 21–23.

4. Zoning ⇐330

Where zoning commission had prohibited the establishment of automobile junkyards in area after plaintiff had obtained a license and begun operating a junkyard in area and where plaintiff sought to extend such nonconforming use to an adjoining lot within zoned area, board of zoning appeals had no authority to grant a variance for, or otherwise allow, the extension of the present nonconforming use. C.G.S.A. §§ 21–16 to 21–18, 21–23.

5. Zoning ⇐618

Where proprietor of junkyard and used car lot applied for permission to extend the nonconforming use of his junk-

yard to an adjoining lot and where extension of junkyard operation was prohibited under regulations of zoning commission but extension of used car operation was not so prohibited, and where proprietor desired to conduct both operations as a single enterprise, and did not ask for the approval of one without the other, court could not substitute its judgment for that of the board which denied permission to extend used car lot where there was no indication that board had not acted fairly, with proper motives, and upon valid reasons.

Albert W. Cretella, Jr., New Haven, with whom was Lawrence J. Carboni, New Haven, for the appellant (defendant).

Dennis N. Garvey, New Haven, with whom were John W. Colleran, New Haven, and, on the brief, Lewis E. Caplan, New Haven, for the appellee (plaintiff).

Before BALDWIN, C. J., and KING, MURPHY, MELLITZ and SHEA, JJ.

MURPHY, Associate Justice.

The board of zoning appeals for the town of North Haven denied the application of the plaintiff for permission to extend the nonconforming use of his automobile junk yard to premises immediately adjoining his present location and for certificates of approval of the adjoining property for that purpose and for a used car lot. Upon an appeal to the Court of Common Pleas by the plaintiff, the action of the board was reversed. The board has appealed.

In 1951, the plaintiff was, and he still is, the owner of an irregularly shaped plot of ground on the north side of Sackett Point Road and bordering the Quinnipiac River. It is in an industrial B zone. Under what is now General Statutes § 14–54, the board in 1951 approved the property for the location of a used car business. The following year, the board approved the same property as a location for a motor vehicle dismantling or junk yard, under the provisions of what is presently § 21–16. At that time, that type of business was a permitted use in an industrial B zone. The plaintiff has conducted a motor vehicle junk yard on the property ever since. Section nine of the North Haven zoning ordinance was amended by the zoning commission in May, 1953, to prohibit junk yards, including automobile dismantling yards, in an industrial B zone.

The plaintiff in 1956 purchased a piece of property adjoining and easterly of his junk yard. This property is the subject matter of this appeal. In July, 1958, the plaintiff filed an application with the board of zoning appeals for permission to extend his non-conforming automobile junk yard to include the second tract and for certificates of approval of that location for both the automobile junk and used car businesses. After a public hearing, the board denied all three requests. Upon appeal to the trial court, the parties filed a stipulation concerning certain statements made by counsel for the plaintiff at the hearing and also correcting a report as to the number of pupils who travel on Sackett Point Road each day in school busses. The court heard no testimony but, with counsel, viewed the premises. On the basis of its observations of the locale, it made a limited finding which was contrary to, and in conflict with, the conclusions of the board. The court sustained the appeal and rendered judgment for the plaintiff.

[1–3] Motor vehicle junk yards are subject to strict regulation and licensing under the provisions of chapter 406 of the General Statutes. See Leach v. Florkosky, 145 Conn. 490, 494, 144 A.2d 334. Section 21–23 provides that in any municipality having a zoning commission, that commission shall have the authority to create restricted districts within which any motor vehicle junk yard or motor vehicle junk business shall not be permitted to be estab-

lished. Section 21–16 provides that no motor vehicle junk yard or junk business shall be established or operated unless a certificate of approval of the location therefor has been obtained from the zoning board of appeals certifying that the location is not within an established district restricted against such uses by the zoning commission. The chapter which governs the location, operation and licensing of motor vehicle junk yards is a licensing statute enacted under the police power of the state for their proper regulation. State v. Kievman, 116 Conn. 458, 465, 165 A. 601, 88 A.L.R. 962. Upon the presentation of a certificate of approval to the commissioner of motor vehicles, a further examination of the location takes place, before a license to operate the yard is issued, in order to determine whether the regulations of the department of motor vehicles are being observed. General Statutes § 21–18. Chapter 406 is independent of chapter 124, relating to zoning. The zoning board of appeals, in acting upon an application for a certificate of approval of a location for either a motor vehicle junk yard or a used car business, acts in a special capacity under the statutes regulating the locations of and the licenses for these particular businesses and not under the local zoning regulations or the zoning statutes. See Mason v. Board of Zoning Appeals, 143 Conn. 634, 637, 124 A.2d 920, and cases cited. The function of the board under § 21–16 is twofold. First, it has to certify that the proposed location is not within an established district restricted against motor vehicle junk yards and then, if no such restrictions exist, it conducts a public hearing to determine the suitability of the location in view of certain factors, which are set forth in § 21–17. There is no grant of authority under any section of chapter 406, regulating motor vehicle junk yards, which permits the board to change the bounds of restricted districts as established by the zoning commission under § 21–23.

[4, 5] It thus becomes apparent from the precise wording of § 21–16 that so long as the zoning commission prohibits the establishment of automobile junk yards in a district, the zoning board of appeals lacks the authority to grant a variance for, or otherwise to allow, the establishment of a new business of that type or the extension of one already operating as a nonconforming use. It was therefore beyond the power of the board here to conduct a legal hearing on the suitability of the location of the plaintiff's second tract for an automobile junk yard. The restriction by the zoning commission did not however, affect the plaintiff's used car business. It is not a prohibited use in an industrial B zone. The plaintiff made a single application for the extension of his nonconforming use and for both certificates of approval. The board considered and voted upon each of the three portions of the application separately, although the application itself gave no indication that the plaintiff sought approval of the location for the used car business other than in conjunction with the automobile junk yard. The action of the board in denying approval of the lot for the used car business could not be reversed by the court unless the board did not act fairly, with proper motives and upon valid reasons. The court heard no testimony but made a finding of facts and conclusions based upon its observations on a visit to the area. It attempted to substitute its judgment for that of the board. This it could not do legally. Wil-Nor Corporation v. Zoning Board of Appeals, 146 Conn. 27, 30, 147 A.2d 197.

There is error, the judgment is set aside and the case is remanded with direction to dismiss the appeal.

In this opinion the other judges concurred.

in Kemline's title to the shares. What defendant says is that Kemline, based on facts totally apart from any issue as to ownership of the shares, fraudulently pledged the shares with Chemical at a time when Chemical had "knowledge" of such frauds. If proved, plaintiff was a party to a fraudulent conveyance (perhaps inter alia) under 6 Del.C. § 1307. As to this issue plaintiff's affidavits are silent.

The foregoing analysis shows that plaintiff has failed in its sworn material to negate a permissible issue posed by defendant in its pleading. This is so regardless of the effect to be accorded defendant's affidavits with respect to this issue. It follows that plaintiff is not entitled to summary judgment on this record insofar as it relies upon the insulating effect of the pledge of the certificates to Chemical.

Plaintiff's brief does not seem to argue that any of the transfers subsequent to the pledge with Chemical constituted transfers of the character necessary to cut off defendant's right to assert the present defense and claim under the Delaware Fraudulent Conveyances Act. 6 Del.C. § 1301 et seq. In any event, the present record would not permit a decision thereon on this motion. I say this partly because of certain statements appearing in defendant's affidavits which may be construed to show knowledge in later parties in plaintiff's chain. Also, defendant's pleading charges subsequent transferees with knowledge of the frauds and none of plaintiff's affidavits deny such charge. I need not consider on this issue what effect should be given the stampings put on the certificates when Chemical first attempted to have them registered.

Thus, plaintiff has not shown from an undisputed record that any party in its chain of title obtained its interest at a time when it was unsullied by defendant's fraudulent conveyance claim. It follows that plaintiff's motion for summary judgment must be denied.

Present order on notice.

MINQUADALE CIVIC ASSOCIATION, Ervin S. Jester, Edward Nilan and Ethel Marie Nilan, Plaintiffs,

v.

Harry O. KLINE and Regina Kline, Harry O. Kline doing business as H. O. Kline Transfer, Lancaster Transportation Company, Drake Motor Lines, Yale Motor Lines, Lahn Transportation Company, and Shurman Trucking Co.

Court of Chancery of Delaware,
New Castle.
July 30, 1965.

City association and property owners brought action against owners of trucking terminal for a permanent injunction to enjoin defendants from carrying on an allegedly forbidden commercial enterprise in a residential district. The Court of Chancery, New Castle County, Marvel, Vice Chancellor, held that purchase and use of garage premises as a center of trucking operations prior to adoption of zoning ordinance which classified area as residential entitled owners to claim a valid nonconforming use as to that part of the business property, but that owners did not have a right to extend the nonconforming use of the garage premises to include adjacent property on ground that natural growth and expansion of business required it, where purchase of adjacent property was made after enactment of zoning ordinance.

Order accordingly.

1. Zoning ⇐331

A nonconforming use may be intensified where normal growth and expansion reasonably require such intensification.

2. Zoning ⇐322

Purchase and use of garage premises as a center of trucking operations prior to adoption of zoning ordinance which classified area as residential entitled owner to

claim a valid nonconforming use as to that part of the business property.

3. Zoning ⟸331

Growth of trucking business, a nonconforming use, at a garage premises subsequent to enactment of zoning ordinance which classified area as residential constituted normal expansion and entitled owner to protection against interference with his business operation.

4. Zoning ⟸321

Owner of trucking business, who used lots adjacent to his garage premises prior to enactment of zoning ordinance which classified area as residential but who did not own such lots, could not claim that nonconforming use existing on his own lots prior to adoption of ordinance also existed on adjoining lots.

5. Zoning ⟸337

Under ordinance providing that whenever a nonconforming use has been discontinued for period of one year, such use shall not thereafter be reestablished, except that when such discontinuance is on account of any cause beyond control of owner or tenant, nonconforming use contemplated in section must have been in existence when zoning ordinance was enacted in order for ordinance to be invoked.

6. Zoning ⟸337

Discontinuance by former owner of trucking terminal of use of premises adjacent to terminal for a commercial purpose for two years prior to enactment of zoning ordinance which classified area as residential precluded subsequent owner from using adjacent premises for a similar commercial purpose, even though discontinuance was involuntary result of bankruptcy.

7. Zoning ⟸323

A casual or occasional use of property, prior to enactment of a zoning ordinance, will not serve to create a valid nonconforming use.

8. Zoning ⟸323

That son of former owner of trucking terminal parked a truck on lot adjacent to terminal during the year prior to enactment of zoning ordinance which classified area as residential did not constitute nonconforming trucking business use, where truck was parked on premises only at night when son came home from work.

9. Zoning ⟸329

Doctrine of expansion of a nonconforming use does not benefit adjoining lands purchased after enactment of a zoning ordinance.

10. Zoning ⟸330, 777

Owner of trucking terminal did not have a right to extend a nonconforming use of the garage premises to include adjacent property on ground that natural growth and expansion of business required it, where purchase of property was made after enactment of zoning ordinance which classified area as residential, and owner would be permanently enjoined from carrying on his business on such adjacent property.

11. Nuisance ⟸33

Evidence was insufficient to establish that operation of trucking terminal in an area classified as residential constituted a nuisance because trucks were source of excessive vibrations, noise, and noxious odors, and vibrations from trucks caused cracks in walls of plaintiffs' homes.

Henry A. Wise, Jr., and Michael F. Tucker, of Wise & Suddard, Wilmington, for plaintiffs.

Gerald Z. Berkowitz and Samuel H. Lewis, of Wahl, Greenstein & Berkowitz, Wilmington, for defendants Harry O. Kline

and Regina Kline and Harry O. Kline, doing business as H. O. Kline Transfer.

MARVEL, Vice Chancellor.

Plaintiffs seek a permanent injunction against the carrying on by the defendant Harry O. Kline of an allegedly forbidden commercial enterprise in a residential district, it being charged that such operation violates the provisions of a zoning classification duly promulgated by the Levy Court of New Castle County on September 28, 1954. While the wife of Harry O. Kline is also a named defendant and has appeared, she has taken no part in the operation of her husband's business, being merely a joint owner of the business premises. Plaintiffs also pray for a permanent injunction abating a claimed nuisance allegedly resulting from the carrying on of the business involved, namely the operation of a trucking center and warehouse as well as a parking and service area for passenger buses on Hazeldell Avenue in Minquadale. Also sought are damages in the sum of $50,000, which, it is claimed, have been sustained by adjacent residents of Minquadale (on whose behalf the corporate plaintiff filed this action) as a result of the carrying on of the Kline business activities.

Plaintiffs are the Minquadale Civic Association, a Delaware corporation which purports to represent property owners in the community of Minquadale, and several residents of that community. Leave was granted after trial for the joining of such individual plaintiffs, all of whom reside in the district in which the Kline business is located. The named defendants are Harry O. Kline doing business as H. O. Kline Transfer, his wife, Regina, and several trucking companies associated with Mr. Kline's business. However, none of the latter has been served nor have any of them entered an appearance in this case. The appearing defendants' premises are located at 305-27 East Hazeldell Avenue, Minquadale, Delaware. Their answer, which neither questions the capacity of the corporate plaintiff to sue nor pleads any special defenses, admits that the lots in question on Hazeldell Avenue are owned by the Klines but denies any actionable violation of a zoning regulation or the commission of a nuisance.

Minquadale is essentially a residential community of modest one family homes, most of which appear to have been built between the two world wars. The entire area here involved, which extends in an easterly direction from the DuPont Highway towards the approaches to the Delaware Memorial Bridge, is zoned R-1-C, a classification which contemplates, with certain exceptions not here relevant, single family homes on lots of a minimum size of 6,500 square feet, or the type of housing which predominated in the district at the time zoning was adopted. However, prior to the enactment of a County Zoning Code in 1954, some commercial enterprises had become established in the area. A grocery store is located across the street from the Kline establishment and nearby is a firm which is engaged in the business of supplying and servicing portable sanitary devices, the vehicles and other equipment used in such business being clearly visible to anyone driving or walking on Hazeldell Avenue.

Jurisdiction to determine the zoning question here in issue derives from 9 Del.C. § 2619(d), which provides, in part, that:

> "In case * * * any land is or is proposed to be used, in violation of this chapter or of any regulation or provision of any regulation, or change thereof, enacted or adopted by the Levy Court under the authority granted by this chapter * * * any owner or occupier of real estate within the district or within an adjoining district in which such * * * land is situated, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or any other appropriate action or actions, proceeding or proceedings to prevent, enjoin, abate or remove such unlawful * * * use."

First of all there is no doubt but that the individual plaintiffs qualify as owners or occupants "within" the R–1–C district in question and thus may seek relief against an alleged zoning violation in their district. According to the evidence adduced at trial, the property on which Mr. Kline now operates his trucking and freight business consists of twenty-two lots, each lot having a frontage of twenty feet on Hazeldell Avenue. Testimony concerning the use of these lots during the past twenty-five years or so discloses that prior to the second world war the six westerly lots now owned by Mr. Kline were owned by a Mr. Franklin Baker. However, the remaining lots presently owned by Mr. Kline were then the property of Mrs. Nora Baker, Mr. Franklin Baker's mother. Located on the original six lot tract is a garage built by Mr. Baker in the early 1940's and used by him as a base of operations for his trucking business. It thereafter became the central point of Kline's business upon his acquisition of the six westerly lots in September, 1953.

In the course of the operation of his business, Franklin Baker found it convenient, if not actually necessary, to use his mother's adjoining land for the purpose of maneuvering his trucks and other vehicles into his easterly loading platform due to the fact that the distance between the garage's side loading platform and the boundary of his mother's lots was less than the length of the trucks and trailers used in the business. Other portions of Mrs. Nora Baker's premises were used to park vehicles. It appears, however, that this use of Mrs. Nora Baker's premises by her son's business was permissive. The Baker business was carried on in Minquadale until some time in 1952 when Franklin Baker went bankrupt. What could be salvaged from the business was then transferred to Middletown, Delaware on December 23, 1952, and following foreclosure of a mortgage on the garage premises by Equitable Trust Company, title to the six lots involved was conveyed to the appearing defendants by deed dated September 11, 1953. The remaining sixteen lots, on the other hand, continued to be the property of Mrs. Nora Baker until July, 1955, although it appears that from the start of Mr. Kline's operations he resorted to Mr. Baker's expedient of using a portion of Mrs. Nora Baker's premises for the purpose of maneuvering his trucks into the loading platform on the east side of what had now become the Kline garage and warehouse. However, unlike the situation existing during the operation of the Baker trucking business, the defendant Kline was never granted permission to make use of Mrs. Baker's premises, nor was such use acquiesced in.

In September, 1954, the Levy Court of New Castle County promulgated a comprehensive zoning code for the County under the authority granted it by 9 Del.C. Ch. 26, the area here in dispute being classified as a R–1–C (single-family-resident) use district with minimum lot areas of 6,500 square feet. A trucking terminal is not a permitted use in a R–1–C district.

In July of 1955, the defendant Kline purchased the adjoining Nora Baker lands, and from the date of such acquisition until the present time defendant has used these premises in the course of carrying on his trucking business. Moreover, after acquiring this additional space, Mr. Kline expanded the scale of his operations so as to include freight transfers and the like with the connecting carriers here named as defendants. He also used the additional lands acquired from Mrs. Baker for the repairing and storing of vehicles and equipment used in his business. By defendant's own estimate at least twelve freight-carrying trucks a day presently use his terminal facilities.

[1] Passing over the question of nuisance for the present, the zoning aspect of this case would appear to be controlled by the law of non-conforming uses. A non-conforming use is defined as "[a] building, structure, or use of land existing at the time of enactment of * * *" the Zoning

Code "* * * which does not conform to the regulations of the district in which it is located." See Zoning Code of New Castle County, Article II—Definitions (1954). "[A] *non-conforming* use may continue to be used for the same non-conforming purpose, nor shall any change of title or of right to possession affect such continuation of an existing use." Zoning Code of New Castle County, Article XVII, § 1 (1954). Furthermore, according to what would appear to be the better reasoned cases on the subject, a non-conforming use may be intensified where normal growth and expansion reasonably require such intensification. Compare State v. Szymanski, 24 Conn.Super. 221, 189 A.2d 514, and Humphreys v. Stuart Realty Corp., 364 Pa. 616, 73 A.2d 407.

The defendant Harry O. Kline, in urging the Court to treat both his garage lots and those lots later acquired from Mrs. Baker as one non-conforming use, cites the Zoning Code of New Castle County as follows: "*Lot*: A parcel of land in common ownership and occupied by one principal building or use * * *, including such *yards* or open spaces as are arranged or designed to be used in connection with such buildings." Article II—Definitions. On the basis of such definition defendant argues that he may extend the non-conforming use established for the six lots acquired from Franklin Baker over the entire "lot", such extension allegedly being the result of the natural growth and expansion of his business. While there are established rules governing the extension of a non-conforming use, defendant's contentions are founded on a false premise. The Zoning Code requires that a parcel must be "in common ownership" to constitute a "lot", and such ownership did not exist as to the entire tract here involved when the Zoning Code was adopted in 1954, the Kline defendants at the time being the owners of only the garage premises.

[2-4] Inasmuch as the two parcels must be considered separately, it is obvious that a valid non-conforming use exists only as to the original garage premises. It is clearly established on the record that Mr. Kline purchased and used the garage premises as the center of trucking operations prior to the adoption of the Zoning Code and he is therefore entitled to claim a valid non-conforming use as to that part of his business property. Moreover, I am of the opinion that the growth of defendant's business at the garage premises subsequent to the enactment of the Code constituted normal expansion and that he is entitled to protection against interference with his business operations there carried on on the basis of the doctrine of non-conforming use. However, in view of the zoning classification in force and effect in the district here involved since September 1954, it would appear that defendant has no legal right to use the former Nora Baker premises for a commercial purpose such as trucking. Defendant did not own these lots when the Zoning Code was enacted and therefore may not successfully claim that a non-conforming use existed at that time. In other words, the use made by Mr. Kline of Mrs. Baker's lands from the time he acquired the garage property constituted a trespass.

[5, 6] Defendants contend, however, that the use made of the premises by Franklin Baker prior to his bankruptcy established a non-conforming use which enures to Mr. Kline's benefit regardless of his trespass, contending that under the Zoning Code the right to a non-conforming use is a vested right which runs with the land. In other words, it is argued that such right does not terminate when a property is sold or leased, Zoning Code of New Castle County, Article XVII, § 1 (1954). It is further contended that the period of discontinuance of use for a commercial purpose from December, 1952 to 1955 does not preclude Mr. Kline's user because a discontinuance, in order to interrupt the establishment of a non-conforming use, must amount to abandonment, and abandonment requires as intent to abandon. Thus, it is argued that Franklin Baker could not have

had such intention because his discontinuance of a trucking business was involuntary, being the result of bankruptcy. This principle relied on by defendants is found in the Zoning Code which provides that "* * * Whenever a *non-conforming use* has been discontinued for a period of one year, such use shall not thereafter be re-established, * * * except that when such discontinuance is on account of any cause beyond the control of the owner or tenant, the period of abandonment shall for the purposes of this Code date from the termination of such cause." Zoning Code of New Castle County, Article XVII, § 1 (1954). While at first glance defendants' argument has appeal, it is obvious that the non-conforming use contemplated in the section must have been in existence when the Zoning Ordinance was enacted. In the case at bar the use made of his mother's premises by Franklin Baker in operating a trucking business had ceased for a period of almost two years before the adoption of the Zoning Code.

[7,8] Defendants also contend that Franklin Baker, Jr., who had become engaged in the Baker trucking business after its removal to Middletown, was accustomed to parking one of his trucks on his grandmother's premises at Minquadale in the course of carrying on such trucking business during the years 1953 and 1954. It is accordingly argued that such use of the premises established a non-conforming use. Such argument, however, fails to take into account the rule that a casual or occasional use of property, prior to the enactment of a zoning ordinance, will not serve to create a valid non-conforming use. Compare Durning v. Summerfield, 314 Ky. 318, 235 S.W.2d 761. And the record here discloses that the truck in question was parked on the Baker premises only at night when Frank Baker, Jr., who lived in the neighborhood, came home from his work in Middletown.

[9,10] Defendants' final contention is that they have a right to extend a non-conforming use of the garage premises to include property formerly owned by Mrs. Nora Baker because natural growth and expansion of the business require it. However, the better reasoned cases which deal with the doctrine of the expansion of a non-conforming use hold that such doctrine does not benefit adjoining lands purchased after the enactment of a zoning ordinance. Compare Jensen's Inc. v. Town of Plainville, 146 Conn. 311, 150 A.2d 297. Accordingly, the carrying on of a commercial operation on the former Nora Baker lots in Minquadale must be permanently enjoined.

[11] I turn now to plaintiffs' claim that defendant's business activities on Hazeldell Avenue constitute a nuisance. Plaintiffs contend that Mr. Kline's and his associates' operation of heavy trucks and business on Hazeldell Avenue as well as on the lots here in controversy constitutes a private nuisance, such vehicles being the alleged source of excessive vibration, noise, and noxious odors. And while there is testimony to the effect that vibrations allegedly set up by Mr. Kline's and his associates' trucks caused cracks in the walls of the individual plaintiffs' homes, such conclusions were obviously mere conjecture. Furthermore, it is apparent that many vehicles other than those of defendant and his associates have used East Hazeldell Avenue over the years. In short, no real effort was made to establish by competent testimony that defendants' trucks caused the damage complained of. In fact, such claimed damage may well be attributable to other factors such as the settling of foundations, weather conditions, as well as other forces which customarily cause deterioration in buildings. In other words, plaintiffs failed to adduce proper proof to support their claim based on allegedly excessive vibration. Compare Midway Realty Corp. v. Larsen, 38 Del.Ch. 511, 154 A.2d 887. By the same token, the testimony adduced at trial fails to establish plaintiffs' claims based on noise and noxious odors allegedly attributable to the operation of defendant's vehicles. While the individual plaintiffs

testified that the noise and odor involved in defendant's business were injurious, other property owners, not parties to this litigation, testified that they did not find defendant's activities unusual or bothersome. In this age of motor vehicles powered by oil or gasoline, noise and exhaust fumes must be passively tolerated in most populated areas. Moreover, there is testimony of record that Mr. Kline has responded to situations which have fostered minor complaints by taking prompt remedial action. I conclude that the record clearly fails to establish the existence of an actionable private nuisance as contended by the individual plaintiffs and such claim will be dismissed.

An order in conformity with the above may be presented on notice.

169 Ariz. 269

Franz ROTTER, South Grand Canyon Hospitality, Inc., an Arizona Corporation, Plaintiffs–Appellees Cross Appellants,

v.

COCONINO COUNTY, Coconino County Planning and Zoning Commission, and William L. Towler, Director of the Coconino County Department of Community Development, Defendants–Appellants Cross Appellees.

No. CV–90–0327–PR.

Supreme Court of Arizona,
En Banc.

Oct. 3, 1991.

Landowners brought special action from decision of county planning and zoning commission denying request for conditional use permit to expand onto adjacent parcel. The Superior Court, Navajo County, Cause No. 24480, Jay M. Abbey, J., ordered issuance of permit, but denied request for attorney fees. All parties appealed. The Court of Appeals, 167 Ariz. 198, 805 P.2d 1019, affirmed in part, reversed in part, and remanded. County petitioned for review. The Supreme Court, Feldman, V.C.J., held that statute which states that nonconforming business use may expand by 100% of area of original business did not grant right to expand nonconforming use onto adjoining parcel that was acquired after passage of the ordinance and was not previously subject to the nonconforming use.

Court of Appeals' opinion vacated; judgment reversed; and case remanded.

1. Zoning and Planning ⇐321

"Nonconforming land use" is commonly defined as lawful use maintained after effective date of zoning ordinance prohibiting such use in the applicable district.

See publication Words and Phrases for other judicial constructions and definitions.

2. Zoning and Planning ⇐321

Doctrine of vested nonconforming uses is based on reluctance of courts to apply zoning ordinances retroactively, thus destroying vested property rights.

3. Constitutional Law ⇐278.2(1)
Zoning and Planning ⇐84

Ordinance that eliminates nonconforming uses solely by virtue of its enactment is generally held unconstitutional as taking of property without due process. U.S.C.A. Const.Amends. 5, 14.

4. Zoning and Planning ⇐323

Nonconforming use is source of vested rights only if it was in actual existence and use before effective date of ordinance.

5. Zoning and Planning ⇐321, 330

Vested right to continued nonconforming use runs with land and is not personal to owner of use at time that right vests; owner is thus limited to original premises and may not assert any vested right to remove nonconforming use to another parcel of land that was not used for this purpose prior to effective date of ordinance.

6. Zoning and Planning ⇐321

Nonconforming uses are not favored by the law and should be eliminated or reduced to conformity as quickly as possible within limits of fairness and justice.

7. Zoning and Planning ⇐27

In general, zoning ordinance will be upheld if it is reasonable exercise of power to zone for purposes of public health, safety, and welfare.

8. Zoning and Planning ⇐14, 29

Zoning ordinance must operate within statutory grant of authority to zone and is invalid if it conflicts with state statute delegating to local authority power to act. A.R.S. §§ 11–801 to 11–832.

9. Municipal Corporations ⇐120

Statutes and ordinances in apparent conflict must be construed, if possible, to give full force and effect to each.

10. Zoning and Planning ⇐14

Zoning ordinance against any regulation that would require termination or removal or preclude maintenance or repair of nonconforming use as it existed at effective date of zoning regulation complies with statute prohibiting ordinance that affects existing uses of property or right to continued use or reasonable repair or alteration for use at time that ordinance takes effect. A.R.S. § 11-830, subd. A.

11. Zoning and Planning ⇐14

Zoning ordinance permitting expansion of nonconforming use by up to 100% of original floor area if there is conditional use permit and compliance with setback and sideyard regulations is consistent with statute which states that nonconforming business use may expand by 100% of area of original business. A.R.S. § 11-830, subd. B.

12. Zoning and Planning ⇐330

Statute which states that nonconforming business use may expand by 100% of area of original business did not grant right to expand nonconforming use onto adjoining parcel that was acquired after passage of the ordinance and was not previously subject to the nonconforming use. A.R.S. § 11-830, subd. B.

13. Zoning and Planning ⇐330

Generally, right to expand nonconforming use exists only if granted by law and is limited by any restrictions therein.

14. Zoning and Planning ⇐9, 327, 330

Statutes and ordinances dealing with expansion or change of nonconforming uses should be read narrowly and strictly construed to promote legislature's policy goals of restricting nonconforming uses.

Perry, Pierson & Kolsrud by Russell A. Kolsrud, Mark D. Svejda, Phoenix, for plaintiffs-appellees cross appellants.

John Verkamp, Coconino County Atty. by Terence C. Hance, Flagstaff, for defendants-appellants cross appellees.

OPINION

FELDMAN, Vice Chief Justice.

Coconino County petitioned for review from the court of appeals' opinion allowing Franz Rotter and his corporation, South Grand Canyon Hospitality, Inc. (collectively Rotter), to expand a nonconforming use in violation of a county zoning ordinance onto an adjacent parcel first acquired by Rotter after passage of an ordinance forbidding that use. *Rotter v. Coconino County*, 167 Ariz. 198, 805 P.2d 1019 (Ct.App.1990). We granted review pursuant to Rule 23, Ariz. R.Civ.App.P., 17B A.R.S., and have jurisdiction under article 6, § 5(3) of the Arizona Constitution and A.R.S. § 12-120.24.

FACTS AND PROCEDURAL HISTORY

Rotter owns and operates a hotel on a leased parcel of land in Tusayan, Arizona, an unincorporated town within Coconino County. Rotter built the hotel in 1980 on parcel 11G. At that time, parcel 11G and the surrounding parcels (10B and 10D), which were not owned or used by Rotter, were all zoned to permit hotels. In 1981, Coconino County (the County) adopted a comprehensive zoning plan that restricted all three parcels to multi-family residential use. Thus, under the 1981 ordinance, as well as the 1987 ordinance that superseded it, hotels are not a permitted use. Rotter, of course, continued to operate his hotel as a legal, preexisting nonconforming use. *See* A.R.S. § 11-830(A). In 1987, he purchased portions of parcels 10B and 10D, now designated as parcel 10G. Parcel 10G is adjacent to parcel 11, but is in a different zoning district.[1]

In December 1987, Rotter applied to the Coconino County Planning and Zoning Commission (the Commission) for a permit to expand his nonconforming hotel use by one hundred percent of its area onto parcel

1. The County ordinance defines "zone" as "a classification established by this Ordinance which limits or permits various and specific uses." Ordinance § 8. This definition equates to a "zoning district," as defined by the Arizona statutes. *See* A.R.S. § 11-801(6) ("zoning district" means any portion of a county in which the same set of zoning regulations applies).

10G. The Commission denied the permit because, under the County's zoning ordinance (the Ordinance), a nonconforming use may not expand onto a "site which it did not occupy at the time it became a nonconforming use." Ordinance § 17.3(B).

Rotter then filed a special action in superior court, seeking an order requiring the County to issue the building permit. The superior court agreed with Rotter that the expansion was authorized by A.R.S. § 11–830(B), which provides:

> A nonconforming business use within a district may expand if such expansion does not exceed one hundred per cent of the area of the original business.

The court held that, in view of this statute, the County had no authority to "legislate against expansion of a business across differently zoned property lines," even though the expansion would extend a prohibited use onto a parcel acquired after the zoning ordinance was enacted. Order, Aug. 17, 1988. The court subsequently issued an order requiring the County to grant a building permit to Rotter in accordance with his expansion plans.

On appeal, a majority of the court of appeals accorded A.R.S. § 11-830(B) its broadest construction, finding that, as a county rather than a city zoning provision, "the policy favoring the eventual elimination of nonconforming uses is inapplicable to the interpretation of A.R.S. § 11–830(B)." *Rotter*, 167 Ariz. at 204, 805 P.2d at 1025. The court interpreted A.R.S. § 11-830(B) as a statute "by which the state legislature *guaranteed* expansion of nonconforming business uses." *Id.* at 203, 805 P.2d at 1024 (emphasis added). It therefore concluded that A.R.S. § 11–830(B) accorded the property owner a right to expand free of county restriction, regardless of whether the expansion would extend across zoning district lines or upon a parcel not previously burdened by the use. *Id.* at 205, 805 P.2d at 1026. To the extent that the Ordinance conflicted with this right, it was invalid. *Id.* at 202–03, 805 P.2d at 1023–24. Dissenting, Judge Gerber read the statute as granting a "limited *permission*" to expand, "discretionary to the zoning commission." *Id.* at 208, 805 P.2d at 1029 (emphasis in original). The dissent based this construction on two grounds. First, it found that Arizona's public policy favors the eventual elimination of nonconforming uses. *Id.* at 207, 805 P.2d at 1028 (citing *Gannett Outdoor Co. v. City of Mesa*, 159 Ariz. 459, 461, 768 P.2d 191, 192 (Ct.App.1989)). Second, the fact that the legislature amended the original language "shall have the right to expansion" to read "may expand" indicated its intent not to confer an absolute right to expand the nonconformity. *Id.* at 208, 805 P.2d at 1029.

We granted review to determine whether a county may prohibit expansion of a nonconforming use onto an adjacent parcel not previously burdened by the use and acquired after passage of the ordinance barring that use.

DISCUSSION

A. Relevant Law of Vested Nonconforming Uses

[1–4] A nonconforming land use is commonly defined as a lawful use maintained after the effective date of a zoning ordinance prohibiting such use in the applicable district. *See* 1 R. ANDERSON, AMERICAN LAW OF ZONING 3d § 6.01, at 446 and 447 n. 2 (1986). The doctrine of vested nonconforming uses is based on the reluctance of courts to apply zoning ordinances retroactively, thus destroying vested property rights. 4 A. RATHKOPF, THE LAW OF ZONING AND PLANNING § 51.01, at 51–4 (1987 & 1990 Supp.); *see Watanabe v. City of Phoenix*, 140 Ariz. 575, 577, 683 P.2d 1177, 1179 (Ct.App.1984) (principle of nonconforming use is based upon the injustice and doubtful constitutionality of compelling immediate discontinuance of the use). Any ordinance that eliminates nonconforming uses solely by virtue of its enactment is generally held unconstitutional as a taking of property without due process of law. *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401, 403–04 (1949); *Bergford v. Clackamas County*, 15 Or. App. 362, 515 P.2d 1345, 1347 (1973). A nonconforming use, however, is a source of

rested rights only if it was in *actual* existence and use before the effective date of the ordinance. *See* RATHKOPF, *supra* § 51.01; Young, *The Regulation and Removal of Nonconforming Uses*, 12 W. RESERVE L. REV. 681, 686 (1961); *see also Sherman-Colonial Realty Corp. v. Goldsmith*, 155 Conn. 175, 230 A.2d 568, 572 (1967) (it is not enough that the use be contemplated, rather the property must be "so utilized as to be 'irrevocably committed' to that use.") (quoting *Town of Lebanon v. Woods*, 153 Conn. 182, 215 A.2d 112, 120 (1965)).

[5] Further, the vested right to continue the nonconforming use runs with the land and is not personal to the owner of the use at the time the right vests. RATHKOPF, *supra* § 51.05. The owner is thus limited to the original premises and may not assert any "vested right" to remove the nonconforming use to another parcel of land that was not used for this purpose prior to the effective date of the ordinance. *See, e.g., Jensen's v. Town of Plainville*, 146 Conn. 311, 150 A.2d 297, 299 (1959) (plaintiff's right to operate nonconforming use extends only to original tract and number of trailers existing at the time it became a nonconforming use).

[6] Although nonconforming uses are constitutionally protected from the retroactive effect of zoning regulations, such uses are not favored by the law, primarily because they detract from the effectiveness of comprehensive land use regulation, often resulting in lower property values and blight. *County Council v. E.L. Gardner, Inc.*, 293 Md. 259, 443 A.2d 114, 118 (1982). Because of these negative effects, nonconforming uses should be eliminated or reduced to conformity as quickly as possible within the limits of fairness and justice. *Beerwort v. Zoning Bd. of Appeals*, 144 Conn. 731, 137 A.2d 756 (1958); *County Council*, 443 A.2d at 119; *New London Land Use Assoc. v. Zoning Bd. of Adjustment*, 130 N.H. 510, 543 A.2d 1385, 1389 (1988).

With these relevant general principles in mind, we turn to examine the validity of the Ordinance as applied to Rotter's expansion request.

B. The Relationship of the Arizona Statutes to Local Ordinance

In most jurisdictions, county and city governments do not have inherent power to enact zoning ordinances. That power is derived from enabling acts passed by state legislatures. The authority to deal with a nonconforming use is thus broadened or narrowed by the enabling act. *See generally* ANDERSON, *supra* § 6.03. In Arizona, the provisions of A.R.S. §§ 11–801 through 11–832 grant counties authority to adopt planning and zoning regulations, affirmatively requiring each county zoning commission to formulate and adopt a comprehensive long-term plan for development of the area within its jurisdiction. A.R.S. § 11–821(A). The county plan must "provide for zoning" and must "show the zoning districts designated as appropriate for various classes of residential, business and industrial uses." § 11–821(B).

[7, 8] Coconino County's zoning ordinance was developed pursuant to the power granted by A.R.S. § 11–801 *et seq.* *See* Ordinance No. 81–1 (adopted by Coconino County Board of Supervisors, Aug. 3, 1981). In general, a zoning ordinance will be upheld if it is a reasonable exercise of the power to zone for the purposes of public health, safety, and welfare. *Cardon Oil Co. v. City of Phoenix*, 122 Ariz. 102, 593 P.2d 656 (1979). The ordinance must, however, operate within the statutory grant of authority to zone. An ordinance is invalid if it conflicts with the state statute delegating the local authority power to act. *See City of Scottsdale v. Scottsdale Assoc. Merchants, Inc.*, 120 Ariz. 4, 5, 583 P.2d 891, 892 (1978).

[9] In this case, therefore, the dispositive question is whether § 17.3(B) of the Ordinance, barring expansion of a nonconforming use onto "a site which it did not occupy at the time it became a non-conforming use," conflicts with A.R.S. § 11–830, the statute governing nonconforming uses. In determining the answer to this question, we start from the premise that

statutes and ordinances that are in apparent conflict must be construed, if possible, to give full force and effect to each. *Fendler v. Texaco Oil Co.*, 17 Ariz.App. 565, 570, 499 P.2d 179, 184 (1972) (courts will avoid finding a city ordinance in conflict with a state statute if a reasonable interpretation of the ordinance will avoid such a conflict).

C. Related Provisions of the Ordinance and the Arizona Statutes

The Ordinance sets forth the regulations governing nonconforming uses in Section 17, which regulates the expansion, alteration, and restoration of nonconforming uses with the goal that "[e]ventually, certain classes of non-conforming uses, nonconforming structures, and certain non-conforming signs are to be eliminated or altered to conform." Ordinance § 17.0. This goal accords with the overall policy underlying regulation of nonconforming uses. *See Gannett Outdoor Co. v. City of Mesa*, 159 Ariz. 459, 461, 768 P.2d 191, 193 (Ct.App.1989) ("[p]ublic policy favors the eventual elimination of nonconforming uses. This is implicit in § 9–462.02 and throughout the entire statutory scheme empowering Arizona cities and towns to employ zoning regulations for land use planning.").

[10] The Ordinance prohibits any regulation that would require the termination or removal, or preclude the maintenance or repair of a nonconforming use as it existed at the effective date of the zoning regulation. Ordinance § 17.11(A). The Ordinance thus complies with A.R.S. § 11–830(A), which restricts a county's authority to regulate nonconforming uses by providing that no ordinance *shall* "[a]ffect *existing* uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purpose for which used at the time the ordinance affecting the property takes effect." (Emphasis added.) The Ordinance and subsection (A) of the statute deal with continuation of the use separately from expansion, thus implying that the vested right to continue the use does not include a right to change or expand the use.

[11] The Arizona legislature has, of course, contemplated limited expansion of a nonconforming use by providing that a "nonconforming business use within a district *may* expand if such expansion does not exceed one hundred per cent of the area of the original business." A.R.S. § 11–830(B) (emphasis added). The Ordinance is facially consistent with A.R.S. § 11–830(B) in that it provides for expansion of a nonconforming use by up to one hundred percent of its original floor area, provided that such expansion is accomplished pursuant to a conditional use permit and in accordance with the setback and sideyard regulations of the zone in which it is located.[2] Ordinance § 17.11(C). However, in a separate provision, the Ordinance bars expansion onto a site not previously used for the nonconforming use. Section 17.3(B) provides in relevant part:

> No non-conforming use shall be enlarged or extended in such a way as to occupy any part of ... another ... site which it did not occupy at the time it became a non-conforming use, or in such a way as to displace any conforming use occupying a structure or site, except as permitted in this Section.[3]

"Site" is defined as "a parcel of land, subdivided or unsubdivided, occupied or to be occupied by a use or structure." Ordinance § 8.

[12] Under the facts of this case, therefore, we must determine whether the Ari-

2. The full text of § 17.11(C) reads as follows:

> In any zone, subject to the granting of a conditional use permit, a non-conforming business use may expand if such expansion does not exceed one hundred percent (100%) of the floor area of the original business; provided, however, that such expansion shall conform to the standards for front yard, side yards, rear yard, height of structures, distances between structures or setbacks from residentially zoned properties prescribed in the regulations for the zone in which the original business is located (A.R.S. § 11–830).

3. Ordinance § 17.6 details limited situations in which an otherwise prohibited expansion may be permitted, none of which apply to the facts of this case.

zona legislature intended A.R.S. § 11-830(B) to grant an absolute right to expand to after-acquired adjoining parcels not previously subject to the nonconforming use, or whether such expansion is subject to county regulatory authority.

D. Interpretation of A.R.S. § 11-830(B)

1. *The Nature of the Right to Expand*

Arguably, the language "a nonconforming business use *may* expand" is ambiguous as to whether the right is "mandatory," *e.g.*, not subject to county regulation, or "permissive." *See Castregon v. Huerta*, 119 Ariz. 343, 345, 580 P.2d 1197, 1199 (1978) (use of the word "may" is interpreted as permissive or mandatory according to the usual principles of statutory construction). Lacking any clear expression of legislative intent, we examine the legislative history of the statute. *See City of Mesa v. Killingsworth*, 96 Ariz. 290, 394 P.2d 410 (1964).

The county zoning scheme originated with the County Planning and Zoning Act of 1949, first codified at §§ 17-1901 through 17-1918. *See* Ariz.Code Ann. 1939 ed. (1952 Cum.Supp.). Section 17-1916 provided that "[a] nonconforming business use within a district *shall have the right to expansion* providing the same does not exceed 100% of the area of the original business." (Emphasis added.) That section was later amended to its present form and codified as A.R.S. § 11-830(B) in the extensive 1956 revisions to the Code. *See* A.R.S. § 11-830(B) (1956).

While the legislature did not expressly comment on the intent behind the changes, we note that the amended statute differs in three important respects from its predecessor: (1) it changes the language from "shall" to "may," (2) it deletes the words "right to expansion" altogether, and (3) it separates the provision regarding continuance from that dealing with expansion. Although, as noted, the word "may" has occasionally been interpreted as "mandatory," we are reluctant to accord that construction where the legislature has clearly amended a statute's mandatory language. As the court of appeals noted in another case in which a statute's language was amended from "shall" to "may" without specific expression of legislative intent, "when the legislature amends a statute we must presume they intended to change existing law rather than perform a futile act." *Lake Havasu City v. Mohave County*, 138 Ariz. 552, 558, 675 P.2d 1371, 1377 (1983). Taken as a whole, the amendments to the statute are quite substantive in nature and indicate that the legislature intended to distinguish between the *absolute* right of a nonconforming business use to continue in its present state and the *limited* right of a nonconforming use to reasonable expansion. Thus, we believe the legislature contemplated that counties would have at least minimal regulatory authority to ensure that expansion of nonconforming uses would be reasonable.[4]

The court of appeals acknowledged that counties have some regulatory authority, but apparently concluded that the one hundred percent area limitation was the *sole* permissible restriction *on* expansion, though the statute does not plainly state this. *Rotter*, 167 Ariz. at 205, 805 P.2d at 1026; *cf.* A.R.S. § 11-830(A)(2) (legislature specifically provided that no ordinance shall *"[p]revent, restrict* or *otherwise regulate* the use or occupation of land [for stated purposes]." (emphasis added)).

4. The court of appeals majority believed that even if the language was discretionary, it gave the nonconforming use a right to expand in the business owner's discretion, rather than in the discretion of the zoning authorities. *Rotter*, 167 Ariz. at 205, 805 P.2d at 1026. This reading of the statute is unsupportable. Even under the earlier version of the statute, which appears to provide a more definitive right to expand, a nonconforming use would have had discretion to expand. The statute did not *require* such expansion. Further, as enabling legislation, the statute governs the authority of the local government, not the business user. Two leading treatises on zoning law interpret § 11-830(B) as authorizing *local authorities* to restrict expansion of nonconforming uses. *See* ANDERSON, *supra* § 6.45, at 582 and n. 37, and § 6.03, at 452 and n. 37; 6 P. ROHAN, ZONING & LAND USE CONTROLS § 41.01[4], at 41-12 and n. 27 (1991).

In a prior portion of the opinion, however, the court correctly realized that A.R.S. § 11–830(B) does not give a nonconforming use an *absolute right* to expand up to one hundred percent free of *any* regulation by the County. For example, the court acknowledged that nonconforming uses are "subject to reasonable regulations under the police power to protect the public health, safety, welfare or morals." *Rotter*, 167 Ariz. at 202, 805 P.2d at 1023 (quoting *Watanabe*, 140 Ariz. at 577, 683 P.2d at 1179). In addition, a nonconforming use cannot be accorded greater rights than a conforming use in the same district. *Jenkintown Towing Serv. v. Zoning Hearing Bd.*, 67 Pa.Cmwlth. 183, 446 A.2d 716, 719 (1982). Thus, expansion of the nonconforming use is subject to the same sideyard and setback requirements that govern all structures in the district.[5]

Thus, expansion of nonconforming uses is clearly subject to *some* county regulation aside from the one hundred percent area limitation. We must therefore determine whether A.R.S. § 11–830(B) authorizes expansion onto a parcel first acquired after passage of the ordinance and not previously subject to that use, or whether a county may prohibit such an expansion in the reasonable exercise of its regulatory authority. Because A.R.S. § 11–830(B) is silent on the issue, we must construe the statute to determine whether this is a permissible regulation.

2. *Expansion to Parcels Not Previously Subject to the Use*

[13] Generally, the right to expand a nonconforming use exists only if granted by law and is limited by any restrictions therein.[6] *See, e.g., Albert v. Board of Standards & Appeals*, 89 A.D.2d 960, 454 N.Y.S.2d 108, 110 (1982); *Watts v. City of Helena*, 151 Mont. 138, 439 P.2d 767, 768 (1968); *County Council*, 443 A.2d at 119. Further, most jurisdictions hold that statutory provisions regarding nonconforming uses are to be read narrowly to promote the policy to restrict and eventually eliminate nonconforming uses. *See* ANDERSON, *supra* § 6.07, at 464–66 and n. 96; *see, e.g., Goodwin v. Kansas City*, 244 Kan. 28, 766 P.2d 177, 182 (1988) (law is strictly construed against nonconforming uses as a matter of public policy); *Wyatt v. Board of Adjustment*, 622 P.2d 85, 86 (Colo.App.1980) (zoning ordinances should not be given an interpretation that would permit an indefinite continuation of a nonconforming use). Even Pennsylvania, which has interpreted its constitution to impart a right of "natural expansion," holds that ordinances dealing with nonconforming uses must be strictly construed to further the policy to closely restrict and eventually eliminate nonconforming uses. *Hanna v. Board of Adjustment*, 408 Pa. 306, 183 A.2d 539, 543 (1962).

[14] In Arizona, the statutes governing cities expressly provide that the eventual termination of nonconforming uses serves a public purpose. A.R.S. § 9–462.02. Thus, the statute accords "with the underlying spirit of zoning, which is to restrict nonconforming uses, and public policy requires that [such] statutes be strictly construed [against the nonconforming use]." *Circle K Corp. v. City of Mesa*, 166 Ariz. 464, 467, 803 P.2d 457, 460 (Ct.App.1990) (citing *Gannett Outdoor Co.*, 159 Ariz. at

5. The court of appeals considered the conditional use permit requirement in its discussion of the validity of the Ordinance. *Rotter*, 167 Ariz. at 202, 805 P.2d at 1023. Rotter's proposed expansion was denied, however, not because it failed to meet the criteria for a conditional use permit but because it would expand a nonconforming use onto a parcel not previously subject to this use. Thus, the validity of the conditional use permit requirement is not an issue before us and is not addressed by this court.

6. This is the rule in the overwhelming majority of American jurisdictions. Pennsylvania has judicially recognized a constitutional right of nonconforming uses to "natural expansion," but this is an exceptional rule and has never been followed by Arizona. *See* 4A N. WILLIAMS, AMERICAN LAND PLANNING LAW § 113.08, at 168 (1986) (noting that "the law in Pennsylvania is completely different from the law any place else. While all the other states have directed considerable effort at preventing the expansion of nonconforming uses, Pennsylvania has actually granted the nonconforming use a constitutional right to expand.").

461, 768 P.2d at 193). Although the statutes governing counties contain no similar statement of policy, we believe that the regulation of nonconforming uses by cities and counties rests on the same basis.[7] Section 9-462.02, which became effective January 1, 1974, illustrates the modern Arizona policy promoting stricter regulation of nonconforming uses to achieve the eventual goal of termination. Further, the 1956 amendments to § 11-830(B) suggest that the legislature intended to balance the rights of an existing business to reasonable expansion against the county's duty to ensure planned growth and development of communities. Thus, statutory provisions regarding the expansion or elimination of nonconforming uses should be read narrowly to promote the legislature's policy goals.

The court of appeals found that "Arizona has never embraced the rule of construing provisions permitting nonconforming uses strictly against the nonconforming user." *Rotter*, 167 Ariz. at 203, 805 P.2d at 1024. The court relied on the following paragraph from *Pima County v. Cardi*, 123 Ariz. 424, 427, 600 P.2d 37, 40 (Ct.App. 1979):

> [A]s a general rule, because land use regulations are in derogation of common law property rights, they are strictly construed to favor the property owner. *Kubby v. Hammond*, [68 Ariz. 17, 198 P.2d 134 (1948)]. Although many jurisdictions except from this general rule regulations governing existing uses and construe them to restrict existing uses ... Arizona has not adopted this rule. *Phoenix City Council v. Canyon Ford, Inc.*, [12 Ariz.App. 595, 473 P.2d 797 (1970)].

As the court in *Cardi* indicated, the general rule that zoning ordinances should be strictly construed in favor of the property owner has been widely disregarded with respect to nonconforming uses. *See Albert*, 454 N.Y.S.2d at 110 ("[w]hile it is customary for a zoning ordinance to be strictly construed in favor of the property owner ... there are countervailing considerations when the ordinance limits extension of nonconforming uses, because such uses detract from the effectiveness of the comprehensive zoning plan" (citations omitted)); *see also* ANDERSON, *supra*, at 465-66.

Significantly, the courts in both *Kubby v. Hammond*, 68 Ariz. 17, 198 P.2d 134 (1948), and *Phoenix City Council v. Canyon Ford, Inc.*, 12 Ariz.App. 595, 473 P.2d 797 (1970), adopted the rule of strict construction in favor of the property owner in considering whether there was a valid preexisting nonconforming use that had an *absolute* entitlement to *continue*. Neither case dealt with a nonconforming use's *limited* statutory right to *expand*. The question of expansion directly raises the possibility that the policy to eventually eliminate the nonconforming use will be frustrated. Thus, to the extent that *Cardi* implies that Arizona strictly construes statutes regulating the *expansion* or *change* of nonconforming uses in favor of the property owner, it is unsupported and is disapproved.

Statutes and ordinances dealing with the expansion or change of nonconforming uses must be strictly construed to further

7. The court of appeals believed that the legislature adopted this policy with regard to the city but not county zoning statutes. *Rotter*, 167 Ariz. at 204, 805 P.2d at 1025. While it is true that the county statutes do not contain a provision identical to A.R.S. § 9-462.02, which expressly states that the "elimination of nonconforming uses in a zoned district is for a public purpose," the two sets of statutes are virtually identical in their broad grants of authority to zone by district and establish permissible uses therein. *See, e.g.*, A.R.S. § 11-821 (mandating adoption of comprehensive plan that districts according to use); A.R.S. § 11-808 (granting broad enforcement powers). Thus, absent any legislative expression to the contrary, we will not read into the county statutes a policy diametrically opposed to that set forth in the city statutes and articulated by each of our sister states. We believe that the city and county nonconforming use statutes rest on the same policy basis. *See State ex rel. Larson v. Farley*, 106 Ariz. 119, 122, 471 P.2d 731, 734 (1970) (statutes relating to the same subject should be construed together because legislature's intent must be ascertained from the chtire system of related statutes. This rule applies even when statutes were enacted at different times and are found in different chapters of the revised statutes).

the legislature's policy goals.[8] Justice Struckmeyer, dissenting on a different issue in *Mueller v. City of Phoenix*, ably foreshadowed the modern approach to dealing with the expansion and change of nonconforming uses:

> *[T]he spirit underlying zoning is to restrict rather than to increase nonconforming uses.* To that end it has been held by the most respected courts in the country that nonconforming uses are to be eliminated as rapidly as possible. They are not to be rebuilt or renewed and statutes permitting nonconforming uses are to be strictly construed against the nonconforming user.

102 Ariz. 575, 585, 435 P.2d 472, 482 (1967) (citations omitted); *see also Circle K Corp.*, 166 Ariz. at 467, 803 P.2d at 460; *County Council*, 443 A.2d at 119 (local ordinances regarding nonconforming uses must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses).

In accordance with the doctrine of vested uses and the restrictive policy that governs interpretation of nonconforming use statutes, most American jurisdictions hold that a nonconforming use is limited to the site or area that was nonconforming when the ordinance was enacted. *See, e.g., Norton Shores v. Carr*, 81 Mich.App. 715, 265 N.W.2d 802, 805 (1978). Thus, a nonconforming use generally may not be extended to encompass land or property that was not in use at the time the zoning ordinance was enacted. *See Olinger v. Collins*, 470 So.2d 1183, 1186 (Ala.1985); *Chizum v. Elkhart County Plan Comm'n*, 147 Ind.App. 691, 263 N.E.2d 654 (1970); *Township of Commerce v. Rayberg*, 5 Mich.App. 554, 147 N.W.2d 453, 454–55 (1967); *see also* Annotation, *Zoning: Changes, Repairs, or Replacements in Continuation of Nonconforming Use*, 87 A.L.R.2d 4, 31 (1963).

A fortiori, the overwhelming majority view is that the establishment of a nonconforming use on one lot does not authorize the owner to expand the use onto the owner's adjoining lots, particularly when those lots were acquired after passage of the ordinance barring the use.[9] *See* ANDERSON, *supra* § 6.51, at 601 and accompanying notes; Annotation, *Change in Area or Location of Nonconforming Use as Violation of Zoning Ordinance*, 56 A.L.R.4th 769, 787–89 (1987); *see, e.g., Evans v. Little Rock*, 221 Ark. 252, 253 S.W.2d 347, 348–49 (1952); *Jensen's*, 150 A.2d at 299; *Minquadale Civic Ass'n v. Kline*, 42 Del.Ch. 378, 212 A.2d 811, 815–16 (1965); *City of Revere v. Rowe Contracting Co.*, 362 Mass. 884, 289 N.E.2d 830, 831 (1972); *Midland Park Coal & Lumber Co. v. Terhune*, 136 N.J.L. 442, 56 A.2d 717 (1948), *aff'd*, 137 N.J.L. 603, 61 A.2d 76 (1948); *Amon v. City of Rahway*, 117 N.J.L. 589, 190 A. 506, 508 (1937); *Weber v.*

8. In Arizona, city ordinances have consistently been construed to further the legislature's zoning goals in cases dealing with expansion and change of nonconforming uses. *See, e.g., Overson v. Phoenix Bd. of Adjustment*, 101 Ariz. 525, 421 P.2d 882 (1966) (zoning ordinance amended to permit expansion of nonconforming uses did not confer an automatic right to expansion, rather expansion was subject to meeting requirements for use permit); *Blake v. City of Phoenix*, 157 Ariz. 93, 754 P.2d 1368 (Ct.App. 1988) (decision of zoning board to deny use permit to expand nonconforming use was upheld because the change in nature of use from wholesale to retail business constituted an impermissible change in use).

9. Rotter cites several cases that allow expansion to adjacent parcels. These cases involve unique factual situations that are easily distinguished from the case before us and are therefore not relevant to our analysis. *See, e.g., Philadelphia Art Alliance v. Zoning Bd. of Adjustment*, 377 Pa. 144, 104 A.2d 492 (1954) (property owner allowed to extend an existing nonconforming parking lot to a contiguous lot acquired prior to the zoning ordinance and by the same deed as the parking lot); *Gulf, C & SF Railway v. White*, 281 S.W.2d 441 (Tex.App.1955) (railroad allowed to extend its rails in violation of a local ordinance where state statutes and constitution provided this right); *Royal Baking Co. v. Oklahoma City*, 182 Okl. 45, 75 P.2d 1105 (1938) (bakery that had purchased adjoining lots prior to passage of zoning ordinance was permitted to use lots because surrounding area had turned into retail district and not residential area, as earlier contemplated); *Liberty Lumber v. City of Tacoma*, 142 Wash. 377, 253 P. 122 (1927) (owner could construct sheds on adjacent, after-acquired parcels because this was incident to an existing business and was not the establishment of a new business within the meaning of an ordinance that prohibited only the latter without consent of the neighbors).

Pieretti, 72 N.J.Super. 184, 178 A.2d 92 (1962), *aff'd*, 77 N.J.Super. 423, 186 A.2d 702 (1962); *Struyk v. Samuel Braen's Sons*, 17 N.J.Super. 1, 85 A.2d 279, 281 (1951), *aff'd*, 9 N.J. 294, 88 A.2d 201 (1952); *Rodrigues v. Rosenthal*, 112 A.D.2d 1000, 492 N.Y.S.2d 809, 811 (1985); *Town of Aurora v. Kranz*, 103 A.D.2d 1022, 478 N.Y.S.2d 218 (1984), *aff'd*, 63 N.Y.2d 996, 483 N.Y.S.2d 1012, 473 N.E.2d 262 (1984); *Davis v. Miller*, 163 Ohio St. 91, 126 N.E.2d 49, 51 (1955); *Humphreys v. Stuart Realty Corp.*, 364 Pa. 616, 73 A.2d 407, 409 (1950); *Bachman v. Zoning Hearing Bd.*, 82 Pa.Cmwlth. 51, 474 A.2d 406 (1984), *aff'd*, 508 Pa. 180, 494 A.2d 1102 (1985); *Schaffer v. Zoning Hearing Bd.*, 32 Pa. Cmwlth. 261, 378 A.2d 1054, 1056 (1977); *DeWitt v. Brattleboro Zoning Bd. of Adjustment*, 128 Vt. 313, 262 A.2d 472, 476–77 (1970); *Town of Yorkville v. Fonk*, 3 Wis.2d 371, 88 N.W.2d 319, 322–23 (1958), *appeal dismissed*, 358 U.S. 58, 79 S.Ct. 110, 3 L.Ed.2d 48 (1958).

In defense of his position, Rotter points out that the Arizona statute, which allows one hundred percent expansion, is much more liberal than the ordinances upon which the holdings in the above cases were based. We are not aware of any jurisdiction that has a statute like Arizona's. We note, however, that even in Pennsylvania, which holds that there is a *constitutional right* to "natural expansion," expansion is not "as of right" but requires a variance based on a showing of unusual hardship to the owner whenever the expansion is to extend over land not previously occupied by that use. *Appeal of Rizzone*, 88 Pa. Cmwlth. 502, 490 A.2d 26 (1985). This is also the case when the expansion would extend to property acquired after the enactment of the zoning ordinance establishing that use as nonconforming. *Jenkintown Towing Serv.*, 446 A.2d at 718. In *Humphreys*, the Pennsylvania Supreme Court considered whether a nonconforming business could expand to an adjoining property under an ordinance that provided for expansions of up to twenty-five percent of the original area. 73 A.2d 407. The court held that "[w]hile a nonconforming use may be extended in scope as the business increases in magnitude it clearly may not be so extended over ground not occupied at the time of the passage of the zoning ordinance." *Id.* at 409.

We are not aware of *any* jurisdiction in the country that guarantees a right to expand a nonconforming use onto parcels never subject to the use and first acquired *after* passage of the ordinance barring the use. To accord the Arizona statute such a broad reading would establish a precedent counter to the law of all of our sister states and impinge on our legislature's policy goals. We would, of course, not hesitate to reach such a result if the statute or legislative history explicitly provided for this. However, neither the statute nor its legislative history expresses such an intent. Nor are we willing to give the statute such an interpretation when, in so doing, we would reach a result contrary to that contemplated by the language of the amendments to § 11–830.

Further, such an interpretation of the statute would contravene sensible policy goals. Restrictions against expansion to other parcels prevent the owner of the nonconforming use from acquiring additional conforming parcels of land and converting them to a nonconforming use, in contravention of the zone's general plan. An absolute right of expansion to such newly acquired property could lead to perpetual existence of the nonconforming use, violating the essential principle that nonconforming uses should be reduced to conformity as soon as is consistent with fairness and due process of law. Such unrestricted expansion would frustrate the objectives of the local zoning authority, particularly where a large preexisting use seeks to expand by one hundred percent, and lead to inconsistent "spot" zoning within distinct zoning districts. As the Arkansas Supreme Court noted in *Evans*, expansion as of right onto the owner's after-acquired lots "would mean that any person who gradually expands an isolated business originally confined to his own homestead has a ... right to acquire the property next door and convert it to industrial use. We are not convinced that the law requires us to go that

PROPERTY OF
LAW LIBRARY
COCONINO COUNTY
ATTORNEY'S OFFICE

far." 253 S.W.2d at 349. In addition, the nonconforming business use would be given a favored economic position, holding a neighborhood monopoly to the exclusion of any potential competitors. *See Hay v. Board of Adjustment*, 37 N.J.Super. 461, 117 A.2d 650, 652 (1955).

It is true, of course, that expansion of a nonconforming use on the original parcel implicates many of the same problems. Here, however, the theory of vested rights within the *original parcel*, premised on due process concerns, supports the right of the nonconforming business to continue and adjust to new circumstances. That same rationale is not available where the expansion would extend to after-acquired parcels of land that were never subject to the nonconforming use. A person who "purchases land with knowledge, actual or constructive, of zoning ordinances which are in effect at the time of purchase is said to have created for himself whatever hardship such restrictions entail." *DeWitt*, 262 A.2d at 477.

Yet another factor militates against the construction that *Rotter* advances. While the court of appeals was careful to limit its holding to expansion onto the owner's *adjacent* parcels, whether within the same zoning district or not, such a broad right to expand would *necessarily* include the right to expand to *any* parcel. There is no statutory basis to distinguish expansion to adjacent parcels from expansion to noncontiguous parcels. The only valid distinction is between the original parcel, on which the vested nonconforming use exists, and other parcels never burdened by the use.

In light of the foregoing, we hold that Ordinance § 17.3(B), as applied to *Rotter* in this case, does not conflict with A.R.S. § 11-830(B). The county may prohibit expansions that would extend the nonconforming use onto after-acquired sites that were not part of the nonconforming use prior to the effective date of the ordinance.

CONCLUSION

The Ordinance complies with the statute by allowing one hundred percent expansion of a nonconforming business use. Ordinance § 17.3(B), as applied in this case, permissibly precludes expansion of a nonconforming use onto an after-acquired parcel not previously used for this purpose. Thus, Rotter did not have an absolute right to expand his nonconforming use onto the adjacent parcel, and the Commission did not act unlawfully in finding that such expansion would violate the Ordinance.

The court of appeals' opinion is vacated. The judgment is reversed, and the case is remanded with instruction to enter judgment in favor of the County.

GORDON, C.J., and CAMERON, MOELLER and CORCORAN, JJ., concur.

169 Ariz. 279

SOUTHWEST GAS CORPORATION, Plaintiff-Appellant,

v.

ARIZONA CORPORATION COMMISSION, Defendant-Appellee,

Apache Power Company, Arizona Public Service Company, Phelps Dodge Corporation, Salt River Project Agricultural Improvement and Power District El Paso Natural Gas Company, Asarco, Inc., Inspiration Consolidated Copper, and Magma Copper Company, Intervenors-Appellees.

No. 1 CA-CV 89-081.

Court of Appeals of Arizona, Division 1, Department D.

Oct. 1, 1991.

Gas company filed complaint with the Arizona Corporation Commission alleging that interstate natural gas pipeline company was a "public service corporation" as defined by article of the Arizona Constitution. Gas company requested order prohib-

Jack Peterson, the "Mayor of Baldwin," Operated County

Downtown Baldwin in the 40's. Petersons store is on the left.

Millie and Jack Peterson

Jack W. Peterson, owner 'eterson's Valley Wine p in Baldwin died on ruary 1, 1994, at the age 76. Born in Radford, ginia, in 1917, he moved 'allston, Maryland, at the of 7 years when his her bought a 109 acre n on Laurel Brook Road. graduated from Bel Air gh School in 1935 after ich he worked for the Glen L. Martin Company for two years.

His father purchased a grocery store in Baldwin during the early 1940's, which Jack took over when his father died in 1948. During the 1950's and 1960's, the store specialized in freshly cut meats and it was a common practice to make grocery deliveries to customers. Over the years, the business flourished and the liquor portion of the store was expanded and later included video rentals.

Jack married Evelyn Vitocolonna in 1940 and had three children, Jacqueline Ostrander of Stowe, Vermont, Joanne Booth of Catonsville, and Joyce Ransone of Phoenix, Maryland. He is also survived by a sister, Louise Klarman of Parkville. His sister Hazel died in 1962; and a brother, Carl died in 1963.

Jack's first wife, Evelyn, passed away in 1984, and he married the former Millie Reed in October 1992. In 1992 Jack celebrated his 75th birthday with a large gathering of family and friends at the Jacksonville Fire Hall.

Jack was known by all throughout the Northern Baltimore County area as well as the neighboring communities in Harford County. He was fondly known as the "Mayor of Baldwin." The business is located in Baldwin and is considered to be a county landmark. It will continue to operate under the management of Buddy Johnson and Mike Baummer, the two very capable young men who have been his right hand men for quite a few years.

Jack touched many lives during his lifetime and will be fondly remembered for his wonderful sense of humor and his kindness and generosity.

Protestants
No 1

AGAINST

Prot No 2

Dear Neighbor:

Below is a copy of a petition regarding requested zoning changes in Baldwin. If you find that this petition represents your view please sign it (and encourage your friends to sign it) and return it to: The Long Green Valley Association, Box 91, Baldwin, MD 21013. – BLATANT DECEPTION!!!

Paul B Wallace

Petition Opposing Zoning Changes

The undersigned oppose the precedent setting expansion of commercial development in Baldwin, Maryland. Specifically, the undersigned oppose the *Executive Auto* request for several zoning changes allowing for the use and expansion of this property as a used car lot.

Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

Name (print)	Address	Signature

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

This petition is sponsored by concerned community residents and the Long Green Valley Association, P.O. Box 91, Baldwin, Maryland 21013.

Contributions toward legal fees would be appreciated. Make check payable to LGVA legal fund.

The Long Green Valley Association
Post Office Box 91
Baldwin, Maryland 21013

Non-Profit Org.
U.S. Postage
PAID
Permit No. 25
Baldwin, MD

Dear Neighbor:

Below is a copy of a petition regarding requested zoning changes in Baldwin. If you find that this petition represents your view please sign it (and encourage your friends to sign it) and return it to: The Long Green Valley Association, Box 91, Baldwin, MD 21013.

Petition Opposing Zoning Changes

The undersigned oppose the precedent setting expansion of commercial development in Baldwin, Maryland. Specifically, the undersigned oppose the *Executive Auto* request for several zoning changes allowing for the use and expansion of this property as a used car lot.

It is all Commercial on Long Green Pike - It's funny comedy alive!

Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

Name (print)	Address	Signature
I am not giving my name for obvious reasons I have been living here almost 30 years not too far from here. Executive Auto has no problem with the. They have fixed up & do have cars sitting there, they bother me less than people. I do not believe in shooting people down for no reason at all		

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

Is Charlotte Pine behind this also? If so you do not even

This petition is sponsored by concerned community residents and the Long Green Valley Association, P.O. Box 91, Baldwin, Maryland 21013.

need funds for legal representation either.

Contributions toward legal fees would be appreciated. Make check payable to LGVA legal fund.

You people make me sick where zoning issues matters are Concerned. There has been an automotive shop there since I've been here — So Be It!! (This will give the trash because

Return Receipt Requested

If undeliverable, please return to:

The Long Green Valley Association
Post Office Box 91
Baldwin, Maryland 21013

Non-Profit Org.
U.S. Postage
PAID
Permit No. 25
Baldwin, MD

Arthur R. & Pauline Brown

13329 Fork Rd.

Baldwin, MD 21013

ZONING ENFORCEMENT SECTION TELEPHONE: 494-3351

BA.

* * * * * CORRECTION NOTICE FOR ALLEGED ZONING VIOLATION * * * * *

CASE NUMBER C - 83-1106 ELECTION DISTRICT: 11th

LOCATION: #13580 Fork Rd. (SE cor. of Long Green Pike Executive Auto).

DEAR Ms. Francies:

PLEASE BE ADVISED THAT AN INSPECTION OF THE ABOVE REFERENCED LOCATION REVEALED:

☐ THERE WAS NO VIOLATION OBSERVED AND THE CASE WILL BE CLOSED.

☒ THERE IS AN APPARENT VIOLATION AND THE FOLLOWING CORRECTION IS REQUIRED: Use of this premises as a service garage must cease; any inoperable vehicles must be removed; car parts, ie. Junk & debris must be removed; screening must be installed along adjoining residential zones!

COMPLIANCE MUST BE ATTAINED BY: 8-27-83.

☐ COMPLIANCE HAS NOT BEEN ATTAINED AND THE MATTER WILL BE SCHEDULED FOR A VIOLATION HEARING.

☐ COMPLIANCE HAS BEEN ATTAINED AND THE CASE WILL BE CLOSED.

INSPECTOR: L. Wilson DATE: 7-26-83.

(☒ DEFENDANT COPY ( ) COMPLAINANT COPY

Pet's No 10

Rev. 12/82

B.R. Zone-Business, Roadside [B.C.Z.R., 1955.]

Section 236[1]-USE REGULATIONS

The following uses only are permitted:

236.1-Uses permitted and as limited in B.M. Zone.

236.2 -Animal boarding place, Class A; [Bill No. 85, 1967.]
Animal boarding place, Class B; [Bill No. 85, 1967.]
Bottling establishment, soft drink;
Greenhouse;
Laboratory;
Motel or motor court;
Printing, lithographing, or publishing plant, employing over 25 persons;
Volunteer fire company.

236.3-The following uses when located at least 50 ft. from the residential zone boundaries at the ends of the commercially zones frontages: [B.C.Z.R., 1955; Resolution, November 21, 1956.]

Building materials storage and sales yard;
Farm implements, sales and service;
Feed and grain sales and storage;
Kennel;
Lumber Yard;
Public utility storage yard;
Stone or monument works;
Storage of inflammable liquids and gases underground (for requirements see Baltimore County Building Code);
Tire retreading or recapping.

236.4-Special Exceptions-The following uses when permitted as Special Exceptions (See Sections 270 and 502):

Airport;
Amusement park;
Arcade, subject to the provisions of Section 423(b); [Bill No. 29, 1982.]
Automotive service station, subject to the provisions of Section 405; [Bill No. 40, 1967; No. 85, 1967.]
["Boat yard;"[2] deleted by Bill No. 85, 1967; "and/or marine railway;" deleted by Bill No. 64, 1963.]
Bus terminal;

1. All provisions of this section from B.C.Z.R., 1955 except as otherwise noted.
2. This entry was omitted from the draft of Bill No. 85, 1967 through the copying of an apparently incomplete list of special exceptions as it appeared in a post-1955 edition of the Zoning Regulations; it is assumed, therefore, that the omission of the entry from the bill as enacted was inadvertent. (No intent regarding the regulation of boat yards is reflected in either the title of the bill or in any record pertaining to the bill.)

A.

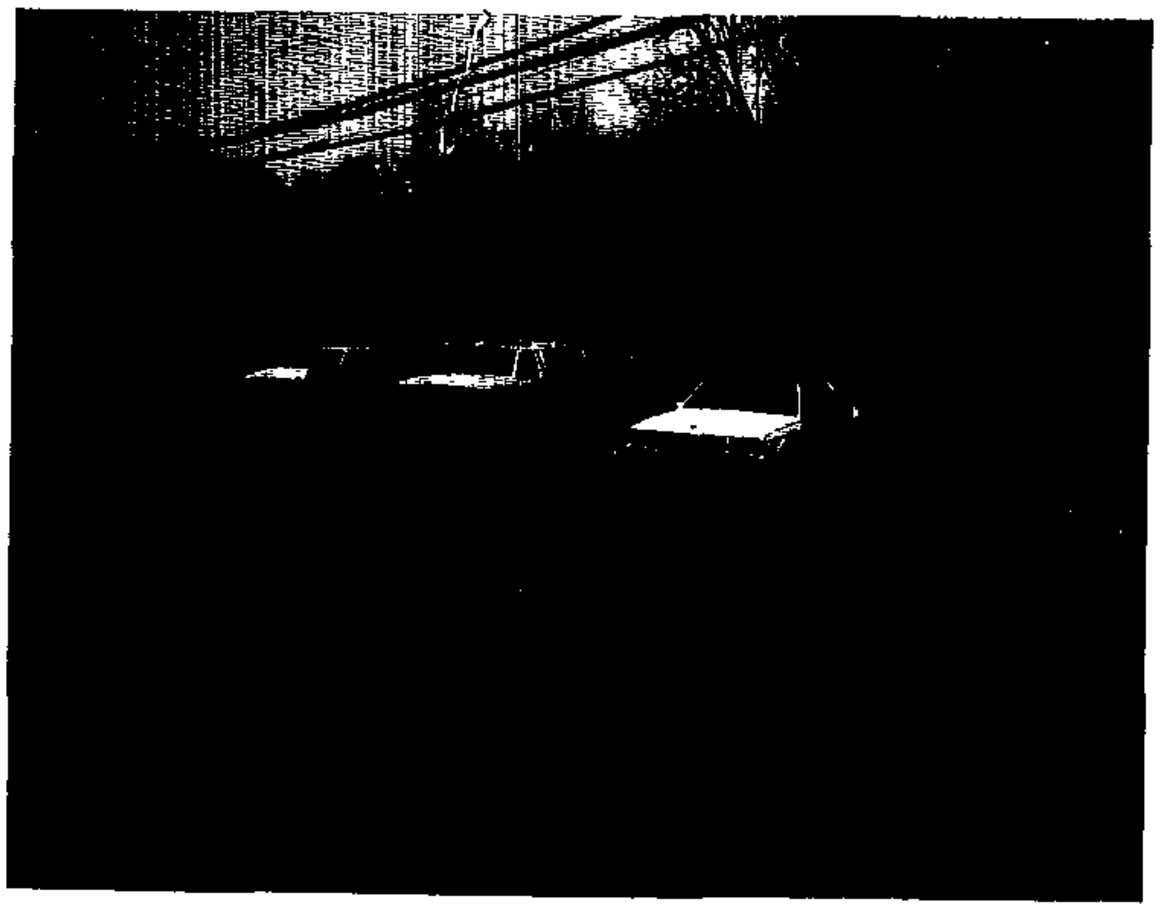
B

Roll No 11

C.

D.

E.



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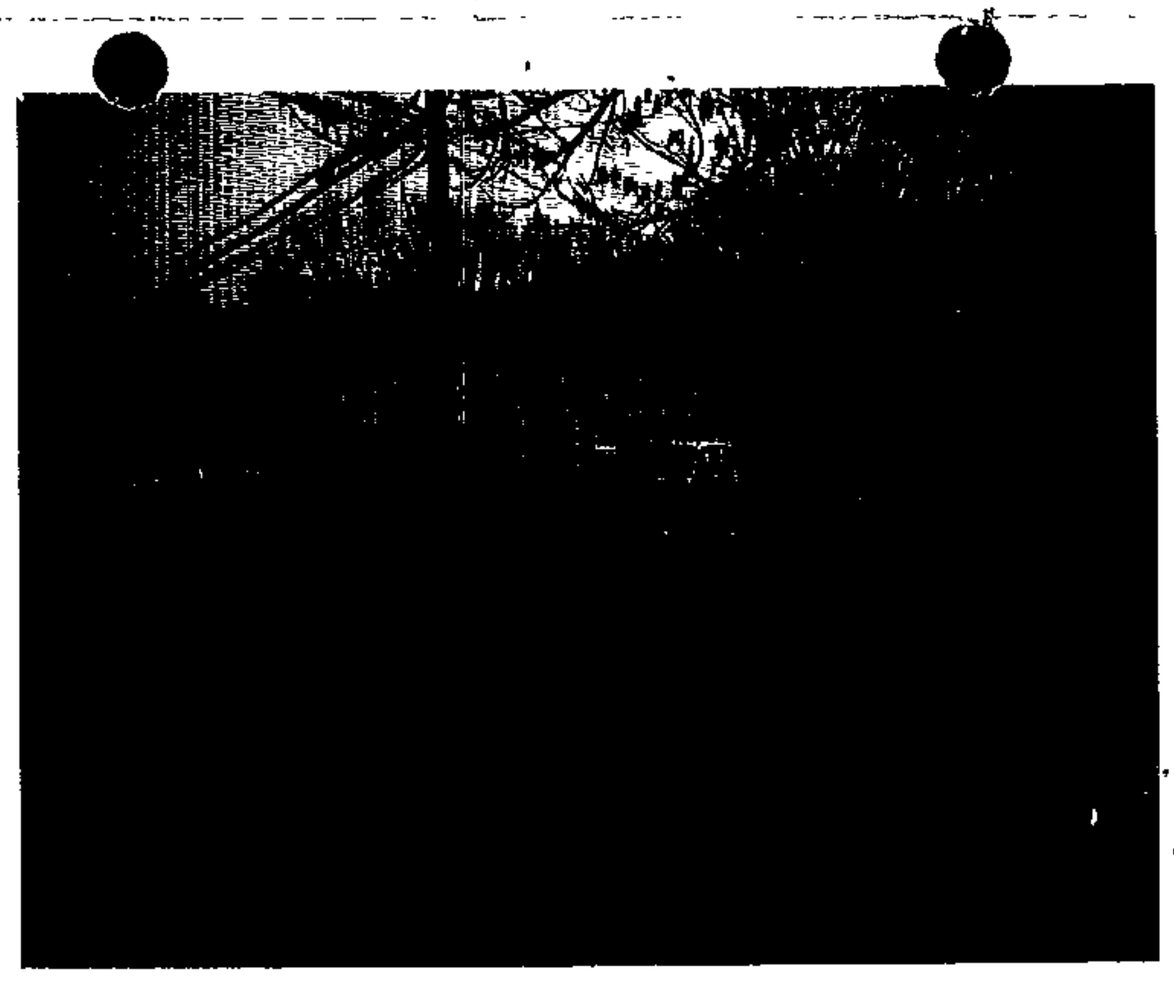

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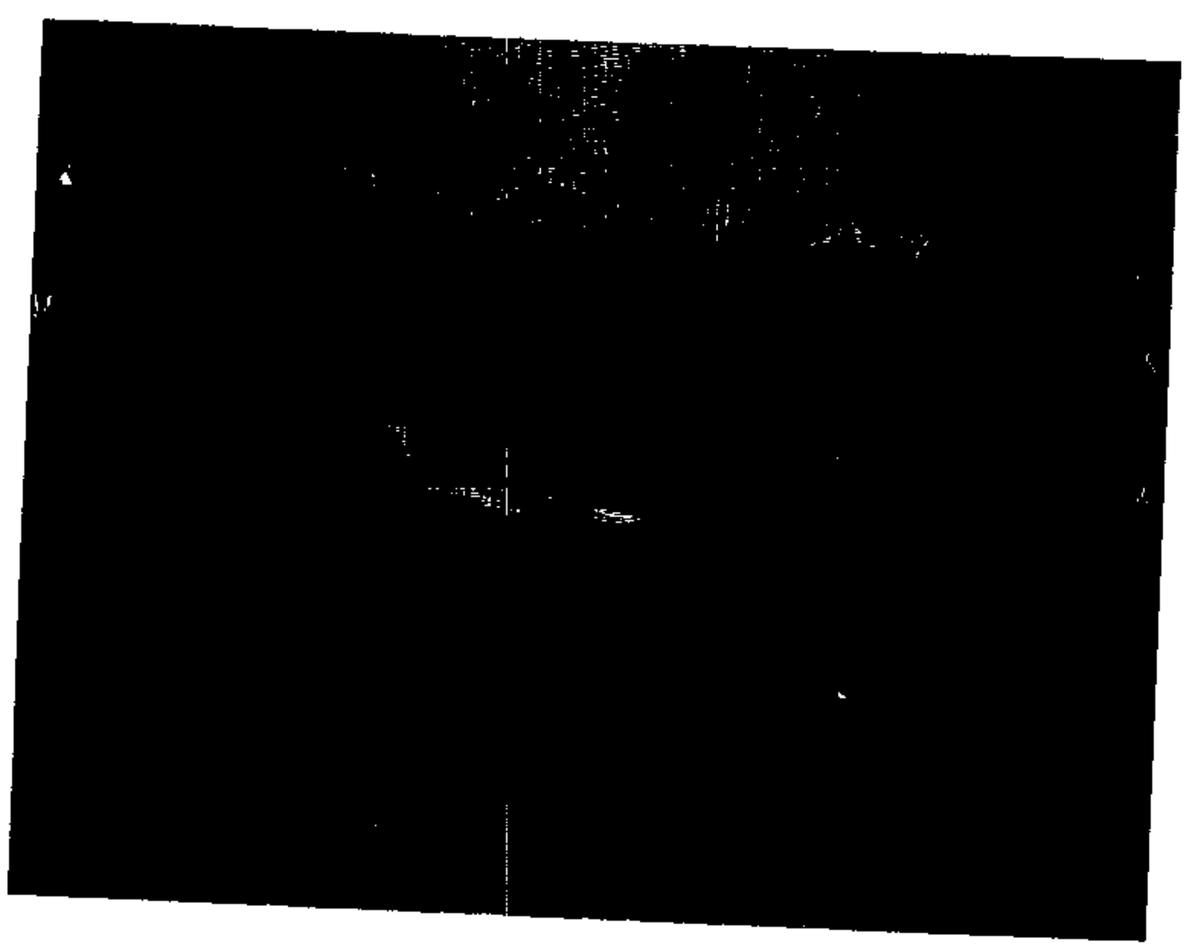

H.

97-87-SPH /Executive Auto
CCT AFFIRMS CBA
9/30/98 (John G. Turnbull, II)

9/29

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
410-887-2647

PETITION OF LONG GREEN VALLEY ASSN. INC., CHARLOTTE PINE, CAROL TRELA, BARLET REGAN, SHARON ROHRBAUGH, AND TOM VANCE 305 WASHINGTON AVENUE, SUITE 502 TOWSON, MARYLAND 21204	* IN THE * CIRCUIT COURT * FOR * BALTIMORE COUNTY
PETITION FOR JUDICIAL REVIEW OF THE DECISION OF: THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY ROOM 49, OLD COURTHOUSE 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204	* CASE No. 3-C-98-00104 * * *
IN THE CASE OF: IN THE MATTER OF EXUCUTIVE AUTO PAINT & REPAIR INC. CASE NO. 97-87-SPH	* * *

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

98 OCT -5 PM 4:4

OPINION AND ORDER

This case comes before this court upon Long Green Valley Association, Inc., Charlotte Pine, Carol Trela, Barlett Regan, Sharon Rohrbaugh and Tom Vance ("Petitioners") Petition for Judicial Review of the decision by the County Board of Appeals

FILED SEP 30 1998

BL

(the "Board"). The Board approved the Appellee's designation of parcel One as an existing nonconforming use for used cars sales, pursuant to Section 104.1 of the Baltimore County Zoning Regulations ("BCZR"). This court heard argument on September 14, 1998 and held the matter sub curia pending a review of the record. The decision of the Board is supported by both the applicable law and facts of this case. As such, the decision must be affirmed.

The issue presented before this court is whether the Board erred in finding that Appellee's site was a lawful non-conforming use for used car sales?

The site is a three acre tract divided into two parcels, parcels One and Two, located at the intersection of Long Green Pike, Fork Road and Baldwin Mill Road. The issue before this court deals soley with parcel One of which 1.175 is Zoned B.R. while the remaining .098 acres is zoned BL-CR.

The first question is whether or not the used car sales operation existed at the site prior to March 30, 1955, at which time the new zoning regulations became effective. The new zoning laws, Sections 101 and 104 of the BCZR, would permit the continued operation of a used car lot in B.R. zoning so long as the used car facility existed prior to March 30, 1955. The Board

found Mr. Breidenbaugh's and Mr. Cypull's testimony convincing that cars were being sold on the site from the 1940's through March 30, 1955. Mr. Breidenbaugh has been familiar with the location in question since 1918. He became a resident in the area in 1951 and worked directly across the street from the site. Mr. Breidenbaugh testified: "as far back as I can remember since 1953 when I came back, there have been cars up there, and there were cars there before that." Mr. Cypull, another longtime resident of the area, also testified that used cars were sold and repair work was done on the site prior to March 1955.

This court also finds there is substantial evidence from which the Board could determine that a used car lot existed at the site prior to March 30, 1955. Thereafter, the used car sales operation became a nonconforming use in a B.R. zone which required that it remain in operation uninterrupted and continuous from March 30, 1955 to present. McKemy v. Baltimore County, 39 Md. App. 257 (1978); County Commissioner v. Zent, 86 Md. App. 745; See also Kastendike v. Baltimore Association for Retarded Children, 267 Md. 389 (1972).

The Appellant contends that the Appellee failed to demonstrate that the used car lot existed continuously and uninterrupted from March of 1955 to present. Appellants claim

that Mr. Regan's telephone directory search, in combination with other testimony, is sufficient to stymie the Appellee from meeting its burden. Mr. Regan, Appellant's witness, did extensive telephone research purporting to demonstrate that a used car business was not listed for the subject site prior to 1956 and not listed throughout a majority of the 1960's. However, the telephone research results are not determinative of the issue, especially when said results contradict the direct testimony of nearby residents of the site. Clearly, the evidence in this case presented a host of inconsistencies but the Board found, as does this court, that the Appellee was far more convincing.

Upon review of the Board's decision, it is clear that the Board weighed all of the evidence and made a determination in accordance with the law. Mortimer et al v. Howard Research & Development Corp. et al, 83 Md. App. 432, 441 (1990). Moreover, the Board's factual findings are supported by substantial evidence and a proper determination was reached. Gray v. Anne Arundel County, 73 Md. App. 301, 307 (1987).

In addition, the Board noted the correct test in the McKemy decision as to whether or not the enlargement or extension of the original nonconforming use was "drastic". Mr. Edwards, a

neighbor directly opposite of the site since 1975, testified that there had been no significant changes in use of the site since 1975. There is substantial evidence upon which the Board could conclude that there has not been any drastic change or enlargement of the facility which would have any detrimental effect on the surrounding areas. McKemy at 269.

Accordingly, it is this 29th day of September, 1998,

ORDERED, by the Circuit Court for Baltimore County, that the decision of the County Board be, and the same is hereby,

AFFIRMED.

John Grason Turnbull, II
Judge

CC:
Stephen J. Nolan, Esquire
J. Carroll Holzer, Esquire

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

10/02/98

Case Number: 03-C-98-000104 AE
Date Filed: 01/07/98
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter of: Long Green Valley Assn Inc , et al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	97-87-SPH

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)		Entered
PET	001	Long Green Valley Assn Inc Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448 (410)825-6961	*CT DO 09/30/98*	*01/07/98*
PET	002	Pine, Charlotte Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448 (410)825-6961	CT DO 09/30/98	01/07/98
PET	*003*	*Trela, Carol* Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448 (410)825-6961	CT DO 09/30/98	01/07/98

Type	Num	Name(Last,First,Mid,Title)		Entered
PET	004	Regan, Bartlett	CT DO 09/30/98	01/07/98
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448 (410)825-6961		
PET	005	Rohrbaugh, Sharon	CT DO 09/30/98	01/07/98
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448 (410)825-6961		
PET	006	Vance, Tom	CT DO 09/30/98	01/07/98
		Attorney: 0012186 Holzer, J Carroll Holzer And Lee 508 Fairmount Ave Towson, MD 21286-5448 (410)825-6961		
ITP	001	Executive Auto Paint & Repair Inc	CT DO 09/30/98	01/26/98
		Attorney: 0004688 Nolan, Stephen J Nolan, Plumhoff & Williams, Chartered Suite 700, Nottingham Cen 502 Washington Ave Towson, MD 21204 (410)823-7800		
INT	001	County Board Of Appeals Of Baltimore County 400 Washington Ave Towson, MD 21204	CT DO 09/30/98	01/07/98

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L Day	Of	Rslt	By	ResultDt	Jdg	T	Notice	Rec
06/09/98	09:30A	002	yes	CIVI	TBA		01	/01	POS	C	06/10/98	JGT	P	
09/14/98	09:30A	006	yes	CIVI	JGT		01	/01					P	

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	01/07/98	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Party	Routed	Ruling/ Closed	Closed	User ID
001000	Petition for Judicial Review filed by pet001, pet002, pet003, pet004, pet005, pet006, with exhibit.	01/07/98	01/06/98 TBA	PET001			09/30/98	KH PH
001001	Answer	01/26/98	01/23/98 TBA	ITP001			09/30/98	CB PH
002000	Certificate of Notice	01/14/98	01/13/98 TBA	INT001			09/30/98	DR PH
003000	Transcript of Record from Adm Agency ** copies sent	03/05/98	03/03/98 TBA	000			09/30/98	JH PH
004000	Notice of Transcript of Record Sent	03/05/98	03/05/98 TBA	INT001	03/05/98		03/05/98	JH JH
005000	Notice of Transcript of Record Sent	03/05/98	03/05/98 TBA	ITP001	03/05/98		03/05/98	JH JH
006000	Notice of Transcript of Record Sent	03/05/98	03/05/98 TBA	PET001	03/05/98		03/05/98	JH JH
007000	Scheduling Order	03/09/98	03/09/98 TBA	000	03/09/98		03/09/98	JD JD
008000	Memorandum *Filed by PET001-Long Green Valley Assn Inc, , PET002-Pine, Charlotte, PET003-Trela, Carol, PET004-Regan, Bartlett, PET005-Rohrbaugh, Sharon, PET006-Vance, Tom*	04/06/98	04/03/98 TBA	PET001			04/06/98	SD SD
009000	Memorandum of Law in Opposition to Appeal with Exhibits.	05/05/98	05/04/98 TBA	ITP001			05/05/98	DFF DFF
010000	Scheduling Order	07/02/98	07/02/98 TBA	000	07/02/98		07/02/98	KGR KGR
011000	Open Court Proceeding Hon. John G. Turnbull, II. Hearing had in re: Appeal held sub curia. Order and Opinion to be filed.	09/14/98	JGT	000			09/30/98	RQ PH
012000	Opinion and Order affirming decision	09/30/98	JGT	000		Granted	09/30/98	PH PH
013000	d/e and copy of opinion and order sent sent to Board of Appeals	10/02/98	TBA	000				ATA ATA

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
1YRT	One Year Tickle (Jud	CLOSED	01/06/99	365	no	no	DAAA	D

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
1ANS	1st Answer Tickle	CLOSED	01/23/98	0	no	no	DANS	D
SLTR	Set List For Trial	DONE	01/23/98	0	yes	yes	1ANS	T
SLTR	Set List For Trial	CANCEL	06/10/98	0	yes	no	CIVI	S
EXPU	Exhibit Pickup Notic	OPEN	11/29/98	30	no	no		

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: INT 001 County Board Of Appeals Of Ba								
000		I	BOX 63/EXHIBITS		B			

DIFFERENTIATED CASE MANAGEMENT TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 03/09/98 Order Date : 07/02/98
Start Date : 03/09/98 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		03/24/98	09/30/98	CLOSED
All Motions (excluding Motions in Limine		08/05/98	09/30/98	CLOSED
TRIAL DATE is	09/14/98	06/07/98	09/30/98	CLOSED

6/22/94

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1839

September Term, 1998

LONG GREEN VALLEY ASSOCIATION, INC., ET AL.

v.

EXECUTIVE AUTO PAINT & REPAIR, INC.

Davis,
Byrnes,
Bishop, John J., Jr., (retired, specially assigned),

JJ.

Opinion by Davis, J.

Filed: June 22, 1999

#3C9800104

Appellee Executive Auto Paint & Repair, Incorporated (Executive) filed a petition for a special hearing concerning its 1.273-acre property located at 13580 Fork Road in Baldwin, Baltimore County. Executive's petition sought approval and designation of a portion of the property as an existing nonconforming use for the sale of used cars. Appellants Long Green Valley Association, Incorporated (Association), a community association for the area in which appellee's property is located, and individuals owning property near Executive's land,[1] opposed the designation. Nevertheless, on January 16, 1997, the Zoning Commissioner of Baltimore County approved the designation of a portion of Executive's property as a nonconforming use for "used car sales." As a result, appellants timely filed an appeal to the County Board of Appeals of Baltimore County (Board).

The Board held two days of hearings on July 10 and August 14, 1997, in which it received evidence and heard oral arguments and testimony. On December 8, 1997, the Board issued a written opinion and order granting approval of a portion of the property as a nonconforming use for used car sales. Appellants filed a motion for reconsideration, which the Board denied on January 6, 1998.[2] Following the denial, appellants filed a petition for judicial

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[1]The landowners include Carol Trela, Bartlett Regan, Sharon Rohrbaugh, Tom Vance, and Charlotte Pine.

[2]Appellants' motion requested that the Board consider the testimony of a local resident who did not become aware of the proceedings until after their conclusion. The Board denied the motion, deciding that sufficient notice had been provided.

review in the Circuit Court for Baltimore County. On September 14, 1998, the parties made oral arguments before the court. Subsequently, the court (Turnbull, II, J.) affirmed the Board's decision in an order dated September 29, 1998. Appellants timely filed this appeal on October 22, 1998 and present for our review two questions that we restate as follows:

> I. Did the Board err by approving appellee's designation of a portion of the property because an existing nonconforming use may not be augmented by the acquisition, at a later date, of a separate parcel of land which was not part of the nonconforming use?
>
> II. Did the Board err by approving appellee's designation because such approval improperly expanded the nonconforming use beyond the statutorily provided twenty-five percent limit?

Appellee, essentially rephrasing the two questions presented by appellants, asks:

> Is the decision of the County Board of Appeals for Baltimore County based on substantial evidence, fairly debatable and in accordance with the law?

For the reasons set forth herein, we shall affirm the circuit court's judgment.

FACTS

The property at issue consists of a three-acre lot located at the intersection of Long Green Pike, Fork Road, and Baldwin Mill Road in northern Baltimore County. The land is divided into two

parcels — Parcel 1 and Parcel 2 — and Parcel 1's 1.273 acres are further divided into two pieces of separately acquired property. The larger portion of Parcel 1, approximately 1.175 acres, is zoned Business, Roadside (BR) and was acquired by Paul Weber, the owner of Executive, in 1979 from Stanley Clayton.[3] Weber obtained the remaining .098 acres of Parcel 1, which we shall refer to as Parcel 3, in 1986 from Marion Francis. Parcel 3 is zoned Business Local (BL). For as long as the parties recall, the property has contained one main concrete building with dimensions of sixty feet by thirty feet. Behind the building, there is a fourteen-foot by twelve-foot addition, two sheds, and a one-story building. The one-story building is used for an upholstery business run by Mike Phillips, who leases the building from Weber. These additional structures were created under Clayton's and appellee's ownership.

Executive's business is a hybrid between a used car sales lot and automobile repair and service facility. The main building contains an area where service is performed as well as where negotiations for vehicle purchases occur. The buildings toward the rear of the property are utilized for the service component of the business to store and repair automobiles. No cars are displayed for sale in any of the buildings. Weber described the used car segment of the business as follows:

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[3]Weber also acquired Parcel 2 at this time, although Parcel 2 is not relevant to the current appeal.

[MR. WEBER]: Primarily, what that business involves is the purchase of traded in vehicles or purchased vehicles from the paper, and among those vehicles an amount are used to be wholesaled and probably a lesser amount to be kept for the retail operation.

[APPELLEE'S COUNSEL]: Would you describe, sir, approximately how many cars are sold through the site on an annual basis?

[MR. WEBER]: I would say a monthly average for used retail as well as wholesale would be in the neighborhood of twenty, twenty-five cars per month.

During the Board's hearing, Weber testified that he investigated the property before purchasing it and determined that an automobile sales and service business was an acceptable nonconforming use. After acquiring the majority of the property in 1979, appellee applied to the Maryland Department of Transportation for a license to conduct a used car dealership on a portion of the property. The Baltimore County Department of Planning and Zoning verified that the zoning was permitted and appellee's license application was approved.

Formalized zoning was created in Baltimore County in 1945 with the passage of the Baltimore County Zoning Regulations (Regulations). At that time, the subject property was E-zoned, permitting its utilization for any purpose except those specifically identified. Automobile repairs and sales were

permitted uses. On March 30, 1955, however, the E zone was eliminated and replaced by the BL and the BR zones. Contrary to the BL zone, which does not permit automobile sales, the BR zone allows automobile sales through the grant of a special exception. In the case *sub judice*, the Board was faced with the question of whether Parcel 1 and Parcel 3 functioned as a used car sales lot before March 30, 1955, and whether the property has been continually used as such until today without an impermissible expansion.

The record reveals that, before appellee bought Parcel 1 and Parcel 2 in 1979, Clayton owned the site and sold used cars and trucks under the name "Clayton Auto Sales, Inc." Clayton had purchased the property in 1970 from Bill Reed, who operated Reed's Valley Motor Sales of Baldwin, Maryland, on the property. Clayton's testimony reveals that, immediately prior to his purchase of the property, Reed was renting the land to a company known as C&D Automotive. Reed's ownership extended to the 1950's; nevertheless, the parties dispute whether a used car business was in existence on the property prior to March 30, 1955. Appellee relies on a 1956 advertisement which described the property as having "new and used cars and trucks" as concrete evidence that the business at least existed at that time. Pursuant to the investigation of one of the appellants, Bartlett C. Regan, appellants observe that the first telephone listing for Reed's

Valley Motor Sales was not until September 1956. Hence, appellants submit that, because a used car sales lot likely would not have been operated without phone service, the business did not begin until after March 1955.

Throughout the hearing before the Board, both parties presented multiple witnesses who testified regarding the current, and historical, use of the land. Testifying for appellee was John Breidenbaugh, an eighty-six-year-old Baldwin resident whose familiarity with the immediate area extended back to World War I. Breidenbaugh stated that he was employed on the property in 1950 as a mechanic for a business then known as "Baldwin Motors." In addition, Breidenbaugh recalled purchasing a car on the site in 1952, commenting that, "as far as I can remember since 1953 when I came back, there have been cars up there, and there were cars before that." Theodore Cypull, a local resident since 1941, also testified on behalf of appellee. Cypull essentially corroborated Breidenbaugh's testimony that used cars consistently had been sold and repaired on the property since prior to 1955. Furthermore, Cypull observed both that the main building on the property had retained the basic appearance it had before 1955 and that the property usage remained "low-keyed," not having undergone a significant change.

William Elwood testified that he worked on the property in 1955, noting that before that date it had been utilized for used

car sales. Elwood claimed to have additional familiarity with the property prior to 1955 because he spent time there socializing with the owner's daughter. According to Elwood, all of the buildings on the property except for the main building were added after 1955, and gas pumps which existed then had been removed. Robert Carter, a resident of the area since 1971 and a charter member of the Association, testified that appellee's property was never cited for a zoning violation from 1974 to 1995. He further recalled the property being used for automotive services as far back as 1964 or 1965, although he was unclear whether it was a gas station or a garage because he never used the services.

Clayton, appellee's predecessor in interest, also testified on behalf of Executive. When he and his father bought the subject property in 1970, they carried on a used car sales and service business until selling the land to appellee. Clayton stated that cars always had been sold on the property "in some way, shape, or form." John Edwards, an owner of property on Fork Road for over twenty-two years, commented that appellee's property had been used for used car sales continuously without significant change or impact. Finally, Weber, an area resident for over forty-seven years, testified on his own behalf.

Appellants also presented the testimony of neighborhood residents. Carol Trela, a resident in the area for twenty years, had considered appellee's business to be nothing more than an

unobtrusive county garage with a few cars for repair stationed outside next to the main building. In her opinion, however, the business today resembles a commercial operation in which cars for sale are now placed along Fork Road on Parcel 3. Salvatore Glorioso reiterated Trela's testimony that the number of cars Executive displays for sale has increased, adding a familiarity with the area that extended back to the 1960's. Glorioso also recalled that a farm equipment sales and service business was located on the property until at least 1966, when the business relocated and the site was vacant for approximately eighteen months.[4]

As further support, Sharon Rohrbaugh, an adjoining landowner, expressed concern about the growth of appellee's business and its impact on the neighborhood. Rohrbaugh asserted that Executive increased commercial activity on the property, unlike Clayton's use which she believed was limited to an automobile painting and repair facility.

After hearing the conflicting testimony, the Board determined that appellee met its burden of demonstrating that the nonconforming use existed prior to March 30, 1955, and has continued uninterrupted as a used car sales lot until the present time. In addition, the Board concluded that Executive had not

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[4]Christina Pika, Glorioso's mother, reiterated that there was a farm equipment sales and service facility on the property until 1966.

illegally expanded, but rather, had permissibly intensified its nonconforming use without a detrimental effect on the surrounding area. Thus, the Board approved the subject property as a nonconforming use for car sales in accordance with the Regulations. The circuit court subsequently affirmed the Board's decision and this appeal followed.

STANDARD OF REVIEW

An appellate court must uphold the order of a county zoning authority if it is not founded upon an erroneous conclusion of law and if its conclusions reasonably may be based upon the facts proven. *See Evans v. Shore Communications, Inc.*, 112 Md. App. 284, 298 (1996). Applying this standard 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 . . . ."

Id. at 299 (quoting *Comptroller v. World Book Childcraft, Int'l, Inc.*, 67 Md. App. 424, 438-39 (1986)).

DISCUSSION

I

The Court of Appeals has observed that nonconforming uses threaten the success of zoning because they "limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values." *County Council v. E.L. Gardner, Inc.*, 293 Md. 259, 267 (1982). The difficulty in eliminating nonconforming uses, however, is that many landowners developed their property and established the uses for their land before comprehensive zoning ordinances designated such land uses as nonconforming. *See id.* Thus, zoning ordinances seek to create conformity as quickly as possible either by forbidding the expansion of a nonconforming use or by placing limitations on the right to change, expand, alter, or restore the use. *See id.* at 267-68. The recognized purpose of these restrictions is "to achieve the ultimate elimination of nonconforming uses through economic attrition and physical

obsolescence." *Id.* at 268. Local regulations determine the extent to which a nonconforming use may be extended or enlarged.

As previously mentioned, the zoning regulations applicable to appellee's property were created in March 1955. Section 236.4 of the Regulations provides that, within the BR zone, a "[u]sed motor vehicle outdoor sales area, separated from [the] sales agency building" is a use permitted as a special exception. On the other hand, no special exception for a used car sales lot exists in the BL zone, for which § 230.9 of the Regulations allows only an "automobile accessory shop" or "automobile parking lot." Appellee never obtained a special exception for the business; hence, the used car sales and repair facility must meet the requirements for a nonconforming use.

Section 101 of the Regulations defines a nonconforming use 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." Furthermore, a nonconforming use,

> 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.

Regulations, § 104.1. In the case *sub judice*, the Board considered the abundance of conflicting testimony presented by both parties as to when appellee's property was first utilized as a used car sales

business and whether the land has continuously been put to such use. Although the Board observed that "[b]oth sides produced a large number of witnesses to substantiate their various positions," it found appellee's witnesses more credible, noting that "[p]articularly convincing was . . . Mr. Breidenbaugh." The Board summarized the testimony it received:

> The law places the responsibility on the Board to determine, from the testimony and evidence produced at the hearings, whether or not, factually, there existed on the site a used car sales activity prior to March 30, 1955 under the 1945 zoning regulations, and as of March 30, 1955 with no interruption or abandonment in the use as a used car sales lot up to the present time. To that extent, the Board concludes that [appellee] has met [its] burden of proof in that respect.

The issue under debate is the propriety of the Board's additional conclusion that appellee's use was a permissive intensification of the nonconforming use, rather than an illegal extension.

Appellants contend that the Board should not have permitted appellee to augment its nonconforming use through the 1986 acquisition of Parcel 3, which was under the ownership of Francis. As previously explained, Clayton testified that he used the corner portion of Parcel 3 to display cars of special interest, but only with the permission of Francis. Furthermore, Clayton testified that he never obtained ownership of the .098-acre tract from Francis. Appellants contend, therefore, that, because the additional parcel was not part of the nonconforming use by

appellee's predecessors, such land may not be added to increase the size of the nonconforming use. In addition, appellants submit that the effect of appellee's improper extension of the nonconforming use is the termination of the nonconforming use as of 1986. Appellee counters asserts that the Board properly determined that, even though appellee did not obtain ownership of the smaller portion until 1986, it had been *used* before and after March 1955 for the display of used cars.

In *McKemy v. Baltimore County*, 39 Md. App. 257 (1978), this Court set forth the factors for determining whether an expanded use represents a permissible intensification or an improper extension of the nonconforming use. Such factors include the following questions:

> (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 different use 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.

Id. at 269-70 (citing *Jahnigen v. Staley*, 245 Md. 130 (1967); *Philips v. Zoning Comm'r*, 225 Md. 102 (1961)). We need only pause briefly to discuss the first three factors.

Utilization of Parcel 3 for the display of used cars for sale reflects the purpose of the original nonconforming use, which also involved the sale of used automobiles. Thus, the Board properly concluded that the current use is not one which is different in nature or character from the original nonconforming use. Furthermore, it was reasonable for the Board to determine that Executive's current use would not have a "substantially different effect" on the surrounding area. Testimony reflects that the business has maintained an unobtrusive character in harmony with the community. Whether an increased number of cars displayed for sale had a substantially different effect on the neighborhood was at least fairly debatable and within the Board's decision-making authority. Giving deference to the Board's application of the standards enunciated in *McKemy* to the facts as established by the testimony, we do not believe the Board erred by concluding that "the present usage constitutes a primary used car operation which does not substantially have any different or detrimental effect on the community."

The fourth factor, whether the use is a "drastic enlargement or extension," requires a more extensive analysis. The Court of Appeals summarized:

> 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 landowner to continue the same kind of use to which the property was devoted on

> the critical date does not confer on him a right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use.

Phillips, 225 Md. at 110. It is apparent that the Board was presented with substantial evidence from which a reasonable person could determine that appellee's business was not drastically enlarged from its original nonconforming use. The additional .098-acre tract comprises less than ten percent of the 1.175 acres that had been used for the automobile sales and repair business. Appellee uses Parcel 3 simply to display vehicles, and did not expand the buildings on the property to serve a drastic enlargement of the used car sales segment of the business.

Furthermore, testimony demonstrated that Parcel 3 had been used to showcase certain automobiles in conjunction with the prior businesses. During Clayton's testimony, the following exchange occurred:

> [WITNESS]: The only time we used this lower corner for used car sales, when I had something that was real – like a special interest car we put done [sic] there and displayed it so it could have been [in] a good view of all the roads coming together so people could see it.
>
> [APPELLEE'S COUNSEL]: Was there ever a one-year period during the time you controlled this property that

cars were not shown down on that corner?

[WITNESS]: It was always — during that time, [there were] always cars there. Marion Francis gave us permission to use the corner.

[APPELLEE'S COUNSEL]: Mr. Francis owned the property?

[WITNESS]: He owned property, that little section at this time in question there.

[APPELLEE'S COUNSEL]: You used it with his permission?

[WITNESS]: Used it with his permission.

The testimony of Cypull essentially corroborated Clayton's statements. The following exchange occurred:

[APPELLEE'S COUNSEL]: Where would they display the used cars prior to 1955?

[WITNESS]: The same place they do now, I believe, from all across the front.

[APPELLEE'S COUNSEL]: Could you just go up to the board here . . . and you can just indicate to the Board members where the cars were displayed prior to March of 1955.

[WITNESS]: Right where they are, pretty much all the way up here.

THE CHAIRMAN: Do you want to mark those in yellow?

. . .

[APPELLEE'S COUNSEL]: . . . Why don't you put your initials near that first yellow mark?

[WITNESS]: About there. Right where it is.

[APPELLEE'S COUNSEL]: I will put a "TC" over the second yellow mark. Thank you, sir.
After March of 1955, did you ever observe any abandonment of the used car use or extended discontinuation of that used car use?

[WITNESS]: No, I didn't. As far as I can recall, it's always been pretty much the same. Sometimes more, sometimes less. You know, they move in and out.

The yellow mark Cypull placed on the diagram was within the smaller portion of property acquired by Executive in 1986. In light of Clayton and Cypull's testimony, it was reasonable for the Board to have determined that Parcel 3 had been continuously utilized since before March 1955 as a part of the used automobile nonconforming use. The Board recognized the inconsistencies between appellee's witnesses and the appellant landowners who testified that the display of vehicles for sale on Parcel 3 was a recent enlargement. The Board applied correct principles from *McKemy* and was presented with substantial evidence supporting both parties' positions. A reasoning mind, even if it believed that Executive's display of used cars had increased in volume recently,

could have reasonably concluded that the increase was a permissive intensification rather than a "drastic" enlargement.

In *County Comm'rs v. Zent*, 86 Md. App. 745 (1991), this Court stated that, "[w]hile a nonconforming use should not be extended or perpetrated longer than necessary, the more frequent present use of property for the same or a similar use than that for which it had been used less frequently theretofore was held to be an intensification and not an extension." *Id.* at 755 (quoting *Feldstein v. LaVale Zoning Board*, 246 Md. 204, 211 (1967)). The Court of Appeals applied this concept in *Jahnigen v. Staley, supra*, wherein a marina owner's predecessors had maintained a nonconforming use by renting seven rowboats from the property's pier. When the appellants bought the property, they quadrupled the size of the pier to provide additional dockage and wet storage facilities. The Court concluded that the new facilities were an impermissible extension of the nonconforming use. *See Jahnigen*, 245 Md. at 138. On the other hand, the Court opined that the amount of rental rowboats that the appellants could have was not to be limited because "[a]ny increase in the number of rowboats rented would be an intensification of non-conforming use and would not be an extension." *Id.*[5] Equally analogous, an increase in the number

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[5]*See also Nyburg v. Solmson*, 205 Md. 150 (1954) (holding that an increase, from thirty to fifty, in the volume of cars parked on a portion of property under a nonconforming use as a parking area for a garage was an intensification of the use because the area of

(continued...)

of used cars displayed for sale is an intensification of the nonconforming use.

Appellants, however, submit that "the [c]ourts have disapproved extensions of nonconforming uses which involve use of new land on a lot other than the one occupied by the original nonconforming use." R. Anderson, *American Law of Zoning 3d* § 6.45 (1986); *see also* E.C. Yokley, *Zoning Law and Practice* § 22-7 (4th ed. 1979). In further support of this proposition, appellants cite case law from other jurisdictions that forbids a landowner from expanding a nonconforming use onto adjoining lots that were acquired after passage of the zoning regulation barring the use. *See Rotter v. Coconino County*, 818 P.2d 704, 712 (Ariz. 1991); *Minquadale Civic Ass'n v. Kline*, 212 A.2d 811, 815-16 (Del. Ch. 1965); *Petrillo v. Board of Zoning Appeals*, 162 A.2d 508, 510 (Conn. 1960).

We need not address appellant's argument that a nonconforming use in Maryland may not be extended to an adjacent property previously owned by a different party. In *Kastendike v. Baltimore Ass'n for Retarded Children, Inc.*, 267 Md. 389, 404-05 (1972), the Court of Appeals held that a change in ownership of the subject property did not affect a nonconforming use that had been continuous and never abandoned. Thus, the fact that Executive's

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[5](...continued)
the property was not enlarged.

predecessors did not own Parcel 3 does not affect its ability to maintain the use of that portion of the property as a nonconforming use for the sale of used automobiles. A reasoning mind could have reached the Board's conclusion because the Board was presented with substantial evidence that Parcel 3 had been used continuously as a used car sales lot. Therefore, unlike the cases upon which appellants rely,[6] the nonconforming use in the instant case existed on Parcel 3 prior to the March 1955 passage of the Regulations.[7]

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[6]Appellants cite four Maryland cases, all of which are factually distinguishable from the instant case, as support for their assertion. *See Cleland v. Mayor and City Council*, 198 Md. 440, 444 (1951) (holding that, where the nonconforming use was the maintaining of doctors' offices, having parking areas adjacent to the offices was not incidental or necessary to the use); *Colati v. Jirout*, 186 Md. 652, 658-59 (1946) (changing the nature of a cafe to create a larger business by constructing new buildings with twice the floor space was an improper enlargement of the nonconforming use); *Beyer v. Mayor and City Council*, 182 Md. 444, 454 (1943) (holding that, after a nonconforming use is abandoned, the landowner may use the property only as permitted by ordinance and is prohibited from resuming the nonconforming use); *Chayt v. Board of Zoning Appeals*, 177 Md. 426, 434-35 (1939) (concluding that owners of a race track, the nonconforming use, could not build stables on adjacent land after the passage of the zoning restrictions simply because the owners had planned to expand the track before the regulations were passed).

[7]Because we disagree with appellants' contention that the display of used cars on the smaller portion of Parcel 1 constitutes an illegal expansion of the nonconforming use, we decline to discuss appellants' supplemental argument that such expansion should have caused appellee to forfeit the entire nonconforming use.

II

Appellants' second argument is that Executive's nonconforming use should not have been permitted because the construction of additional buildings had expanded the use beyond the Regulations' express limitation of twenty-five percent of the ground floor area. Section 104.3 of the Regulations, regarding nonconforming uses, provides that, "[n]o nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25% of the ground floor area of the building so used." Appellants contend that the Board erred, in making its determination, by failing to address this provision. Appellee, on the other hand, submits that the challenged buildings were not part of the nonconforming use for used car sales.

We agree with appellee. The sale of used cars occurs in the main concrete building, which is thirty by sixty feet and has existed for the time that cars have been sold on the property.[8] The other buildings to the rear of the property comprise more than one hundred percent of the main building's square footage. Although this amount of building would be in violation of § 104.3, the section is not applicable. Section 104.3 applies to the extension of a "nonconforming building or structure." In this instance, however, the added buildings are not extensions of the

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[8]Automobile service work and repairing and painting also occur in the main building.

nonconforming used car sales use. Instead, the buildings comply with the Regulations for a BR zone.

Weber testified that the two sheds are used for storage while another building is utilized for automobile painting. According to § 236.1, the BR zone allows "[u]ses permitted and as limited in the BM Zone." Within the BM zone, "garage, service" is a permitted use and is defined in § 101 as "[a] garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale." This definition includes the automobile storage and painting for which Executive used the aforementioned buildings. As a result, the construction of these buildings was not an extension of the used car "sales" portion of Executive's business. The buildings do not serve as either a showroom or added sales space, but rather as a location for storage and repair.

Nor is the building appellants designate as the "upholstery building" an extension of the nonconforming use. Section 233.1 of the Regulations allows in the BM zone "[u]ses permitted in the BL Zone." Thus, uses permitted in the BL zone also are accepted in the BR zone through § 236.1. According to § 230.9, "furniture and upholstery stores" are permitted in the BL zone. During the Board's hearing, the following exchange occurred during cross-examination of Weber:

[APPELLANTS' COUNSEL]: Now, the existing building behind your property, is that used in your operation?

[WITNESS]: No, it is not.

[APPELLANTS' COUNSEL]: That's used for the upholstery workshop?

[WITNESS]: That's correct.

. . .

[APPELLANTS' COUNSEL]: Is this part of your operation, or not part of your operation?

[WITNESS]: I would consider it not part of my operation.

[APPELLANTS' COUNSEL]: Is it a separate company?

[WITNESS]: Yes.

. . .

[APPELLANTS' COUNSEL]: What about the one-story shed, 12 by 22, which is adjacent to the workshop?

[WITNESS]: I believe [the lessee] uses that for storage.

[APPELLANTS' COUNSEL]: But it's not involved in your Executive Auto?

[WITNESS]: No, it is not.

Evidence did not contradict Weber's explanation of the "upholstery building." In line with the other buildings, therefore, the upholstery building was not an improper extension of

the nonconforming used car sales use. The Board did not err by granting appellee approval for designation of Parcel 3 as an existing nonconforming use for used car sales. The outdoor storage of used cars for sale had not drastically increased from its original size and the additional buildings on appellee's property contain permissible uses.

The Board, however, did not expressly exclude the additional buildings from its approval of appellee's used car sales business as a nonconforming use. The Board's opinion concluded:

> The Board unanimously has reached a decision that recognizes the subject site as a nonconforming use . . . . The relief granted is specifically for [Parcel 3], since Parcel No. 2 has never been used for the used car sales business. Additionally, . . . there exists a split rail fence which bisects Parcel 1. That portion of Parcel 1 on the southeast side of that fence has not been used for the business, so that the nonconforming use designation is hereby applied only to that portion of the property on the northwest side of the fence, *as supported by the evidence*, eliminating the area of the property on which the business could be expanded.

(Emphasis added). The evidence supported approval of the nonconforming use both for Parcel 3 and for the portion of Parcel 1 on the northwest side of the fence. Such nonconforming use does not include the additional buildings that we have concluded are permissible uses, not associated with appellee's used car sales business. Thus, we affirm the Board's opinion with the proviso

that the additional buildings on the property do not qualify as part of the nonconforming use.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.

3/3/98

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF LONG GREEN VALLEY ASSN., INC., CHARLOTTE PINE, CAROL TRELA, BARTLETT REGAN, SHARON ROHRBAUGH, AND TOM VANCE 305 WASHINGTON AVENUE, SUITE 502 TOWSON, MARYLAND 21204	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Room 49, Old Courthouse, 400 Washington Avenue, Towson, MD 21204	*	CIVIL ACTION No. 3-C-98-00104
IN THE CASE OF: IN THE MATTER EXECUTIVE AUTO PAINT & REPAIR, INC. FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SE/c FORK ROAD (13580 FORK ROAD) 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT CASE NO. 97-87-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 Charles L. Marks, Thomas P. Melvin, and Harry E. Buchheister, Jr., 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. 97-87-SPH

July 30, 1996 RECEIVED AND FILED 98 MAR -3 PM 2:55 CLERK OF THE CIRCUIT COURT BALTIMORE COUNTY	Petition for Special Hearing filed by Gerard King Stevens, Esquire, on behalf of Paul D. Weber, President of Executive Auto Paint & Repair, Inc., to approve an existing nonconforming use for used car sales, in accordance with BCZR Sec. 104.1.
September 5	Publication in newspaper.

September 16, 1996	Certificate of Posting.
September 24	ZAC Comments.
October 1	Hearing held on Petition by the Zoning Commissioner.
January 16, 1997	Order of the Zoning Commissioner in which Petition for Special Hearing was GRANTED.
February 10	Notice of Appeal filed J. Carroll Holzer, Esquire, on behalf Protestants -- Long Green Valley Association, Charlotte Pine, Katherine Gabriel, Sharon Rohrbaugh, and Carol Trela.
July 10	Hearing before the Board of Appeals (Day #1).
August 14	Hearing before the Board of Appeals (Day #2 - concluded).
September 15	Protestants' Memorandum in lieu of Final Argument filed by J. Carroll Holzer, Esquire.
September 15	Petitioner's Post Hearing Memorandum filed by Stephen J. Nolan, Esquire.
September 25	Deliberation conducted by the Board.
December 8	Opinion and Order issued by the Board; Petition for Special Hearing is GRANTED.
December 10	Motion to Reconsider filed by J. Carroll Holzer, Esquire, on behalf of Protestants.
December 23	Petitioner's Opposition to Motion to Reconsider filed by Steve Nolan, Esquire, on behalf of Petitioner.
January 6, 1998	Motion hearing held and deliberation conducted by the Board. Motion to Reconsider DENIED. Ruling on Motion to Reconsider issued by the Board on January 15, 1998.
January 6	Petition for Judicial Review filed in the Circuit Court for Baltimore County by J. Carroll Holzer, Esquire, on behalf of Protestants.
January 9	Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.
January 13	Certificate of Notice sent to interested parties.

Petitioner's Exhibit Nos.
1-Plat of site
2-Plat of site with Edwards house in red
3-Zoning Map of B.C. (2 pp) 12/1/47
4-1958 Aerial of subject site
5-Aerial of subject site (1972
6-Aerial of site (1986) (Bldgs in red circle)
7-Photograph of site
8-Photo copy of Rd & Bl cover of Reed Motors
9-Single Photograph of sub. site (12/1970)
10-Four photographs of Clayton Used Cars (MD '70's)
11-List of auto sales in 1979 by Clayton
12-Long Green Valley Assoc. Newsletter (5 pp) 6/18/97
13-Minutes of Valley Assoc. meeting from Mrs. Trela 6/26/97
14-Proposal for Mr. Weber for landscaping
15-Placement of proposed landscape of pines
16-Documents (3 pp) of Used Car Authorization
17-Photos of Site & Autos
18-Photos of Site & Autos
19-Photos of Site & Autos
20-Complaint for Injunctive Relief
21-Photo of Executive Auto
22-Notice Reminder of 8/14/97 Mtg.

Appellant's Exhibit No.
1-Rule 8 (4 pp)
2-3 parcel plat from Mrs. Trela
(Large -CBA closet) 3-Display Board by Mrs. Trela
4A-Parcel 1 Deed in black (BR zone)
4B-Parcel 2 Deed
4C-Parcel 3 Deed
5A-Baltimore Telephone Directory (1955)
5B-Baltimore Telephone Directory (1956)
5C-Baltimore Telephone Directory (1957)
5D-Baltimore Telephone Directory (1960)
5E-Baltimore Telephone Directory (1961)
5F-Baltimore Telephone Directory (1962)
5G-Baltimore Telephone Directory (1963)
5H-Baltimore Telephone Directory (1964)
5I-Baltimore Telephone Directory (1965)
5J-Baltimore Telephone Directory (1966)
5K-Baltimore Telephone Directory (1967)
5L-Baltimore Telephone Directory (1968)
5M-Baltimore Telephone Directory (1969)
5N-Baltimore Telephone Directory (1970)
5O-Baltimore Telephone Directory (1971)
(Large -CBA closet) 6-Chart of Timeline of Site (overlay)
7-Corresp. from J. Deere to Mrs. Ebert

(Cont'd list of Appellant's Exhibits)	8-Packet from MVA in response to letter from Charlotte Pine 9-Protestant's sign-in-sheet (2 pps.)
March 3, 1998	Transcript of testimony filed.
March 3, 1998	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: J. Carroll Holzer, Esquire
Stephen J. Nolan, Esquire
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

1/23/98

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF LONG GREEN VALLEY ASSN., INC., CHARLOTTE PINE, CAROL TRELA, BARTLETT REGAN, SHARON ROHRBAUGH, AND TOM VANCE * 305 WASHINGTON AVENUE, SUITE 502 TOWSON, MARYLAND 21204 *

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

* CIVIL ACTION
* No. 3-C-98-00104

IN THE CASE OF: IN THE MATTER * EXECUTIVE AUTO PAINT & REPAIR, INC. FOR A SPECIAL HEARING ON PROPERTY * LOCATED ON THE SE/c FORK ROAD (13580 FORK ROAD) * 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT * CASE NO. 97-87-SPH

* * * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Charles L. Marks, Thomas P. Melvin, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, has 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, J. Carroll Holzer, Esquire, HOLZER & LEE, 305 Washington Avenue, Suite 502, Towson, MD 21204, Counsel for Long Green Valley Assn., Inc., et al, Petitioners; Paul D. Weber, President, Executive Auto Paint and Repair, Inc., 4825 Hydes Road, Hydes, MD 21082; Stephen J. Nolan, Esquire, NOLAN PLUMHOFF & WILLIAMS, 502 Washington Avenue, Towson, MD 21204, Counsel for Executive Auto.; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, MD 21204; a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

RECEIVED AND FILED
98 JAN 13 PM 3:06
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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 J. Carroll Holzer, Esquire, HOLZER & LEE, 305 Washington Avenue, Suite 502, Towson, MD 21204, Counsel for Long Green Valley Assn., Inc., Charlotte Pine, Carol Trela, Bartlett Regan, Sharon Rohrbaugh, and Tom Vance, Petitioners; Paul D. Weber, President, Executive Auto Paint and Repair, Inc., 4825 Hydes Road, Hydes, MD 21082; Stephen J. Nolan, Esquire, NOLAN PLUMHOFF & WILLIAMS, 502 Washington Avenue, Towson, MD 21204, Counsel for Executive Auto.; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 13th day of January, 1998.

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

1/15/98

IN THE MATTER OF THE THE APPLICATION OF EXECUTIVE AUTO PAINT & REPAIR, INC. FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER FORK ROAD AND LONG GREEN PIKE (13580 FORK ROAD) 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 97-87-SPH

* * * * * * * * *

RULING ON MOTION TO RECONSIDER

This case comes to the Board of Appeals of Baltimore County based on a "Motion to Reconsider" timely filed by the Appellants in reference to an Opinion and Order issued by this Board on December 8, 1997 following public deliberation. The "Motion to Reconsider" filed by Appellants essentially requests this Board to reconsider its original Order based on an affidavit signed by Mr. Carl Kress which Motion contends that the request for reconsideration would involve a rehearing by this Board limited exclusively to the testimony of Mr. Kress, subject to the prescribed rules of procedure normally followed by the Board.

The hearing on this Motion was held on Thursday, January 6, 1998 at 1:00 p.m. J. Carroll Holzer, Esquire, represented the Appellants; and Stephen J. Nolan, Esquire, was counsel for the Petitioner. At that time, Mr. Holzer reviewed his Motion request, and the affidavit of Mr. Kress. While the affidavit, which is incorporated in the Board's file, is self-explanatory, the nature and thrust of Mr. Holzer's request was that Mr. Kress was unaware of the Executive Auto proceedings until subsequent to the actual hearing; and also had no personal knowledge of the proceedings until on or about October 11, 1997, while attending St. John's

Lutheran Church's 16th Annual County Fair Day on Sweet Air Road in Baldwin, Maryland. If allowed to testify, Mr. Kress would state that there had been an interruption in the used auto sales business at the Executive Auto site, which, due to the length thereof, would deny the nonconforming use.

Mr. Nolan stated his reasons for opposing the Motion to Reconsider, referencing Rule 10 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals, and further that the affidavit of Mr. Carl Kress constituted newly discovered evidence, which is not covered by the Board's rules. Additional reasons offered were lack of diligence on the part of the Appellants to uncover Mr. Kress prior to or during the hearing; and Rule 7 of the Board's rules pertaining to the Board's right to limit immaterial and unduly repetitious evidence, and also limiting the number of witnesses if such testimony is repetitive or cumulative.

Having heard oral arguments, the Board recessed in order for the members to individually review their notes, Motion and affidavit filed, and the legal issues involved. A public deliberation was held following the recess. Rule 10 of the rules of procedure of the Board states:

> Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake, or irregularity.

The essence of Appellants' Motion was that the Board, by hearing the testimony of Mr. Kress, would consider that a mistake had been made by the Board in considering the testimony relative to the

Executive Auto nonconforming use at the present location. The issues of fraud or irregularity were not presented at the hearing.

The authority for reconsideration of any matter previously decided by the Board is subject to severe and limited circumstances, and must be limited to those conditions present in Rule 10. In the matter at hand, the Board heard substantial testimony and received voluminous evidence which resulted in the Board's Order of December 8, 1997. That opinion formulated the reasoning and rationale employed by the Board in reaching their decision. In Miles, et al, v. McKinney, 199 Atl.Rep. 540, the Maryland Court of Appeals has held that a quasi-judicial tribunal may not reopen and rehear a proceeding that has been terminated, at least in the absence of mistake in the prior proceedings. Additionally, in Bernstein, et al, v. Kapneck, et al, 46 Md.App. Reports 231, the Maryland Court of Special Appeals stated: "However, it is clear to us that in those cases permitting a judgement to be set aside on the basis of 'mistake,' the mistake must necessarily be confined to those instances where there is a jurisdictional mistake involved." The Court goes on to recite in Hughes v. Beltway Homes, Inc., 276 Md. 382, that the Court of Appeals interpreted "mistake" as follows:

> The type of situation in which mistake might be applicable is demonstrated by Miles v. Hamilton, 269 Md. 708, 309 A2d 631 (1973) (no valid service or process) and Ashe v. Spears, 263 Md. 622, 284 A2d 207 (1971) (a contention of no valid service or process).

The Court indicated that these jurisdictional mistakes could justify the utilization of the Court's revisory power over an

enrolled judgement.

This matter has been pending since December 1996, with the property posted for public notice at the time of the original Zoning Commissioner's hearing, and the appeal to this Board. The site in question is a very heavily travelled one bordered by Long Green Pike, Baldwin Mill Road, Pleasantville Road, and Fork Road. The Long Green Valley Association is a large and prominent community association that has voiced its opposition to the Petitioner's use of the property as a used motor car sales facility, and has communicated its opposition in a very forceful manner in the general area. Additionally, the local community paper (The North Baltimore County News) has provided very fair and comprehensive coverage of both the Zoning Commissioner's hearing and that of this Board. This paper has a distribution area outside the Greater Long Green Valley, and it appears inconceivable to the Board that Mr. Kress did not have any knowledge of the issue, considering the length of time it has been a viable litigious issue, until after the Board had held its hearings, providing that the appellants had exercised due diligence in seeking out such persons that could testify on their behalf. As was indicated in the original decision of the Board, considerable weight was attached to the cumulative testimony offered during the hearing days, and to permit additional testimony at this time would simply be repetitive, and tantamount to testimony that had already been presented to the Board at the original hearing, the weight of which had already been assessed by the Board members.

For the reasons as stated, this Board shall deny the Motion to Reconsider.

O R D E R

IT IS THEREFORE THIS 15th day of January, 1998 by the County Board of Appeals of Baltimore County

ORDERED that the Motion to Reconsider filed in the subject matter be and the same is hereby **DENIED.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Charles L. Marks, Acting Chairman

Thomas P. Melvin

Harry E. Buchheister, Jr.

County Board of Appeals of Baltimore County

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

January 15, 1998

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 97-87-SPH
Executive Auto Paint and Repair, Inc.
Ruling on Motion to Reconsider

Dear Mr. Holzer:

With reference to the subject matter, enclosed please find a copy of the Board's Ruling on Motion to Reconsider issued this date.

Very truly yours,

Charlotte E. Radcliffe for

Kathleen C. Bianco
Administrator

encl.

cc: Long Green Valley Association
Charlotte Pine
Katherine Gabriel
Sharon Rohrbaugh
Carol Trela
Stephen J. Nolan, Esquire
Paul D. Weber /Executive Auto
Gerald K. Stevens, Esquire
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director/PDM
Virginia W. Barnhart, County Attorney

Printed with Soybean Ink
on Recycled Paper

1/6/98

PETITION OF:	*	
		IN THE
LONG GREEN VALLEY ASSN., INC.,	*	
CHARLOTTE PINE, CAROL TRELA,		CIRCUIT COURT
BARTLETT REGAN, SHARON ROHRBAUGH,	*	
AND TOM VANCE		FOR
305 WASHINGTON AVE., SUITE 502	*	
TOWSON, MARYLAND 21204		BALTIMORE COUNTY
	*	
PETITION FOR		
JUDICIAL REVIEW OF FINAL	*	Case: 03-C-98-000184 CE-Civil Fili
DECISION OF THE BOARD OF APPEALS		Case No. _____ 30.00
OF BALTIMORE COUNTY	*	Arrearance Fee 10.00
400 WASHINGTON AVE.		
TOWSON, MARYLAND	*	TOTAL $30.00
RE: CASE NO. 97-87-SPH	*	
		COMMENT: Long Green Valley Assn
* *		Receipt #193800000233 Cashier: BH CCBACOP967 01/06/98 2:48PM

PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioners Long Green Valley Association, Inc., Charlotte Pine, Carol Trela, Bartlett Regan, Sharon Rohrbaugh and Tom Vance, by and through their attorney J. Carroll Holzer and Holzer and Lee, request judicial review of the decision of the County Board of Appeals of Baltimore County regarding the decision of the Board of Appeals in Case Number 97-87-SPH rendered on December 8, 1997 attached hereto, and the decision of the CBA in denying Petitioners' Motion to Reconsider decided on January 6, 1998.

Petitioners were all parties before the County Board of Appeals and participated fully in the proceedings.

Respectfully Submitted,

J. Carroll Holzer, Esquire

RECEIVED AND FILED
98 JAN -6 PM 2:48
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

98 JAN -9 PM 3:44
COUNTY BOARD OF APPEALS
RECEIVED

LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX: (410) 825-4923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 6th day of January, 1998, a copy of the foregoing **Petition for Judicial Review** was mailed postage prepaid to Steve Nolan, Esquire, Nolan, Plumhoff & Williams, 502 Washington Ave., Suite 700, Towson, MD, 21204.

J. Carroll Holzer

A:\ Petitions\LGVA.Pet

2/27/97

IN THE MATTER OF:	*	COUNTY BOARD OF APPEALS
EXECUTIVE AUTO PAINT AND REPAIR, INC.	*	OF BALTIMORE COUNTY
	*	CASE NO.: 97-87-SPH

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

PETITIONER'S OPPOSITION TO MOTION TO RECONSIDER

Executive Auto Paint and Repair, Inc., Petitioner, by Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered, its counsel, files this Opposition To Motion To Reconsider and for reasons says as follows:

1. Rule 10 of the Rules of Practice and Procedure of County Board of Appeals says as follows:

> "Within thirty (30) days after the entry of an order, the Board shall have revisory power and control over the order in the event of fraud, mistake or irregularity."

2. Protestants' Motion to Reconsider recites that Protestants were unaware of the existence of a witness whose proposed testimony is presented by affidavit attached to the Motion. The proposed testimony does not demonstrate that the Order was issued as a result of fraud, mistake or irregularity.

3. At best, the affidavit of Mr. Carl Kress constitutes newly discovered evidence which is not covered by the Rules of Procedure of the County Board of Appeals. Furthermore, in order for newly discovered evidence to be admitted under the Maryland Rules of Civil Procedure, the newly discovered evidence must be that which could not have been discovered by due diligence. Protestants' Motion to Reconsider fails to show any efforts or diligence on the part of the Protestants in its attempts to locate witnesses, such as Mr. Kress who may have possessed information Protestants believed to be relevant evidence.

97 DEC 23 PM 3:48
RECEIVED
COUNTY BOARD OF APPEALS

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

4. That, in any event, the proposed testimony of Mr. Kress is cumulative to that of other witnesses produced by Protestants at the hearing, including the testimony of Salvitore Glorioso as stated in the Protestants own Motion. Under County Board of Appeals Rule 7(a), the Board has the right as a matter of policy to limit immaterial or unduly repetitious evidence and to limit the number of witnesses if it appears their testimony may be merely cumulative.

5. And for such other reasons as may be advanced at any hearing on the Protestants' Motion.

WHEREFORE, Executive Auto Paint and Repair, Inc., Petitioner, prays that this Honorable County Board of Appeals deny the Protestants' Motion to Reconsider.

Stephen J. Nolan
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 23rd day of December, 1997, that a copy of the foregoing Petitioner's Opposition to Protestants' Motion to Reconsider was mailed, postage prepaid, to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

Stephen J. Nolan

C:\OFFICE\WPWIN\WPDOCS\SJNPLDGS\EXECAUTO\OPPOMTR.WPD

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**
STUART A. SCHADT

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

LAW OFFICES
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December 23, 1997

VIA HAND DELIVERY

Mrs. Kathleen Bianco
County Board of Appeals
Courthouse, Room 49
Towson, Maryland 21204

Re: Case No.: 97-87-SPH
Executive Auto Paint and Repair, Inc.

Dear Mrs. Bianco:

Enclosed for filing in the above-captioned matter, please find Petitioner's Opposition To Motion To Reconsider.

Thank you for docketing this paper accordingly.

Very truly yours,

Stephen J. Nolan

SJN:mao
encl.

cc: J. Carroll Holzer, Esquire
Mr. Paul D. Weber

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COUNTY BOARD OF APPEALS
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12/8/97

IN THE MATTER OF THE THE APPLICATION OF EXECUTIVE AUTO PAINT & REPAIR, INC. FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE SOUTHEAST CORNER FORK ROAD AND LONG GREEN PIKE (13580 FORK ROAD) 11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 97-87-SPH

* * * * * * * * *

O P I N I O N

This case comes to the Board of Appeals based on an appeal by the Appellants from a decision of the Zoning Commissioner which granted the Petition for Special Hearing filed by Executive Auto Paint & Repair, Inc. ("Executive"), and also approved the designation of a portion of Executive's 1.273-acre property located in Baldwin, Baltimore County, as an existing nonconforming use for used car sales in accordance with Section 104.1 of the Baltimore County Zoning Regulations.

J. Carroll Holzer, Esquire, represented the Appellants; and Stephen J. Nolan, Esquire, was counsel for Petitioner. The Board heard oral argument, testimony and received evidence during hearings held over two days, July 10, 1997 and August 14, 1997. At the conclusion of the hearing, the Board requested Counsel to submit post-hearing briefs in lieu of oral closing arguments. A public deliberation was held on September 25, 1997.

The case itself involves a site that is roughly 3 acres in total land area, which is divided into two parcels known as Parcel One and Parcel Two. Parcel One is the subject matter of the special hearing, and constitutes the tract which is adjacent to the intersection of Long Green Pike, Baldwin Mill Road, Pleasantville Road, and Fork Road, constituting 1.273 acres in total area. This parcel is split-zoned B.R. and B.L.-C.R., with the B.R. portion

being the predominant section (1.175 acres). The smaller section is zoned B.L.-C.R. and constitutes .098 acre. Undoubtedly, this is one of the most valuable corner properties in the Long Green Valley community.

The site consists of a one-story block building, 60 feet by 30 feet deep. In the rear of the building is a smaller 14-1/2 foot by 12-foot addition, and a much smaller one-story shed. Further, in the rear is a one-story building used for upholstery purposes, and another smaller shed. At issue is whether or not the property falls within the definition of a nonconforming use, Article I: "General Provisions" Baltimore County Zoning Regulations, Section 101, Definitions:

> "Nonconforming use. 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 "nonconforming" is a nonconforming use. [Bill No. 110, 1993]."

Also involved is Section 104 of the Baltimore County Zoning Regulations, Section 104.

> Section 104.1. "A conforming 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. [BCZR 1955; Bill No. 18, 1976; Bill No. 124, 1991]"

Additionally, the revisions of Section 104.3 also apply:

> "No nonconforming building or structure and no nonconforming use of a building, structure or parcel of land shall hereafter be extended more than 25 percent of the ground floor area of the building so used. This provision does not apply to structures or uses restored pursuant to Section 104.2, except as authorized by the Zoning Commissioner pursuant to Section 307 [Bill No. 124, 1991]."

Formalized zoning first came to Baltimore County on January 2, 1945. At that time, the Baltimore County Zoning Regulations permitted a property zoned "E" to be utilized for any purpose except those uses specifically identified. Under the 1945 zoning provisions, the use of the subject property for car repairs and sales was permitted. As time progressed, the zoning laws were extensively rewritten. The "E" zone was eliminated, and B.L. and B.R. zones were substituted in place thereof. Under the March 1955 regulations, auto sales were permitted by special exception [Section 236.4] in the B.R. zone. The B.L. zone, however, did not permit an automotive sales area. In drafting the 1955 regulations, the drafters adopted a different regulatory standard for used car lots. Section 236.4 required a special exception in the B.R. zone for a used car lot, drafting it as "used motor vehicle outdoor sales area, separated from sales agency building." While the subject property does enjoy the present-day B.R. zoning, such zones permit used car sales only by special exception. The question before the Board is whether or not the property in question was functional as a used car sales facility prior to March 30, 1955, as of March 30, 1955, and exists today in accordance with the dictates of Sections 101 and 104 of the Baltimore County Zoning Regulations.

The burden in nonconforming use issues is placed upon the Petitioner to prove his or her case by the preponderance of the evidence produced at the hearing. Both sides produced a large number of witnesses to substantiate their various positions. At times there was much contravening testimony. The Board, therefore, was constrained to listen attentively to each witness and weigh the credibility and reliability of each individual testifying, as well

as assigning weight to the evidence produced at the hearing.

Testifying initially for the Petitioner was John Lewis Breidenbaugh. Mr. Breidenbaugh opined that he was an 86-year-old resident of the area. He resides at 12631 Manor Road and has lived there since 1951. His familiarity with the immediate area went back approximately to the end of World War I (1918). In examining Petitioner's Exhibit No. 7, Mr. Breidenbaugh identified "Executive Auto" to the left of the exhibit; and indicated that it fairly and accurately depicted what it looked like today. Mr. Breidenbaugh further stated that in 1936 he went to work for a Mr. Charles A. Snavely selling and servicing farm equipment where the "block building" currently existed (referring to the white building in the right-hand portion of Petitioner's Exhibit No. 7). He testified that in 1937 he went back to work on a farm and farmed for himself from 1938 through 1943 on Manor Road, just below where he presently lives. He then went to work for a Wes Burl in the same area of Fork Road and Baldwin Mill Road. He stated that he went to work for Wes Burl in January 1950 in a building shown on Petitioner's Exhibit No. 2 near the word "Pike" on Long Green Pike, called "Baldwin Motors"; and was employed as a mechanic there. Mr. Breidenbaugh outlined a description of the various commercial uses that were present in the small village of Baldwin as it existed around 1950 and pointed to where used cars were sold on Fork Road in 1952 "along Long Green Road and Fork Road." He left Burl's employ in 1951 and went to work for Jarmen Motors in Baltimore City, leaving there to return to work for Wes Burl in 1953. He identified a commercial operation on the south side of Fork Road that was selling cars "a good way up," identifying the spot on the

exhibit, leaving a green mark. Mr. Breidenbaugh testified to his farm work in the area of Fork Road and Baldwin Mill Road since 1953, and stated that "as far as I can remember since 1953 when I came back, there have been cars up there, and there were cars before that," stating that he had actually purchased a used car on the site in 1952.

Mr. Theodore Cypull, 13801 Pleasantville Road, also testified on behalf of the Petitioner, stating that he had resided at the referenced address since 1941, and was quite familiar with the Petitioner's property as reflected in Petitioner's Exhibit No. 2. Mr. Cypull opined relative to the uses occurring on the property prior to March 30, 1955 and stated that used cars had always been sold there, along with repair work, with cars being displayed prior to March 1955 all across the front, placing an "LB" near the green mark on Petitioner's Exhibit No. 2, identifying how far up the cars had gone. The witness testified that he had not observed any abandonment of the used car use or extended discontinuance of such use, stating that it had always been "pretty much the same, sometimes more, sometimes less. You know they [cars] move in and out." His testimony essentially bolstered that of Mr. Breidenbaugh.

During cross-examination, the witness stated again that he was very familiar with the area. On cross-examination, the witness testified concerning ownership of the property by Mr. Weber, Mr. Clayton and Bill Reid. He stated that both Clayton and Reid had worked on cars in addition to selling used cars. He stated that in 1955 he would observe "for sale" signs, just as you might today. He also testified that he "pretty much knew what the building

looked like in 1955" and it had not changed very significantly from what he could see from today's usage. He stated that he had never seen any offensive floodlights, fluttering signage, or other advertising which might be considered detrimental to the community. His testimony frequently indicated no significant change in the property usage, and that it had always been "low-keyed."

Mr. William Elwood, residing at 12343 Long Green Pike, which is about 2-1/2 miles from the subject site, also testified on behalf of the Petitioner. His earliest recollection of the property went back to 1954, when Bill Reid had a used car lot there. He stated that he had unusual familiarity with the site since his brother had been dating Bill Reid's daughter, and "we" used to hang out there. He stated that the block building existed on the site with used cars being displayed along Fork Road as Mr. Weber (the present owner) has them now. He stated that he worked on the property when he started high school in September 1955; and that even prior to that time it had been utilized for used car sales. He opined that, while he served in the Marine Corps from 1958 to 1962, he frequently came back to visit his parents and had occasion to observe that the site was still selling used cars and continued to do so at the present time.

On cross-examination, the witness stated that the one-story 14-foot by 24-foot shed was not in existence but a "little shack" was there in which trash was stored. He also stated that the upholstery building was not there in 1955, nor was the 12-foot by 22-foot shed. He further stated that in 1955 gas pumps existed in front of the building but were subsequently taken out by Mr. Weber.

Mr. Stanley Clayton was called as a witness for the

Petitioner, stating that he was a resident of Olmar, Florida, and travelled to Baltimore for the hearing, with travel expenses being reimbursed by Mr. Weber. He stated he was in the used car sales and service business in Florida, having resided in Maryland from 1948 through 1979. He testified that he had previously carried on a used car sales and service business at 13580 Fork Road, the subject site; and that he and his father owned the property, having purchased it in December 1970. He stated he was quite familiar with the property, having moved and lived in the Long Green Valley area since he was four years old. He stated that he was enrolled in Carroll Manor Elementary School in 1954, and that in 1954 Bill Reid owned the business, and Reid had repaired his father's truck after an accident in 1954.

Petitioner's Exhibit No. 8 was entered into evidence representing a booklet dated Saturday, April 28, 1956 and published by the organizers of the Carroll Manor "Hey Day" which referenced used cars being sold on the site. He stated that his father was friendly with Bill Reid and frequently stopped by Reid's place of business. In December 1970, he and his father purchased the property as a going concern. At that time, the people that were renting it were vacating the property, that is, C&D Automotive, so that Bill Reid had not run the business at the time that he and his father had purchased it. He stated that for a while he lived in Cub Hill, but always had occasion to visit the property and that throughout the years there were "always cars being sold there, in some way, shape, or form."

Petitioner's Exhibits No. 9 and No. 10 were shown to the witness. Exhibit No. 9 depicted a photograph of the site when the

witness and his father acquired it, before any painting, and he identified the picture as having been taken in the late 1970s. As to the four photos in Petitioner's Exhibit No. 10, the witness identified these as pictures taken in the mid-1970s of his used car operation, with gas pumps in front of the building and cars displayed on the upper end of the lot. The witness stated that the split rail fence was erected in 1976, and that cars were never parked beyond the split rail, since his father had four head of cattle back there and would not permit cars to be parked beyond the fence. He stated that when they purchased the property the only improvement on the property was the concrete building. The witness testified that he and his father had acquired 1.25 acres and that every car sold there came through the property, both wholesale and retail, with 1975 being a peak year of 175 to 200 vehicles being sold. Petitioner's Exhibit No. 11 was introduced into evidence and reflected car sales.

The witness continued to state that since they acquired the property in December of 1970 up to the sale to Mr. Weber, there had been no intensification in the use of the property for used car sales. The witness further stated that prior to purchasing the property, he had made legal inquiry from Senator Pine and was of the understanding that the property was zoned for used car sales at that time.

On cross-examination the witness acknowledged a small mortgage on the property, and that the property was worth the amount due on the mortgage, irrespective of usage "and the outcome of this hearing."

Mr. Robert B. Carter, 4809 Long Green Pike, stated he lived

about 3 miles from the subject site, and also testified on behalf of the Petitioner. Mr. Carter stated that he had resided at this address since 1971 and his familiarity with the property went back to 1964, or 1965, when he hunted on the site. He stated that there was an automotive function on the site, but was unclear as to whether or not it was a gas station or a garage, since he never used those particular services there. His familiarity with the used car sales function went back 15 or 20 years ago, when he became president and secretary of the Long Green Valley Improvement Association in 1974 and 1975. He was one of the three founding charter members. He opined that he was still a member, having served on the board for a number of years. He stated that from 1974 through 1995 the property had not been cited by the association for any violation. He did state that in the Spring of 1997 there had been two mailers sent out by the association (Petitioner's Exhibit No. 12 and Petitioner's Exhibit No. 13) which were also admitted for identification purposes, reflecting the minutes from the Long Green Valley Association board meeting of June 26, 1997. Those documents speak for themselves. Mr. Carter also stated that he had submitted a proposal to Mr. Weber to plant 16 white pines on his property, which had been accepted by Mr. Weber, the work to be completed in the Fall of 1997.

On cross-examination, Mr. Carter again admitted knowledge of the property up to 15 or 20 years ago, but not as it looked or existed in 1955.

Mr. Paul Weber testified on his own behalf, stating that he was the owner of Executive Auto Paint & Repair since July 1979. He stated that he had lived at 4825 Hydes Road and had resided in the

area for about 47 years. He stated that he purchased about 3 acres (more or less), had investigated the property before the purchase, and that it was his understanding that it was an ongoing auto repair and service, auto painting, and wholesale and retail sale of used cars facility. It was also his understanding from the previous owner, Mr. Clayton, that zoning was in place for a nonconforming use as to used car sales. Petitioner's Exhibit No. 16 was introduced representing the Department of Motor Vehicles license to sell used cars at the site, along with a signature by two officers certifying that the property was properly licensed to conduct a used car sales operation as of September 20, 1996. Additionally, Petitioner's Exhibit also reflected a letter from the Maryland Department of Transportation dated September 5, 1979 stating the site was licensed as a used car dealer site, and Baltimore County records indicated the property was zoned for such sales. Mr. Weber described in detail as to the building, and the used car business conducted since 1971. Petitioner's Exhibit Nos. 17, 18, and 19 were admitted representing photographs taken prior to the hearing in July 1997. Mr. Weber also described the site shown on Petitioner's Exhibit No. 17. Mr. Weber stated that no lights, banners or streamers had been displayed along the outside of Fork Road. He had no intention of doing so, in keeping with the general nature and character of the area. He stated that his understanding of current zoning as to car placement was that he could go up the "split rail fence" and he had no intention to go beyond that fence in the future. He further opined that he had not changed the character, nature or kind of used car sales that had previously existed prior to his purchase, and that he did not

intend to substantially alter the effect of his business on the community, nor had he undertaken any drastic enlargement or expansion of the used car sales during the 20 years he had owned the property.

On cross-examination, Mr. Weber explained that he had purchased Parcel 1 and Parcel 2, excluding the small parcel split-zoned to the west of the property. He stated that he had acquired the corner split-zoned parcel in 1986 by separate deed from Marion Francis, having acquired Parcels 1 and 2 from Stanley Clayton and his father. He stated that the 12-foot by 14-foot shed was there when he acquired the building from the Claytons, and that the one-story shed was also on the property but in bad shape, so that he removed it and put in another shed that was freestanding and approximately 14 feet by 24 feet. Mr. Weber stated he was about 7 years old in 1955 and remembered used car sales activity on the subject site.

He stated that presently, in the concrete building, he performs service work as well as automotive body repairs, painting, and the sale of used cars. All of the company's paperwork is also performed in that building. The 14-foot by 12-foot shed is used for storage, with the one-story shed behind the building used for painting autos. The building behind his property is not used in his business, but is presently used for upholstery work, and it has shared parking with his business, depending upon the volume of used cars for sale, and his need for full usage of the area. Mr. Weber indicated knowledge of the 25 percent expansion factor but not of the 1955 requirement.

Mr. John Edwards also testified, stating that he had lived at

13575 Fork Road since 1975, pointing out the location on Petitioner's Exhibit No. 2. He stated that since he purchased the property in July 1975 Clayton Motors had occupied the south side of Fork Road for used cars and auto repairs, and that the property had been utilized for used car sales continuously with the display area illustrated on the exhibit; and that for the past 22 years there had not been any significant changes in the business operation, with no significant impact on his property from 1975 to 1997, noting that the only major change was when the Claytons had repainted it. Mr. Edwards stated that he had purchased vehicles from Executive Auto. He also stated that in 1994 he had placed his property for sale, anticipating a move to Harford County, but then took it off the market after 3 months, electing to stay at his present location, and that decision did not have any bearing on Executive Auto's operations. He stated that he was the homeowner closest to Executive Auto and that he supported the nonconforming use issue.

On cross-examination, Mr. Edwards admitted he had considered requesting a commercial zone for the property, but that consideration had nothing to do with being in a commercial area on Fork Road. He also admitted no knowledge of what existed on the subject site in 1955, but that he had knowledge that went back to 1975 when he moved to his present residence. Mr. Edwards concluded the Petitioner's case-in-chief.

Mrs. Carol Trela testified in opposition to the Petitioner's request, stating that she had relocated to the area from Reisterstown about 20 years ago and was not then immediately aware of the Petitioner's operation. She became aware of a gas station

at the corner in 1988 and had had a car repaired there. She considered the site as merely a small, unobtrusive county garage with no cars for sale along the road, but some by the building, with no visible evidence or signage present. She opined as to what she considered an increase in cars in recent years and stated that the site today clearly evidences a commercial operation. She indicated that approval of the nonconforming use would simply increase commercial activity in a mostly rural community. Mrs. Trela testified that Parcel 3, which was acquired by Mr. Weber on January 20, 1986, should not have been included in the approval for a nonconforming use, since it was not acquired by the Petitioner until January of 1986. Parcel 3 had been owned by Marion Francis and had not been used as a used car business by the owner.

Mr. Adam Weber, Baldwin, Maryland, had been subpoenaed by Mr. Holzer to be present at the Day 2 hearing. He stated that he purchased the property in 1953 at a public auction with a demolished building on a vacant lot. The property had been sold to his father, and he sold it in July 1954. It was his belief that the site was zoned commercial, and that after the 1953 purchase he had no additional contact or knowledge of the property. He was not related to the present owner.

Mr. Bartlett C. Regan also testified on behalf of the Protestants. He currently resides on Church Lane which is about 1-1/2 miles away, and has lived there since December 1984. Mr. Regan related what was, in fact, a very exhaustive search of records from the Enoch Pratt Free Library concerning telephone listings for the area for a substantial number of years from 1955 through 1971/72. Copies were introduced into evidence for the Board to consider in

determining whether or not a nonconforming use was in existence in 1955 and had continued in an uninterrupted vein until the present time. A chart prepared by the witness was entered for identification purposes only.

Mr. Salvatore Glorioso also testified, stating that he had grown up in the area of Kingsville and was familiar with the Long Green Valley area, that familiarity going back to the early 1960s. He stated that he had purchased a tractor at the subject site from Preston Implement Company in 1960, when he was 9 years old, and had visited the site many times as Preston Implement Company operated there as a John Deere equipment franchise. Repairs and sales were made from the building with farm equipment on display outside. He stated that Preston was there until at least 1966 when that firm moved to Churchville. During the next several years, the subject site remained vacant and there was no other activity. He indicated that he regularly now passes Executive Auto and it does appear to him to be a much larger commercial operation than that from which Clayton operated a number of years previously.

On cross-examination, he indicated that he had been subpoenaed by Mr. Holzer and also admitted that he had been involved with the Fallston Improvement Association and had requested assistance from the Long Green Valley Association to support their disapproval of a methane treatment center in the Fallston area. Mrs. Christine Pika also testified concerning her knowledge of the site and essentially that she recalled buying equipment from Preston Implement, as was her son's testimony, and that to her knowledge there had been no automobile used car sales in existence during at least a 5-year period. She also testified that the John Deere

franchise had moved in 1966 to Route 22 in Churchville in Harford County for the purposes of expansion and that the subject site was vacant until the Claytons bought it in 1970.

Mrs. Alex Rohrbaugh also testified on behalf of the Protestants indicating that she was an adjacent property owner, lot 21, on the east side of the subject property, consisting of approximately 9 to 10 acres, and had been a 20-year resident of the area. She stated that she was familiar with Clayton Motors; that it had been essentially a small operation; and that she was not aware of any car sales. Her concerns appeared to be concentrated on increased commercial activity with Executive Auto becoming an enlarged business, and its impact on the general neighborhood.

Ms. Kathy Ebert, Glen Arm, Maryland, also testified and stated she had made inquiry of the John Deere Company concerning a franchise operation that had been located on Long Green Pike, Baldwin Mill Road, Fork Road area. Materials submitted by her were not admitted into evidence but were identified for the weight which the Board considered to assign same.

Ms. Catherine Gabriel also testified in support of the Protestants' position and indicated that she lived at 12601 Long Green Pike, about 2 miles from the subject site, since about 1978, and had been a member of the Long Green Valley Association for a considerable length of time. Her perception was that the site was an auto painting and repair facility, but not a used car lot. She testified to an increase in the number of cars in the area, which appeared to be for either repair or painting. during the past 10 months. She indicated that previously the site had been less obtrusive and that she was in attendance at a May 1997 meeting when

a restrictive covenant was suggested to restrict any expansion on the part of the Petitioner. The majority of Ms. Gabriel's testimony represented what appeared to be a genuine concern relative to future expansion of the present operation that would be totally out of character with the neighborhood.

The Board having heard oral arguments and the opportunity to review the evidence and both Counsel briefs, held a public deliberation on September 25, 1997.

This case presented the Board with a plethora of conflicting testimony concerning the site and the existence of a nonconforming use. The Board as a finder of fact is obligated to judge the credibility of each witness and apply each Board member's own knowledge, developed through experience and training, to the evidence and testimony produced. In Snowden v. Mayor and City Council, 224 Md. 443-448, 168 A2d 390 (1961), the Court of Appeals said:

> ...The heart of the factfinding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. "The Court may not substitute its judgement on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness."

Judicially speaking, Maryland courts have found that nonconforming uses do limit the effectiveness of land use control, contribute to urban blight, imperil the success of the community plan, and injure property values. County Council of Prince George's County v. E.L.P. Gardner, Inc., 293 Md. 259, 443 A2d 114 (1982). As a nonconforming use is inconsistent with the land use pattern established by the zoning regulations, the nonconforming

user is required by the majority of court decisions to prove the essential elements of his or her right to continue the nonconformity. Therefore, a nonconforming user must prove that his or her use existed prior to the enactment of the restrictive ordinance, and will not be sustained where evidence in support of the prior use is insufficient or contradictory. Kastendike v. Baltimore Association for Retarded Children, 267 Md. 389; 297 A2d 745. Additionally, quoting from the same case, the Court held "the right to maintain a nonconforming use does not depend upon the ownership or tenancy of the land on which the use is situated. The right attaches to the land itself; and is not personal to the current owner or tenant."

The Board is also cognizant of the standard of review imposed by the Court of Appeals in Gray v. Anne Arundel County, 73 Md. App. 307-309:

1) Did the Board recognize and apply the correct principles of law?

2) If the Board did not err in its legal analysis, are the Board's factual findings supported by substantial evidence; i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and it is within the agency's province to resolve conflicting evidence and where inconsistent inferences can be drawn from the same evidence, it is for the agency to draw the inferences.

3) How the agency applied the law to the facts. The test is whether a reasoning mind could reasonably have reached the conclusion reached by the agency, consistent with a proper application of the principles.

The Petitioners offered several witnesses in support of their position. Particularly convincing was that of Mr. Breidenbaugh, a resident of the area since 1951, with familiarity of the area going

back to 1918. His testimony was sharp, clear and convincing. He spoke concerning Wes Burl and his garage, and clearly identified Petitioner's Exhibit No. 7 as the site in question; that a commercial operation was in existence on the south side of Fork Road when he returned to the area in 1953 and cars were being sold there prior to the 1955 zoning regulations. He clearly stated that cars had always been sold there since 1953; and, in fact, he had purchased a car on site in 1952. He clearly recalled the Reid ownership, and the Clayton ownership, along with the current Weber ownership.

Mr. Theodore Cypull testified as to his area residency since 1946 (56 years) and that cars had been sold on site with no abandonment or extended discontinuance of the use, stating that "it's always been pretty much the same."

Mr. William Elwood's recollection went back to 1954 when Bill Reid had a used car lot there. His brother dated Reid's daughter, and he clearly remembered Reid's displaying cars along Fork Road, having actually worked on the site in September of 1955. While away in the Marine Corps for 3 years, he returned often to the area, stating that used cars had always been sold there. Mr. Clayton also confirmed use of the site as far back as 1954; with the Reid business being advertised in the Carroll Manor "Hey Day" booklet (Petitioner's Exhibit No. 8), his residency in the area going back to 1948. Photographs introduced into evidence clearly reflected old cars sitting on the property left there by the previous owner when the property was purchased in 1970. He stated that there had been no change in the use of the building up until 1979 when he sold it to Mr. Weber. He returned to the area

frequently after relocating to Florida to revisit friends in the Baldwin area and was not aware of any significant change or intensification in the business.

Mr. Robert Carter testified indicating area involvement as a charter member of the Long Green Valley Association, serving as a past president and a member of the Board of Directors. The association had not expressed any concerns about the operation since its incorporation in 1974; and it was only in very recent years that the current officers and directors had expressed concerns over the site, and in particular what was expressed as becoming an overly expansive commercial site.

Mr. Weber produced documents from the State of Maryland recognizing the site as an authorized motor vehicle dealer (Petitioner's Exhibit No. 16) which included zoning office certification of proper zoning for the sale of used motor cars. During his ownership, as confirmed by other witnesses, the site appeared to be low-keyed without the usual excessive outdoor lighting, floating flags, streamers, and other gaudy materials, and that he had no intention of expanding the site's usage.

Mr. John Edwards, the site's closest neighbor, testified convincingly concerning usage of the site as a used car facility since July 1975 with no adverse effects on his property.

Protestants also offered several witnesses in support of their position. These were not as convincing or compelling as those offered by the Petitioners. Mrs. Gabriel frequently commented inappropriately on direct questions posed by Counsel for the Petitioner; and frequently offered opinion in lieu of fact, with the Board seriously questioning the accuracy of community

newsletters issued by the association in opposition to approval of the nonconforming use issue.

Mrs. Trela also appeared to be more concerned with the future expansion of the nonconforming use than the existence of the use itself. Again, Mr. Regan had performed an excellent research of the telephone listings over a substantial number of years, but the lack of any specific street address did not permit the Board to assign any considerable weight to it. This was also the case with the John Deere records which Mr. Holzer attempted to introduce into evidence. While the Board took this data in for identification purposes only, here again the failure to provide any specific street address lessened the weight factor in consideration of the Board in making its final decision.

Counsel for Protestants also presented a substantial amount of data and evidence dictating the chain of title on the property going back to the time of Adam Weber, who acquired the site in 1953. The important date, again, is March 30, 1955, when the County Council adopted regulations concerning nonconforming uses. The first telephone listing for Reid's Valley Motor Sales was September 1956, Protestants' Exhibit No. 5A. Counsel for the Protestants argued: is it reasonable to assume that the used car business was in operation without benefit of telephone service? The probable answer is "no," except that the September 1955 directory may well have gone to press between March of 1955 and September of 1955; and Reid's Valley Motor Sales may not have had the opportunity to have the number added either into the regular telephone directory or the yellow pages. Petitioner's Exhibit No. 8 clearly shows Reid's Valley Motor Sales (New & Used Cars &

Trucks) as per the Carroll Manor "Hey Day" brochure under date of Saturday, April 28, 1956. Again, the document issued relative to the telephone directories submitted by the Protestants was probative -- but not necessarily conclusive.

The law places the responsibility on the Board to determine, from the testimony and evidence produced at the hearings, whether or not, factually, there existed on the site a used car sales activity prior to March 30, 1955 under the 1945 zoning regulations, and as of March 30, 1955 with no interruption or abandonment in the use as a used car sales lot up to the present time. To that extent, the Board concludes that the Petitioner has met his burden of proof in that respect. As to the expansion of the nonconforming use, the Board also concludes that the Petitioner has satisfied the requirements of McKemy v. Baltimore County, 39 Md. App. 257 (1978) and County Commissioners v. Zent, 86 Md. App. 745 (1991), which quantify the relevant factors which must be considered by this Board in determining the difference between illegal extension and permissive intensification. Specifically stated, these were:

1. To what extent does the current use of these lots reflect the purpose and nature 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 nonconforming use?

To this end, the Board, recognizing inconsistencies in the testimony and evidence presented by both sides, and assessing the

weight factor in hearing such testimony and the inferences, motivation and credibility of same, concludes that the witnesses for the Petitioner were far more convincing than those offered by the Protestants in establishing the requirements set forth in McKemy and Zent. Clearly the current use of the lot is consistent with the original use as of March 30, 1955; and, while some of the uses originally present may have disappeared (i.e., gas pump removal), the present usage constitutes a primary used car operation which does not substantially have any different or detrimental effect on the community.

Lastly, the Board, recognizing the differences between an illegal extension and permissive intensification, finds that there has not been a drastic enlargement or extension "of the original nonconforming use." The Court of Appeals in the McKemy decision recognizes that with the passage of time certain enlargements or extensions are permissible provided that they do not represent a "drastic" enlargement or extension of the original nonconforming use (McKemy, infra, pp 269-270). It is in this area that the Protestants appear to have their major concern, fearing an extension or intensification of the current use. Yet for a substantial number of years, since the 1970s, no one has questioned the validity of the operation or that it was operating within the parameters permitted by law. Clearly the evidence demonstrated that, while the local community has experienced growth, there was no evidence presented that the current operation has a greater impact in the community at the present time. Mr. Weber, the current owner, appears to be genuinely concerned in preserving the integrity of the operation, and a number of individuals testified

at the hearing concerning the fact that there was no detrimental effect upon the local area. The Court of Special Appeals recognizes "change" without impact on nonconforming uses. Property uses, by their very nature, do require some moderated change without involving "drastic" enlargement or extension. The Board, therefore, concludes that there has not been any drastic change or enlargement of the facility which would have any detrimental effect upon the immediate surrounding areas.

The Board unanimously has reached a decision that recognizes the subject site as a nonconforming use and that the Petition for Special Hearing for the property located at 13580 Fork Road in Baldwin, Baltimore County, Maryland, should be granted in accordance with Section 104.1 of the Baltimore County Zoning Regulations. The relief granted is specifically for a portion of Parcel 1, since Parcel No. 2 has never been used for the used car sales business. Additionally, as to the site plan (Petitioner's Exhibit No. 1), there exists a split rail fence which bisects Parcel 1. That portion of Parcel 1 on the southeast side of that fence has not been used for the business, so that the nonconforming use designation is hereby applied only to that portion of the property on the northwest side of the fence, as supported by the evidence, eliminating the area of the property on which the business could be expanded.

O R D E R

IT IS THEREFORE this 8th day of December, 1997 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing in Case No. 97-87-SPH seeking approval of the subject property as an existing

nonconforming use for car sales in accordance with Section 104.1 of the Baltimore County Zoning Regulations be and is hereby GRANTED, pursuant to Petitioner's Exhibit No. 1.

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

Charles L. Marks, Acting Chairman

Thomas P. Melvin

Harry E. Buchheister, Jr.

County Board of Appeals of Baltimore County

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

December 8, 1997

J. Carroll Holzer, P.A.
HOLZER and LEE
305 Washington Avenue, Suite 502
Towson, MD 21204

RE: Case No. 97-87-SPH
Executive Auto Paint and Repair, Inc.

Dear Mr. Holzer:

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

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
Administrator

encl.

cc: Long Green Valley Association
Charlotte Pine
Katherine Gabriel
Sharon Rohrbaugh
Carol Trela
Stephen J. Nolan, Esquire
Paul D. Weber /Executive Auto
Gerald K. Stevens, Esquire
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director/PDM
Virginia W. Barnhart, County Attorney

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11/3/97

IN THE MATTER OF: * COUNTY BOARD OF APPEALS

EXECUTIVE AUTO PAINT AND REPAIR, INC. * OF BALTIMORE COUNTY

* CASE NO. 97-87-SPH

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

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PROTESTANTS' MOTION TO RECONSIDER

Protestants Long Green Valley Association, Inc.; Charlotte Pine, Carol Trela, Bartlett Regan, Sharon Rohrbaugh and Tom Vance, individual Protestants, submit this Motion to the Board to reconsider their decision in the above matter as articulated in the Board's open deliberation of September 25, 1997 and say as follows:

1. At the time of the hearing before the County Board of Appeals, and all times prior thereto, Protestants were unaware that there was a witness (Carl Kress) to the use of the parcel currently occupied by Executive Auto Paint and Repair, Inc. who could testify with specificity that the Preston Implement Company, an authorized dealer of John Deere implements, occupied and used the same structure as presently used by Executive Auto Paint and Repair from 1960 until about 1970. (See attached affidavit of Carl Kress).

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2. Affiant Carl Kress currently lives at 1601 Philadelphia Road in Joppa, Maryland and is presently 71 years old.

3. On or about October 11, 1997, Mr. Kress attended the St. John's Lutheran Church's 16th annual Country Fair Day on Sweet Air Road in Baldwin, Maryland. It was at that encounter that he heard about the instant Board of Appeals case involving Executive Auto resulting in the attached affidavit.

4. Protestants submit that the attached affidavit of Carl Kress corroborates the testimony heard by the Board in this matter that there was a break of continuous use by Executive Auto of the

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sale of used cars at least within the decade of the 1960's that was specifically referenced in the sworn testimony of Salvitore Glorioso.

WHEREFORE, Protestants respectfully request the Board of Appeals to reconsider its opinion, particularly regarding the interrupted use as a used car lot by Executive Auto on the subject site, and schedule a new hearing for the taking of additional testimony on this point.

Respectfully submitted,

J. Carroll Holzer
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3RD Day of November, 1997 the foregoing Motion to Reconsider was mailed first class, postage pre-paid to Steve Nolan, Nolan, Plumhoff and Williams, 502 Washington Avenue, Suite 700, Towson, Maryland, 21204

J. Carroll Holzer

A:/Motions/LGVA.MTR

NEWTON A. WILLIAMS
THOMAS J. RENNER
WILLIAM R. ENGLEHART, JR.
STEPHEN J. NOLAN*
ROBERT L. HANLEY, JR.
ROBERT S. GLUSHAKOW
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C. WILLIAM CLARK
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JAMES D. NOLAN
(RETIRED 1980)

J. EARLE PLUMHOFF
(1940-1988)

RALPH E. DEITZ
(1918-1990)

WRITER'S DIRECT DIAL
823- 7853

September 24, 1997

VIA HAND DELIVERY

Hon. Charles Marks
Acting Chairman
Hon. Harry E. Buchheister, Jr.
Hon. Thomas P. Melvin
County Board of Appeals of Baltimore County
Old Court House
Towson, Maryland 21204

RECEIVED POST-HEARING
DAY ONE

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COUNTY BOARD OF APPEALS
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Re: Executive Auto Paint & Repair, Inc.
Case No.: CBA -97-87-SPH

Dear Mr. Chairman and Board Members:

In Protestants' Memorandum In Lieu Of Final Agrument, there were four significant inaccurate statements that I feel compelled to correct as follows:

PROTESTANTS' MISSTATEMENTS OF TESTIMONY AND EVIDENCE

At page 3:

> "While residential users were allowed to have party lines in this time period, businesses were not allowed to have party lines."

Fact: There was no such testimony or evidence admitted at the hearing.

At page 8:

> "Clayton testified that then he and his father took possession of the property, Bill Reed was not around because the property was leased to the 'Prestons'."

Fact: There was no such testimony by Mr. Clayton. (see Tr. 92-122)

At page 9:

> "They [Glorioso & Pika] testified there was no automobile used car sales in existence during that 5-year period ... He [Glorioso] then testified that after Preston Implement Co. left, the subject site building was vacant until the Claytons bought it in 1970."

Fact: There was no such testimony or evidence admitted at the hearing. At pages 97 and 98 Mr. Clayton testified that when he purchased the property it was a going concern known as C&D Automotive.

At page 16:

> "This documentation obtained from John Deere headquarters verifies the fact that Preston Implement Co. was in business at that location during the years 1961-1965."

Fact: First and foremost, the documents from Deere certainly do not describe any street address, much less 13580 Fork Road, as the dealership. Secondly, an objection to the admission of those unauthenticated documents was properly sustained and they are not in evidence in this case.

I believe I have a responsibility to bring the above matters to the Board's attention so that the record is accurately preserved.

Respectfully submitted,

Stephen J. Nolan
Counsel for Appellee

cc: J. Carroll Holzer, Esquire
Executive Auto Paint & Repair, Inc.
Gerard K. Stevens, Esquire

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9/15/97

IN THE MATTER OF: EXECUTIVE AUTO PAINT & REPAIR, INC. Petitioner 13580 Fork Road 11th Election District 6th Councilmanic District	*	BEFORE THE
	*	COUNTY BOARD OF
	*	APPEALS OF
	*	BALTIMORE COUNTY
Long Green Valley Association, et al. Appellants	*	Case No.: 97-87-SPH
	*	Hearing dates: July 10, 1997 August 14, 1997

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

PETITIONER'S POST HEARING MEMORANDUM

Executive Auto Paint & Repair, Inc., (hereinafter "Executive"), Petitioner, by Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered, submits this post hearing Memorandum for the consideration of the County Board of Appeals of Baltimore County.

STATEMENT OF THE CASE

This zoning appeal was filed by Long Green Valley Association, Charlotte Pine, Katherine Gabriel, Sharon Rohrbaugh, and Carol Trella from the decision of the Zoning Commissioner of Baltimore County rendered on January 16, 1997. The Zoning Commissioner's Order granted Executive's Petition for Special Hearing and approved the designation of a portion of Executive's 1.273 acre property in Baldwin as an existing non-confirming use for used car sales in accordance with Section 104.1 of the BCZR.

The County Board of Appeals held hearings on July 10 and August 14, 1997. At the close of the evidentiary hearing on August 14, the Board granted the appellants request to submit post-hearing memoranda in lieu of oral argument.

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QUESTION PRESENTED

Is there substantial evidence in the record to support the approval of an existing non-conforming use of petitioner's property for used car sales in accordance with Section 104.1 of the BCZR?

STATEMENT OF THE FACTS

As shown on the plat to accompany the Special Hearing Petition of Executive Auto Paint & Repair, Inc., the subject property is known as 13580 Fork Road and contains a one-story, three bay office and auto repair shop toward the west end of the property. An existing one-story upholstery work shop and shed are located in the rear. The property has on-site parking as well as on-site display areas as shown on Petitioner's site plan. With the exception of a very small portion of the property at the west end which is zoned B.L.-C.R., the vast majority of Executive's property enjoys the heaviest Baltimore County commercial zoning classification, namely B.R., Business Roadside zoning.

As will be for more fully discussed below, the subject property has been used for automotive purposes since the early 1950's. Executive Auto has operated the property since September 5, 1979, when it was licensed by the Maryland Department of Transportation for used motor vehicle sales. See Petitioner's Exhibit 15 attached. The certified copy of the Zoning Office certification expressly provided that used car dealer operations were permitted at the site. Clearly, an inference may be drawn by the Board that the Baltimore County Zoning Office recognized in 1979 the long standing, non-conforming use of the subject property for used car sales.

Applicable Zoning Regulations

As observed by the Court of Special Appeals of Maryland in *McKemy v. Baltimore County*, 39 Md. App. 257, at 259 (1978), "Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations." A 1948 Baltimore County display map indicates that this section of Baldwin was then zoned "E Commercial." As codified on September 1, 1948, by then Zoning Commissioner Charles H. Doing, the Zoning Regulations of Baltimore County which were then entitled Zoning Regulations and Restrictions for Baltimore County, were negative in nature. By negative in nature it is meant that a commercial use was allowed in a zone unless it was specifically forbidden. The 1948 Regulations were unlike the present BCZR which date from 1955 and which provide that in order to be allowed in a zone, a use must be specifically enumerated.

Attached hereto and incorporated herein by reference are pages 8 and 9 of the 1948 codification of the Baltimore County Zoning Regulations. As can be seen in Section VII, the E Commercial Zone, 8.1 through 17, designated seventeen enumerated uses which were not permitted as a matter of right. In like manner, at pages 12 and 13 of the 1948 Code, there are some 22 enumerated uses which require a special exception or special permit. New and used car sales are not among those uses enumerated as requiring a special exception or permit.

On March 30, 1955, the so-called "1955 Regulations" were adopted and entitled Baltimore County Zoning Regulations. With the adoption of the 1955 Regulations, the E Commercial Zone was divided into three parts, namely the BL, BM and BR zones. Furthermore, the drafters of the 1955 Regulations adopted a different regulatory standard for used car lots. Section 236.4 of the 1955

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Regulations required a special exception in the BR zone for a used car lot, styling it "used motor vehicle outdoor sales area, separated from sales agency building." Used car sales continue today to be permitted only in the BR zone and only by a special exception. Even though the subject property enjoys the requisite BR zoning, Executive is entitled to the protection conferred by the non-conforming use law and by Section 104.1.

Applicable Non-Conforming Use Law

In *Umerley v. People's Counsel*, 108 Md. App. 497, 503, 672 A.2nd, 173, *cert. denied*, 342 Md. 584, 678 A.2nd, 1049 (1996), it was noted that the "zoning authority must recognize and apply the correct principles of law governing the case." 67 Md. App. at 438-39. As noted by the Court in *County Commissioner v. Zent*, 86 Md. App. 745, 752 (1991), the Court of Special Appeals of Maryland discussed the concept of non-conforming use in *Loan v. Montgomery County*, 85 Md. App. 477, 496 (1990) and stated:

> An owner of land may establish a "lawful non-conforming use" if the evidence conclusively establishes that before and at the time of the adoption of the original zoning ordinance, he was using substantially all of his tract of land in a then-lawful manner for a use which by a later legislative action became non-permitted. (citation omitted)

In *Zent*, the Court of Special Appeals utilized the tests it had enunciated in *McKemy v. Baltimore County*, 39 Md. App. 257 in order to determine whether the subject uses represented a permissible intensification of an original use or an actual change of that use. In *McKemy* at 269-70, the Court of Special Appeals set forth the following four prong test which is to be applied in deciding whether current activity is within the scope of a non-conforming use: 1) to what extent does the current use of the property reflects 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; and 4) is the current use a drastic enlargement or extension of the original non-conforming use.

Petitioner Executive Auto respectfully contends that there is substantial evidence in the record taken as a whole which clearly demonstrates the lawful existence of a non-conforming use for used car sales as of March 30, 1955 and which complies with all four factors enunciated in *McKemy*. The evidence also established that the non-conforming use was never abandoned or discontinued for a period of one year or more as prohibited by Section 104.1 of the BCZR.

SUBSTANTIAL EVIDENCE IN THE RECORD DEMONSTRATES THE EXISTENCE AND CONTINUATION OF A LAWFUL NON-CONFORMING USE OF EXECUTIVE AUTO'S PROPERTY FOR USED CAR SALES.

Once the Board recognizes and applies the correct principles of law governing the case, the Board must then apply the law to the relevant evidence established in the course of the administrative hearing. *Umerley,* 67 Md. App. at 438-39. As the Board knows, great deference is accorded to it as an administrative agency under Maryland law.

Petitioner Executive Auto respectfully submits that the great weight of the evidence submitted throughout the two day hearing warrants the grant of the special hearing petition as requested by Executive Auto. Sworn testimony from four, independent witnesses confirmed the continuous use of the subject property for used car sales prior to March 30, 1955. A summary of that unrebutted evidence follows:

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John Lewis Breidenbaugh

- 86 year old area resident (born 1911). [Tr. 40] [1]
- Earliest recollection of subject intersection dates to 1918. [Tr. 45]
- In 1938 worked in Snavely building opposite what is now Executive Auto. [Tr. 45]
- From January 1950 to 1952 worked as mechanic in Wes Burl's garage (now location of refinisher). [Tr. 47-8]
- As part of his description of commercial uses in Baldwin as of 1952, Mr. Breidenbaugh testifies "Across the road, they sold cars on the lot." [Tr. 48, l.14]
- Returned to work with Wes Burl again in 1953 and states "they were selling cars there then," referring to Executive's location along the south side of Fork Road. [Tr. 49, l. 19]
- When asked how far along Fork Road cars were sold, Mr. Breidenbaugh placed a green ink mark on Petitioner's Exhibit 2 to indicate the extent of the display area in 1953. [Tr. 51]
- Remained working for Wes Burl into 1955. [Tr. 55]
- Since 1953, he has remained familiar with the subject site and used car sales have always been going on. [Tr. 52]
- Mr. Breidenbaugh bought a used car on the subject site in 1952. [Tr. 52]
- Bill Reed parked a tow truck on the property. [Tr. 59]
- Recalls Executive's predecessor, Clayton, who had "a lot of cars there then." [Tr. 60.]

Theodore Cypull

- Since 1941, this 69 year old nearby resident has lived on Pleasantville Road. [Tr. 64-5]
- Prior to March 30, 1955, there "Pretty much always been used cars there on the subject site." Specifically used car sales. [Tr. 65]

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1 At Petitioner's request and for the benefit of the Board's review of its evidence, the Reporter has prepared a transcript of Petitioner's witnesses. Copies are attached hereto

- Prior to March 1955, used cars were displayed for sale "the same place they do now, I believe, from all across the front." [Tr. 66]

- Initials, "TC" and uses yellow marks on Petitioner's Exhibit 2 to designate limits of display areas prior to 1955.

- After March, 1955, Mr. Cypull observed no abandonment or discontinuation of the used car use of the property. [Tr. 67]

- Recalls Clayton ownership and Reed ownership. [Tr. 70]

- Recalls "For Sale" sign in car windshields in 1955. [Tr. 73]

- Recalls upholstery shop in rear being there "a long time." [Tr. 75]

- Recalls a sign on building in 1955 that said "Used Car Sales". [Tr. 76-7]

- When asked to describe the nature and extent of used car sales back in 1955, Mr. Cypull testifies: "Pretty much like it is now. It hasn't changed that much." [Tr. 78, l.19]

- When asked by Mr. Holzer whether he recalls any other kind of operation being conducted out of this location, Mr. Cypull testifies that he does not. [Tr. 80]

William Elwood

Mr. Elwood testified on both hearing days.

- This area resident is 57 years of age. [Tr. 82]

- His earliest recollection of the subject site is 1954 when Mr. Reed's used car lot was there. [T. 82]

- Reed displayed used cars along Fork Road "where Mr. Weber has them now." "Cream puffs" in the front row. A middle row of economy cars; and the back row was "stuff he used to cannibalize ..." [Tr. 83]

- Later in September 1955, Mr. Elwood worked for Bill Reed at the subject site. [Tr. 83]

- On cross examination, Mr. Elwood confirmed site was used for used car sales prior to 1955 and continuing at least through 1958.

- In 1955, Mr. Elwood recalled 8 to 12 cars in the front display row; the second row had "a few less, sometimes more." [Tr. 88]

- Mr. Elwood started going up to Bill Reed's sales and service lot before he started working there in September 1955. [Tr. 89-90]

- On the second hearing day of August 14, Mr. Elwood testified that he was in Turkey from 1959 until April 1961. However, from April 1961 through August 1962, he drove by the property every weekend en route to his girlfriend's home and he observed car sales on the site. [Vol. II-3]

- In contrast to Mr. Glorioso's statement, he unequivocally testified that there was no John Deere dealership (e.g. Preston Implement Co.) on Executive Auto's site. [Vol. II-3]

- Referring to the 1960s, Mr. Elwood testified concerning tractor sales across the road from Executive's site where the refinisher is now located. He was emphatic that there was no tractor dealership or Preston Implement Co. on the subject site. [Vol. II, 4-5]

- Between 1966-68, Mr. Elwood lived on Long Green Pike and stated that the subject site was never vacant. [Vol. II, 6]

Stanley Clayton

- Mr. Clayton was born in 1948 and lived in the subject area until 1979. [Tr. 93]

- The witness and his father purchased 13580 Fork Road in December 1970 as a going concern (C&D Automotive). [Tr. 96-8] "...it was always cars there for sale and being serviced." [Tr. 97]

- Mr. Clayton recalls Bill Reed's tow truck and commercial operation as early as 1954. [Tr. 95-6]

- Through Mr. Clayton, Petitioner introduced Exhibit 8, an April 1956 program booklet containing an ad for Reed's Valley Motor Sales that describes its used car sale operation.

- St. Clair Motors based in Jarrettsville sold used cars on the subject site. [Tr. 98]

- Between 1966 and 1970, Mr. Clayton attended Towson State and visited the area. When asked about possible abandonment of the used car sale use, he testified "...it was always cars being sold there, some way, shape or form." [Tr. 99]

- Regarding the B.L. zoned corner property, Mr. Clayton testified there were special interest cars displayed there with the permission of the then-owner, Marion Francis. [Tr. 102]

- Regarding sales volume, a peak of 376 were sold in 1975; an average year involved between 175 or 200 car sales. [Tr. 103-118]

- Mr. Clayton identified a 1972 aerial photo showing cars displayed along Fork Road as Petitioner's Exhibit 5. [Tr. 105]

- There was never any interruption of used car sales on the subject site between 1970 and 1979, when the Claytons sold to Executive Auto. [Tr. 105]

- When Mr. Clayton bought property in 1970 his understanding was that used car sales was a lawful, nonconforming use. [Tr. 106] After seeking legal advice from then Senator James Pine he thought "property was zoned correctly for used cars." [Tr. 108]

- Denying any drastic enlargement or extension of used car sales, Mr. Clayton states that Executive's current site looks "very similar to what it looked like when we had it." [Tr. 121]

Clearly, the unrebutted testimony of the foregoing, independent witnesses conclusively establishes that the subject site was in continuous use for used car sales from 1952 through 1979. Prior to March 30, 1955, the subject property was being used "in a then-lawful manner for a [used car sale] use which by a later legislative action became non-permitted." *Zent* supra.

Executive's President, Paul Weber, testified that prior to his purchase of the property from Clayton in 1979 he undertook an investigation and understood that it was a lawful, nonconforming use for used car sales. [Tr. 140] Mr. Weber also obtained the proper MVA licensing and related Baltimore County zoning approval. See Petitioner's Exhibit 15. Regarding his sales volume, Mr. Weber testified that approximately 20-25 cars per month "are sold through the site." [Tr. 142] On rebuttal examination in response to Protestants' Exhibit 8, Mr. Weber explained that the annual figures reported to the MVA only refer to used car sales to which his dealership actually took title, and did not include consignment sales which are a large part of his used car business. It was clearly demonstrated throughout the course of Mr. Weber's testimony that the subject site satisfies the four

prong test of *McKemy*, supra. Furthermore, the current use certainly does not involve "a drastic enlargement or extension of the original non-conforming use."

Two other witnesses testified to corroborate the evidence of the uninterrupted use of the subject property throughout the 1970s, namely, Robert Carter and John Edwards. Mr. Carter was one of the incorporators of the protestant Long Green Valley Association and served as its President in 1974 or 1975. He is still a member of that organization today. Mr. Carter testified that an Association mailing in May or June 1997 which incorrectly described the nonconforming use area permitted by the Zoning Commissioner's order below. [Tr. 128-30]. Petitioner's Exhibits 14 and 15 describe a row of 16 white pines to be planted by Executive Auto to serve as a natural boundary to the northeastern limits of the longstanding used car display area. [Tr. 132-33]

Mr. John Edwards, the neighbor who is most affected by Executive's continuation of the subject non-conforming use, testified in support of the same. [Tr. 169] During the 22 years that Mr. Edwards has lived opposite the subject property, he has observed no significant changes in the original used car use which was present when he moved to his home in 1975. [Tr. 166] Mr. Edwards also testified that Executive's use today in 1997 does not have a substantially different effect upon his property than the used car sale use there in 1975. [Tr. 166] Executive's site has always been "well maintained" and "clean." [Tr. 167]

PROTESTANTS' EVIDENCE WAS AMBIGUOUS AND WHOLLY INCONCLUSIVE

In addition to certain Association witnesses who testified in opposition to the subject petition for special hearing, Appellants called Adam Weber, Bartlett Regan, Salvatore Glorioso and his mother, Mrs. Christine Glorioso Pika.

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Mr. Weber purchased the subject property as an agent for his father's real estate company in 1953. He visited the property on the day of sale and did not recall what use was there before or after. Indeed, after July 1954, he absolutely had not contact or involvement with the subject property.

Mr. Regan testified regarding his phone directory research at the Enoch Pratt Public Library. At best, his research results are incomplete; at the worst, they are misleading. In addition to the admission that the 1958 and 1959 records were not available at all, Mr. Regan admitted that he did not abstract those directory pages with the letter "v" and so he could not establish that "Valley Motor Sales" or "St. Clair Motors" or "C&D Automotive" did not have proper listings during relevant time periods. He could not state what the publication submission deadline was for any year and he admitted to the existence of "party lines" in rural areas in the 1960's. The documents furnished by Mr. Regan are not at all conclusive, much less persuasive.

Salvatore Glorioso, a community activist from the Kingsville area, testified on behalf of the Appellants concerning a John Deere dealership allegedly operated by Preston Implement Company at the subject site in the 1960's.[2] However, when asked about used car sales also taking place at the subject site, Mr. Glorioso's response was equivocal: "Not to my recollection, just farm equipment." This witness did not state under oath that used cars in fact were not sold; he just could not recall their presence. Petitioner respectfully contends that Mr. Glorioso was confusing the subject site with the tractor dealership on an opposite corner which was recalled by Mr. Elwood. Mr. Elwood subjected himself to cross examination on two occasions and he consistently described the absence of any other commercial operation on Executive's property beginning in 1954 and thereafter. [Vol. II-4] This was

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2 Material referred to by Mr. Holzer and Ms. Ebert and marked as Protestant's Exhibit 7 for identification only did not list 13580 Fork Road on any John Deere documents whatsoever.

also entirely consistent with Mr. Cypull's testimony on cross examination that no "other kind of operation" was conducted at the subject location. [Tr. 79, l.19-80, l.7]

Also inconclusive and ambiguous was the testimony of Mrs. Pika. She could not state under oath one way or another when asked whether used cars were present at the subject site. Stating "I wasn't there to look for cars," she simply admitted a lack of full recall.

For many of the individual protestants, the used car sales at the subject site were practically invisible throughout the 1970's and 1980's and early to mid 1990's. It was only in recent years (after some unsuccessfully sued Executive Auto on account of an easement conveyed by it to support an adjacent commercial building constructed by Orville Jones) that they determined to challenge and dispute the longstanding, lawful non-conforming use continued by Mr. Weber's company.

CONCLUSION

After applying the applicable law to the substantial weight of evidence demonstrating a lawfully existing non-conforming use for used car sales as of March 30, 1955, the Board should grant and approve Executive's special hearing petition and deny the appeal filed by protestants.

Stephen J. Nolan
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
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(410) 823-7800

Of Counsel:
Gerard K. Stevens, Esquire
Fisher & Winner
315 North Charles Street
Baltimore, Maryland 21201
(410) 385-2000

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 15th day of September, 1997, that a copy of the foregoing Petitioner's Post-Hearing Memorandum was mailed, postage prepaid, to J. Carroll Holzer, Esquire 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

Stephen J. Nolan

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

4/15/97

IN THE MATTER OF:	*	COUNTY BOARD OF APPEALS
EXECUTIVE AUTO PAINT AND REPAIR, INC.	*	OF BALTIMORE COUNTY
	*	CASE NO. 97-87-SPH

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

PROTESTANTS' MEMORANDUM IN LIEU OF FINAL ARGUMENT

The Protestants, the Long Green Valley Association, Inc., Charlotte Pine, Carol Trela, Bartlett Regan, Sharon Rohrbaugh, Tom Vance, individual Protestants (hereinafter "Protestants") submit this Memorandum of Facts and Law to the County Board of Appeals in Lieu of Final Argument in the above captioned case.

Statement of the Case

The Petition for Special Hearing was filed by Paul D. Weber, President of Executive Auto Paint and Repair, Inc. as owner of the property located at 13580 Fork Road, Baldwin, Maryland, which is located within the Long Green Valley in northern Baltimore County. The Petitioner sought approval and designation of the site as an existing non-conforming use for "used car sales" pursuant to Section 104.1 of the Baltimore County Zoning Regulations (hereinafter "B.C.Z.R."). The Protestants are individual property owners adjacent and adjoining the subject property as well as a community association within whose boundaries the subject site is located. After hearing before the Zoning Commissioner of Baltimore County, on January 16, 1997, approval for the designation of that portion of the site identified as parcel 1, was granted as an existing non-conforming use for "used car sales." From that decision, a timely appeal was filed to the County Board of Appeals. This Board held hearings on July 10 and August 14, 1997. This Memorandum is due on September 15, 1997 followed by a public deliberation on September 25, 1997.

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Statement of the Facts

Normally, counsel here would summarize the testimony elicited from the witnesses presented by both the Petitioner and the Protestants before this Board; however, in this case, that will not be done for two reasons. First, the Board had ample opportunity, which they exercised, to take notes of the individual witnesses testimony. Secondly, it is more important for the Protestants to clearly establish for the Board the timeline that was presented by all of the evidence during the course of the hearing. The timeline will establish the failure of the Petitioner to prove, under B.C.Z.R. Section 104.1, that the use as a "used car" lot existed in March of 1955 and was continuous and uninterrupted thereafter.

A. Facts in General

The site is a large tract at the intersection of Long Green Pike, Fork Road and Baldwin Mill Road, approximately 3 acres in total. On Petitioners' Plat, Exhibit #1, the tract is divided into two parcels, parcels 1 and 2. Parcel 1 contains two pieces of separately acquired property by the Petitioner as will be discussed later in these facts. For the purpose of the Special Hearing, parcel 2 is not involved. Parcel 1 is approximately 1.273 acres in area and it is split zoned BL-CR and BR. The predominant area of parcel 1 (1.175 acres) is zoned BR and .098 acres is zoned BL-CR.

Generally, the site plan shows various improvements on the site including a primary building 60 x 30 ft.; to the rear of that building is a small 14 1/2 x 12 ft. addition; a free standing 24 x 14 1/2 ft. one story shed; an existing one story building used as an upholstery workshop; and another single story shed. (The origin of these buildings will discussed later in the **Statement of Facts**).

B. Timeline.

1. Baltimore Telephone Directory Listings Timeline- Bartlett Regan presented the results of his investigation contained Protestants' Exhibits 5A thru O, which were various telephone listings obtained from the microfilm files of the Enoch Pratt Library. While presenting the telephone listings in evidence, Regan clarified two points. First, that the Baltimore Telephone Directories from the year 1955 until 1964 were divided into city and suburban listings. In 1965, the Baltimore Metropolitan Area Directories were introduced eliminating the suburban section. Regan testified that on the microfilm reels, the cover pages were illegible which required utilizing the dated yellow page covers for identification purposes only. Secondly, Regan testified that the question of party lines was raised with regard to the Lyric 2-7777 phone number. While residential users were allowed to have party lines in this time period, businesses were not allowed to have party lines.

Regan then introduced Protestants' Exhibits 5A thru O and discussed a telephone directory chart identified as Protestants' Exhibit 6 for identification. The admitted evidence established the following:

12/16/54- William Reed purchases property from Peterson.

03/30/55- Date for non-conforming use- Baltimore County Zoning Regulations amended.

09/55- No listing for Reed's Valley Motor Sales- Therefore, no corroborative evidence of automotive sales at site.

09/56- First listing for Reed's Valley Motor Sales (phone number Fork- 7777).

09/57- Second listing for Reed's Valley Motor Sales (phone number changed to Lyric 2-7777).

1958-1959- Phone directories not available from Pratt Library.

1960-1965- Preston Implement Company listed (phone number Lyric 2-7777). No listing for Reed's Valley Motor Sales.

1966-1969- No listing for either Preston Implement Company or Reeds Valley Motor Sales.

12/01/70- William Reed sells to Stanley Clayton; no listing for either.

1971- Clayton Motors first listed.

2. Witnesses testimony timeline- The Board should be interested in comparing the testimony of the Protestants' witnesses with the physical documentation provided by the telephone directories as Protestants' Exhibit 5 and the various deeds presented through the testimony of Carol Trela, 5433 Paterson Road, Baldwin, Maryland. The Board will recall that Mrs. Trela obtained authenticated deeds from the Land Record Divison of the Clerk's Office for Baltimore County. Her obtaining of these documents was confirmed and authenticated by Bob Joy, an attorney specializing in title examinations and by reviewing the Land Records of Baltimore County. Joy adopted the documentation submitted by Carol Trela as Protestants' exhibits and verified their accuracy. The following is a timeline established by the testimony of witnesses related to the physical evidence of the deeds and the Baltimore Telephone Directory listings:

1953- The testimony of Adam Weber, who was subpeoned by the Protestants, established that he acquired the subject property in 1953 and at the time, there

were no buildings on the site, only a "pile of wood" and that in 1954, his family sold it. This testimony is validated by the deeds introduced by Trela and authenticated by Joy.

11/23/53- The timeline documentation of deeds submitted by Trela establishes that parcel 1 was purchased by Adam Weber on November 23, 1953 by Straw Party, J. Thomas Phipps.

Adam Weber and his various corporations and straw parties owned the property until July 20, 1954, when it was sold to Evelyn and Jack Peterson. Weber's testimony was that he bought it at auction and it was a vacant lot purchased as an investment.

November 23, 1953, Fisher to Weber's straw party, liber 2404, folio 525.

On the same date, leasehold interest was conveyed by straw party to Henry John Weber, (Adam Weber's father), liber 2404, folio 527.

On the same date, mortgage was recorded to Gustov Ebersberger, liber 2404, folio 530.

On the same date, J. Thomas Phipps Straw Party conveyed the property to Raven Realty, Inc., which was a corporation owned by Mr. Weber, liber 2404,

folio 535. Deed transactions of Henry John Weber continued on July 20, 1954 when Henry John Weber assigned the leasehold interest to J. Thomas Phipps, Straw Party liber 2519, page 399.

On the same date, Raven Realty, Inc. conveyed the ground rent to J. Thomas Phipps, liber 2519, page 401.

These transactions were in preparation for the transfer to Evelyn and Jack Peterson on the same date, liber 2519, page 403- July 20, 1954.

07/20/54- Jack and Evelyn Peterson purchased the property on this date from Henry John Weber through Straw Party J. Thomas Phipps. The Petersons owned a grocery store across the street on Long Green Pike- they were never in the used car business.

12/16/54- Peterson sold property 5 months later to William R. Reed and his wife, Ruth E. Reed- liber 2615, page 152.

03/30/55- Baltimore County Zoning Regulations non-conforming use applicable.

09/55- No listing for Reed's Valley Motor Sales.

09/56- First listing for Reed's Valley Motor Sales. (Phone- Fork-7777).

Bartlett Regan's exhaustive examination of telephone records as previously referenced through the Enoch Pratt Library, validates the deed timeline as

well as the testimony of Salvatore Glorioso and his mother Christine Pika.

There was no telephone listing Reed's Valley Motors until September, 1956. Bill Reed bought the property on December 16, 1954. There was no telephone listing until September, 1956, 21 months after he purchased the property. It is not reasonable to assume that the business was in operation on the magic date of March 30, 1955 when there existed no telephone listing until the Fall of the following year.

09/56- Reed's Valley Motors was presumably in business in 1956 as shown on the Carrol Manor School Hay Day ad entered into evidence by the Petitioner. This is also validated by the telephone listing for the business at Fork 7777 in September of 1956. In 1957, the telephone listing of Reed's Valley Motors is repeated, but this time it is changed to Lyric 2-7777.

1958-1959- The phone record not available from Pratt Library. It is not possible to determine whether or not Reed's Valley Motor Sales was in existence through the telephone directory since they were not available for 1958 and 1959; however, we do know that William Reed leased the property to Preston Implement Company for a John Deere dealership.

1960-1965- The telephone directories list the Preston Implement Company at the same telephone address, Lyric 2-7777 for the period of 1960-1965. Coincidently,

there is no listing for Reed's Valley Motor Sales at all during that same period. According to the testimony of Glorioso, Preston Implement Company then left the location in 1965 and moved to Harford County so it could expand.

1966-1969- For the years 1966-1969 there is no listing in the Baltimore telephone directories for either Reed's Valley Motors or Preston Implement Company. This ties in with the testimony of Salvitore Glorioso that the property was vacant for a number of years before Stanley L. Clayton, Stanley R. Clayton and Anna M. Clayton bought the property in 1970.

12/01/70- The deeds verify that Stanley L. Clayton and Stanley R. Clayton, father and son, bought the subject site on December 1, 1970 (liber 5148, page 513), and operated Clayton Motors. Clayton testified that when he and his father took possession of the property, Bill Reed was not around because the property was leased to the "Prestons."

The testimony of Salvitore Glorioso and his mother, Christine Pika, coincides exactly with the telephone timeline and deed evidence. There is no reason to believe that either one of them was motivated to lie or be mistaken about the existence of the John Deere Implement Co. located on the subject site from 1960-1965. Glorioso and his

mother, Pika, lived on Sunshine Avenue and were heavily involved in farming operations at that location and also later when they moved to Mt. Vista Road. They operated a local vegetable farm at each location as a family operation during the years that Preston Implement Company was located in the very building that is now owned by Executive Auto Paint and Repair. They testified that they bought equipment from Preston Implement and had tractors and other farming items repaired at that location as well as their purchasing of parts at that location. They testified there was no automobile used car sales in existence during that 5-year period. Further, Glorioso testified that the John Deere dealership franchise was moved in 1966 to Route 22 in Churchville in Harford County for purpose of expansion. He then testified that after Preston Implement Co. left, the subject site building was vacant until the Claytons bought it in 1970.

1970- Kathy Gabriel, Sharon Rohrbaugh and Carol Trela all testified they had lived in the community for approximately 15-20 years, and that they did not know or observe the operation of Executive Auto Paint and Repair as a used car lot. They each testified that they did not see any more than 3 to 5 cars on the lot and those that were parked there had no "for sale" signs on them and looked as if they were waiting to have engine work, paint and body and fender work to be performed

on them in the existing building. They testified it was a quiet business visually conforming with the rural area. They each testified that there had been a tremendous increase in cars since the zoning signs have gone up and that presently, 20-30 vehicles can be seen on the lot and many have "for sale" signs on their windshields. They also testified that ancillary buildings have been added behind the main building and that there is a very large tractor trailer parked behind the fence.

They also testified previously that during the 1970's there were no cars parked at the corner lot which was purchased by Executive Auto from Marion Francies in 1986. Gabriel, Rohrbaugh and Trela testified that now there are cars and boats parked on the corner on what was designated Parcel 3 by Trela.

01/20/86- Carol Trela testified concerning Parcel 3, the property acquired and so acknowledged by Paul Weber on January 20, 1986, liber 7090, folio 406. That was a separate piece of property, distinct and separated from the chain of title originating with Adam Weber, which has been the focus of the alleged original non-conforming use site. What was designated by Carol Trela as Parcel 3 within Parcel 1 should not have been included in the application for non-conforming use because it was not even acquired by the Petitioner until

> January 20, 1986. In 1955, Parcel 3 belonged to Marion M. Francies and was never used or operated as a used car business by the owner. Francies had a country store in which he lived and sold miscellaneous items but had no connection with the used car operation.

Thus, the Board can see that according to the testimony and evidence presented by the Protestants, there are three time periods where Protestants believe that the Petitioners have not established use of the site as a used car lot. First, the period from March 30, 1955 until September of 1956, Protestants believe that Petitioner has not presented supportive and corrobative evidence that the subject site has been continuously operated as a used car lot from March, 1955 to the present. Secondly, the period from 1960-1965 indicates Preston Implement Co. and John Deere Tractors utilized the site for a tractor sales and repair operation. Thirdly, from 1966 to December 1, 1970 there no listing for Preston or Reed's and the testimony of the witness Glorioso was that the property was vacant.

C. Petitioners' Witnesses

This case places before the Board the testimony of lay witness in direct opposition to each other. Petitioners are required to present and establish under the law, the continuation since 1955 of used car sales on the site. Protestants submit that the testimony of their witnesses, Glorioso and Pika, is corroborated by the physical evidence, deeds and telephone directories submitted. Protestants will now analyze the fabric woven together by the Petitioners in an attempt to establish a continued used car operation on the subject site:

1. Richard Matz- The Petitioners' engineer, other than drafting Petitioners' Exhibit #1 (the site plan for the subject request) had no personal knowledge of the site prior to the summer of 1995. Matz did, however, verify that parcel 1 consisted of two separate historical ownerships within that parcel. The first being the property obtained by Paul Weber from Stanley Clayton as to the original site and; secondly, the January 20, 1986 property acquired from Marion M. Francies which was separate and apart from the original property allegedly utilized as a non-conforming used car business.

2. John Lewis Breidenbough- Petitioners' witness, John Lewis Breidenbough who is 86 years old, testified he worked in a building run by Charles Snavely at the end of WW I. He said:

> "There is a garage set there where you come down Fork Road. You run straight into it." (Transcript, page 1, line 2).

This garage that he referred to was not Executive Auto building, but at the site "where the block building is located now (Transcript, page 10, line 8) across the road on Long Green Pike. It is clear from the testimony of Breidenbough that he was not referring to the block building on the subject site, but across the road. One simply has to look at the Exhibit to see that drawing a line down in a westerly direction on Fork Road you would run right into the garage referred to by Breidenbough which is located on the west side of Long Green Pike.

Breidenbough testified that in 1950 he worked for Wes Burl in a tar paper building that burned down (page 12, line 9). Again, the location was "so if you were coming down Fork Road and keep on driving, you'd run right into that tar paper building..." this building was called Baldwin Motors. It is the same building previously alluded to on Long Green Pike which is not the Executive Auto Building.

Breidenbough testified that used cars were sold from the subject site around 1952 at the corner where the BL zone is located and along Long Green Pike and Fork Road. (Page 14). However, later on in his testimony, he was not clear if it was 1952, 1953 or 1955 (Pages 17-19). He did testify he bought a used car in 1952 that was parked at the corner. It was not bought from any building and he did not know who he bought it from. It was a very casual sale. He testified that people just brought cars to the corner and sold them. Breidenbough's recollection is in direct contradiction to the testimony of Adam Weber, Sr., who said he purchased the property as an investment in 1953, and at that time it was a vacant lot and continued as such when he owned it.

3. Theodore Cypul- Petitioners' witness Cypul testified that used cars were sold prior to March 30, 1955 in direct opposition to the testimony of Adam Weber, Sr. who verified there was no used car lot when he purchased the property in 1953 and 1954.

4. William Ellwood- Ellwood testified he worked for Bill Reed from September, 1955 to March of 1957 when he went into the Marine Corps for 4 years. On recall, Mr. Ellwood testified he worked part time for Reed from 1955 to 1956. His dates changed and are inconsistent.

It is clear that Breidenbough, Cypul and Ellwood's testimony is in direct contradiction to the testimony of Adam Weber, Sr., as well as the clear and convincing testimony of Glorioso and Pika. No supportive or corroborative documentation as to time frame of a continuous use non-conforming use supports the Petitioners' witnesses testimony while much documentation supports the Protestants.

5. Stanley Clayton- Stanley Clayton was called by the Petitioners to testify. It is clear that Clayton's actual knowledge begins from the time he acquired the property on December of 1970. It is significant to note that the Petitioners could not call, nor produce any evidence from Bill Reed in regard to the significant time frame from Reed's acquisition of the property from Peterson on December 16, 1954 until Reed sold to Stanley Clayton on December 1, 1970. Significantly, Clayton testified that his property which he utilized as a used car lot did not include the corner property which Paul Weber subsequently acquired in December, 1986 from Marion M. Francies. Therefore, the attempted addition of this parcel on the corner acquired from Francies is not a part of the non-conforming use and its acquisition and use in

1986 by Weber, would operate to terminate the non-conforming use which will subsequently be discussed in the Legal Argument section of this brief.

Clayton, in his testimony, did acknowledge that when he purchased the property on December of 1970 that the only construction or building that then existed was the cinder block building of 30x60 ft. Clayton acknowledged his construction of the wooden shed, upholstery buildings, all other buildings added in the rear of the property and extensions to the original cinder block building of 30x60 ft., during the course of his and his father's ownership.

6. Rob Carter- Carter's testimony provides little assistance in that his earliest recollection of the property as a used car lot was in 1982.

7. Paul Weber- Weber acquired the subject property in June of 1979 from Clayton. He testified that he has been displaying used cars on the corner property since 1979 even though he did not acquire ownership of it until 1986. He further testified that he sold 25 wholesale and 20 retail cars each month. He then testified that in 1979, he averaged 10-12 cars per month sold and thereafter, 15-20 cars per month sold. Weber, when confronted with copies of his application for Dealer's License for the last three years (1995-1997), (marked as Protestants' Exhibit 8), admitted that he sold only 31-38 wholesale and 15-30 retail used cars each year.

Annually

January 31, 1995- 15 retail, 31 wholesale.

January 31, 1996- 21 retail, 38 wholesale.

January 31, 1997- 30 retail, 36 wholesale.

Weber's explanation was that the small number of cars were titled in Executive Auto Paint and Repair and that most of his used cars were sold on consignment and belonged to other entities. The attached copy of the Maryland Annotated Code, Transportation Article, Section 13-113 (attached hereto as Exhibit 1), requires that the dealer, Executive Auto, must hold the title in its name and not in other names and not in open titles. This appears to be a procedure that is not in compliance with the Maryland Law.

Finally, Protestants sought to introduce evidence obtained from the John Deere Co. in regard to the Preston Implement Co. and the subject site as Protestants' Exhibit 7 for identification. This documentation obtained from official John Deere headquarters verifies the fact that Preston Implement Co. was in business at that location during the years 1961-1965. The documents were mailed from the law department of the John Deere Co., John Deere Road, Moline, Illinois 61265 directly to the witness, Cathy Ebert, who was to introduce them into evidence. The record will contain counsel's arguments and proffer that these documents should have been admitted as exhibits and the documents are self explanatory in supporting the conclusion that the subject site has not been a continuous operation for used car sales since March 30, 1955.

Questions Presented

1. Petitioner failed to meet its burden of proof to establish under B.C.Z.R. Section 104.1 that the subject site was being utilized as a used car lot on March 30, 1955 and then continuously and uninterrupted since then.

2. That a change from the non-conforming use, or an addition and expansion of the non-conforming use such as occurred by the acquisition of additional land on January 20, 1986 by the Petitioner, terminated the non-conforming use as a matter of law.

3. That the unrebutted evidence in this case (which the Petitioner and his witness Clayton acknowledged) established that the nonconforming use of the subject site was expanded from the 30x60 ft. building to additional buildings, all in violation of the BCZR, which results in the termination of said use as a matter of law.

4. That the uncontested evidence presented in Petitioners' own case establishes that pursuant to Section 104.3 B.C.Z.R., the existing non-conforming use was expanded in excess of 25 %, in violation of the Baltimore County Zoning Regulation.

Legal Analysis

A non-conforming use is defined in Section 101 of the Baltimore County Zoning Regulations 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-conform' is a non-conforming use."

Furthermore, non-conforming uses are governed by Section 104 of the B.C.Z.R. Section 104.1 provides for a continuation of a non-conforming use provided, however, 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," shall terminate the right to continue or resume such non-conforming use. Section 104.3 of the B.C.Z.R. provides that no non-conforming building or structure and no non-conforming use of a building, structure or parcel of land shall hereafter, be extended by more than 25% of the ground floor area of the building so used. Case law further prohibits the addition of land to a non-conforming use as well as defining illegal expansion thereof.

Non-conforming uses are not favored by the law and Maryland's Appellate Courts have consistently held that non-conforming uses pose a threat to the success of an orderly zoning scheme and can limit the effectiveness of land use control. See County Council of Prince George's County v. E. LPL. P. Gardner, Inc., 293 Md. 259 (1982) for a general discussion of non-conforming use cases. Additionally, the Board may wish to review Anderson's American Law of Zoning, Chapter 6 entitled, "The Creation, Limitation, and Termination of Non-Conforming Uses." Sections 6.01-6.07 provide a background discussion for non-conforming uses and Section 6.45-6.53 provide for a discussion in regard to extension of the non-conforming use. The disfavor which the zoning authorities, treatises and courts around the country view non-conforming uses, certainly supports the Maryland Court of Appeals in its analysis in the Gardner case. In the instant case, the applicable

zoning regulations in Baltimore County were first enacted on January 2, 1945; however, the regulations were comprehensively amended in 1955 and established the basic regulations which apply to this case. Among the business zones created were the BL and BR zones. An examination of the 1955 regulations discloses that "automobile sales" were permitted in the BR zone by Special Exception. Specifically, Section 236.4 of the 1955 regulations identified Special Exception uses in among those listed, including "used motor vehicle outdoor sales area, separated from sales agency buildings." The BL zone did not allow automobile sales area at all. It is not contested that the subject property has never received Special Exception approval for auto sales for the BR zone portion of the tract. It is clear and undisputed that the use of the subject property as an auto sales was prohibited by the zoning amendments enacted on March 30, 1955; thus, the sales business can operate legally today, only if it is designated a non-conforming use.

Legal Argument

I. Petitioner failed to meet its burden of proof to establish under B.C.Z.R., Section 104.1 that the subject site was being utilized as a used car lot on March 30, 1955 and then continuously and uninterrupted since then.

A. Prior to March 30, 1995- Protestants will not restate all of the facts contained in the **Statement of Facts** in this memorandum, but will draw the appropriate conclusions therefrom for the purpose of this argument. The Petitioners, as the moving party, have the obligation to establish by preponderance of the evidence presented and to overcome the general legal view disfavoring non-conforming uses by proving to the Board that the subject site existed as a used car lot on March 30, 1955. Protestants submit that the evidence is clear that Petitioners'

witnesses are mistaken in their testimony that this used car facility existed back into the 1940's and early 1950's. In fact, the testimony of Adam Weber who had to be subpoened by Protestants to appear was that when he purchased the property in 1953, there were no buildings on the site at all, and that when it was sold in 1954, there were no buildings on the site. It clearly was not then operating as a used car lot in 1954. After acquiring the site from Weber, the Petersons sold it to William R. Reed on December 16, 1954. Again, there was no building on the property at that point. The telephone directories of September, 1955 show no listing for Reeds Valley Motor Sales until September of 1956 which is the first listing. As previous explained in Statement of Facts, the documented evidence presented does not support the testimony of Petitioners' witnesses Breidenbough, Cypul, and Ellwood. Protestants believe that no used car operation existed on March 30, 1955, therefore, no non-conforming use has been proved by the Petitioners.

B. Continuity from 1955 - present- It is incumbent upon the Petitioners to prove under Section 104.1 that the non-conforming use has continued uninterruptedly since March 30, 1955. Protestants submit that in this requirement, Petitioners have failed. In the **Statement of Facts**, Petitioners have established that there are two time periods where they believe the evidence is lacking to establish used car sales. First, from 1960-1965 when the Preston Implement Co. ocupied the site and was listed with the same telephone number that had previously been listed to Reed's Valley Motor Sales. The telephone directories established no listing for Reeds Valley Motor Sales during that same time period. The testimony of Glorioso and Pika, in addition to the telephone directories, clearly provide the Board with evidence of a 5-year hiatus in used car sales. The second period of absence of the used car operation was from 1966 to December 1, 1970 when there is no evidence

in the telephone directories of either Preston or Reeds Valley Motor Sales and likewise, testimony from Glorioso and Pika that the property was vacant. The testimony of Stanley Clayton that he acquire the property on December 1, 1970 and began using the subject site as a used car lot, begins the established proof of such an operation for the Petitioner.

The question of whether or not there was used car activity on the site on March 30, 1955 and whether there were two interruptions to the used car operation, is a question of fact for the Board to decide. It is recognized that there is conflicting testimony between some of the witnesses presented by the Protestants and the Petitioners; however, Protestants submit that in their previous **Statement of Facts** contained herein, they set forth corroboration of the Protestants' witnesses Glorioso and Pika by the telephone directories, deeds, and testimony of Adam Weber which is lacking in the Petitioner's case. There is no supportive evidence or corroboration of the Petitioners' witnesses' testimony as to the three crucial time frames of interest to the Board- the specific dates of March 30, 1955, 1960-65, and 1966-69.

WHEREFORE, Protestants respectfully request that this Board find that Petitioners failed to meet their standard of proof to establish that the non-conforming use existed on the site at the time the zoning regulations were amended on March 30, 1955, and that there was no interruption in the use as a used car lot for the periods 1960-65 and 1966-69.

II. That a change from the non-conforming use, or in addition, an expansion of the non-conforming use such has occurred by the acquisition of additional land on January 20, 1986 by the Petitioner, terminated the non-conforming use as a matter of law.

In the instant case, if there was as alleged, a non-conforming use for a used car lot which began on or before March 30, 1955, it could only by definition have applied to the property purchased by the Petitioner, Executive Auto/ Paul Weber from the property conveyed to him by way of deeds from Clayton back to William Reed. It is uncontested that this property did not include that portion of Parcel 1 on Petitioners' Exhibit 1 that has been defined in the testimony of Carol Trela as Parcel 3. That is a triangular piece of property on the western boundary located at the corner of the intersection of Long Green Pike, Baldwin Mill Road and Fork Road. It is undisputed that this triangular piece of property was owned by Marion M. Francies and was never a part of the alleged non-conforming use operated by Reed and Clayton. It was obtained subsequently by Executive Auto on January 20, 1986. This Parcel 3 cannot be added to increase the size of the non-conforming use as a matter of law.

Again, for a general understanding of non-conforming use and the limitations on the extension of use, see American Law of Zoning, Section 6.45. There it is discussed that the right to continue a non-conforming use does not include a right to extend or enlarge it. This appears to be the rule, whether or not the municipal corporation is adopting an ordinance which specifically limits the rights of the non-conforming user to enlarge or extend its use. The Courts have ruled that expansion of a non-conforming use offends the spirit of zoning regulations and the stated purpose of the regulations to ultimately eliminate the non-conforming use.

Anderson, in Section 6.47, likewise speaks of unlawful extensions or enlargements of non-conforming uses affected by the addition of new equipment, facilities or the enlargement thereof. In Section 6.50, Anderson comments upon the Maryland case of Phillips v. Zoning Commissioner of

Howard County, 225 Md. 102 (1961), describing the differences between intensification of a non-conforming use which is permissible, versus an illegal extension by saying:

> While it is true that mere intensification of non-conforming use is permissible so long as the nature is not substantially changed, it is generally recognized that the land owner to continue the same kind of use to which the property was devoted on the critical date does not confer on him a right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of prior existing use.

Perhaps the most significant and important section in Anderson, is Section 6.51:

> The Courts have consistently disapproved extensions of non-conforming uses which involve use of new land on a lot other than the one occupied by the original non-conforming use. (Emphasis Supplied). This result has been reached where the land in question was acquire before, as well as after, enactment of the restrictive ordinance. Use of such land is proscribed, although the new land is located in the same district, as across the street, as adjacent to the land originally occupied by the non-conforming use.

A number of cases cited from other jurisdictions illustrate the clear majority view of denying extension of a non-conforming use, newly or subsequently acquired. See Rotter v. Coconio County, 818 Pacific Reporter, Second Series 704, 169 Arizona, 269 (1991) attached hereto. See also, Minquadale Civic Association v. Kline, 212 A.2d 811 (1965), attached hereto, and finally Petrillo v. Board of Zoning Appeals of the Town of New Haven, 162 Atlantic Reporter Second, 508 (1960), attached; See also, Milcrest Corporation v. Clackamas County, 650 Pacific Second, 963 (1982),

attached. A further discussion of the Phillips v. Zoning Commissioner case, can likewise be found in Jahnigen v. Staley, 245 Md. 130 (1965).

Thus, it can be seen from the evidence in this case, that it is legally impermissible to add the additional property obtained by the Petitioner in 1986 to his original property acquired from Clayton to enlarge the non-conforming use to its present operation. Secondly, Protestants submit that once Petitioner expanded the non-conforming use operation by selling used cars from Parcel 3, that act constituted an illegal expansion of the non-conforming use and the non-conforming use was lost to him as a matter of law. See Baxter v. Preston, 115 Idaho 607, 768 P.2d 1340 (1989) in which the Court found that an owner of a non-conforming use would lose the protected grandfather right if the use was enlarged or expanded in violation of a valid zoning ordinance. Thus, any alleged non-conforming used car status was lost to Petitioner by its action in 1986, as well as by Clayton's expanding the operation in excess of 25%, which is discussed in the next argument.

III. That the unrebutted evidence in the case, (which the Petitioner and his witness Clayton acknowledged) was expanded from the 30x60 ft. building to additional buildings, all in violation of BCZR which results in the termination of said use as a matter of law.

And

IV. That the uncontested evidence presented in Petitioner's own case establishes that pursuant to Section 104.3 B.C.Z.R., the existing non-conforming use was expanded in excess of 25%, in violation of the Baltimore County Zoning Regulations.

Protestants will jointly discuss issues III and IV in this section.

The original building constructed by Reed's Valley Motors sometime in the late 1950's, is 30x60 ft. equaling 1800 sq. ft. It is undisputed from the testimony of Petitioners' and Protestants' witnesses that the original cinder block building was the structure that was utilized for whatever use

was made of the subject property during the 50's and 60's. No other buildings existed on the site untilClayton constructed them in the 1070's The Claytons acquired the subject site on December 1, 1970 and it is clearly acknowledged by Clayton when he testified that when he purchased the property, the "only building on the property was block." Clayton then acknowledged that he was responsible for constructing a number of sheds and buildings which are shown as existing on the property today. Clayton acknowledged constructing the following:

1) A wooden shed 12 ft. x 14 1/2 ft. = 174 sq. ft.

2) Upholstery building: 30 ft. x 21 sq. ft. = 630 sq. ft.
15.5 ft. X 14 ft. = 216 sq. ft.

3) Paint Building: 24 ft. x 14 ½ ft. = 341 sq. ft.
And brick pad in rear of building

4) Additional Bldg. 15 ft. x 22 ft. = 330 sq. ft.

Total 1691 sq. ft.

It is clear that under any stretch of the Baltimore County Zoning Regulations, interpreting B.C.Z.R. Section 104.3, the Petitioner has almost doubled the square footage of buildings on the property far exceeding any 25% increase in building footprint permitted by the regulations. From the original 1800 square feet, we now have a total of 3491 square feet.

In addition to simply the enlargement of the buildings, there is testimony available to the Board to conclude that the number of vehicles and the area in which they were parked over Parcel # 1 has been increased and multiplied over the years. The testimony of Glorioso, Pika, Trela, Gabriel and Rohrbaugh all establish that the operation in both numbers of vehicles and external appearance has far exceeded that even conducted on the property in the 70's let alone, the extent of the activity

that was there, if at all, in 1955. Under no stretch of the imagination has the Petitioner established that the extent of the area today, the number of vehicles for sale today, and the operation of the facility today existed in 1955 to the same degree as in 1955.

As previously argued, the illegal expansion of a non-conforming use terminates it and extinguishes the non-conforming activity.

The law relating to the issue of expansion of a non-conforming use, as opposed to the law applying to addition of land to a non-conforming use, as previously referenced is set forth in the American Law of Zoning, Section 6.45, 6.47 and 6.51. Generally, it is found that an unlawful extension of a non-conforming use may be effected by the addition of new equipment or facilities, or the enlargement thereof. The Maryland cases of McKemy v. Baltimore County, 39 Md. App. 257 (1978) and County Commissioners v. Zent, 86 Md. App. 745 (1991), articulate the factors for this Board's review to determine the difference between illegal extension and permissive intensification. The factors to be considered in determining whether an activity is in the scope of a non-conforming use are:

> 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 Zent, the Court cites the Gardner case and states:

> "That a distinction is to be drawn between the enlargement or the extension of a non-conforming use and an intensification of such lawful use. An increase in floor space. . . an increase in an area of a lot used for non-conforming uses; or a change in business methods or the provision of new accessory facilities with resulting extension of the use involved have all been held to be proposals for the enlargement of a non-conforming use." (Emphasis supplied).

Thus, it can be seen from the facts here that there has been over the years an increase in floor space, area of the lot used for the non-conforming use, both within parcel 1 and by the addition of parcel 3, which have been held to be enlargements and, therefore, illegal.

An analysis of the four factors would establish from the testimony of the witnesses, that in 1955, this facility was a single concrete cinder block building which housed a service garage and later on gas pumps. It did not blossom into an active used car operation until Reeds Valley Motor Sales took over when they were first listed in September, 1956. Clearly, Clayton Motors in 1971, enlarged the operation physically as well as the numbers of vehicles offered for sale and located on the lot. Secondly, it is clear that the third factor is present here in that the current use has a substantially different effect upon the neighborhood. Clearly, the testimony of Protestants has been that there are many many more cars there than there were even in the early 1970's, that the cars clearly have used car prices on them and that they are for sale, whereas in the late 1950's and 1960, one could not even identify whether a car was for sale or not. In fact, the testimony of Trela, Gabriel and Rohrbaugh confirmed that even in the early 1970's signs of used car activity were not on the vehicles parked on the subject site. The fourth factor, the Protestants' evidence clearly establishes that a drastic enlargement or extension of the original non-conforming use has taken place over the years.

WHEREFORE, Protestants respectfully request this Honorable Board to find that a non-conforming use, if it in fact existed, has been terminated as a matter of law by its illegal admitted expansion.

Respectfully submitted,

J. Carroll Holzer
305 Washington Avenue, Suite 502
Towson, Maryland 21204
(410) 825-6961
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of September, 1997, a copy of the Protestants' Memorandum in Lieu of Final Argument was mailed first class, postage pre-paid to Steve Nolan, Nolan Plumhoff & Williams, 502 Washington Avenue, Suite 700, Towson, Maryland 21204.

J. Carroll Holzer

MEMOS5\A:\EXECAUTO.MEM

8/8/97

IN THE MATTER OF: EXECUTIVE AUTO PAINT & REPAIR, INC., Petitioner, 13580 Fork Road 11th Election District 6th Councilmanic District Long Green Valley Association, et al., Appellants.	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 97-87-SPH Hearing dates: 7/10/97 & 8/14/97

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

APPLICATION FOR ISSUANCE OF SUBPOENA

Executive Auto Paint & Repair, Inc., Petitioner, by its attorney, Gerard King Stevens, respectfully requests the issuance of the attached Subpoena. This request is based upon the following:

1. This case came before the Board on the appeal of the Long Green Civic Association for a hearing commencing July 10, 1997.

2. At the time of the hearing, it was disclosed by a witness, Stanley Clayton, Jr., that Clayton Motors, Inc. operated a used car facility at the subject location commencing on or about 1970 until the subject was sold to the Petitioner in 1979. Stanley Clayton, Jr. further testified that, at the time of the purchase in 1970, Clayton Motors, Inc. was represented by counsel, namely, James A. Pine, Esquire, who investigated the subject property to determine whether or not it was properly zoned for the sale of used automobiles.

3. Stanley Clayton, Jr. furthermore testified that at the time of the application for the transfer to the subject property of an existing used car dealer license, Clayton Motors, Inc. (a/k/a Clayton Auto Sales, Inc.), was required to provide proof that the subject property met with the zoning approval requirements for Baltimore County.

4. The Subpoena requested is specifically to determine whether or not those records of that legal representation still exist and are available for consideration by the Board. The named

person, Charlotte W. Pine, is believed to be the custodian of the records of the Law Offices of James A. Pine, Esquire.

WHEREFORE, it is respectfully requested that the attached Subpoena be issued.

Gerard King Stevens
Fisher & Winner, LLP
315 N. Charles Street
Baltimore, MD 21201
(410) 385-2000

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of August, 1997, I sent a copy of the foregoing Application for Issuance of Subpoena via facsimile and first-class mail, postage prepaid, to J. Carroll Holzer, Esquire, Holzer & Lee, 305 Washington Avenue, Suite 502, Towson, Maryland 21204; via first-class mail, postage prepaid, to People's Counsel for Baltimore County, Court House, Ground Floor, 400 Washington Avenue, Towson, Maryland 21204; and via first-class mail, postage prepaid, to Stephen J. Nolan, Esquire, Nolan, Plumhoff & Williams, Chtd., 210 W. Pennsylvania Avenue, Suite 700, Court Towers, Towson, Maryland 21204-5340.

Gerard King Stevens

F:\WPDOCS\GKS\EXECAUTO\SUBPOENA.APP

7/10/91

IN THE MATTER OF: EXECUTIVE AUTO PAINT & REPAIR, INC. Petitioner 13580 Fork Road 11th Election District 6th Councilmanic District Long Green Valley Association, et al. Appellants	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 97-87-SPH Hearing dates: July 10, 1997 August 14, 1997

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

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PETITIONER'S HEARING MEMORANDUM

Executive Auto Paint & Repair, Inc., (hereinafter "Executive"), Petitioner, by Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered, submits this Memorandum for the consideration of the County Board of Appeals.

STATEMENT OF THE CASE

Executive is the owner of a 1.273 acre property on the south side of Fork Road at its intersection with Pleasantville Road, Baldwin Mill Road and Long Green Pike in the Baldwin area of Baltimore County. In 1995, one or more area residents made a zoning complaint about the subject property, complaining of an outdoor used car display and the presence of a trailer on the property. That case was docketed in the District Court of Baltimore County as civil case number 0808-SP01342-96. That case is being held in abeyance, pending the outcome of this special hearing case.

In light of the issuance of a Correction Notice for Alleged Zoning Violation, Executive filed this special hearing petition to prove its right as a non-conforming use to used car sales and display.

On January 16, 1997, following a hearing, the Zoning Commissioner for Baltimore County issued Findings of Fact and Conclusions of Law and an Order granting the Petition for Special Hearing and approving the designation of a portion of the subject site as an existing nonconforming use for used car sales in accordance with Section 104.1 of the BCZR.

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

STATEMENT OF THE FACTS

As shown on the Plan to Accompany Special Hearing Executive Auto Paint & Repair, Inc., by Colbert, Matz, Rosenfeld, Inc., dated February 1, 1996, the subject property is a wedged shaped property with the narrower part of the wedge at an extremity on the eastern edge of the property on Fork Road, and the wider part of the wedge lying at the intersection of the four roads. The subject property is known as 13580 Fork Road, and contains a one-story, three bay office and auto repair shop, toward the west end of the property. An existing one-story upholstery workshop and shed are located in the rear. The property has on-site parking, as well as on-site display areas as shown on Petitioner's Exhibit 1. The subject property enjoys the heaviest Baltimore County commercial zoning classification- B.R., that is Business Roadside. A very small portion of the property at the west end is zoned B.L.-C.R., but the vast majority is zoned B.R.

USED CAR SALES ARE PERMITTED AS A LAWFUL, NONCONFORMING USE

It would appear that the subject property has been used for automotive purposes since the early days of the automobile age following World War I.

Executive Auto has operated the property since 1979, when on September 5, 1979, it was licensed by the Maryland Department of Transportation for used motor vehicle sales. Baltimore County Zoning specifically approved that licensing, which has continued year to year to date.

Prior to that, the property was used and operated by Stanley R. Clayton as Clayton Auto Sales, Inc. selling used cars and trucks from December 1970 until June 1979, when it was acquired by Executive.

Prior to that, in the 1950's and April 1956, the property was known as Reed's Valley Motor Sales of Baldwin, Maryland, and an ad in the Carroll Manor school program of that year, 1956,

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CHARTERED

stated "complete automotive service", "Amoco gas and oil road service", as well as "new and used cars and trucks". (Emphasis added).

A photograph of Reed's New and Used Cars indicates that the area to the east of the building, that is away from the village of Baldwin, and the intersection was being used for the display and storage of new and used cars and trucks in the 1950's. That area is so used today.

A 1948 Baltimore County display map indicates that this section of Fork was then zoned "E Commercial." (See attached copy) As codified on September 1, 1948, by then Zoning Commissioner Charles H. Doing, the Zoning Regulations of Baltimore County which were then entitled *Zoning Regulations and Restrictions for Baltimore County,* were negative in nature. By negative in nature, a commercial use was allowed in a zone unless it was specifically forbidden. Unlike the present Baltimore County Zoning Regulations, which date from 1955, which provide that in order to be allowed in a zone, a use must be specifically enumerated.

Attached hereto and incorporated herein by reference, are pages 8 and 9 of the 1948 codification of the Baltimore County Zoning Regulations. As can be seen, in Section VII, the "E" Commercial Zone, A.1 through 17, there are some 17 enumerated uses which were not permitted as a matter of right in the "E" Commercial Zone. In like manner, at pages 12 and 13 attached hereto, there are some 22 enumerated uses which require a special exception or special permit. New and used car sales are not among those uses enumerated as requiring a special exception or permit.

On March 30, 1955, the so-called "1955 Regulations" were adopted and entitled *Baltimore County Zoning Regulations*. A copy of page (i) of those Regulations is attached hereto and incorporated by reference herein, indicating the March 30, 1955 effective date.

The 1948 Regulations then permitted new and used car sales as a matter of right in the "E" Commercial zone, and the property was so zoned from at least January 2, 1945 until March 30, 1955.

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& WILLIAMS,
CHARTERED

With the adoption of the 1955 Regulations, the "E" Commercial Zone was divided into three parts namely the BL, the BM, and the BR zones. Furthermore, the drafters of the 1955 Regulations adopted a different regulatory standard for used car lots, because in Section 236.4 of the 1955 Regulations, they required a special exception in the BR zone for a used car lot, styling it "used motor vehicle outdoor sales area, separated from sales agency building". Used cars continue today to be permitted only in the BR zone, and only by special exception. It should be noted that in the present case, the subject property enjoys the requisite BR zoning. However, we respectfully submit that Executive need not so apply. Used cars have been sold on the property since the early 1950's and even prior thereto, and such sales have continued to date under a succession of owners and operators, all as required by Section 104.1 of the Regulations.

CONCLUSION

Executive respectfully submits that the subject property at 13580 Fork Road has been used continuously over the years for automobile sales and service, including used car sales and is entitled to continue, as a lawful, non-conforming use. **Accordingly, Appellee Executive urges the Board to affirm the Zoning Commissioner and grant the Special Hearing Petition.**

Respectfully submitted,

Stephen J. Nolan
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

Attorneys for Executive Auto Paint & Repair, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 10th day of July, 1997, that a copy of the foregoing Memorandum was hand delivered, to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204 and to People's Counsel for Baltimore County, Court House, Ground Floor, 400 Washington Avenue, Towson, MD 21204.

Stephen J. Nolan

3/5/97

IN RE: PETITION FOR SPECIAL HEARING
SEC FORK ROAD AND LONG
GREEN PIKE
13580 Fork Road

11th Election District
6th Councilmanic District
Executive Auto Paint and Repair, Inc.
Appellee

* BEFORE THE

* COUNTY BOARD OF APPEALS

* OF BALTIMORE COUNTY

* Case No.: 97-87-SPH

*

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

NOTICE TO ENTER APPEARANCE
OF APPELLEE'S COUNSEL

Please enter the appearance of Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered, 502 Washington Avenue, Suite 700 - Nottingham Centre, Towson, Maryland 21204, as counsel for Appellee Executive Auto Paint & Repair, Inc. Please notify us of any hearing date.

Stephen J. Nolan
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 5th day of March, 1997, that a copy of the foregoing Notice to Enter Appearance of Appellee's counsel was mailed, postage prepaid, to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

Stephen J. Nolan

C \OFFICE\WPWIN\WPDOCS\SJNPLDGS\EXECUTIV\ENTERAPP WPD

2/11/97

IN RE: PETITION FOR SPECIAL HEARING
SEC FORK ROAD AND LONG
GREEN PIKE
13580 Fork Road

11th Election District
6th Councilmanic District
Executive Auto Paint and Repair, Inc.
Petitioner

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 97-87-SPH

*

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

NOTICE OF APPEAL

Appellants, Long Green Valley Association, Charlotte Pine, Katherine Gabriel, Sharon Rohrbaugh, and Carol Trela by and through their attorney J. Carroll Holzer and Holzer and Lee, hereby note an appeal to the County Board of Appeals from the decision of the Zoning Commissioner of Baltimore County rendered on January 16, 1997.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal as well as a copy of the decision of the Zoning Commissioner.

Respectfully submitted,

J. Carroll Holzer
Holzer and Lee
305 Washington Avenue
Suite 502
Towson, Maryland 21204
Attorney for Appellants

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LAW OFFICE
HOLZER AND LEE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MARYLAND
21204

(410) 825-6961
FAX: (410) 825-4923

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of February, 1997 a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to Stephen J. Nolan, Esq., Nolan, Plumhoff & Williams, Suite 700, 502 Washington Avenue, Towson, MD 21204.

J. Carroll Holzer

NOTICES\A:\LONGGR.NOA

1/16/97

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
SEC Fork Road and Long Green Pike
13580 Fork Road * ZONING COMMISSIONER

11th Election District * OF BALTIMORE COUNTY
6th Councilmanic District
Executive Auto Paint & Repair,Inc. * Case No. 97-87-SPH
Petitioner

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for the property located at 13580 Fork Road in Baldwin. The Petition is filed by Executive Auto Paint and Repair, Inc., by Paul D. Weber, President. The Petitioner seeks approval and designation of the site as an existing nonconforming use for used car sales, in accordance with Section 104.1 of the BCZR. The subject property and improvements thereon are more particularly shown on the plat to accompany the Petition for Special Hearing received as Petitioner's Exhibit No. 1.

Appearing at the requisite public hearing held for this case was the aforementioned Paul D. Weber, on behalf of his corporation, Executive Auto Paint and Repair, Inc. Also present in support of the Petition was Robert E. Rosenfelt, an engineer from Colbert, Matz, Rosenfelt, Inc., the firm which prepared the site plan. The Petitioner was represented by Stephen J. Nolan, Esquire. Participating as co-counsel was Gerald K. Stevens, Esquire. Appearing in opposition to the request were members of the Long Green Valley Improvement Association. That Association and certain members therein were represented by J. Carroll Holzer, Esquire. Sign-in sheets were also completed at the hearing which disclose a large number of individuals who appeared both in support of, and in opposition to, the request.

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Mr. Rosenfelt testified and presented the plan. The site is a large tract which appears to be approximately 3 acres in total area. The tract

is divided into two parcels, shown on the plan as parcel 1 and parcel 2. Parcel 1 is the subject of the Petition for Special Hearing. For purposes of this case, parcel 2 is not involved. Parcel 1 constitutes that portion of the overall tract immediately adjacent to the intersection of Long Green Pike, Baldwin Mill Road, Pleasantville Road and Fork Road. Parcel 1 is approximately 1.273 acres in area. Parcel 1 is split zoned, B.L.-C.R. and B.R. The predominant area of parcel 1 (1.175 acres) is zoned B.R. A small portion (.098 acres) is zoned B.L.-C.R.

Mr. Rosenfelt generally described the improvements on the site. The primary building is an existing one story block building 60 ft. wide by 30 ft. deep. To the rear of that building is a small 14-1/2 ft. x 12 ft. addition and a free-standing 24 ft. x 14-1/2 ft. one story shed. Also to the rear of the main building is an existing one story building used as an upholstery workshop, and another single story shed. The site plan also shows an existing macadam parking area, as well as several gravel and dirt automobile parking/display areas. Through Mr. Rosenfelt's testimony, the Petitioner also offered a series of aerial photos of the site which were taken over the years.

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By Jn. Grammer

As noted above, the Petitioner seeks a nonconforming use designation for the subject site. Specifically, approval is requested to continue used car sales from the property. In this regard, testimony from a number of long time residents of the area was offered.

First testifying was John Louis Breidenbaugh, an 85 year old gentleman who has resided in this area for many years. Mr. Breidenbaugh extensively discussed his familiarity with this property over the years and indicated that he worked near the site for a long period of time, as far back as the 1930s. Mr. Breidenbaugh testified that the car sales occurred on the property as far back as 1950. In his recollection, many of the cars were displayed for sale on that small sliver of the tract, zoned

B.L.-C.R., immediately adjacent to the intersection of the four roads identified above. Mr. Breidenbaugh testified that although the business originally began in that corner of the property, it expanded along the property's frontage on Fork Road.

Also testifying was Richard Plaine. Mr. Plaine is 63 years of age and has a recollection of the property from the 1940s. He also testified that cars were sold from the site since that time. He remembered an original wooden garage building on the site and that that building was replaced by the block building which is presently utilized on the property.

Also testifying was Stanley Clayton. Mr. Clayton is the former owner of the property and now resides in Florida. He and his father owned and operated a service garage/used car sales business on the site from 1970 through 1979. He also grew up in the area. He indicated that he and his father purchased the site from a individual by the name of William Reed and renamed the business Clayton Motors. Mr. Clayton also produced a series of photographs taken during his period of ownership. He believes that the site has been used continuously and uninterruptedly as a used car sales business for many years.

Mr. Clayton also described in detail the improvements on the property. He testified as to when many of the original buildings were constructed, and when additions and improvements were made over the years during his ownership. Mr. Clayton indicated that he and his father had obtained a dealers license from the Motor Vehicle Administration to sell cars on the site when they purchased the property. It was indicated that the previous owner (Mr. Reed) had also operated under such a license.

John Edwards who resides immediately across Fork Road from the site also testified. He has lived across the street since 1975. He described the business on the property as being a service garage/repair/used car sales business. He supports the Petition. He indicated that the property

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is well kept and that he has no complaints about the use of the property. His testimony was that the used car sales operation has continued uninterruptedly and continuously since at least as far as he has lived at his present address. Similar testimony was received from Darryl Griffith, who also lives nearby and is in support of the Petition.

Robert B. Carter, another resident of Long Green also testified in support of the Petition. Mr. Carter runs a nursery and landscape business nearby. He has been familiar with the area since the 1960s and is a former officer in the Long Green Valley Association. He supports the Petition for Special Hearing and believes that the business is a nonconforming use. He testified that the site has not changed in character or use since the 1970s and does not oppose continuation of this use for so long as the business is not expanded.

Theodore Cypull also testified. He corroborated the testimony offered by Mr. Plaine and Mr. Breidenbaugh. Mr. Cypull had a particularly detailed memory of the site and provided uncontradicted testimony that the property has been used as combination auto repair/auto sales business since the 1940s. I was particularly impressed with Mr. Cypull's credibility and the record of this case will reflect the breadth of his recollection.

Lastly, testimony was received from Paul Weber, the President of Executive Auto Paint and Repair, Inc. Mr. Weber is 48 years old and has owned the property since 1979. As noted above, he acquired the site from Mr. Clayton and has continued the automobile repair/sales business. As was the case with the Claytons, Mr. Weber is licensed to sell automobiles from the site by the Motor Vehicle Administration. Mr. Weber also described in detail the buildings on site and the areas where automobiles are kept and sold. On cross examination, Mr. Weber indicated that he has not added any impermeable surfaces to the parking areas on the site other

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By M. Gardner

than to re-gravel certain of the areas which had deteriorated. He also described the upholstery business to the rear and the various sheds which are used on the property.

The above summation generally describes the testimony and evidence offered by the Petitioner. In addition to this evidence, a Petition in support of the Petition for Special Hearing, signed by a number of residents in the vicinity, was submitted. The Protestants did not offer any evidence other than a Petition opposing the use. It is of note that the Protestant's Petition opposes "zoning changes" and to allow "expansion" of the use. The requested Petition, in fact, seeks neither. No zoning change is proposed. Moreover, as described hereinafter, the nonconforming use designation legitimizes an existing use, not an expansion of that use.

A nonconforming use is defined in Section 101 of the Baltimore County Zoning Regulations (BCZR) 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 'nonconform' is a nonconforming use."

Further, nonconforming uses are governed by Section 104 of the BCZR. That section provides that nonconforming uses may continue provided that they are not changed, abandoned or discontinued for a period of one year or more. Section 104 goes on to provide further guidelines as to the repair of nonconforming uses after casualty, the expansion of such uses and other regulations relevant to specific uses.

Nonconforming uses are not favored by law. Maryland's Appellate Courts have consistently held that nonconforming uses pose a threat to the success of an orderly zoning scheme and can limit the effectiveness of land use control. See e.g., County Council of Prince Georges County v. E.L.P. Gardner, Inc. , 293 Md. 259 (1982).

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Nonetheless, despite their undesirability from a land planning standpoint, the Courts have recognized the legal authority for nonconforming uses to continue under certain guidelines. Specifically, both the BCZR and the case law allow nonconforming uses to operate as a grandfathering mechanism to permit land uses to continue even after a rezoning and/or re-regulation of the property on which they are located which would render that use impermissible. However, nonconforming use may not continue if abandoned, discontinued or changed; and limits are placed upon their expansion and repair.

Zoning regulation first came to Baltimore County on January 2, 1945. Those zoning regulations divided the County into 7 zones; 4 of which were residential, 1 commercial, 1 light industrial and 1 heavy industrial. Zone "E" was the commercial zone and apparently the subject site was so zoned at that time. Moreover, unlike the present regulations, which are written in inclusive, the 1945 version of the BCZR allowed a property zoned "E" to be used for any purpose except those uses specifically identified. Automobile sales and repair were not identified in that earliest version of the BCZR as prohibited uses. Thus, under the regulations, enacted in 1945, the use of the property for automobile repair and sales was allowed.

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By Jan Wright

The regulations were comprehensively amended in 1955. Those regulations did away with the A through E zones and created zones similar to those in effect today. Among the business zones created were the B.L. and B.R. zones. An examination of the 1955 regulations discloses that automobile sales were permitted in the B.R. zone by special exception. Specifically, Section 236.4 of the 1955 regulations identified special exception uses and among those listed, included "used motor vehicle outdoor sales area, separated from sales agency buildings." The B.L. zone did not allow

automobile sales area at all. The property has never received special exception approval for auto sales for the B.R. zoned portion of the tract.

It is clear that although a used car sales area was permitted under the original zoning regulations adopted in 1945 within the "E" zone, that use was later prohibited and is prohibited today. Thus, the sales business can operate legally only if designated a nonconforming use. In my judgment, it is clear that sales from the subject site began in the late 1940s when the property was zoned "E". Although many of the elderly witnesses who testified presented slight differences as to when the use precisely began, their testimony was consistent that it began prior to 1955. It is clear that the automobile sales use commenced on the site sometime prior to when the use became illegal, pursuant to the adoption of the 1955 regulations.

Having made this determination, it must, therefore, be concluded that the Petitioner has satisfied the first part of the nonconforming use test. That is, it is clear that the use predates the adoption of the regulation and implementation of the zone and regulations which prohibits the use.

Therefore, it must then be determined whether the use has continued uninterruptedly and continuously since its adoption. If so, the use may continue. In this regard, the testimony was persuasive that the use has so continued uninterruptedly. Although the property has gone through a series of owners and differently named businesses, the uncontradicted testimony and evidence offered was that used car sales, in addition to the repair business, has continued uninterruptedly since the date the business began in approximately 1950. Although the business may, at one time, been operated by Mr. Reed, later by the Claytons and most recently by Mr. Weber, the business of selling used cars has not been terminated or abandoned. I find no evidence that the use has ever been discontinued. To

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the contrary, it appears that sales have continued on an uninterrupted basis for approximately 47 years. Thus, the Petitioner has satisfied that portion of the test which requires a finding that the use has been continuous and uninterrupted.

The final consideration relates to the Protestants primary objection to the use. That is, the Protestants aver that there has been an improper extension of the nonconforming use, as opposed to a permitted intensification of same. These principals have been discussed in a series of Maryland cases, the leading one of which is McKemy v. Baltimore County, 39 Md. App. 257 (1978). Later, in County Commissioners v. Zent, 86 Md. App. 745 (1991), the Court of Special Appeals discussed the differences between a permitted intensification of a nonconforming use and the prohibited extension of same. In McKemy, the Court identified four factors in determining whether an activity has been extended or intensified. Those factors are:

> "(1) To what extent does the current use 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;
>
> (4) Is the current use a "drastic enlargement or extension" of the original nonconforming use."
> McKemy, infra, pg. 269-270.

ORDER RECEIVED FOR FILING
Date 1/16/97
By

Applying these tests to the case at issue, I, first, easily find that the current use of the property reflects the nature and purpose of the original nonconforming use. The original use was to sell and service automobiles, the identical nature and purpose of the use both through the years and today. The nature and purpose of the use both in 1950 and in 1997 is the same.

As to the second standard, I find no evidence that the present use of the property constitutes a use different in character, nature and kind. Again, the nature of the use, namely, automobile sales and service is identical. Neither the character or kind of use presently utilized on site is different than originally.

As to the third test, there is clearly no substantially different effect on the neighborhood. Indeed, this was the concern of many of the opponents of the Petition, as well as some of the proponents who testified in support of the Petition. These individuals fear an expansion of the use. A number of individuals testified that the current operation is acceptable. Although the community in this locale has matured over the years, there is no evidence that the present operation causes a unique and more detrimental impact at the present time. I am appreciative and sympathetic to the concerns of the neighbors who fear an extension of the use. Mr. Weber, himself, carefully testified that he has no intention to undertake such an extension of the use. Based on the record made before me, I see no evidence of same and believe that this prong is satisfied.

The last test is the most contested. The question must be answered whether the current use is considered a drastic enlargement or extension of the original nonconforming use. There was a limited amount of testimony about the number of cars which have been sold over the years. Clearly, this has not been a stagnate number but has ebbed and flowed with business cycles.

I think it significant that the Court of Special Appeals employs the word "drastic" in describing an enlargement or extension. In my judgment, the Court inserted this word recognizing that property uses are not stagnate.

Based on the record before me, I find no evidence of a drastic enlargement or extension of the use. Although times have changed, I do not

ORDER RECEIVED FOR FILING
Date 4/16/97
By

believe the use is appreciably different than it was in 1950. The Protestants ask me to adopt too narrow application of this test. Although the identity of the proprietor has changed, the type and number of vehicles sold; the basic nature of the business has remained the same.

Therefore, having examined the four principals in McKemy, I conclude that the subject use is nonconforming and that the Petition should be granted. However, the relief granted is only for a portion of Parcel 1. Clearly, Parcel 2 has never been used for the sales business. Additionally, the site plan (Petitioner's Exhibit No. 1) shows a split rail fence which bisects Parcel 1. It is clear that the portion of Parcel No. 1 on the southeast side of that fence has not been used for the business. Thus, the nonconforming use designation is hereby applied only to that part of the property on the northwest side of the fence. This conclusion is entirely supported by the evidence and may also alleviate the concerns of the Protestants; by eliminating the area of the property on which the business could expand.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 16th day of January 1997 that, pursuant to the Petition for Special Hearing, approval for the designation of that portion of the site, as described above, as an existing nonconforming use for used car sales in accordance with Section 104.1 of the BCZR, be and is hereby GRANTED.

Any appeal from this decision must be taken in accordance with the applicable provisions of law.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING
Date 1/16/97
By Mark

Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

January 14, 1997

Stephen J. Nolan, Esquire
Nottingham Centre
Suite 700
502 Washington Avenue
Towson, Maryland 21204

J. Carroll Holzer, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Petition for Special Hearing
Case No. 97-87-SPH
Property: 13580 Fork Road
Executive Auto Paint & Repair, Inc., Petitioner

Gentlemen:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been granted.

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

Very truly yours,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.
cc: Gerard K. Stevens, Esquire, Fisher and Winner, LLP, 315 N. Charles St. Baltimore, Maryland 21201-4325
cc: Mr. Paul D. Weber, 4825 Hydes Road, Hydes, Md. 21082
cc: Various Petitioners and Protestants

Printed with Soybean Ink

12/20/96

EXECUTIVE AUTO PAINT & REPAIR, INC. 13580 Fork Road Petitioner	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No.: 97-87-SPH Hearing Date: December 20, 1996

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

PETITIONER'S HEARING MEMORANDUM

Executive Auto Paint & Repair, Inc., (hereinafter "Executive"), Petitioner, by Stephen J. Nolan and Nolan, Plumhoff & Williams, Chartered, submits this Memorandum for the Zoning Commissioner's consideration.

STATEMENT OF THE CASE

Executive is the owner of a 1.273 acre property on the south side of Fork Road at its intersection with Pleasantville Road, Baldwin Mill Road and Long Green Pike in the Baldwin area of Baltimore County. In 1995, one or more area residents made a zoning complaint about the subject property, complaining of an outdoor used car display and the presence of a trailer on the property. That case was docketed in the District Court of Baltimore County as civil case number 0808-SP01342-96. That case is being held in abeyance, pending the outcome of this special hearing case.

In light of the issuance of a Correction Notice for Alleged Zoning Violation, Executive filed this special hearing petition to prove its right as a non-conforming use to used car sales and display.

STATEMENT OF THE FACTS

As shown on the Plan to Accompany Special Hearing Executive Auto Paint & Repair, Inc., by Colbert, Matz, Rosenfeld, Inc., dated February 1, 1996, the subject property is a wedged shaped property with the narrower part of the wedge at an extremity on the eastern edge of the property on Fork Road, and the wider part of the wedge lying at the intersection of the four roads. The subject

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

property is known as 13580 Fork Road, and contains a one-story, three bay office and auto repair shop, toward the west end of the property. An existing one-story upholstery workshop and shed are located in the rear. The property has on-site parking, as well as on-site display areas as shown on Petitioner's Exhibit 1. The subject property enjoys the heaviest Baltimore County commercial zoning classification- B.R., that is Business Roadside. A very small portion of the property at the west end is zoned B.L.-C.R., but the vast majority is zoned B.R.

USED CAR SALES ARE PERMITTED
AS A LAWFUL, NONCONFORMING USE

It would appear that the subject property has been used for automotive purposes since the early days of the automobile age following World War I.

Executive Auto has operated the property since 1979, when on September 5, 1979, it was licensed by the Maryland Department of Transportation for used motor vehicle sales. Baltimore County Zoning specifically approved that licensing, which has continued year to year to date.

Prior to that, the property was used and operated by Stanley R. Clayton as Clayton Auto Sales, Inc. selling used cars and trucks from ~~January~~ December 1970 until June 1979, when it was acquired by Executive.

Prior to that, in the 1950's and April 1956, the property was known as Reed's Valley Motor Sales of Baldwin, Maryland, and an ad in the Carroll Manor school program of that year, 1956, stated "complete automotive service", "Amoco gas and oil road service", as well as "new and used cars and trucks". (Emphasis added).

A photograph of Reed's New and Used Cars indicates that the area to the east of the building, that is away from the village of Baldwin, and the intersection was being used for the display and storage of new and used cars and trucks in the 1950's. That area is so used today.

A 1948 Baltimore County display map indicates that this section of Fork was then zoned "E Commercial." (See attached copy) As codified on September 1, 1948, by then Zoning Commissioner Charles H. Doing, the Zoning Regulations of Baltimore County which were then entitled *Zoning Regulations and Restrictions for Baltimore County,* were negative in nature. By negative in nature, a commercial use was allowed in a zone unless it was specifically forbidden. Unlike the present Baltimore County Zoning Regulations, which date from 1955, which provide that in order to be allowed in a zone, a use must be specifically enumerated.

Attached hereto and incorporated herein by reference, are pages 8 and 9 of the 1948 codification of the Baltimore County Zoning Regulations. As can be seen, in Section VII, the "E" Commercial Zone, A.1 through 17, there are some 17 enumerated uses which were not permitted as a matter of right in the "E" Commercial Zone. In like manner, at pages 12 and 13 attached hereto, there are some 22 enumerated uses which require a special exception or special permit. New and used car sales are not among those uses enumerated as requiring a special exception or permit.

On March 30, 1955, the so-called "1955 Regulations" were adopted and entitled *Baltimore County Zoning Regulations*. A copy of page (i) of those Regulations is attached hereto and incorporated by reference herein, indicating the March 30, 1955 effective date.

The 1948 Regulations then permitted new and used car sales as a matter of right in the "E" Commercial zone, and the property was so zoned from at least January 2, 1945 until March 30, 1955.

With the adoption of the 1955 Regulations, the "E" Commercial Zone was divided into three parts namely the BL, the BM, and the BR zones. Furthermore, the drafters of the 1955 Regulations adopted a different regulatory standard for used car lots, because in Section 236.4 of the 1955 Regulations, they required a special exception in the BR zone for a used car lot, styling it "used motor vehicle outdoor sales area, separated from sales agency building". Used cars continue today

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

to be permitted only in the BR zone, and only by special exception. It should be noted that in the present case, the subject property enjoys the requisite BR zoning. However, we respectfully submit that Executive need not so apply. Used cars have been sold on the property since the early 1950's and even prior thereto, and such sales have continued to date under a succession of owners and operators, all as required by Section 104.1 of the Regulations.

CONCLUSION

Executive respectfully submits that the subject property at 13580 Fork Road has been used continuously over the years for automobile sales and service, including used car sales and is entitled to continue, as a lawful, non-conforming use.

Respectfully submitted,

Stephen J. Nolan
Nolan, Plumhoff & Williams, Chtd.
Suite 700 - Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 823-7800

Attorneys for Executive Auto Paint & Repair, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 20th day of December 1996, that a copy of the foregoing Memorandum was hand delivered, to J. Carroll Holzer, Esquire, Holzer and Lee, 305 Washington Avenue, Suite 502, Towson, MD 21204 and to People's Counsel for Baltimore County, Court House, Ground Floor, 400 Washington Avenue, Towson, MD 21204.

Stephen J. Nolan

87

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 13580 FORK ROAD

97-87-SPH

which is presently zoned BR and BL-CR

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

AN EXISTING NONCONFORMING USE FOR USED CAR SALES, IN ACCORDANCE WITH SEC. 104.1 OF THE BCZR.

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner:

GERARD KING STEVENS, ESQ.
(Type or Print Name)

Signature

FISHER & WINNER L.L.P.
315 NORTH CHARLES ST.
Address Phone No.

BALTIMORE MD 21201-4325
City State 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): PAUL D. WEBER
EXECUTIVE AUTO PAINT & REPAIR, INC.
(Type or Print Name)

Signature

PAUL D. WEBER
(Type or Print Name) PRESIDENT

Signature

13580 FORK ROAD 592-8880
Address Phone No.

BALDWIN, MD 21013
City State Zipcode

Name, Address and phone number of representative to be contacted.
RICHARD E. MATZ
COLBERT MATZ ROSENFELT, INC.
Name

3723 OLD COURT ROAD 653-3838
Address Phone No

BALTIMORE, MD 21208

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

Zoning Administration & Development Management

Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners

97

ZONING DESCRIPTION
SPECIAL HEARING

97-87-SPH

BEGINNING AT A POINT ON THE SOUTH SIDE OF FORK ROAD, 20 FEET WIDE AT THE DISTANCE OF 80 FEET OF THE CENTERLINE OF LONG GREEN PIKE, 20 FEET WIDE; THENCE THE FOLLOWING COURSES AND DISTANCES:

1. NORTH 85 DEGREES 03 MINUTES 11 SECONDS EAST, 336.12 FEET;
2. SOUTH 05 DEGREES 31 MINUTES 31 SECONDS EAST, 69.79 FEET;
3. SOUTH 59 DEGREES 41 MINUTES 29 SECONDS WEST, 345.77 FEET;
4. NORTH 37 DEGREES 34 MINUTES 29 SECONDS EAST, 61.90 FEET;
5. NORTH 62 DEGREES 01 MINUTES 31 SECONDS WEST, 227.50 FEET;
6. NORTH 41 DEGREES 43 MINUTES 29 SECONDS EAST, 49.71 FEET;
7. NORTH 85 DEGREES 03 MINUTES 11 SECONDS EAST, 85.23 FEET;
8. NORTH 08 DEGREES 05 MINUTES 29 SECONDS EAST, 14.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.27 ACRES MORE OR LESS.

I:\JOBS\95209.DES, 4 - 7/30/96

STATE OF MARYLAND
RICHARD E. MATZ
No. 13653
REGISTERED
PROFESSIONAL ENGINEER

7/30/96

3723 Old Court Road, Suite 206 Baltimore, Maryland 21208
Telephone: (410) 653-3838 / Facsimile: (410) 653-7953

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: #97-87-SPH
(Item 87)
13580 Fork Road
SEC Fork Road and Long Green Pike
11th Election District
6th Councilmanic
Legal Owner(s):
Executive Auto Paint and Repair, Inc.

Special Hearing: to approve an existing nonconforming use for used car sales.

Hearing: Tuesday, October 1, 1996 at 2:00 p.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.

9/064 Sept. 5. C80082

CERTIFICATE OF PUBLICATION

TOWSON, MD., Sept. 6, 1996

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 Sept. 5, 1996.

THE JEFFERSONIAN,

A. Henrickson

LEGAL AD. - TOWSON

CERTIFICATE OF POSTING

RE: Case No.: 97-87 SPH

Petitioner/Developer: EXECUTIVE AUTO

Date of Hearing/Closing: _____

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 13580 FORK RD.

The sign(s) were posted on 5/8/97 ✓
(Month, Day, Year)

Sincerely,

Gary Fenno 5/12
(Signature of Sign Poster and Date)

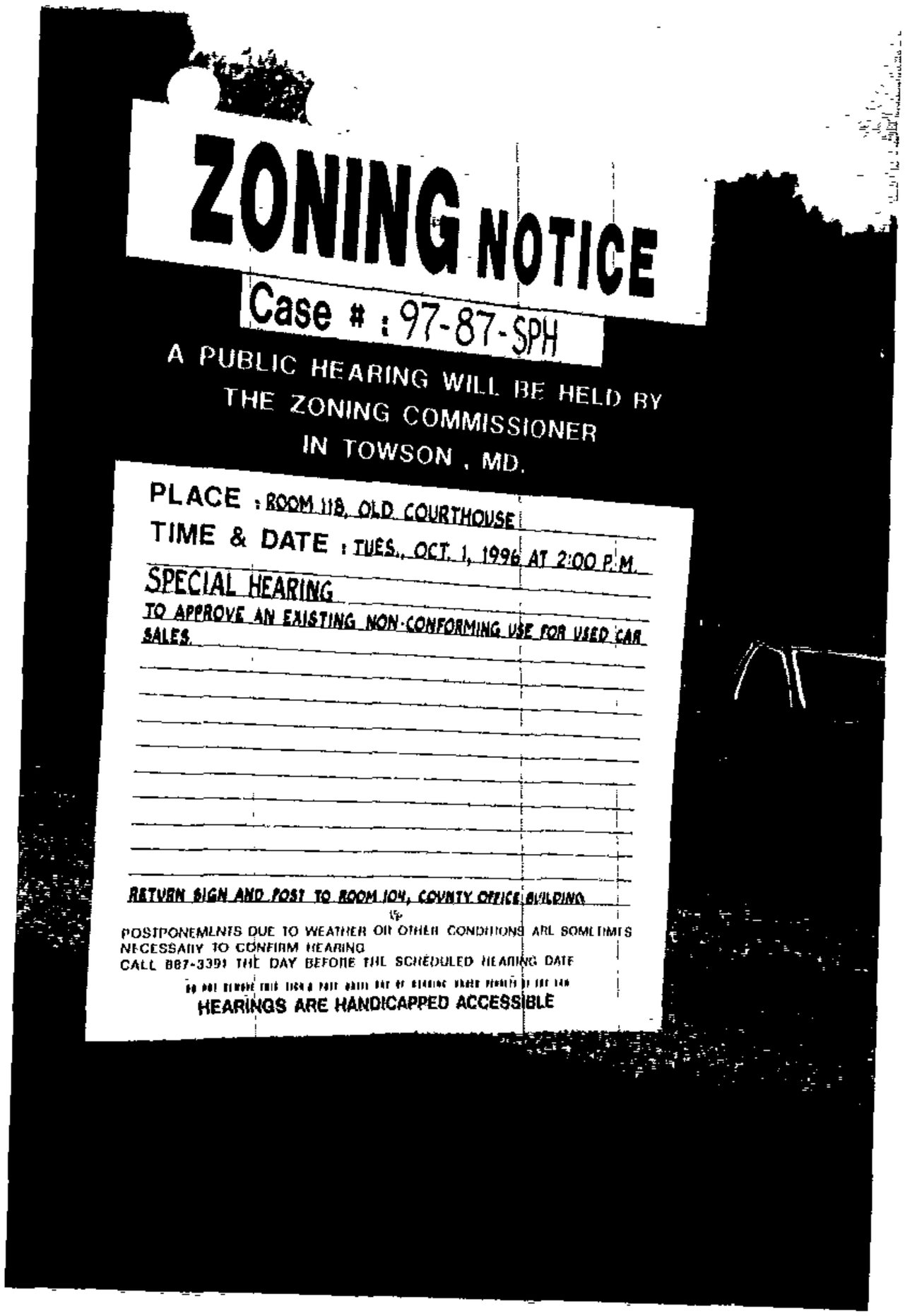
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

9/96
cert.doc


ZONING NOTICE
Case # : 97-87-SPH
A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON , MD.
PLACE : ROOM 118, OLD COURTHOUSE
TIME & DATE : TUES., OCT. 1, 1996 AT 2:00 P.M.
SPECIAL HEARING
TO APPROVE AN EXISTING NON-CONFORMING USE FOR USED CAR SALES.
RETURN SIGN AND POST TO ROOM 104, COUNTY OFFICE BUILDING
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY TO CONFIRM HEARING
CALL 887-3391 THE DAY BEFORE THE SCHEDULED HEARING DATE
HEARINGS ARE HANDICAPPED ACCESSIBLE

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

No. 022544

DATE 2/10/97 ACCOUNT R-001 6150

AMOUNT $ 210.00

RECEIVED FROM: J. Carroll Holzer, Esq.

FOR: Appeal case #97-87-SPH

01A00#0009MICHRC $210.00
BA C007:20AM02-11-97

VALIDATION OR SIGNATURE OF CASHIER

KJC

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

No. 024767

#87 SPH VLL
97-87

DATE 8/22/96 ACCOUNT R001 6150

AMOUNT $ 285.00

RECEIVED FROM: GERARD KING STEVENS PA

FOR: 1 SIGN POSTING

CSPH + SIGN

01A00#0073MICHRC $285.00
BA C009:55AM09-22-96

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

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.

LAND POSTING AND RETURNING THE SIGN AS WELL AS ALL COSTS

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.: 87

Petitioner: Paul D. Webber & Executive Auto Paint & Repair, Inc

Location: 13580 Fork Road, Baldwin, Md 21013

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Gerard K. Stevens, Fisher & Winner

ADDRESS: 315 North Charles St.
Baltimore, Md. 21201

PHONE NUMBER: 410-385-2000

AJ:ggs

(Revised 04/09/93)

Printed on Recycled Paper

97-87-SPH

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

District 11 Date of Posting 9/16/96

Posted for: OCT 1, 1996 HEARING

Petitioner: EXECUTIVE AUTO PAINT & REPAIR

Location of property: 13580 FORK RD

Location of Signs: FORK ROAD AT LONG GREEN PIKE.

Remarks: PHOTOS TAKEN

Posted by Patrick M O'Keefe Date of return:

Signature

Number of Signs: 1

Baltimore County
Department of Permits and
Development Management

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

August 30, 1996

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: 97-87-SPH (Item 87)
13580 Fork Road
SEC Fork Road and Long Green Pike
11th Election District - 6th Councilmanic
Legal Owner(s): Executive Auto Paint and Repair, Inc.

Special Hearing to approve an existing nonconforming use for used car sales.

HEARING: TUESDAY, OCTOBER 1, 1996 at 2:00 p.m. in Room 118, Old Courthouse.

Arnold Jablon
Director

cc: Executive Auto Paint & Repair, Inc.
Richard E. Matz
Gerard King Stevens, 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 CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

Printed with Soybean Ink
on Recycled Paper

TO: PUTUXENT PUBLISHING COMPANY
September 5, 1996 Issue - Jeffersonian

Please foward billing to:

Gerard K. Stevens, Esq.
Fisher & Winner L.L.P.
315 N. Charles Street
Baltimore, MD 21201-4325
385-2000

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: 97-87-SPH (Item 87)
13580 Fork Road
SEC Fork Road and Long Green Pike
11th Election District - 6th Councilmanic
Legal Owner(s): Executive Auto Paint and Repair, Inc.

Special Hearing to approve an existing nonconforming use for used car sales.

HEARING: TUESDAY, OCTOBER 1, 1996 at 2:00 p.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

September 24, 1996

NOTICE OF POSTPONEMENT

CASE NUMBER: 97-87-SPH
PETITIONER(S): Executive Auto Paint & Repair, Inc.
LOCATION: 13580 Fork Road

THE ABOVE MATTER, PREVIOUSLY ASSIGNED TO BE HEARD ON OCTOBER 1, 1996, HAS BEEN POSTPONED AT THE REQUEST OF J. CARROLL HOLZER, ATTORNEY FOR PROTESTANTS.

NOTIFICATION OF THE NEW HEARING DATE WILL BE FORWARDED SHORTLY.

Arnold Jablon
Director

cc: Executive Auto Paint & Repair, Inc
Gerard King Stevens, Esq.
J. Carroll Holzer, Esq.
RICHARD E. MATZ

AJ:ggs

*ENCLOSED YOU WILL FIND A POSTPONED STICKER TO BE PLACED ON THE NOTICE OF ZONING HEARING SIGN.

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

FAX

OCTOBER 15, 1996

NOTICE OF REASSIGNMENT

Rescheduled from 10/1/96
CASE NUMBER: 97-87-SPH (Item 87)
13580 Fork Road
SEC Fork Road and Long Green Pike
11th Election District - 6th Councilmanic
Legal Owner(s): Executive Auto Paint and Repair, Inc.

Special Hearing to approve an existing nonconforming use for used car sales.

HEARING: FRIDAY, NOVEMBER 8, 1996 AT 9:00 A.M. IN ROOM 106, COUNTY OFFICE BUILDING, 111 W CHESAPEAKE AVENUE, TOWSON MD.

****

PLEASE NOTE THAT THE PETITIONER OR HIS AGENT MUST ALTER THE ZONING NOTICE SIGN TO REFLECT THE ABOVE HEARING'S DATE AND LOCATION.

****

ARNOLD JABLON
DIRECTOR

cc: Executive Auto Paint & Repair, Inc. via fax at 592-3930
Gerard King Stevens, Esq. via fax at 727-1362
J. Carroll Holzer, Esq. via fax at 825-4923
Richard E. Matz via fax at 653-7953

PLEASE NOTE THAT FAX REPLACES THE NOTICE FORWARDED VIA FIRST CLASS MAIL DATED OCTOBER 11, 1996. KINDLY IGNORE THE OCTOBER 11TH NOTICE WHEN IT IS RECEIVED.

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

November 4, 1996
TELEFAX and FIRST CLASS MAIL

NOTICE OF POSTPONEMENT

CASE NUMBER: 97-87-SPH
PETITIONER(S): Executive Auto Paoint & Repair, Inc.

THE ABOVE MATTER, PREVIOUSLY ASSIGNED TO BE HEARD ON NOVEMBER 8, 1996, HAS BEEN POSTPONED AT THE REQUEST OF STEPHEN J. NOLAN, ESQ.

THIS CASE WILL NOT BE RESCHEDULED WITHOUT AN AGREED DATE BETWEEN THE PARTIES, WITH AN ESTIMATION AS TO THE LENGTH OF HEARING .

AS OF THIS WRITING, THE DOCKET CONTAINS AVAILABLE DATES AS FOLLOWS: DECEMBER 16, 17, 18, 19, and 20. PLEASE CONTACT GWEN ONCE YOU HAVE AGREED ON A DATE, SO THAT THE MATTER CAN BE SET IN BEFORE THE COMMISSIONER.

Arnold Jablon
Director

cc: Stephen J. Nolan (via fax 296-2765)
Gerard King Stevens, Esq. (via fax 727-1362)
J. Carroll Holzer, Esq. (via fax 825-4923)
Richard E. Matz (via fax 653-7953)
Executive Auto Paint & Repair, Inc. (via fax 592-3930)

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

November 19, 1996

NOTICE OF REASSIGNMENT

CASE NUMBER: 97-87-SPH (Item 87)
13580 Fork Road
SEC Fork Road and Long Green Pike
11th Election District - 6th Councilmanic
Legal Owner(s): Executive Auto Paint and Repair, Inc.

Special Hearing to approve an existing nonconforming use for used car sales.

HEARING:
FRIDAY, DECEMBER 20, 1996 at 9:00 a.m. in Room 106, County Office Building.

ARNOLD JABLON
DIRECTOR

cc: Stephen J. Nolan, Esq.
Gerald King Stevens, Esq.
J. Carroll Holzer, Esq.
Richard E. Matz
Executive Auto Paint & Repair, Inc.

Printed with Soybean Ink
on Recycled Paper

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 15, 1997

AMENDED NOTICE OF ASSIGNMENT /To add Day #2 **

CASE #: 97-87-SPH

IN THE MATTER OF: EXECUTIVE AUTO PAINT & REPAIR, INC. -Petitioners 13580 Fork Road 11th Election District; 6th Councilmanic District

(Petition for Special Hearing GRANTED.)

ASSIGNED FOR: THURSDAY, JULY 10, 1997 at 10:00 a.m. /Day #1 and
THURSDAY, AUGUST 14, 1997 at 10:00 a.m. /Day #2 **

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c). For further information, see Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

Kathleen C. Bianco
Legal Administrator

---

cc: Counsel for Appellants : J. Carroll Holzer, Esquire
Appellants : Long Green Valley Association
Charlotte Pine
Katherine Gabriel
Sharon Rohrbaugh
Carol Trela

Counsel for Petitioner : Stephen J. Nolan, Esquire
Petitioner : Paul D. Weber, President
Executive Auto Paint & Repair

Gerald K. Stevens, Esquire

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

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on Recycled Paper

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 8, 1997

NOTICE OF ASSIGNMENT

CASE #: 97-87-SPH

IN THE MATTER OF: EXECUTIVE AUTO PAINT & REPAIR, INC. -Petitioners 13580 Fork Road 11th Election District; 6th Councilmanic District

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Kathleen C. Bianco
Legal Administrator

Amended 5/15/97 to include second hearing day of 8/14/97.

cc: Counsel for Appellants : J. Carroll Holzer, Esquire
Appellants : Long Green Valley Association
Charlotte Pine
Katherine Gabriel
Sharon Rohrbaugh
Carol Trela

Counsel for Petitioner : Stephen J. Nolan, Esquire
Petitioner : Paul D. Weber, President
Executive Auto Paint & Repair

Gerald K. Stevens, Esquire

People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt

Arnold Jablon, Director /PDM
Virginia W. Barnhart, Co Atty

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PETITION

The undersigned Baltimore County property owners state:

A. That they have had an opportunity to review the Plat to Accompany Special Hearing Petition of Executive Auto Paint and Repair, Inc.; and

B. That they support the Zoning Commissioner's approval of the continuation of the lawful existing non-conforming use as used car sales on the B.R. zoned property at 13580 Fork Road, without a special exception because of its longstanding and uninterrupted use for that purpose.

Name	Address
Signature PAUL B. VALLE Printed Name	9 PALMWAY CT. BALDWIN, MD. 21013
Signature Sandra L. Bissell Printed Name	9 Burnbrae Rd Towson, Md 21204
Signature PAUL M. NEAS Printed Name	13111 SANFIELD RD BALDWIN MD 21013
Signature JOHN R. LINDONG Printed Name	13128 Long Green Path Hydes Md 21082
Signature DEAN KELLY Printed Name	11232 Notchely Rd Glenarm Md. 21057
Signature ROSARIO R. CACCAMISI Printed Name	16 LIBERTY RIDGE CT OWINGS MILLS MD 21117

PETITION

The undersigned Baltimore County property owners state:

A. That they have had an opportunity to review the Plat to Accompany Special Hearing Petition of Executive Auto Paint and Repair, Inc.; and

B. That they support the Zoning Commissioner's approval of the continuation of the lawful existing non-conforming use as used car sales on the B.R. zoned property at 13580 Ford Road, without a special exception because of its longstanding and uninterrupted use for that purpose.

Name	Address
Roger R Snyder Signature ROGER R. SNYDER Printed Name	13910 BALDWIN MILL Rd BALDWIN MD 21013
Gloria Weber Signature Gloria Weber Printed Name	13821 Baldwin Mill Rd Baldwin, MD. 21013
Adam H. Weber Signature Adam H. Weber Printed Name	13821 Baldwin Mill Rd Baldwin, MD 21013
Maria Angelos Signature Maria Angelos Printed Name	14001 Baldwin Mill Rd Baldwin MD 21013
Jennifer Weber Signature Jennifer Weber Printed Name	13801 Baldwin Mill Rd. Baldwin, MD. 21013
Marie H. Rommel Signature Marie H. Rommel Printed Name	13801 Baldwin Mill Rd. Baldwin, MD. 21013

PETITION

The undersigned Baltimore County property owners state:

A. That they have had an opportunity to review the Plat to Accompany Special Hearing Petition of Executive Auto Paint and Repair, Inc.; and

B. That they support the Zoning Commissioner's approval of the continuation of the lawful existing non-conforming use as used car sales on the B.R. zoned property at 13580 Fork Road, without a special exception because of its longstanding and uninterrupted use for that purpose.

Name	Address
Kathleen & John McCormick Signature KATHLEEN & JOHN MCCORMICK Printed Name	12709 Manor Rd Long Green, MD 21092
Tara Walton Signature Tara Walton Printed Name	14108 Baldwin Mill Rd Baldwin Md. 21013
Judy Gatto Signature JUDY GATTO Printed Name	6107 Fork Woods Rd Baldwin Md 21013
Sally Heidermann Signature SALLY HEIDERMANN Printed Name	11442 GLENARM Rd GLENARM md 21057
J. Thomas P. Walton Signature J. THOMAS P. WALTON JR. Printed Name	14108 BALDWIN MILL RD. BALDWIN, MD. 21013-9005
Steven R Fisher Signature STEVEN R FISHER Printed Name	2817 ORCHARD LAKES DR BALDWIN MD 21013

PAUL VEDER

Petition Opposing Zoning Changes

The undersigned oppose the precedent setting expansion of commercial development in Baldwin, Maryland. Specifically, the undersigned oppose the *Executive Auto* request for several zoning changes allowing for the use and expansion of this property as a used car lot.

Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

This petition is sponsored by concerned community residents and the Long Green Valley Association, P.O. Box 91, Baldwin, Maryland 21013.

Page 1 Name (Print)	Date	Complete Address	SIGNATURE
Jama Trela	12/3/96	5433 Patterson Rd.	James D Trela
Elain Pottschmidt	12/6/96	13558 FORK RD	Alice L. Pottschmidt
C Goetzinger	12/10/96	6014 Forkwood Rd	C Goetzinger

Dear Neighbor:

Below is a copy of a petition regarding requested zoning changes in Baldwin. If you find that this petition represents your view please sign it (and encourage your friends to sign it) and return it to: The Long Green Valley Association, Box 91, Baldwin, MD 21013.

Petition Opposing Zoning Changes

The undersigned oppose the precedent setting expansion of commercial development in Baldwin, Maryland. Specifically, the undersigned oppose the *Executive Auto* request for several zoning changes allowing for the use and expansion of this property as a used car lot.

Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

Name (print)	Address	~~Signature~~
PAMELA NOTARANGE	11515 Hannibal Rd 21057	Pamela Notarange
SUSAN SVEHLA	"	Susan Svehla

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

This petition is sponsored by concerned community residents and the Long Green Valley Association, P.O. Box 91, Baldwin, Maryland 21013.

Contributions toward legal fees would be appreciated. Make check payable to LGVA legal fund.

The Long Green Valley Association
Post Office Box 91
Baldwin, Maryland 21013

Non-Profit Org.
U.S. Postage
PAID
Permit No. 25
Baldwin, MD

Notarange/Svehla

11515 Hannibal Rd.

Glen Arm, MD 21057

Dear Neighbor:

Below is a copy of a petition regarding requested zoning changes in Baldwin. If you find that this petition represents your view please sign it (and encourage your friends to sign it) and return it to: The Long Green Valley Association, Box 91, Baldwin, MD 21013.

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Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

Name (print)	Address	Signature
Richard C. Groscup	12005 Harford Rd, Glen Arm MD 21057	
Jean Groscup	12005 Harford Rd. Glen Arm	Richard C Groscup
		Jean Groscup

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

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The Long Green Valley Association
Post Office Box 91
Baldwin, Maryland 21013

Non-Profit Org.
U.S. Postage
PAID
Permit No. 25
Baldwin, MD

Richard & Jean Groscup

12005 Harford Rd.

Glen Arm, MD 21057

Dear Neighbor:

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Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

Name (print)	Address	Signature
WILLIAM L. DEAN	6018 FORK WOODS RD. BALDWIN, MD 21013	William L. Dean

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

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Contributions toward legal fees would be appreciated. Make check payable to LGVA legal fund.

The Long Green Valley Association
Post Office Box 91
Baldwin, Maryland 21013

Non-Profit Org.
U.S. Postage
PAID
Permit No. 25
Baldwin, MD

William & Roseanne Dean

6018 Fork Woods Rd.

Baldwin, MD 21013

Dear Neighbor:

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Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

Name (print)	Address	Signature
Roy Trentalange	4405 Langtry Dr	R Trentalange
Elena Trentalange	4405 Langtry Dr	Elena Trentalange
Victoria Trentalange	4405 Langtry Dr	
John Mario Trentalange	4405 Langtry Dr	

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

This petition is sponsored by concerned community residents and the Long Green Valley Association, P.O. Box 91, Baldwin, Maryland 21013.

Contributions toward legal fees would be appreciated. Make check payable to LGVA legal fund.

The Long Green Valley Association
Post Office Box 91
Baldwin, Maryland 21013

Non-Profit Org.
U.S. Postage
PAID
Permit No. 25
Baldwin, MD

Trentalange Family

4405 Langtry Dr.

Glen Arm, MD 21057

Dear Neighbor:

Below is a copy of a petition regarding requested zoning changes in Baldwin. If you find that this petition represents your view please sign it (and encourage your friends to sign it) and return it to: The Long Green Valley Association, Box 91, Baldwin, MD 21013.

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Case #97-87SPH
Executive Auto
13580 Fork Road
Baldwin, Maryland

Name (print)	Address	Signature
PAUL deGROUCHY	5603 PATTERSON RD	
Lisa deGrouchy	5603 Patterson RD	

This petition will be presented to the Zoning Commissioner on December 20, 1996, room 106, 9:00 am, County Office Building, Towson, Maryland.

This petition is sponsored by concerned community residents and the Long Green Valley Association, P.O. Box 91, Baldwin, Maryland 21013.

Contributions toward legal fees would be appreciated. Make check payable to LGVA legal fund.

The Long Green Valley Association
Post Office Box 91
Baldwin, Maryland 21013

Non-Profit Org.
U.S. Postage
PAID
Permit No. 25
Baldwin, MD

Mr. + Mrs. Paul de Grouchy
5603 Patterson Road
Baldwin, Md. 21013

zoning maps and appropriate regulations shall be prepared in the manner hereinafter provided to regulate and restrict, within the county, the height, number of stories, and size of buildings and other structures; the percentage of a lot that may be occupied; the size of yards or courts; the setback or distance of any buildings or structures from front or side lot, road, street, or alley line and other open spaces; the density of population; and the location and use of buildings, structures, and land for trade, industry, residence, or other purpose. Such zoning maps and regulations shall be made in accordance with a comprehensive plan. They shall be designed to reduce congestion in the roads, streets, and alleys; to promote safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land to avoid undue concentration of population; to facilitate adequate provision for schools, parks, water, sewerage, transportation, and other public requirements, conveniences, and improvements, including gas and electric structures and facilities.
(Code 1978, § 22-19)

Sec. 26-117. Validation of existing zoning regulations.

The zoning regulations adopted by the county on March 30, 1955 and as thereinafter and whenever adopted and amended are hereby declared to be in full force and effect provided, however, that in the case of any conflict between such regulations and the provisions of this title, these provisions shall control.
(Code 1978, § 22-31; Bill No. 18, 1990, § 2)

Sec. 26-118. Record and copies of rules, regulations, etc.; certified copies of rules, etc., as evidence.

The office of planning and zoning shall keep in a separate book all rules, regulations, and restrictions adopted by the county council from time to time under the authority of this title, and any amendments or supplements thereto, and the office of law shall cause copies thereof to be printed and made available for general distribution.
(Code 1978, § 22-34; Bill No. 18, 1990, § 2)

Sec. 26-119. Penalty for violation of regulations, etc.

Any violation of the zoning regulations or policies, rules, or regulations interpreting the zoning regulations or of any final written order made or adopted pursuant to this title shall be a misdemeanor.
(Code 1978, § 22-35; Bill No. 18, 1990, § 2; Bill No. 88, 1990, § 1)

Sec. 26-120. Injunctive proceedings.

In addition to all other remedies provided by law, the director of zoning administration and development management or any person whose property is affected by any violation, including abutting and adjacent property owners, whether specially damaged or not, may maintain an action in any appropriate court for an injunction enjoining the erection, construction, reconstruction, alteration, repair, or use of buildings, structures,

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regional shopping center and cottages. Trustees of McDonogh v. Baltimore County, 221 Md. 550, 158 A.2d 637 (1969).

Construed in Oursler v. Board of Zoning Appeals, 204 Md. 399, 104 A.2d, 568 (1954); Offutt v. Board of Zoning Appeals, 204 Md. 551, 105 A.2d 219 (1954); Daniels v. Board of Zoning Appeals, 205 Md. 36, 106 A.2d 57 (1954); Temmink v. Board of Zoning Appeals, 205 Md. 489, 109 A.2d 85 (1954).

Applied in Zinn v. Board of Zoning Appeals, 207 Md. 355, 114 A.2d 614 (1955).

Price v. Cohen et al., 213 Md. 457, 132 A.2d 125 (1957), denial of rezoning of a certain tract of land on the grounds that it would materially increase the traffic hazard at that particular location, was upheld pursuant to this section.

An order rezoning certain property from residential to commercial to permit erection of a shopping center was reversed in Hardesty v. Zoning Board, 211 Md. 172, 126 A.2d 621 (1956), on the grounds that such rezoning would clearly increase the traffic hazard in the vicinity. Such a reclassification would be a plain violation of the statutory requirement against congestion in the streets pursuant to this section.

Applied as to a rezoning from residential to manufacturing restricted. Huff v. Board of Zoning Appeals of Baltimore County, 214 Md. 48, 133 A.2d 84 (1957).

Cited in Nelson v. Montgomery County, 214 Md. 596, 136 A.2d 377 (1957).

Applied in Tyrie v. Baltimore County, 215 Md. 135, 137 A.2d 156 (1957).

Applied and appellant required to pay cost, Missouri Realty Co. v. Reamer, 216 Md. 442, 140 A.2d 656 (1958).

Charter references—Zoning maps, § 523; county board of appeals functions and powers relating to zoning, § 602(a).

Cross references—Parking commercial vehicles in residential zones, § 21-110; parking nonmotorized vehicles on residential streets, § 21-112; residential permit parking areas, § 21-186 et seq.

Exh. E

and land in violation of zoning regulations and restrictions adopted pursuant to this title and requiring the return of property, to the extent possible, to its condition prior to the violation, including removal of the source of the violation.
(Code 1978, § 22-36; Bill No. 18, 1990, § 2; Bill No. 4, 1992, § 1)

Annotation—Similar section of 1955 County Code cited in Commissioners of Baltimore County v. Oxford Company, 209 Md. 373, 121 A.2d 239 (1956).

Sec. 26-121. Civil penalty for zoning violations.

(a) The director of zoning administration and development management shall interpret and enforce the county zoning regulations to insure that uses or buildings, including but not limited to structures, landscaping, roads, and streets, conform to plans approved by the county.

(b) As used in this section, the following words have the meanings indicated.

Defendant means the person charged with violating the zoning regulations and having a relationship to the property, including but not limited to any of the following:

(1) *Owner* means the person listed in the tax records of the county.

(2) *Occupant* means the person who has the actual use of the property.

(3) *Landlord* means the person who owns or holds the property for the owner.

(4) *Tenant* means the person who rents or leases the use of the property.

(5) *Person* includes an individual, corporation, partnership, association, joint venture, firm, organization, representative, trustee, receiver, or other legal entity.

Cross reference—Definitions and rules of construction generally, § 1-2.

(c) If the use of property by a person, after inspection by a representative of the office of planning and zoning, is alleged to be in violation of the zoning regulations or policies, rules, or regulations interpreting the zoning regulations or orders of the zoning commissioner or board of appeals of the county, the person is subject to a civil penalty as prescribed in subsection (c) of this section. Representatives of the office of planning and zoning have the duty of enforcing the zoning regulations and inspecting property for enforcement purposes and are authorized to enter upon open land during the performance of their duties.

(d) The amount of the civil penalty is two hundred dollars ($200.00) for each violation, and each day shall be considered a separate violation. A citation may charge the defendant with more than one (1) violation.

(e) On receipt of the initial inspection report alleging a civil zoning violation of the zoning regulations, the director of zoning administration and development management shall issue a citation to the person alleged to be in violation of the zoning regulations. The citation shall be on a form adopted by the director of zoning administration and development management, shall affirm that the contents therein are correct to the best of his knowledge, and shall include:

(1) The date of issuance of the citation.

(2) The name and address of the person charged.

(3) The section number(s) of the zoning regulation which has been violated.

(4) The nature of the civil zoning violation and the location and dates of the violation and whether the violation may be continuing in nature.

(5) The amount of the fine assessed as a civil penalty.

(6) The instructions for paying the fine.

(7) The right to elect to stand trial for the civil zoning violation, along with the instructions for making such election.

(f) (1) Any person who receives a citation may pay the fine within thirty-five (35) days or may elect to stand trial for the violation by filing with the director of zoning administration and development management, at least five (5) days before the date of payment as set forth in the citation, a notice of intention to stand trial.

Pict Sub #7

CARROLL MANOR

HEY DAY

Saturday, April 28, 1956

P.M. to P.M.

sponsored by the

CARROLL MANOR

PARENT TEACHER ASSOCIATION

Prot 8

11 Sales 79 Pet Sch #11

2-22	74 Ply VL29C4B483852 - Hartland & Sons	40
	73 Buick-4K45H36 125273 John W Hunter Sr	1500
	73 Ply-VL29C3B521608 - Joan D Cadle	1875
2-26	73 Ply-VL29G3B485850 Wm H Bowell	1695
	65 Pont-23369520604677 Dwight L Addington	100
3-7	74 Ford-4F03Y334455 Mary C Moore	1895
	75 Olds 3557F5M121574 Bel Air Auction	2108
3-14	72 Ford - 2B27H128182 " "	858
	73 Olds 3G37K3M178521 " "	1143
	73 Pont 2037M3A228773 Houston & Cecil Jr	1520
	71 Olds 34239M129691 Charles L Canedy	1495
	67 Olds-3543737M485776 - Glen Auto Sales	
	69 VW - 1196713553 - "	
	68 VW 1182779003 - "	850
	70 VW - "	
	65 Ford - "	
	68 Falcon 5X10U146853 M. Ted Smith	575
	70 Olds 3547J0E202715 James E. Stanley	50
	74 Dodge-LH41C4R126762 John J. Stropelis	1845
3-20	72 Olds-3L39H2E155050 Bel Air Auction	243
	63 Cad - " "	63
	69 Dodge LL23B9B418282 " "	603
	73 Merc 3H10H517672 " "	547
	67 Ply-BH29D72248770 Brian C Mulligan	400
4-2	65 Myriad - Dell a Auto Sales	60
	69 Merc-9276X629186 Bel Air Auction	400
	71 Buick 8111062280 Wm Ward	149

Sales 79

	73 Capri - Tracy & Price - 6AE CNR 86627	600
	73 Buick 4D37H3H235094 - Bel Air Auction	1355
	74 Auto 4T11T366903 - George J McKeever	1045
	73 Olds 3557K3R193775 Charles W Miller Jr	2600
	72 Chev - 1H57H2B634412 Dorothy Cecelia Dalton	1895
	74 Chev - NV17R4U423737 Raymond F Weidenhoft Jr	800
	71 Olds - 3646711E176817 Hannibal E Yeck	650
	74 Ford - 4T11X272142 Valerie V Weltzel	1200
1-11	74 Ford - 4B30H148631 Elizabeth B Jeckle	1895
1-19	69 Olds - 3546990 138378 John D Young	200
	73 Chg - DP23K3F125067 Bel Air Auction	3334
	73 Dodge LL41C5R329738 " " "	1143
	71 Chev 138571B211251 " " "	1173
	73 Chev - BW69R3T129104 " " "	1283
	77 Ford 7X10Y180584 Susan Carol Leander	1475
	73 Ford - 3E63N193137 Bel Air Auction	873
2-5	70 VW - 1102412771 " " "	393
	72 Ford 2T57M2N579878 " " "	1483
	74 Chev 1L39H4T137847 " " "	1143
	71 Cad - 6R347IQ130938 Impound Mts	350
2-7	74 Dodge - DP43N4F147255 Wholesale Mts	900
	73 Olds - 3J57K3M229813 Kostlevard Mts	120
	72 Olds 3L39H2E234493 Outdoor Living Inc	110
	75 Ford - 5E81F223033 Margaret E Baxter	240
	73 Olds - 3X39T3E224623 John D Everly Jr	155
2-22	75 Olds - 3R35T5X193937 Nelson Auto Brokers	145
	71 Datsun - PL521441536 - Abco Auto Parts	35

Complete Automotive Service

Amoco Gas & Oil

Road Service

REED'S VALLEY MOTOR SALES

NEW & USED CARS & TRUCKS

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LANDSCAPE CONTRACTOR

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Baltimore 6, Maryland

NOrthfield 8-0640

Fork 4392

LAKE DRIVE INN

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SANDWICHES

CROMWELL BRIDGE ROAD AND LAKE DRIVE

LOCH RAVEN, MARYLAND

LAND AND SIMMONS COMPANY

GENERAL CONTRACTORS

GLEN ARM LUMBE

Long Green Pike

BUILDING SUPPLIES, TOOLS AND F

FORK 4021

G

Compliments

of

G. D. MOOMAW &

TGU D'OR FARMS

Pet's Ex #6

Bag A
Pet. Ex. #9

Sales 77

	74 Ford E1KAHU 61227 Bel Air Auction	578 00
	74 Dodge WL41C4F246933 Wm C. Wilson	1200 00
4-10	74 Ford 4F[illegible]127101 Fidie Yarbrough	1645 00
	70 VW-3602098948 Abes Aut. Parts	250 00
	74 Ford-4A48H111308 Northwind Mts	1655 00
	73 Bly-4H41C3R188723 Richard L Goranch	250 00
4-13	75 Chev-1D29H5B517800 Wm K Barnes	2800 00
	65 Chev C1545B126289 Deerbeck Bldg Sup	975 00
	72 Bly VL29626322185 Wholesale Mts	550 00
	72 Olds 3F87H2M141241 James W Walters	1500 00
	74 Ford 4X92L162329 Robert J Garlock	1895 00
	72 Ford-F10GEP63091 Ted W Hostetler	700 00
	76 Mustang 6F02X102285 Melson Aut. Brokers	1500 00
4-23	73 AMC A3A067A304147 Murray C Taylor Jr	850 00
	74 Chev 1635H4B400024 Harry J Treherne III	2100 00
4-24	72 Ford-22687[illegible] Northwind Mts	1250 00
	74 Chev C54B145527 Roscoe M Hall III	1500 00
	74 Dodge-DH23T4F116914 Bel Air Auction	473 00
	75 Dodge-LH23C5F172482 Bel Air "	1730 00
5-8	76 Pont 2635N6G104349 Northwind Mts	2155 00
	72 Dat-PL521712351 Leslie S Ogawa Jr	550 00
	70 Olds 35H390E184484 Stu Beigel Olds	350 00
	72 Chev-1N35R2T104778 " " "	350 00

Pet Exh #12

LONG GREEN VALLEY ASSOCIATION

The purpose of the Long Green Valley Association is to preserve our valley's agricultural and rural character. We have consistently strived to maintain the pristine nature of our valley. This is our main mission. We hope that you, as a valley resident, will support our efforts.

Over the years the community association has addressed many issues, the latest is the request by Mr. Paul Weber, owner of Executive Auto Paint & Repair, for a non-conforming use as shown on the attached plat. Previously we have alerted you about this issue because we believe it involves expansion and intensification of an existing commercial property or the potential for such growth. In our past communication, three hundred and forty-six of you supported our opposition to the non-conforming use by signing our petition. These names were presented to the hearing officer at the first hearing in December.

If you have driven by this property recently, you may have noticed the increased number of cars which have appeared on the property along Fork Road. The request for a non-conforming use would allow the entire area within the black border on the plat to be filled with cars. This represents a

definite expansion, in our opinion, of a commercial property in our valley. If the non-conforming use is upheld in the appeals process, Executive Auto Paint & Repair may be required to adhere to the Baltimore County Landscape Manual for commercial property. This means the property may NOT be allowed to remain in its present state. The manual addresses issues of paving, lighting, and advertising. The property in question may have to be paved, lighted and commercialized as any used car lot.

The final decision by the Baltimore County Appeals Board will be permanent and everlasting without regard to ownership of the property in the future. Mr. Paul Weber, owner of Executive Auto Paint & Repair, as part of the hearing before the Zoning Commissioner, was asked under oath if he had any intention of expanding his business. Mr. Weber deferred this question to his attorney and refused to answer.

It is not the intention of the Long Green Valley Association, by contesting this non-conforming use, to deny Executive Auto Paint & Repair, the opportunity to exist at the level of operation in the past, but that it is the community's desire to ensure that no more intensification or commercialization of the site take place either now or in the future.

The Long Green Valley Association appeared before the zoning commissioner to voice opposition to this non-conforming use; nevertheless, the non-conforming use was granted. The case has now been appealed to the Board of Appeals. **A hearing has been scheduled for Thursday, July 10th, 1997, at 10:00 A.M. in Room #48, Old Court House, 400 Washington Avenue, Towson, Maryland 21204**. [If a second day is required, the hearing will continue on Thursday, August 14th, 1997, at 10:00 A.M. same location.] An important thought to remember is: these decisions set precedents for the valley. These precedents will govern future decisions by the zoning board and other agencies. Therefore your presence at this hearing is imperative.

A group with a pro-development agenda has organized a militant opposition to the efforts of the Long Green Valley Association.

At no time has the Long Green Valley Association ever attempted to "put Paul Weber out of business," as has been alleged. We seek containment of the status quo.

Please read attached letter of our counsel, Carroll Holzer.

Mark July 10, 1997, as a red letter day. The hearing is located in Room 48 Old Court House, Towson, Maryland. Below is an opportunity to communicate your support of the Association's efforts on behalf of this issue.

HOLZER & LEE

LAW OFFICES
J. CARROLL HOLZER, PA
J. HOWARD HOLZER
1907-1989
THOMAS J. LEE
OF COUNSEL

TOWSON OFFICE
305 WASHINGTON AVENUE
SUITE 502
TOWSON, MD 21204
(410) 825-6961
FAX: (410) 825-4923
E-MAIL: JCHOLZER@MAIL.BCPL.LIB.MD.US

May 12, 1997
6972

Long Green Valley Association
c/o Charlotte Pine, President
Baldwin, Maryland 21013

Re: Executive Auto Paint and Repair, Inc.

Dear Members of the Long Green Valley Association:

On December 20, 1996, a hearing was held before the Zoning Commissioner as a result of the Petition for Special Hearing filed by Paul Weber. He sought approval and designation of his site at 13580 Fork Road as an **existing nonconforming use for used car sales**. On January 16, 1997, the Zoning Commissioner **granted** as an existing nonconforming use for used car sales that part of Mr. Weber's property on the northwest side of the fence on Parcel 1.

As attorney for the LGVA, I extended an offer to Mr. Weber to enter into a Restrictive Covenant Agreement with LGVA to limit expansion of his used car operation. But he has refused to do this.

At the hearing before the Zoning Commissioner when given the opportunity to testify under oath that he was not going to expand his operation on Fork Road, Mr. Weber's attorney objected and would not permit him to answer that question.

In addition, county law permits an expansion by 25 % of an existing nonconforming use designation. Also, in the future Weber could file a Petition for Special Exception to expand his operation beyond the present nonconforming use.

Consequently, Mr. Weber's public statements as to the limitations of his business are not supported by his action before the Zoning Commissioner. If Mr. Weber is willing to enter into a binding agreement with the LGVA, the contested issues on the current and future use of his property could be resolved with guarantees by both sides. But at the present time, he is unable or unwilling to enter into such an enforceable agreement.

Very truly yours,

J. Carroll Holzer

JCH:clg

LONG GREEN VALLEY ASSOCIATION
P.O. Box 91
Baldwin, Maryland 21013

Protest Exh #B for I.D.

MINUTES FOR JUNE 26, 1997

A regular meeting of the Board of Directors of the Long Green Valley Association was held on June 26, 1976 at Boordy Vineyard.

Board Members In attendance

N. Boyce	*S. Buck**	*M. Cordes**	*C. Ebert*
*S. Emory**	*K. Gabriel*	*E. Hartline**	*D. McCloskey*
S. Millemann	*H. Mitchell* *	*C. Pine*	*B. Regan*
*M. Reier**	*C. Trela**	*J. Vance**	

---

1. A quorum was not present initially, but midway through the meeting a quorum was declared present.

2. The minutes of the meeting for May 15, 1997 were approved by consensus as submitted.

3. Tom Vance chaired the meeting. Noting there was not a quorum present at the beginning of the meeting, when needed the Board voted a consensus. An agenda was handed out and issues were updated.

4. On July 9, 1997 Wednesday at 10:00a.m. (case #96-168 SPHA) in Rm 48 of the Old Courthouse, the case of Ron Sanders of Sanders Corner will be heard.

5. On July 10, 1997 Thursday at 10:00a.m. (case #97-87 SPH) in Rm 48 of the Old Courthouse, the case of Paul Webber of Executive Auto will be heard. The second day is scheduled for Thursday, August 14, 1997 at 10:00 a.m. if needed.

6. Mr. Rob Carter again mentioned the issue of the original claim against Paul Webber which was made by a non- existent person with a false address. His purpose in bringing up this issue again was unclear. It was pointed out that this claim was not about the used car lot, but concerned another matter. When the zoning officer came to investigate, he discovered the used car lot to be in violation and issued the violation. Many points were discussed and C. Trela stated that this discussion should be terminated because it has already taken up a great deal of time and the board had much other business to discuss. She suggested that Mr. Carter, having brought up these same points at the last meeting where Carroll Holzer addressed them,

SALES ORDER

Pet Exh #14

Pinehurst Landscape Co., Inc.
4809 Long Green Road
Long Green, Maryland 21092

Telephone: 410-592-6766

SALES ORDER NO. 102465

CUSTOMER NO. EXECUTIVE

SALES QUOTE (ONLY)

BILL TO:	SHIP TO:
Executive Auto 13580 Fork Road Baldwin, Maryland 21013	Executive Auto 13580 Fork Road Baldwin, Maryland 21013

Telephone: 410-582-8880

DATE	SHIP VIA	F.O.B.	TERMS
07/08/97	SUMMER 97		NET 10

P.O. NUMBER	ORDER DATE	SALESPERSON	RESALE NUMBER	OUR ORDER NUMBER
	07/08/97	ROB		102465

QUANTITY ORDERED	QUANTITY SHIPPED	ITEM NUMBER / ITEM DESCRIPTION	UNIT PRICE	EXTENDED PRICE
16.00		PINUS-WHITE-5' Pinus strobus (White Pine) 5-6'	85.00	1360.00
1.00		*	0.00	0.00

Terms
Payment in full as items of work are completed.
1.5% monthly, 18% annual, service charge on balances over 30 days.
This proposal may be withdrawn by us if not accepted within 30 days.

Authorized Signature _____
Robert B. Carter, President

Acceptance of Proposal _____
Date 7-9-97

NON TAXABLE	* TAXABLE	SALES TAX		FREIGHT	ORDER TOTAL
1360.00	0.00	0.000%	0.00	0.00	1360.00

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

CERTIFICATE NO.
7162

By virtue of the authority vested in me, as Administrator of Motor Vehicles, under the provisions of the Maryland Vehicle Laws, I do hereby certify that the following described document(s), a copy of which is attached hereto, is a true copy taken from the original, now on file, and part of the records of this agency.

ATTACHED IS A TRUE COPY OF THE ZONING REQUIRED FOR THE LICENSING OF EXECUTIVE AUTO PAINT & REPAIR, INC. LOCATED AT 13580 FORK ROAD BALDWIN, MARYLAND 21013

062 MVA 9-20-96#688 $10.00 C

In testimony whereof, I hereto subscribe my name, and affix the seal of the Office of the Motor Vehicle Administration of the State of Maryland, this date SEPTEMBER 20, 1996 mah .

Ronald L. Freeland
ADMINISTRATOR OF MOTOR VEHICLES

C CK

BZA Cert. Exh #16

CS-143 (9-95)

Pet's No 9-

CV# 476756

MOTOR VEHICLE ADMINISTRATION
Licensing & Consumer Services
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062 48

☐ $ 5.00 NON-CERTIFIED RECORD (for personal or general use)
☒ $10.00 CERTIFIED RECORD (for official use)

☑ CASH 5.00 + CV
☐ CHECK #
☐ GRATIS

CS-224 (8-92)

TYPE OF RECORD REQUESTED

- ☒ DEALER FILE
- ☐ SALESMAN FILE
- ☐ PROFESSIONAL DRIVING SCHOOL FILE
- ☐ INSTRUCTOR FILE
- ☐ TITLE SERVICE AGENTS
- ☐ AUTOMOTIVE DISMANTLER & RECYCLER FILE
- ☐ SCRAP PROCESSOR FILE
- ☐ COMPLAINT CASE
- ☐ OTHER: _____

I/WE CERTIFY, UNDER PENALTY OF PERJURY, THAT THE STATEMENTS MADE HEREIN ARE TRUE AND CORRECT, TO THE BEST OF MY/OUR KNOWLEDGE, INFORMATION AND BELIEF.

NAME(S) OF RECORD REQUESTED:
Executive Auto Paint & Repair, Inc.

ADDRESS:
13580 Fork Road, Baldwin, Md. 21013

NAME OF PERSON REQUESTING RECORD:
Gerard F. Stevens, Attorney

ADDRESS:
315 No Charles St., Balto, Md. 21201

AGENCY OR BUSINESS REPRESENTED:
Fisher & Winger, Attorney, for Exec.

SIGNATURE: _____ **DATE:** 9/16/96

REASON FOR REQUEST:
Zoning violation / Petition for Non-Conforming Use

APPROVED BY: _____ **DATE:** 9/20/96

062 MVA 9/20/96#688 $10.00 C

_____Scrap Processor

_____Professional Driver's School

_____Transporter (Vehicle repair, remodeling, painting, Etc.)

Inasmuch as they are located in your jurisdiction we are requesting that you supply us with zoning verification.

The attached self-addressed envelope may be utilized when submitting this information. Your cooperation, in this matter, is greatly appreciated.

Very truly yours,

Mrs. S. Kazmarek
Mrs. S. Kazmarek
Dealer Licensing & Consumer Services

I certify that the above referenced is X, is not ___, properly zoned to conduct the type of business indicated above.

Signed: _____

Date: 10-1-79

Enclosure

OCT 8 1979

Pit Exh #17

Pict Sht # 18

Pict #19

Pet Ex #21

1980

Prot Exh (ID)
9

EXECUTIVE AUTO PAINT & REPAIR CASE NO. 97-87-SPH

COUNTY BOARD OF APPEALS HEARING AUGUST 14, 1997

PROTESTANTS' SIGN-IN SHEET

Check if you wish to testify.	Name/Address Phone No.	(Community Group You Represent?) Basis of Your Concerns
	5 Fork Springs Ct Baldwin, Md 21013	
	Mark Steindler 832683	
	ANTHONY J. VERDECCHIA 9 FORK SPRINGS CT BALDWIN 21013	
	PAULA WAIRE 12 FORK SPRINGS CT BALDWIN MD 21013	
	Carol + Tule	
	Ballard C. Rizer	
	Katherine Gabriel	
	13333 Long Green Pike BALDWIN MD 21013 592-2970	
	Sharon Rohrbaugh 13538 Mt. Rd Baldwin, Md 21013	
	Cathy	

7/10/97

Protestants Sign In

Sharon Rohrbaugh - 13558 Fork Rd. Baldwin MD 21013 410-592-6552
Paula Waire 12 Fork Springs Ct Baldwin MD 21013 (410) 592-7019
Pat Verdecchia 9 Fork Spring Ct Baldwin 21013 (410-592-2599)
John T. Vance III 13333 Long Green Pike Baldwin MD 592-2970
Carol T. Treca 5433 Patterson Rd. Baldwin, MD
Edward Ilgenfritz 13015 Bottom Rd Hydes MD. 410-592-2830
Lynda Roth 3 Fork Springs Ct, Baldwin, Md. 21013 410-592-6527
Richard Roth 3 Fork Springs Ct. Baldwin MD 21013 410-592-6527
Katherine Gabriel 12601 Long Green Pike Glen Arm Md 21057 410 592 8987
Cathy Ebert 12815 Kanes Rd Glen Arm Md 21057
Elston Brown 5921 Williams Rd Hydes 21082
Charlotte + Mr. Pine 13310 Fork Road Baldwin Md 21013

JAMES A. PINE
ATTORNEY AT LAW
607 BALTIMORE AVENUE
TOWSON, MARYLAND 21204-4035

PHONE (410) 823-5200
FAX (410) 823-5201

CHARLOTTE W. PINE
ASSOCIATE

Prot. Exh #8

VIA FACSIMILE

August 4, 1997

Motor Vehicle Administration
Attn: Ann Panasuk
6601 Ritchie Highway, Room 101
Glen Burnie, Maryland 21062

Dear Ms. Panasuk:

Please send me copies of the Application for License (front and back) for Executive Auto Paint & Repair, Inc., for the years prior to 1995. You mailed me:

U-2584	expiration 2/28/96
U-4473	expiration 2/28/97
U-5406	expiration 2/28/98

This information is needed for Case No. 97-87-SPH, In the Matter of Executive Auto, before the Baltimore County Board of Appeals which is scheduled for Trial on August 14, 1997.

Thank you for your prompt and courteous assistance in this matter.

Very truly yours,

Charlotte W. Pine

Charlotte W. Pine

CWP/cmh

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

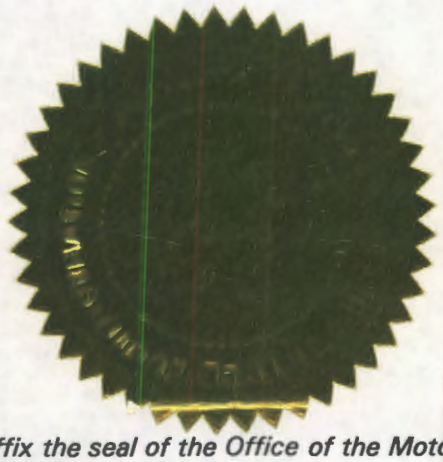
CERTIFICATE NO.
7235

By virtue of the authority vested in me, as Administrator of Motor Vehicles, under the provisions of the Maryland Vehicle Laws, I do hereby certify that the following described document(s), a copy of which is attached hereto, is a true copy taken from the original, now on file, and part of the records of this agency.

Attached are copies of The Dealer Applications for the last 3 years on Executive Auto Paint&Repair.

001 MVA 7-28-971720

$30.00CK



In testimony whereof, I hereto subscribe my name, and affix the seal of the Office of the Motor Vehicle Administration of the State of Maryland, this date July 28,1997 jm.

Ronald L. Freeland

ADMINISTRATOR OF MOTOR VEHICLES

C CK

CS-143 (9-95)

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

ealer Licensing & Consumer Services
(410) 787-7732

APPLICATION FOR VEHICLE DEALER'S LICENSE

FOR MVA USE ONLY
502707
$250.00

LICENSE CONTROL NO.
U 5406

EXPIRATION:
2-28-98

CURRENT DEALER'S LICENSE NUMBER
U2223

DEALER'S FEDERAL ID NUMBER
52-1131-967

CURRENT TRADER'S LICENSE NUMBER
890852

BUSINESS PHONE
410 592-8880

SCHEDULED BUSINESS HOURS
MON-FRI 8am -5pm

A

TYPE OF DEALERSHIP (X)
- ☑ USED CAR
- ☐ NEW CAR
- ☐ MOTORCYCLE
- ☐ TRAILER OVER 15 FT.
- ☐ BOAT TRAILER OR TRAILER UNDER 15 FT.
- ☐ EMERGENCY VEHICLE

TYPE OF APPLICATION (X)
- ☐ ORIGINAL APPLICATION
- ☑ RENEWAL APPLICATION
- ☐ ADDITIONAL LOCATION
- ☐ CHANGE OF ADDRESS
- ☐ CHANGE OF OWNERSHIP
- ☐ CHANGE OF OFFICERS
- ☐ CHANGE OF NAME

TYPE OF OWNERSHIP (X)
- ☐ INDIVIDUAL OWNER
- ☐ PARTNERSHIP
- ☐ CORPORATION
- ☐ CLOSE CORPORATION

B

COMPANY NAME (INCLUDE TRADE NAME)
Executive Auto-Paint + Repair Inc T/A Executive Auto

ADDRESS
13580 Fork Rd

CITY | COUNTY | STATE | ZIP CODE
Baldwin Md Ba 21013

LIST ALL OWNERS, PARTNERS OR OFFICERS OF CORPORATION BELOW, AND INDICATE WHICH ONE RECEIVES THE GRATIS SALESMAN'S LICENSE.
NOTE: ONE GRATIS SALESMAN'S LICENSE IS ISSUED PER DEALER LICENSE FEE PAID.

#1 GRATIS

C

1 NAME OF OWNER, PARTNER OR OFFICER: PAUL DONALD WEBER G17702479 | POSITION HELD | HOME PHONE NO.
STREET ADDRESS (HOME) | CITY | STATE | ZIP CODE
HGT. | WGT. | SEX | [redacted] | STATE

2 NAME OF OWNER, PARTNER OR OFFICER: DEBORAH FLOYD WEBER | POSITION HELD | HOME PHONE NO.
STREET ADDRESS (HOME) | CITY | STATE | ZIP CODE
HGT. | WGT. | SEX | DATE OF BIRTH | DRIVER LICENSE NO. | STATE

3 NAME OF OWNER, PARTNER OR OFFICER: DEBORAH FLOYD WEBER | POSITION HELD | HOME PHONE NO.
STREET ADDRESS (HOME) | CITY | STATE | ZIP CODE
HGT. | WGT. | SEX | DATE OF BIRTH | DRIVER LICENSE NO. | STATE

D

OTHER THAN THOSE LISTED ABOVE, LIST ALL PERSONS WHO HAVE A FINANCIAL INTEREST EITHER DIRECT OR INDIRECT IN THIS DEALERSHIP. PLEASE ATTACH ADDITIONAL STATEMENT IF MORE SPACE IS REQUIRED.

FIRST, MIDDLE, AND LAST NAME | DATE OF BIRTH | DRIVER LICENSE NO. | STATE
STREET ADDRESS (HOME) | CITY | STATE | ZIP CODE

FIRST, MIDDLE, AND LAST NAME: None | DATE OF BIRTH | DRIVER LICENSE NO. | STATE
STREET ADDRESS (HOME) | CITY | STATE | ZIP CODE

E

LIST MAKES OF VEHICLES FOR WHICH YOUR DEALERSHIP HOLDS A FRANCHISE.

FOR M.V.A. USE ONLY

LOCATION APPROVED BY _____ SIGNATURE OF INVESTIGATOR DATE

APPLICATION APPROVED BY Denise Pennock 2/13/97 SIGNATURE OF REPRESENTATIVE OF DEALER LICENSING SERVICES DATE

APPROVED C.H. Bidwell 2-14-97 CHIEF, DEALER LICENSING DATE

CONCURRENCE _____ ASSISTANT DIRECTOR — DEALER LICENSING

1-31-94

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

Dealer Licensing & Consumer Services
(410) 787-7732

APPLICATION FOR VEHICLE DEALER'S LICENSE

FOR MVA USE ONLY
CV 323407
$250.00
CV
CK
C

LICENSE CONTROL NO.
U 2584

EXPIRATION:
FEB 28 1996

A

TYPE OF DEALERSHIP (X)
- [X] USED CAR
- [ ] NEW CAR
- [ ] MOTORCYCLE
- [ ] TRAILER OVER 15 FT.
- [ ] BOAT TRAILER OR TRAILER UNDER 15 FT.
- [ ] EMERGENCY VEHICLE

TYPE OF APPLICATION (X)
- [ ] ORIGINAL APPLICATION
- [X] RENEWAL APPLICATION
- [ ] ADDITIONAL LOCATION
- [ ] CHANGE OF ADDRESS
- [ ] CHANGE OF OWNERSHIP
- [ ] CHANGE OF OFFICERS
- [ ] CHANGE OF NAME

TYPE OF OWNERSHIP (X)
- [ ] INDIVIDUAL OWNER
- [ ] PARTNERSHIP
- [X] CORPORATION
- [ ] CLOSE CORPORATION

CURRENT DEALER'S LICENSE NUMBER: U2223

B

COMPANY NAME (INCLUDE TRADE NAME)
EXECUTIVE AUTO PAINT + REPAIR INC T/A EXECUTIVE AUTO

DEALER'S FEDERAL ID NUMBER: 52-1131-967

ADDRESS
13580 FORK ROAD

CURRENT TRADER'S LICENSE NUMBER: 618302

CITY	COUNTY	STATE	ZIP CODE
BALDWIN,	MD	BA	21013

BUSINESS PHONE: (410) 592-8880

SCHEDULED BUSINESS HOURS: MON-FRI 8-5

LIST ALL OWNERS, PARTNERS OR OFFICERS OF CORPORATION BELOW, AND INDICATE WHICH ONE RECEIVES THE GRATIS SALESMAN'S LICENSE.
NOTE: ONE GRATIS SALESMAN'S LICENSE IS ISSUED PER DEALER LICENSE FEE PAID.

1 | NAME OF OWNER, PARTNER OR OFFICER: PAUL D. WEBER G94702146 | POSITION HELD: Pres | HOME PHONE NO.: [redacted]
STREET ADDRESS (HOME): [redacted] | CITY | STATE | ZIP CODE
HGT. [redacted] | DATE OF BIRTH [redacted] | DRIVER LICENSE NO. [redacted] | STATE [redacted]

2 | NAME OF OWNER, PARTNER OR OFFICER: DEBORAH F. WEBER | POSITION HELD [redacted] | HOME PHONE NO. [redacted]
STREET ADDRESS (HOME): [redacted] | CITY | STATE | ZIP CODE
HGT. [redacted] | WGT. [redacted] | SEX [redacted] | DATE OF BIRTH [redacted] | DRIVER LICENSE NO. [redacted] | STATE [redacted]

3 | NAME OF OWNER, PARTNER OR OFFICER: DEBORAH F. WEBER | POSITION HELD [redacted] | HOME PHONE NO. [redacted]
STREET ADDRESS (HOME): [redacted] | CITY | STATE | ZIP CODE
HGT. [redacted] | WGT. [redacted] | [redacted] | [redacted] | [redacted] NO. | STATE [redacted]

OTHER THAN THOSE LISTED ABOVE, LIST ALL PERSONS WHO HAVE A FINANCIAL INTEREST EITHER DIRECT OR INDIRECT IN THIS DEALERSHIP.
PLEASE ATTACH ADDITIONAL STATEMENT IF MORE SPACE IS REQUIRED.

FIRST, MIDDLE, AND LAST NAME	DATE OF BIRTH	DRIVER LICENSE NO.	STATE
NONE			
STREET ADDRESS (HOME)	CITY	STATE	ZIP CODE

FIRST, MIDDLE, AND LAST NAME	DATE OF BIRTH	DRIVER LICENSE NO.	STATE
STREET ADDRESS (HOME)	CITY	STATE	ZIP CODE

LIST MAKES OF VEHICLES FOR WHICH YOUR DEALERSHIP HOLDS A FRANCHISE.

FOR M.V.A. USE ONLY

LOCATION APPROVED BY _____ SIGNATURE OF INVESTIGATOR _____ DATE

APPLICATION APPROVED BY _____ SIGNATURE OF REPRESENTATIVE OF DEALER LICENSING SERVICES _____ DATE

APPROVED Ronald B. Cook CHIEF, DEALER LICENSING 2/9/95 DATE

CONCURRENCE _____ ASSISTANT DIRECTOR — DEALER LICENSING FEB 03 1995 DATE

MVA 5-952B (10-93)

(CONTINUED ON THE REVERSE SIDE)

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

Dealer Licensing & Consumer Services
(410) 787-7732

APPLICATION FOR VEHICLE DEALER'S LICENSE

FOR MVA USE ONLY
CV429732 CV✓
$250.00 CK
C

LICENSE CONTROL NO.
44473

EXPIRATION:
2-25-97

CURRENT DEALER'S LICENSE NUMBER
V2223

DEALER'S FEDERAL ID NUMBER
52-1131-967

CURRENT TRADER'S LICENSE NUMBER
749623

BUSINESS PHONE
(410) 592-8880

SCHEDULED BUSINESS HOURS
MON-FRI 8AM-5PM

A

TYPE OF DEALERSHIP (X)
- ☑ USED CAR
- ☐ NEW CAR
- ☐ MOTORCYCLE
- ☐ TRAILER OVER 15 FT.
- ☐ BOAT TRAILER OR TRAILER UNDER 15 FT.
- ☐ EMERGENCY VEHICLE

TYPE OF APPLICATION (X)
- ☐ ORIGINAL APPLICATION
- ☑ RENEWAL APPLICATION
- ☐ ADDITIONAL LOCATION
- ☐ CHANGE OF ADDRESS
- ☐ CHANGE OF OWNERSHIP
- ☐ CHANGE OF OFFICERS
- ☐ CHANGE OF NAME

TYPE OF OWNERSHIP (X)
- ☐ INDIVIDUAL OWNER
- ☐ PARTNERSHIP
- ☑ CORPORATION
- ☐ CLOSE CORPORATION

B

COMPANY NAME (INCLUDE TRADE NAME)
Executive Auto Paint + Repair, Inc T/A Executive Auto

ADDRESS
13580 Fork Road

CITY: Baldwin | COUNTY: Maryland | STATE: Ba | ZIP CODE: 21013

C

LIST ALL OWNERS, PARTNERS OR OFFICERS OF CORPORATION BELOW, AND INDICATE WHICH ONE RECEIVES THE GRATIS SALESMAN'S LICENSE.
NOTE: ONE GRATIS SALESMAN'S LICENSE IS ISSUED PER DEALER LICENSE FEE PAID.

1 | NAME OF OWNER, PARTNER OR OFFICER: Paul David Weber G97701548 | POSITION HELD: [redacted] | HOME PHONE NO.: [redacted]
STREET ADDRESS (HOME): [redacted] | CITY | STATE | ZIP CODE
HGT. [redacted] | WGT. [redacted] | SEX [redacted] | DATE OF BIRTH [redacted] | DRIVER LICENSE NO. [redacted] | STATE [redacted]

2 | NAME OF OWNER, PARTNER OR OFFICER: Deborah Floyd Weber | POSITION HELD: [redacted] | HOME PHONE NO.: [redacted]
STREET ADDRESS (HOME): [redacted] | CITY | STATE | ZIP CODE
HGT. [redacted] | WGT. [redacted] | SEX [redacted] | DATE OF BIRTH [redacted] | DRIVER LICENSE NO. [redacted] | STATE [redacted]

3 | NAME OF OWNER, PARTNER OR OFFICER: Deborah Floyd Weber | POSITION HELD: [redacted] | HOME PHONE NO.: [redacted]
STREET ADDRESS (HOME): [redacted] | CITY | STATE | ZIP CODE
HGT. [redacted] | WGT. [redacted] | SEX [redacted] | DATE OF BIRTH [redacted] | DRIVER LICENSE NO. [redacted] | STATE [redacted]

D

OTHER THAN THOSE LISTED ABOVE, LIST ALL PERSONS WHO HAVE A FINANCIAL INTEREST EITHER DIRECT OR INDIRECT IN THIS DEALERSHIP. PLEASE ATTACH ADDITIONAL STATEMENT IF MORE SPACE IS REQUIRED.

FIRST, MIDDLE, AND LAST NAME | DATE OF BIRTH | DRIVER LICENSE NO. | STATE
STREET ADDRESS (HOME) | CITY | STATE | ZIP CODE

FIRST, MIDDLE, AND LAST NAME: None | DATE OF BIRTH | DRIVER LICENSE NO. | STATE
STREET ADDRESS (HOME) | CITY | STATE | ZIP CODE

E

LIST MAKES OF VEHICLES FOR WHICH YOUR DEALERSHIP HOLDS A FRANCHISE.

FOR M.V.A. USE ONLY

LOCATION APPROVED BY _____ SIGNATURE OF INVESTIGATOR _____ DATE

APPLICATION APPROVED BY Lee Inscoe SIGNATURE OF REPRESENTATIVE OF DEALER LICENSING SERVICES 2-20-96 DATE

APPROVED _____ CHIEF, DEALER LICENSING _____ DATE

CONCURRENCE _____ ASSISTANT DIRECTOR — DEALER LICENSING _____ DATE

(01) MVA 3-08-962922

(01) MVA 3-08-962923

Appeal Ex. #1

LONG GREEN VALLEY ASSOCIATION

RESOLVED: That the position of the Long Green Valley Association as adopted by the Board of Directors on the zoning matter known as:

Petition for Non-Conforming Use
filed by Executive Auto Paint and Repair

CASE NO. 97-87-SPH

is that:

The Association is opposed to the granting of non-conforming use status.

AS WITNESS OUR HANDS AND SEAL THIS 9th day of July, 1997.

ATTEST: **LONG GREEN VALLEY ASSOCIATION**

Charlotte Lee
President

Carol J. Gable
Secretary

LONG GREEN VALLEY ASSOCIATION

P.O. Box 91 Baldwin, Maryland 21013

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY, ss:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the Board of Directors of the Long Green Valley Association.

July 9, 1997
Date

LONG GREEN VALLEY ASSOCIATION

ATTEST:

Charlotte E. Pine
President

Carol A. Dunbar
Secretary

DATE: July 9, 1997

LONG GREEN VALLEY ASSOCIATION

RESOLVED: That at the Annual meeting of the Long Green Valley Association held on April 14, 1997, it was decided by the Association that responsibility for review and action on all zoning matters for the period one year be placed in the Board of Directors consisting of the following members:

ALL PERSONS ON ATTACHED LIST

AS WITNESS OUR HANDS AND SEAL THIS 9th day of July, 1997.

ATTEST: **LONG GREEN VALLEY ASSOCIATION**

Charlotte W. Pine
President

Carol H. Gulb
Secretary

Long Green Valley Association Board of Directors 1997

NAME	OFFICE	STREET	CITY	STATE	ZIP	HOME PHONE	WORK PHONE	TERM EXPIRES
Edward L. Blanton, Jr.	Ex Officio	5025 Long Green Road	Glen Arm	MD	21057	592-6284	296-8160	
Nancy Boyce		5912 Glen Arm Road	Glen Arm	MD	21057	592-2831		1999
Sally Buck		12722 Long Green Pike	Hydes	MD	21082	592-9570	633-8110	1999
Michael Cordes		5530 Glen Arm Road	Glen Arm	MD	21057	592-3792		1998
Robert Deford	Ex Officio	12820 Long Green Pike	Hydes	MD	21082	472-4960	592-5015	
Catherine Ebert		12815 Kanes Road	Glen Arm	MD	21057	592-2381		2000
Susanne Emory		5525 Glen Arm Road	Glen Arm	MD	21057	592-9288		2000
Katherine Gabriel	Vice President	12601 Long Green Pike	Glen Arm	MD	21057	592-8087		2000
Elizabeth Hartline		5430 Patterson Road	Hydes	MD	21082	592-8162		1998
Denise McCloskey		5300 Hydes Road	Hydes	MD	21082	592-2996		2000
Sally Millemann		13009 Bottom Road	Hydes	MD	21082	592-3588		1998
Helen Mitchell		4523 Long Green Road	Long Green	MD	21092	592-6508		1999
Charlotte Pine	President	607 Baltimore Avenue	Towson	MD	21204		823-5200	1998
Bartlett Regan		6037 Church Lane	Hydes	MD	21082	592-5867		1999
Michael Reier		11909 Long Green Pike	Glen Arm	MD	21057	592-9045	581-1101	1998
Carol Trela	Secretary	5433 Patterson Road	Baldwin	MD	21013	592-3956		1999
John T. Vance III	Treasurer	13333 Long Green Pike	Baldwin	MD	21013	592-2970		2000

May 15, 1997

A

B

C

D

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Pet. Ex #
7

PET. Pet Exh #10
Ex # Bag A
10

IMPORTANT REMINDER

Pet. Exh #22

PLEASE COME!

YOUR PRESENCE IS NEEDED

TO SHOW SUPPORT IN OPPOSITION TO

EXPANSION OF USED CAR LOT

EXECUTIVE AUTO PAINT & REPAIR
13580 FORK ROAD
BALDWIN, MARYLAND 21013

CASE # 97-87SPH
*** * * * ***

PLEASE ARRANGE YOUR SCHEDULE TO BE PRESENT

AUGUST 14, 1997 @ 10:00 A.M.

AT

COUNTY BOARD OF APPEALS
OLD COURT HOUSE, ROOM 48
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
BALTIMORE COUNTY

Parcel 3

Aug 12 / 1942
1244/499

to be her act

As Witness my hand and notarial seal

Ont. Exh 4C

(Notarial Seal) Luella B Hottes

Notary Public

State of Maryland Baltimore City to wit

I Hereby Certify that on this 5th day of August 1942 before me the subscriber a Notary Public of the State of Maryland in and for the City aforesaid personally appeared Mary E Howard wife of Norris R Howard one of the within named grantors and she acknowledged the aforegoing deed to be her act

As Witness my hand and Notarial Seal

(Notarial Seal) Frances Kelso Roycroft

Notary Public

Recorded Aug 26 1942 at 11.40 A M and exd per Christian H Kahl Clerk (Rec by GRM) Examiners (J&G)

24695
Milton R Smith et al Trustees
Deed to
William T M Francis & Wf
USS $0.55 SS $0.10

This Deed made this 12th day of August in the yeer one thousand nine hundred and forty two by and between Milton R Smith Elmer R Haile and Howard B Stocksdale all of Baltimore County in the State of Maryland Trustees as hereinafter set forth parties of the first part and William T M Francis and Ada L Francis his wife of Baltimore County in the State of Maryland parties of the second part

Whereas by a decree of the Circuit Court for Baltimore County in Equity dated the 11th day of April 1942 and passed in a cause in said Court entitled Harvey E Nonemaker Administrator D B N C T A of the estate of Luther L Day deceased et al vs Gail D Day et al recorded in Equity Docket No 43 folio 85 the above named Milton R Smith Elmer R Haile and Howard B Stocksdale were appointed Trustees with authority to sell the hereinafter described fee simple property in the proceedings in said cause mentioned and after complying with all the previous requisites of the said decree the said Trustees did on or about the 1st day of June 1942 sell unto William T M Francis and Ada L Francis his wife at and for the sum of One Hundred Forty Dollars ($140.00) current money the aforesaid property situate in the Eleventh Election District of Baltimore County State of Maryland and described as follows that is to say

Beginning for the same at a stone marked JW standing on the south side of the Old Joppa Road and running the following courses and distances viz South eighty five degrees West seven perches to the Harford Turnpike Road and thence South thirty seven degrees East five perches and thence North seventy degrees East three and one half perches and thence with a straight line to the first place of beginning

For Title see Deed from John Watkins and wife to Luther L Day dated April 11 1867 and

the said decree to execute these presents

Now Therefore This Deed Witnesseth that the said Milton R Smith Elmer R Haile and Howard B Stocksdale Trustees as aforesaid for and in consideration of the premises and the sum of One Hundred and Forty Dollars ($140.00) current money to them in hand paid by the said William T M Francis and Ada L Francis his wife at and before the sealing and delivery of these presents the receipt of which is hereby acknowledged do grant and convey unto the said William T M Francis and Ada L Francis his wife as tenants by the entireties their assigns and unto the survivor of them his or her heirs and assigns all the aforesaid fee simple property hereinbefore described with its appurtenances and all the right title interest and estate of the said parties of the aforesaid decree both at law and in equity in and to the same

Together with the buildings and improvements thereupon and the rights alleys ways waters privileges appurtenances and advantages to the same belonging or in anywise appertaining

To Have And To Hold the aforesaid property with its appurtenances unto the said William T M Francis and Ada L Francis hiswife as tenants by the entireties their assigns and unto the survivor of them his or her heirs and assigns in fee simple forever

And the said Milton R Smith Elmer R Haile and Howard B Stocksdale Trustees as aforesaid hereby covenant that they will execute such further assurances of said land as may be requisite

Witness the hands and seals of the said Milton R Smith Elmer R Haile and Howard B Stocksdale Trustees as aforesaid

Witness

Ernestine T Barshinger

Milton R Smith (Seal)
Trustee

Elmer R Haile (Seal)
Trustee

Howard B Stocksdale (Seal)
Trustee

State of Maryland Baltimore County to wit

I Hereby Certify that on this 12th day of August in the year one thousand nine hundred and forty two before me the subscriber a Notary Publicof the State of Maryland in and for Baltimore County aforesaid personally appeared Milton R Smith Elmer R Haile and Howard B Stocksdale Trustees as aforesaid and they acknowledged the aforegoing Deed to be their respective act

(B)

LIBER 2812 FOLIO 387

This Deed, Made this 27th day of May

in the year one thousand nine hundred and fifty-four, by and between

WILLIAM T. M. FRANCIS and ADA L. FRANCIS, his wife

of Baltimore County in the State of Maryland, of the first part, and

JOHN M. NELSON and MARGARET NELSON, his wife

of the second part.

Witnesseth, that in consideration of the sum of five dollars and other good and valuable considerations

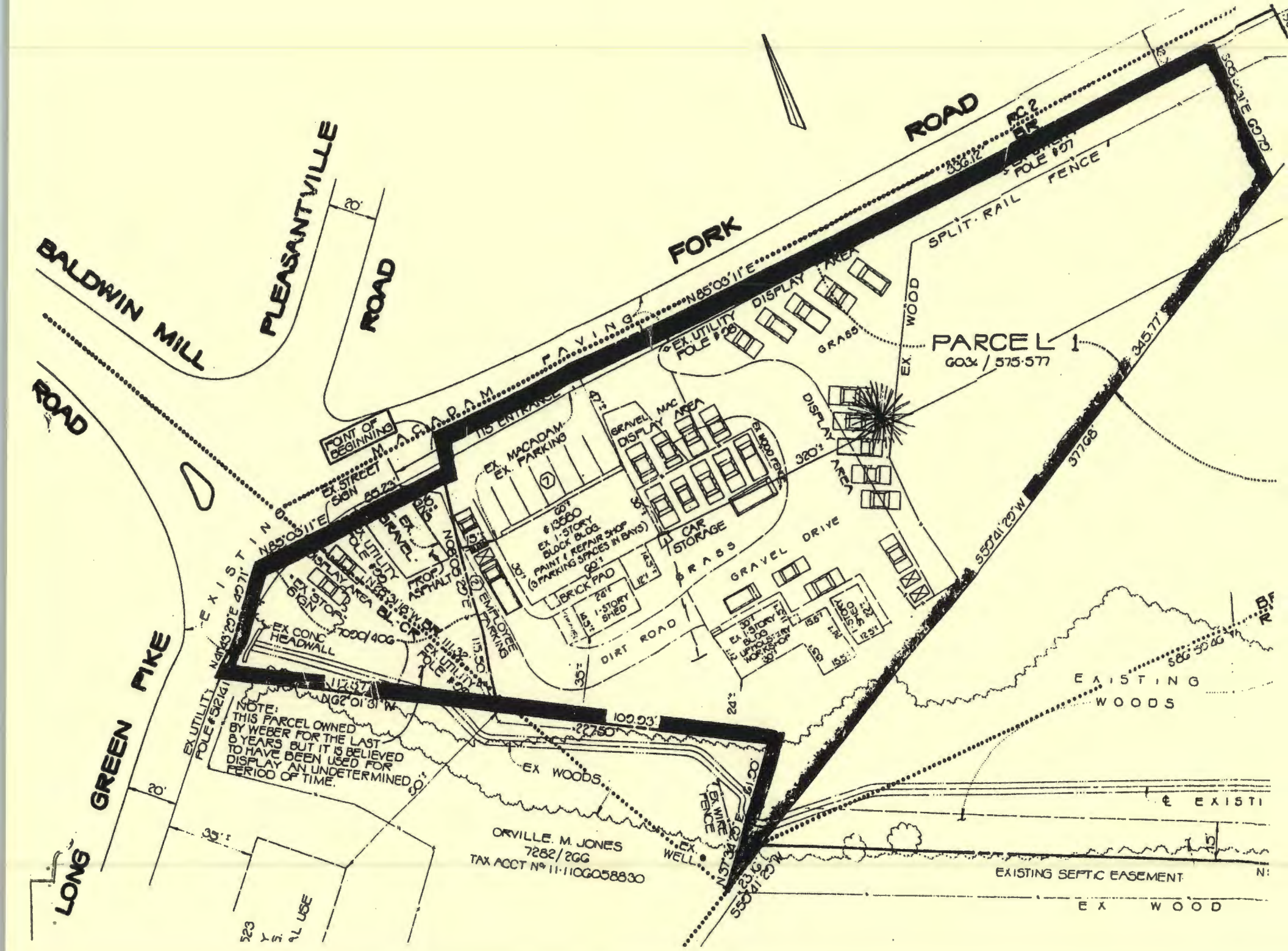
the said WILLIAM T. M. FRANCIS and ADA L. FRANCIS, his wife

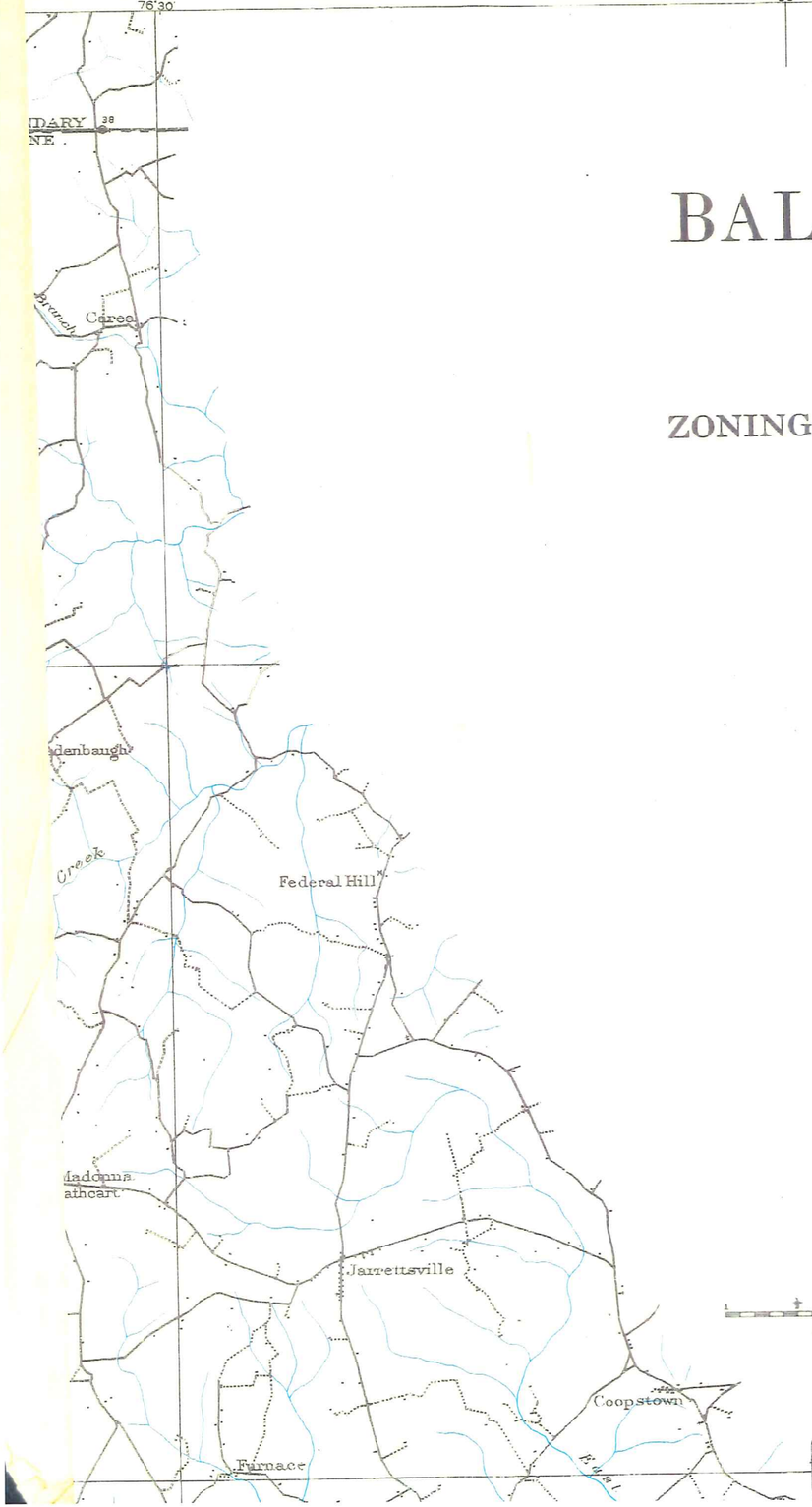
does grant and convey unto the said JOHN M. NELSON and MARGARET NELSON, his wife as tenants by the entireties, their

heirs and assigns, in fee simple, all that lot of ground, situate, lying and being in Baltimore County, state aforesaid, and described as follows, that is to say:—

Beginning for the same at a post on the southeast side of the road leading from Baldwin to Long Green, being a corner of the land now owned by the within grantees, and being the beginning of the whole lot, of which the land now being described is a part, which by deed dated April 17, 1923 and recorded among the land records of Baltimore County in Liber WPC No. 572 folio 46, was conveyed by J. Oscar Francis and wife to William T. M. Francis and wife, and running thence binding on the southeast side of said road, and on the outline of the whole lot, North 46° 15' East 50.00 feet to an iron pipe, thence leaving the outline, and running for a new dividing line, through and across the land of the grantors, South 44° 00' East 155 feet to a point in the South 65° West 260.5 feet line of the whole tract described in said deed, and thence binding on the outline of the whole tract, and on the Totten land, South 65° West 51.84 feet to a post at the corner of the lot of the within grantees and thence binding on said lot as now surveyed North 44° West 141.3 feet to the beginning. Containing 0.17 of an acre more or less as surveyed April 23, 1952.

Being part of that lot of ground contained in a deed dated April 17, 1923 from J. Oscar Francis and wife to William T. M. Francis and wife and recorded among the land records of Baltimore County in Liber WPC No. 572 folio 46.


BALDWIN MILL ROAD
PLEASANTVILLE ROAD
FORK ROAD
LONG GREEN PIKE
FAVING
N85°03'11"E
POINT OF BEGINNING
M.A.P.A.M.
115' ENTRANCE
EX. STREET SIGN
85.23'
EX. MACADAM PARKING
GRAVEL MAC DISPLAY AREA
EX. UTILITY POLE #28
DISPLAY AREA
GRASS
EX. WOOD
SPLIT RAIL FENCE
PARCEL 1
603 / 575-577
345.77'
377.68'
320'
EX. 1-STORY BLOCK BLDG.
PAINT & REPAIR SHOP
(3 PARKING SPACES IN BAYS)
BRICK PAD
1-STORY SHED
CAR STORAGE
GRAVEL DRIVE
DIRT ROAD
EMPLOYEE PARKING
EX. GRAVEL
PROP. ASPHALT
EX. SIGN
EX. CONC. HEADWALL
EX. UTILITY POLE #522
EX. UTILITY POLE #523
EX. UTILITY POLE #524
EX. 1-STORY BLDG. UPHOLSTERY & PAINT WORKSHOP
EXISTING WOODS
EX. WOODS
EX. WIRE FENCE
EX. WELL
ORVILLE M. JONES
7282/266
TAX ACCT No 11-1100058830
EXISTING SEPTIC EASEMENT
EX WOOD
S55°41'29"W
S86°50'00"W
N37°34'25"E
S50°41'29"W
N85°03'11"E
N43°29'E 45.71'
NOTE:
THIS PARCEL OWNED BY WEBER FOR THE LAST 8 YEARS BUT IT IS BELIEVED TO HAVE BEEN USED FOR DISPLAY AN UNDETERMINED PERIOD OF TIME.



ZONING MAP
OF
BALTIMORE COUNTY
MARYLAND

REPRODUCTION OF THE USE DISTRICT MAPS
PART OF THE
ZONING REGULATIONS AND RESTRICTIONS
Prepared by The Zoning Department
SEPTEMBER 1, 1947

LEGEND

- A—Residence Zone
- B—Residence Zone
- C—Residence Zone
- D—Residence Zone
- E—Commercial Zone
- F—Light Industrial Zone
- G—Heavy Industrial Zone
- District Boundary Lines

N. B. This is a diagramatic reproduction. For exact location of boundaries of zones, consult the Official Maps in the Office of the Zoning Commissioner, Towson, Maryland.

ON A BASE FURNISHED BY
THE MARYLAND GEOLOGICAL SURVEY
IN COOPERATION WITH
THE UNITED STATES GEOLOGICAL SURVEY

Scale 1/62500

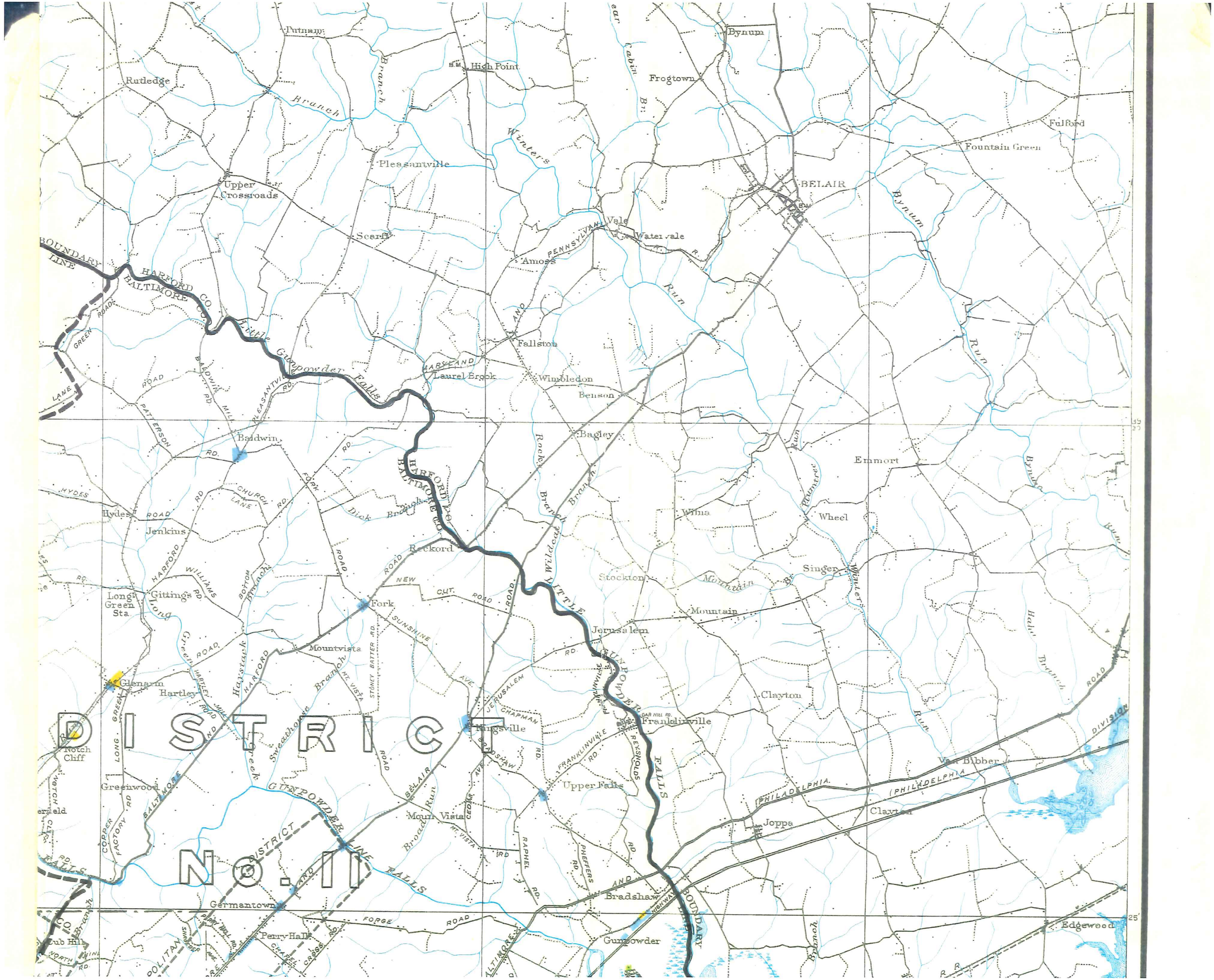
1 0 1 2 3 4 Miles

1 0 1 2 3 4 5 Kilometers

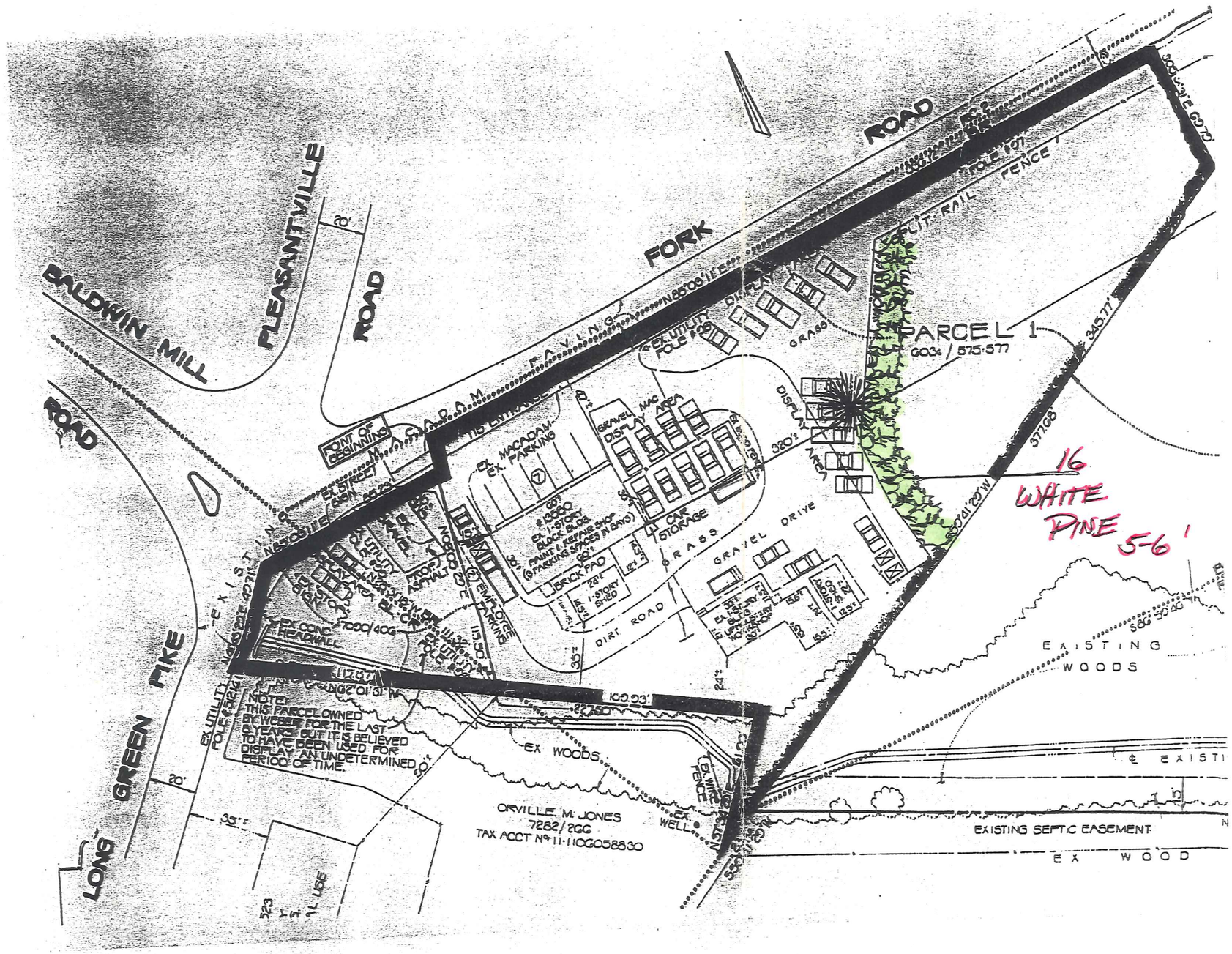
Contour interval 20 feet.
Datum is mean sea level.

PETR EXHIBIT NO. 2

Ct. Spl # 3


Putnam
Rutledge
Branch
High Point
Winters
Pleasantville
Upper Crossroads
Scarff
Vale
Waterville
Amoss
PENNSYLVANIA
Frogtown
Bynum
Fulford
Fountain Green
BELAIR
Bynum Run
BOUNDARY LINE
HARFORD CO.
BALTIMORE CO.
GREEN ROAD
LANE
ROAD
BALDWIN MILL RD.
PLEASANTVILLE RD.
PATTERSON RD.
Gunpowder Falls
MARYLAND
Laurel Brook
Fallston
Wimbledon
Benson
Bagley
Rocky Branch
Run
Emmort
Baldwin
HYDES ROAD
CHURCH LANE
RD.
FORK
Dick
Hydes
Jenkins
HARFORD
WILLIAMS
Long Green Sta
Gittings
Long Green
ROAD
BOTTOM Branch
Haystack
Reckord
NEW CUT ROAD
SUNSHINE AVE.
Mountvista
Glenarm
Hartley
Sweethouse Branch
MT. VISTA
STONEY BATTER RD.
Wildcat
LITTLE
Stockton
Mountain
Singer
Wilna
Wheel
Mountain Br.
Winters Run
Hall's Branch
Jerusalem
RD.
CHAPMAN
Kingsville
Franklinville
GUNPOWDER FALLS
Clayton
Notch Cliff
Greenwood
LONG GREEN
SALTMORE
COPPER FACTORY RD.
Broadshaw
AVE.
FRANKLINVILLE RD.
Upper Falls
Mount Vista
CEDAR
RAPHEL
PHEFFERS RD.
Bradshaw
Joppa
PHILADELPHIA
DIVISION
Vest Bibber
Edgewood
DISTRICT
NO. II
Germantown
FORGE ROAD
Perry Hall
Cub Hill
NORTH
TWIN
CRAIGEL
CROSS
POLITAN
BOUNDARY
HIGHWAY
R. R.

Pet Exh #15


ROAD
FORK
PLEASANTVILLE
ROAD
BALDWIN MILL
ROAD
LONG GREEN PIKE
EXISTING
N65°03'15"E
FENCE
PARCEL 1
6034 / 575-577
345.77'
377.68'
S00°12'20"W
POINT OF BEGINNING
N.65°03'15"E. 115.00'
EX. MACADAM PARKING
EX. 1-STORY BLOCK BLDG. PAINT & REPAIR SHOP (9 PARKING SPACES IN BAYS)
GRAVEL DISPLAY AREA
CAR STORAGE
GRASS
GRAVEL DRIVE
BRICK PAD
1-STORY SHED
DIRT ROAD
EX. CONC. HEADWALL
PROP. ASPHALT
EX. CONC. CURB
EX. UTILITY POLE #2216
EX. UTILITY POLE #2217
EX. UTILITY POLE #2218
EX. UTILITY POLE #2219
EX. UTILITY POLE #2220
EX. UTILITY POLE #2221
EX. UTILITY POLE #2222
EX. UTILITY POLE #2223
EX. UTILITY POLE #2224
EX. UTILITY POLE #2225
EX. UTILITY POLE

4/2/58

1958
flight 6
1000' scale
401-6-12

PETITIONER'S
EXHIBIT NO. 3

I HEREBY CERTIFY that this is a true copy, taken from the records in my custody of Baltimore County, Maryland.

Signed this 21 day of Nov 1996

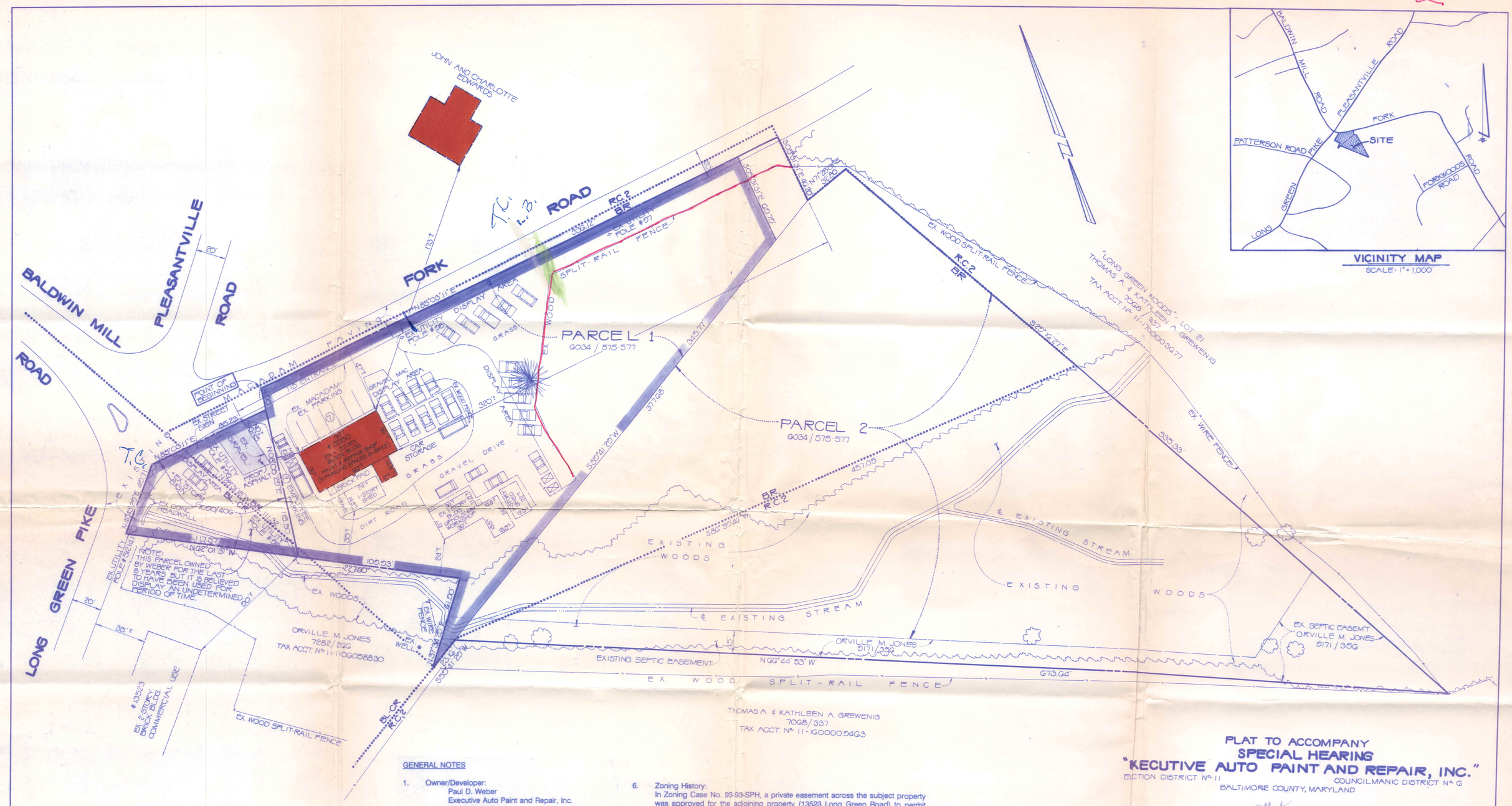
Catherine Kleeman

Cat Exh #4

3

Pet. Ex # 2

VICINITY MAP
SCALE: 1" = 1,000'



GENERAL NOTES

1. Owner/Developer:
   Paul D. Weber
   Executive Auto Paint and Repair, Inc.
   13580 Fork Road
   Baldwin, Md. 21013
   (410) 592-8880

2. Area of Special Hearing: 55,445 S.F. / 1.273 AC.±
   Tax Map No. 45, Parcels 2, 89, 242
   Tax Acct. Nos: 1118011076 BR AREA: 1.175 AC.±
   1106058831 BL-CR AREA: 0.098 AC.±
   Deed Rererence: 6034/575
   7090/406

3. Existing and Proposed Use:
   Auto Service Garage, Used Car Sales - 2802 sq. ft.

4. Off-Street Parking:
   Required: 10 spaces @ 3.3/1,000 sq. ft.
   Proposed: 12 spaces incl. 3 interior service bays

5. Floor Area Ratio: Maximum Permitted F.A.R. - 2.0
   Ex. and Proposed F.A.R. - 0.05

6. Zoning History:
   In Zoning Case No. 93-93-SPH, a private easement across the subject property was approved for the adjoining property (13523 Long Green Road) to permit construction of an off-site septic system serving the adjoining property. Easement recorded at 9171/356.

   Zoning Map No.: NE 18-G

7. Maximum permitted sign on building:
   60 Ft. length of wall x 4 = 240 square feet.
   Existing signs on building: ± 160 square feet.

8. No free-standing signs on site.

OWNER
EXECUTIVE AUTO PAINT & REPAIR, INC.
13580 FORK ROAD
BALDWIN, MARYLAND 21013
PHONE-(410) 592-8880

PLAT TO ACCOMPANY SPECIAL HEARING "KECUTIVE AUTO PAINT AND REPAIR, INC."

ELECTION DISTRICT Nº. 11 — COUNCILMANIC DISTRICT Nº. 6
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND — RICHARD EARL MATZ — No. 10923 — REGISTERED PROFESSIONAL ENGINEER — 5/1/96

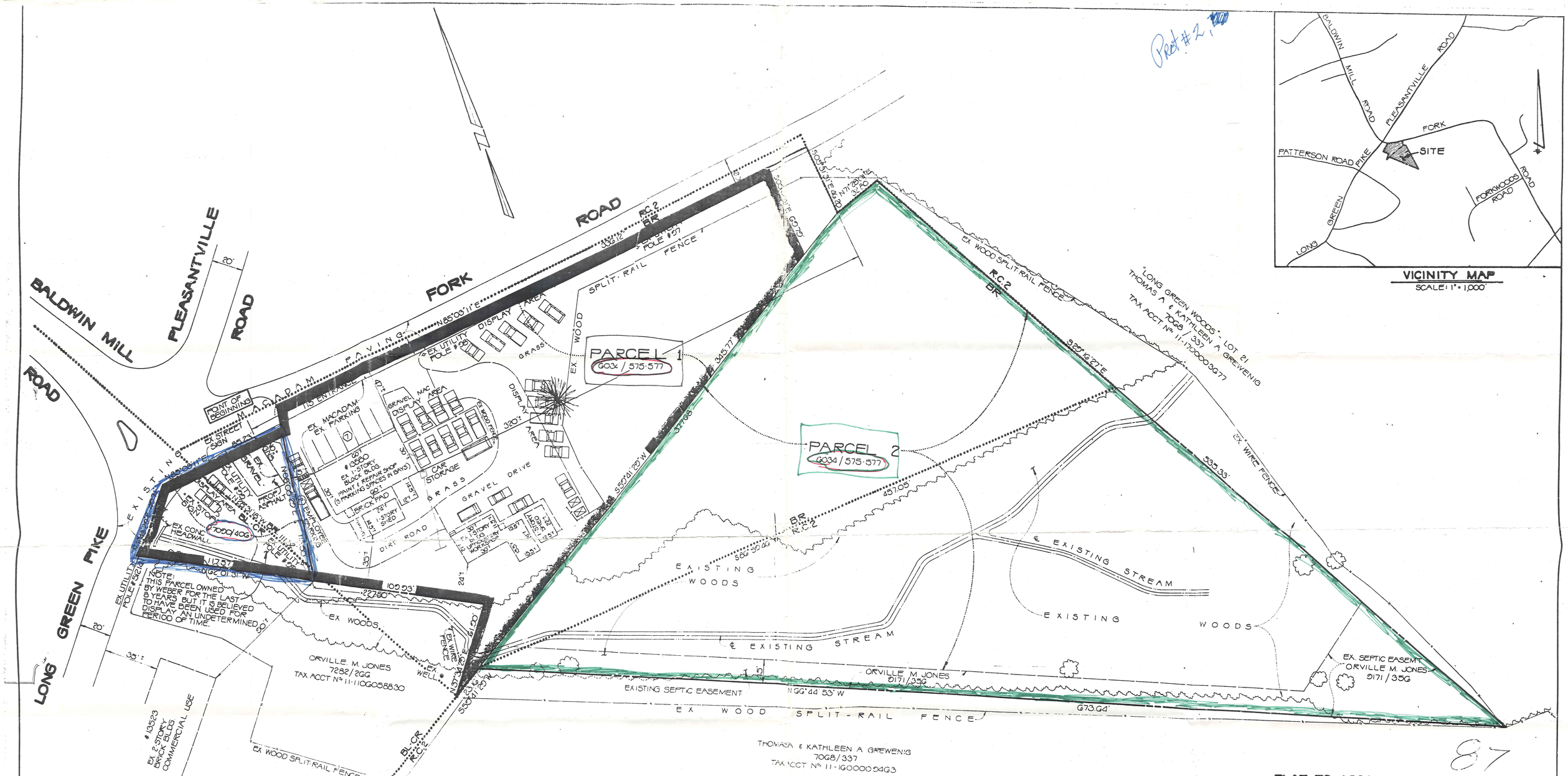
Colbert Matz Rosenfelt, Inc.
Engineers • Surveyors • Planners
3723 Old Court Road, Suite 206
Baltimore, Maryland 21208
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

NO.	DATE	REVISIONS:	BY

SCALE: 1" = 30'
DATE: FEBRUARY 1, 1996
JOB NO.: 95200
DESIGNED:
DRAWN: M.E.K.
CHECKED:
FILE:
DRAWING NUMBER:
SHEET 1 OF 1

Prot #2, 000

VICINITY MAP
SCALE: 1" = 1,000'



87

PLAT TO ACCOMPANY
SPECIAL HEARING
"EXECUTIVE AUTO PAINT AND REPAIR, INC."
ELECTION DISTRICT Nº 11 — COUNCILMANIC DISTRICT Nº 6
BALTIMORE COUNTY, MARYLAND

GENERAL NOTES

1. Owner/Developer:
   Paul D. Weber
   Executive Auto Paint and Repair, Inc.
   13580 Fork Road
   Baldwin, Md. 21013
   (410) 592-8880

2. Area of Special Hearing: 55,445 S.F / 1.273 AC±
   Tax Map No. 45, Parcels 2, 89, 242
   Tax Acct. Nos: 1118011076 BR AREA: 1.175 AC±
   1106058831 BL-CR AREA: 0.098 AC±
   Deed Reference: 6034/575
   7090/406

3. Existing and Proposed Use:
   Auto Service Garage, Used Car Sales - 2802 sq. ft.

4. Off-Street Parking:
   Required: 10 spaces @ 3.3/1,000 sq. ft.
   Proposed: 12 spaces incl. 3 interior service bays

5. Floor Area Ratio: Maximum Permitted F.A.R. - 2.0
   Ex. and Proposed F.A.R. - 0.05

6. Zoning History:
   In Zoning Case No. 93-93-SPH a private easement across the subject property was approved for the adjoining property (13523 Long Green Road) to permit construction of an off-site septic system serving the adjoining property. Easement recorded at 9171/356.

   Zoning Map No.: NE 18-G

7. Maximum permitted sign on buding:
   60 Ft. length of wall x 4 = 240 square feet.
   Existing signs on building: ± 30 square feet.

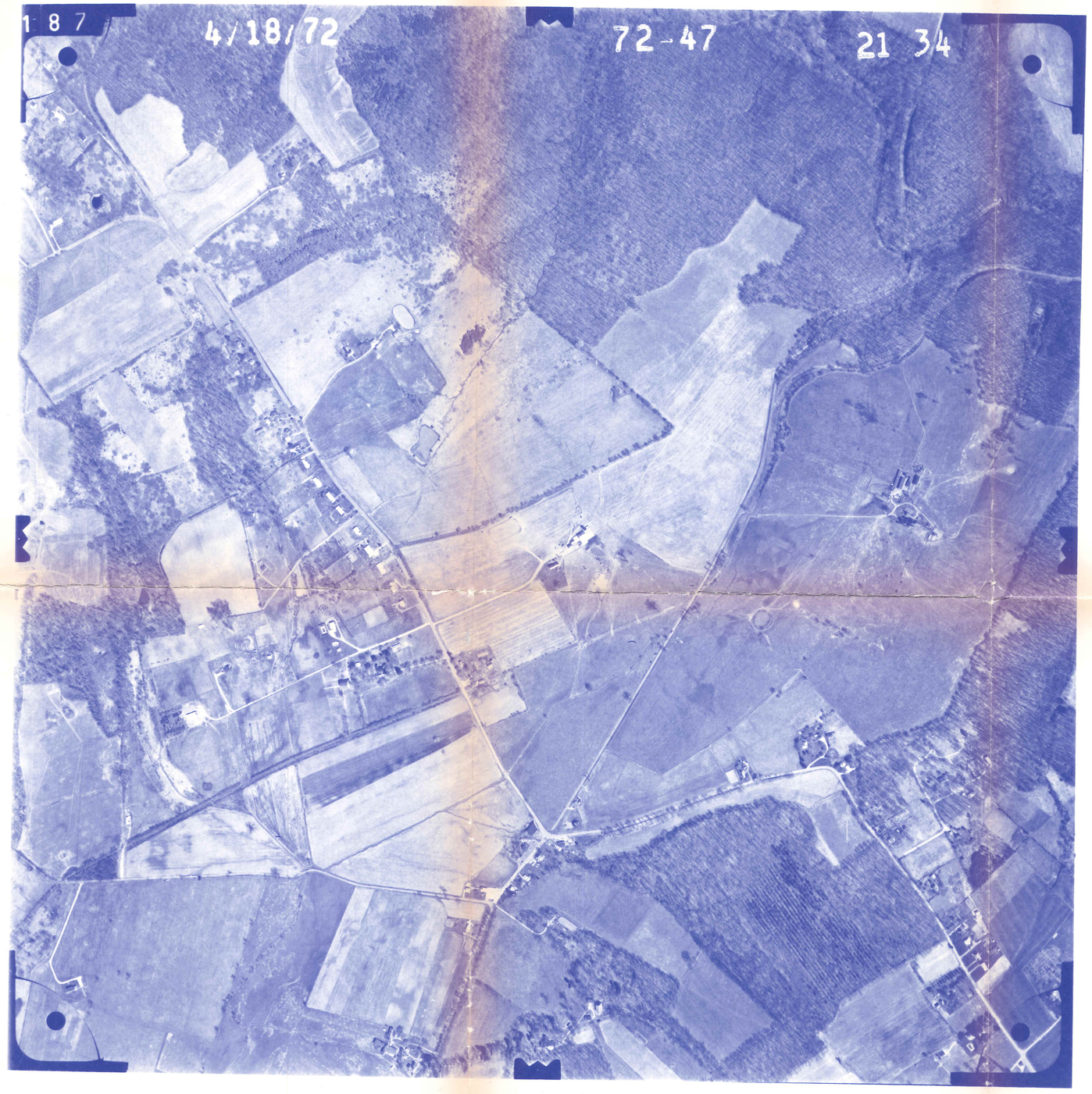
8. No free-standing signs on site.

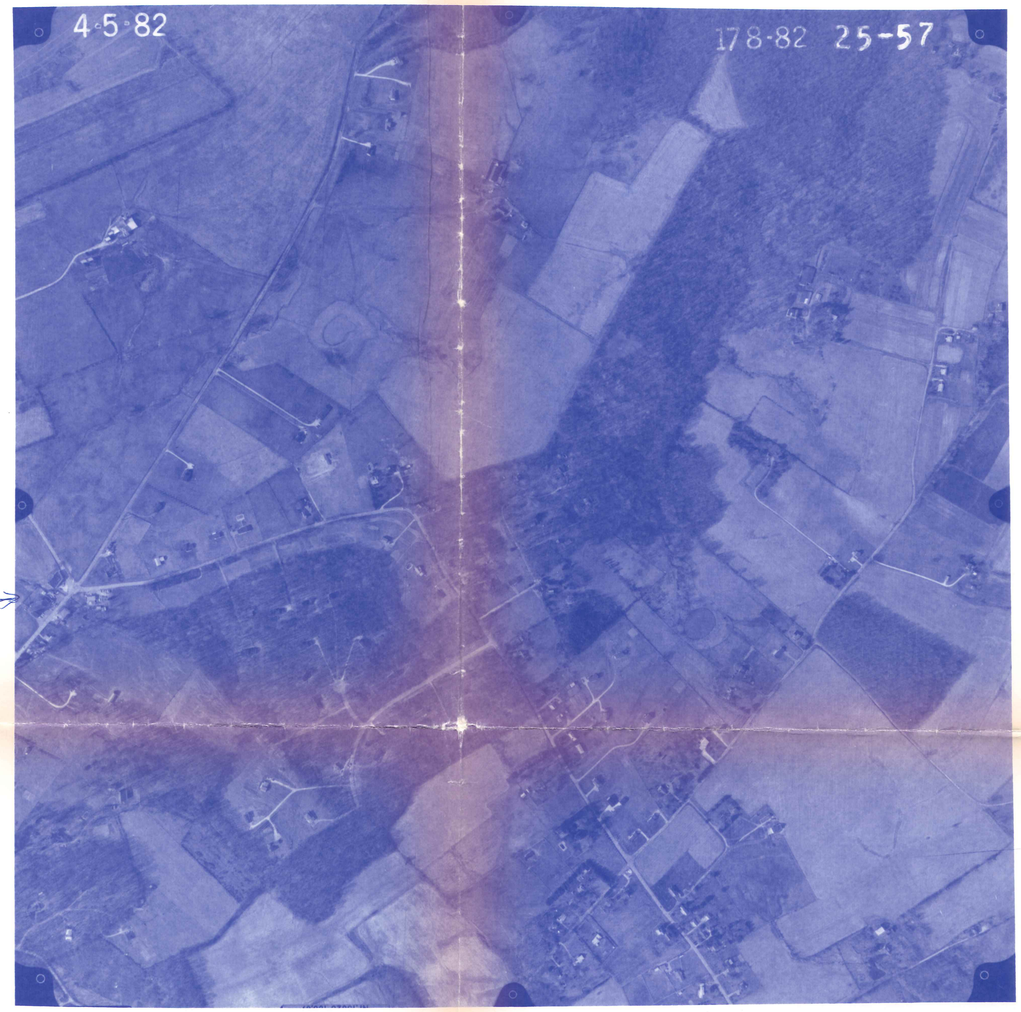
OWNER
EXECUTIVE AUTO PAINT & REPAIR, INC.
13580 FORK ROAD
BALDWIN, MARYLAND 21013
PHONE (410) 592 8880

Colbert Matz Rosenfelt, Inc.
Engineers • Surveyors • Planners
3723 Old Court Road, Suite 206
Baltimore, Maryland 21208
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

NO.	DATE	REVISIONS:	BY

SCALE: 1" = 30
DATE: FEBRUARY 1, 2000
JOB NO.: 95200
DESIGNED:
DRAWN: M.E.K.
CHECKED:
FILE:
DRAWING NUMBER:
SHEET 1 OF 1





Pet. Exh #5

AERIAL DATA REDUCTION ASSOCIATES, INC.
PENNSAUKEN, NJ HEBRON, CT
RICHMOND, VA EAST PROVIDENCE, RI

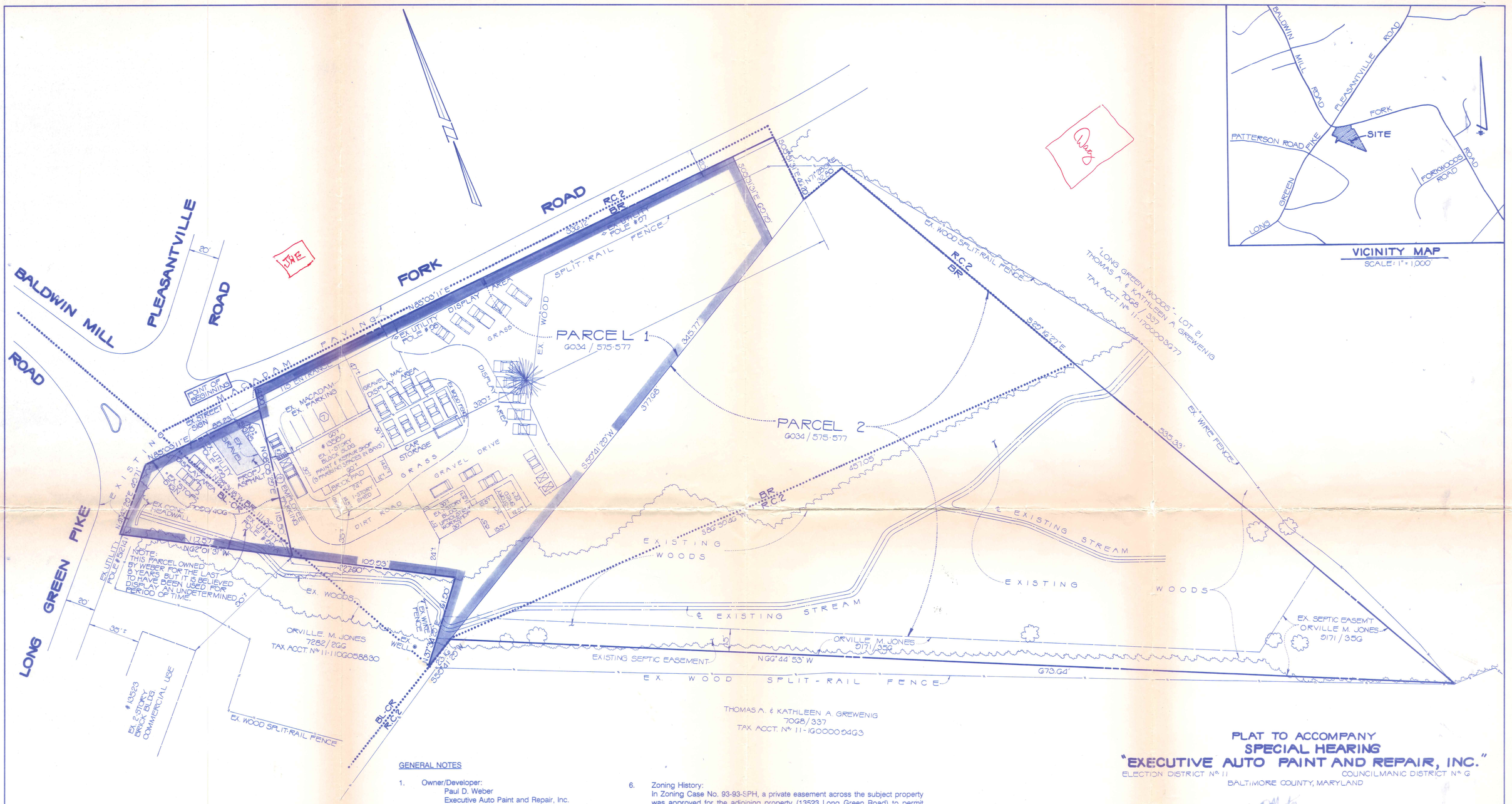
25-20

25

I HEREBY CERTIFY that this is a true copy, taken from the records in my custody of Baltimore County, Maryland.

Signed this 21st day of Nov. 1996

PETITIONER'S EXHIBIT NO. 4



VICINITY MAP
SCALE: 1" = 1,000'

GENERAL NOTES

1. Owner/Developer:
   Paul D. Weber
   Executive Auto Paint and Repair, Inc.
   13580 Fork Road
   Baldwin, Md. 21013
   (410) 592-8880

2. Area of Special Hearing: 55,445 S.F. / 1.273 AC.±
   Tax Map No. 45, Parcels 2, 89, 242
   Tax Acct. Nos: 1118011076 BR AREA: 1.175 AC.±
   1106058831 BL-CR AREA: 0.098 AC.±
   Deed Reference: 6034/575
   7090/406

3. Existing and Proposed Use:
   Auto Service Garage, Used Car Sales - 2802 sq. ft.

4. Off-Street Parking:
   Required: 10 spaces @ 3.3/1,000 sq. ft.
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5. Floor Area Ratio: Maximum Permitted F.A.R. - 2.0
   Ex. and Proposed F.A.R. - 0.05

6. Zoning History:
   In Zoning Case No. 93-93-SPH, a private easement across the subject property was approved for the adjoining property (13523 Long Green Road) to permit construction of an off-site septic system serving the adjoining property. Easement recorded at 9171/356.

   Zoning Map No.: NE 18-G

7. Maximum permitted sign on building:
   60 Ft. length of wall x 4 = 240 square feet.
   Existing signs on building: ± 160 square feet.

8. No free-standing signs on site.

PETITIONER'S EXHIBIT NO. 1

OWNER
EXECUTIVE AUTO PAINT & REPAIR, INC.
13580 FORK ROAD
BALDWIN, MARYLAND 21013
PHONE: (410) 592-8880

PLAT TO ACCOMPANY SPECIAL HEARING "EXECUTIVE AUTO PAINT AND REPAIR, INC."

ELECTION DISTRICT Nº 11 COUNCILMANIC DISTRICT Nº 6
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND — RICHARD EARL MATZ — No. 11786 — REGISTERED PROFESSIONAL ENGINEER — 5/1/96

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Engineers • Surveyors • Planners
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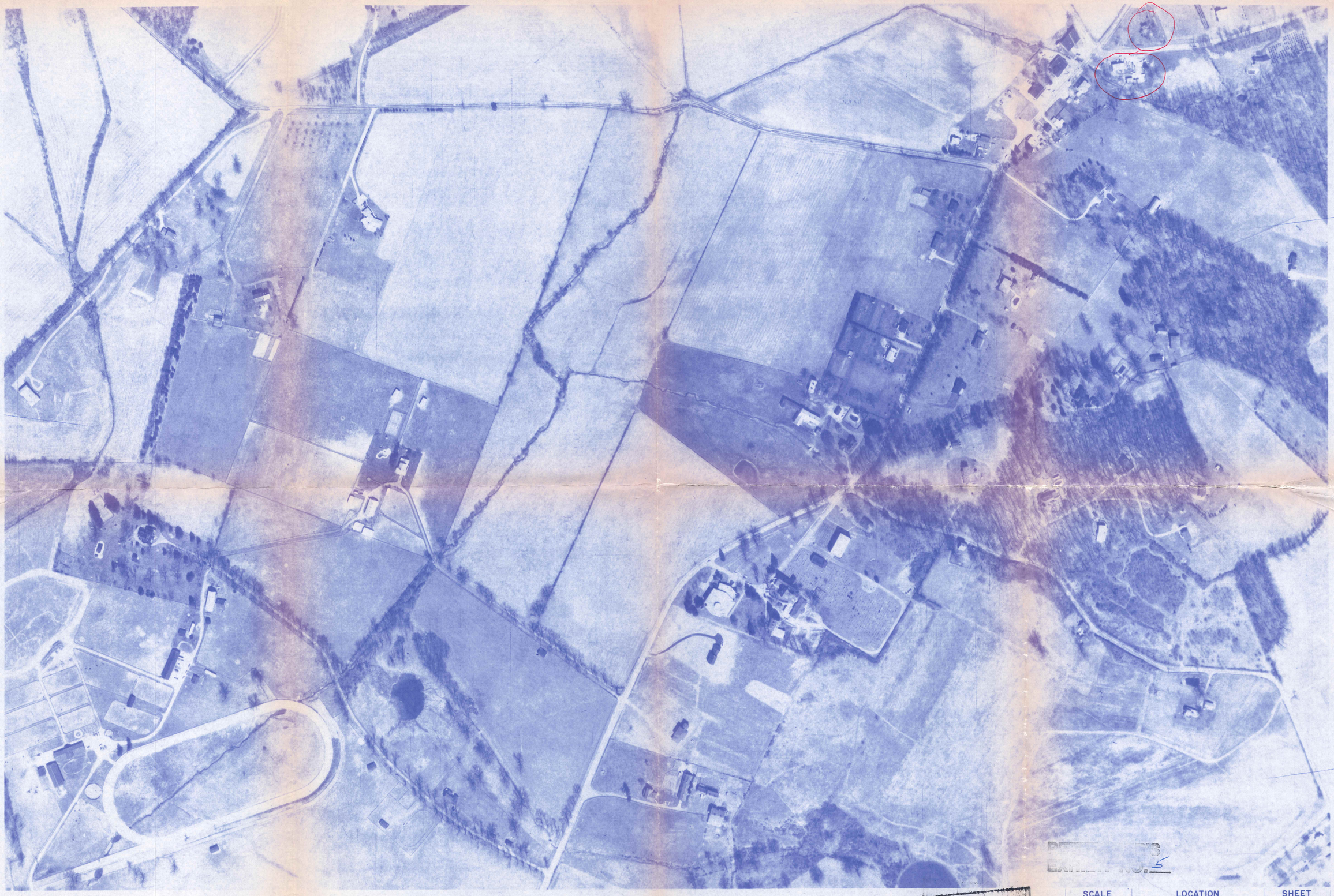
Baltimore, Maryland 21208
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

NO.	DATE	REVISIONS:	BY

SCALE: 1" = 30'
DATE: FEBRUARY 1, 1996
JOB NO.: 95200
DESIGNED:
DRAWN: M.E.K.
CHECKED:
FILE:
DRAWING NUMBER:
SHEET 1 OF 1

Pet. Exh #1



I HEREBY CERTIFY that this is a true copy, taken from the records in my custody of Baltimore County, Maryland.

Signed this 25 day of Nov. 1986 Joann Romines

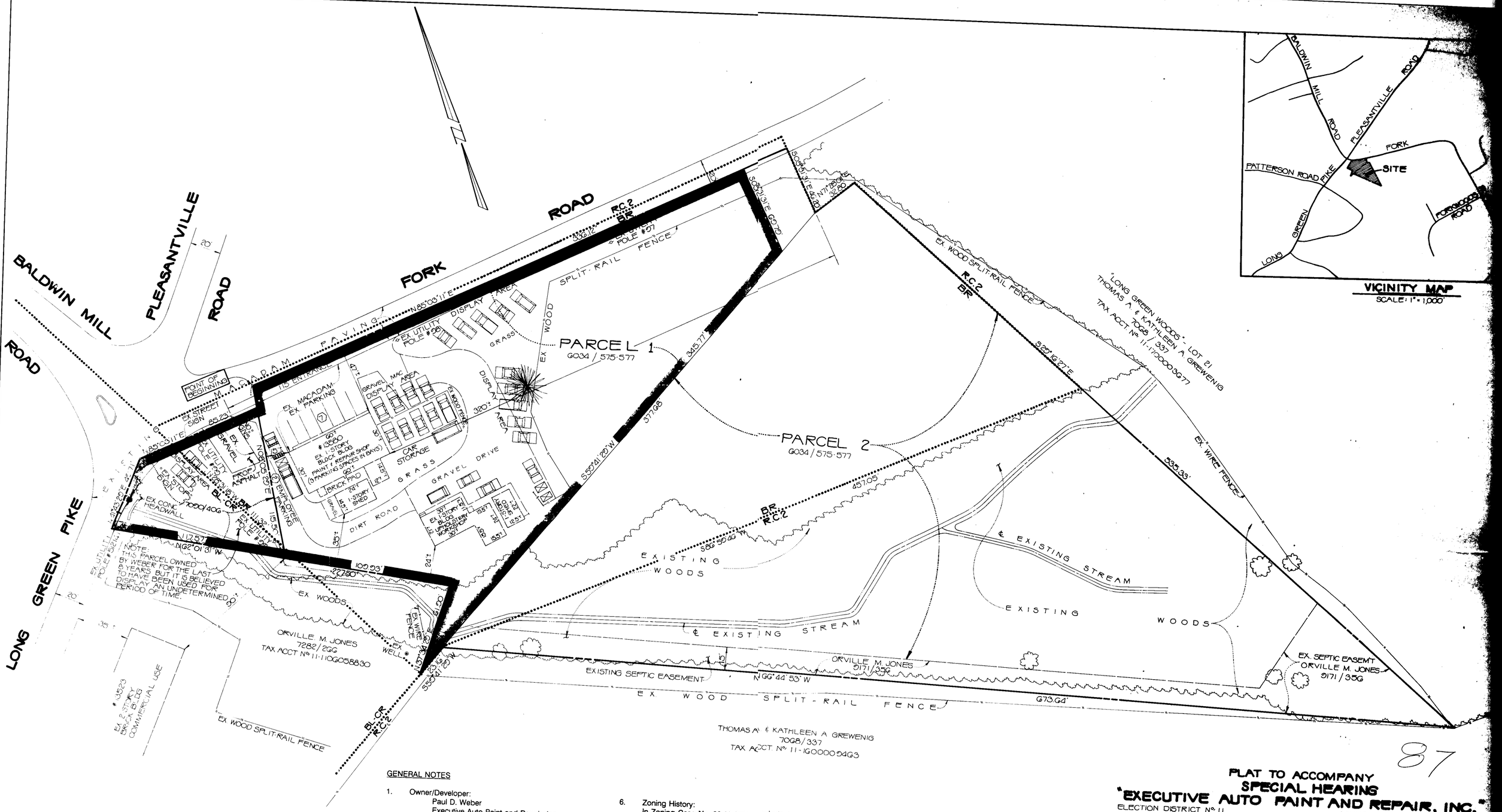
BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
PHOTOGRAPHIC MAP

I HEREBY CERTIFY that this is a true copy taken from the

PETITIONER'S EXHIBIT NO. 5

PREPARED BY AIR PHOTOGRAPHICS, INC.
MARTINSBURG, W.V. 25401

SCALE	LOCATION	SHEET
1" = 200'±	BALDWIN	N. E. 18-G
DATE OF PHOTOGRAPHY JANUARY 1986		



87

GENERAL NOTES

1. Owner/Developer:
   Paul D. Weber
   Executive Auto Paint and Repair, Inc.
   13580 Fork Road
   Baldwin, Md. 21013
   (410) 592-8880

2. Area of Special Hearing: 55,445 S.F. / 1.273 AC.±
   Tax Map No. 45, Parcels 2, 89, 242
   Tax Acct. Nos: 1118011076 BR AREA: 1.175 AC.±
   1106058831 BL-CR AREA: 0.098 AC.±
   Deed Reference: 6034/575
   7090/406

3. Existing and Proposed Use:
   Auto Service Garage, Used Car Sales - 2802 sq. ft.

4. Off-Street Parking:
   Required: 10 spaces @ 3.3/1,000 sq. ft.
   Proposed: 12 spaces incl. 3 interior service bays

5. Floor Area Ratio: Maximum Permitted F.A.R. - 2.0
   Ex. and Proposed F.A.R. - 0.05

6. Zoning History:
   In Zoning Case No. 93-93-SPH, a private easement across the subject property was approved for the adjoining property (13523 Long Green Road) to permit construction of an off-site septic system serving the adjoining property. Easement recorded at 9171/356.

   Zoning Map No.: NE 18-G

7. Maximum permitted sign on building:
   60 Ft. length of wall x 4 = 240 square feet.
   Existing signs on building: ± 160 square feet.

8. No free-standing signs on site.

NOTE:
THIS PARCEL OWNED BY WEBER FOR THE LAST 8 YEARS BUT IT IS BELIEVED TO HAVE BEEN USED FOR DISPLAY AN UNDETERMINED PERIOD OF TIME.

OWNER
EXECUTIVE AUTO PAINT & REPAIR, INC.
13580 FORK ROAD
BALDWIN, MARYLAND 21013
PHONE: (410) 592-8880

PLAT TO ACCOMPANY
SPECIAL HEARING
"EXECUTIVE AUTO PAINT AND REPAIR, INC."
ELECTION DISTRICT Nº 11 COUNCILMANIC DISTRICT Nº 6
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
RICHARD EARL MATZ
No. 13103
REGISTERED
PROFESSIONAL ENGINEER
5/1/96

Colbert Matz Rosenfelt, Inc.
Engineers • Surveyors • Planners
3723 Old Court Road, Suite 206
Baltimore, Maryland 21208
Telephone: (410) 653-3838
Facsimile: (410) 653-7953

NO.	DATE	REVISIONS:	BY

SCALE: 1" = 50'
DATE: FEBRUARY 1, 19
JOB NO.: 92200
DESIGNED:
DRAWN: M.E.K.
CHECKED:
FILE:
DRAWING NUMBER:
SHEET 1 OF

(SHEET N.E. 19-G)

N 72,000 | E 36,000 | E 37,500 | E 39,000 | E 40,500 | E 42,000

R.C. 2 | RAILROAD | PATTERSON | ROAD | BALDWIN | POB PIKE | FORK | BR | BL-CR | 92-217-A | 93-95-SPH | GREEN | R.C.C.2 | SUBJECT SITE FOR SPECIAL HEARING | PA | MARYLAND | ABANDONED | LONG | PRIVATE | SILO | CHURCH | ST. JOHN'S ELEMENTARY SCHOOL | CEMETERY | 91-155-XA & Z.C. | 90-541-XA | LANE | LAKE | GREEN | PIKE | RACE TRACK | SILOS

N 71,000 | N 70,000 | N 69,000 | N 68,000 | N 605,000 | N 602,000

(SHEET N.E. 18-F) | (SHEET N.E. 18-H) | (SHEET N.E. 17-G)

LONG GREEN VALLEY N.R.H.D.

UU-SW
UU-NW

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

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

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

1992 COMPREHENSIVE ZONING MAP
Adopted by the Baltimore County Council
Oct. 15, 1992
Bill Nos. 183-92, 184-92, 185-92, 186-92, 187-92, 188-92, 189-92
William A. Howard IV
Chairman, County Council

SCALE	LOCATION	SHEET
1" = 200' ±	BALDWIN	N. E. 18-G
DATE OF PHOTOGRAPHY JANUARY 1986		

SPECIAL HEARING

IN THE MATTER OF	*	BEFORE THE
EXECUTIVE AUTO PARK	*	COUNTY BOARD OF APPEALS
PAINT AND REPAIR, INC.	*	OF
13580 Fork Road	*	BALTIMORE COUNTY
11th Election District	*	Case No. CBA-97-87-SPH
6th Councilmanic District	*	August 14, 1997

ORIGINAL

* * * * *

The above-entitled matter came on for hearing before the Baltimore County Board of Appeals at the Old Courthouse, 400 washington Avenue, Towson, Maryland 21204 at 10 a.m., August 14, 1997.

* * * * *

Reported by:

C.E.Peatt

IN THE MATTER OF	*	BEFORE THE
EXECUTIVE AUTO PARK	*	COUNTY BOARD OF APPEALS
PAINT AND REPAIR, INC.	*	OF
13580 Fork Road	*	BALTIMORE COUNTY
11th Election District	*	Case No. CBA-97-87-SPH
6th Councilmanic District	*	July 10, 1997

ORIGINAL

* * * * *

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* * * * *

Reported by:

C.E.Peatt

IN THE MATTER OF	*	BEFORE THE
EXECUTIVE AUTO PARK	*	COUNTY BOARD OF APPEALS
PAINT AND REPAIR, INC.	*	OF
13580 ~~Ford~~ Fork Road	*	BALTIMORE COUNTY
11th Election District	*	Case No. CBA-97-87-SPH
6th Councilmanic District	*	August 14, 1997

* * * * *

Excerpt testimony of William Elwood, rebuttal witness, in the above-entitled matter which came on for hearing before the Baltimore County Board of Appeals at the Old Courthouse, 400 washington Avenue, Towson, Maryland 21204 at 10 a.m., August 14, 1997.

* * * * *

COPY

Reported by:

C.E.Peatt

BOARD MEMBERS:

CHARLES MARKS, Acting Chairman

HARRY E. BUCHHEISTER, JR.

THOMAS P. MELVIN

APPEARANCES:

STEPHEN J. NOLAN, Esquire
GERARD K. STEVENS, Esquire
On behalf of Appellee-Petitioner

J. CARROLL HOLZER, Esquire
On behalf of the Long Green Valley Association, Charlotte Pine, et al.

THE CHAIRMAN: Mr. Nolan.

W I L L I A M E L W O O D,

having been previously sworn, resumed and testified further as follows:

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Mr. Elwood, you testified during the first day of this hearing, and it's not my purpose in recalling you to revisit all this testimony, but I would like to ask just a couple preliminary questions so the Board can place you in context.

How old are you, sir?

A. I am fifty-seven right now.

Q. That would mean you were born in about 1940?

A. 1939.

Q. Sir, I think when you testified on the first day of this hearing you indicated you worked for Mr. Reed?

A. Yes, sir.

Q. When was that?

A. I worked for him part-time from the time I started high school, which was in 1955, until I started to

work for the health department in 1956.

Q. What type of business or uses were carried on at this site when you were working there?

A. It was a used car lot, plus he did mechanical work. He had a full-time mechanic there.

Q. Now, did there ever come a time when you were absent from the area for any extended period of time?

A. About the only time I was away was for the four years I was in the service.

Q. During what years were those?

A. I was in the Marine Corps August '58 to August '62.

Q. Now, during those four years that you were in the Marine Corps, did you return to visit the property?

A. Yes, sir. My father lived on Glen Arm Road and my wife at that time was living on Fork Road, so --

Q. Was she your wife at that time?

A. No. I was dating my wife.

Q. Approximately how often would you return to the area in any given twelve-month period?

A. Well, there was one period '59 to '61 I was in

Turkey for like twenty-one months, and I came back to North Carolina -- I was home almost every weekend in that time.

Q Would that have been in '61?

A. It would have been like April '61 until I got out in August of '62.

Q. And from April of 1961 until 1962, you came home every weekend, you say?

A. Almost every weekend, right.

Q. Did you have occasion to drive by the property?

A. It was en route to my girlfriend's.

Q. What uses were made of the property?

A. They were selling cars.

Q. Now, sir, let me direct your attention to the mid or late sixties before Clayton Motors came on the site.

Was there ever any John Deere dealership in this area of Fork?

A. I don't recall a John Deere dealership at that particular site, no.

Now, across the road where the refinisher is, they sold tractors. Whether it was John Deere or --

Q. Did they also sell farm equipment across the road?

A. Yes, sir.

Q. Do you have any recollection throughout the sixties of the use of this property by Preston Implement Company?

A. I don't recall any Preston Implement Company there. I don't know who Preston is, to begin with, but I know that it wasn't a tractor dealership there.

Q. You say there wasn't a tractor dealership here?

A. It was not.

Q. When I say "here," I am referring to parcel one of Petitioner's Exhibit 1?

A. Yes, sir.

MR. NOLAN: Witness with you.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Were you familiar with -- when you say there were tractors or something across the street, this was a storage facility, was it not?

A. That piece of property across the street changed

hands quite a few times. It was different businesses.

It was Bobby Alexander had a repair shop one time in '55, '56, along there. Before that, Wes Burl. He worked on tractors and farm equipment.

I don't know how many different businesses have been in that building.

Q. Let's say on the subject site in the cinder block building that's currently still there and was there at the time in 1960.

Is it your testimony that you do not recall seeing a John Deere dealership at that location?

A. Yes, sir.

Q. Is it your testimony there was no Preston Implement Company at that location?

A. That's my testimony.

Q. To the best of your ability?

A. To the best of my knowledge.

Q. You said you didn't recall that being there. Could you have not paid attention?

A. I mean, I drove by the place. Even that, I mean, I was still friends with Mr. Reed, and I used to stop

periodically and see him.

Q. Between 1966 and 1968, was the place ever vacant?

A. Not to my knowledge.

Q. Were you there every week during that time frame?

A. In that time frame I had a house on Long Green Pike.

Q. Do you know that the place was not vacant at that time?

A. Yes, sir.

Q. Were you here this morning --

A. No, sir.

Q. -- to hear the testimony?

A. No, sir.

Q. Did you ever own tractors, or have tractors repaired?

A. No, sir.

Q. Do you know anybody by the name of -- excuse me. I think the Board has the documents dealing with the John Deere for identification only.

Do you know a man by the name of C. Minton Preston?

A. C. Minton Preston?

Q. It doesn't ring a bell?

A. I don't know.

Q. Do you have any photographs of what the property looked like in the early to mid-sixties?

A. No, I don't. I didn't take any pictures.

Q. During the period, from your testimony just now, during the period from 1959 to 1961, you were in Turkey. You didn't visit the site during that time frame?

A. Not during that time frame.

MR. HOLZER: No further questions.

MR. NOLAN: No further questions.

THE CHAIRMAN: Thank you.

MR. NOLAN: That would be the rebuttal case.

* * * * *

IN THE MATTER OF	*	BEFORE THE
EXECUTIVE AUTO PARK	*	COUNTY BOARD OF APPEALS
PAINT AND REPAIR, INC.	*	OF
13580 ~~Ford~~ Fork Road	*	BALTIMORE COUNTY
11th Election District	*	Case No. CBA- 97-87-SPH
6th Councilmanic District	*	July 10, 1997

* * * * *

The above-entitled matter came on for hearing before the Baltimore County Board of Appeals at the Old Courthouse, 400 washington Avenue, Towson, Maryland 21204 at 10 a.m., July 10, 1997.

* * * * *

COPY

Reported by:

C.E.Peatt

BOARD MEMBERS:

CHARLES MARKS, Acting Chairman

HARRY E. BUCHHEISTER, JR.

THOMAS P. MELVIN

APPEARANCES:

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On behalf of the Long Green Valley Association, Charlotte Pine, et al.

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THE CHAIRMAN: Good morning. Let the record show the County Board of Appeals for Baltimore County is in its regularly scheduled session for today, Thursday, July 10, relative to Case No. 97-87-SPH, in the matter of Executive Auto Paint and Repair, Inc., Petitioners, 13580 Fork Road, Eleventh District, Sixth Councilmanic District, relative to a petition for special hearing which was granted by the Zoning Commissioner.

Will counsel present please identify themselves for the record.

MR. NOLAN: Good morning, Mr. Chairman. Stephen Nolan, together with Mr. Gerard Stevens, as counsel for the Appellant and Petitioner, Executive Auto Paint and Repair, Inc.

THE CHAIRMAN: Thank you.

MR. HOLZER: J. Carroll Holzer, on behalf of the Long Green Valley Association and Charlotte Pine as an individual, Carol Trela, Mark Regan, Sharon Rohrbaugh and Tom Dance as individuals.

THE CHAIRMAN: Are there any preliminary matters that have to come before the Board?

MR. NOLAN: No preliminary matters, but if the Board permits, I would have a very brief opening statement.

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: Just from a preliminary standpoint, so the Board knows what I anticipate, this case took a while before the Zoning Commissioner.

It was my expectation, since it's a hearing de novo, that the petitioner would present probably a good portion, if not all of today, his case, so I have all of my witnesses basically lined up for August the 14th, the second date, but we'll certainly finish well in time so that Mr. Nolan can have time for rebuttal,

MR. NOLAN: Mr. Chairman, perhaps I am optimistic, but it is my hope to move expeditiously with the witnesses. So I hope that Mr. Holzer has one or two witnesses that he can call at the end of the case, at the end of the Petitioner's case, so that we can keep going.

I would urge that once we rest, that Mr. Holzer at least begin his case, because I think that is exactly what I was anticipating and, you know, we ought bo be able

to do that.

MR. HOLZER: I can cut this short. I will try to do that.

THE CHAIRMAN: Fine. Thank you very much. Okay. We can proceed. Mr. Nolan.

MR. NOLAN: Thank you, Mr. Chairman. Good morning, members of the Board. It's my privilege, together with Mr. Stevens, to represent Executive Auto Paint and repair, Inc.

Who is Executive Auto Paint? Well, clearly, it's a Maryland corporation, but it's not some big corporation. It's a small family business, and it was a small business that was owned by Paul Weber, and with the help of his wife, Deborah Weber, they have been running a used car business on this site for many years.

Back in 1995, there was a zoning violation case that was brought based upon a complaint of a Geraldine Griffith, and you may hear later in the hearing about Geraldine Griffith.

The complainant did not proceed in the district court because it was resolved in the circuit court by the

filing of a petition for special hearing by Mr. Weber and his corporation with the Zoning Commissioner.

Mr. Weber only asked for one thing in that petition for special hearing. He asked to confirm the lawful existing nonconforming use that has existed on this property since prior to March 30 of 1955.

When Mr. Weber filed his zoning petition, he did not ask to expand the use. He did not ask to change the use. And he certainly did not ask to rezone this property.

This property, the evidence will show, has been zoned commercially since January 1945 when Baltimore County, Maryland, first adopted the zoning regulations in our county.

Used car sales were permitted as a matter of right. Up until March 30, 1955, you did not need a special exception; you did not need any special permit to have used car sales on this lot.

It was only as of March 30, 1955, that the regulations changed to require a special exception at that time.

Mr. Chairman and members of the Board, the evidence will show that used car sales predate that zoning law change, that that use predates the change, that that use has been continuous and uninterrupted, and that Mr. Weber is here only because of an appeal filed by the Long Green Valley Association and certain individual appellants who challenged the Zoning Commissioner's decision dated January 16, 1997, and that Mr. Weber is prepared to abide by the Zoning Commissioner's decision, limiting the nonconforming use, and that we believe that after this Board hears all of the evidence, that a preponderance of the evidence will establish that there is full compliance with the county code as far as nonconforming uses, and that what exists here today is lawful and should be permitted to continue. Thank you.

THE CHAIRMAN: Thank you. Mr. Hozler.

MR. HOLZER: Yes, sir. Normally, it's not my custom to present an opening statement, particularly because many times in a hearing de novo before the Board, what I think might come in might not really come, so it's better to listen to hear what the Petitioner has to say

before one starts talking about your own case, or about about what the issues are.

I want to make an exception in my normal practice today though in terms of this particular case because I think I can anticipate what's coming.

I think I can anticipate some of the questions you ultimately will have to resolve, and I think it will be beneficial to you as Board members to put the testimony that you hear and the cross-examintion and questions in context to what I believe are the issues that you should be looking at.

First, in regard to Mr. Nolan's opening statement, he indicates it's a nonconforming use. The Board full well understands the law indicates that a nonconforming use is not a favored kind of status for a particular piece of property.

In fact, it's disfavored. And when you read the cases after the hearing and the memorandum perhaps which will be submitted, you will see that it's the general law that they are disfavored, and the idea is that nonconforming uses are supposed to die out.

That is the legal zoning theory of nonconforming use. It's something that's not a right. It's not a privilege. It's there because it's nonconforming with the existing law.

In this case, we intend to require the Petitioner in this case to establish that this was a nonconforming use on March 30 of 1955, and it continued uninterruptedly until now. That's the legal standard under the Baltimore County zoning regulations.

We believe the evidence may establish that this cases misses the mark insofar as that issue is concerned.

A second area that must be established by the Petitioner is that this is not an expansion of nor an intensification of what existed in 1955, March 30 of 1955, because in March 30 of 1955, our zoning regulations also permitted only an expansion as statutorily set forth, and I believe it's twenty-five percent of the floor area, which is, again, a legislative directive that nonconforming uses are not favored.

There are a number of cases that deal with the issue of whether or not something is a nonconforming use

being extended or intensified and is appropriate.

The two main cases are the McKemy and Zent case which present the test, and I think, for the benefit of the Board, while this might be more appropriate in legal argument at the end, the tests are the things that you must examine as the testimony goes by, and with the Board's permission, I would just like to state the four tests that are cited in McKemy.

Number one. To what extent does the current use reflect the nature and purpose of the original nonconforming use.

Two. 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.

Three. Does the current use have a substantially different effect upon the neighborhood.

Four. Is the current use a drastic enlargement or extension of the original nonconforming use.

We believe that keeping those tests in mind will assist the Board as it goes through listening to the

testimony, direct and cross-examination.

My next point is that I believe if the Board does review the Zoning Commissioner's order, that it, in fact, is an illegal order in that it -- for the benefit of the Board, when looking at the plat to accompany the special hearing, you will hear testimony about the property which is contained on the plat, and there's a parcel two, which is this triangular parcel, which is B.R. and R.C. 2. And also parcel one, which is the subject of the nonconforming use, this area.

For reference purpose of historical value only, parcel two contains the septic easement for Orville Jones, which was a case that was decided by this Board with supports a High's store and another facility which is separate and apart from this issue. But, in fact, it is another case and another issue that is currently in the -- I believe it's in the Court of Special Appeals dealing with that part of it, but parcel two is not involved today.

Parcel one is the requested area. You will notice in parcel one that it consists of two zones. It's

split zoned. It's a zone B.R. on what I will call the northeast side, and then it's a small portion of B.L.-C.R. on the southwest side, I will call it, right at the corner of Long Green Pike and Baldwin Mill Road and Fork Road.

The inclusion of this piece of property in the nonconforming use order of the Zoning Commissioner, I believe, is illegal as a matter of law, and we'll present evidence to establish that.

In response only to a very brief comment in regard to a zoning violation case, normally the protestants are usually the ones that try to introduce the zoning violations in these cases and they are usually stopped by the Board on the basis that it is not a relevant process or relevant procedure.

This issue is whether it's nonconforming use. I did not object, but I would simply comment I do not believe, however, whatever reason that the case got here, it's here because it has to be here under the law.

You cannot operate a used car operation such as this is purported to be without either some sort of special exception approval or establishing that it's a

nonconforming use.

That leads me to one of my final comments, and I think the Board can see the turnout today. This is a fairly hotly viewed issue in the community of Long Green and the Baldwin Mill area.

It's one that has brought out concerns on both sides, argument on both sides, and it's an issue that is fostered, I believe, by some agree of misunderstanding as to what the actual thrust of this case is.

And the thrust of this case is a nonconforming use issue which the Zoning Commissioner tried to explain.

A special exception hearing, for instance, if it dealt with the same subject, would permit the Board or the Zoning Commissioner to attach certain conditions to its operation. Conditions such as no enlargement, conditions such as no signs or hours of operation, or no lights or no typical kinds of things that could be disturbing to a residential community or rural community such as we have here in Baldwin.

These are issues that in the community perception they don't make fine distinctions between special

exception cases and nonconforming use cases, and those kinds of issues are the things that have many individuals concerned, at least many clients that I have.

I believe in the end, as a result after all the testimony is taken and I believe you hear the extensive testimony from the petitioners, from people who have lived in the community, I anticipate you will hear testimony from my clients, from people who have lived in the community as to what the nature of the operation has been and so forth.

At the conclusion, I do believe this is the kind of case that has a lot of legal issues mixed in with it. In other words, I don't think it's purely a question of fact.

I think you will be required to examine to some extent the McKemy and Zent case and standards and also, as I said before, the law, on nonconforming uses.

Having said all that, it's a lot more than I normally say, and I thank you very much for your attention.

THE CHAIRMAN: Thank you, Mr. Holzer. Mr. Nolan?

MR. NOLAN: Yes, sir. I am going to call my first witness.

Before I do, let me just say in response, Mr. Holzer indicates that we are here because this case had to come here.

I think the record ought to reflect that had no appeal been filed from the Zoning Commissioner by the Long Green Valley Association and the others, we wouldn't be here today.

So I do want to make that statement, and then call on Mr. Richard Matz as the first witness.

Mr. Chairman, may I have the exhibits from the file?

R I C H A R D M A T Z,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Good morning, sir.

A. Good morning.

Q. Would you state your full name and address.

A. Richard Earl Matz, 19 Marcy Woods Court, Baltimore, Maryland 21208.

Q. What is your profession, sir?

A. I am a professional engineer.

Q. Are you licensed?

A. Yes.

Q. Are you registered by the State of Maryland?

A. Yes.

Q. For how long have you been a registered professional engineer?

A. Since 1983.

Q. Since 1983, has a part of your practice involved Baltimore County zoning and development work?

A. Yes.

Q. Would you describe approximately how much of your practice is here in the county?

A. Probably about eighty percent.

MR. NOLAN: At this time, I am going to offer Mr. Matz as an expert registered professional engineer.

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: No voir dire. I have no problem.

THE CHAIRMAN: Thank you. Accepted.

Q. Mr. Matz, I am going to hand you what I will refer to as Petitioner's Exhibit No. 1 for identification and ask you to examine that document and tell me what it is.

A. There was a plat prepared by myself, by my company, by myself, to accompany the special hearing, for Executive Auto Paint and Repair, Inc.

It shows the area we are requesting the nonconforming use, which is highlighted in a blue marker, which we, after many discussions with Mr. Weber and his lawyer, deemed to be approximately the area that has been under use since the time that this facility started.

Q. Sir, was that prepared prior to the Zoning Commissioner's decision in January of this year?

A. Yes.

Q. Would you describe for the record where the property is located?

A. Yes. I would call it the south -- southeast intersection of Long Green Pike and Fork road in upper Baltimore County.

Q. Now, sir, I'd ask you to come to the board --

MR. NOLAN: I am going to introduce this now as Petitioner's Exhibit No. 1.

THE CHAIRMAN: Any objection?

MR. HOLZER: No objection.

THE CHAIRMAN: Admitted.

Q. Sir, I am going to mark this as Petitioner's Exhibit No. 2 for identification, and ask you to explain how that Exhibit No. 2 for identification differs from Exhibit 1?

A. Okay. The difference in this particular exhibit is that we were asked to locate the Edwards' house as best we could from available data, and we basically checked the aerial photograph and the Baltimore County 200 scale aerial topography, and this is our best location drawn at a thirty scale.

This is one inch equals a thirty scale drawing. So we estimate it's about a 170 feet away from the edge of the building for Executive Auto.

Q. Did you also colorize the Executive Auto building on that Exhibit No. 2?

A. Yes. We highlighted the Executive Auto building, the main building in the front, and the Edwards' house just for clarity so you could see how far away it is to scale.

Q. Have you personally visited the site?

A. Yes. I have been there several times.

Q. Were there automobiles displayed in the areas that you have depicted them on Exhibit No. 2?

A. Yes. In fact, we actually did a field survey of this site. Sometimes in zoning hearings you don't do that, but in this particular case I deemed it necessary, because, not being familiar with the area myself, I wanted to get out there and accurately depict where the cars were actually placed and where some of the things in the back were also placed, where cars were actually sitting.

Q. Now, sir, there is an indication on Exhibit 2 of a split rail fence or existing wood split rail fence. Do you see that?

A. Yes.

Q. Is it correct to say that cars are situate northwest of that fence?

A. Yes.

Q. Would you go ahead and take a red pen and just mark, in red, that area.

A. (Indicating.)

Q. Thank you, sir. So there were no cars parked to the east of the split rail fence, correct?

A. No. In fact, in our discussions on this -- on the area we were actually asking for the nonconforming use on, because this property itself is split into parcel one and parcel two, we wanted to make it clear on this parcel one piece that the area behind the fence wasn't used for display or anything else.

It was just supposed to stay open.

Q. In fact, the Zoning Commissioner ruled it should stay open, correct, at this time?

A. I have not actually read the decision.

Q. I will withdraw that question. What is the area of the site?

A. The area of the parcel one is about 1.27 acres. Parcel two, which is really not part of the site, is probably about three acres.

Q. What is the zoning of parcel one?

A. Parcel one is split zoned. B.R. on the north, the northeast side, and B.L.-C.R. for the small sliver of B.L.-C.R. on the southwest side.

Q. Now, sir, for how long have you been familiar with this area of Baldwin Mill Road and Fork Road?

A. This particular intersection, this is actually the first job that I did at this intersection.

I have driven there before, but never actually paid attention very much to the intersection.

Q. Perhaps you can take a seat.

MR. NOLAN: At this time, I am going to introduce Petitioner's Exhibit No. 2, and I will, during a break, submit it to the Chairman for stamping.

THE CHAIRMAN: Any objection?

MR. HOLZER: No objection.

THE CHAIRMAN: Admitted.

Q. Mr. Matz, assume, sir, that used car sales were carried on on parcel one prior to March 30, 1955. Assume also that they have been continuous and uninterrupted since that time up to and including the present time.

Do you have an opinion as to a reasonable degree of probablility concerning whether there is a lawful nonconforming use on this site?

MR. HOLZER: Objection. That's an issue you have to decide.

THE CHAIRMAN: I agree. I am going to sustain the objection.

Q. Sir, in your work with the zoning process and development process in Baltimore County, is a property that has been determined to be a nonconforming use required to comply with the Comprehensive Manual of Design Policies and the area requirement or bulk requirements of paving and lighting and curb and gutter?

A. No.

MR. NOLAN: Witness with you.

CROSS EXAMIANTION

BY MR. HOLZER:

Q. I guess the answer -- the intent of that question was to determine whether or not if there was some requirement for paving versus types of surfaces on the property for a normal used car lot that was not a

nonconforming use, that this particular nonconforming use would not have to comply with, is that correct?

A. That's correct. I mean, things like setbacks, entrance widths, even parking regulations as to how many cars per square feet to the building, a nonconforming use, you wouldn't have to meet those regulations.

Q. So, to your knowledge, would there be any lighting requirements that also would or would not have to be met for this particular site?

A. In my opinion, only the lighting that would have been there in 1955 would be allowed.

Q. In other words, in your opinion, only those things that were in existence on March 30 of 1995 should be determined to be nonconforming, is that correct?

A. Not exactly, because you are allowed an expansion of a nonconforming use by twenty-five percent.

Q. Of what?

A. Of the floor area.

Q. Of a building?

A. Of a building. But I would also say that in expanding a nonconforming use, there are probably some

accessory things that would be -- and I don't know what the exact rules are, but as far as zoning goes, if you added a piece of building and certain building code, whatever, placed, you may be able to add another little thing when you do the expansion.

Q. But by and large, if there was one building on the site in 1955, under your understanding of a nonconforming use insofar as the used car business, you wouldn't be able to have two or three or four new buildings after 1955?

A. Up to twenty-five percent more.

Q. Of the existing building?

A. Of the existing building or buildings. I don't know how many buildings there were. But if you have 10,000 square feet, then you could have 10,500 now.

Q. Let me go back and ask you a few things about this plat that your office drafted.

First of all, you defined the area in the bold dark blue outline as parcel one as how many acres?

A. 1.27, I believe.

Q. Then the wooden split rail fence, which you have

marked in red, do you know how much that takes out of the 1.27?

A. I could give you an estimate.

Q. Could you do that?

A. Yes, I can. It probably takes out about a quarter of an acre.

Q. So it brings this parcel one, what is northeast of the split rail fence, down to about 1.02 tenths of an acre?

A. Right.

Q. While you're here -- maybe it will keep you from jumping up and down -- could you tell us, first of all in regard to parcel number one, the B.L.-C.R. area, how much acreage is that?

A. How much is the B.L.-C.R.?

Q. Yes.

A. A tenth of an acre.

Q. Now, when you prepared this plat, did you determine who owned this property at the time you prepared the plat?

A. Yes.

Q. Does Executive Auto Paint and Repair, Inc. own both parcel one and parcel two?

A. Yes.

Q. Did you determine when Executive Auto -- for short -- acquired this property?

A. We did, but I don't have that information with me. I remember I looked that up. We did the deed, of course.

Q. But you don't recall exactly when they were acquired?

A. No.

Q. If I indicated to you it was sometime in 1979, would that sound about right?

A. That sounds about right, yes.

Q. You do you recall in 1979 what Mr. Weber acquired? What portion of this property Mr. Weber acquired?

A. I believe it would be both of them because -- according to the deed references, both parcels.

Q. Both parcel one and parcel two?

A. Yes. And this would have been a little later

(indicating).

Q. That's what I was going to ask you. For the record, the witness pointed to the B.L., what I will call the B.L. section.

A. Essentially the split zoned section.

Q. So the section split zoned between B.R. and B.L.-C.R., which is shown by a dotted line running basically a north-south direction, that piece of property was acquired at a later date?

A. Yes.

Q. And do you know when that was?

A. Again, I don't have the deeds with me.

Q. According to the note on the plat that you prepared, it says this parcel -- and I assume that you're dealing with the split zoned parcel owned by Mr. Weber for the last eight years, is that correct?

A. Yes.

Q. It says but it is believed to have been used for display an undetermined period of time. How did you get that information?

A. From Mr. Weber.

Q. But, clearly, this portion of the property was acquired about eight years ago?

A. Well, from when we started this, probably now it's probably ten years.

Q. So sometime around 1986?

A. (Nodding head.)

Q. So this split zoned section which was acquired sometime in the 1986 era was not a part of the original parcel one as described in the deeds that you found, is that a fair statement?

A. Yes.

Q. And it was under -- presumably, it was under different ownership in 1955, or do you know that?

A. I couldn't tell you in 1955. The only thing I can say, when we were developing the plan, I was told that this area had been used by the dealership, and I'm not sure exactly who owned it, but in the field, there were cars always on this area.

Q. But as far as the deeds, you're not aware of who owned it in 1955?

A. I could look it up, but I don't have it.

Q. Did you, in your preparation of this plat, did you run the deeds all the way back to 1955?

A. Probably not. We may have them, but whether -- we didn't do a boundary survey. So not having done the boundary survey, we probably did not go back.

Q. Now, while you're here, other than the B.L. portion, B.L. and B.R. portion of the parcel one, do you know what the basic zoning is for the rest of the surrounding properties -- let's say described in the vicinity map -- do you know what the general zoning would be for the area?

A. I think most of it is R.C. 2 and probably some R.C. 5.

Q. Now, you indicated that you were requested to locate the Edwards' house, is that correct?

A. Yes.

Q. I assume that's been at some time since the Zoning Commissioner' hearing and before today?

A. Yes.

Q. Were you asked to locate any other neighbor's house on Petitioner's Exhibit No. 2?

A. No.

Q. Do you know whether or not there are any other adjacent property owners who have homes in the vicinity of the subject site?

A. In the immediate vicinity? I know there are some more houses further up on Fork Road, and I believe there are some houses to the east.

Q. But you were not asked to locate those?

A. No.

Q. You said that you personally visited the site. When did you go out there to visit?

A. It probably would have been in -- if we did the plan in 19 -- February '96, it would have been probably sometime in 1995.

I would say I know I was in there in the summer of '95 probably when I first started, and I went up several other times to check and finish the plan, and took a number of pictures.

Q. Would the summer of 1995 have been the first time that you would have paid any attention to the number of vehicles parked on this particular site?

A. Yes.

Q. I think you may have a seat. You have no personal knowledge of your own as to what existed there in March of 1995?

A. March 1995?

Q. I'm sorry. March of 1955.

A. No. I was four.

Q. Between 1955 when you were four and 1995 when you went out, you were hired, had you seen the property or paid any attention to it between that time?

A. I may have seen it, but I didn't pay attention to it.

Q. Mr. Matz, I would like you to, if you could, describe for us, first of all, the building that you colored in in a dark red or brown maroon.

MR. NOLAN: Red.

MR. HOLZER: If you say so.

Q. A dark red. This is indicated block building and paint and repair shop?

A. Yes.

Q. The size is designated as thirty feet by sixty

feet, correct?

A. Yes.

Q. Now -- you might as well stand down here, because I want to ask you some questions. Do you know when that building was constructed on the site?

A. Personally, no.

Q. Do any records that you have checked, do you have any way of knowing when it was constructed?

A. No records that I have checked.

Q. Do you know -- there's a fourteen by twelve foot little square attached and it's colored in on the, back or south side of that same building.

Do you know when or whether that was part of the original building, or whether that was an expansion to the original building?

A. I don't know that.

Q. There's also a notation of a brick pad on the back. Do you have any idea when that was added?

A. No.

Q. There's a 24 by 14.51 one-story shed with gravel apparently in the front. Could you tell us what that is?

A. I believe it's storage, but I also don't know when that was built.

Q. That was my next question. There's an existing one-story building, upholstery workshop in the back here, thirty by -- I can't read that, whatever that is -- and then it's an "M" shaped building, I'd say. Do you know when that was constructed on the site?

A. No.

Q. And then, finally, the one-story shed that was next to that M shaped building, the same question?

A. No, I don't know when it was built.

Q. Do you know whether the existing macadam parking that's designated on the Fork roadside in the front of the larger building with seven spots, do you know whether that was there in 1955?

A. No.

Q. Do you know -- how many cars have you drawn in in terms of the display area? On the other display area, or total.

A. Twenty-three.

Q. Now, are all of these twenty-three vehicles, are

they are supposed to represent where vehicles are currently parked?

A. This was a representation of where they are currently parked when we did our survey, and according to Mr. Weber where they had been parked over the years.

Q. Do you know the number of vehicles that are related to the used car sales versus the number of vehicles that would be utilized in the Auto Paint and Repair, Inc. aspect of the operation?

A. I could not give you an exact number. The way it's been described to me, most of the repairs have to do with the used cars.

In other words, people bring in a used car, trade it in, and before it gets sold, it gets, you know, repaired in better condition, and then sold.

Q. To your knowledge, was he doing any independent paint or repair work that's not related to the used car operation?

A. I don't know.

Q. Located on the west side of the existing large building there appears to be parking, and I think that

other people have referenced it as a Jarr-Dan van, one of the --

A. Tow truck.

Q. -- tow trucks. Do you know how long that's been parked there?

A. Some type of tow truck has been parked there. I would assume that any used car lot would have had a tow truck also, so -- and Mr. Weber has said, as far as he know, this is where they always parked the tow truck.

Q. So, basically, your opinion is only based on whatever you were told by Mr. Weber?

A. Right. Not having been there.

Q. And what about the existing gravel on the split zoned parcel of property on the west side, do you know when that was installed?

A. No.

MR. HOLZER: I think that's all I have. If I can just check my notes.

THE CHAIRMAN: Certainly.

MR. HOLZER: I think that's all the questions I have.

MR. NOLAN: No other questions. Can Mr. Matz be excused, Mr. Chairman?

THE CHAIRMAN: Do you have any other questions?

MR. HOLZER: No, sir. No problem.

THE CHAIRMAN: Thank you, Mr. Matz. You are excused.

MR. NOLAN: Mr. Chairman, may we look at the evidence file again? Thank you.

Mr. Chairman and members of the Board, at this time the Petitioner intends to offer in certified copies of certain public documents, county records.

Petitioner No. 3 would be the zoning map of Baltimore County, Maryland, prepared by the zoning department, dated September 1, 1947.

It's a two-page document. It's colorized. And the second page shows the blue colored commercial zone property that is the subject of this hearing. That's Exhibit 3.

Exhibit 4 is a certified copy of the 1958 aerial photograph of the subject site.

Exhibit five is the certified copy of the 1972

county aerial of the subject site.

Number 6, Mr. Chairman, is the 1986 aerial of the subject site, and that is also certified.

I will return these temporarily to the Chairman, these other exhibits.

At this time, I would call Mr. Lewis Breidenbaugh.

THE CHAIRMAN: Do you have any objection?

MR. HOLZER: No. If I could just take a look at No. 4, just to make sure.

* * * * *

MR. NOLAN: I call Mr. Bridenbaugh. Take the stand, please.

* * * * *

J O H N L. B R E I D E N B A U G H,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Good morning, Sir.

A. Good morning.

Q. Would you state your full name and your home address, please.

A. John Lewis Breidenbaugh, 12631 Manor Road.

Q. Mr. Breidenbaugh, do you spell your first name with a "w" or a "u."

A. I go with "w." L-e-w-i-s.

Q. Thank you, sir. Mr. Breidenbaugh, how long have you lived at 12631 Manor Road?

A. Since 1951.

Q. How old are you, sir?

A. If I live to Saturday, I will be eighty-six.

Q. In advance, let me say "Happy Birthday" to you. You were born, I take it, in about 1911?

A. That is correct.

Q. Are you retired, sir?

A. Yes sir.

Q. Before you retired, what was your occupation?

A. Been a number of things. I grew up on a farm. Then I sold service farm machinery and worked in a garage, and an operator myself, worked for Ford Brothers, worked for Baltimore County as shop foreman in the police and

motor pool for fifteen years.

Q. During what years did you work in the motor pool for Baltimore County?

A. '62 to '76.

Q. Mr. Breidenbaugh, do you have any current advocation or hobby?

A. Old engines.

Q. You have a collection of those, do you?

A. Yes, sir.

Q. Now, sir, referring your attention to the Baldwin area of Baltimore County, for how long have you been familiar with that area?

A. Well, when World War I ended, I rode a pair of old mules pulling from the -- around Palmisano's --

COURT REPORTER: Excuse me. I can't hear.

Q. Mr. Breidenbaugh, sir, if you could speak a little louder so we can all hear you.

First off, in order for us to get the right time period that you're talking about -- I am going to move a little closer to you.

You say this was after the end of the first World

War?

A. Just about the end.

Q. And what year was that?

A. 1918, I think it was.

Q. If I am correct, you would have been about six or seven years old?

A. Yes, sir.

Q. Now, you have a recollection of a specific area. If we looked at the area today, what area -- you mentioned Palmasinos.

Is that part of the area you relate to your earliest memory of this site?

A. From there to where the finishers is in that block building where Wes Burl (phonetic) used to have the garage.

Q. I will show you Petitioner's No. 7 for identification, what I am going to show to counsel, and maybe we can establish a framework first, and then I will have some other questions for you.

First off, sir, let me show you Exhibit No. 7 and ask you if that fairly and accurately represents in

Baldwin, the area of Fork Road and Baldwin Mill Road today in the 1990s.

Does that look familiar to you?

A. I don't understand your picture. This looks familiar.

Q. What does that look to be?

A. That's where --

Q. Is that the refinisher that you mentioned?

A. No -- the -- no. Yes. There's the doors. Yes. This is Executive Auto.

Q. That's Executive Auto on the left of Exhibit 7?

A. Yes.

Q. Does that fairly and accurately depict what it looks like today?

A. That's about what it would look like today.

MR. NOLAN: I am going to introduce this as Exhibit No. 7.

Q. So the Board can follow along with you, on the right side, you pointed out the refinisher?

A. Yes.

Q. You say there's a refinisher there today?

A. Yes.

Q. So back about the end of World War I, tell us what happened.

A. Well, at that time, there's a stream, runs down past this building here, right at the end.

Q. The building on the right, the white building on the right?

A. There's a garage set there where you come down Fork Road. You could run right straight into it. And it could -- would have set about half that far to the stream up to Long Green Pike.

Q. What did you do back then at the end of the war? What did you or your family do?

A. They farmed for Charles A. Snavely. He's the one that had the building moved up to here.

Q. What was your job in moving the building?

A. I was a big shot. I rode a pair of mules, started and stopped them as they put the rollers under the building.

Q. And they took the building up to where the white building is there today?

A. It would be -- is right in here, where this is.

Q. You show the Board by just pointing to it, sir, on Exhibit No. 7.

A. The building moved -- sat right up here on the right-hand corner.

Q. That was in about 1918?

A. Yes, sir.

Q. Is that your first memory of this site?

A. Well, that's the first thing I remembered about it, because I was involved in that.

Q. Did there come a time, Mr. Breidenbaugh, when you worked in that area?

A. I went to work for Mr. Charles A. Snavely, in 1936, selling and servicing farm machinery where this block building is right now.

Q. When you say the "block building," you're referring to the white building?

A. The white building.

Q. In the right-hand portion of Exhibit No. 7?

A. That's right.

Q. For how long did you work for Mr. Snavely back

then?

A. I worked for him for nearly two years, and then something happened and that his money run out, or something, he went and made a bad investment, and his son took over and his grandson then come to settle there, and we didn't see eye to eye, and I left.

Q. What year did you leave? About what year?

A. About '37.

Q. Then what did you do?

A. Then in '37, I worked on a farm again, and then I farmed for myself from '38 to '43.

In '43, I went to work for Ford Brothers in and Valley View, and then I had a garage of my own.

Q. Let me stop you right there. When you were farming between '37 abnd '43, what areas of Baltimore County did you farm?

A. Manor Road, just below where I live.

Q. And then after farming in '43, you mentioned you went to work for Ford Brothers?

A. Yes. Before I went to work for Ford Brothers -- just my mind slipped a little bit. Wait a minute.

I went to work for Ford Brothers, and then Wes Burl.

Q. Let me ask you, sir, what year did you work for Wes Burl?

A. Is the fifties, I started for Wes Burl.

Q. Am I correct that this is the second time that you have worked in this area of Fork and Baldwin Mill road?

A. Yes.

Q. Where was Mr. Burl -- tell me where the building was you worked in?

A. The building I worked for Wes Burl to start with, that burned down.

Q. Where's the building that you worked for Wes Burl in January of 1950?

A. That's a tarpaper building that breaks down to form fork Road you can run right into.

Q. So if you were coming down Fork Road and keep on driving, you'd run right into that tarpaper building where about my finger is on Exhibit 2 near the word "Pike," on Long Green Pike?

A. That's right. It was called Baldwin Motors.

Q. Who owned that building?

A. Mr. Eck.

Q. And Wes Burl was the operator of that garage there?

A. That's right.

Q. What did you do for Wes Burl?

A. I was a mechanic.

Q. Now, could you describe what commercial uses there were back in about 1950 in this village of Baldwin?

A. Well, the tarpaper garage was there. Then where the block building is put up now, Wes Burl was in there after the first one burned, and it was a post office, a gas pump was there. Across the road, they sold cars on the lot.

Q. Now, when you say "across the road," can you show me, sir, where, if you could -- if I can move this a little closer to you and you can just stand up and point to where they were selling used cars.

A. This is Fork Road, is it?

Q. Yes, sir.

A. Right here in the corner (indicating.)

Q. When was that?

A. That was in '52.

Q. Now, you're pointing to the display -- near the area that says display area BL on Exhibit 2?

A. Right alongside -- along Long Green Road and Fork Road.

Q. Now, how long did you work for Wes Burl back then?

A. I worked for Wes Burl almost two years, and then I went to Jarman Motors, but I didn't like it in town and come back to Wes again in '53.

Q. 1953. And was this the third time --

A. That's the third.

Q. -- you worked. Okay. Now, will you tell the members of the Board what, if any, commercial operation was on the south side of Fork Road when you came back this third time?

A. They were selling cars there then.

Q. Show the Board, if you would, how far along Fork Road they were selling cars?

A. I can't tell you how far, but there was maybe six or eight, something, sitting up there then.

Q. And was this, how that's shown here now, was that back there then?

A. Yes, sir.

Q. And were they selling cars up to about where that house was?

A. Well, my mind, I can't tell you, but it was a little -- a good ways up.

Q. A good ways up?

A. Yep.

Q. Why don't you show us, as best you can, how far up you remember?

A. That's the existing building?

Q. Yes.

A. I'd say about here.

MR. HOLZER: Would you put a mark there, please?

Q. Did I make the mark right?

MR. HOLZER: You make the mark right, Mr. Breidenbaugh.

A. (Indicating.)

Q. Here's the Edwards' house here.

A. That's the Edwards' house?

Q. Yes.

A. Then it's further up the road.

Q. Hold on, Mr. Breidenbaugh. I don't want Mr. Holzer to think I am doing something I shouldn't.

You make the mark where the cars were in '53.

A. (Indicating.) Near where this fence comes down.

Q. Why don't you make a green mark there. Make it real hard, if you want. All right, sir. Thank you.

Now, after 1953, when you went back to work for Wes Burl, did you ever move out of Baltimore County?

A. No, sir.

Q. Since 1953, have you always been familiar with this area of Fork Road and Baldwin Mill Road?

A. Well, it's always been a good grocery store there and we went to that and bought feed from Bill across the road, from the grocery store.

Q. Since that time, have used cars always been going on at that lot?

A. As far as I remember since 1953 when I come back,

there's been cars up there, and there was cars before that.

Q. Cars before that?

A. Yes, sir.

Q. Used cars?

A. Well, I bought a used one there.

Q. You did?

A. '52.

Q. In 52?

A. (Nodding head.)

MR. NOLAN: Thank you, Mr. Briedenbaugh. Witness with you.

THE CHAIRMAN: Cross?

MR. HOLZER: Thank you.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Mr. Breidenbaugh, it's good to see you again. As I understand your testimony, Mr. Briedenbaugh -- and I will come up here because it makes it easier to point out.

You never worked in this garage that's -- that's the Reed garage, or Clayton garage, you never worked on

that property yourself?

A. No, sir. But I worked across the road.

Q. You worked across the road on the northwest corner in the garage that you testified to, three times?

A. Yes.

Q. When -- do you remember 1955?

A. Yes. I was around in 1955.

Q. Were you still working at the garage over here in 1955?

A. Yes. For Wes Burl.

Q. When did you stop working for him?

A. After the block building was built.

Q. After his block building was built?

A. Yes.

Q. Do you recall when that was?

A. Positive, no, I don't recall what year that was.

Q. After you stopped working for Wes Block (sic) or Wes --

A. Burl.

Q. -- Burl, where did you go to work after that?

A. That winter I worked for Jim Mackal, a carpenter,

and then I went back to farming.

Q. So there would have been -- do you remember that third time from 1953, could you have worked there one year or two years or three years, or about how long?

A. Well, after that first building burned, I kind of had some heart problems, because I stayed up two nights and two days without sleep to keep people out of the stuff that burned, and then I worked there, and then I had to stop.

Q. When you stopped, then you went back to farming back on your own property, or in the vicinity of your own property?

A. I worked -- when I left there, I didn't do nothing for awhile. Then I worked for R.T. Bauer and Company.

Q. As a mechanic?

A. Yes.

Q. Do you remember when you started working for them?

A. '56.

Q. 1956?

A. In that neighborhood.

Q. So if you started working for R. T. Bauer in 1956, then you took off a couple years?

A. No, I wasn't off for a couple years.

Q. How long were you off?

A. About six or seven months.

Q. Okay. So somewhere around 1955, you could have still been working for Wes -- or you may not have been working for Wes?

A. Right in there.

Q. Where was this other business located that you went to?

A. Manor Road.

Q. In the same area?

A. Yes, not far from it.

Q. Now, could you tell us, in 1953, when you bought an automobile from the corner here, could you tell us what was located on the property which is now owned by Mr. Weber and Executive Auto?

A. Up where that red spot is, there was an old -- old wooden building there. I just -- I can't tell you the

shape of it, but I know it was there.

Q. It was an old wooden building?

A. Yes.

Q. Could you tell us what they did in that old wooden building?

A. I don't know. I couldn't answer that. Because it was immaterial, and I never paid much mind to it.

Q. Was it a service station or gas station?

A. No. Just an old building.

Q. Just an old building. So at that time, were they selling used cars out of that old building?

A. I don't know whether they sold out of them or not, but they was on this side and in front.

Q. Was that old building used as the place where you would go and pay for the used car, or get the keys to it?

A. I was never in it. I can't answer you.

Q. How did you buy your car on this corner? Was it from the person that owned that house or that building?

A. I don't think so, because it was a piece of ground Bill Franz owned there, and I think it was just on the other side of that and he -- a man parked cars there

and sold them and someone brought their car up there and when you went to start it, you couldn't get it in gear.

Q. So you still bought it anyway?

A. I bought it. Turned the clutch around the way it belonged, and it worked fine.

Q. So you brought it from someone who just used to park cars up there and sell them that way?

A. Back at that time, yes.

Q. So there wasn't -- it didn't look like it looks today where there's a big block building and cars all parked out --

A. Well, they were setting over there. It wasn't no building.

Q. And they were not owned by the man who owned that building?

A. Not the one I bought. The rest of them did.

Q. Do you know what the name of the lot was called at that time?

A. It was no name as I know of. Back then you just had the road, and somebody was there.

Q. Do you remember how many cars would be parked on

this area of the site back in those days?

A. After I come back to Wes Burl the second time, there was cars parked up there. I can't tell you just how many, but they was strung out a little bit.

Q. Would you say -- you said before it was like six to eight. Would that be about the right average?

A. I am guessing at it. Yes.

Q. Did those cars have "for sale" signs in their windows, do you know?

A. I never looked to see.

Q. Have you looked recently at Mr. Weber's cars that are parked out there?

A. I go past there quite often.

Q. Does he have "for sale" signs and prices marked on the windows of his cars?

A. I never paid any attention, because the cars was there and --

Q. Back in 1953, do you know whether there were any tow trucks parked there?

A. Not at that time.

Q. Not at that time. Do you know whether there were

ever any tow trucks parked up on that property?

A. Yes.

Q. When would that have been?

A. When Bill Reed owned it.

Q. Bill Reed?

A. Yes.

Q. Do you know whether the buildings that are in the back of the current location, it says it's an existing one-story building, uphostery and workshop, do you know whether that was there back in 1950?

A. I didn't pay no mind to it. Bill Franz owned the ground there and where the stream is, had -- we never went over.

Q. So Bill Franz owned this property at that time?

A. Not there. He owned it --

Q. The corner?

A. Down in here (indicating.)

Q. Where the stream is?

A. Where the stream, and south, he had a store there, the old hotel.

Q. Down here where the Long Green Hotel was?

A. Yes.

Q. All right. Did you ever buy another automobile from that location?

A. One. Only one.

Q. Good.

A. That was the only one.

Q. Let me do it this way. Mr. Paul Weber owns the property and this garage and the facility there now.

Do you remember who owned the property before him?

A. No, I don't. I think Clayton, Mr. Clayton.

Q. When Mr. Clayton owned it, was it a service garage and a gas station?

A. I don't know about that, but there was a lot of cars there then.

Q. Do you know whether there were gas pumps out front?

A. I believe it was at one time. Up near the other end of the building.

Q. Near which one? Towards the corner or the other way?

A. Where your finger is at.

Q. So towards the northeast side of the building, the gas pumps were located.

Do you remember what kind of gas station it was, what kind of gas they sold?

A. No, because back then you could get gas for five or six gallons for a dollar, and it wasn't no names on it.

Q. Before Mr. Clayton, Mr. Reed owned it?

A. As far as I know.

Q. Do you know whether Mr. Reed used it as a gas station and an automobile repair shop?

A. He sold cars there. Now, whether he repaired or not, I can't -- I can't answer you.

Q. Back in 1955 -- today, there's macadam parking in front of this building. Do you remember that today?

A. I couldn't answer you whether there's macadam or not.

Q. Looking at this picture, does that look like a paved surface in front of the garage?

A. Not to me.

Q. Not to you. Okay. Do you remember when this

building that you described on Petitioner's Exhibit No. 7, this block building that's Mr. Weber's, do you remember when this block building was built?

A. No, not exactly, no, sir.

Q. Would it have been after 1953 when you were working across the street?

A. It seems to me that building was put up or started up when I was was at Jarman Motors.

Q. At 29th and Remmington?

A. Yes.

Q. I remember.

A. When I was at Jarman's, that's between the time I was working for Wes Burl and left Wes and went to Jarman's.

I didn't like it, and come back to Wes.

Q. Do you remember when you were working, what years you were working at Jarman Motors?

MR. NOLAN: Objection. Asked and answered. Between the second time and --

THE CHAIRMAN: You want the exact date?

MR. HOLZER: If he remembers.

Q. Do you remember what year you went to work at Jarman Motors?

A. In the fall of '52, I think, and '53, I was back to Wes.

Q. Do you remember a Mr. Henry Fisher? Annabelle Fisher?

A. They lived on Bottom Road.

Q. Do you remember whether or not they lived on this site in 1953?

A. I don't remember them living there. I remember them being up on Bottom Road. He was a painter.

Q. You don't know whether he ever lived on that site or not?

A. I can't answer that, because I don't remember him living there.

I say I remember him from up on Bottom Road.

MR. HOLZER: I have no further questions.

THE CHAIRMAN: Redirect?

MR. NOLAN: No further questions. May Mr. Breidenbaugh be excused?

MR. HOLZER: I have no objection.

THE CHAIRMAN: Thank you, Mr. Breidenbaugh.

* * * * *

MR. NOLAN: May Mr. Breidenbaugh be excused?

THE CHAIRMAN: Yes, you may be excused.

MR. NOLAN: I'd like to call at this time Mr. Theodore Cypull.

T H E O D O R E C Y P U L L,

having been called as a witness, was duly sworn and testified as follows.

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Good morning, sir.

A. Good morning.

Q. Would you state your full name, please.

A. Theodore Louis Cypull.

Q. What is your address?

A. 13801 Pleasantville Road.

Q. How long have you lived at 13801 Pleasantville Road?

A. Since 1941.

Q. How old are you, sir?

A. I am sixty-nine.

Q. Mr. Cypull, did you testify before the Zoning Commissioner in December of 1996?

A. Yes.

Q. Have I talked to you since that hearing?

A. I don't think, no.

Q. Now, Mr. Cypull, I'd like to direct your attention to Petitioner's Exhibit No. 2 and the property which is owned by Executive Auto Paint and Repair, Inc.

Are you familiar with that property?

A. Pretty much.

Q. Now, directing your attention to the period prior to March 30 of 1955, could you tell the Board what uses were taking place on the subject property prior to March 30 of 1955?

A. Pretty much always been used cars there. I don't pay a lot of attention. I just drive by every few days, and they did repair work and used cars.

Q. And used car sales?

A. Yes.

Q. You were present in the hearing room when Mr.

Breidenbaugh testified, correct?

A. Yes.

Q. What is your earliest memory of this subject site?

A. Just about what Lou Breidenbaugh said. They had a repair place and used cars. Occasionally a boat or tractor.

Q. Where would they display the used cars prior to March of 1955?

A. The same place they do now, I believe, from all across the front.

Q. Could you just go to the board here -- and I will move the board closer to you and you can just indicate to the Board members where the cars were displayed prior to March of 1955.

A. Right where they are, pretty much all the way up here.

THE CHAIRMAN: Do you want to mark those in yellow?

Q. I am going to put an "LB" near the green mark, and I would ask you to make a yellow mark on the outer

limits of what you saw prior to March of 55.

A. Where's the stream? Are you familiar with that?

Q. The existing stream?

A. Oh, there it is.

Q. I think that's labled "existing stream"?

A. They went all the way. Used to be a tree here. Still is. And go pretty much from here up.

Q. Would you mark -- you marked that real well. Why don't you put your initials near that first yellow mark?

A. About there. Right where it is.

Q. I will put "TC" over that second yellow mark. Thank you, sir.

After March of 1955, did you ever observe any abandonment of the used car use or extended discontinuation of that used car use?

A. No, I didn't. As far as I can recall, it's always been pretty much the same. Sometimes more, sometimes less. You know, they move in and move out.

Q. Move in and move out?

A. Yes.

MR. NOLAN: No further questions.

THE CHAIRMAN: Mr. Holzer.

MR. HOLZER: Yes.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Yes. Mr. Cypull, all the questions that you were asked related to basically, in the beginning, related to prior to March of 1955.

You were living at that time at your present address on Pleasantville Road?

A. Yes.

Q. Were you employed, sir?

A. I worked for my father. And we did contracting, some roadwork, and a lot of farming. He raised cattle.

Q. Did that take you away from the Baltimore County-Fork Road area at any time from 19 -- let's say -- 53 to the present?

A. No. Only when I drove in town.

Q. But I mean for any extended time?

A. No.

Q. So you lived out there continuously, all the time?

A. Right, except -- let me straighten that out. I got married in '51, and I lived there totally full time between '41 and '51. I lived there some of the time, some of the time in town.

Q. So --

A. I came up and down every day.

Q. Did you have another residence though? Were you living --

A. Yes.

Q. Where was that?

A. On Walker Avenue.

Q. In Baltimore City?

A. No. It was in the county.

Q. And were you living full-time on Walker Avenue?

A. I was -- no. Pretty much until we bought the farm in '41. Then I lived in both places.

Q. Well, I guess what I'm trying to get at is in the 1950s, were you living at both places? Let's say in '55.

A. 55? Only at the farm. Since '51, I lived at the farm, all the way.

Q. Now, are you familiar with the folks that owned

the property that's the subject of this discussion today that the Executive Auto is located on?

In other words, do you know something about the history of the property and the owners?

A. Not a great deal, you know,

Q. Why don't you tell us who owned it before Mr. Weber? If you know.

A. As far as I know, it's Clayton.

Q. Mr. Clayton?

A. Uh-huh.

Q. And before Mr. Clayton?

A. I am going -- I miss a lot of them. I remember Bill Reed.

Q. Before Bill Reed?

A. You got me.

Q. Let me ask it this way. You know what the property looks like today?

A. Uh-huh.

Q. You have seen it recently?

A. Just this morning, drove by.

Q. And you have seen the cars out out there on

display on Fork Road.

Do they have signs, "For Sale" signs on them, or prices on them?

A. Yes, they do. Not very big signs. Just little writing in the windshield.

Q. Right in the windows, like with some sort of shoe marker or --

A. Yes.

Q. Also, today, are you familiar with when the block -- the one-story block building that was constructed on this site?

A. I remember it being done. But I couldn't tell you when.

Q. Well, you said since 1951, you lived at the farm continuously, and you remember the building being built.

Do you remember whether it was in 1951 or 1953 or '55 or '60?

A. You know, it seems to me like it's just been there ever since '51, but I'm not sure.

Q. Well, before this brick building, wasn't it a wooden shack, as Mr. Breidenbaugh described it?

A. That's going back pretty far.

Q. Do you remember the wooden shack?

A. Vaguely.

MR. NOLAN: I am going to object to the term "shack." I think he said a wooden garage.

MR. HOLZER: I will rephrase it.

Q. A wooden building?

A. I recall it being there, but --

Q. Now, when this building was constructed, the block building, did it have a pad behind it, to your knowledge?

A. Not -- I couldn't tell you. It could have. As I say, I went by. I didn't stop and didn't go look around.

Q. Did you ever go in and talk to the people that were selling the cars?

A Only very rarely. If I wanted to get some work done on my car, sometimes I'd stop.

Q. When you wanted to get some work done, you would get the work done. Was that a repair shop there?

A. Yes, they repaired cars.

Q. And if you had a problem with a broken muffler or

spark plug that needed replacing, you could take it in there and get it repaired that way?

A. Sure.

Q. Do you know who was doing that? Was it Mr. Clayton. Mr. Reed? Do you know how far back that operation goes?

A. I know either one of them could fix a spark plug.

Q. Either Clayton or Reed had a repair shop?

A. They could work on it. Some of it might have been primarily used car people. Some were probably, primarily, garage people. But they also all had used cars, fixed cars.

Q. In 1955, would you see a car that had a "For Sale" sign on it like you just described it sitting out there today?

A. Sure.

Q. They would have signs on them, "For Sale"?

A. Yes, sure. They wanted to sell them. They put signs on them.

Q. Could you tell the difference between cars that were there for sale and cars that were there for the

repair shop?

A. No, I wouldn't know that. You know, the ones that had signs on them, I guess they were for sale. The ones that didn't might have been for sale. I don't know.

Q. But they might have been there for the repair shop as well?

A. Correct.

Q. Do you know when the first gas pump were put in?

A. No. I remember seeing them, and they took them out. I don't know what.

Q. Do you remember whether those gas pumps went in before 1955 or after 1955?

A. I would think about '55. See, if I knew you were going to ask me questions, I would have written it down, but I didn't pay that much attention.

Q. So in the course of your entire time being out there, you never went into any of the people that owned this facility to try to buy a car?

A. I never bought a car.

Q. Do you know whether or not in 1955 this building designated as the upholstery shop was in the back there?

A. I can't answer that. I know it's been there a long time, but --

Q. You don't know when it went in?

A. No.

Q. Do you know when the existing macadam was put in?

A. It looks like it's been there quite awhile. I don't know just when.

Q. Did you ever need your car towed?

A. Yes.

Q. Did you ever call them to tow it?

A. Yep, yep.

Q. What was the earliest time you recall a tow truck being in that location, that you can recall?

A. Yes. I don't know. Long time.

Q. What about 1955, would it have been there?

A. Sure.

Q. You think so?

A. I would think so. But I'm not sure.

Q. Do you know what the property looked like in 1955?

A. Pretty much. It hasn't changed much as far as I

can see.

Q. Well, you're not sure about this building in the back?

A. No.

Q. What about the one-story shed that's right behind it, are you familiar with that?

A. No. I know there's been buildings behind it for a long time, but I oculdn't point out a building like that. God, I couldn't tell you.

Q. Do you know if that building has been added onto the property since 1951, since you started living out there permanently?

A. May have.

Q. May have?

A. May have. I never went around to look that much.

Q. Has this split rail fence always been there since 1955?

A. I don't know when that went in. I know it hasn't always been there. I just don't know when it went in.

Q. In 1955, were there any signs on the building that said "Used Car Sales"?

A. I believe there was, yes.

Q. Do you recall whose sign it was? Whoever had it then?

A. Whether it was Clayton --

Q. You don't recall in 1955 who was the owner, whether it was Clayton or Reed?

A. No, I couldn't tell you.

Q. Do you recall whether their signs, whether they had any signs on the property that said "Used Car Lot" or "Used Cars"?

A. Yes, I remember that, yes.

Q. You think there was?

A. I think they called it Clayton Motors, if I'm not mistaken.

Q. Were there any lights on the property illuminating the cars that were for sale in 1955?

A. No big lights. Might have been. You know. 55? Not a floodlight or anything.

Q. Would there have been a light at the building?

A. Probably, but nothing big.

Q. In other words, no lighting up along wherever the

cars were displayed?

A. Not to my recollection, no.

Q. You have seen these car lots on Belair Road, Harford Road, that have those strings with the fluttering stuff and all?

A. Yes.

Q. Has it ever had any of those kinds of flags or displays up along Fork Road?

A. I never known it to happen. I haven't seen them.

Q. Would you have noticed it?

A. I would surely think so.

Q. So, to the best of your knowledge, there were never any of those kinds of fluttering signs or flags?

A. Not that I know of.

Q. How would you describe the used car sales on this property back in 1955?

Tell us, in your own words, you know, what kind of operation it was.

A. Pretty much like it is now. It hasn't changed that much.

Like I say before, it depends who was in there.

You could see a lot of cars because that fellow was into the used car business, main thing.

Q. Who was that, do you know?

A. I think Clayton had it a good -- and Bill Reed surely had used cars. And then somebody else would have it, and they'd be into repairs more. All the time, used cars.

Q. They'd be in the repairs more?

A. Probably, yes.

Q. So further used cars and more repair work, more garage work?

A. Probably so. That's the way it appeared to me, you know. I don't know.

Q. Would you describe the operation in 1955 as you recall that operation, whatever it was, as being a low-keyed kind of operation?

A. Just -- just about like it is now. I would call it low-keyed.

Q. Do you ever remember any other kind of operation being conducted out of this location, other than what we have just talked about?

A. No, I don't.

Q. So it's always been that?

A. As far as I can recall, seems like it's always been that.

Q. And you can't recall anything else ever happening, or having been done with this property?

A. That's about it.

MR. HOLZER: Thank you. I have no further questions.

MR. NOLAN Just two questions.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q. Mr. Cypull, you told us that you got married in 1951, correct?

A. Yes.

Q. Before you moved back full-time to the farm in 1951, were you visiting the farm occasionally?

A. More than occasionaly.

Q. More than occasionally?

A. Yes. Just about every day.

Q. Were there used car sales on the subject site in

1949?

A. '49?

Q. Yes.

A. Sure. Even in '41 they were selling used cars off that property.

MR. NOLAN: No further questions.

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: Nothing further.

THE CHAIRMAN: You may step down. Thank you, Mr. Cypull. You witness is excused.

MR. NOLAN: Thank you. I will next call Mr. William Elwood.

W I L L I A M E L W O O D,

having been called as a witness, was duly sworn and testified as follows.

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Good morning, sir.

A. Good morning.

Q. What is your name?

A. William Everett Elwood.

Q. Where do you live, Mr. Elwood?

A. 12343 Long Green Pike.

Q. About how far approximately from the subject site is your home?

A. Probably two and a half miles.

Q. How old are you, sir?

A. Fifty-seven.

Q. You were born in 1920?

MR. HOLZER: I hope not.

MR. NOLAN: That is why I became a lawyer. I couldn't do the math.

Q. 1940?

A. 1939. I wasn't even three years old in '20.

Q. What's your earliest recollection of the subject site, sir?

A. I would guess my earliest recollection would be probably in 1954.

Q. Would you tell the Board what, if any, commercial uses were taking place at the site?

A. Mr. Reed had a used car lot there.

Q. What do you recall about it?

A. Well, in '54, my brother was dating Bill Reed's daughter, and we used to hang out up there.

Q. Was there a block building there in 1954?

A. Yes, sir.

Q. Where did Mr. Reed display his used cars?

A. He displayed the used cars along the Fork Road side where Mr. Weber has them now.

Q. And did he have different classification of cars in there, cream puffs, or --

A. The front row was cream puffs. The second row was -- indicating. And the third road was stuff he used to cannabalize or fix other cars with.

Q. The middle row was -- you didn't say what that was, but that wasn't the cream puff?

A. That was the economic.

Q. The economic car, okay, we'll take that. Did you ever work at this site?

A. Yes, sir.

Q. When did you work there?

A. I started working for Mr. Reed, I think when I started high school in September of '55, I think.

Q. And prior to that time, it had been used car sales?

A. Yes, sir.

Q. Directing your attention to early 1955, say March of 1955, since that time, have you ever -- first let me ask a preliminary question.

After March of 1955, did you ever move out of town for an extended period of time?

A. I was in the Marine Corps for the years '58 to '62.

Q. Well, for that time between March of '55 and when you went in the Marine Corps in '58, was it continually used cars?

A. Yes, sir.

Q. While you were in the Marine Corps, did you ever come home and visit your folks?

A. Yes, sir.

Q. From 1958 up to the present time, has it always been used cars, to your knowledge?

A. To my knowledge, it always was.

MR. NOLAN: Thank you, Mr. Elwood. Witness with

you.

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: Yes.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Mr. Elwood, when did you work there?

A. I started working for Mr. Reed when I started high school, which was September of 1955, and I worked there until like March of '57.

Q. Was that on a full-time basis?

A. No, sir, part-time, after school in the evenings and on Saturdays.

Q. That was for Mr. Reed?

A. Yes, sir.

Q. At the time, was this block building -- was this in existence at that time?

A. Yes, sir.

Q. Was the addition that's on the back in existence at that time?

A. I don't think so.

Q. You don't think so. Okay. To your knowledge,

was the brick patio in the back at that time?

A. No, sir.

Q. You have to answer so she can hear you.

A. No, sir.

Q. Was the one-story shed, fourteen feet, right behind it, by twenty-four, was that in existence at the time?

A. I don't think that was in existence. There was a little shack back there that we used to keep junk in.

Q. But not this one?

A. I don't think it was that one. Even if it was, it was modernized.

Q. What about this upholstery building?

A. No, sir, that wasn't there.

Q. In '55?

A. No, sir.

Q. What about the one-story shed that's twelve by twenty-two?

A. That wasn't there.

Q. What about Mr. Reed, did he have a tow truck?

A. He had a green and white Chevrolet.

Q. Did he park it in this location?

A. Yes.

Q. To your knowledge, further over, was there existing gravel in terms of the parking?

A. There was some gravel there. That's where -- he had a repair business too. He had a full-time mechanic in there, full-time mechanics, and cars to be repaired were parked on that side of the building.

Q. On this left --

A. West side of the building. And the cars for sale were on the east side of the building.

Q. So if I went by there in September of 1955, the vehicles that I would have seen parked on the west side of the building towards the corner of Long Green Pike, Baldwin Mill and Pleasantville Road, would basically have been cars that were there to be serviced in the garage?

A. Yes, sir.

Q. In terms of the cars or the vehicles, that is, vehicles parked on the east side of the building, those were related to the used car sales?

A. Yes, sir.

A. Yes, sir.

Q. That was in September of 1955?

A. Well, ever since I can remember, and I started going up there before I started working there.

Q. In terms of paving, was there macadam parking there at the time?

A. I don't recall whether it was macadam or crusher run.

Q. In September of 1955, do you recall, or thereafter while you were working, do you recall the split rail fence being there?

A. No, sir. It was a house sitting back there.

Q. There was a house back in that area?

A. Yes, sir.

Q. Was it a residence?

A. Yes. Mr. Reed rented it out.

Q. From 1958 to 1962, you were away in the Marine Corps?

A. Yes, sir.

Q. Did they -- in September of 1955, were there gas pumps in front of them?

A. Yes.
Q. There were?
A. Yes.
Q. And part of the operation was to pump gas?
A. Pump gas, check oil, wash the windows. No Gas-N-Go.
Q. Not a Gas-N-Go?
A. No.
Q. Do you remember when those gas pumps were put in?
A. Prior to my knowledge. They were there when I started going there.
Q. Well, we have two different times you started going there to work. In September --
A. September of '55, I started going to there to work. Before that, I -- my oldest brother was dating his daughter and we used to stop and get gas there, so they were there before I started working there.
Q. Do you know when they were taken out, by any chance?
A. No. I think Mr. Weber took them out. I don't know.

MR. HOLZER: I have no further questions.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q. Between 1958 and 1962 when you were in the Marine Corps, Mr. Elwood, on an annual basis, how often would you get home to the Baldwin area?

A. Well, except for two years -- well, not quite two years. Twenty-one months overseas. I was home several times a year anyway.

Q. And was the used cars sales always there when you were there?

A. Yes.

Q. I think you told us your brother was dating Bill Reed's daughter back in 1954?

A. Yes, sir.

Q. He was buying gas a couple times a week even?

A. I think Mr. Reed was giving him some gas.

MR. NOLAN: No further questions.

THE CHAIRMAN: Mr. Holzer?

MR. HOLZER: No questions.

THE CHAIRMAN: The witness is excused. Thank you.

MR. NOLAN: Mr. Chairman, I know the Board has been sitting for two hours now. I don't know what the Board's pleasure is.

I have just three more witnesses to call, but if the Board wants, I can --

THE CHAIRMAN: Off the record.

(Discussion held off the record.)

THE CHAIRMAN: We'll take an hour lunch break, and reconvene at 1 p.m.

(A luncheon recess was taken.)

THE CHAIRMAN: We can go back on the record. Mr. Nolan?

MR. NOLAN: Thank you, sir. The Petitioner/Appellant would call Mr. Stanley Clayton.

S T A N L E Y C L A Y T O N,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Would you state your full name, please.
A. Stanley R. Clayton.
Q. What is your address?
A. 563 Long Wood Circle, Olmar, Florida.
Q. For how long have you lived in Florida?
A. Eighty-seven years.
Q. How old are you?
A. Oh. '48.
Q. I really fouled this up earlier. So what year were you born?
A. '48.
Q. Were you present in December of 1996 at the Zoning Commissioner's hearing?
A. Yes, I was.
Q. Did you testify at that hearing?
A. Yes, I did.
Q. At Mr. Weber's request, did you return just for purposes of this hearing today?
A. Yes, I did.
Q. Is he reimbursing you for your travel expenses?
A. Yes, he is.

Q. Mr. Clayton, what is your business?

A. I am in used car sales and service business in Florida.

Q. Before moving to Florida, during what years did you live in Maryland?

A. I lived in Maryland from the time I was born in '48 until we moved in '79.

Q. Prior to moving to Florida, what was your business?

A. Used cars, sales and service.

Q. Where did you carry on that business?

A. 13580 Fork Road.

Q. That's the subject site?

A. Right.

Q. Did you lease the property or own it?

A. My father and I owned the property.

Q. When did you and your father purchase 13580 Fork Road?

A. December of 1970.

Q. Before you purchased it, had you visited the property?

A. Yes.

Q. When did you first become familiar with the subject property?

A. Well, we moved and live in Long Green Valley when I was four years old, so at that point in time I have a recollection of that as a child.

Q. Where did you go to elementary school?

A. Carroll Manor Elementary School.

Q. What year would you have started that school?

A. 1954.

Q. Now, do you have a recollection of this property back in 1954?

A. Well, the only real recollection I have, in fact, Bill Reed was in business, and my father bought a new tow truck from Griffith Ford, was coming home one night down Patterson Road, run in the creek, turned it over, and Bill Reed came down and pulled him out with his tow truck.

That was about 1954. The truck was still new. I remember my father was very upset. It was a new truck, and he took it up to Bill Reed's to be repaired.

He repaired it himself. He was in the same

business. Bill Reed had a tow truck also and pulled it out of the creek there. Free of charge, too.

Q. Other than the tow truck operation that was there, what use was made of the property in the fifties, that you recall?

A. Well, I had a little -- a little program from Carroll Manor Elementary School from '56 that shows -- it has everything he did there. Complete automotive service, gas and road service, used cars and trucks.

Q. Now, I am going to show you what I believe is a photocopy of this original booklet that you brought with you today.

The booklet is dated Saturday, April 28, 1956?

A. That is correct.

Q. It was published -- it appears to have been published by the organizers of Carroll Manor Hey Day?

A. Right.

Q. And what part of the booklet refers to the subject site?

A. Right there.

Q. Is the photocopy that I have made an exact copy

of your original booklet?

A. Yes, it is.

MR. NOLAN: At this time, I would introduce this as the next Petitioner's Exhibit.

THE CHAIRMAN: No. 8. Any objection?

MR. HOLZER: No objection.

Q. Separate and apart from that booklet which refers to used car sales, what do you recall about used cars being sold on the site in the fifties and sixties?

A. Well, my father was friendly with Bill Reed and occasionally stopped there when going through Baldwin, talked to him, ask how business was, stuff like that, because it was always cars there for sale and being serviced.

Q. Now, you indicated that you and your father purchased the property in December of 1970?

A. Yes.

Q. Was it a going concern when you bought it?

A. Yes, it was. People that were renting it were in the process of moving out.

Q. Who was renting it?

A. At that particular time, C&D Automotive.
Q. C&D?
A. Yes.
Q. It was not Bill Reed immediately before you bought it?
A. No.
Q. Do you recall who C&D Automotive was?
A. No, not really, no. They were moving out, and we were in the process of buying the place.
Q. Do you recall any other operators on the site that were there?
A. Bill Reed, after he ran it for awhile, went to work for St. Clair Motors in Jarrettsville, and they sold used cars there for awhile.
Q. Would that have been in the sixties?
A. That was in the sixties, yes.
Q. Now, you told us about Carroll Manor School. Did there come a time you went to college?
A. In '66,'70, we bought that place right after I graduated from college.
Q. Where did you attend college?

A. Towson State.

Q. During the years you attended college, were you still living in the area?

A. We lived in Cub Hill then.

Q. But did you ever have occasion to visit the area?

A. Riding in the country, yes.

Q. Was the used car operation, to your knowledge, ever abandoned, or did it continue?

A. To my recollection, it was always cars being sold there, some way, shape or form.

Q. Now, sir, I am going to show you two photographs. Petitioner's Exhibit No. 9 and Petitioner's Exhibit No. 10.

I'll show them to counsel first.

THE CHAIRMAN: Any objection, Mr. Holzer?

MR. HOLZER: No.

THE CHAIRMAN: Accepted.

Q. Sir, let me show you what's been received in evidence as Petitioner's Exhibit No. 9, which is a single photograph.

Would you tell the Board what's depicted in that

photo?

A. This is a picture photo of the place when we acquired it before we did any kind of painting or anything.

There is some old cars still sitting on the property the previous tenant had left there, which was in pretty poor shape.

The sign on the side of the building says, Reed Valley Motor Sales, New and Used cars.

Q. Any writing on the back?

A. It says Reed Valley Motor Sales. Before, it was Clayton Motors.

Q. And this picture would have been taken some time in the late seventies?

A. Late seventy.

Q. Referring your attention, sir, to the four photographs that are shown in Exhibit No. 10, can you describe for the Board what is depicted in each of those four photographs?

A. These are pictures taken in the mid-seventies of our used car operation. You see the gas pumps in front of

the building, the cars displayed on the upper end of the lot, which is the same place these cars are in this drawing there.

It shows just various pictures of cars being displayed around the lot.

Q. In the upper left-hand photo of Exhibit 10, there is what appears to be a short line of cars. Was there any barrier or any other obstacle at this end of the property?

A. The split rail fence, yes. My father put the split rail fence there about 1976.

Q. After 1976, cars were never parked beyond the split rail?

A. No. His hobby -- he was -- I guess he always wanted to be a farmer. He had four head of cattle back there. Never a car on that side of the fence.

Q. During the period 1970, early '71, when you had just acquired this property, could you describe for the Board what improvements were on the property and whether there were any used car sales near or used car displays near the intersection of Long Green Pike and Fork Road?

A. When we we purchased the property, the only

improvement on the property was the concrete building there.

The only time we used this lower corner for used cars sales, when I had something that was real -- like a special interest car we put done there and displayed it so it could have been a good view of all the roads coming together so people could see it.

Q. Was there ever a one-year period during the time you controlled this property that cars were not shown down on that corner?

A. It was always -- during that time, it was always cars there. Marion Francis gave us permission to use the corner.

Q. Mr. Francis owned the property?

A. He owned property, that little section at this time in question there.

Q. You used it with his permission?

A. Used it with his permission.

Q. Now, approximately how much property did you initially acquire?

A. Roughly 1.25 acres, acre and a quarter.

Q. Did you operate with any Motor Vehicle Administration licensing at this site?

A. Oh, yes.

Q. Does Exhibit 2 depict, Mr. Clayton, the display areas that were utilized by you, other than the one you just described at the corner?

A. That's a rough picture of the same with the cars displayed there.

Q. Approximately how many cars a year would be sold at this site?

A. Well, we were going both wholesale and retail, but every car that we sold still came through that piece of the property.

The best deal was '75, was -- I think we had seventy-six cars we sold that year, which is wholesale and retail.

Q. If 1975 was a peak year, give us what an average year would have been in the early seventies?

A. 175, 200.

Q. Do you have any records with you today of some of your sales towards the latter part of your business?

A. Just recently, I found a list of my fathter's writing of the last year, which was only five months we were there, and a list of cars we sold off that property at that time.

Q. I will show you Petitioner's Exhibit 11 for identification and ask you, sir, if you have the other list with you?

A. Yes.

Q. Let me see that. This is an original of a three-page listing for the last five months of your operation?

A. Yes.

Q. How many cars did you sell --

MR. HOLZER: What year?

THE WITNESS: That's '79. Seventy-three cars.

Q. And is Exhibit 11 that's been marked a true and accurate copy of your original listing?

A. Yes, it is.

MR. NOLAN: I'd introduce that as Petitioner's Exhibit 11, Mr. chairman.

MRTHE CHARIMAN: Any objection?

MR. HOLZER: No, not at this point.

THE CHAIRMAN: Thank you. Admitted.

Q. Now, let me show you Petitioner's Exhibit No. 4. Perhaps it's No. 5 in this case.

It is an aerial of 1972. I ask you, sir, if you can -- excuse me. No. 5 -- and ask you sir, if you can identify your commercial property?

A. This is the corner right here.

Q. Yes, sir. What does that show?

A. Well, it's pretty small. Can you see the building in the picture?

Q. You were owning it at that time?

A. '71, yes.

Q. So in April of 1972, you were carrying on the property there --

A. Yes, cars all displayed up here.

Q. Now, sir, after you acquired the property in December of 1970 and up until you sold it to Mr. Weber in 1979, was there any interruption in the use of the property for used car sales?

A. No.

MR. NOLAN: I'd like to have one minute.

THE CHAIRMAN: Sure.

Q. Now, shortly after you purchased the property in 1970, what was your understanding about the zoning status of your property?

MR. HOLZER: Objection.

THE CHAIRMAN: Basis?

MR. HOLZER: It's irrelevant what his understanding was.

MR. NOLAN: Not at all, sir. It is extremely relevant. This was an owner. He bought it.

THE CHAIRMAN: Overruled. I agree.

Q. You can answer.

A. We were told at that time of purchase --

MR. HOLZER: Objection.

Q. Just tell me what your understanding was.

A. My understanding was the used car sales were a nonconforming use, and had been there. But that's what it was, a nonconforming use.

Q. Did you check with any lawyer to verify that?

MR. HOLZER: Objection. It's irrelevant.

MR. NOLAN: I believe it's most relevant.

THE CHAIRMAN: I think it's relevant.

A. Yes, we did.

Q. Who did you consult?

A. Senator Pine.

Q. Would that be Jim Pine?

A. Yes.

Q. As a result of tht, did he meet with you? Did he meet with you about the property?

A. Yes, both my father and I.

Q. As a result of that meeting with Senator Jim Pine, did your understanding change at all about the nonconforming use?

MR. HOLZER: Objection. It's just another way of getting in hearsay.

THE CHAIRMAN: No, I don't agree. I am going to allow the question.

A. My understanding at the time, after being advised by him --

MR. HOLZER: Objection.

Q. Just tell us your understanding.

MR. HOLZER: "Being advised"?

A. My understanding --

MR. HOLZER: No matter which way you cut it, it's still innappropriate hearsay.

MR. NOLAN: The Chairman ruled.

A. After consultation, however you want to put it, I understood the property was zoned correctly for used cars.

Q. Did your understanding about the nonconforming use change any after consulting Mr. Pine?

A. I thought it was conforming at that point.

MR. NOLAN: Witness with you.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Mr. Clayton, you previously testified before the Zoning Commissioner, did you not, in regard to this very issue?

A. Yes.

Q. Now, you, at that time, you testified that you still held the mortgage on this particular property?

A. That's true.

Q. Is that true today as well?

A. Yes, a small mortgage left.

Q. So Mr. Weber is obligated to you on that mortgage for some amount of payment?

A. Yes.

Q. Is it in your interest that this property continue to be utilized as a used car facility?

A. Well, I said yes to that last time you asked me, but actually the answer is no.

The property is worth what he owes me, whether he makes it into a garbage dump.

Q. So the last time your answer was yes; this time you thought about it, and your answer is no?

A. That's correct.

Q. Now, as I understand your testimony, you were -- in 1955, you would have been how old?

A. In 1955, I was six years old.

Q. Other than the incident of your father's truck crashing into the stream and having to be pulled out, do you have any recollection of what this property looked like in 1955 when you were six years old?

A. Very vague. Not really, no.

Q. In 1956, you would have been five years old?

A. Seven years old.

Q. I'm sorry, seven. I'm as bad as Mr. Nolan when it comes to math. You would have been seven years old.

Do you have any recollection of the events surrounding your Exhibit Petitioner 8, Carroll Manor Hey Day, what this advertisement meant? Or is that just something that was was collected in your family?

A. Something I attended, and somehow or another it never got thrown away.

Q. Now, you and your father acquired the property in December of 1970.

So from 1956 to 1970, where were you residing at that time?

A. We moved from Long Green Valley to Cub Hill in 1958.

Q. So when you were about ten or eleven years old?

A. Ten.

Q. You moved out of the neighborhood and you were in Cub Hill until 1970 when you acquired this property?

A. Right.

Q. Now, when you acquired this property with your father, what you acquired was on Petitioner's Exhibit No. 2, it did not include this corner piece of property, did it?

A. No.

Q. Which is shown on the northwest side of the existing building?

A. That's correct.

Q. So did you acquire parcel one and parcel two in 1970? Did you acquire this whole thing?

A. No,

Q. What did you acquire?

A. This right here down to the building, right here.

Q. So you acquired -- the witness has described what is covered by the blue line on the north and east and the south side, and then running up along this line defined right to the west of the existing building?

A. Right.

Q. So you did not acquire any of parcel two at that time?

A. No.

Q. And you did not acquire this corner parcel at that time?

A. No.

Q. Did you ever acquire -- in your ownership of the property, did you acquire that corner?

A. No.

Q. It was always under the ownership, I think you said, of Mr. Marion Francis?

A. Right.

Q. I believe you testified if there was an occasion -- was there an occasion where you would park extraordinary things such as a boat or something like that?

A. Anything of special interest that I wanted to stand out.

Q. Would it necessarily have been a car that would have been put over there?

A. Yes. I don't recall selling a boat or anything.

Q. But that was only because you had the permission of Mr. Francis to do it?

A. Correct.

Q. So, presumably, if you acquired the property from Mr. Reed, Mr. Reed, when he sold you this property, he did not own that corner either?

A. Right.

Q. In 1970 when you acquired the property, could you tell us -- I believe you testified that only the existing block building was there when you bought it?

A. Right.

Q. Was there a twelve by fourteen addition on the back at that time?

A. No.

Q. You added that?

A. Yes.

Q. Could you tell us, just ballpark, when you added it?

A. Mid-seventies, '74, something like that.

Q. And this brick pad in the back of the building, did you add that?

A. No.

Q. Did someone else add that?

A. After we left there.

Q. After you left there. What about the one-story shed, fourteen by twenty-four?

A. No, we didn't put that there.

Q. You didn't put that there either?

A. No.

Q. So Mr. Weber would have to put it there?

A. Right.

Q. What about the upholstery shop, workshop, was this building there when you bought the property?

A. No.

Q. Was it there when you sold the property?

A. It was.

Q. You added that?

A. Yes.

Q. Can you tell us approximately when?

A. '76, I think.

Q. Next to it, the one-story shed, fifteen by twenty-two, was that there when you acquired the property?

A. No.

Q. Was this there when you sold the property?

A. Yes. We added that.

Q. You added that as well?
A. Yes.
Q. Approximately when was that?
A. '75,.
Q. I believe you testified that you installed, or you and your father installed the split rail fence?
A. Yes.
Q. I believe you also testified no cars were ever sold behind that fence?
A. Yes.
Q. In that area?
A. Yes.
Q. Now, when you acquired the property in 1970, was it being used as a service and repair service station at the time?
A. Auto service and repairs yes.
Q. In other words, if I wanted to have my tires changed or spark plugs or new muffler, I could take it there, and they would do that?
A. Yes.
Q. Did you continue that?

A. Our main business was buying and selling cars. There were gas pumps. So for about four years, we sold gas, which case you buy a car from us, we'll service your car for you, and it's part of our business.

Q. So is it fair to say when you bought it, there was more emphasis on the service part of the operation and less in regard to the used car lot?

A. I really don't know what he was doing at that time, because he was in the process of moving out when we bought it.

You can see in the pictures of what's left there, some cars on the side there and stuff. But what his main business was didn't really concern me, so I never looked into it.

Q. What about, did your main focus change from 1970 when you first acquired it, did it change from the service automobile repair aspects and selling gas to more of a used car operation?

A. As used car sales improved, we did get more used cars and eliminated gas. After the gasoline crisis, it was a pain in the neck anyhow.

The service was always about the same amount of business. We serviced the cars that we sell.

Q. In terms of the numbers of cars, you have given us a number, a list, and so forth. In 1970, could you tell us about how many cars you sold?

A. In '70 or '71?

Q. '71.

A. I would say we probably sold 150 cars that year.

Q. Then you also testified that your highest year was 1975 where it was 376?

A. Right.

Q. So in 1971 -- when you say wholesale and retail, what do you mean by that?

A. Well, wholesale, when you sell a car, you sell to another used car dealer, and still selling a car, making a profit, by turning it over to the dealer. Bring a car in in, recondition it, turn them over that way.

Q. So you would acquire a car, you would then fix it up in the shop?

A. Right.

Q. And then would it sit here or would it go up to

Bel Air? Would you take it to the auction?

A. Cars in good enough shape to pass Maryland inspection, all the laws, we put it up for retail.

Something about the car we didn't like, we sent it to the auction, or the dealer come into the shop from Pennsylvania and bought them.

Q. Out of the 376 that you sold in 1975, could you tell us about how many were wholesale?

A. Well, I don't have a list anymore, but I say it was probably half.

Q. Half?

A. I said I did half my business was wholesale.

Q. And half was retail?

A. Retail.

Q. Did you and your father also have a used car lot in Carney?

A. Cub Hill.

Q. What time frame did you have that used car lot?

A. Well, my father built the place the year I was born in '48, and ran it in that area until we moved there in '70, '71.

Q. So it was not running concurrent with this?

A. No, no.

Q. Now, at the time you acquired the property, did it have lights? Not a light on the building, the existing building, but did it have lights, let's say, stretched across the property to display the automobiles?

A. No.

Q. It did not?

A. No.

Q. At anytime during the course of your operation, did you ever have any kinds of lights stretched out to show off the automobiles?

A. No, never. Never had lights or banners or any streamers or any banners.

We appreciated the fact it was Long Green Valley, and that is tacky, and we never did it.

Q. So during the period of time that there were no lights, there were no banners, that was pretty much your entire operation from '70 to '79?

A. That's correct.

Q. When you acquired the property in 1970, did you

transfer your license from Cub Hill to this site, or did you get a new one, or did you use Mr. Clayton's license?

A. It was a transfer. Just moved it.

Q. So you would have transferred from the Cub Hill location to this location?

A. Right.

Q. But it would have been your license?

A. Right.

Q. Or your father's license?

A. Well, it was his and mine together.

Q. But it wasn't as if you acquired somebody else's license on the existing site?

A. Right.

Q. When you sold the property to Mr. Weber, did you transfer your license to him, or did he have to go get another license?

A. He had to get another license. We had to turn ours in before he could even apply.

MR. HOLZER: Thank you. I have no further questions.

THE CHAIRMAN: Redirect?

MR. NOLAN: Just a couple questions.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q. Mr. Clayton, after you moved to Florida in 1979, how often would you return and visit the Baldwin area?

A. Every year or so.

Q. I'd like to direct your attention back to 1979 and ask you to picture in your mind the nature of the uses on this site at that time.

And, then if you would, examine your -- you were at the site in December of 1996?

A. Yes.

Q. Did you visit the site at all in this month?

A. Yes.

Q. As you compare what the site looked like back in 1979 and as it appears today, have you observed any drastic enlargement or extention of the used car sales uses there?

A. No, very similar to what it looked like when we had it.

MR. NOLAN: No further questions.

MR. HOLZER: Just one question.

RECROSS EXAMINATION

BY MR. HOLZER:

Q. You can't draw that same comparison between what it looked like in 1955 and the time period up to 1970, can you?

A. No.

MR. HOLZER: No further questions.

THE CHAIRMAN: Thank you.

MR. NOLAN: I call Mr. Rob Carter.

R O B E RT C A R T E R,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Good afternoon, sir.

A. Good afternoon.

Q. Could you state your full name and your home address, for the record.

A. My name is Robert B. Carter, 4809 Long Green Road, Long Green, Maryland.

Q. Approximately how far from the subject site is your home?

A. Probably about three miles.

Q. Mr. Carter, what is your profession, sir?

A. I am a landscape contractor, and I operate three nurseries.

Q. For how long have you been engaged in that profession?

A. Since 1964.

Q. For how long have you lived at Long Green Road?

A. Since 1971, I believe.

Q. Now, when did you first become familiar with the subject site?

Or were familiar with it before you bought your house, is my question?

A. I used to come out on it and hunt on it behind the buildings, across the street, in probably 1964, '65.

Q. On those occasions, did you ever observe what uses existed across the street on the south side of Fork Road?

A. At best, I would say there was an automotive

function over there. Whether it was a gas station or garage, I never really put that -- I never used those facilities.

Q. About when did you first make the distinction in addition to the automotive uses, there were used car sales?

A. Probably fifteen, twenty years ago. I mean, I became familiar with Baldwin and what was going on there.

Q. After you became familiar with Baldwin, did you get involved in any community activities?

A. Yes. I am past president of the Long Green Valley Association.

Q. When were you president, sir?

A. I was the secretary president of the association, so approximately 19 -- I don't know -- 74 or '75, somewhere's along those lines.

Q. Did you have any formal involvement in the organization, in the chartering of the association?

A. Yes. I was one of the three people who signed the charter.

Q. So you're one of the founders, is that correct?

A. That's correct.

Q. For how long did you remain active in the Long Green Valley Association?

A. Well, I am still a member. I was -- I served as vice president and president and served on the board for a number of years, and I am still a member of the association.

Q. Now, from 1974 when the Long Green Valley Association was incorporated up until about 1995, was this property ever cited for any violations by the association of which you are a member?

A. I don't think the association ever cited him, no.

Q. Now, sir, let me ask, did you receive any correspondence this past spring about this property from the association?

A. I think there's been two general mailers to the community about this. One was -- just came out the last -- oh, probably three or four weeks ago.

Q. Let me show you a copy --

MR. NOLAN: Mr. Holzer, you probably have a copy?

MR. HOLZER: (Shaking head.)

Q. Let me show you what I will call Petitioner's Exhibit No. 12 for identification and ask if that's a true and accurate copy of the mailing you received at your home?

MR. HOLZER: The date, Mr. Nolan?

Q. The date of the letter that's attached to it is May 12, 1997, but there's a fax date across the stamp from Executive Auto, dated June 18, 1997?

A. Yes. It had a green copy.

Q. Would you get that for us?

MR. NOLAN: I beg the Board's indulgance. It may have a date.

Q. Is this the package you actually received?

A. Yes, it is. Excuse me. I have scribbling on the back.

Q. It had a return envelope?

A. Right.

Q. Let's put that over here because my real questions are about these pages that were separate from the envelope.

Do you recall approximately when this came to

you? Was it in this envelope?

A. No.

Q. Was it about June?

A. This came before the last board meeting of the Long Green Valley Association, so I guess that's a May, June mailing.

Q. I note that you underscored something here at the bottom. Would you read the sentence that you have underscored?

MR. HOLZER: Objection. I think we can have the document submitted.

THE CHAIRMAN: It will speak for itself.

MR. NOLAN: Then I am going to introduce it into evidence, but I do have some questions about it, and that will be Exhibit 12.

MR. HOLZER: Could I see it? I didn't see what was underscored.

MR. NOLAN: The Chairman has Exhibit 12 in front of him.

MR. HOLZER: I would object to the exhibit, just for the record.

THE CHAIRMAN: What basis, Mr. Holzer?

MR. HOLZER: That it's irrelevant. It's a community news letter or information from the association, and if I anticipate, with good reason, what the testimony will be, it's going to be irrelevant to the outcome of this hearing.

MR. NOLAN: I think it's very relevant.

THE CHAIRMAN I think you will have an opportunity on cross-examination, and also when you present your case, so it's overruled.

Q. Mr. Carter, I am going to refer your attention to that sentence you underscored in the letter.

Could you -- the Chairman doesn't want you to read it, but let me ask you a question about it.

My question is, does that sentence refer to a diagram of the subject site that was attached to the letter?

MR. HOLZER: Objection. It's up to you, the reader.

MR. NOLAN: But, sir -- and I will address my remarks to the Chairman -- this witness, this is the only

time he's going to be on the witness stand.

Whether it speaks for itself or not, I think I have to ask him the questions I have about it.

THE CHAIRMAN: We'll give you a little leeway, but very limited leeway.

MR. NOLAN: Thank you.

Q. What was your understanding, reading that sentence, sir?

A. That the area that's been darkened, the perimieter was -- I believe in a ruling of the zoning officer, commissioner, was the area that was determined as being a nonconforming use.

Q. In your view, Mr. Carter, was that a correct statement?

A. In my view, it is not a correct statement.

Q. Why do you say that, sir?

A. Because I read to the Long Green Green Valley board meeting that -- what the ruling was. The ruling said that --

MR. HOLZER: Objection. I think that's the problem.

THE CHAIRMAN: I will sustain the objection.

Q. Don't tell me what the ruling is, but tell me, sir, why you know that's not a correct statement?

MR. HOLZER: Objection. Could I just be heard on the objection?

The reason is that what he's trying to juxtaposition is the Zoning Commission's decision, which we all know is irrelevant for this hearing.

This is a hearing de novo, so how it was characterized is irrelevant to this case, because it doesn't exist from a legal standpoint.

MR. NOLAN: Then why did they sent it if it was irrelevant?

Why did they send a mis-communication to 810 residents in the valley?

MR. HOLZER: Objection. And I don't believe -- I object to the line of questions, and I object to that comment.

THE CHAIRMAN: I agree with Mr. Holzer.

MR. NOLAN: I will abide by the Board's ruling, but I also will say, for the record, that I have certain

due process rights to protect this client, and when he's objecting to my ability to just ask normal questions, questions that are permitted by the Rules of Evidence, that it frustrates those due process rights.

Q. Now, Mr. Carter, let me ask you about a different subject.

THE CHAIRMAN: I just want you to identify for the record Exhibit 13 for identification.

A. This is the minutes from the Long Green Valley Association board meeting of June 26th.

Q. From whom did you receive that?

A. Carol Trela.

Q. Is Ms. Trela one of the appellants in this case?

A. I believe she is.

Q. And after you received this, did you read it?

A. Yes.

Q. Do you have any doubt it's an official communication from the Long Green Valley Association?

A. That's the way I interpret it.

Q. Were you permitted to speak at the June 26th meeting?

A. Yep.

MR. NOLAN: I have no further questions about this document.

Q. But I do -- as a final point, sir, let me show you what I will term as Exhibit 14 and 15.

MR. HOLZER: I have no objection at this point, Mr. Nolan, but you said the minutes were 13.

MR. NOLAN: For identification.

MR. HOLZER: So you're not offering --

MR. NOLAN: Not at this time.

Q. Sir, let me show you 14 and 15, and I will mark the eight and a half by 11 paper as 14 for identification and the 11 by 17 sheet as 15.

MR. HOLZER: I didn't get a copy.

MR. NOLAN: I'm sorry.

MR. HOLZER: Thank you.

MR. NOLAN: You're welcome.

Q. Can you tell me what No. 14 is?

A. Fourteen is a proposal from my landscape firm to Paul Weber to provide sixteen white pines to be planted on his property.

Q. Has that proposal been accepted and now under contract with Mr. Weber for Executive Auto for that work?

A. That's correct.

Q. No. 15, have you indicated in green marking the placement of the proposed white pines?

A. Yes, I have.

Q. Did he ask that you do that work?

A. Yes.

Q. Is it correct to say that this isn't going to be planted during this draught, is it?

A. Not by me.

Q. It will be planted sometime in the fall planting season?

A. Yes.

MR. NOLAN: I'd introduce Exhibit 14 and 15.

THE CHAIRMAN: Any objection?

MR. HOLZER: No.

MR. NOLAN: Witness with you.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Mr. Carter, I just have a few brief questions.

The Exhibit 14 and 15, the sales order and the new plat, turning first to Petitioner's 14, it appears from the date of this, July 8 of 1997, that this idea of planting sixteen, five-by-six foot white pines along the fence line is something that is new, is that correct?

A. Yes.

Q. And this presentation was not made before the Zoning Commissioner?

A. That's right.

Q. And looking at -- I don't have a color rendition, I don't know whether there was one, but I am looking at the photocopy of Petitioner's No. 15.

A. Right there.

Q. So, in other words, the trees that the witness just identified are all along the existing wood split rail fence on parcel one, and it appears that it will run from the southern boundary to where the split rail fence turns in an easterly fashion?

A. That's correct.

Q. Right through here? Some of these trees are not on Petitioner's Exhibit No. 2?

A. No, they're not.

Q. They are not shown on that?

A. No.

Q. Mr. Carter, do you own any property in the immediate vicinity of the subject site?

A. I own part of a corporation that owns 72 acres more or less you see what's along Long Green Pike and behind the stores.

Q. Would that be behind the Peterson store? Is that still called the Peterson Store?

A. Valley Wine shop.

Q. That shows you how long it's been since I have been up there.

MR. HOLZER: Off the record.

(Discussion held off the record.)

Q. So on the vicinity map, then it would be to the west of the subject site?

A. It runs over to the old Ma and Pa Railroad.

Q. And what is that property zoned? Your property.

A. R.C. 2.

Q. Is it currently farmed?

A. It has a nursery on it.

Q. You said that your earliest recollection was, of the subject site, was in 1964 when you used to come out that way and hunt?

A. Yes. Yes. One of the DeFord boys, gentlemen, came out.

Q. But it was about, only about fifteen to twenty years ago that you became aware that the operation consisted of a used car lot?

A. Yes, I think that's probably correct. It might be twenty, but --

Q. So between '78, '82, somewhere or thereabouts?

A. Fifteen, twenty years. I don't know. It's never been a big issue with me. I never worried about it.

Q. So you would have no personal knowledge of what it looked like or what existed in 1955?

A. No, I have no personal knowledge.

MR. HOLZER: I have no further questions. Thank you.

THE CHAIRMAN: Any redirect?

MR. NOLAN: Just a few questions.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q. Referring your attention to the June 26, 1997 meeting that you mentioned earlier --

MR. HOLZER: Objection. I didn't get into any questions on cross-examination about the Long Green meetings or letters specifically so we wouldn't get into all that.

THE CHAIRMAN: I think Mr. Holzer is correct. I don't recall anything coming up like that.

MR. NOLAN: Yes, sir. No further questions.

THE CHAIRMAN: Thank you, Mr. Carter.

MR. NOLAN: I'd call Paul Weber.

P A U L W E B E R,

having been called as a witness, was duly sworn and testified as follows:.

DIRECT EXAMINATION

BY MR. NOLAN:

Q. Would you state your name, please.

A. Paul Weber.

Q. What is your address?

A. 4825 Hydes Road, Hydes, Maryland.

Q. What is your occupation, sir?

A. I own Executive Auto Paint and Repair, Incorporated, in Baldwin, Maryland.

Q. How long have you owned that business?

A. Since it went under contract, I believe in May of '79, and we settled in July.

Q. Who are the officers of the Executive Auto Paint and Repair, Inc.?

A. My wife, Deborah, and myself.

Q. Are you also the stockholders?

A. That is correct.

Q. How old are you, sir?

A. Forty-nine.

Q. How long have you lived at 4825 Hydes Road?

A. Approximately fifteen years.

Q. Before that time, had you ever resided in the Long Green Valley?

A. I lived on Hydes Road for a good portion of my life, probably forty-seven years, moved three times, and never gone more than two or three football fields.

Q. Now, Mr. Weber, directing your attention to 13580 Fork Road, when did you acquire that property?

A. In 1979.

Q. There's already been testimony you acquired it from Mr. Clayton?

A. That is correct.

Q. How much property did you acquire?

A. I never really looked at the total acreage. There were two parcels and, if I'm not mistaken, it may total greater than three acres.

Q. Did you investigate the property before you bought it?

A. Yes.

Q. Based upon that investigation, what did you determine about the use of the property?

A. Well, it was an ongoing automobile repair and service facility.

Clayton had done some auto body painting there as well as service. And also they were engaged in the sale, wholesale and retail, of used automobiles.

Q. Now, did you, as part of that investigation, did

you form an understanding of what the zoning status was before you bought it?

A. I talked to Mr. Clayton and he indicated to me --

MR. HOLZER: Objection.

Q. Don't tell me what Mr. Clayton told you. Just tell me what your understanding was.

A. My understanding, the zoning was correct, and it was nonconforming for used car sales, and I had the ability to continue to sell used cars.

Q. Let me show --

MR. NOLAN: First, I'll show it to counsel.

Q. I am going to now show you Petitioner's Exhibit 16 for identification and ask you to please tell the members of the Board what that is.

A. When I took it over from Mr. Clayton, I had to apply to the Department of Motor Vehicles for a license.

And in addition to that application, I had to supply the Administration with a document which indicated I would have the proper zoning in which to sell used cars, and I believe that depicts that.

Q. In fact, sir, does Exhibit 15 for identification

bear the certification and seal of the Motor Vehicle Administration of the state?

A. I would say that's an official document.

Q. The third page of that exhibit bears -- it's actually a letter from the Dealer Licensing and Consumer Services addressed to the Baltimore County Zoning Office, correct?

A. Yes.

Q. And on about October 1, 1979, was there a signature by the zoning office certifying that the above-referenced property, meaning this property here, was properly zoned to conduct the type of business indicated above?

A. That is true.

Q. And, sir, what business was indicated on this Exhibit 15?

A. Motor vehicle dealer (Used Car Dealer.)

MR. NOLAN: I would introduce that, Mr. Chairman.

THE CHAIRMAN: Thank you. Any objection?

MR. HOLZER: No.

Q. Mr. Weber, based upon that zoning certification,

which is Exhibit 16, did you rely on that in going ahead with your business operation?

A. Absolutely.

Q. Would you describe for the members of the Board the used car segment of your business as you carried it on since 1979?

A. Primarily what that business involves is the purchase of traded in vehicles or purchased vehicles from the paper, and among those vehicles an amount are used to be wholesaled and probably a lesser amount to be kept for the retail operation.

Q. Would you describe, sir, approximately how many cars are sold through the site on an annual basis?

A. I would say a monthly average for used retail as well as wholesale would be in the neighborhood of twenty, twenty-five cars per month.

Q. Mr. Weber, let me show you what's been marked Petitioner's Exhibit 17, 18 and 19 for identification and ask you, sir, whether you took those photographs?

A. I did.

Q. Approximately when did you take them?

A. I believe three days ago.

Q. Do they fairly and accurately depict the property as it existed in early July of 1997?

A. Yes, they did. They do.

Q. Will you step off the witness stand, come around here, and will you describe for the Board what's depicted in Exhibit 17?

A. My building is over here to the left. This is the fence area that's been referred to quite often.

And down that line along the front of Fork Road is where I display cars, as well as down on the corner here.

Q. For how long have you been displaying cars in those two areas as you just described?

A. Since 1979.

Q. Let me show you, sir, what's been marked as Exhibit 18 for identification.

A. Again, this is a view from the reverse angle which depicts the line of cars up Fork Road, the building being down this end.

Q. Lastly sir -- hold that up.

A. Okay. This is a portion of the picture we just showed you. This depicts the building as well as the cars on the corner.

Q. While you have that held up there, No. 19, have you ever displayed any lights or streams of lights along the south side of Fork Road?

A. No, I have not. I have no desire to do so.

Q. Have you ever strung any banners or streamers of any kind?

A. No.

Q. Do you have any intention or plans to do so?

A. None whatsoever. In keeping with the valley.

Q. As the owner of this property, what is your understanding concerning the extent of the zoning authorization you have up to the date of this hearing?

How far can you put cars -- if you just want to maintain what you have, what's your understanding?

A. I would go up to the split rail fence.

Q. Mr. Weber, do you have any plans, sir, to expand the display of used cars beyond the split rail fence?

A. None whatsoever.

Q. Would you take a seat, sir.

MR. NOLAN: I'd introduce as 17, 18 and 19.

THE CHAIRMAN: Any objection.

MR. HOLZER: No.

THE CHAIRMAN: Accepted.

Q. Mr. Weber, did you --

MR. NOLAN: May I have Exhibit 12?

Q. I am going to show you Petitioner's Exhibit 12 and ask you, sir, if you received one of these in the mail?

A. Yes, I did.

Q. The fourth page of the Exhibit 12 is a copy of a letter dated May 12, 1997 from Mr. Holzer to the Long Green Valley Association, correct?

A. That's correct.

Q. In Exhibit 12, Exhibit 12 states that, "As attorney for the LGVA, I extended an offer to Mr. Weber to enter a Restrictive Covenant Agreement with the LGVA to limit expansion of his used car operation. But he has refused to do so."

Sitting here today, can you recall any instance,

either verbal or written, when Mr. Holzer or anyone on behalf of the LGVA extended to you an offer to enter into a Restrictive Covenant Agreement?

A. That never happened from either any board member or Mr. Holzer.

Q. I just have four more questions. During the period 1979 to the present time when you have controlled this property, to what extent does the current use reflect the nature and purpose of the original use, car use that was there when you bought it?

A. I think it doesn't exceed it at all. It's the same operation that was going on at the time I purchased it.

Q. Have you changed the character, nature or kind of the used car sale use --

A. No.

Q. -- since you controlled the property?

A. No, not one iota.

Q. Are you aware of anything you have done, Mr. Weber, or your corporation has done, to substantially alter the effect of your business on the neighborhood?

A. No.

Q. Have you undertaken any drastic enlargement or expansion of the used car sale use during the twenty years that you controlled the property?

A. In my opinion, no.

MR. NOLAN: Witness with you.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Mr. Weber, maybe we can just start at the beginning.

When you acquired the property, the subject site which is the source of the nonconforming use question, could you tell us what property you acquired?

A. Parcel one and parcel two which could be encompassed by this line.

Q. So, for the record, the witness excluded the small parcel that's split zoned to the west side of the property.

So, basically, you acquired all of parcel two and parcel one, minus everything to the left of that line that runs basically north and south, right?

A. That's correct.
Q. And is this the parcel that you acquired in 1979?
A. Yes.
Q. When did you acquire this corner which is split zoned?
A. I didn't check that, but I believe it was 1986.
Q. That would have been by way of separate deed?
A. That's correct.
Q. Do you recall the party that you acquired it from?
A. Marion Francis.
Q. Who was the entity that you acquired parcel one and two from?
A. Stanley Clayton and his father.
Q. Thank you. Maybe it would be easier if I stand here so I don't keep making you run back and forth.

When you acquired the property in 1979 -- let me put it this way.

When you acquired the split zoned property in 1986, did it have the existing gravel on it at that time?
A. Yes. I have since improved that, put a little

more down, because it began to get a little bit soft.

Q. At the time that you acquired the property, there was some gravel there?

A. That's correct.

Q. Do you know who placed that on the property?

A. I do not know for sure. I can assume it was Mr. Clayton or Mr. Francis, either one. I don't know.

Q. At the time you acquired the property in 1979, were you parking a tow truck there, or Jarr-Dan of any sort?

A. Yes, I was.

Q. When you acquired the property, was the existing macadam that's demonstrated on Petitioner's Exhibit No. 2 there?

A. That is correct.

Q. So did you not macadamize everything that wasn't macadamized before?

A. That's correct.

Q. I believe we heard the testimony of Mr. Clayton that this 12 by 14 shed was there?

A. That was there when I acquired the building.

Q. Was the brick pad there?

A. That's correct. This brick pad, by the way, is only two feet by four feet.

Q. Okay.

A. I don't know why it's drawn that way.

Q. It's their engineer. I don't know why either. What about the one-story shed, that was there?

A. Yes. Well, I couldn't tell you how tall the shed was, because it was in pretty bad shape.

Q. Did you make any improvements?

A. I removed it and put another shed that was free-standing.

Q. So the 14 by 24 foot one-story shed was basically rebuilt by you?

A. That's correct.

Q. Were the existing buildings in the back and the other building, were they there?

A. Yes.

Q. Now, I understand it's now your proposal that, contrary to before the Zoning Commissioner, you're now going to plant trees along two sides of the split rail

fence?

MR. NOLAN: Objection to the "contrary" part.

THE CHAIRMAN: Agreed.

Q. The white pines are not depicted on Exhibit 2, which is the plat to accompany special hearing?

A. That's correct.

MR. NOLAN: I am going to object to that because Exhibit Two is an illustrative drawing that's separate and apart from the plat that accompanied the petition for special hearing.

MR. HOLZER: Let's get Petitoner's No. 1 and see if it's there.

MR. NOLAN: I will stipulate it's not, to save time.

Q. So the thrust of my question is, between the previous hearing and today, you made a determination to retain Mr. Carter to plant some white pines along this fence?

A. That's correct.

Q. Now I think you can sit down. In 1955, where were you living at that time?

A. On Hydes Road.

Q. How old were you in 1955?

A. I believe I would have been seven.

Q. Do you recall this subject site and what was occurring on it at that time?

A. Vaguely. At seven years old, I don't think it was a priority, but I do vaguely remember a little activity there.

Q. Had you ever been engaged in the used car operation before you acquired this site in 1979?

A. Yes.

Q. Where had you been involved?

A. Town and County Datson, on Harford Road.

Q. Did you own that?

A. No, I did not.

Q. You were employed by them?

A. Employed by them.

Q. The operation that you run there today, could you tell us what goes on in the concrete block building?

A. We do service work as well as automobile body repair, painting, and engage in the sale of used cars.

Q. So is the paperwork and so forth done out of that where you have your office in that building?

A. That is correct.

Q. And what goes on in this little 14 by 12 foot square building that's shown in red on Petitioner's Exhibit --

A. That's storage.

Q. That's a storage area?

A. Yes. It naturally opens up through the building.

Q. The one-story shed behind the building, the current block building, what do you use that for?

A. For painting of automobiles.

Q. Cars are actually painted in there?

A. Yes.

Q. What do you use -- do you park vehicles on this corner property that's bisected by the zoning lines?

A. Yes, we do.

Q. How many automobiles do you have parked over there?

A. Varies from two to three. It really wouldn't hold many more than that. Cars for sale. Sometimes we

park customers' cars there. I may park there myself.

Q. I see there's cars shown on the B.R. side of the split zone and also on the B.L. Do you park cars only on the B.R. side of that, or are they to park on both sides?

A. Quite frankly, Mr. Holzer, I don't know where that line runs through that property.

Q. It would run apparently from -- your engineer -- it looks like it runs from the back somewhere across bisecting this angle right up where the road comes together?

A. Well, to answer your question, if it split it by approximately fifty percent, I would say occasionally a car may wind up on this side.

Q. On the B.L. side?

A. Yes.

Q. Well, you have a car drawn in there, and Mr. Matz testified he drew cars in where they are existing, is that correct?

A. Right.

Q. Is this a grassy area or is it paved or gravel or what?

A. If you dug down between the blades of grass, you would find stone. It's stone that, over the years, grass has grown up through it.

Q. So it's not surfaced in any way one could look at it and say clearly that's a parking lot?

A. Well, I would say it's impermeable surface. It's not a hard macadam surface.

Q. Now, the existing building behind your property, is that used in your operation?

A. No, it is not.

Q. That's used for the upholstery workshop?

A. That's correct.

Q. I thought I recall you testifying before that on occasion when you made an automobile repair of the interior, that you would have that work done in this shop?

A. If I needed an upholstery repair, I would have him do it for me, yes.

Q. Is this part of your operation, or not part of your operation?

A. I would consider it not part of my operation.

Q. Is it a separate company?

Are these cars that are related to your auto sales, or are they parking places for the upholstery shop?

A. It would be difficult to answer. When I leased him the property, I gave him no specific area to park.

It's a common area. I may park a used car there if I need the room or out on the side, on the road. It's difficult to say exactly what cars they were.

Q. Well, there's a request, I believe, or this to be determined as a special nonconforming use for parking of the nonconforming regulations related to the auto sales, and I was trying to figure out if they are parking for visitors and customers of the upholstery shop?

A. That would be included in this area, I would think, yes.

Q. Well, exactly how many automobiles are you asking to be able to park there?

A. Mr. Holzer, I'm not asking for any particular amount of automobiles. My business fluctuates. I may buy five or six cars one day. I may not buy any for a week.

I may buy -- in order to get one good car, I may have to buy four or five bad cars and bring them there,

eventually wholesale them.

I never asked for any specific amount. I am only asking for what I have been used to using, and would like to continue doing. I don't know what a specific amount would be.

Q. Well, I just was -- Mr. Matz testified that these were the automobiles parked in these areas, and I was just trying to understand.

A. I was --

MR. NOLAN: Wait for the question, sir.

Q. Now, I have heard your testimony -- let me get my notes to make sure.

I heard you testimony that as long as you operated the Executive Auto Paint and Repair, that there were no lights used to display along Fork Road, used to display the used cars, vehicles, is that correct?

A. That is correct.

Q. Do you have any proposal or desire in the future to be able to light the area of the nonconforming use?

A. None whatsoever.

Q. Now, we have asked questions about lighting along

Fork Road.

Are there any plans to light the area behind the existing facility and near the upholstery workshop for purposes of automobile display?

A. None.

Q. Are there any plans within this nonconforming use to locate any banners or aluminum flutters or flags, any item like that?

A. No.

Q. Are you acknowledging that no such banners or display devices have ever been used in the past?

MR. NOLAN: Objection. That's not the testimony.

MR. HOLZER: Let me rephrase the question, because it's a legitimate objection.

Q. To your knowledge, has there ever been a continuous use of signs, flags or banners to display the automobiles in the area of the nonconforming use?

A. To my knowledge, no.

Q. Of course, you have been running it for almost twenty years?

A. That's correct.

Q. Do you have any plans to create any additional paving area in what I'll call the 1986 parcel that you acquired?

A. No.

Q. And my comments also would refer to all these banners, signs or lights, you don't intend to put any of them on the parcel that you subsequently acquired in 1986?

A. None.

Q. Do you anticipate any expansion of any of the buildings on parcel one?

MR. NOLAN Objection.

THE CHAIRMAN: Sustained. It's not relevant.

Q. Do you understand that the zoning regulations, if this is determined to be a nonconforming use, only permits a twenty-five percent increase of the square footage of any building that existed as of 1955?

A. I could answer the first part of the question. I was aware that there could be a twenty-five percent expansion, but I'm not aware of the 1955.

Q. The nonconforming use area that you have asked for approval for, is, as I understand, everything in the

dark blue line.

Is there any reason why that line should not have been drawn where the existing wood split rail fence is?

In other words, instead of asking for this parcel that Mr. Matz gave as to the calculations, why the blue line wouldn't have really followed the red line on Petitioner's Exhibit 2?

A. I can't answer that, Mr. Holzer. I have no idea.

Q. Well, you're not contending, are you, that the area behind the split rail fence and contained in the dark blue line has been used for used car sales in the past?

A. It has not.

Q. Could you tell us, in 1979 when you acquired the property, how many automobiles would be -- let me do it this way.

Could you tell us in 1979 how many automobiles through your operation at this site were acquired and bought and sold?

A. In what period of time?

Q. The year --

A. The year of 1979?

Q. The year of 1979. I'm sorry. When did you acquire it?

A. '79.

Q. But when did you start to operate?

A. I believe it was June or July. I'm not certain.

Q. So can you give us an idea of how many automobiles you wholesaled or retailed from the first year?

A. At that time, being new there, I would venture a guess and say probably an average of ten, twelve cars per month.

Q. And how many are you doing today?

A. An average, maybe fifteen or twenty cars per month.

Q. You heard Mr. Clayton testify as to what wholesaling and retailing means. Is that the same way you're using the term?

A. That's correct.

Q. So do you sell these automobiles, these used automobiles at auction?

In other words, you repair them at this location

and take them to Bel Air or someplace else and sell them at auction?

A. Some are in need of repair and we can do that. Some are not. But usually the wholesale pieces go to an action, one of three that we use. The remainder are retailed, if they are worthy of that.

Q. And retail would mean displayed on the site?

A. That is correct.

Q. Could you give us an idea what percentage is wholesale and what percentage is retailed today?

A. It fluctuates, but if I gave you a percentage, I would say close to half.

Q. That's about the same percentage that Mr. Clayton used?

A. I'm not aware or recall his testimony, but that's what mine is.

Q. Mr. Weber, do you have any intention to expand your operation at this point?

MR. NOLAN: Objection. It was asked and answered.

THE CHAIRMAN: Sustained.

MR. HOLZER: If I may have just one more second, I believe I am finished.

I have no further questions.

THE CHAIRMAN: Mr. Nolan?

MR. NOLAN: No further questions.

THE CHAIRMAN: Thank you.

MR. NOLAN: I have one more short witness, Mr. John Edwards.

THE CHAIRMAN: We're going to take a ten-minute break and be back in about ten minutes' time.

(A recess was taken.)

THE CHAIRMAN: Ready to proceed?

MR. NOLAN: Yes, sir.

J O H N E D W A R D S,

having been called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION

BY MR. NOLAN:

A. Good afternoon, sir. Would you state your full name, please.

A. John Harold Edwards.

Q. Where do you live, Mr. Edwards?

A. 13575 Fork Road, in the infamous Edwards House.

Q. For how long have you lived there?

A. Since July of 1975.

Q. Will you stand up and come to the board, and referring your attention to Petitioner's Exhibit No. 2, indicate to the Board where your infamous house is?

A. (Indicating.)

Q. Does that fairly and accurately depict your home?

A. Yes, it does.

Q. Before you bought the place, did you investigate it somewhat? Did you check it out?

A. Yes.

Q. What did you determine, or what was your understanding when you bought it as to when it was built, approximately?

A. The original house predates the turn of the century, and then there's an addition over the years.

Q. When you first bought your house in July of 1975, what uses were being carried on opposite your property along the south side of Fork Road?

A. The property was called Clayton Motors and it was the sale of used cars and auto repair.

Q. Referring your attention to Exhibit No. 2, has the property been utilized for these used car sales consistent with the display areas shown on that exhibit?

A. I certainly do believe so.

Q. During the period -- you can sit down, sir. During the twenty-two years that you lived in your property, have you ever observed any cessation or abandonment of the use?

A. No, I haven't.

Q. During the twenty-two years you have been there, to what extent does the current use reflect the nature of the original used car use which was there when you first moved to the site?

A. As far as I am concerned, it's very similar, no significant changes.

Q. Does this current use here in 1997 have a substantially different effect upon your property today as opposed to back in 1975?

A. No.

Q. Have you observed any drastic enlargement or extension of the used car sale use during the twenty-two years you have been there?

A. I can't see any substantial change.

Q. What have you observed personally about the maintenance of the Executive Auto site?

A. It's always been well maintained. It's been clean. The major change that occurred since we moved out, Clayton had it painted. It was a white building and they had it painted maybe a couple years after we moved out there.

It was a very bright and attractive building, and then when Paul and Tom bought the place in '79, they also had it repainted and it's in its current beige color, but it's been maintained, and very well.

Q. Now, have you ever purchased any vehicles from Executive Auto?

A. Yes.

Q. Were they always arm's length transactions, in your view?

A. They certainly were.

Q. Now, did you testify in December of 1996 at the first hearing?

A. Yes, sir.

Q. Directing your attention to 1994, did you ever list your property for sale?

A. Yes, we did.

Q. Why did you do that?

A. My wife and I had been talking about moving further out into -- across into Harford County. We found a very nice place, made a downpayment on that, and put our house on the market. And it's contingent on our selling our house.

After a short period of time, I say three months or so, we had a change of heart and decided we wanted to stay right where we were.

Q. Did your decision to take the property off the market involve Executive Auto's use in any manner?

A. No. The decision to put it on the market or take it off had no -- the operation of Executive Auto had no bearing on our decisions.

Q. Finally, Mr. Edwards, is there a homeowner that

is more proximate to Executive Auto's used car lot than you are?

A. No, sir.

Q. Is Mrs. Edwards here today?

A. She was, but she had to leave.

Q. She was here this morning?

A. Yes.

Q. What is your position, sir, with regard to the petition to confirm the nonconforming use?

A. I support the petition.

MR. NOLAN Witness with you.

CROSS EXAMINATION

BY MR. HOLZER:

Q. Hi, Mr. Edwards. Do you recall I asked you questions the last time?

A. I do.

Q. Obviously Mr. Nolan learned from those questions, because he asked you one of the questions I asked you last time, that is, did you try to sell your house?

A. Yes, sir.

Q. I also asked you a question, did you try to get

commercial zoning on your property in the 1996 comprehensive zoning map?

A. Yes, I did.

Q. So you had, in the 1996 comprehensive zoning process in Baltimore County, you desired to turn your property into a commercially zoned property?

MR. NOLAN: Objection.

A. I didn't --

MR. NOLAN: Is there an objection or not?

THE CHAIRMAN: The question is did he attempt to change the zoning. I don't see where it's relevant to this hearing.

MR. HOLZER: I think it is essential since they opened the issue up. He put his property up for sale.

MR. NOLAN: I withdraw my objection.

THE CHAIRMAN: Fine. You can proceed.

A. Ask me the question.

Q. You already said that you did request commercial zoning --

MR. NOLAN: That's not what he said. Why don't you ask him --

THE CHAIRMAN: Repeat the question.

A. Please.

Q. What,if anything, did you do in regard to the comprehensive rezoning maps of 1996 in regard to your property?

A. I did nothing.

Q. Did you ask someone to do something for you, and then decide not to?

A. Did I ask someone? I did not.

Q. Did you ask Mrs. Pine whether she would object if you requested commercial zoning for your property?

A. I did.

Q. So, therefore, you had thought at least of asking for a commercial zone on your property, if she did not object?

A. You give me the time frame. You have mentioned 1996.

Q. Well, that would have been the zoning comprehensive zoning map. This would have been before 1996, probably 1995 or before?

A. Yes, sir, it was. But my thought was, in 1991,

that I might proceed with a request for rezoning. And I did not do that.

Q. Was that thought that crossed your mind because of the commercial nature of the area that you're now living in which related to Fork Road, Pleasantville Road, Baldwin Mill Road, Long Green Pike, all being a commercial kind of an area?

A. That probably was in part of it. We had two and a half acres. We had raised cattle. And we had used the entire two and a half acres.

But we stopped doing that, so we thought we might have some opportunity for light commercial arts, crafts, use of some of the facilities that were there.

Q. Your testimony is that your putting your house up for sale for the number of months it was had nothing to do with living in a commercial area on Fork Road?

A. That is correct.

Q. Now, sir, you have been there since July of 1975?

A. Yes, sir.

Q. Where did you live before 1975?

A. Long Ridge Apartments.

Q. Where are they?

A. In Parkville. Oh, not Parkville. Off of -- off of -- well, close to Perring Parkway.

Q. Was that in the city or --

A. It's out in the county.

Q. But inside the beltway?

A. Yes. No. It's outside. It's very close, but it's outside.

Q. Right outside the beltway?

A. Yes.

Q. And by Perring Parkway, I guess that's where the Hechinger's is?

A. It's in back of it. It's close to Hechinger's.

Q. In 1995, did you have any knowledge of what existed on the subject site? I'm sorry. 1955.

A. No.

Q. Would the first time you became aware of either Clayton Motors or Weber's Executive Auto, would that have been in 1975 when you moved to your present house?

A. Yes, sir.

Q. In 1975 when you moved to your present house, do

you recall whether or not the one-story shed was behind the cinder block building?

A. I don't recall.

Q. Do you recall whether or not the twelve by fourteen addition was on there?

A. No, I don't recall that.

Q. Do you recall whether the M shaped building was in the back of it?

A. No, I don't recall that. It was either there or being built.

Q. So is it fair to say you didn't pay all that much attention to the property in 1975?

A. I didn't go over and inventory the buildings, that's for sure.

Q. Did you go over and inventory the cars parked there?

A. No, I didn't.

Q. Would some of the cars that have been parked there, could they have been for the service station that was performing service operations in 1975?

A. By a service station, you're talking about auto

repair?

Q. Yes.

A. Yes. Some of them were, I am sure.

Q. To your knowledge, in 1975, did Mr. Clayton park cars and put "For Sale" signs on them?

A. I am sure there were. I don't know if they were signs. I don't remember. But there was indications there were cars for sale.

Q. What kind of indication? On the cars themselves?

A. Yes.

Q. Or a sign on the building?

A. On the cars themselves.

Q. Were there ever any lights, to your recollection, in 1975, strung along there?

A. No, sir.

Q. Were there ever any banners or flags or anything of that nature?

A. No, sir.

Q. To your knowledge, today, do people visit the upholstery workshop that's the building in the back of the property?

Do you have have occasion to watch what goes on across the street?

A. Not that much. I know that the owner -- I mean the operator is there.

Q. Of the upholstery shop?

A. Yes.

Q. Are there other vehicles that come and park there for purposes of his operation, to your knowledge?

A. I can't say for sure. I don't know.

Q. In 1975 when you acquired your property, did you know that this corner of the property which is split zoned was not part of the subject site owned by Mr. Clayton?

A. I wasn't aware of that.

Q. When you put your property up for sale, did you have anyone that offered you the price that you had asked for?

A. No, sir.

Q. Did you have anyone that came through your property that indicated they didn't want to buy it because of the Executive Auto Park?

MR. NOLAN: Objection. Hearsay.

THE CHAIRMAN: Sustained.

Q. When you first moved onto your property -- there's been some testimony that there was livestock or something behind this split rail fence.

Have you seen either sheep or cows or something back there when you first moved on the property?

A. Yes, sir.

Q. Has that basically always -- which was it, sheep or cows?

A. Cattle.

Q. Were it used for grazing back there?

A. Yes.

MR. HOLZER: Thank you, Mr. Edwards.

THE CHAIRMAN: Mr. Nolan?

MR. NOLAN: Just a few quick questions.

REDIRECT EXAMINATION

BY MR. NOLAN:

Q. Mr. Edwards, regarding the questions Mr. Holzer asked you about this thought you had back in 1991 about and arts and crafts center, isn't it true, sir, that you made brief mention of it to Mrs. Pine after church one

Sunday morning?

A. That's my recollection.

Q. You didn't hire an engineer, correct?

A. I did not.

Q. You didn't hire a surveyor to draw up any plans, correct?

A. Correct.

MR. NOLAN: Nothing further.

RECROSS EXAMINATION

BY MR. HOLZER:

Q. Are you sure it wasn't in 1995 that you had this conversation with Mrs. Pine?

A. Yes, sir.

Q. Yes, you're sure?

A. I am sure.

Q. That it was not?

A. I am sure it was not.

Q. Are you sure it was '91?

A. I have a document that I drew up and dated.

MR. NOLAN: He said he's sure.

MR. HOLZER: I have no further questions.

MR. NOLAN: May Mr. Edwards be excused, Mr. Chairman?

THE CHAIRMAN: Yes.

MR. NOLAN: If I may have one moment to talk to my co-counsel.

THE CHAIRMAN: Sure.

MR. NOLAN: That would be the Petitioner-Appellee's case, Mr. Chairman.

THE CHAIRMAN: Thank you.

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