98

IN THE MATTER OF THE THE APPLICATION OF THERESA B. MARSCHALL AND ANNA M. MUELLER -PETITIONERS FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE SE/S OLD EASTERN AVE., 82' NEly OF WILBER ROAD (1901 OLD EASTERN AVENUE) 15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	* * * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 97-336-SPHA

* * * * * * * * *

OPINION

This matter comes before the Board as an appeal of a decision by the Deputy Zoning Commissioner dated March 28, 1997, in which the Petition for Special Hearing to approve an existing nonconforming use for used car sales, in accordance with Section 104.1 of the Baltimore County Zoning Regulations (BCZR), and for a variance to increase the floor area of the subject use to 341 percent in lieu of the maximum 25 percent, pursuant to Section 104.3 of the BCZR, were denied.

This matter was heard by this Board de novo on March 3, 1998 with a public deliberation held at the conclusion of the hearing.

The Appellants /Property Owners, Ms. Theresa Marschall and Anna Mueller, were represented by Norman Lauenstein, Esquire; the Appellant /Lessee, Ms. Roberta Day, appeared pro se; and Peter Max Zimmerman, People's Counsel for Baltimore County, participated in these proceedings. There were no Protestants present at the hearing in this matter.

The subject property, 1901 Old Eastern Avenue, consists of 0.53 acre, more or less, zoned B.L., located in the vicinity of Eastern Avenue in Essex, and currently the site of Kal's Auto Sales. The property is presently improved with a small 12' x 21.2' block building, an office trailer 10.3' x 32.3' in dimension, and

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a gravel parking /storage lot.

As a preliminary matter, it was noted that Mr. Lauenstein would be representing the Property Owners, solely on the issue of the nonconforming use, and would not be offering any legal counsel pertaining to the variance request, initiated by the Lessee of the subject property. The Board thus inquired if Ms. Day, as the Lessee, was prepared to move forward on the variance request. She acknowledged, with some hesitation, that she, along with Mr. Michael Kouflas, was prepared to proceed without counsel.

As it was clear that Ms. Day was still apprehensive, People's Counsel in all fairness to Ms. Day explained the complexity of a variance request in combination with a nonconforming use, and had no objection to a postponement of this hearing if Ms. Day felt she needed counsel to present her case.

At this time the Board took a short recess to afford Ms. Day and Mr. Kouflas time to consider their options, whether to obtain legal counsel or to proceed pro se. Upon the Board's return, Ms. Day informed the Board that she would not pursue the variance request. The Board then proceeded to hear the nonconforming use issue, dismissing the variance issue as moot.

Testifying initially for the Petitioner was Joseph Larson, with the firm of Spellman, Larson and Associates. Mr. Larson is a Civil Engineer, and author of the plat of the subject site (Petitioner's Exhibit #1). Mr. Larson testified he made a search of County records and referenced Petitioner's Exhibit #2, which is a zoning approval form from the Licensing and Consumer Services Division of the Maryland Department of Transportation dated July

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27, 1994. This letter, which incorporates the stamped signature of the Director of the then Zoning Administration and Development Management Office, indicates a used car dealership has existed at 1901 Eastern Avenue for a minimum of 50 years.

Mr. Daniel Hubers testified next on behalf of the Petitioner, stating he was very familiar with the subject site as he currently owns property two blocks away. He stated that he has resided at 1709 Old Eastern Avenue since 1941, and from that time to the present, the subject site has always been used without interruption as a used car lot.

During cross-examination, Mr. Hubers testified there were always 15 to 20 cars displayed on the entire frontage of Old Eastern Avenue, with more cars in the back. He further testified that signage was always present identifying the various used car businesses which operated at this location over the years. Mr. Hubers also noted that the block building present today on the property (as indicated on Petitioner's Exhibit #1) is the same as it was in 1941. He further indicated a trailer was present on the property, but he was not aware of how long it had been there.

Ms. Anna Mueller testified on her own behalf, stating that she is the co-owner of the subject site, along with her mother. She stated she was placed on the deed to the property when her uncle passed away in 1966. Her familiarity with the property dates back to 1938 when her grandmother leased to a Mr. Carey. Ms. Mueller referenced several tenants dated from 1943 to the present which included Mr. Carey, Bud Sorin C & S Auto, Mountain Motors, Wheatley Motors, and several others, stating that used cars were always

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existed prior to the adoption of the B.L. zoning classification and meets the requirements of Section 104.1, which states, in pertinent part:

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

Additionally, the provisions 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% 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.

From the evidence and uncontradicted testimony presented in this matter, the Board unanimously finds that the nonconforming use for the sale of used cars on the subject site, including the block building, has continued from 1938 to the present without any interruption, thus satisfying Section 104.1 of the BCZR, and further finds that no expansion pursuant to Section 104.3 of the BCZR has taken place, as the variance request to expand the original block building to 341 percent of its original size has been withdrawn and dismissed as moot. Since the testimony reveals that the trailer on the site has existed for approximately 3 years, it does not satisfy the requirements of the BCZR for a nonconforming use and, therefore, shall be removed.

O R D E R

IT IS THEREFORE this 27th day of April, 1998 by the

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County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing to approve an existing nonconforming use for used car sales, in accordance with Section 104.1 of the Baltimore County Zoning Regulations (BCZR), be and is hereby **GRANTED** as to the property and the block building as it presently exists; and it is further

ORDERED that the Petition for Special Hearing as to the trailer be and is hereby **DENIED**; and it is further

ORDERED that the said trailer shall be removed from the subject site within 30 days of the date of this Order; and it is further

ORDERED that the Petition for Variance, having been withdrawn, be and is hereby **DISMISSED** as moot.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Acting Chairman

Harry E. Buchheister, Jr.

Thomas P. Melvin

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County Board of Appeals of Baltimore County

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

April 27, 1998

Norman W. Lauenstein, Esquire
IRVINGTON BUILDING, Suite 200
809 Eastern Boulevard
Baltimore, MD 21221

RE: Case No. 97-336-SPHA
Theresa B. Marschall and Anna M. Mueller

Dear Mr. Lauenstein:

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, with a photocopy provided to this office concurrent with filing in Circuit Court. 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: Theresa B. Marschall and Anna M. Mueller
Roberta Day
Joseph Larson /Spellman, Larson & Associates, Inc.
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director/PDM
Virginia W. Barnhart, County Attorney

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3-28-97

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE - SE/S Old Eastern Ave., 82' NE of the c/l Wilber Road (1901 Old Eastern Avenue) 15th Election District 5th Councilmanic District	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 97-336-SPHA
Theresa B. Marschall, and Anna M. Mueller - Petitioners	* * * * * *	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance for that property known as 1901 Old Eastern Avenue, located in the vicinity of Eastern Boulevard in Essex. The Petitions were filed by the owners of the property, Theresa B. Marschall, and Anna M. Mueller, and the Contract Purchaser/Lessee, Roberta Day. The Petitioners seek approval to confirm and continue an existing used car dealership on property zoned B.L. as a legal, nonconforming use, and a variance from Section 104.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an increase in the floor area of the subject use to 341% in lieu of the maximum permitted 25%. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petitions were Roberta Day, Contract Lessee, Michael Kalfas, and Joseph Larson with Spellman, Larson & Associates, who prepared the site plan for this project. There were no Protestants or other interested parties present.

Testimony and evidence offered revealed that the subject property consists of 0.53 acres, more or less, zoned B.L. and has been the site of Kal's Auto Sales for the past 2 and 1/2 years. The property is presently improved with a small, 12' x 21.2' block building, an office trailer,

ORDER RECEIVED FOR FILING
Date 3/28/97
By

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10.3' x 32.3' in dimension, and a gravel parking/storage lot. The Petitioners are desirous of razing the existing building and trailer and replacing same with a 40' x 50' sales and service garage. Due to the use of the property and proposed increase in the overall use of the property, the special hearing and variance requests are necessary.

As to the status of the nonconforming use of this property, testimony offered by Mr. Larson on behalf of the Petitioners was very limited. Records show that no prior special hearing has ever been granted for a nonconforming used car sales business on the subject site. Therefore, this is the first attempt to establish that a used car business has operated from the subject site and is a nonconforming use of the property. In support of their request, Mr. Larson submitted as Petitioner's Exhibit 2, a Maryland Department of Transportation, Motor Vehicle Administration, Zoning Approval Form which had been issued by the Licensing and Consumer Services Division and signature stamped by Arnold Jablon, Director of the then Zoning Administration and Development Mangement office on July 27, 1994. This Form indicates that the use of the subject property as a used vehicle dealership meets all local zoning requirements, including those required for a use and occupancy permit. To the left of Mr. Jablon's stamped signature was a typed statement that this approval was based upon previous approvals of 2/2/81, 2/5/80, 12/30/92, and 3/11/94 and that a used car business has operated on the subject site for a minimum of 50 years. However, there was no other evidence to support that such use existed prior to 1980, or that such use has been continuous and uninterrupted. This Form was the only piece of evidence offered to prove that the use of the property as a used car business is truly nonconforming.

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As with all nonconforming use cases, the first task is to determine whether a lawful, nonconforming use existed on the subject property prior to the year in which a change in the zoning regulations caused the use of the property to become illegal. The controlling year in this case is 1945.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming. See McKemy v. Baltimore County, Md., 39 Md. App.257, 385 A2d. 96 (1978).

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

> "(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
>
> (b) 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;
>
> (c) Does the current use have a substantially different effect upon the neighborhood;
>
> (d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

McKemy v. Baltimore County, Md., Supra.

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Date 3/23/92
By

In my view, the Petitioners' attempt to prove the nonconforming status of the subject property by way of the Zoning Approval Form fails miserably. There was no evidence to support that this business has operated at the subject location since prior to 1945, the effective date of the legislation governing such use. Furthermore, the Zoning Approval Form, which contains certain language thereon, is also insufficient to prove a nonconforming status of the proposed use.

A site inspection of the subject property indicated that the use of the property would be better characterized as a junk yard than a used car dealership. There were a great number of vehicles stored to the rear of the trailer and block building, all of which appeared to be damaged and disabled, or otherwise, inoperable. There were some cars lined up along Old Eastern Avenue being offered for sale. However, the majority of the cars on site appeared to be inoperable. Furthermore, there were tires and other junk and debris scattered about the property. The site is an eyesore and detracts from the surrounding community. As noted in the Office of Planning comments dated February 28, 1997, this property is located in a community conservation area and efforts are currently underway to upgrade the appearance of Eastern Avenue between Maryland Route 702 and Martin Boulevard. Baltimore County is spending a considerable amount of time, effort, and money to improve the overall appearance of this area. In addition, Hopewell Point, a residential and commercial development which is slated to break ground in the near future, will be located a short distance away from the subject property. In my opinion, the current condition of the subject property detracts from the progress that is being made to revitalize this area of Baltimore County.

Inasmuch as the Petitioners have failed to satisfy the burdens

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imposed upon them to establish that the used car dealership is a nonconforming use of the property, the special hearing to approve same shall be denied, and so, too, shall the requested variance to allow its expansion.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 28th day of March, 1997 that the Petition for Special Hearing seeking approval to confirm and continue an existing used car dealership on the subject property, zoned B.L. as a legal, nonconforming use, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 104.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an increase in the floor area of the subject use to 341% in lieu of the maximum permitted 25%, for a proposed 50' x 40' sales and service garage, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the use of the property as a used car dealership shall cease and desist within forty-five (45) days of the date of this Order; and,

IT IS FURTHER ORDERED that any and all junked vehicles, auto parts, tires, trash and debris, shall be removed from the subject site within forty-five (45) days of the date of this Order; and,

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

ORDER RECEIVED FOR FILING
Date 3/28/97
By

TMK:bjs

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

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Baltimore County
Zoning Commissioner
Office of Planning and Zoning

Suite 112, Courthouse
400 Washington Avenue
Towson, Maryland 21204
(410) 887-4386

March 28, 1997

Ms. Theresa B. Marschall
Ms. Anna M. Mueller
1316 Stonebridge Court
Baltimore, Maryland 21286

RE: PETITIONS FOR SPECIAL HEARING and VARIANCE
SE/S Old Eastern Avenue, 82' NE of the c/l Wilber Road
(1901 Old Eastern Avenue)
15th Election District - 5th Councilmanic District
Theresa B. Marschall and Anna M. Mueller - Petitioners
Case No. 97-336-SPHA

Dear Ms. Marschall and Ms. Mueller:

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

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

Timothy Kotroco

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjs

cc: Mr. Joseph Larson, Spellman, Larson & Associates, Inc.
105 W. Chesapeake Avenue, Towson, Md. 21204

Ms. Roberta Day
5928 Glenoak Avenue, Baltimore, Md. 21214

People's Counsel; Case File

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RE: PETITION FOR SPECIAL HEARING PETITION FOR VARIANCE	*	BEFORE THE
1901 Old Eastern Ave. (Kal's Auto Sales) SE/S Old Eastern, 82' NEly of Wilber Road 15th Election District, 5th Councilmanic	*	ZONING COMMISSIONER OF BALTIMORE COUNTY
Legal Owner(s): Theresa B. Marschall, Anna M. Mueller, et al.	*	CASE NO. 97-336-SPHA
Contract Purchaser(s): Roberta Day Petitioners	*	

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 1997, a copy of the foregoing Entry of Appearance was mailed to Joseph L. Larson, Spellman, Larson & Assoc., Inc. 105 W. Chesapeake Avenue, Towson, MD 21204, representative for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

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Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

97-336-SPHA

for the property located at KAL'S AUTO SALES
1901 Old Eastern Avenue

which is presently zoned BL

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

confirm, and continue a pre-existing non-conforming use of a used car dealership in a BL Zone.

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

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

Contract Purchaser/Lessee:

Roberta Day
(Type or Print Name)

Roberta Day
Signature

5928 Glenoak Avenue
Address

Baltimore MD 21214
City State Zipcode

Legal Owner(s):

Theresa B. Marschall ET AL
(Type or Print Name)

Theresa B Marschall
Signature

ANNA M. MUELLER
(Type or Print Name)

Anna M Mueller
Signature

1316 Stonebridge Ct. 687-3577
Address Phone No.

Baltimore, MD 21286
City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

Name, Address and phone number of representative to be contacted.

SPELLMAN, LARSON & ASSOC INC.
JOSEPH L LARSON
Name

105 W CHESAPEAKE AVENUE 823-3535
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 hrs

unavailable for Hearing

the following dates _____ Next Two Months

ALL ✓ OTHER _____

REVIEWED BY: CAM DATE 11 Feb 97

ORDER RECEIVED FOR FILING
Date 3/28/97

Zoning Administration & Development Management

MICROFILMED 33C

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at KAL'S AUTO SALES
1901 Old Eastern Avenue

97-336-SPHA

which is presently zoned BL

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 Variance from Section(s)

104.3 to allow for an increase in floor area of a non-conforming use of 341% in lieu of the allowed 25%

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

The size of the existing buildings are totally inadequate requiring that most repair work be performed on the outside in the yard on storage lot area. This operation has always been unique when comparing the lot size to the building size creating an ongoing hardship and practical difficulty for the business operation.

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

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

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

Contract Purchaser/Lessee:

Roberta Day
(Type or Print Name)

Roberta Day
Signature

5928 Glenoak Avenue
Address

Baltimore MD 21214
City State Zipcode

Legal Owner(s):

Theresa B. Marschall ET AL
(Type or Print Name)

Theresa B Marschall
Signature

ANNA M. MUELLER
(Type or Print Name)

Anna M. Mueller
Signature

1316 Stonebridge Ct. 687-3577
Address Phone No.

Baltimore MD 21286
City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address Phone No.

City State Zipcode

Name, Address and phone number of representative to be contacted.

SPELLMAN, LARSON & ASSOC INC.
JOSEPH L LARSON
Name

105 W. CHESAPEAKE AVENUE 823-3535
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

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By

Zoning Administration & Development Management

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SPELLMAN, LARSON & ASSOCIATES, INC.

SUITE 109 — JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
TEL (410) 823-3535
FAX (410) 825-5215

ROBERT E. SPELLMAN, P.L.S
JOSEPH L. LARSON
JO ANN W. ROGGE

97-336-SPHA

DESCRIPTION FOR ZONING 1901 OLD EASTERN AVENUE, 15TH DISCTICT, BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point on the southeast side of Old Eastern Avenue, 60 feet wide, said point being at the distance of 82 feet, more or less, measured northeasterly along the southeast side of Old Eastern Avenue from the centerline of Wilber Road if said centerline was extended southeasterly to intersect the southeast side of Old Eastern Avenue and running thence and binding on the southeast side of Old Eastern Avenue north 23 Degrees 18 Minutes 34 Seconds east 176 feet, more or less, thence leaving the southeast side of Old Eastern Avenue and running south 71 Degrees 41 Minutes east 139 feet more or less, south 10 Degrees 49 Minutes west 142 feet, more or less, and north 82 Degrees 56 Minutes 15 Seconds west 175 feet, more or less, to the place of beginning.

Containing 0.53 acres of land, more or less.

Being the lease parcel of land which was leased by Theresa B. Marshall and Anna Mueller to Roberta Day.

11/18/96

STATE OF MARYLAND
ROBERT E. SPELLMAN
No. 4503
REGISTERED
PROFESSIONAL LAND SURVEYOR

MICROFILMED

33C

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 in Towson, Maryland on the property identified herein as follows:

Case: #97-336-SPHA
1901 Old Eastern Avenue
Kal's Auto Sales
SE/S Old Eastern, 80' NE of Wilber Road
15th Election District
5th Councilmanic
Legal Owner(s):
Theresa B. Marshall [illegible] and Anna M. Mullin
Contract Purchaser(s):
Roberta Day

Special Hearing: to confirm and continue a pre-existing non-conforming use of a used car dealership. **Variance:** to allow for an increase in floor area of a non-conforming use of 341% in lieu of the allowed 25%.

Hearing: Tuesday, March 18, 1997 at 10:00 a.m. in Rm. 118, Old Courthouse.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.
(2) For information concerning the File and/or Hearing, Please Call 887-3391.

2/375 Feb. 27 C122555

CERTIFICATE OF PUBLICATION

TOWSON, MD., Feb 27, 1997

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 Feb 27, 1997.

THE JEFFERSONIAN,

A. Henderson

LEGAL AD. - TOWSON

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BALTIMORE COUNTY, M YLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 036545

PAID RECEIPT
05/15/97 01 4 CKL R 11118
Dept 5 502 MISCELLANEOUS CASH
CR NO. 036545
$325.00 CK PAID
Baltimore County Maryland
Office Of Budget & Finance

DATE 5/08/97 ACCOUNT R-001-6150

AMOUNT $ 325.00

RECEIVED FROM: Roberta Day

FOR: Appeal #97-336-SPHA

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DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

RYE

CASHIER'S VALIDATION

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

No. 032614

DATE 11 Feb 97 ACCOUNT R-001-6150

336
CAM AMOUNT $ 500.00

RECEIVED FROM: Spellman Larson

FOR: 1901 Old Eastern Ave CSPHA

01A00R0011MICHRC $500.00
BA C009:29AM02-11-97

VALIDATION OR SIGNATURE OF CASHIER

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DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CERTIFICATE OF POSTING

RE: Case No.: 97-336 SPHA

Petitioner/Developer: _____

_____

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 1901 OLD EASTERN AVE

The sign(s) were posted on 5/29/97
(Month, Day, Year)

Sincerely,

Gary Freund 5/29
(Signature of Sign Poster and Date)

_____
(Printed Name)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Telephone Number)

9/96
cert.doc

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Baltimore County
Department of Permits and
Development Management

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

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County zoning regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of which, lies with the petitioner/applicant) 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 advertising are satisfied. However, the petitioner is responsible for the costs associated with this requirement.

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.: 336

Petitioner: Marschall Et AL

Location: 1901 Old Eastern Av

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Joe L. Larson / Spellman, Larson & Assoc Inc.

ADDRESS: 105 W. Chesapeake Ave
Towson, Md 21204

PHONE NUMBER: 823-3535

AJ:ggs

(Revised 09/24/96)

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336

Exhibit B

Request for Zoning: Variance, Special Exception, or Special Hearing

Date to be Posted: Anytime before but no later than _____.

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 97-336-SPHA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD

PLACE: _____

DATE AND TIME: _____

REQUEST: To confirm a pre-existing Non-Conforming use. And to allow an increase in floor area of a non-conforming use to 341% in lieu of the allowed 25%

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

9/96
post.4.doc

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TO: PUTUXENT PUBLISHING COMPANY
February 27, 1997 Issue - Jeffersonian

Please foward billing to:

Joe L. Larson
Spellman, Larson & Associates, Inc.
105 W. Chesapeake Avenue
Towson, MD 21204
823-3535

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-336-SPHA
1901 Old Eastern Avenue - Kal's Auto Sales
SE/S Old Eastern, 82' NEly of Wilber Road
15th Election District - 5th Councilmanic
Legal Owner(s): Theresa B. Marschall, et al and Anna M. Mueller
Contract Purchaser(s): Roberta Day

Special Hearing to confirm and continue a pre-existing non-conforming use of a used car dealership.
Varia ce to allow for an increase in floor area of a non-conforming use of 341% in lieu of the allowed 25%.

HEARING: TUESDAY, MARCH 18, 1997 at 10:00 a.m. in Room 118, Old Courthouse.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

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Baltimore County
Department of Permits and
Development Management

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

February 21, 1997

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 in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-336-SPHA
1901 Old Eastern Avenue - Kal's Auto Sales
SE/S Old Eastern, 82' NEly of Wilber Road
15th Election District - 5th Councilmanic
Legal Owner(s): Theresa B. Marschall, et al and Anna M. Mueller
Contract Purchaser(s): Roberta Day

Special Hearing to confirm and continue a pre-existing non-conforming use of a used car dealership.
Varia ce to allow for an increase in floor area of a non-conforming use of 341% in lieu of the allowed 25%.

HEARING: TUESDAY, MARCH 18, 1997 at 10:00 a.m. in Room 118, Old Courthouse.

Arnold Jablon
Director

cc: Theresa B. Marschall, et al and Anna M. Mueller
Joseph L. Larson/Spellman, Larson & Associates, Inc.
Roberta Day

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY MARCH 3, 1997.
(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.

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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

September 25, 1997

NOTICE OF ASSIGNMENT

CASE #: 97-336-SPHA

IN THE MATTER OF: THERESA B. MARSCHALL & ANNA M. MUELLER -Petitioners 1901 Old Eastern Avenue
15th Election District; 5th Councilmanic

(Petition for Special Hearing DENIED by Deputy Zoning Commissioner)

pp'd @ request of Counsel for Petitioner
Rem to 3/03/98

ASSIGNED FOR: WEDNESDAY, NOVEMBER 12, 1997 at 10:00 a.m.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: 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).

Kathleen C. Bianco
Legal Administrator

---

cc: Appellant /Petitioner /Contract Lessee : Roberta Day

Petitioners /Property Owners : Theresa B. Marschall and Anna M. Mueller

Spellman, Larson & Associates, Inc. : Joseph Larson

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

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LAUENSTEIN & GEPHARDT
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
809 EASTERN BOULEVARD
SUITE 300
ESSEX, MARYLAND 21221

NORMAN W. LAUENSTEIN
MARY E. GEPHARDT

DOUGLAS C. LAUENSTEIN
OF COUNSEL

TELEPHONE
410-687-2299

TELEFAX
410-687-3616

FAX TRANSMITTAL SHEET

DATE: November 10, 1997

TO: County Board of Appeals - Attn: Charlotte

FROM: Norman W. Lauenstein, Esquire

RE: Matter of Theresa B. Marschall & Anna M. Mueller

RECIPIENT'S FAX NUMBER: (410) 887-3182

TOTAL NUMBER OF PAGES INCLUDING COVER SHEET: 2

MESSAGE: Please advise whether postponement has been granted.

If you do not receive all the pages, please call as soon as possible at (410) 687-2299.

* *

This facsimile contains privileged and confidential information intended only for the use of the addressee(s) named above. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this facsimile in error, please notify us immediately by telephone and return the original message to us at the address above via the U.S. Postal Service.

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County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

November 12, 1997

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 97-336-SPHA

IN THE MATTER OF: THERESA B. MARSCHALL & ANNA M. MUELLER -Petitioners 1901 Old Eastern Avenue
15th Election District; 5th Councilmanic

(Petition for Special Hearing DENIED by Deputy Zoning Commissioner)

which was scheduled to be heard by the Board on November 12, 1997 has been **POSTPONED** at the request of Counsel for Petitioner /Appellant, without objection by the Office of People's Counsel; and has been

REASSIGNED FOR: **TUESDAY, MARCH 3, 1998 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

IMPORTANT: 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).

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Petitioners : Norman W. Lauenstein, Esquire
Appellant /Petitioner /Contract Lessee : Roberta Day
Petitioners /Property Owners : Theresa B. Marschall and Anna M. Mueller

Spellman, Larson & Associates, Inc. : Joseph Larson

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

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** March 19, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File: 97-336-SPHA /Theresa B. Marschall and Anna M. Mueller

As no further appeal was taken in the above captioned case, we are hereby closing the file and returning same to you herewith.

Attachment (Case File No. 97-336-SPHA)

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: February 28, 1997

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 1901 Old Eastern Avenue

INFORMATION:

Item Number: 336

Petitioner: Theresa B. Marschall, et al

Property Size:

Zoning: B.L.

Requested Action:

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support the request for a 341% increase for a used car sales operation. Such an increase is excessive and contrary to the spirit and intent of Section 104 in the BCZR which restricts expansion for non-conforming uses to 25%. Also, the property is zoned BL, which is an indication that the site is not considered appropriate for an intensive use such as a used car dealership.

The lot is in a community conservation area and efforts are currently underway to upgrade the appearance of Eastern Avenue between MD 702 and Martin Blvd. This a public/private venture and the County is spending a considerable amount of money to improve the overall appearance of Eastern Avenue and Old Eastern Avenue.

Lastly, the site is in close proximity to the gateway of the proposed "Hopewell Point" development. This development is designed to attract middle and upper-middle class home buyers to the area. In order to facilitate this effort, it is imperative to make the surrounding area as attractive as possible.

Prepared by: Jeffrey W. Long

Division Chief: Odry L. Kerns

AFK/JL:rdn

ITEM336/PZONE/ZAC1

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PETITION PROBLEMS

#336 --- CAM

1. No review information on bottom of variance petition.
2. Sign form incomplete.

#337 --- JCM

1. Need authorization for person signing for legal owner.
2. Need printed name of person signing for contract purchaser.
3. Sign form incomplete.

#338 --- RT

1. No section number or request wording on petition form.

#339 --- MJK

1. Sign form incomplete.

#340 --- MJK

1. No telephone number for legal owner.
2. Notary section is incomplete.

#341 --- JRF

1. Notary section is incomplete - doesn't have notary seal, among other things.

#342 --- JCM

1. Sign form incomplete.

#343 --- JRF

1. Sign form incomplete.

2/19/97

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DRAFT

BALTIMORE COUNTY, MARYLAND

Interoffice Correspondence

TO: Hearing Officer **DATE:** November 5, 2003

FR: W. Carl Richards, Jr.
Zoning Supervisor

RE: Case 04-142 SPHX and 97-336 SPH
Zoning Comments Regarding Permit B490346C, 1901 Old Eastern Avenue
Property Condition – Violations

This office assisted the petitioner with the filing of the instant petition at the suggestion of the then Director Arnold Jablon as the only means to possibly resolve the new building built in violation of the Board of Appeals order in the prior zoning case #97-336 SPH. Also, during the processing of this petition, Mr. Robert Infussi, agent for the owner, spoke to Timothy Kotroco, PDM Director, regarding this case, and Mr. Infussi promised the Director that the property would be "cleaned up" prior to the hearing.

As of this date, the deplorable condition of the property has not been corrected, as agreed. This property is located directly in the middle of an area of Baltimore County that is undergoing tremendous revitalization. The conditions that exist on this property are offensive and are in direct contravention of the Renaissance efforts of the County Executive's administration. No relief whatsoever should be granted to this petitioner. The property has not been cleaned up and the violations continue. (See attached photos.) Based on the condition of the property, this office urges you to deny this request.

wcr/jm

Attachments

1901 Old Eastern Avenue (Notes to file)

By Joe Merrey

9/5/02 Discussed with John Sullivan And Carl. First submittal for building permit did not have zoning history establishing Zoning Comm. approval for proposed building. Revised plan was resubmitted with this note added, "SITE DEVELOPMENT SHOWN ON THIS PLAT FOR THIS PARCEL WAS APPROVED THROUGH ZONING CASE# 97-336 SPH". On that basis, the permit was released. On 9/13/02, J. Sullivan sent a letter to Mr. Piechocki, of Building Development Consultants, who did the plan, and advised that the requested building was beyond the relief granted in the Boards order. Carl advised that the permit should be rescinded, as the Board had denied the necessary relief, contrary to the note that was on the revised site plan. John Altmeyer, at our request, had an inspector visit the site and place a stop work order on the job. Spoke with Mr. Anderson (Lessee) and advised him of the erroneous information on the site plan reflecting that the proposed improvements had been approved per zoning case 97-336-SPH. He indicated that he would follow-up with Carl by telephone in the p.m..

9/6/02 J. Sullivan advised that Mr. Anderson had spoken with Carl yesterday p.m. and that Carl had advised him that a hearing was necessary. Upon

speaking with Carl, he said that he had explained to Mr. Anderson that the permit was released on the condition that the relief was granted as noted on the plan. Carl said that Mr. Anderson stated that he understood the County's position, but that it did not help his situation.

9/11/02 Spoke with Carl. We discussed Mr. Anderson's letter to Mr. Barrett. Carl requested that I call Mr. Anderson and advise him that the plan, prepared by a professional, had incorrect information on it that was relied upon by the Zoning Office in releasing the permit, and that a hearing would be required. Carl advised not to call Mr. Anderson until we had had a chance to speak with Arnold.

9/12/02 Spoke with John Altmeyer. He advised that he received a call from a Mrs. Riley, an adjoining property owner, who was listed as owner of the subject property on the permit application. She advised that she is not the owner, although the tax i.d. # on the application is a number assigned to her. John confirmed the problem with the property #.

Mrs. Peterson called (Maiden name Riley above), confirming above. She advised that she has spoken to Mr. Anderson about the erroneous info. on the application identifying her as owner and referencing her tax i.d.#, but he insisted that the number was correct. She said an Anne Buedel (sp.)

owns the property, and was the owner when the slab and foundation were begun without permits. I advised WCR of 9/12/02 info and he said a meeting with Arnold will be today.

11:30 Spoke with Lee Petre. She said that Ms. Riley told her that Mr. Anderson represented that Joe Bartenfelter told him to apply for the permit and that "He would take care of it". Lee said that this is not true, that Mr. Bartenfelter has never spoken to him, has no knowledge of this matter and certainly did not make the statement that Mr. Anderson attributes to him.

9/17/02 Spoke with Carl today for update on this and he advised that he has heard nothing further. He made no recommendations at this point for additional action on my part.

9/19/02 Soke with Carl. We attempted to meet with Arnold. He was in a meeting with Les Pitler. Carl advised that he would catch Arnold when he was available and call me back.

Carl advised in the p.m. that he had spoken to Arnold and that Arnold agreed with the handling of this matter. Carl said to prepare a memo to Mr. Bartenfelter with both our names on it, with an "Attention" to Lea Petr.

9/23/02 Sent memo to J. Bartenfelder's office, attention Lea Petr

9/23/02 Carl advised me to have J.T. open an enforcement file.

Baltimore County
Department of Permits and
Development Management

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

May 5, 1997

Mses. Theresa B. Marschall & Anna M. Mueller
1316 Stonebridge Court
Baltimore, MD 21286

RE: Petitions for Special
Hearing and Variance
SE/S Old Eastern Ave., 82'
NE of the c/l Wilber Rd.
(1901 Old Eastern Avenue)
15th Election District
5th Councilmanic District
Theresa B. Marschall &
Anna M. Mueller-Petitioners
Case No. 97-336-SPHA

Dear Mses. Marschall & Mueller:

Please be advised that an appeal of the above-referenced case was filed in this office on April 24, 1997 by Roberta Day. 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 410-887-3180.

Sincerely,

ARNOLD JABLON
Director

AJ:rye

c: Joseph Larson, Esquire
People's Counsel

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APPEAL

Petitions for Special Hearing and Variance
SE/S Old Eastern Avenue, 82' NEly of Wilber Road
(1901 Old Eastern Avenue)
15th Election District - 5th Councilmanic District
Theresa B. Marschall & Anna M. Mueller - Petitioners
Case No. 97-336-SPHA

Petitions for Special Hearing and Variance

Description of Property

No Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Advisory Committee Comment

Petitioners Sign-In Sheet

Petitioners' Exhibits: 1 - Plat to Accompany Zoning Petitions
2 - MVA Zoning Approval Form

Letter from Joseph L. Larson, Esquire to Timothy Kotroco, Deputy Zoning Commissioner dated March 20, 1997

Deputy Zoning Commissioner's Order dated March 28, 1997 (Denied)

Notice of Appeal received on April 24, 1997 from Roberta Day

c: Mses. Theresa B. Marschall & Anna M. Mueller, 1316 Stonebridge Court, Baltimore, MD 21286
Mr. Joseph Larson, Esquire, Spellman, Larson & Associates, Inc., 105 W. Chesapeake Avenue, Towson, MD 21204
Ms. Roberta Day, 5928 Glenoak Avenue, Baltimore, MD 21214
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

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APPEAL

Petitions for Special Hearing and Variance
SE/S Old Eastern Avenue, 82' NEly of Wilber Road
(1901 Old Eastern Avenue)
15th Election District - 5th Councilmanic District
Theresa B. Marschall & Anna M. Mueller - Petitioners
Case No. 97-336-SPHA

Petitions for Special Hearing and Variance

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Notice of Appeal received on April 24, 1997 from Roberta Day

c: Mses. Theresa B. Marschall & Anna M. Mueller, 1316 Stonebridge Court, Baltimore, MD 21286
Mr. Joseph Larson, [redacted], Spellman, Larson & Associates, Inc., 105 W. Chesapeake Avenue, Towson, MD 21204
*Ms. Roberta Day, 5928 Glenoak Avenue, Baltimore, MD 21214
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

* Norman W. Lauenstein, Esquire
IRVINGTON BUILDING, Suite 200
809 Eastern Boulevard
Baltimore, MD 21221

Entered appearance /Counsel for Petitioner

✓E

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Case No. 97-336-SPHA

SPH -Approval to confirm and continue existing used car dealership on property zoned B.L. as legal nonconforming use; VAR -from 104.3 to permit increase in floor area to 341% ilo maximum permitted 25%.

3/28/97 -D.Z.C.'s Order in which Petitions for Special Hearing and Variance were DENIED.

9/25/97 - Notice of Assignment for hearing scheduled for Wednesday, November 12, 1997 at 10:00 a.m. sent to following:

Roberta Day
Theresa B. Marschall and
Anna M. Mueller
Spellman, Larson & Associates, Inc. /Joseph Larson
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

11/06/97 -T/C from N. Lauenstein, Esquire - has been contacted by Petitioners to represent them at hearing before the Board. If in fact he is retained as Counsel, would be requesting a postponement. He has spoken with P. Zimmerman, who knows of no protestants to this case, and who would have no objection to the granting of such a request. Mr. Lauenstein will contact this office within the next couple of days.

11/10/97 -FAX from N. Lauenstein. Spoke with both P. Zimmerman and N. Lauenstein by telephone. Also contacted L. Stahl (Acting Chair for this particular panel). Postponement to be granted this date with case to be reassigned to next available date on docket. No one to appear on 11/12/97 inasmuch as all parties to this case are aware of the postponement.
Confirmed this with both counsel and the Board this date. Notice of PP and Reassignment to be sent on 11/12/97.

11/12/97 -Notice of PP and Reassignment sent to parties; case rescheduled to Tuesday, March 3, 1998 at 10:00 a.m.
- Received hard copy of letter of postponement from N. Lauenstein

---

3/03/98 -Hearing concluded before Board; deliberated at conclusion of hearing; G -SPH [redacted] as to property and block building; trailer to be removed within 30 days of date of Board's Order; Variance w/d and dismissed as moot. (L.B.M.)

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COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Theresa B. Marshall and
Anna M. Mueller -Petitioners
Case No. 97-336-SPHA

DATE : March 3, 1998/ at conclusion of hearing

BOARD /PANEL : Lawrence M. Stahl, Acting Chairman (LMS)
Harry E. Buchheister, Jr. (HEB)
Thomas P. Melvin (TPM)

SECRETARY : Charlotte E. Radcliffe
Legal Secretary

PURPOSE: To deliberate Case No. 97-336-SPHA /Theresa B. Marshall and Anna M. Mueller - Petitioners; Petition for Special Hearing and Petition for Variance.

IN ATTENDANCE: Norman W. Lauenstein, Esquire, Counsel for Petitioners and Peter Max Zimmerman, People's Counsel for Baltimore County.

LMS: We are here in Case No. 97-336-SPHA for deliberation under the open meetings law that this County Board of Appeals follows.

What we have here is a request to confirm a Special Hearing and nonconforming use for property at 1906 Old Eastern Avenue in the 15th Election District and 5th Councilmanic District. There was an attendant request for a variance which was determined by counsel not to be proceeded on today and, therefore, we will discuss and reach a determination only as to the nonconforming use issue.

After opening argument, we heard from Joe Larson, who is President of Spellman, Larson, and Associates - Surveyors and Engineers. He testified that he prepared the plan which was entered into evidence as Petitioner's Ex. #1, showing a .53 ac. parcel presently being used as a used car business. He also testified he made a search of County records and pointed to a letter dated July 2, 1994 from Arnold Jablon /PDM of the County showing the property used as a used car dealership, and that licenses dated back as far as 50 years. He did determine there are two existing structures - 1) a block building in the southwest corner; and 2) a trailer on a permanent site, but he did not know how long buildings were there.

Then we heard from Daniel Hubers. Mr. Hubers has been a long-time resident and businessman in that area of Eastern Avenue for many years. He testified that as far back as 1941 the

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site was a used car lot, and at that time he was living at 1709 Eastern Avenue. He stated the property was continuously used for that business since that time. He had driven by and continues to drive by that site from where he lives now, and confirms continuous and uninterrupted use. He identified on a map and plat (one of exhibits) that site he is referring to is the site which has the nonconforming use. He testified under cross-examination that property is being used as a used car lot and there is always 15 to 20 cars using the entire frontage and "quite a bit" of back. He could not recall the trailer, but did remember the block building has always been there.

Anna Mueller, owner of 1901 Eastern Avenue, with mother, explained the history of the property purchased in 1912 by her grandparents and transferred to her natural uncle and mother. In 1966, her uncle passed away, she then was placed on deed with her mother. She recollected that in 1938, her grandmother had the lot leveled and used by Mr. Cary who subleased it to various tenants who all used lot as a used car lot -- C & F Auto and others. In the 1950's lot was utilized for that purpose by Mr. Cary. From her personal knowledge, from 1938 to present, the property was rented uninterrupted as a used car lot, and from her recollection, he never closed down for more than one year. She also testified that the block building was there since Mr. Cary put it there in the 1940's, and thought the trailer was there for approximately 3 years. Her basis of knowledge was that she had grown up in the area, and family had a bar business in the area, and from her personal knowledge, a used car lot has been there continually since that time. She then showed copies of (Petitioner's Ex. #5) the 1967 Appraisal of the Estate of Joseph Buedel showing that a used car lot was already in existing entity. She testified that signs were where signs have always been since placed by Mr. Cary. She testified to earliest ownership since 1940's (this is personal knowledge). She recalls the same building being there, but the trailer is a new structure. She also testified, she did not realize the "nonconforming" use until the present lessees' variance request was brought out before the County authorities.

The Board heard from Annabelle Vleck. She lives one block from site at 1811 and 1813 Eastern Avenue (now Old Eastern Avenue). She stated that she has been a resident of the area since the World War II years. She recalls that the building was always there and a used car lot was there with cars on the premises with no interruption; always very little building in the southwest corner. She had no recollection of the trailer.

Based upon all testimony that we have to date, we now look to

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Section 104 of the BCZR, 1955, and cite 104.1 states that "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.".

As counsel pointed out, under Section 104.3 /BCZR, that an existing building or structure cannot be extended more than 25% of the ground floor area. As the key is either the use of the property has been used since 1938 and predated the zoning regulations of approximately 1945. Since 1945 - end of World War II, which I will take into account, after much discussion and dialogue, that this property was being used from 1938 (from at least the war years -- 1939 to 1945 or 1941 to 1945) in any event this property was being used for this purpose and under those procedures; considerable evidence this has in fact has been a nonconforming use. The Petitioners have established clearly by evidence that it has been used uninterrupted as a used car lot and that the block building as described is part of that nonconforming use; structure is permanent as nonconforming use structure; that is uncontroverted; and that trailer has been there for 3 years and is not part of the nonconforming use and, therefore, this board will recognize as such. To my left ...

HEB: I concur; this is a reasonable decision - it is a nonconforming use, except the trailer.

TPM: ... and I also agree.

LMS: We are unanimous. The Board's written opinion and order shall be issued; the right to appeal is 30 days from date of order not date of deliberation; other than that, we are adjourned.

* * * * * * * *

Respectfully submitted,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

MICROFILMED

Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

August 13, 2002

Mr. Raymond J. Piechocki
Piechocki Consultants
7500 Harford Road
Baltimore, MD 21234

Dear Mr. Piechocki:

Re: Proposed addition
1901 Old Eastern Ave. (Bldg. Permit #B-490346)
Zoning Case No. 97-336-SPHA
15th Election District

Your letter to Arnold Jablon, Director of Permits and Development Management, has been referred to me for reply. Your client's request is to allow a 28 ft. x 30 ft. x 16' 3" (in height) garage addition as shown on the submitted site plan. At the time of the prior zoning case, the zoning of this site per the 1" = 200' scale zoning map Nos. NE, 3-H, and 3i was Business Local (BL). The zoning of the site has not changed since then. On March 28, 1997, the Deputy Zoning Commissioner denied the special hearing for non-conforming use and the variance (341% expansion). On April 27, 1998, the Baltimore County Board of Appeals dismissed the variance, as the request was withdrawn, but granted the non-conforming use of the 12 ft x 21.2 ft. block building.

Your client's requested 330% expansion far exceeds the 25% allowed by S.104, 3, BCZR (copy enclosed). As such, a hearing is required.

Enclosed are the petition forms as well as a self-explanatory sample procedural booklet.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Sincerely,

John J. Sullivan, Jr.
Planner II
Zoning Review

JJS:rlh

Enclosure

c: Letter File

Printed with Soybean Ink
on Recycled Paper

Zoning Permit File B490346C

BALTIMORE COUNTY, MARYLAND
Interoffice Correspondence

TO: **The Honorable Joseph Bartenfelder**
Councilman, Sixth District
Attention: Lea Petr

DATE: September 23, 2002

FROM: W. Carl Richards, Zoning Supervisor
Joseph C. Merrey, Planner

RE: Response to your memo of September 6, 2002
1901 Old Eastern Avenue
Rescission of Building Permit # B490346C
Case 97-336 SPH

In June of this year, Mr. Anderson applied for a building permit for the garage that is at issue. Upon review of the building permit site plan, certain issues were identified by this Office that needed to be addressed prior to release of the permit. A letter, dated July 10, 2002 (Copy attached), was forwarded to Mr. Anderson specifically identifying those items. Paragraph number 4 of said letter advised Mr. Anderson that he needed to establish on the plan that the proposed addition had received prior approval, and that a public hearing to approve same was possible if he had not already done so. Shortly thereafter, this Office received revised plans from Mr. Raymond J. Piechocki, of Building Development Consultants. Building Development Consultants had done the first plan that had generated the initial comments of July 10, 2002, aforementioned. The revised plan had the following amendment to the "General Notes" on the plan, in response to this Office's July 10, 2002 request:

"SITE DEVELOPMENT SHOWN ON THIS PLAT FOR THIS PARCEL WAS APPROVED THROUGH ZONING CASE 97-336-SPHA."

The permit was release on August 1, 2002, based upon this affirmation of prior approval. Shortly thereafter, it was discovered that the zoning case that Mr. Piechocki had cited on his revised permit plan had actually denied any further expansion on the property by the Board of Appeals. A letter was forwarded to Mr. Piechocki on August 13, 2002, advising him that an additional hearing would be required by his client for approval of the expansion. On September 5, 2002, it came to the attention of this Office that Mr. Anderson was proceeding with the construction of the expansion (subject garage). This Office thereupon had a stop-work order issued until these issues could be properly addressed. Both Mr. Richards and Mr. Merrey have spoken by telephone to Mr. Anderson and explained in detail the issues involved. Mr. Richards has advised Mr. Anderson that this Office relied on the information submitted with the application which was clearly erroneous, that consequently, the zoning approval was in error, and that the Zoning Office had therefore withdrawn approval until such time as the application and proposed improvements agree with the Board of Appeals Order. Mr. Richards also informed Mr. Anderson that he could bring this matter before the Zoning Commissioner via a Special Hearing and attempt to resolve the conflict between his expansion and the Board of Appeals Order.

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 5-28-02

OEA: 16164

HISTORIC DISTRICT/BLDG. [ ] YES [✓] NO [ ] DO NOT KNOW

RMIT #: B490346
CEIPT #: HYC 3716
NTROL #: C-
CF #:

E: 140-+5-+12-
ID: 157
ID BY: HJ
SPECTOR: D

AVE CAREFULLY READ THIS APPLICATION KNOW THE SAME IS CORRECT AND TRUE, THAT IN DOING THIS WORK ALL PROVI- ONS OF THE BALTIMORE COUNTY CODE AND ROPRIATE STATE REGULATIONS WILL BE PLIED WITH WHETHER HEREIN SPECIFIED NOT AND WILL REQUEST ALL REQUIRED SPECTIONS.

PROPERTY ADDRESS 1901 OLD EASTERN AVE
SUITE/SPACE/FLOOR
SUBDIV: 1164 E Eastern Ave
TAX ACCOUNT #: 1513200310
DISTRICT/PRECINCT 15 11

OWNER'S INFORMATION (LAST,FIRST)
NAME: Riley Charles & Regina
ADDR: PO Box 7859
21221

DOES THIS BLDG. HAVE SPRINKLERS YES ___ NO ___

APPLICANT INFORMATION
NAME: James Anderson
COMPANY:
STREET 401 Forrest Road
CITY,ST,ZIP Balto. MD 21221
PHONE #: 410-258-7949 MHIC # MHBR #
APPLICANT SIGNATURE: James Anderson DRC#
PLANS: CONST 21 PLOT 14 PLAT DATA 3 EL 2 PL 2
TENANT
CONTR: TBD
ENGNR:
SELLR:

PE OF IMPROVEMENT
[✓] NEW BLDG CONST
[ ] ADDITION
[ ] ALTERATION
[ ] REPAIR
[ ] WRECKING
[ ] MOVING
[✓] OTHER Replace on

DESCRIBE PROPOSED WORK: Citation # 02-3355
Construct Free Standing Garage On [redacted], Abutting Ex Office
Rear of office Forward cpnd. 30 X 28 X 16'3" = 840 ☐

Will use Existing Foundation + Slab.
2 SETS SEALED PLANS + 3 DATA SHEETS REQUIRED
Site
CONSTRUCTION Plan
Plan
WAIVED
See letter from Engineer
E Bryan

YPE OF USE

ESIDENTIAL
1. ___ ONE FAMILY
2. ___ TWO FAMILY
3. ___ THREE AND FOUR FAMILY
4. ___ FIVE OR MORE FAMILY (ENTER NO UNITS)___
5. ___ SWIMMING POOL
6. ___ GARAGE
7. ___ OTHER

NON-RESIDENTIAL
08. ___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ___ CHURCH, OTHER RELIGIOUS BUILDING
10. ___ FENCE (LENGTH ___ HEIGHT ___)
11. ___ INDUSTRIAL, STORAGE BUILDING
12. ___ PARKING GARAGE
13. ___ SERVICE STATION, REPAIR GARAGE
14. ___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ___ OFFICE, BANK, PROFESSIONAL
16. ___ PUBLIC UTILITY
17. ___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ___ SIGN
19. ___ STORE MERCANTILE ___ RESTAURANT
SPECIFY TYPE
20. ___ SWIMMING POOL
SPECIFY TYPE
21. ___ TANK, TOWER
22. ___ TRANSIENT HOTEL, MOTEL (NO. UNITS ___
23. [✓] OTHER Marina

YPE FOUNDATION
___ SLAB
___ BLOCK
___ CONCRETE

BASEMENT
1. ___ FULL
2. ___ PARTIAL
3. ___ NONE

TYPE OF CONSTRUCTION
1. ___ MASONRY
2. ___ WOOD FRAME
3. ___ STRUCTURE STEEL
4. ___ REINF. CONCRETE

TYPE OF HEATING FUEL
1. ___ GAS 3. ___ ELECTRICITY
2. ___ OIL 4. ___ COAL

TYPE OF SEWAGE DISPOSAL
1. ___ PUBLIC SEWER ___ EXISTS ___ PROPOSED
2. [✓] PRIVATE SYSTEM
___ SEPTIC [✓] EXISTS ___ PROPOSED
___ PRIVY ___ EXISTS ___ PROPOSED

TYPE OF WATER SUPPLY
1. ___ PUBLIC SYSTEM ___ EXISTS ___ PROPOSED
2. [✓] PRIVATE SYSTEM [✓] EXISTS ___ PROPOSED

CENTRAL AIR: 1. 2.
ESTIMATED COST: $5000.00
OF MATERIALS AND LABOR

PROPOSED USE: Marina + Garage. Use only
EXISTING USE: Marina Garage.

[redacted] 2. ___ PUBLICLY OWNED 3. ___ SALE 4. ___ RENTAL

[redacted] DETACHED 2 SEMI-DET 3 GROUP 4. TOWNHSE 5. ___ MIDRISE

Baltimore County
Department of Permits and
Development Management

Code Inspections and Enforcement
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204

Code Enforcement: 410-887-3351
Building Inspection: 410-887-3953

Plumbing Inspection: 410-887-3620
Electrical Inspection: 410-887-3960

15 DIST

BALTIMORE COUNTY UNIFORM CODE ENFORCEMENT CORRECTION NOTICE

Citation/Case No.: 02-3355
Property No.: 15 13 203811
Zoning:

Name(s): T. MARSCHALL ET. AL

Address: 1316 STONEBRIDGE CT. 21286

Violation Location: 1901- 1907 OLD EASTERN AVE

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

IBC - PERMIT B490346 HAS
BEEN RESCINDED
OBTAIN BUILDING PERMIT
FOR 28' X 30' GARAGE.

PERMIT B490346 SHOWS
OWNERSHIP AS C.&R. RILEY.
TAX RECORD SHOWS SAME
PLOT PLAN SHOWS 1907 - WITH
T. MARSCHALL ET. AL AS
OWNER

LEFT AT SITE WITH J. ANDERSON

YOU ARE HEREBY ORDERED TO CORRECT THESE VIOLATION(S) ON OR BEFORE:

On or Before:
Date Issued:

FAILURE TO COMPLY WITH THE DEADLINE STATED IS A MISDEMEANOR. A CONVICTION FOR EACH VIOLATION SUBJECTS YOU TO POTENTIAL FINES OF $200, $500, OR $1000 PER DAY, PER VIOLATION, DEPENDING ON VIOLATION, OR 90 DAYS IN JAIL, OR BOTH.

Print Name

INSPECTOR:

STOP WORK NOTICE

PURSUANT TO INSPECTION OF THE FOREGOING VIOLATIONS, YOU SHALL CEASE ALL WORK UNTIL THE VIOLATIONS ARE CORRECTED AND/OR PROPER PERMITS OBTAINED. WORK CAN RESUME WITH THE APPROVAL OF THE DIVISION OF CODE INSPECTIONS AND ENFORCEMENT. THESE CONDITIONS MUST BE CORRECTED NOT LATER THAN:

Not Later Than: 4-29-03
Date Issued: 4-24-03

INSPECTOR: Glenn Berry
GLENN BERRY

VIOLATION SITE

PDLV0102F Permits & Development - Livability System
View Cases

Case No: 02-3355

Address: 01901 OLD EASTERN AVE 21221
Cmd No: 015 District: 000 Date Rcv: 5/21/2002 Grp: ENF Intk: HOPKINS, K
Inspec: BERRY, G. Inspec2: Date Inspec: 11/05/2003
Close: 0/00/0000 Activity: Delete: _

Problem: BUILT GARAGE W/O PERMIT

CL Name: KRAMER ALFRED
CL Address: 00000

CL Home Phone: 410-686-7026 CL Work Phone: Tax Acct. 1518350231

Enter=Continue F12=Cancel

Case No: 02-3355

Notes: 02-3355

05/22/02 VISITED SITE APPEARS TO BE GAR. BLT. ON OLD SLAB. NOTICE POSTED ON FRONT DOOR. CALLED MR. KRAMER. 3:10 PM. NO ANSWER. P/U 06/07/02. H.ROWE/KH.***

06/07/02 OWNER WORKING ON PERMIT. COMPL. NOTIFIED BY PHONE 06/07/02 3:30PM. P/U 07/07/02. H.ROWE/KH.***

07/22/02 OWNER HAS HAD MEETING W/MR. BRYANT & IS REVISING PERMIT. P/U 08/20/02. H.ROWE/KH.***

08/21/02 PERMIT OBTAINED-B490346. CLOSE CASE. H.ROWE/KH.***

09/05/02 PERMIT WAS RESCINDED BY ZONING. ISSUED SWO. TOLD EMPLOYEE AT SITE FOR SOMEONE TO CALL JOE MERREY FOR INFO. MAILED COPY OF SWO TO OWNER. P/U 09/12/02. G.BERRY/KH.***

09/13/02 TALKED TO JOE MERREY FROM ZONE. THERE IS NO CHANGE. LEAVE STOP WORK ON SITE. P/U 10/14/02. G.BERRY/KH.***

10/16/02 PERMIT REMAINS RESCINDED BY ZONING. P/U 11/16/02. G.BERRY/KH.***

11/18/02 PERMIT REMAINS RESCINDED. P/U 12/18/02. G.BERRY/KH.***

12/20/02 WORKING W/ZONING. P/U 01/23/03. G.BERRY/KH.***

******SEE NEXT PAGE******

Enter=Continue F12=Cancel

PDLV0104F Permits & Development - Livability System
View Cases

Case No: 02-3355

Notes: 01/24/03 STILL RESCINDED. P/U 02/24/03. G.BERRY/KH.*** 0
2/25/03 NO ACTION AS OF YET. P/U 04/19/03. G.BERRY/KH.*** 0
4/24/03 MAILED CORR. NO. VIA REG & CERT MAIL TO T. MARSCHALL ETAL @ 1316 STONEBR
IDGE CT., TOWSON, MD. 211286. KH.*** 4
/21/03 TALKED TO OWNER AT SITE. HE HAS COUNCILMAN BARTENFELDER INVOLVED. WILL C
ONTACT HIS OFFICE. CALLED COUNCILMAN'S OFFICE. LEE PETTER WILL CHECK WITH MR.BAR
TENFEDER, I WILL CHECK BACK. P/U 4/22/03 G.BERRY/NS*** 4
/22/03 CALLED LEE FROM COUNCILMAN'S OFFICE. HAS NOT TALKED TO MR.BARTENFELDER. W
ENT TO J.MERRY FROM ZONING. HE HAS HAD NO CONTACT ABOUT CASE. P/U 4/25/03 G.BERR
Y. 4/25/03 RE-ISSUED STOP WORK TO OBTAIN PERMIT BY 4/29/03. LEFT COPY W
ITH JAMES ANDERESON (TENANT) AND WILL SEND COPY TO OWNERS, BOTH REG. & CERT. MAI
L. P/U 4/29/03 G.BERRY/NS*** 0
4/30/03 ACQUIRING INFO FOR R.WISNOM. P/U 05/08/03. G.BERRY/KH.*** 5
5/14/03 APPLYING FOR VARIANCE. MET WITH R.WISNOM. EXT.8/8/03 G.BERRY/NS*** 0
09/15/03 NO CHANCE. P/U 10/17/03. H.ROWE/KH.*** 1
/0/27/03 P/U 11/05/03 G.BERRY/NS***

Enter=Continue F12=Cancel

File

SPELLMAN, LARSON & ASSOCIATES, INC.

ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON
JO ANN W. ROGGE

SUITE 109 — JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
TEL (410) 823-3535
FAX (410) 825-5215

RECEIVED
MAR 21 1997
ZONING COMMISSIONER

March 20, 1997

Mr. Timothy Kotroco
Deputy Zoning Commissioner
Baltimore County
Zoning Commissioners Office
Old Court House
Towson MD 21204

"HAND DELIVERED"

Re: Kal's Auto Sales
1901 Old Eastern Avenue
Case No. 97-336-SPHA

Dear Mr. Commissioner:

I wish to herein respectfully submit this memorandum which represents an addendum to the argument presented before you at the Zoning Hearing for Case No. 97-336-SPHA on Tuesday last.

Since there were no protestants in attendance at the Hearing I do not feel that this supplemental pleading is an infringement of the Public Hearing rules and guidelines.

My primary concern herein relates to the Inter-Office Correspondence from the Office of Planning which unfortunately was never received by my office or by the Petitioners. Actually no Agency comments at all were received as a result of our Zoning Petition filing.

I wish to herein briefly respond to the Planning Office comments in order to hopefully mitigate their negativity.

Initially I wish to re-state what I had originally proffered at the Hearing regarding the misleading proposed increase in the existing non-conforming use.

As I indicated this increase is, in fact, numerically correct regarding the measurable existing and proposed floor area, but, it is quite misleading since all repair and maintenance services of the business currently are conducted

MICROFILMED

in the open yard directly behind the storage building and office. The proposed building will house all operations of the business; i.e.; sales office, storage area and for the most part service and maintenance activities.

Therein the point that I wish to emphasize is that this 341% increase is actually a misconception and does not truly represent the non-conforming use increase.

Secondly and more important, is the basic underlying theme of the Planning Office comments relating to the public and private efforts underway in this area of Old Eastern Avenue to upgrade and enhance the appearance of the properties in the neighborhood.

I feel sure that upon your site visit you will immediately recognize the fact that the proposal as submitted with our Special Hearing Petition is indeed an enhancement and upgrading of the neighborhood which will result in marked improvement over the existing conditions.

The used car operation which has existed at this location for over 50 years, with little site improvements, will benefit considerably by Ms. Roberta Day's development proposal. The efforts by Kal's Auto Sales, as shown on our Zoning Plat, would be a vast improvement to the current appearance of the property and certainly an asset to the community.

Lastly, as I also brought out at the Hearing, the operation of the Kal's Auto Sales has drawn only favorable comments from the neighborhood since Ms. Day has been the owner/operator for the past two and one half years.

Unfortunately, if I would have had the benefit of the Planning Office comments prior to the Hearing we may have been able to overcome the negative reaction from that Office by meeting with Mr. Jeffery Long and Mr. Gary Kerns to more thoroughly review and elaborate on our proposal.

MICROFILMED

I appreciate your taking the time to acknowledge this memorandum whereby should there be anything additional that you would need from this office prior to your making a decision I would be more than happy to accommodate.

Very truly yours,

Joseph L Larson
President

cc: Ms. Roberta Day

MICROFILMED

SPELLMAN, LARSON & ASSOCIATES, INC.

ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

SUITE 109 — JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
TEL (410) 823-3535
FAX (410) 825-5215

February 10, 1998

Ms. Kathleen Bianco, Administrator
Board of Appeals
Baltimore County
Old Court House
Room 49
Towson, MD 21204

Re: Case No. 97-336-SPHA
Marschall Property
1901 Old Eastern Avenue

Dear Kathy:

Pursuant to our telephone conversation of yesterday I wish to herein confirm that the Board of Appeals Hearing that is scheduled for 10:00 A.M. on March 3, 1998 for the above-captioned property is in fact a Hearing regarding the Special Hearing denial by the Deputy Zoning Commissioner and also the Variance denial by the Deputy Zoning Commissioner.

This letter is to confirm our conversation related to the Notice of Postponement and Reassignment where only the Special Hearing was mentioned on that document.

I appreciate your cooperation in this matter and should you have any questions with regard to same please feel free to contact me at any time.

Very truly yours,

SPELLMAN, LARSON & ASSOC.

Joseph L. Larson
President

JLL:crb
cc: Roberta Day
Norman Lauenstein

MICROFILMED

DOUGLAS C. LAUENSTEIN, P.A.
ATTORNEY AT LAW
8900 Belair Road
Baltimore, Maryland 21236

TELEPHONE
(410)256-0311

TELEFAX
(410)256-0310

February 10, 1998

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

RE: In the Matter of Theresa B. Marschall
& Anna M. Mueller
Case No. 97-336-SPHA
Hearing: 3/3/98

Dear Sir/Madam:

Please enter my appearance on behalf of Theresa B. Marschall and Anna M. Mueller relative to the above captioned case, which is scheduled for hearing on March 3, 1998. ✓ cc (already noted)

Enclosed herewith please find the original and three copies of four (4) Subpoenas which I have prepared in this matter. Please stamp and return for service by private process server. Thank you. ✓ Ret'd 2.12.98

Very truly yours,

Douglas C. Lauenstein

DCL:gjs
Enclosures

RECEIVED
COUNTY BOARD OF APPEALS
98 FEB 11 PM 12:21

MICROFILMED

IN RE: * BEFORE THE
PETITIONS FOR SPECIAL HEARING
AND VARIANCE - SE/S OLD EASTERN * DEPUTY ZONING COMMISSIONER
AVE., 82' NE of the c/1 Wilber Rd.
(1901 Old Eastern Avenue) * OF BALTIMORE COUNTY
15th Election District
5th Councilmanic District * Case No. 97-336-SPHA

****

SUBPOENA

RECEIVED
COUNTY BOARD OF APPEALS
98 FEB 11 PM 2:22

MR. CLERK:

Please issue a Subpoena to the following:

ANNABELLE PUNTE VLECK
101 Punte Lane
Baltimore, MD 21221
(410-687-1234)

ALL EXCUSES SET ASIDE, to appear in person and testify on behalf of the owners of the property known as 1901 Old Eastern Avenue, namely, Theresa B. Marschall and Anna M. Mueller, at a hearing before the Deputy Zoning Commission of Baltimore County, which is scheduled for Tuesday, March 3, 1998 at 10:00 A.M. at Hearing Room 48, Old Courthouse, 400 Washington Avenue, Towson, Maryland.

This Subpoena is requested by Douglas C. Lauenstein, Esquire, 8900 Belair Road, Baltimore, MD 21236 (410-256-0311), Attorney for Property Owners.

CLERK County Board of Appeals

MICROFILMED

IN RE: * BEFORE THE
PETITIONS FOR SPECIAL HEARING
AND VARIANCE - SE/S OLD EASTERN * DEPUTY ZONING COMMISSIONER
AVE., 82' NE of the c/1 Wilber Rd.
(1901 Old Eastern Avenue) * OF BALTIMORE COUNTY
15th Election District
5th Councilmanic District * Case No. 97-336-SPHA

****

SUBPOENA

RECEIVED
COUNTY BOARD OF APPEALS
98 FEB 11 PM 12:23

MR. CLERK:

Please issue a Subpoena to the following:

CHARLES RILEY
c/o RILEY'S MARINA
1900 Old Eastern Avenue
Baltimore, MD 21221
(410-686-0771)

ALL EXCUSES SET ASIDE, to appear in person and testify on behalf of the owners of the property known as 1901 Old Eastern Avenue, namely, Theresa B. Marschall and Anna M. Mueller, at a hearing before the Deputy Zoning Commission of Baltimore County, which is scheduled for Tuesday, March 3, 1998 at 10:00 A.M. at Hearing Room 48, Old Courthouse, 400 Washington Avenue, Towson, Maryland.

This Subpoena is requested by Douglas C. Lauenstein, Esquire, 8900 Belair Road, Baltimore, MD 21236 (410-256-0311), Attorney for Property Owners.

CLERK County Board of Appeals

MICROFILMED

IN RE: * BEFORE THE
PETITIONS FOR SPECIAL HEARING
AND VARIANCE - SE/S OLD EASTERN * DEPUTY ZONING COMMISSIONER
AVE., 82' NE of the c/1 Wilber Rd.
(1901 Old Eastern Avenue) * OF BALTIMORE COUNTY
15th Election District
5th Councilmanic District * Case No. 97-336-SPHA

****

SUBPOENA

RECEIVED
COUNTY BOARD OF APPEALS
98 FEB 11 PM 12:23

MR. CLERK:

Please issue a Subpoena to the following:

DANIEL HUBERS
800 Cold Spring Road
Baltimore, MD 21220
(410-335-3234)

ALL EXCUSES SET ASIDE, to appear in person and testify on behalf of the owners of the property known as 1901 Old Eastern Avenue, namely, Theresa B. Marschall and Anna M. Mueller, at a hearing before the Deputy Zoning Commission of Baltimore County, which is scheduled for Tuesday, March 3, 1998 at 10:00 A.M. at Hearing Room 48, Old Courthouse, 400 Washington Avenue, Towson, Maryland.

This Subpoena is requested by Douglas C. Lauenstein, Esquire, 8900 Belair Road, Baltimore, MD 21236 (410-256-0311), Attorney for Property Owners.

CLERK, County Board of Appeals

MICROFILMED

IN RE: * BEFORE THE
PETITIONS FOR SPECIAL HEARING
AND VARIANCE - SE/S OLD EASTERN * DEPUTY ZONING COMMISSIONER
AVE., 82' NE of the c/1 Wilber Rd.
(1901 Old Eastern Avenue) * OF BALTIMORE COUNTY
15th Election District
5th Councilmanic District * Case No. 97-336-SPHA

****

SUBPOENA

RECEIVED
COUNTY BOARD OF
APPEALS
98 FEB 11 PM 12:23

MR. CLERK:

Please issue a Subpoena to the following:

FRIEDA ZAJDEL
329 Lee Anne Road
Baltimore, MD 21221
(410-391-2563)

ALL EXCUSES SET ASIDE, to appear in person and testify on behalf of the owners of the property known as 1901 Old Eastern Avenue, namely, Theresa B. Marschall and Anna M. Mueller, at a hearing before the Deputy Zoning Commission of Baltimore County, which is scheduled for Tuesday, March 3, 1998 at 10:00 A.M. at Hearing Room 48, Old Courthouse, 400 Washington Avenue, Towson, Maryland.

This Subpoena is requested by Douglas C. Lauenstein, Esquire, 8900 Belair Road, Baltimore, MD 21236 (410-256-0311), Attorney for Property Owners.

CLERK, County Board of Appeals

MICROFILMED

LAUENSTEIN & GEPHARDT
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
809 EASTERN BOULEVARD
SUITE 300
ESSEX, MARYLAND 21221

NORMAN W. LAUENSTEIN
MARY E. GEPHARDT

DOUGLAS C. LAUENSTEIN
OF COUNSEL

TELEPHONE
410-687-2299

TELEFAX
410-687-2616

November 10, 1997

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

RE: In the Matter of: Theresa B. Marachall &
Anna M. Mueller
Case No. 97-336-SPHA

Dear Chairman & Members of the Board:

At this late date, regretfully, we must request a postponement for the above entitled case.

The land owner came to me on Friday seeking representation. With such short notice to our office, it is impossible to prepare and appear before the Board.

We are therefore requesting a postponement. I thank you for your cooperation.

Yours truly,

Norman W. Lauenstein

Norman W. Lauenstein

NWL:msw

97 NOV 12 PM 5:28
RECEIVED
COUNTY BOARD OF APPEALS

MICROFILMED

Expedite, LLC
Consulting

Robert M. Infussi, Sr Principal

October 29, 2003

10/31/03
OK to postpone.
Reset at future
date.
TMK

Mr. Timothy Kotroco, Director
Department of Permits & Development Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

Dear Mr. Kotroco:

was for 11-10-03

I would like to request a change of hearing date for case # 04-142-SPHX for the reason that I was out of town and did not a the required sign posted for the hearing date.

I humbly apologize for my mistake and hope that you and your office will act on my request for a new hearing date. I understand that I will be responsible for any and all costs that will be outstanding.

Thank you in advance for your help in this matter.

Sincerely:

Robert Infussi,
Expedite, LLC

rescheduled for
12.9.03
11A.M
Rm 106.
Jack Murphy

RECEIVED
OCT 29 2003
03-562
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

P.O. Box 1043-7043 • Bel Air, Maryland 21014
410.812.2236 • Fax: 410.893.8647
e-mail: expedite.llcrinfussi@comcast.net

OVER

10-31-03 gone to Kristen & called Dennis

PIECHOCKI CONSULTANTS
Building Development Consultants
7500 Harford Road
Baltimore. Maryland 21234
(410) 426-0302
FAX (410)-426-7779

July 24, 2002

Mr. Joseph C. Merrey
Planning II Zoning Review
Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Building Permit #B490346C, 15th Election District

Dear Mr. Merrey,

With reference to you letter of July 10, 2002 to Mr. James Anderson regarding the above referenced permit application, we offer the following:

1. Mr. Anderson is a tenant on the property and not the individual that was involved in the zoning hearing. He does not have any of the records other than the attached plan that was part of the hearing. If this is not sufficient, please contact me.
2. We have met with Mr. Avery Harden and worked out a landscape plan. We have submitted the plan to him and attached is a copy for your information.
3. The site is presently paved with a Durable/Dustless surface that has been in place for some time.
4. Our Spirit and Intent letter is attached.
5. The portion of the property subject to this permit is in Flood Zone C per FEMA map Panel 430 of 575, Community Panel #240010-0430B.
6. Parcel will be used for "Used Auto Sales".
7. See plan regarding parking space size and signage

Sincerely,

Raymond J. Piechocki

Raymond J. Piechocki

AUG 2 2 2002

R03 97-1888 pd 4/28 RYK

KAL'S AUTO SALES
1901 Old Eastern Ave.
Baltimore, MD 21221
(410) 574-3904

TO: MR. TIMOTHY M. KOTROCO.
FROM: ROBERTA
DATE: 4-22-97
SUBJECT: CASE # 97-336-SPHA

AT THIS TIME I WOULD LIKE TO FILE AN APPEAL OF THE DECISION MADE ON THE ABOVE CASE #.

RE: PETITIONS FOR SPECIAL HEARING + VARIANCE
SE/S OLD EASTERN AVE. 82' NE OF THE c/l WILBER RD
(1901 OLD EASTERN AVE)
15TH ELECTION DISTRICT - 5TH COUNCILMANIC DIST.
THERESA B. MARSHALL + ANNA M. MUELLER - PETIT.

THANKING YOU IN ADVANCE,

Roberta Ray

TOTAL FEE ENCLOSED.
$210.00

RECEIVED
[redacted]
PDM

MICROFILMED

97-1034

TO: ROSYLN
FROM: ROBERTA DAY
DATE: 4-29-97
SUBJECT: CASE # 97-336 SPHA
APPEAL

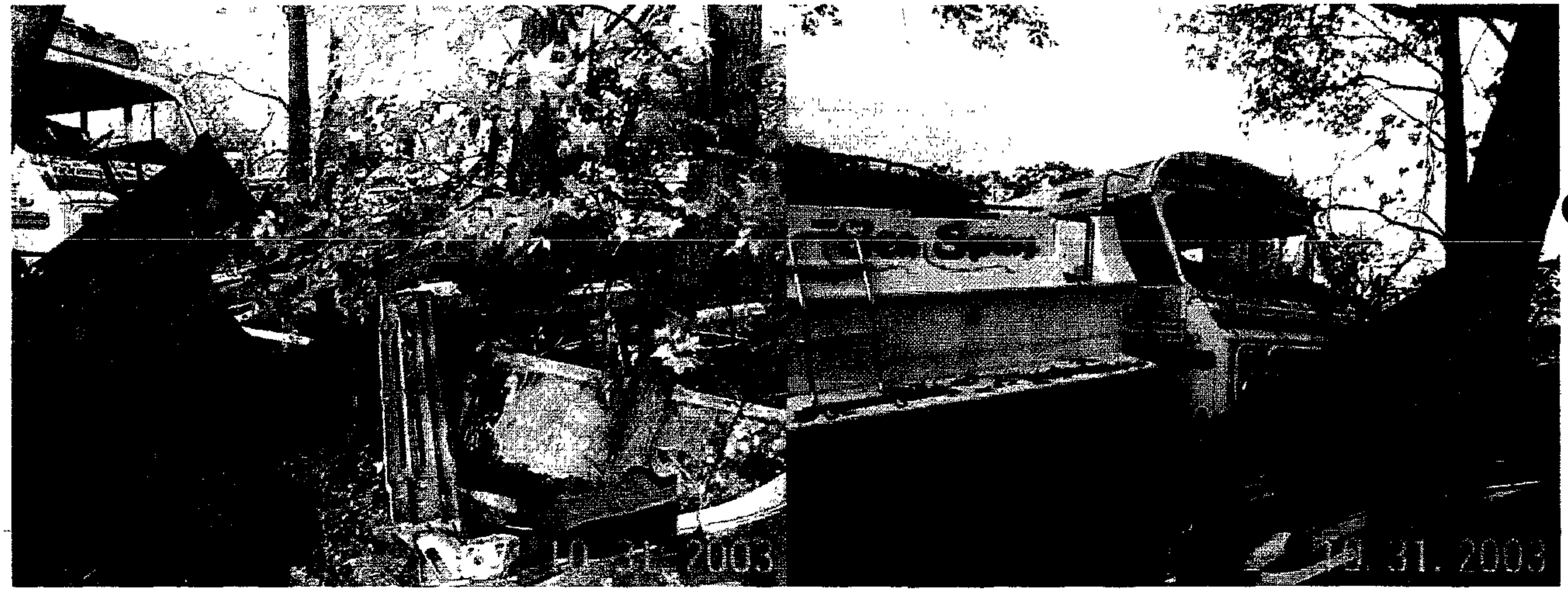
ENCLOSED PLEASE FIND A CHECK FOR $175.00 FOR APEAL OF ABOVE CASE. THIS SHOULD COVER THE SPECIAL HEARING AND THE VARIANCE WHEN ADDED TO CHECK # 1315 FOR $210.00

RECEIVED
MAY 1 1997
PDM

THANK YOU +
SORRY FOR ANY
INCONVIENCE,
Roberta Day

MICROFILMED

10. 31. 2003
10. 31. 2003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LOW
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10. 31. 2003

10. 31. 2003
10. 31. 2003

10. 31. 2003
10. 31. 2003

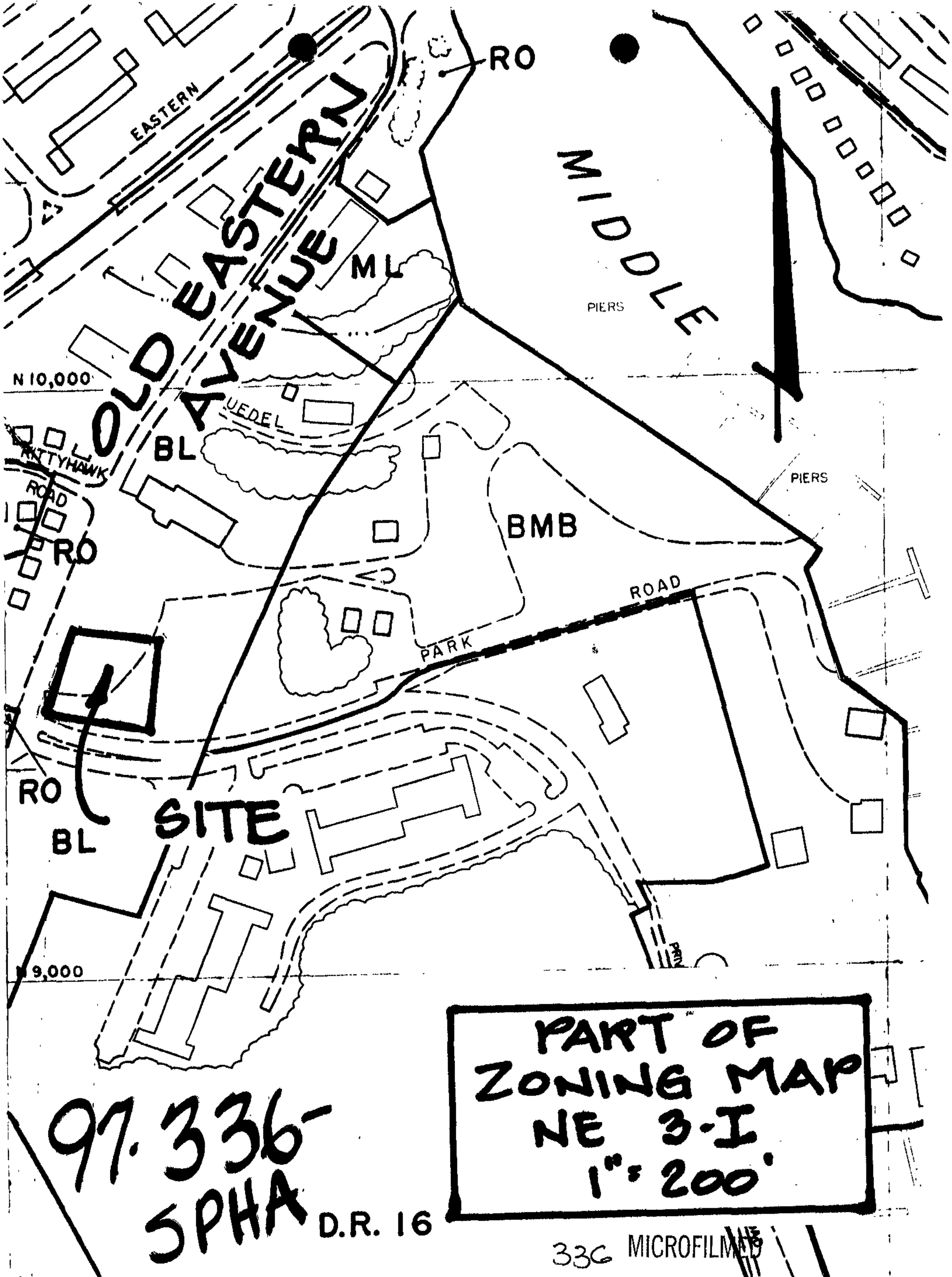
PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Bobbie Day	1901 Old Eastern Ave
Michael Kalfas	1901 Old Eastern Ave.

Printed with Soybean Ink
on Recycled Paper

MICROFILMED


EASTERN
EASTERN AVENUE
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MIDDLE
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PIERS
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OLD
BL
KITTYHAWK ROAD
RO
BMB
PIERS
ROAD
PARK
RO
BL
SITE
9,000
PART OF ZONING MAP NE 3-I 1" = 200'
97-336-SPHA
D.R. 16
336 MICROFILMED

NE 3-I, 3-H

Joins Map 29

MAP 37

Ridge Rd ES (Site)
Nottingham MS Site
EAST BUSINESS AND INDUSTRIAL PARK
PULASKI BUSINESS PARK
Holly Hill Memorial Gardens
Our Lady Queen of Peace
Essex Community College
Kings Court Shop Ctr
Division of Support Services Dept of Facilities Maintenance
Victory Villa Comm
First Church of God
Assembly of God
Rosedale Bapt
ROSSVILLE INDUSTRIAL PARK
Middle River MS
Glenmor ES
Middle River CU Of Resort
Lamb of God
Essex Rosedale Library Villa District Court
Victory Villa ES
VFW Post
Harmony Fellowship
Golden Ring Park
Maryland State Barrack R Golden Ring
PULASKI INDUSTRIAL PARK
Victory Villa Shop Ctr
Middle River
Golden Ring Plaza
Golden Ring Mall
Exit-35
Stemmers Run Rd
Martin Plaza
Middle River Rsc Sqd Co 520
Glenn L Martin State Airport
Aero Acres Shop Ctr
Drems ES
Essex Middle River District Court
CHESAPEAKE INDUSTRIAL PARK
MIDDLE RIVER
Zion Christ Luth Ch of Christ
Trinity Epis
Faith
Hawthorne Plaza
Hawthorne ES
MARSHFIELD BUSINESS PARK
Eastern Technical HS
Kenwood HS
Middlesex ES
Cow Pens Creek
Martin Lagoon
Buedels Marina & Boat Yard
Hawthorne Park
Midthorn Park
Wilhelms Restaurant
Dark Head Creek Park
Chestnut Cove
Exit-36
SOUTHEAST BLVD
Stemmers Run MS
Marina Basin Inc
Our Lady of Mt Carmel
Hopkins Creek ES (Site)
Kingston Park
Northeast FREEWAY
Woodyard Park
Middlesex Shop Ctr
Essex Co 7 Rescue
Essex Precinct 11
Saint Clares Cath
Mars Hill
Mars Estates ES
Stansbury Yacht Basin Inc
River Watch Restaurant & Marina
Anchor Bay Ships Store
Hopkins
Hilltop
Country Rhode Shop Ctr
Essex
Deckhands Boatyard
Essex ES
Historical Society of Essex & Middle River
ESSEX
EASTERN BLVD
Deep Creek ES
Martindale Park
Middleborough Co 520
Middleborough ES
Jackson Marine Sales
Norman Cr
Sussex ES
Fox Ridge Park
Middle View Beach
Whitakers
Deep Creek
Duck Creek
Weaver Bros Boatyard Inc
Greenmarsh Pt
Cox Point Park
Essex Yacht Harbor
Sandalwood ES
Deep Creek SHS
Deep Creek MS
Cox Point
Wetherby Pt
Bread and Cheese Cr
BACK RIVER
Hyde Park ES (Site)
Chesapeake HS
Pottery Farm Park
Back River Ctr
Point MS (Site)
Joins Map 38
Joins Map 45
950,000 FT
960,000 FT
550,000 FT
540,000 FT
530,000 FT
39°22'30"
39°17'30"
16°27'30"
76°27'30"
7-20500
MICROFILMED
© ADC OF ALEXANDRIA, INC.
MD GRID
43

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

LICENSING & CONSUMER SERVICES DIVISION
(301) 768-7536

ZONING APPROVAL FORM

TO BE COMPLETED BY APPLICANT AND PRESENTED FOR APPROVAL TO THE LOCAL ZONING AUTHORITIES.

SUBMIT WITH APPLICATION

See chg form comp 6601 Ritchie Hwy Glen Burnie Md 21061

COMPANY NAME (INCLUDING TRADE NAMES)
COPE Motors

BUSINESS OFFICE ADDRESS
1701 Eastern Ave.

CITY: Balto. COUNTY: Balto. STATE: Md ZIP CODE: 21221

NAME AND TYPE OF STORAGE LOCATION
Trailer & Storage Building

STREET ADDRESS: 1901 Eastern Ave. CITY OR COUNTY: Balto STATE: Md. ZIP CODE: 21221

NAME AND TYPE OF ANY ADDITIONAL STORAGE LOCATIONS
N/A

STREET ADDRESS: CITY OR COUNTY: STATE: ZIP CODE:

TYPE OF BUSINESS (CHECK APPROPIATE BLOCK)

VEHICLE DEALERS

- [ ] WHOLESALE
- [ ] NEW
- [x] USED
- [ ] TRAILER
- [ ] MOTORCYCLE

TRANSPORTER OF VEHICLES

- [ ] INSPECTION STATION
- [ ] VEHICLE PAINTING
- [ ] REMODELING OF VEHICLES
- [ ] VEHICLE REPAIRS
- [ ] INSTALLATION OF EQUIPMENT
- [ ] OTHER

THIS SECTION TO BE COMPLETED BY **ZONING OFFICIAL** TO VERIFY APPLICANT HAS MET ALL LOCAL ZONING REQUIREMENTS TO CONDUCT THE TYPE OF BUSINESS SPECIFIED ABOVE.

I CERTIFY, THAT THE BUSINESS OF Used Vehicle Dealer (TYPE OF BUSINESS)

DOES ✓ DOES NOT ____ MEET ALL LOCAL ZONING REQUIREMENTS, INCLUDING THE ISSUANCE OF A USE AND OCCUPANCY PERMIT, IF REQUIRED.

This approval is based upon previous approvals of 2/2/81, 2/5/80, 12/30/92, 3/11/94 & signed affidavits & traders license approval for 1901 Old Eastern Avenue. Based on enforcement information of site, used car dealership at 1901 Eastern Avenue has been there for a minimum of 50 years. This approval is conditional and is only for 1901 Old Eastern Avenue.

SIGNED: [signature] WCR+MJK

OFFICIAL CAPACITY: Director, ZALM

TELEPHONE #: 887-3391

DATE: 7/27/94

CS-53 (9-88)

MICROFILMED

TO BE COMPLETED BY APPLICANT AND PRESENTED FOR APPROVAL TO THE LOCAL ZONING AUTHORITIES

SUBMIT WITH APPLICATION

COMPANY NAME (INCLUDING TRADE NAMES)
KAL'S AUTO SALES

BUSINESS OFFICE ADDRESS
1901 EASTERN AVE BALTO, MD 21221

BALTIMORE — COUNTY — MD STATE — 21221 ZIP CODE
CITY

NAME AND TYPE OF STORAGE LOCATION

STREET ADDRESS: 1901 Eastern — CITY OR COUNTY: Ave — STATE: Balto — ZIP CODE: MD 21221

NAME AND TYPE OF ANY ADDITIONAL STORAGE LOCATIONS

STREET ADDRESS — CITY OR COUNTY — STATE — ZIP CODE

TYPE OF BUSINESS (CHECK APPROPIATE BLOCK)

VEHICLE DEALERS

- [ ] WHOLESALE
- [ ] NEW
- [x] USED
- [ ] TRAILER
- [ ] MOTORCYCLE

TRANSPORTER OF VEHICLES

- [ ] INSPECTION STATION
- [ ] VEHICLE PAINTING
- [ ] REMODELING OF VEHICLES
- [ ] VEHICLE REPAIRS
- [ ] INSTALLATION OF EQUIPMENT
- [ ] OTHER

THIS SECTION TO BE COMPLETED BY ZONING OFFICIAL TO VERIFY APPLICANT HAS MET ALL LOCAL ZONING REQUIREMENTS TO CONDUCT THE TYPE OF BUSINESS SPECIFIED ABOVE.

I CERTIFY, THAT THE BUSINESS OF USED CARS (TYPE OF BUSINESS)

DOES ✓ DOES NOT ____ MEET ALL LOCAL ZONING REQUIREMENTS, INCLUDING THE ISSUANCE OF A USE AND OCCUPANCY PERMIT, IF REQUIRED.

This Approval is based upon Previous Approvals of 2/2/81, 2/5/80, 12/80/92, 3/11/94 & signed affidavits & Traders Lic. Approval for 1901 Old Eastern Ave. Based on enforcement info. of site, used car dealership at 1901 Eastern Ave. Has been there for a minimum of 50 yrs. This Approval is conditional and is only for 1901 Old Eastern Ave

SIGNED [signature] WLR TMK/26
OFFICIAL CAPACITY Director Zoning
TELEPHONE # 887-3377
DATE 6-6-95

CS-53 (9-88)

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

LICENSING & CONSUMER SERVICES DIVISION
(301) 768-7536

ZONING APPROVAL FORM

TO BE COMPLETED BY APPLICANT AND PRESENTED FOR APPROVAL TO THE LOCAL ZONING AUTHORITIES.

SUBMIT WITH APPLICATION

5.00 charge form comp 6601 Ritchie Hwy Glen Burnie 21061 DIRECTOR ZONING OFFICE

COMPANY NAME (INCLUDING TRADE NAMES)
COPE MOTORS

BUSINESS OFFICE ADDRESS
1901 EASTERN AVE.

CITY	COUNTY	STATE	ZIP CODE
BALTO.	BALTO.	Md	21221

NAME AND TYPE OF STORAGE LOCATION
Trailer + Storage Building

STREET ADDRESS	CITY OR COUNTY	STATE	ZIP CODE
1901 EASTERN AVE	BALTO	Md.	21221

NAME AND TYPE OF ANY ADDITIONAL STORAGE LOCATIONS
N/A

STREET ADDRESS	CITY OR COUNTY	STATE	ZIP CODE

TYPE OF BUSINESS (CHECK APPROPIATE BLOCK)

VEHICLE DEALERS

- [ ] WHOLESALE
- [ ] NEW
- [x] USED
- [ ] TRAILER
- [ ] MOTORCYCLE

TRANSPORTER OF VEHICLES

- [ ] INSPECTION STATION
- [ ] VEHICLE PAINTING
- [ ] REMODELING OF VEHICLES
- [ ] VEHICLE REPAIRS
- [ ] INSTALLATION OF EQUIPMENT
- [ ] OTHER _____

THIS SECTION TO BE COMPLETED BY **ZONING OFFICIAL** TO VERIFY APPLICANT HAS MET ALL LOCAL ZONING REQUIREMENTS TO CONDUCT THE TYPE OF BUSINESS SPECIFIED ABOVE.

I CERTIFY, THAT THE BUSINESS OF Used Vehicle Dealer
TYPE OF BUSINESS

DOES ✓ DOES NOT _____ MEET ALL LOCAL ZONING REQUIREMENTS, INCLUDING THE ISSUANCE OF A USE AND OCCUPANCY PERMIT, IF REQUIRED.

This approval is based upon previous approvals of 2/2/81, 2/5/80, 12/30/92, 3/11/94 & signed affidavits & traders license approval for 1901 Old Eastern Avenue. Based on enforcement information of site, used car dealership at 1901 Eastern Avenue has been there for a minimum of 50 years. This approval is conditional and is only for 1901 Old Eastern Avenue.

SIGNED [signature] WCR+MJK

OFFICIAL CAPACITY Director, ZADM

TELEPHONE # 887-3391

DATE 7/27/94

CS-53 (9-88)

MICROFILMED

TAX Assement

TRAclers LLC.

Maryland Department of Transportation
MOTOR VEHICLE ADMINISTRATION
6601 RITCHIE HIGHWAY, N.E.
GLEN BURNIE, MARYLAND 21062

LICENSING & CONSUMER SERVICES DIVISION
(301) 768-7536

ZONING APPROVAL FORM

Petit X #3

TO BE COMPLETED BY APPLICANT AND PRESENTED FOR APPROVAL TO THE LOCAL ZONING AUTHORITIES.

SUBMIT WITH APPLICATION

COMPANY NAME (INCLUDING TRADE NAMES)
KAL'S AUTO SALES

BUSINESS OFFICE ADDRESS
1901 EASTERN AVE. BALTO., MD 21221

BALTIMORE — CITY
COUNTY
MD — STATE
21221 — ZIP CODE

NAME AND TYPE OF STORAGE LOCATION

STREET ADDRESS: 1901 Eastern
CITY OR COUNTY: Ave
STATE: Balto
ZIP CODE: MD 21221

NAME AND TYPE OF ANY ADDITIONAL STORAGE LOCATIONS

STREET ADDRESS
CITY OR COUNTY
STATE
ZIP CODE

TYPE OF BUSINESS (CHECK APPROPIATE BLOCK)

VEHICLE DEALERS
- [ ] WHOLESALE
- [ ] NEW
- [x] USED
- [ ] TRAILER
- [ ] MOTORCYCLE

TRANSPORTER OF VEHICLES
- [ ] INSPECTION STATION
- [ ] VEHICLE PAINTING
- [ ] REMODELING OF VEHICLES
- [ ] VEHICLE REPAIRS
- [ ] INSTALLATION OF EQUIPMENT
- [ ] OTHER _____

THIS SECTION TO BE COMPLETED BY ZONING OFFICIAL TO VERIFY APPLICANT HAS MET ALL LOCAL ZONING REQUIREMENTS TO CONDUCT THE TYPE OF BUSINESS SPECIFIED ABOVE.

I CERTIFY, THAT THE BUSINESS OF USED CARS (TYPE OF BUSINESS)

DOES ✓ DOES NOT ____ MEET ALL LOCAL ZONING REQUIREMENTS, INCLUDING THE ISSUANCE OF A USE AND OCCUPANCY PERMIT, IF REQUIRED.

This Approval is based upon Previous Approvals of 2/2/81, 2/5/80, 12/30/92, 3/11/94 & signed affadavits & Traders Lic. Approval for 1901 Old Eastern Ave. Based on enforcement info. of site, used car dealership at 1901 Eastern Ave. has been there for a minimum of 50 yrs. This Approval is conditional and is only for 1901 Old Eastern Ave

SIGNED: [signature] WCRTMJK/DEM
OFFICIAL CAPACITY: Director Zadm
TELEPHONE #: 887-3397
DATE: 6-6-95

CS-53 (9-88)

MICROFILMED

Petitioners #4

Form A140

COMMERCIAL LEASE

This lease is made between Theresa B Marschall and Anna M. Mueller of 1316 Stonebridge Ct. Balto, Md 21286 herein called Lessor, and Roberta Day 5928 Glenoak Ave. 21214, of, herein called Lessee.

Lessee hereby offers to lease from Lessor the premises situated in the City of Essex, County of Baltimore, State of Maryland, described as

1901 Old Eastern Avenue, upon the following TERMS and CONDITIONS:

1. Term and Rent. Lessor demises the above premises for a term of one years, commencing 10/1/95, 1995, and terminating on 10/1/96, 1996, or sooner as provided herein at the annual rental of six thousand six hundred * Dollars ($ 6,600.00), payable in equal installments in advance on the first day of each month for that month's rental, during the term of this lease. All rental payments shall be made to Lessor, at the address specified above.

2. Use. Lessee shall use and occupy the premises for used car sales. The premises shall be used for no other purpose. Lessor represents that the premises may lawfully be used for such purpose.

3. Care and Maintenance of Premises. Lessee acknowledges that the premises are in good order and repair, unless otherwise indicated herein. Lessee shall, at his own expense and at all times, maintain the premises in good and safe condition, including plate glass, electrical wiring, plumbing and heating installations and any other system or equipment upon the premises and shall surrender the same, at termination hereof, in as good condition as received, normal wear and tear excepted. Lessee shall be responsible for all repairs required, excepting the roof, exterior walls, structural foundations, and: , which shall be maintained by Lessor. Lessee shall also maintain in good condition such portions adjacent to the premises, such as sidewalks, driveways, lawns and shrubbery, which would otherwise be required to be maintained by Lessor.

4. Alterations. *Lessee shall not,* without first obtaining the written consent of Lessor, make any alterations, additions, or improvements, in, to or about the premises.

5. Ordinances and Statutes. Lessee shall comply with all statutes, ordinances and requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the premises, occasioned by or affecting the use thereof by Lessee.

6. Assignment and Subletting. Lessee shall not assign this lease or sublet any portion of the premises without prior written consent of the Lessor, which shall not be unreasonably withheld. Any such assignment or subletting without consent shall be void and, at the option of the Lessor, may terminate this lease.

7. Utilities. All applications and connections for necessary utility services on the demised premises shall be made in the name of Lessee only, and Lessee shall be solely liable for utility charges as they become due, including those for sewer, water, gas, electricity, and telephone services.

8. Entry and Inspection. Lessee shall permit Lessor or Lessor's agents to enter upon the premises at reasonable times and upon reasonable notice, for the purpose of inspecting the same, and will permit Lessor at any time within sixty (60) days prior to the expiration of this lease, to place upon the premises any usual *"To Let" or "For Lease"* signs, and permit persons desiring to lease the same to inspect the premises thereafter.

9. Possession. If Lessor is unable to deliver possession of the premises at the commencement hereof, Lessor shall not be liable for any damage caused thereby, nor shall this lease be void or voidable, but Lessee shall not be liable for any rent until possession is delivered. Lessee may terminate this lease if possession is not delivered within days of the commencement of the term hereof.

10. Indemnification of Lessor. Lessor shall not be liable for any damage or injury to Lessee, or any other person, or to any property, occurring on the demised premises or any part thereof, and Lessee agrees to hold Lessor harmless from any claims for damages, no matter how caused.

11. Insurance. Lessee, at his expense, shall maintain plate glass and public liability insurance including bodily injury and property damage insuring Lessee and Lessor with minimum coverage as follows:

Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Lessor or Lessee, Lessee and Lessor, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.

* adjustment on rent July 1/96 - depending on increase of property tax brought about by new improvements

0 53926 20009 2

MICROFILMED

(Revised 1/95)

Eminent Domain. If the premises or any part thereof or any estate therein, or any other part of the building materially affecting Lessee's use of the premises, shall be taken by eminent domain, this lease shall terminate on the date when title vests pursuant to such taking. The rent, and any additional rent, shall be apportioned as of the termination date, and any rent paid for any period beyond that date shall be repaid to Lessee. Lessee shall not be entitled to any part of the award for such taking or any payment in lieu thereof, but Lessee may file a claim for any taking of fixtures and improvements owned by Lessee, and for moving expenses.

3. Destruction of Premises. In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises. If such repairs cannot be made within said sixty (60) days, Lessor, at his option, may make the same within a reasonable time, this lease continuing in effect with the rent proportionately abated as aforesaid, and in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease

4. Lessor's Remedies on Default. If Lessee defaults in the payment of rent, or any additional rent, or defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if Lessee does not cure any such default within 30 days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such 30 days and thereafter proceed with reasonable diligence and in good faith to cure such default), then Lessor may terminate this lease on not less than 30 days' notice to Lessee. On the date specified in such notice the term of this lease shall terminate, and Lessee shall then quit and surrender the premises to Lessor, but Lessee shall remain liable as hereinafter provided. If this lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the premises by any lawful means and remove Lessee or other occupants and their effects. No failure to enforce any term shall be deemed a waiver.

5. Security Deposit. Lessee shall deposit with Lessor on the signing of this lease the sum of _____ Dollars ($ _____) as security for the performance of Lessee's obligations under this lease, including without limitation the surrender of possession of the premises to Lessor as herein provided. If Lessor applies any part of the deposit to cure any default of Lessee, Lessee shall on demand deposit with Lessor the amount so applied so that Lessor shall have the full deposit on hand at all times during the term of this lease.

6. Tax Increase. In the event there is any increase during any year of the term of this lease in the City, County or State real estate taxes over and above the amount of such taxes assessed for the tax year during which the term of this lease commences, whether because of increased rate or valuation, Lessee shall pay to Lessor upon presentation of paid tax bills an amount equal to _____ % of the increase in taxes upon the land and building in which the leased premises are situated. In the event that such taxes are assessed for a tax year extending beyond the term of the lease, the obligation of Lessee shall be proportionate to the portion of the lease term included in such year.

7. Common Area Expenses. In the event the demised premises are situated in a shopping center or in a commercial building in which there are common areas, Lessee agrees to pay his pro-rata share of maintenance, taxes, and insurance for the common area.

8. Attorney's Fees. In case suit should be brought for recovery of the premises, or for any sum due hereunder, or because of any act which may arise out of the possession of the premises, by either party, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fee.

9. Waiver. No failure of Lessor to enforce any term hereof shall be deemed to be a waiver.

10. Notices. Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to Lessee at the premises, or Lessor at the address specified above, or at such other places as may be designated by the parties from time to time.

11. Heirs, Assigns, Successors. This lease is binding upon and inures to the benefit of the heirs, assigns and successors in interest to the parties.

12. Option to Renew. Provided that Lessee is not in default in the performance of this lease, Lessee shall have the option to renew the lease for an additional term of _____ months commencing at the expiration of the initial lease term. All of the terms and conditions of the lease shall apply during the renewal term except that the monthly rent shall be the sum of $ _____ . The option shall be exercised by written notice given to Lessor not less than 30 days prior to the expiration of the initial lease term. If notice is not given in the manner provided herein within the time specified, this option shall expire.

13. Subordination. This lease is and shall be subordinated to all existing and future liens and encumbrances against the property.

14. Entire Agreement. The foregoing constitutes the entire agreement between the parties and may be modified only by a writing signed by both parties. The following Exhibits, if any, have been made a part of this lease before the parties' execution hereof:

Signed this 12th day of Oct, 1995.

By: Roberta Day
Lessee

By: Theresa B Marshall / Anna M Mueller
Lessor

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Petitioner's #5

APPRAISAL

THE ESTATE OF JOSEPH BUEDEL

VALUATION OF

CANDY AND MAGNOLIA TERRACE
TAVERN-HALL-BOAT-YARD,
EASTERN BLVD., LOTS (formerly
Pope Ave.,), CHESACO PARK
LOTS

Applicable information on page 7
for Used Car Lot.

MICROFILMED

Hugh E. Gelston & Compa
408 BOSLEY AVENUE
TOWSON, MARYLAND 21204

VALLEY 3-8747

REAL ESTATE APPRAISALS
COURT TESTIMONY

May 19, 1967

Mr. H. Anthony Mueller,

Campbell Building,

Towson, Maryland, 21204

Dear Mr. Mueller:

In compliance with your request, I have inspected the following properties in the Estate of Joseph Buedel, located in the Fifteenth District of Baltimore County.

The purpose of this appraisal is to estimate the fair market value of the subject properties, as of December 25, 1966.

Respectfully submitted,

Hugh E. Gelston

Hugh E. Gelston

G/b

Location	315 Candy Terrace.	
Deed reference	Grantor: Charles G. Sealover	
	Grantee: Joseph Buedel	
	January 5, 1946	Liber 1424/443
Lot size	26.38' x 100'	
Zoning	Residential - "R-G".	
Utilities	City water, County sewer, gas and electricity.	
Improvements	The improvements consist of a two-story, end of group, row house, brick, with built-up roof, basement-garage, containing living room, dining room, kitchen, 3 bedrooms and bath. Hot water oil heat. Condition - fair.	
Rental	$85.00 per month.	
Valuation	$9,750 in fee simple.	

Location	319 Magnolia Terrace.
Deed reference	Grantor: William J. Kowalski and wife Grantee: Joseph Buedel May 8, 1944 Liber 1343/237
Lot size	26.37' x 68.39' x 28.83' x 80'
Zoning	Residential - "R-G".
Utilities	City water, County sewer, gas and electricity.
Improvements	The improvements consist of a two-story, end of group, row house, brick, with built-up roof, basement-garage, containing living room, dining room, kitchen, 3 bedrooms and bath. Hot water oil heat. Condition - fair, needs some roof repair.
Rental	$90.00 per month.
Valuation	$9,250 in fee simple.

Comparable sales

Grantor: John Felbinger

Grantee: Joseph F. DiPietro

September 4, 1964

313 Candy Terrace

Liber 4352/168

$9,250 - $75 G.R.

Grantor: Raymond F. Hutzfelt

Grantee: Paris L. Bentley

July 3, 1964

50 Ridgemoore Road

Liber 4321/618

$10,000

Grantor: Robert E. Weaver

Grantee: William B. Kerner

December 3, 1965

7816 Eastdale Road

Liber 4552/559

$7,990 - $84 G.R.

Location	West side of Patuxent Avenue, south side of Walnut Avenue, Chesaco Park.		
Deed reference	Grantor:	E. Ramona Talbott, widow	
	Grantee:	Theresa B. Marshall and Anna T. Marshall and Joseph Buedel, Joint Tenants	
		Liber 1907/525	
		September 28, 1950	
Lot size:	Lot No. 768	-	25' x 100'
	" " 769	-	25' x 100'
	" " 770	-	25' x 100'
	" " 771	-	25' x 100'
Zoning	Residential - "R-6"		
Utilities	City water, gas and electricity.		
Improvements	None. Covered with scrub and third growth timber.		
Valuation	Lots 768-769	-	$1,000
	" 770-771	-	$1,200

Comparable Sales

Grantor:	Rose Smoot	Liber 4688/584
Grantee:	Roy L. Williams	$1,000
	Lots 121-123	
	Plan C., Chesaco Pk.	
	October 28, 1966	
Grantor:	Rose Smoot	Liber 4688/586
Grantee:	Joseph J. Sonntag	$1,000
	Lots 159-161	
	Plan C., Chesaco Pk.	
	October 28, 1966	
Grantor:	Charles E. Crawford	Liber 4585/273
Grantee:	George Shoemaker	$500
	Lot 565	March 4, 1966
	Sheetl, Plan D,	
	Chesaco Park	
Grantor:	Joseph J. Rader	Liber 4494/288
Grantee:	Joseph J. Dolan	$1,650
	S.S. Summit Ave., &	
	E. S., Chesaco Ave.	
	July 30, 1965	

Location	South side of Old Eastern Avenue, approximately 1 block west from Eastern Boulevard.
Deed reference	Grantor: E. Ramona Talbott, widow Liber 1907/52 Grantee: Theresa B. Marshall and Anna T. Marshall and Joseph Buedel September 28, 1950
Lot size	12.25 acres
Zoning	Commercial -"B-L" and Residential - "R-6", with a portion of the "R-6" granted a Special Exception for a Boat Yard, effective September 1965.
Utilities	City water, County sewer, gas and electricity.
Improvements	Hall, 40' x 120', tavern, 48' x 32', 2 stories. Used car lot. Situate on 4.25 acres zoned "B-L". (Also 2 small frame houses, which add no value).
Rental	Hall-tavern - $450 per month Used car lot - $ 60 " " Total - $510 " "
Valuation	Hall-tavern - $33,500 650' frontage @ $300 per frt foot - $195,000 Total - $228,500

Valuation continued

3 acres "R-6" @ $1,500 per acre - $4,50

The improvements consist of 3 small houses, frame. In my opinion these improvements add no value to the land as the highest and best use would be to incorporate this acreage with the "B-L" land or adjoining boat-yard land.

Boat-yard, 5 acres, unimproved as of December 25, 1966.
Special exception granted for a boat-yard August 4, 1965, to become effective September 1965.
740.85' of frontage on Middle River. This portion of the property reached by Lynwood Rd., (a partly paved road).

5 acres @ $10,000 per acre - $50,000

Tota l entire parcel - $283,000

Location	North side of Eastern Boulevard, west from Stemmers Run Road.
Deed reference	Grantor: Lawrence F. Appel and wife Grantee: Joseph Buedel December 9, 1942 Liber 1265/499
Lot size	1.06 acres.
Zoning	Commercial - "B-R".
Utilities	City water, County sewer, gas and electricity.
Improvements	None. Level and wooded.
	Land shown on attached plat of Essex, Subdivision of Lot 7, block H, Section B., Recorded in Plat Book No. 7, folio 21. Shows frontage on Pope Avenue, now Eastern Boulevard. Following the acquisition by the Maryland State Roads Commission, the property now has frontage of 176' on the north side of Eastern Boulevard, running through to Catherine Avenue. This parcel is in the right-of-way of the proposed White Marsh Boulevard, which makes it all but impossible for either sale or development.
Valuation	176 front feet @ $300 per front foot - $52,800

Include in this appraisal, are the following annual ground rents.

Grantor: George H. Kalb and wife — Liber 3285/ 231

Grantee: Theresa Marshall and Anna Mueller and Joseph Buedel

December 17, 1957 — Value $2000.00

833 50th. Street — annual rent 120.00

Joseph Buedel, Theresa Marshall and Anna Mueller

Liber 3398/590

August 11, 1958 — Value $8000.00

820 Dorsey Avenue — annual rent 480.00

Comparable sales

Grantor:	Bernard A. Ruocco	Liber 4708/189
Grantee:	Savon Gas Stations No. 6, Inc.	$150,000
	December 23, 1966	1.454 acre
	N.S. Eastern Blvd., W.S. Selig Avenue.	
Grantor:	William H. Peters, Jr.	Liber 4562/109
Grantee:	Back and Middle River Building and Loan Ass'n.	$16,000
	December 24, 1965	0.2318 Acre
	N. S. Old Eastern Avenue	
Grantor:	Roy W. Norris	Liber 4550/10
Grantee:	Mars Stores Inc.	$48,550
	November 26, 1965	9.710 acres
	N.S. Eastern Avenue south of R/W of R.R.	

Qualification of Hugh E. Gelston:

1. Licensed real estate broker since 1947.

2. Real estate salesman 1932-1947.

3. Charter member Baltimore County Real Estate Board. Director 1956-1958.

4. Charter member Baltimore County Appraisers' Society. President 1957.

5. Appraisal course McCoy College.

6. Member and past president Real Estate Brokers Round Table of Baltimore County.

7. Have personally owned and sold real estate in Baltimore County.

8. Qualified as Real Estate Appraiser in Circuit Court for Baltimore County.

9. Qualified as Real Estate Appraiser before Property Review Board of Baltimore County.

10. Qualified as Real Estate Expert before Board of Zoning Appeals of Baltimore County.

11. Real Estate Consultant to the Board of Education of Baltimore County.

12. Have made paid appraisals for property owners, attorneys, Gas and Electric Company, City of Baltimore, County Commissioners, County Revenue Authority, Gunpowder State Park, Colonial Pipeline Company, etc.

and she did get her to put on some clothes when she left for Wilmington. Mrs. Sentman was concerned about appellant driving a car that night, in her condition, and asked her to call her the next morning. This she did and the appellant inquired of Mrs. Sentman about her husband. The appellant was in a deplorable condition. Her eyes were black, she had bruises on her body, and her ankle was swollen. An x-ray showed that she suffered no broken bones. A doctor was called that night by the Sentmans to attend the appellee. The doctor shaved his head and to close the wound on his head it was necessary for him to put five stitches in his scalp.

Mr. Sentman testified that Mrs. Garrett was "feeling very good" when he left at eleven o'clock. "Q. You mean by that she was feeling the liquor she had taken? A. Yes." Appellant said that she never got drunk. Sentman testified about two weeks before the occasion in question that appellant was at his house and was in such a condition that his sister-in-law and his wife took her home. Mrs. Sentman corroborates her husband in this regard and she testified, when she went back to the Garrett home that night appellant was "tight," and when asked: "What does 'tight' mean?" she answered: "Well, drunk, I guess." She stated that she saw no blood on appellant but there was blood on the steps, which she removed.

Albany was asked the question: "Was Mrs. Garrett drunk or sober? A. I would say Mrs. Garrett—that is pretty hard to say, I don't know what you call drunkenness. I know she had enough liquor in her to affect her." The appellant denied that she was drinking that night, as well as her brother, sister-in-law and their friend Miss Gregg. Albany stated that before appellant built his home, in 1939, the Carretts and he and his wife were on their way home from a trip to New York and stopped at a hotel in Trenton, New Jersey, for dinner, and that the appellant stated to appellee, while at dinner: "You better hurry up and get that G—— d—— home built. If you don't, in a couple of years I won't be with you."

It is not necessary for us to repeat the law governing cruelty as a ground for partial divorce. It has been set out by this court in numerous decisions. See Stirn v. Stirn, 183 Md. 59, 36 A.2d 695; Hawkins v. Hawkins, 65 Md. 104, 3 A. 749; Hamren v. Hamren, 180 Md. 692, 26 A.2d 381; Short v. Short, 151 Md. 444, 135 A. 176; Kreiner v. Kreiner, Md., 44 A.2d 440; Singewald v. Singewald, 165 Md. 136, 166 A. 441; Collins v. Collins, Md., 42 A.2d 680; Collier v. Collier, 182 Md. 82, 83, 32 A.2d 469; McClees v. McClees, 160 Md. 115, 152 A. 901.

[1, 2] As we have stated before, the burden of proof was on the appellant to show that appellee was guilty of such brutal treatment toward her as would entitle her to relief in this case. We have carefully considered all of the evidence in this case and we come to the conclusion that the wife has failed to meet the burden of proof which the law casts upon her. We cannot say, from this record, that it is satisfactorily proved that the husband was brutal to his wife upon any of the occasions specified by the appellant. It may well have been that the appellant, on August 3, 1945, was so excited from drink that her injuries were caused as the appellee contends they were. The preponderance of the evidence shows that the wife was intoxicated on that occasion and the husband's statement that she was, we think, is corroborated by the evidence. We are not prepared to say that the injuries of which the appellant complains are proved by satisfactory evidence. We think that the trouble in this home was due to the wife's ungovernable temper, which was inflamed when she indulged in intoxicating liquor.

We will refuse the relief she prays for and her remedy is to be more temperate in the use of alcohol, control her temper, correct the coarseness of her language, and return to her husband.

Decree affirmed, appellee to pay costs.

COLATI v. JIROUT et al.

No. 156.

Court of Appeals of Maryland.

June 20, 1946.

1. Municipal corporations ⟹601

The zoning ordinance of City of Baltimore prohibits generally the extension of a non-conforming use except to portion of building designed for such use at time of passage of the ordinance.

2. Municipal corporations ⟹625

The stopping of expansion of a non-conforming use by zoning ordinance is not an arbitrary or unreasonable exercise of governmental power.

3. Municipal corporations ⟹601

Zoning in general is a valid exercise of the police power of the state, and a comprehensive zoning ordinance is constitutional. Code 1939, art. 66B.

4. Municipal corporations ⟹63(1)

If municipal council deems that the securing of quiet residential section, expediting local transportation, facilitating suppression of disorder, extinguishment of fire, or enforcement of sanitary regulations a sufficient reason for adopting a zoning ordinance, court cannot take issue with the council, since court has nothing to do with wisdom or good policy of municipal ordinances. Code 1939, art. 66B.

5. Municipal corporations ⟹601

The spirit of the Baltimore City zoning ordinance is against extension of non-conforming uses. Code 1939, art. 66B, § 7.

6. Municipal corporations ⟹601

Even where a non-conforming building has been destroyed by act of God, the owner should not be allowed to rebuild as a matter of right without authority from state zoning enabling act or ordinance. Code 1939, art. 66B, § 7.

7. Municipal corporations ⟹601

Where a non-conforming use is established on a lot in a residental district, that use should not be enlarged or extended without authority from state zoning enabling act or ordinance. Code 1939, art. 66B, § 7.

8. Municipal corporations ⟹621

In view of manner in which Baltimore City zoning ordinance limits application of principle of non-conforming use and the restrictive language with which it authorizes restoration of a building in event of destruction, the power of Board of Zoning Appeals to extend non-conforming uses would be strictly construed. Code 1939, art. 66B, § 7.

9. Municipal corporations ⟹621

The Board of Zoning Appeals of City of Baltimore had no authority under zoning ordinance to grant a permit to extend non-conforming use by permitting building in which cafe was operated as a non-conforming use to be razed and a larger building constructed. Code 1939, art. 66B, § 7.

10. Municipal corporations ⟹621

Where Baltimore City Court, in modifying decision of Board of Zoning Appeals granting permit for extension of non-conforming use, permitted an extension to an extent less than that sought by applicant, but no cross-appeal was taken from that part of order allowing the extension, the order would be affirmed, even though it was more favorable to applicant than he was entitled to receive.

Appeal from Baltimore City Court, W. Conwell Smith, Chief Judge.

Proceeding by Marie Jirout to review a decision of the Board of Zoning Appeals of the City of Baltimore granting a permit to Silvestero Colati to construct a building for a non-conforming use, wherein John Jenesek and Elizabeth Jenesek, his wife, intervened. From an order modifying decision of Board of Zoning Appeals. Silvestero Colati appeals.

Affirmed.

Argued before MARBURY, C. J. and DELAPLAINE, COLLINS, GRASON, HENDERSON, and MARKELL, JJ.

Z. Townsend Parks, Jr. and Joseph O. Kaiser, both of Baltimore, for appellant.

Deeley K. Nice, of Baltimore (Max Sokol and Dickerson, Nice & Sokol, all of Baltimore, on the brief) for appellees.

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Rep. 6 Sub #3

DELAPLAINE, Judge.

On November 1, 1945, John W. Christopher, a building contractor, made application to the Buildings Engineer of Baltimore City for a permit to build for Silvestero Colati a two-story building on his corner lot at 2510 McElderry Street, for the purpose of a cafe and lunch room, after a one-story cafe building and garage now on the lot shall have been removed. The Buildings Engineer disapproved the application, and the contractor thereupon appealed to the Board of Zoning Appeals. At a public hearing on November 13, Mrs. Marie Jirout, who resides next to the cafe at 2512 McElderry Street, protested against the construction of a two-story building farther back than the rear wall of her residence on the ground that it would cut off her air and light; but on November 14 the Board adopted a resolution approving the application.

Mrs. Jirout then filed a petition in the Baltimore City Court alleging that the action of the Board was illegal. Her landlords, John Jenesek and his wife, were subsequently granted permission to intervene in the case. Under paragraph 33 of the Baltimore City Zoning Ordinance (Ordinance 1247, approved March 31, 1931), any person aggrieved by a decision of the Board of Zoning Appeals may present a petition to the Baltimore City Court setting forth that the decision is illegal in whole or in part, and specifying the grounds of the illegality. The Court may reverse or affirm, wholly or in part, or may modify the decision brought up for review. On January 11, 1946, the Court passed an order modifying the decision of the Board by restraining the applicant for the permit from erecting any buildings on Colati's lot, from a point at the rear end of the wall of the residence at 2512 McElderry Street to the rear of the lot, to a height greater than the first story of that residence. From that order Colati appealed to this Court.

[1, 2] It appears that the property in question is a non-conforming use in a residential use district. Paragraph 8(38) of the Baltimore City Zoning Ordinance prohibits the use of any building in a residential use district for the sale of alcohol or alcoholic drinks. But the Zoning Ordinance does not prevent the continuance of any non-conforming use existing at the time of the passage of the ordinance. Non-conforming buildings existing when the Zoning Ordinance went into effect are allowed to stand, and non-conforming uses are allowed to continue. Zoning seeks to stabilize and protect, not to destroy; it seeks to safeguard the future with anticipation that time will repair the mistakes of the past. However, paragraph 11 contains the following prohibition: "A non-conforming use may not be extended, except as hereafter provided, but the extension of a use in any portion of a building, which portion is now arranged or designed for such non-conforming use, shall not be deemed to be an extension of a non-conforming use." This Court holds that the Zoning Ordinance prohibits generally the extension of a non-conforming use except to the portion of the building designed for such use at the time of the passage of the ordinance, and that the stopping of expansion of a non-conforming use is not an arbitrary or unreasonable exercise of governmental power. Knox v. Mayor and City Council of Baltimore, 180 Md. 88, 96, 23 A.2d 15; Beyer v. Mayor and City Council of Baltimore, 182 Md. 444, 453, 34 A.2d 765.

The Zoning Ordinance, as amended by Ordinance 445, approved April 23, 1941, makes only one exception to the prohibition of paragraph 11 in dealing with residential use districts. This exception, found in paragraph 12(b), provides that the Board of Zoning Appeals, subject to the provisions of paragraph 32(j), may in its discretion in a specific case permit, where otherwise excluded or limited, "a use of the same classification, necessary or incidental to a non-conforming use" within 50 feet from such existing non-conforming use, provided that such 50-foot measurement shall not extend across a street. It is apparent that the Board's discretionary power to extend a non-conforming use horizontally does not apply to the pending case.

[3, 4] It is true that paragraph 32(g)3 of the Zoning Ordinance, enacted pursuant to the State Zoning Enabling Act, Acts of 1927, ch. 705, Code 1939, art. 66B, sec. 7, endows the Board of Zoning Appeals with discretion to authorize in any specific case such variance from the terms of the ordinance as may be necessary to avoid arbitrariness and so that the spirit of the ordinance shall be observed and substantial justice done. The only guide which the Mayor and City Council gave to the Board as to when it may authorize a variance from the terms of the ordinance was, as stated in paragraph 33(b), when there are "practical difficulties or unnecessary hardships" in the way of carrying out the strict letter of the ordinance. In 1933 the Court of Appeals held that this grant of unlimited and unregulated discretion to an administrative board to set aside the ordinance in any case was an arbitrary and unlawful delegation of power. Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 164 A. 220; Sugar v. North Baltimore Methodist Protestant Church, 164 Md. 487, 495, 165 A. 703. On this appeal there is no necessity to discuss whether paragraph 32(g)3 has been brought fully within the bounds of constitutionality by the enactment of paragraph 32(j) of Ordinance 449, approved April 23, 1941, requiring the Board of Zoning Appeals to consider various factors before authorizing a variance. For the invalidity of paragraph 32(g)3 prior to the 1941 amendment did not affect the ordinance as a whole. We hold that zoning in general is a valid exercise of the police power of the State, and that a comprehensive zoning ordinance is constitutional. With congestion of masses of people in small areas, high tension of the industrial civilization of today, and steady progress of sanitary science, it has become obviously necessary to subject the use of property in congested centers of population to restrictions which may be burdensome in individual cases, but which are essential for the common safety and welfare. R.B. Construction Co. v. Jackson, 152 Md. 671, 137 A. 278; Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 153, 164 A. 220; County Com'rs of Anne Arundel County v. Ward, Md., 46 A.2d 684. The establishment of districts may, among other things, secure quiet residential sections, expedite local transportation, and facilitate the suppression of disorder, extinguishment of fires, and enforcement of sanitary regulations. If the municipal council deems any of these things a sufficient reason for adopting the ordinance, it is not the province of the court to take issue with the council, as the court has nothing to do with the wisdom or good policy of municipal ordinances. City of Aurora v. Burns, 319 Ill. 84, 93, 149 N.E. 784; State ex rel. Civello v. New Orleans, 154 La. 271, 282, 97 So. 440, 33 A.L.R. 260; Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303, 54 A.L.R. 1016.

[5, 6] It is evident that the spirit of the Baltimore City Zoning Ordinance is against the extension of non-conforming uses. It is generally accepted that a few non-conforming buildings and uses, allowed to continue as exceptions to the regulations in order to avoid injustice, will not be a substantial injury to the community if they are not allowed to multiply where they are harmful or improper; but non-conforming uses should not be perpetuated any longer than necessary, and the Zoning Board should make constant efforts to move them into the use districts where they properly belong. Bassett on Zoning, 106, 109. Even when a non-conforming building has been destroyed by act of God, the owner should not be allowed to rebuild as a matter of right without authority from statute or ordinance. Paragraph 38 of the Baltimore City Zoning Ordinance expressly provides that nothing contained in the ordinance shall prevent the restoration of a building or part thereof which has been destroyed by fire, wind, flood, explosion, act of God, or act of the public enemy; but it also states that in the event of such destruction nothing shall prevent the continuance of the use or part thereof "as such use existed at the time of such destruction of such building or part thereof."

[7, 8] Appellant's lot has a frontage of 14 feet, 3 inches, on McElderry Street, and a depth of 70 feet on Rose Street. The brick building now used as a cafe extends back 38 feet, and the garage in the rear has a depth of 32 feet. Thus the two buildings cover the entire area of the

lot. The construction, for which appellant wants a permit, is not in any sense an alteration. He wants to raze and remove his buildings and build anew on a much larger scale. He desires to transform a cafe or bar occupying slightly more than half the area of his lot to a cafe and lunch room which would have a floor space twice that of the entire area of the lot. It is conceded that the entire property has been used in the cafe business, and that the owner is protected from interference in that use; but, as the Supreme Court of New Jersey explained in De Vito v. Pearsall, 115 N.J.L. 323, 180 A. 202; 147 A.L.R. 170, where a factory or other non-conforming use is established on a lot in a residential district, that use should not be enlarged and extended without authority from statute or ordinance. For, while continuance of the original non-conforming building might be comparatively unobjectionable, a larger building might cause great damage to the district. Moreover, the manner in which the Baltimore City Zoning Ordinance limits the application of the principle of non-conforming use, and the restrictive language with which it authorizes restoration of a building in event of destruction, are strong manifestations of the intention of the Mayor and City Council that the power of the Board of Zoning Appeals to extend non-conforming uses shall be strictly construed.

[9, 10] For these reasons we hold that the Board of Zoning Appeals had no authority under the Zoning Ordinance to grant the permit to extend the non-conforming use as requested. No appeal, however, was taken from the extension allowed by the Court below, and the appellees do not complain of that extension and are not injured by it. On this appeal there is nothing before us in respect to the extension as granted and therefore the order of the Court will be affirmed. County Com'rs of Frederick County v. Page, 163 Md. 619, 164 A. 182.

Order affirmed, with costs.

LALEKOS v. MANSET et al.

No. 370.

Municipal Court of Appeals for the District of Columbia.

June 11, 1946.

1. Appeal and error ⟹158(2)

Where landlords brought suit for possession of building for nonpayment of rent and tenant appealed from directed verdict in favor of landlords, the tenant's payment after judgment, under protest, of overdue rent and ensuing monthly rentals, did not render the appeal moot.

2. Appeal and error ⟹158(1)

Compliance with a civil judgment or decree by payment of the judgment or performance of the decree does not bar an appeal, where repayment or restitution may be enforced.

3. Landlord and tenant ⟹37

The language of a lease will be construed against the party who drafted it.

4. Landlord and tenant ⟹57(1), 80½

Where subtenant was still in possession when lease with new tenant was executed, provision in lease that landlords leased to tenant the entire building and the income therefrom was not the equivalent of an assignment of subtenant's lease and did not make subtenant the subtenant of new tenant, in absence of evidence that by accepting such lease the new tenant waived her right to exclusive enjoyment of the entire premises.

5. Landlord and tenant ⟹130(1)

Where landlords leased, granted, and demised the premises to tenant, a covenant of quiet enjoyment was implied.

6. Landlord and tenant ⟹17

A lessor, after setting up the validity of a lease for purpose of collecting his rent, may not assail it as invalid for purpose of avoiding liability on his implied covenant of quiet enjoyment, as he will not be permitted to treat the lease as valid for one purpose and invalid for another.

7. Trial ⟹178

In ruling on a motion for a directed verdict, the trial court must consider the evidence, introduced by the party against whom the verdict is sought, as true, and view all the evidence in the light most favorable to him, giving him the benefit of all reasonable inferences therefrom.

8. Landlord and tenant ⟹190(2), 281

Where tenant sublet part of leased premises and thereafter surrendered the premises to landlord, but subtenant remained in possession of subleased portion, and landlords thereafter leased the entire premises to another tenant, the subtenant's presence did not constitute a partial eviction of new tenant so as to relieve new tenant of her liability for rent, and landlords were entitled to sue for possession for nonpayment of the entire rent.

9. Landlord and tenant ⟹129(1), 223(2)

Where lessee cannot take possession of a part of the premises because of a prior lease to another, he may refuse to take possession and bring an action for damages, or may accept possession of remainder, pay the entire rent, and bring an action for damages, or he may accept possession of remainder and when suit is brought for rent due, or for possession for nonpayment of rent, may defend on ground that he does not owe all the rent claimed.

10. Landlord and tenant ⟹80½, 128(2)

Where tenant of commercial building sublet the second and third floors and thereafter surrendered premises to landlord who leased the entire premises to another, new tenant's request in writing to subtenant that he quit the second and third floors could not be construed as an acknowledgment by new tenant of subtenant as her subtenant, or as an exercise of such dominion over the whole premises as to constitute a waiver of landlord's failure to deliver full possession.

11. Landlord and tenant ⟹285(3)

In suit by landlord for possession of commercial building for nonpayment of rent, answer denying that landlords were entitled to possession of the premises for nonpayment of full rent, and reciting that rental on portion of premises which tenant did not possess was a certain amount per month, and offering to pay, for portion of premises actually occupied by tenant, the

tiffs acquired a prescriptive easement in road leading over defendant's land by open and continuous user for statutory period.

Decree affirmed.

1. Easements ⟹61(2)

Where plaintiffs sought to enjoin interference with roadway easement over land of the defendant based on adverse user for statutory period and to require the defendant to remove obstructions and restore a bridge, suit was maintainable in equity, even though title to disputed roadway was in issue.

2. Easements ⟹61(2)

Where a complainant's claim to a right of way by prescription over another's land is disputed, rule requiring a resort to an action at law is not inflexible, and factors such as possibility of irreparable damage, lack of reasonable doubt as to title and need for mandatory injunction to afford complete relief may be taken into account in determining whether equity has jurisdiction to decide the disputed question.

3. Easements ⟹36(3)

Evidence sustained finding that plaintiffs acquired a prescriptive easement in road leading from their land over defendant's land, by open and continuous user for a statutory period so as to warrant decree requiring defendant to remove obstructions.

4. Easements ⟹8(4)

Where plaintiffs openly and continuously used road leading from their land over defendant's land for statutory period, fact that sliding gates were maintained on roadway which were kept open except during race meetings held during a period of 25 days a year, and that patrons of race track on defendant's land used road from time to time did not militate against plaintiffs' claim of adverse and exclusive user.

Hyman Ginsberg, Baltimore (Ginsberg and Ginsberg, John W. Farrell and John S. Conroy, all of Baltimore, on the brief), for appellant.

M. Hampton Magruder, Upper Marlboro, and Ralph W. Powers, Hyattsville, for appellees.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, and HENDERSON, JJ.

HENDERSON, Judge.

This appeal is from a decree of the Circuit Court for Prince George's County, in equity, enjoining interference with the use of a certain roadway over the land of the appellant, and requiring the appellant to remove obstructions and restore a bridge. The questions presented are whether the appellees acquired an easement by prescription or dedication, and whether there was jurisdiction in equity to decide the disputed question of title.

[1, 2] We find no merit in the contention as to jurisdiction. The authorities were discussed in the recent case of Potomac Edison Co. v. Routzahn, Md., 65 A.2d 580, 583, where it was said that the rule requiring resort to an action at law is not inflexible, and that factors such as the possibility of irreparable damage, the lack of reasonable doubt as to the title, and the need for mandatory injunction to afford complete relief, may be taken into account. Cf. Smith v. Shiebeck, 180 Md. 412, 24 A.2d 795.

[3] In the instant case there was abundant proof of continuous user for the statutory period. In 1908 Jacob Meyer, the father of four of the appellees, and some of his neighbors began fording the Patuxent River, by team and on horseback, and crossing the land now owned by the appellant to a county road known as the Bowie Road, and thence to the town of Bowie, where they transacted business, purchased supplies and attended church. In 1919 several of the appellees constructed a bridge over the river and continued to use the road, which had a gravel surface and was generally kept in repair by the appellees, although some surfacing was done by the appellant. In 1926, the appellant erected a new grandstand, which involved a relocation of a portion of the road, but the appellees continued to use it without interruption until May 13, 1949, when barricades were erected. No permission was ever sought from or given by the appellant.

While the appellees could reach Bowie by another road, this alternate route was about three times as long. It was shown that while some of the appellees had, at one time or another, been employed at the track, others had never been so employed.

[4] The chief contention of the appellant is that the adverse character of the user was not established, and that it was in fact permissive, because of the maintenance by the appellant of one or more sliding gates which it maintained on the roadway. But the evidence shows that these gates were never locked and were kept open altogether except during the race meetings held during a period of about twenty-five days a year. Even during race meetings the appellees' use was not forbidden, but the closing of the gates and the posting of a watchman was designed to control the flow of traffic coming to the races. At one time the appellant erected a sign "Road closed—Bridge out of repair," but the chancellor found that this was designed to avoid possible liability to persons injured on the bridge. During the racing season the road was used by as many as one hundred cars a day. The bridge was never impassable, and there was testimony that even during the racing season the appellees were allowed to pass through the gates without question. We think the appellant has not met the burden of showing that the use of the way was by license or permission inconsistent with a claim of right. Wilson v. Waters, Md., 64 A.2d 135, 137; Cox v. Forrest, 60 Md. 74, 80. In Baker v. Frick, 45 Md. 337, 340, 24 Am.Rep. 506, it was said that "the grant of a right of way * * * does not imply that the grantor may not erect gates at the points where the way enters and terminates." Easter v. Overlea Land Co., 129 Md. 627, 99 A. 893, is distinguishable upon its facts, for there the gates were kept locked, and there was definite evidence of permission. For cases holding that the mere erection of gates, for the greater convenience of the owner's operations and not as a barrier to passage, will not defeat a claim to a prescriptive easement of passage, see Davis v. Wilkinson, 140 Va. 672, 125 S.E. 700; Carpenter v. Stapleton, 169 Va. 22, 192 S.E. 792; Chesson v. Jordan, 224 N.C. 289, 29 S.E.2d 906; Hodgkins v. Branchini, 323 Mass. 169, 80 N.E.2d 464; note 73 A.L.R. 778, 788, and Tiffany, Real Property, 3d Ed., § 812. Indeed, if the right to maintain unlocked gates has been exercised for the statutory period, it has been held that this does not negative, but merely limits the extent of, the adverse user.

The mere fact that patrons of the race track have used the road from time to time does not militate against the appellees' claim of adverse and exclusive user. Wilson v. Waters, supra. See also note to this case in 10 Md.L.R. 272. In view of our conclusion on the point of prescriptive right, it is unnecessary to consider whether the evidence would support the chancellor's finding that there was a dedication within the rule laid down in Smith v. Shiebeck, 180 Md. 412, 24 A.2d 795.

Decree affirmed, with costs.

FRANCIS et ux. v. MacGILL et al.

No. 209.

Court of Appeals of Maryland.

July 19, 1950.

Suit by James J. Francis and wife against James MacGill, Zoning Commissioner of Howard County, and others, to enjoin the defendants from interfering with plaintiffs in the erection of a building on certain land in a residential zone. The Circuit Court, Howard County, James Clark, J., rendered a decree dismissing the bill, and the plaintiffs appealed. The Court of Appeals, Grason, J., held that the Commissioners did not act unreasonably in locating the line between commercial and residential property.

Decree affirmed.

1. Counties ⟹21½

Where machine shop was constructed on property before adoption of county zoning regulations placing land within residential zone, business conducted at build-

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ing after adoption of regulations was affected by nonconforming use.

2. Counties ⟹21½

In framing zoning regulations and determining where commercial area or zone terminated and where residential area commenced, county commissioners were required to exercise their best discretion in determining where line should be drawn.

3. Counties ⟹21½

Where parcel of land on which machine shop was built was located 1750 feet from intersection of two main highways near which was located a small village, establishing county residential zone extending 1300 feet beyond machine shop and including it was not arbitrary.

4. Counties ⟹21½

If choice of county commissioners in establishing division line between residential and commercial zones under zoning regulations was fairly debatable, action of commissioners would be sustained.

5. Counties ⟹21½

The statute providing for payment of fee for building permit and providing penalty for failure to acquire permit before erecting buildings in Howard County does not give permittees right to use their property irrespective of zoning regulations. Laws 1939, c. 270, as amended by Laws 1947, c. 754; Laws 1948, Ex.Sess., c. 19, § 2.

6. Counties ⟹21½

Where landowners obtained permit for construction of addition to machine shop at time proposed zoning regulations were under consideration, and owners had knowledge of the fact, and after adoption of regulations, owners did some grading, dug footing trenches, drilled a well and made certain electrical installations but did not commence building, small amount spent on property did not affect it with a nonconforming use.

7. Constitutional law ⟹101

Where owners of land and machine shop thereon had knowledge of proposed zoning regulations when building permit was obtained, and after adoption of regulations, owners proceeded to erect addition to machine shop and did some grading, dug footing trenches, drilled a well and made certain electrical installations, issuance of permit created no vested right that would render residential zoning regulations inoperative. Code Pub.Loc.Laws 1930, art. 14, § 360, as added by Laws 1948, Ex.Sess., c. 19.

James J. Francis, Bethesda, in pro. per.

Charles E. Hogg and W. Henry Forsythe, Jr., both of Ellicott City, for appellees.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, and HENDERSON, JJ.

GRASON, Judge.

On July 2, 1945, James J. Francis and Mildred S. Francis, his wife, purchased from Arthur M. Lucas and Edna Lucas, his wife, a parcel of land containing about three and one-quarter acres, situate in the Sixth Election District of Howard County, Maryland, the same being located on the east side of the Laurel-Highland Road, about 1750 feet southeast of the intersection of the Columbia Road and the Laurel-Highland Road; the frontage of this property on the latter road is three hundred and seventy-three feet. In September of that year Francis and his wife obtained a building permit from the County Commissioners of Howard County, which authorized them to construct a machine shop on this property, and in accordance therewith they erected on said property a one-story building 24 feet by 60 feet, to be used as a machine shop. Upon completion of this building they engaged in the manufacture of cinder blocks, which venture was unsuccessful and discontinued, and the property has since, from time to time, been rented for the purpose of carrying on a business of light manufacturing.

Zoning regulations were adopted by the County Commissioners of Howard County on July 27, 1948, in accordance with the Act of the General Assembly of Maryland,

passed at its Extraordinary Session 1948, Chapter 19. Section 360 of that Act is as follows:

"For the purpose of promoting health, safety, morals and general welfare, to alleviate traffic congestion, to facilitate the safe flow of traffic, to protect highways from the encroachment of advertising structures and buildings, to preserve the scenic beauty of Howard County and to promote the orderly growth of said County in the interest of all its inhabitants, the County Commissioners of Howard County are hereby empowered to designate Zoning Districts within the bounds of said County, regulate the use, height, area and type of construction of buildings and the use of land. Such regulations shall be made in accordance with a comprehensive plan.

"The County Commissioners of Howard County may designate within the County certain Districts of such number, shape and area as may be deemed best suited to carry out the purposes of this sub-title, and within such Districts they may, by appropriate regulations, restrict, control, limit or regulate the erection, alteration, repair and use of buildings and the use of land and regulate the number of families which may be housed per acre of land. All such regulations shall be uniform for each class or kind of building or structure throughout each District, but the regulations in one District may differ from those in other Districts."

Prior to the adoption of the Zoning Regulations by the County Commissioners of Howard County, they advertised the proposed regulations, in accordance with the Act, and public hearings were held thereon. James J. Francis attended these meetings and submitted to the Commissioners, in writing, his reasons why his property referred to should not be zoned "residential" and should be zoned "commercial". These suggestions were rejected by the Commissioners.

On July 6, 1948, Francis secured a building permit from the County Commissioners to construct on said property a 17 by 41 foot building, to be used as a machine shop for light manufacturing. In the appellants' brief it is stated: "At this time, (July 6, 1948) proposed Zoning Regulations for Howard County were under consideration, and this fact was known by Appellants * * *." After the adoption of zoning regulations for Howard County, the appellants proceeded to erect the building under the permit of July 6, 1948. The appellants did some grading, dug footing trenches, drilled a well between the original building and the proposed second building, caused to be brought to the original building on the property, electric current of high voltage, and allocated the costs of the well and the installation of the electricity to the two buildings. They were delayed in the construction of the new building, because they did not obtain a loan of $800.00 until February, 1949, when they immediately started to erect this building. James MacGill, the Zoning Commissioner, while passing this property, saw that the second building was under construction. The appellant, James J. Francis, was notified by MacGill to come to his office in Ellicott City to discuss the matter. He accordingly appeared on March 19th. On March 23rd he was notified by the Zoning Commissioner to discontinue further construction of the building, under the building permit dated July 6, 1948, remove all construction under the permit, and discontinue the use of the land for any purpose other than residential usage. Appellants then filed their bill in this case against James MacGill, Zoning Commissioner of Howard County, and the County Commissioners of said County (appellees), in the Circuit Court for Howard County, in Equity, to which bill a demurrer was sustained; an amended bill filed, which prayed that the appellees be enjoined from interfering with the appellants in the erection of the building aforesaid, and from the use of it and their property for commercial usage. To the amended bill an answer was filed, testimony taken in court, the parties heard, and the chancellor, after filing an opinion which thoroughly discussed the law and the evidence, passed a decree which dismissed the bill. From that decree the case comes here on appeal.

It is not contended that the Enabling Act passed at the 1948 Extra Session, Chapter 19, is unconstitutional, nor that the Zoning Regulations adopted by the County Commissioners pursuant thereto are unconstitutional, but that the Zoning Regulations, as applied to appellants' property, are "so arbitrary, unreasonable and oppressive as to confiscate their property without due process of law".

[1-4] The small village of Scaggsville is situated around the intersection of the Columbia Road and the Laurel-Highland Road. The area from the northeast and southeast corners formed by the intersection of those roads, for a distance of 450 feet southeasterly from each corner, was zoned "commercial" in July, 1948. Before the adoption of the Zoning Regulations, at Scaggsville there was a store and filling station, which was affected with a nonconforming use. After the adoption of the Regulations, the business theretofore conducted in these properties continued, and the business conducted at the building erected on appellants' property prior to the adoption of the Zoning Regulations continued, and it is affected by a nonconforming use. The appellants' property is 1750 feet from the northeast corner of this intersection, and is zoned "residential". In other words, the appellants' property is 1300 feet within the residential zone. It is claimed that the adoption of this line by the Commissioners, as set up in the Zoning Regulations, is unreasonable, arbitrary and capricious, as applied to appellants' property, and hence unconstitutional. The law presumes that the Zoning Regulations were fairly and justly framed, and that their provisions apply equally to all properties similarly situated. Manifestly the Commissioners, in framing the Regulations, were required to determine where a commercial area or zone terminated and where a residential area commenced. This was a question that required the Commissioners to carefully and thoroughly study, and to exercise their best discretion in determining where the line should be drawn.

"Lines between used districts must be drawn somewhere." Northwest Merchants Terminal v. O'Rourke, Md., 60 A.2d 743, at page 751 (a case that differed widely on the facts from the case at bar).

We cannot say, from the evidence in the case at bar, that the action of the Commissioners, in drawing the line where they did, was unreasonable, arbitrary and capricious. If where they drew the division line in this case is fairly debatable, their action must be sustained. Zahn v. Board of Public Works, 274 U.S. 325, 47 S.Ct. 594, 71 L.Ed. 1074; Board of County Com'rs of Anne Arundel County v. Snyder, 186 Md. 342, 346, 46 A.2d 689.

[5] It is urged that the expenses incurred by the appellants in preparing this property for the erection of the building under the building permit issued on July 6, 1948, and the money spent in partially erecting the building after the Zoning Regulations became effective, affected the building and the property with a nonconforming use, and to refuse such use deprived them of their property without due process of law. It is said that the Act of 1939, Chapter 270, as amended by the Act of 1947, Chapter 754, gave them the right to use their property irrespective of the Zoning Regulations. But the Act referred to did not involve zoning. Its purpose was to keep track of new buildings or of additions to other buildings for the purpose of turning this information over to tax assessors, to the end that such properties would be assessed. Section 2 of Chapter 19, Extra Session 1948, provides: "And be it further enacted, That all Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed to the extent of such inconsistency."

It is idle to say that the issuance of the building permit created a vested right that would render inoperative the Zoning Regulations.

"Adoption of zoning ordinance ipso facto revokes permit for construction of building violating zoning restrictions, where no construction has been begun." Rice v. Van Vranken, 225 App.Div. 179, 232 N.Y.S. 506.

[6,7] The appellants started to erect this building in 1949. They completely ignored the Zoning Regulations, and they were engaged in an unlawful act. No question of a nonconforming use, nor deprivation of property without due process of law can arise from an unlawful act. The small amount spent on this property before 1949 did not affect it with a nonconforming use. Anne Arundel County v. Snyder, supra, 186 Md. at page 347, 46 A.2d 689; Kahl v. Consolidated Electric Light & Power Co., Md., 60 A.2d 754; Rice v. Van Vranken, supra; Bogley v. Barber, Md., 72 A.2d 17, 20.

We have considered the authorities cited by the appellants, but under the facts of this case we cannot follow them. We conclude that the appellants deliberately violated the Zoning Regulations, and whatever consequence follows to them is the result of their own unlawful action.

Decree affirmed, with costs.

STATE ex rel. BALLAM v. WARDEN OF MARYLAND HOUSE OF CORRECTION.

No. 1.

Court of Appeals of Maryland.

July 18, 1950.

The State of Maryland on relation of Adrian W. Ballam brought habeas corpus proceedings against the Warden of the Maryland House of Correction. The Lower Court refused the writ and Ballam applied for leave to appeal. The Court of Appeals, Delaplaine, J., held that fact that Ballam did not receive a copy of indictment would not entitle him to release on habeas corpus.

Application denied.

1. Habeas corpus ⟹30(1)

Fact that a defendant did not receive a copy of indictment as provided by statute would not entitle defendant to release on habeas corpus from imprisonment following conviction. Laws 1949, c. 757.

2. Habeas corpus ⟹85(1)

In habeas corpus proceeding by a petitioner sentenced to House of Correction, petitioner did not establish that he did not have time to prepare his defense.

3. Habeas corpus ⟹112

The statutory provision that judge file a succinct but substantial statement setting forth grounds of application for writ of habeas corpus, the questions involved, and reasons for action taken, is not a right of the petitioner but is intended to facilitate disposition of the case in the Court of Appeals. Code Supp.1947, art. 42, § 3B.

Before MARBURY, C. J., and DELAPLAINE, COLLINS, GRASON, HENDERSON and MARKELL, JJ.

DELAPLAINE, Judge.

Adrian W. Ballam filed this application for leave to appeal from refusal of a writ of habeas corpus.

Petitioner alleges that in November, 1949, he was sentenced by the Criminal Court of Baltimore to the Maryland House of Correction, but that he was denied his constitutional rights because he was misinformed of the true nature of the charges against him and he did not receive a copy of the indictment as required by the Maryland law. He says that he was not given an opportunity to prepare a suitable defense.

[1] The statute requires that in every indictment or information for the alleged commission of a criminal offense in this State, the accused shall be furnished a copy thereof as soon as practicable after the same shall have been prepared, and at the expense of the prosecuting authority. Laws of 1949, ch. 757. However, even assuming the truth of petitioner's statement that he did not receive a copy of the indictment, such fact would not entitle him to release on habeas corpus. Fisher v. Swenson, Md., 64 A.2d 124, certiorari denied 337 U.S. 933, 69 S.Ct. 1489, 93 L.Ed. 1740.

[2] We find no merit in petitioner's contention that he did not have time to

that this question is properly before us, we observe that the firmly established rule of this Court is to the contrary. "Where a plea of guilty is properly entered, as it was here, evidence to prove guilt is not required." Brown v. State, 1960, 223 Md. 401, 404, 164 A.2d 722, 724.

Judgments affirmed.

225 Md. 102

Johnny A. PHILLIPS, Jr., et al.

v.

ZONING COMMISSIONER OF HOWARD COUNTY.

No. 228.

Court of Appeals of Maryland.

April 7, 1961.

The zoning commissioner of the county brought a suit against the occupants of realty to enjoin them from using the realty for a junk yard. The Circuit Court for Howard County, James Macgill, J., rendered a decree in favor of the zoning commissioner, and the occupants of the realty appealed. The Court of Appeals, Horney, J., held that the evidence sustained the finding that use of the realty as a junk yard was not a vested nonconforming use on the critical date of zoning regulations and that the realty therefore could not be used as a junk yard.

Decree affirmed.

1. Zoning ⟹329

Whether nonconforming use can be enlarged or extended is ordinarily governed by local zoning ordinances and regulations.

2. Zoning ⟹329

Power to deny use of land as junk yard necessarily included power to prohibit extension or enlargement of nonconforming use of premises as secondhand furniture store and used automobile lot so as to encompass added use as junk yard for junking and burning of automobiles.

3. Zoning ⟹329

Spirit underlying zoning regulations is to restrict rather than increase nonconforming uses.

4. Zoning ⟹329

Question what is extension or enlargement of nonconforming use is ordinarily one of fact, and determination in each case depends on its own facts.

5. Zoning ⟹331

Mere intensification of nonconforming use is permissible so long as nature of use is not substantially changed.

6. Zoning ⟹329

Right of landowner to continue same kind of nonconforming use does not confer on him right subsequently to change or add to use new and different use amounting to drastic enlargement or extension of prior existing use.

7. Zoning ⟹329

Extension of nonconforming use may be allowed where zoning regulations authorize it.

8. Zoning ⟹329

Ordinarily, change may not be made in nonconforming use of higher classification to one of lower classification.

9. Zoning ⟹788

Evidence sustained finding that use of property as junk yard was not vested nonconforming use on critical date of zoning regulations and that property therefore could not be used as junk yard.

10. Zoning ⟹790

Court of Appeals could not set aside decree prohibiting occupants of realty from using it as junk yard, where chancellor's finding that use of realty as junk yard was vested nonconforming use on critical date of zoning regulations was not clearly erroneous. Maryland Rules, rule 886 a.

Richard H. Stevenson, Baltimore, and Bernard F. Goldberg, Ellicott City, for appellants.

Daniel M. Murray, Jr., Ellicott City, for appellee.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

HORNEY, Judge.

The sole question on this appeal—arising out of an injunction proceeding instead of in a zoning case as might be expected—is whether the present use of a tract or parcel of land along the Baltimore-Washington Boulevard in Howard County as and for a junk yard constitutes a lawful nonconforming use.

No proceedings were taken by Johnny A. Phillips, Jr., and others (owners-appellants) to have the issue of a nonconforming use determined by the Board of Zoning Appeals and the case came before the Circuit Court for Howard County on the bill of the Zoning Commissioner for an injunction. The chancellor granted an injunction prohibiting the owners-appellants from operating and using the premises as a junk yard and "more specifically for the purpose and use of wrecking, dismantling and burning motor vehicles, or removing or storing the parts thereof." The decree, however, reserved to the owners-defendants the right to use the building on the premises and the immediate area around it (but not the space or field in the rear of the building which had been used for pasture of goats and cows or left unutilized) for the "storage and sale of second hand furniture, motor vehicles and other items," which the chancellor found was the only use employed as of the critical date.

In this posture of the case the question for this Court to decide is not whether there was "substantial evidence" to support the finding of the Board, but whether the chancellor was "clearly erroneous" in finding that the present use was unlawful with respect to the "junking" of motor vehicles on the property in question. See Maryland Rule 886 a. Thus, it appears that a review of the evidence as well as the applicable zoning regulations is necessary.

Under the original zoning regulations, adopted July 27, 1948, the subject property was zoned "Commercial B." Neither this classification nor any other in the original regulations allowed the use of land as a junk yard. However, under such regulations (Paragraph 5–A) the Zoning Commissioner was empowered, after a public hearing, to "permit any use of land or building in the Commercial B. District which does not adversely affect the public health, safety, morals or general welfare and which does not contravene the purpose and intent of [the zoning] regulations." There was no definition of a "junk yard," but the regulations (Paragraph 6–1) contained a provision permitting nonconforming uses provided they were in existence on or before the critical date. The privilege, however, was confined to "that part of a building or the extent of land actually used" at that time.

On January 12, 1954, the original zoning regulations were repealed and a more comprehensive zoning scheme was adopted. Under the new regulations, presently in effect, the subject property was zoned M–1 (Light Manufacturing), and again a junk yard was not permitted in this classification. However, the present regulations (§ 23–A–9) permit a junk yard on property zoned

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M-2 (Heavy Manufacturing) provided the Board of Zoning Appeals determines that such use would not be detrimental to the public health, safety, morals and general welfare or would prevent the most appropriate use of the land. The present regulations (§ 30-A-16) define a junk yard as:

> "Any open space or building, or both, where scrap metals, bottles, rags, including new clippings, rubber, paper or any discarded material of any kind is stored, handled, baled, packed, sold or reconditioned or *where motor vehicles are dismantled or wrecked or wrecked motor vehicles or parts are stored.*" [Italics supplied.]

The present regulations (§ 13-A-H) also permit existing nonconforming uses, but again such use is confined to that "part of a building" or to the "extent of land" actually used on the critical date. And, besides these limitations, the regulations (§ 13-B, C, D) further provide that once a nonconforming use has been changed to a higher classification it may not thereafter be changed to a lower classification; that such use may not be changed to a use of the same classification unless approved by the Board of Zoning Appeals;[1] and that a nonconforming use may not be extended or increased in size or changed in design and buildings may not be erected or extended on land without the approval of the Board.[2] The present regulations (§ 7-A-5) further provided that automobile, truck or farm equipment storage, sale and repair services are permissible in B-2 Districts, but the dismantling or wrecking of vehicles were specifically excepted.[3]

With regard to the critical date in the instant case, both parties assumed at the injunction hearing that January 12, 1954, was the critical date, but the chancellor subsequently concluded and so ruled, and the parties have concurred by filing a stipulation in this Court, that the correct critical date was July 27, 1948.

As might be expected the evidence concerning the existence or non-existence of a nonconforming use prior to the critical date is conflicting. Supporting the existence of a nonconforming use, there was evidence that the property in question had been purchased in 1946 for the purpose of using it for junking automobiles and that it had been used for that purpose ever since in conjunction with a general junk and second hand furniture business. There was evidence that junked automobiles and piles of junk as well as used automobiles in running condition had been observed on the premises as early as July of 1946. There was evidence that the property was being used as what was characterized as a "junk yard" in 1947 and as proof thereof several photographs were produced, one showing children against a background of several automobiles in a good state of repair, one showing a truck or bus and several automobiles with some of the wheels removed, and one showing two automobiles

1. The original regulations (Paragraph 6-2-A) had permitted a change of a nonconforming use to a use of similar classification, but were silent as to higher or lower classifications.

2. The original regulations (Paragraph 6-2-B) had permitted an extension of a nonconforming use not exceeding sixty feet from the existing nonconforming use of land or building provided set back requirements were maintained. See Board of Zoning Appeals of Howard County v. Meyer, 1955, 207 Md. 389, 114 A.2d 626, 629, where an extension of one hundred and twenty feet was allowed under the circumstances in that case.

3. The original regulations (Paragraphs 4-10 and 5-1) had permitted automobile and truck sales and service in Commercial A and B Districts (which it seems would include a used car sales lot), but were silent as to the dismantling or wrecking of vehicles on the premises.

in a bad state of repair but seemingly still intact. There was evidence that the former owner had purchased a "junker" in 1952. There was evidence that there were "auto parts all over the place" in 1953. And there was evidence that the present owner had been employed by the prior owner in 1955 or 1956 to cut up and burn automobiles.

On the other hand, there was considerable evidence rebutting the existence of a valid nonconforming use of the property on the critical date so far as the junking and burning of motor vehicles thereon was concerned. There was evidence that the former owner had first used the premises as a used furniture warehouse and did not begin to buy used vehicles until about 1950, that such vehicles were not dismantled on the property but were sold and hauled away and that no automobiles were ever stored in the rear of the building prior to 1954. There was evidence that in 1947 the prior owner had the building filled with used furniture and fixtures and kept some of it as well as several trucks, automobiles and other vehicles on the outside, that subsequently he had begun to buy "war surplus" vehicles then on sale at Fort Meade and that prior to 1954 the automobiles on the property had been posted with "for sale" signs and were not "junked" but were sold as used automobiles. There was evidence that between 1949 and 1953 considerable furniture was repaired on the premises and taken to Virginia for sale and that during that time no vehicle was ever junked or burned on the premises. There was evidence that in September of 1954 and before, goats and cows were pastured in the back field where vehicles were presently being dismantled and burned and that the pasture did not begin to "get junked up" until 1957. And there was other testimony that the junking and burning was of comparative recent origin.

On this evidence, the chancellor, in judging the weight of the evidence and the credibility of the witnesses who had known and observed the premises over a period of years, found as a fact that there had been no "wrecking, dismantling or burning of vehicles on the property prior to July 27, 1948, so as to give such operations the present status of a lawful non-conforming use."

To summarize, the evidence seems to indicate, as the chancellor found, that what was in existence in 1948, as a nonconforming use of a used car lot and a store or warehouse for the storage and sale of second hand furniture and fixtures and other used articles, had in 1960, by some sort of "creeping" process, developed into a full-fledged junk yard and shop, where, among other things, large numbers of worn out and wrecked motor vehicles were junked and burned. The owner concedes that the use he is now making of the property constitutes a "junk yard," but contends that the chancellor was clearly erroneous on the evidence presented. The question then—since the owner was not precluded from using the building and the immediate area around it for the storage and sale of second hand furniture, motor vehicles and miscellaneous articles—is whether the use of the premises for junking and burning of motor vehicles and the salvaging and storage of parts, is a new and different use (now absolutely forbidden in an M-1 zone) from that for which the premises were used prior to July 27, 1948.

[1-4] Whether or not a nonconforming use can be enlarged or extended is ordinarily governed by the provisions of the local ordinances and regulations, and in this case, where the zoning regulations in effect when the nonconforming use vested not only impliedly prohibited a change from a classification as a "used car" lot to a lower classification as a lot for dismantling and wrecking of motor vehicles,[4] but def-

4. Logically it would seem that the dismantling, wrecking and burning of worn out or wrecked motor vehicles is far different and definitely more obnoxious than a used car lot and second hand furniture store. Cf. Parr v. Bradyhouse, 1939, 177 Md. 245, 9 A.2d 731.

initely disallowed all use as a junk yard in any land district unless such use was approved by the Zoning Commissioner, it would seem that the power to deny the use of land as a "junk yard" necessarily included the power to prohibit the extension or enlargement of an existing nonconforming use as a second hand furniture store and used car lot so as to encompass the added use of the premises as a junk yard for the junking and burning of automobiles. This is so because the spirit underlying zoning regulations is to restrict rather than increase nonconforming uses. 1 Yokley, Zoning Law and Practice, § 153; 2 Rathkopf, Law of Zoning and Planning, § 59–1; Colati v. Jirout, 1946, 186 Md. 652, 47 A.2d 613. The question, however, as to what is an extension or enlargement of a nonconforming use is ordinarily one of fact,[5] and in determining it the question in each case must stand on its own facts. 101 C.J.S. Zoning § 189.

[5, 6] While it is true that mere intensification of a nonconforming use is permissible so long as the nature of 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. Yokley, op. cit., § 152; Rathkopf, op. cit., §§ 58–5, 60–1; 58 Am.Jur., Zoning, § 166; 101 C.J.S. Zoning § 189, supra.

[7, 8] The courts generally disapprove—as a substantial departure from a vested nonconforming use—a change from one use to another. The rule in Maryland that a change from one nonconforming use to a new and different one constitutes an extension of the use is found in that line of cases which began with Chayt v. Zoning Appeals Board, 1939, 177 Md. 426, 9 A.2d 747, and has continued through a series of cases ending with Boulevard Scrap Co. v. City of Baltimore, 1957, 213 Md. 6, 130 A.2d 743.[6, 7] When, however, the zoning regulations authorize it, an extension of a nonconforming use may be allowed. See Board of Zoning Appeals of Howard County v. Meyer, 1955, 207 Md. 389, 114 A.2d 626, another Howard County case, where a permissible extension was allowed. It is also true—depending, of course, on the provisions of the local regulations in each case—that a different rule may be applicable when the change involves a substitution of one nonconforming use for another of the same or a higher classification. Higgins v. Mayor and City Council of Baltimore, 1955, 206 Md. 89, 110 A.2d 503; Nyburg v. Solmson, 1954, 205 Md. 150, 106 A.2d 483, 46 A.L.R.2d 1051; Hare v. Mayor and City Council of Baltimore, 1952, 200 Md. 477, 90 A.2d 217; Green v. Garrett, 1949, 192 Md. 52, 63 A.2d 326; Parr v. Bradyhouse, 1939, 177 Md. 245, 9 A.2d 751. Cf. Board of Zoning Appeals of Baltimore County v. Gue, 1958, 217 Md. 16, 141 A.2d 510. Ordinarily, however, a change may not be made in a nonconforming use of a higher classification to one of a lower classification, as was the case here. Roach v. Zoning Appeals Board, 1938, 175 Md. 1, 199 A. 812; Lipsitz v. Parr, 1933, 164 Md. 222, 164 A. 743. The reason for disallowing a change from one nonconforming use to another is because the lawful nonconforming use of land "must be held to contemplate only a continuation of substantially the same use which existed at the time of the adoption of the ordinance, and not some other and different kind of nonconforming use which the owner of the land * * * subsequently find to be profitable or advantageous." In re Botz (Botz v. Garrett), 1942, 236 Mo.App. 566, 159 S.W.2d 367, 372.

[9, 10] In this case, where there was evidence to justify a finding that the use of the property in question as a junk yard was not a vested nonconforming use on the critical date, the chancellor in so finding was not clearly erroneous, and we are therefore without authority to set aside the decree granting the injunctive relief sought by the Zoning Commissioner. Rule 886 a.

For the reasons stated herein the decree will be affirmed.

Decree affirmed; appellants to pay costs.

5. It is noted that the present zoning regulations (§ 13–F) specifically provide that whether a nonconforming use exists (or has been abandoned) shall be a *question of fact*.

6. Other cases in the Chayt line include Knox v. Mayor and City Council of Baltimore, 1941, 180 Md. 88, 23 A.2d 15; Colati v. Jirout, 1946, 186 Md. 652, 47 A.2d 613; Cleland v. Mayor and City Council of Baltimore, 1951, 198 Md. 440, 84 A.2d 49; Fritze v. City of Baltimore, 1953, 202 Md. 265, 96 A.2d 4; and Shannahan v. Kinggold, 1957, 212 Md. 481, 129 A.2d 797.

7. For a case in point from another jurisdiction concerning a new and different use prohibited as a nonconforming use, see President and Trustees of Village of Ossining v. Meredith, 1949, 275 App. Div. 850, 88 N.Y.S.2d 775, where the change was from the storage of poles, cables and pipes and the use of trucks from time to time to move such materials to the storage of tractors, freight trucks and busses and the daily use of such noisy and vibrating vehicles in and about the storage facility, the Appellate Division overruled a Special Term holding that "storage was storage" and held that the later use was new and different. For other out-of-state cases stating what constitutes a new and different use see Town of Lexington v. Bean, 1930, 272 Mass. 547, 172 N.E. 867 [change from repairing trucks by private owner to repair shop available to public generally]; Kensington Realty Holding Corp. v. Jersey City, 1937, 118 N.J.L. 114, 191 A. 787, affirmed 1938, 119 N.J.L. 338, 196 A. 691 [change from a tea room (formerly a doctor's office) to a funeral home]; Killian v. Brith Sholom Congregation, Mo.App.1941, 154 S.W.2d 387 [change of part of a cemetery into a place for the display and sale of monuments]; DeFelice v. Zoning Board of Appeals, 1948, 130 Conn. 156, 32 A.2d 635, 638, 147 A.L.R. 161 [change from a "dry-screen" sand mining operation to a "wet sand classifier"]; Sitgreaves v. Board of Adjustment, 1947, 136 N.J.L. 21, 54 A.2d 451 [change from a garage to an auto repair shop]; San Diego County v. McClurken, 1951, 37 Cal.2d 683, 234 P.2d 972 [change from small movable gasoline tanks to a considerably larger underground tank]; and Markey v. Danville Warehouse & Lumber Co., 1953, 119 Cal.App.2d 1, 259 P.2d 19 [change from nonindustrial use to a cement mixing operation].

225 Md. 86

Louis J. MEYERS, Indiv. and T/A Marclay-Oden Co.

v.

JACHAM ENTERPRISES, INC.

No. 202.

Court of Appeals of Maryland.

April 7, 1961.

Attachment proceeding presenting question of a broker's right to recover a commission from proceeds of a note held in escrow pursuant to a bulk sales agreement. The Circuit Court for Baltimore County, John E. Raine, Jr., J., awarded the funds in question to a claimant and appeals were taken. The Court of Appeals, Horney, J., held that an agreement in lieu of strict compliance with the bulk sales statute, providing for retention in escrow of a note for part of the purchase price to protect purchasers against enforcement of a rejected claim or "any other claims for fees, commissions or creditors" was intended only to benefit purchasers and not to enable broker to recover commission due from proceeds of note held in escrow.

Affirmed.

Defense counsel did not propose his second exception at this point and the parties went on to give their closing arguments to the jury. At the end of closing arguments and after the jury had retired defense counsel noted his second exception to the judge's assumption of a controverted fact, *i.e.*, that the car Dircks and Gloria saw was Morrow's Pacer.

The record clearly reflects that defense counsel had ample opportunity to interject his objection in timely fashion. Maryland Rule 757 h provides that an objection to a jury instruction shall be made "before the jury retires ... and shall state the matter or omission ... to which [counsel] objects." Morrow's objection did not conform to the requirements of Rule 757 h and is therefore barred from appellate review.

Judgment affirmed; appellant to pay costs.

MICROFILMED

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND v. E. L. GARDNER, INC.

[No. 11, September Term, 1981.]

Decided April 2, 1982.

ZONING — *Basic Principles — Division Of Community Into Use Districts, Each Restricted To Industrial, Commercial Or Residential Occupation Is Basic Tenet Of Efficient Employment Of Land.* p. 266

ZONING — *Nonconforming Uses — Limit Effectiveness Of Land Use Controls — Fundamental Problem Of Zoning Is Inability To Eliminate Incompatible Nonconforming Uses — Zoning Regulations Place Limits On Right To Change, Alter, Repair. Restore Or Recommence Nonconforming Uses — Purpose Of Such Restrictions Is To Achieve Ultimate Elimination Of Nonconforming Uses Through Economic Attrition And Physical Obsolescence.* pp. 266-268

ZONING — *Nonconforming Use — Whether Nonconforming Use Can Be Changed, Extended, Enlarged, Altered, Restored Or Recommenced After Abandonment Is Governed By Provisions Of Applicable Local Ordinance And Regulations — Such Laws Are Strictly Construed To Effectuate Purpose Of Eliminating Nonconforming Uses* p. 268

ZONING — *Prince George's County — Nonconforming Use — County Code Prohibits Change On Nonconforming Use To Any Use Other Than That Provided By Permits Under Which Nonconforming Use Operated — Addition Of Wet-Processing Facility To Existing Nonconforming Sand And Gravel Mining Operation Involves Change Of Nonconforming Use — County Council Has No Authority To Grant Special Exception Which Changes Nonconforming Use — Prince George's County Code, §§ 27-107, 27-108 (a), 27-482 (a), 27-553 (a), 27-538.1 (1979).* Where owner of nonconforming sand and gravel operation sought special exception to add a wet-processing facility, the Court *held*, construing the Prince George's County Zoning Ordinance, that a sand and gravel pit was a special exception use separate and distinct from a special exception use for sand and gravel wet-processing; that the addition of wet-processing to a nonconforming sand and gravel operation constituted a *change* of nonconforming use, rather than an intensification of a nonconforming use; and that the County Council lacked authority to approve a change of nonconforming use. Prince George's County Code (1979), §§ 27-107, 27-537 (a) (1) and 27-538.1 (a). pp. 268-270

ZONING — *Prince George's County — Nonconforming Use — Addition Of*

Wet-Processing Facility To Existing Nonconforming Sand And Gravel Mining Operation Is Not An Intensification Of Ongoing Nonconforming Use. pp. 268-270

J. A. A.

Motion for reconsideration filed April 30, 1982; denied May 6, 1982.

Certiorari to the Court of Special Appeals. (Circuit Court for Prince George's County, Blackwell, J.).

E. L. Gardner, Inc. appealed to the Circuit Court for Prince George's County from a decision of the County Council sitting as the District Council for Prince George's County, denying a special exception to use a nonconforming sand and gravel operation for wet-processing sand and gravel. From an order of the Circuit Court reversing the District Council, Prince George's County appealed to the Court of Special Appeals, which *affirmed* the Circuit Court *Prince George's County v. E. L. Gardner, Inc.*, 47 Md. App. 471, 424 A.2d 392 (1981). The Court granted the County's petition for writ of certiorari.

Judgment of the Court of Special Appeals reversed. Case remanded to that Court with directions to reverse the judgment of the Circuit Court for Prince George's County, and to remand the case to that Court with directions to enter an order affirming the decision of the County Council of Prince George's County. Costs to be paid by appellee.

The cause was argued before MURPHY, C. J., and SMITH, *DIGGES, ELDRIDGE, COLE, DAVIDSON and RODOWSKY, JJ.

Steven M. Gilbert, Associate County Attorney, with whom were *Robert B. Ostrom, County Attorney*, and *Michael O. Connaughton, Deputy County Attorney*, on the brief, for appellant.

Paul B. Rodbell, with whom were *William V. Meyers* and *Meyers & Billingsley, P.A.* on the brief, for appellee.

**Reporter's Note:* Digges, J., now retired, participated in the hearing and conference of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and adoption of this opinion.

DAVIDSON, J., delivered the opinion of the Court.

This case presents a question concerning nonconforming uses. More particularly, it involves the question whether, under the applicable provisions of the Prince George's County Code (1979), Subtitle 27.Zoning, the owner of a nonconforming surface mining sand and gravel operation can obtain a special exception to operate a sand and gravel wet-processing facility at the same location. The relevant provisions of the Prince George's County Code are as follows.

Section 27-101 provides in pertinent part:

"(a) Terms used in this Subtitle are defined as follows:

. . .

"(110.1) Nonconforming Building or Structure: Any building or structure not in conformity with a regulation of the zone in which it is situated, which regulation was adopted subsequent to the lawful erection of such building or structure. . . .

"(111) Nonconforming Use: Use of any building, structure, or land, or portion thereof, not in conformity with a regulation of the zone in which it is situated, including any regulation of Division 36 [Special Exceptions] applicable to said use, which regulation was adopted subsequent to the lawful establishment of such use. . . . The term 'nonconforming use' shall be deemed to include any building, structure, or other facility utilized in connection with a nonconforming use. . . .

. . .

"(152) Use: The principal purpose for which a lot, and/or the main building thereon, is designed, arranged, or intended and for which it may be used, occupied, or maintained."

Section 27-107 (a) provides:

"(a) *Any nonconforming* building, structure, or *use*, as defined in Section 27-101, *may be continued,*

repaired, or maintained *without enlargement or extension*, unless otherwise provided by this Subtitle." (Emphasis added.)

Section 27-107 (e) provides in pertinent part:

"(e) *No nonconforming use may be changed to any use other than that provided by . . . permits under which the nonconforming use operated* at the time the nonconforming use was established." (Emphasis added.)

Section 27-108 (a) provides in pertinent part:

"(a) *A nonconforming* building, structure. or *use may only be enlarged or extended if* such enlargement or extension shall conform to the provisions of this Subtitle for the zone in which it is located and *a special exception has been approved by the District Council*, as provided in Division 36 [Special Exceptions] of this Subtitle." (Emphasis added.)

Section 27-482 (a) provides in pertinent part:

"(a) *Any nonconforming* building, structure, or *use* as defined in Section 27-101, *may be continued*, subject to the regulations of Section 27-107, *and may be structurally expanded or extended*, subject to the provisions of Division 36 [Special Exceptions] of this Subtitle." (Emphasis added.)

Section 27-553 provides in pertinent part:

"(a) *Any nonconforming* building, structure, or *use*, as defined in Section 27-101 herein . . . *may be enlarged, extended, or demolished and reconstructed*, if the applicant can show generally that such enlargement, extension, or reconstruction will not adversely affect the use of adjacent properties and the neighborhood, subject to the following requirements and conditions:

"(1) A nonconforming building or structure, or a

building or structure utilized in connection with a nonconforming use, may be enlarged in height or bulk. . . .

"(2) A nonconforming use may be extended throughout a part or whole of a building in which such nonconforming use lawfully exists, or to the bounding lot lines of the lot. . . .

"(3) A nonconforming use may be reconstructed within the bounding lot lines of the lot. . . .

"(4) Any addition to an existing building or structure. or any new building or structure, constructed in connection with a nonconforming use shall, at a minimum, conform to the requirements relative to building lines, setbacks, yards, and height limits in the zone in which such nonconforming use is situated. . . ." (Emphasis added.)

The respondent, E. L. Gardner, Inc. (owner), owns approximately 450 acres of land (subject property) located in Prince George's County. The subject property was originally zoned R-R (rural-residential, 15,000 square foot minimum lot size) by the comprehensive zoning map adopted 2 December 1966. It was reclassified to the O-S zone (open space, single-family residential, 5 acre minimum lot size) by the comprehensive zoning map adopted 12 July 1977. Neither a sand, gravel or clay pit, nor a wet-processing facility is a permitted use in the O-S zone. Both, however, are special exception uses in that zone. § 27-537 (a) (1) and § 27-538.1 (a).[1]

1. § 27-537 (a) (1) provides:

"Sec. 27-537. *Sand, gravel or clay pits*; rock or stone quarries; mining removal of earth or topsoil; extraction and removal of natural materials or deposits.

"(a) In all zones, the use of land for any or all of the purposes or uses of this Section, subject to the following conditions:

"(1) Except in the I-2 Zone *there shall be no use of heavy machinery for washing, refining, or other processing or manufacturing*, unless a special exception is granted for sand and gravel wet processing under the provisions of Section 27-538.1. The use of heavy machinery for extraction and

Before the subject property was zoned, it was used for the mining of sand and gravel. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. § 27-108 (b).[2] In 1977, an application was filed, pursuant to § 27-538.1, for a special exception for the wet processing of sand and gravel.

The technical staff of the Maryland-National Capital Park and Planning Commission and the Prince George's County Planning Board recommended approval, with conditions, as did the Zoning Hearing Examiner. Thereafter, the County Council sitting as the District Council for Prince George's County (Council) rejected those recommendations and entered an order denying the requested special exception. In its written findings and conclusions, the Council, among other things, said:

> "5. Council further concludes that to grant this special exception would be an unwarranted extension and expansion of a nonconforming use, contrary to the provisions of COUNTY CODE Sect. 27-107. This proposed sand and gravel processing facility would obviously encourage the further continuation of sand and gravel extraction operations, contrary to the purposes of the County's

removal of natural material or deposits from the site is permissible." (Emphasis added.)

§ 27-538.1 (a) provides in pertinent part:

"Sec. 27-538.1. *Sand and/or gravel wet-processing.* . . .

"(a) In all zones, except the I-3 and I-4 Zones wherein such uses are prohibited, and in the I-2 Zone wherein such uses are permitted, the use of land for wet-processing, including washing, sorting, refining, and stockpiling of natural materials, and in the I-2 Zone only, including such facilities as concrete batching plants, asphalt or cement mixing plants, and similar facilities. . . ." (Emphasis added.)

2. § 27-108 (b) provides in pertinent part:

"(b) *Satisfactory evidence as to the actual existence of a nonconforming use is a prerequisite to its continuance and shall be established by the issuance of a use and occupancy permit* by the Building Inspector upon approval and certification by the Planning Board." (Emphasis added.)

> Zoning Ordinance, which has the object of discouraging nonconforming uses."

The owner appealed to the Circuit Court for Prince George's County which reversed the action of the Council. In its opinion the trial court said:

> "Penultimately, the District Council concluded that to grant Gardner's special exception would be an 'unwarranted extension and expansion' of the Petitioner's nonconforming use, and would be contrary to § 27-107 of the County Code.
>
> . . .
>
> "The Court notes that enlargement or extension of a nonconforming use is contemplated by the Code, and that the criteria for a 'permitted' enlargement or extension are set forth in § 27-553 of the Code. However, the Court finds that the requested special exception is not an extension or enlargement as contemplated by the Code, see § 27-533, but rather an intensification of Gardner's ongoing nonconforming use."

The Council appealed to the Court of Special Appeals which affirmed the judgment of the trial court. *Prince George's County v. E. L. Gardner, Inc.*, 47 Md.App. 471, 424 A.2d 392 (1981). In its opinion, that Court said:

> "If the controversy here considered involved only the question whether the contemplated use of the land owned by the appellee amounted to an illegal enlargement or expansion of its non-conforming use of the premises, it would not present a difficult question to be decided. The problem in this case, however, is that the proposed use of the appellee's property does not depend on the non-conforming use, but rather on the right to a special exception established by the Prince George's County Zoning Ordinance.

. . . .

"Under the circumstances revealed by the record, we agree with the appellee that the non-conforming use status of the appellee's property is irrelevant in the determination of this controversy.

. . .

"The sole question to be answered in this appeal then is whether [the trial court] erred in concluding that based on the evidence before the District Council the record did not raise an issue before the administrative body which was 'fairly debatable.'

. . .

"Our examination of the record convinces us that the applicant more than met its burden of producing probative and credible evidence on all the issues required to be proven, and that the evidence of the protestants was so vague and indefinite as to fail to raise fair debate in a reasoning mind. Therefore, we find that the action of the District Council, in refusing to grant the special exception was arbitrary, capricious, and illegal." *E. L. Gardner, Inc.*, 47 Md.App. at 477-78, 480, 424 A.2d at 395-97.

The Council filed a petition for a writ of certiorari that we granted. We shall reverse the judgment of the Court of Special Appeals.

One of the basic tenets of zoning is that some uses of land are incompatible with others, and that more efficient employment of land resources is achieved if such incompatible uses are separated. An admixture of incompatible land uses is avoided by dividing the community into use districts, each restricted to industrial, commercial or residential occupation.

As a practical matter, however, homogeneous land use has not been achieved. Major movement of population from rural to urban areas had begun half a century before the first comprehensive zoning ordinance was enacted in the United States. As a result, land to be zoned was not always vacant.

Indeed, frequently it was occupied by landowners who had developed their land unfettered by any significant degree of governmental control. Thus, use districts, designed to be homogenous, unavoidably include land devoted to uses proscribed by the zoning regulations. Such nonconforming uses pose a formidable threat to the success of zoning. They limit the effectiveness of land use controls, contribute to urban blight, imperil the success of the community plan, and injure property values. 1 R. M. Anderson, *American Law of Zoning* § 602 (2d ed. 1976).

This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:

> "Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use."

Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *The Arundel Corp. v. Board of Zoning Appeals of Howard County*, 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); *Stieff v. Collins*, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); *Colati v. Jirout*, 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); *Beyer v. Mayor of Baltimore*, 182 Md. 444, 446, 34 A.2d 765, 766 (1943); *See Kastendike v. Baltimore Ass'n for Retarded Children, Inc.*, 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).

Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. *Feldstein v. La Vale Zoning Board*, 246 Md. 204, 211, 227 A.2d 731, 734 (1967); *Phillips v. Zoning Comm'r of Howard County*, 225 Md. 102, 109, 169 A.2d 410, 413 (1961); *Board of Zoning Appeals of Baltimore County v. Gue*, 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. *Mayor of Baltimore v. Byrd*, 191 Md. 632, 638, 62 A.2d 588, 591 (1948); *Colati*, 186 Md. at 658-59, 47 A.2d at 616; *Knox v. Mayor of Baltimore*, 180 Md. 88, 96, 23 A.2d 15, 18 (1941); *see City of Hagerstown v. Wood*, 257 Md. 558, 563, 263 A.2d 532, 534 (1970); *Hewitt v. County Comm'rs of Baltimore County*, 220 Md. 48, 59, 151 A.2d 144, 150 (1959).

Applying these principles to the instant case produces a clear result. Section 27-107 (a) provides that any nonconforming use may be continued without enlargement

or extension. Section 27-107 (e) explicitly provides that "no nonconforming use may be changed to any use other than that provided by . . . permits under which the nonconforming use operated." Section 27-108 (a) provides that a nonconforming use may be enlarged or expanded if a special exception is obtained. Sections 27-482 (a) and 27-553 (a) provide that a nonconforming use may be structurally expanded or extended subject to certain structural requirements. These provisions embody a statutory scheme that explicitly prohibits an existing nonconforming use from being changed to any other use while it explicitly permits an existing nonconforming use to be enlarged or extended under specified circumstances. Under the applicable local ordinances, there is, therefore, a significant and critical difference between changing an existing nonconforming use to another use and enlarging or extending an existing nonconforming use.

Here the record shows that a sand and gravel mining operation existed on the subject property before zoning was applicable. This use has been established as a legal nonconforming use by the issuance of a use and occupancy permit. Section 27-537 delineates sand, gravel, and clay pits as a separate and distinct special exception use in which heavy machinery for washing or processing is explicitly prohibited unless a special exception for wet processing is obtained. Section 27-538 delineates wet-processing facilities as a separate and distinct special exception use. Each of these uses has differing standards, regulations, and requirements. Thus, there can be no question that the ordinance itself establishes that these two uses are indeed different. Consequently, the addition of the wet-processing facility to the existing nonconforming sand and gravel mining operation necessarily involves a change in the use of the subject property. Such a change in use is explictly prohibited by § 27-107.

Under the circumstances here, the Council had no authority to grant the requested special exception. The trial court erred when it reversed the Council's denial of the requested

special exception. Accordingly, we shall reverse the judgment of the Court of Special Appeals that affirmed the judgment of the trial court.

Judgment of the Court of Special Appeals reversed.
Case remanded to that Court with directions to reverse the judgment of the Circuit Court for Prince George's County and to remand the case to that Court with directions to enter an order affirming the decision of the County Council of Prince George's County.
Costs to be paid by appellee.

DAVID HAROLD UTT A/K/A HAROLD DAVID UTT v. STATE OF MARYLAND

[No. 57, September Term, 1981.]

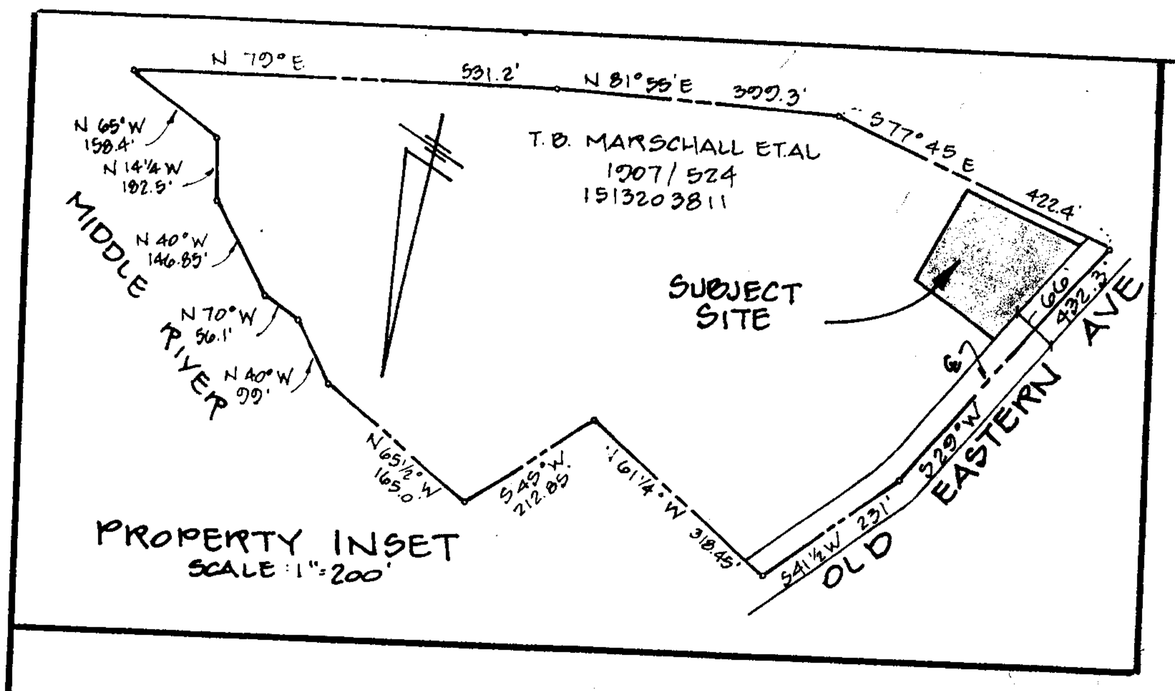
Decided April 5, 1982.

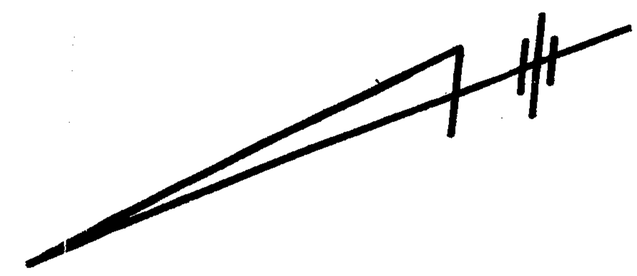
CONSTITUTIONAL LAW — CRIMINAL LAW — *Right To Assistance Of Counsel Is Firmly Embedded In Law — Right To Counsel Applies Whenever Criminal Proceeding Has Reached "Critical Stage" — Counsel Appointed When Defendant Is Financially Unable To Retain Private Attorney.* pp. 274-275

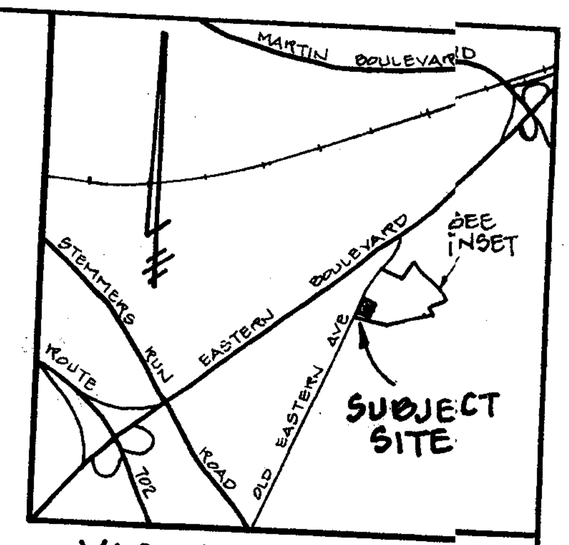
EXTRADITION — *Nature Of Extradition Proceeding — Hearing Before Governor Or His Representative Is Summary, Informal Proceeding — Normal Rules Of Evidence Applicable To Criminal Proceedings Do Not Apply — Hearing Is Not Designed To Test Guilt Or Innocence Of Accused — Constitutional Protections For Suppression Of Evidence Or Speedy Trial Do Not Apply To Extradition Proceedings — Extradition Clause Intended To Enable Each State To Bring Offenders To Trial Swiftly In State Where Alleged Offense Was Committed — U. S Const., Art IV, § 2, Cl. 2, Code (1957) Art. 41, § 19.* pp 275-276

EXTRADITION — JUDICIAL REVIEW — *Governor's Grant Of Extradition Is Prima Facie Evidence That Constitutional And Statutory Requirements For Rendition Have Been Met — In Considering Release On Habeas Corpus, Court Can Only Review Whether Extradition Documents Are In Order, Whether Petitioner Has Been Charged With A Crime In Demanding State, Whether Petitioner Is Person Named In Request For Extradition And Whether Petitioner Is A Fugitive — U. S Const., Art. IV, § 2, Cl. 2.* p. 285

EXTRADITION — CONSTITUTIONAL LAW — *Right To Counsel — Rendition Hearing Before Governor Is Not "Critical Stage" Of Criminal Process That Would Confer Upon Indigent A Right To Assigned Counsel — U. S. Const., Art. IV, § 2, Cl. 2; Art. VI; Fourteenth Amendment.* Reviewing many authorities and cases dealing with when a criminal proceeding has reached a "critical stage," requiring right to counsel, the Court *held* that a Governor's rendition (extradition) hearing involves no irretrievable loss of basic rights and is unconnected with guilt and innocence, so that it was not a "critical stage" of the proceeding. Consequently, an indigent defendant is not entitled, under the State or United States Constitutions, to court-appointed counsel. pp. 276-286







VICINITY MAP
SCALE: 1"=2000'

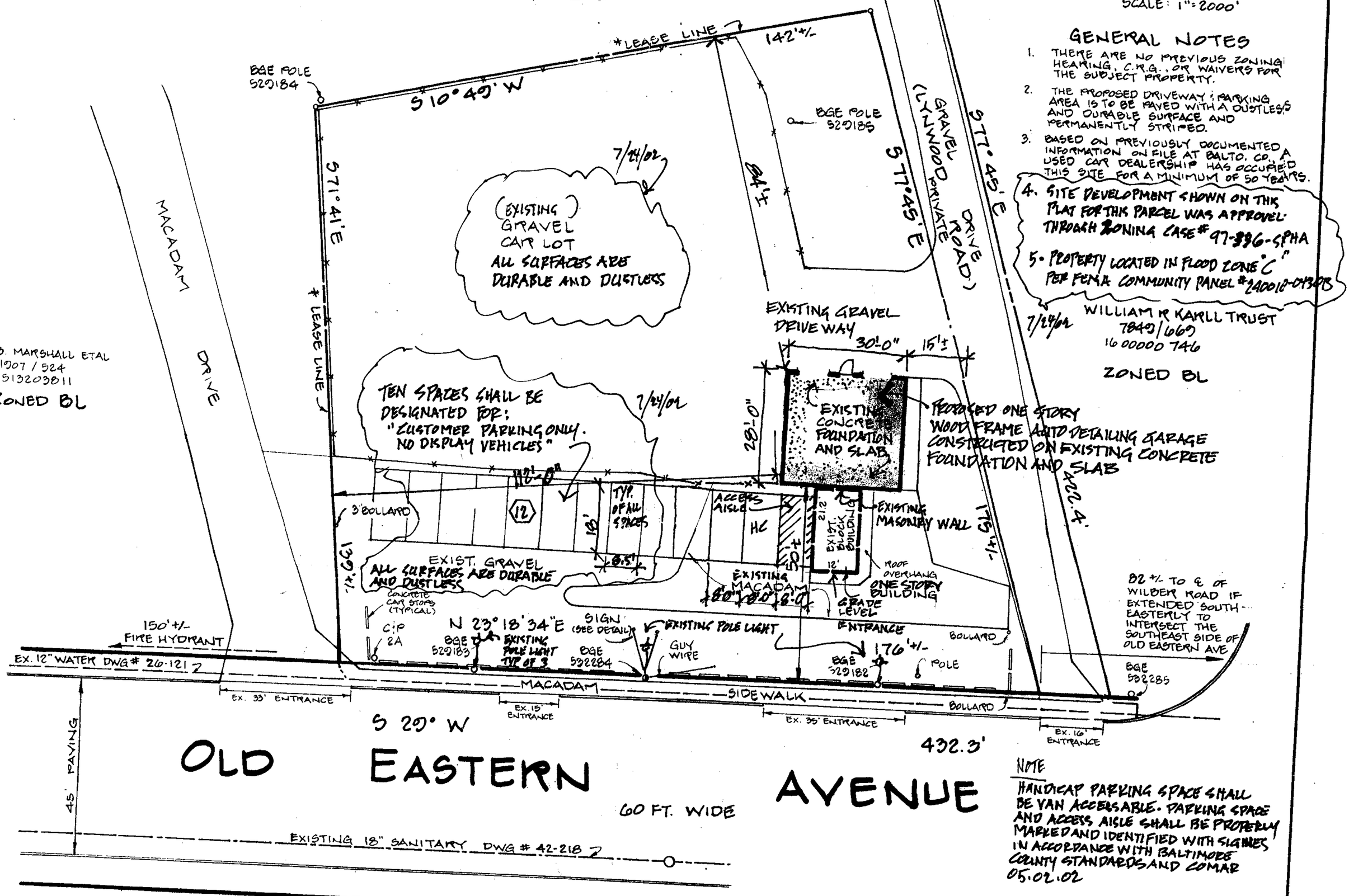
T.B. MARSHALL ET.AL
1907/524
1513203811
ZONED BL

GENERAL NOTES

1. THERE ARE NO PREVIOUS ZONING HEARING, C.R.G., OR WAIVERS FOR THE SUBJECT PROPERTY.
2. THE PROPOSED DRIVEWAY & PARKING AREA IS TO BE PAVED WITH A DUSTLESS AND DURABLE SURFACE AND PERMANENTLY STRIPED.
3. BASED ON PREVIOUSLY DOCUMENTED INFORMATION ON FILE AT BALTO. CO., A USED CAR DEALERSHIP HAS OCCUPIED THIS SITE FOR A MINIMUM OF 50 YEARS.
4. SITE DEVELOPMENT SHOWN ON THIS PLAT FOR THIS PARCEL WAS APPROVED THROUGH ZONING CASE # 97-336-SPHA
5. PROPERTY LOCATED IN FLOOD ZONE "C" PER FEMA COMMUNITY PANEL # 240010-0430B

7/24/02

WILLIAM R KARLL TRUST
7849/669
16 00000 746
ZONED BL



NOTE

HANDICAP PARKING SPACE SHALL BE VAN ACCESSABLE. PARKING SPACE AND ACCESS AISLE SHALL BE PROPERLY MARKED AND IDENTIFIED WITH SIGNES IN ACCORDANCE WITH BALTIMORE COUNTY STANDARDS AND COMAR
05.02.02

NOTE

ALL INFORMATION SHOWN ON THIS SITE PLAN IS BASED ON THE "PLAT TO ACCOMPANY ZONING PETITION" DATED 11/15/96, REVISED 1/31/97 PREPARED BY SPELLMAN, LARSON, AND ASSOCIATES, INC OF TOWSON, MARYLAND

SITE PLAN 1"=20'-0"

7/24/02

WATERVIEW AUTO SALES (USED AUTO SALES)
1901 OLD EASTERN AVE
BALTIMORE, MARYLAND 21221

PIECHOCKI
BUILDING DEVELOPMENT CONSULTANTS
7500 Harford Road Suite 100
Baltimore, Maryland 21234
(410) 426-0302 Fax (410) 426-7779

JUNE 17, 2002
REV JUNE 26, 2002
REV JULY 24, 2002

SITE DATA

SITE AREA	0.53 AC ±
ELECTION DIST.	15
COUNCILMANIC DIST.	5
EXISTING ZONING	BL
DEED REFERENCE	1907/524
TAX MAP/PARCEL/GRID	90/999/23
TAX ID #	1513203810
EXISTING USE	AUTO SALES
PROPOSED USE	AUTO SALES

PARKING CALCULATIONS

TOTAL FLOOR AREA PROPOSED = 1094 SQ.FT.

PARKING REQUIRED

5 SPACES PER 1000 SF

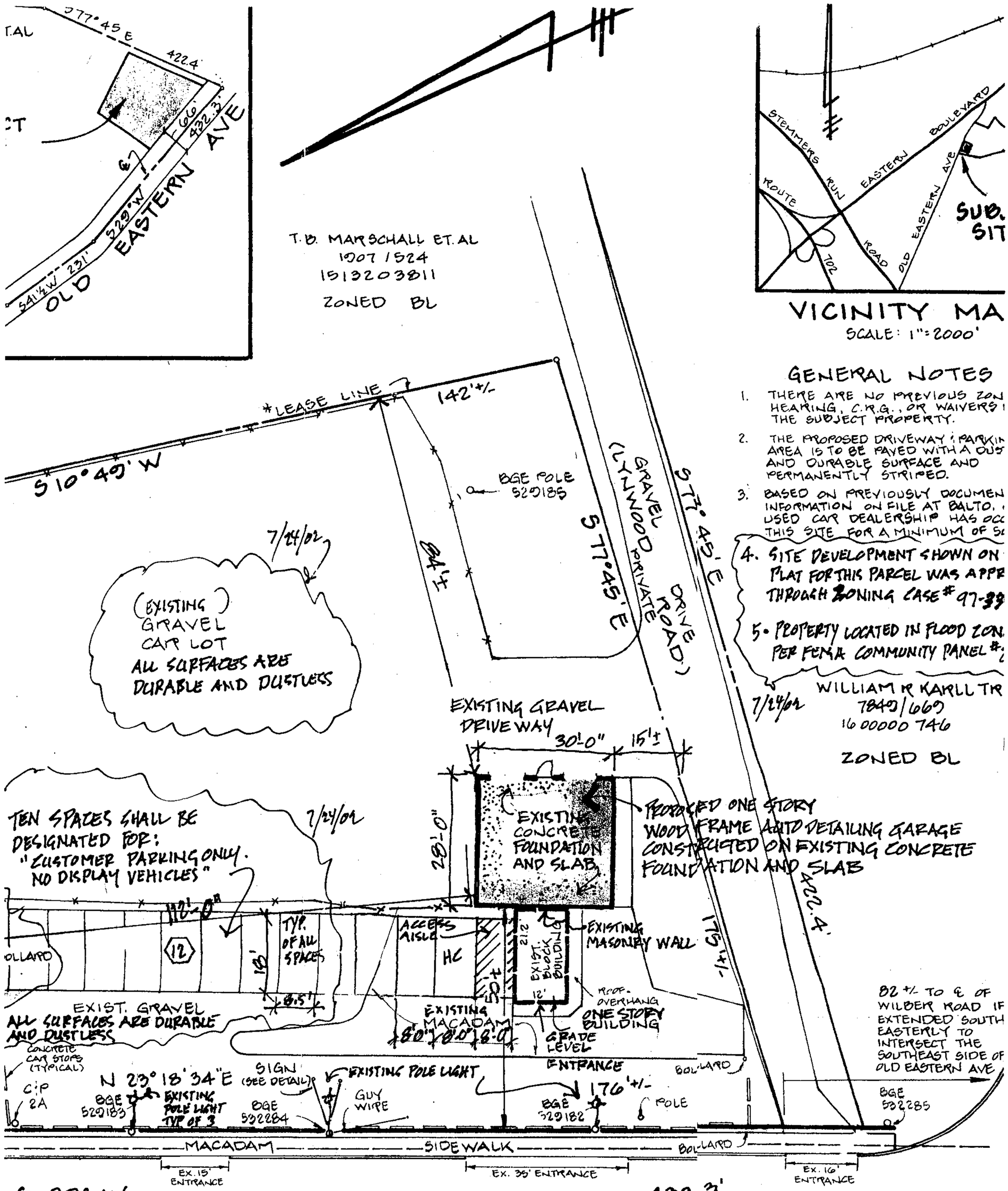
$\frac{1094 \text{ SF}}{1000} \times 5/1000 = 6$ SPACES REQUIRED

PARKING PROVIDED

12 SPACES

NOTE

LANDSCAPING APPEARS ON SEPARATE PLAN # 7-24



GENERAL NOTES

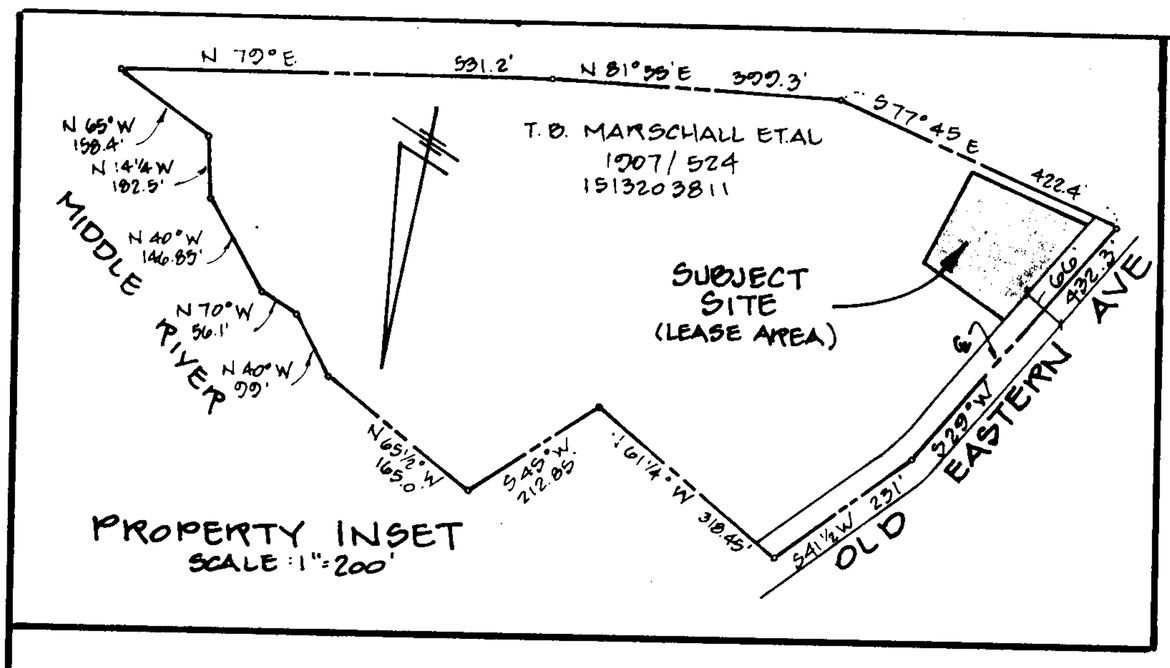
1. THERE ARE NO PREVIOUS ZON HEARING, C.R.G., OR WAIVERS THE SUBJECT PROPERTY.
2. THE PROPOSED DRIVEWAY & PARKIN AREA IS TO BE PAVED WITH A DUS AND DURABLE SURFACE AND PERMANENTLY STRIPED.
3. BASED ON PREVIOUSLY DOCUMEN INFORMATION ON FILE AT BALTO. USED CAR DEALERSHIP HAS OCC THIS SITE FOR A MINIMUM OF S
4. SITE DEVELOPMENT SHOWN ON PLAT FOR THIS PARCEL WAS APPR THROUGH ZONING CASE # 97-39
5. PROPERTY LOCATED IN FLOOD ZON PER FEMA COMMUNITY PANEL #

NOTE

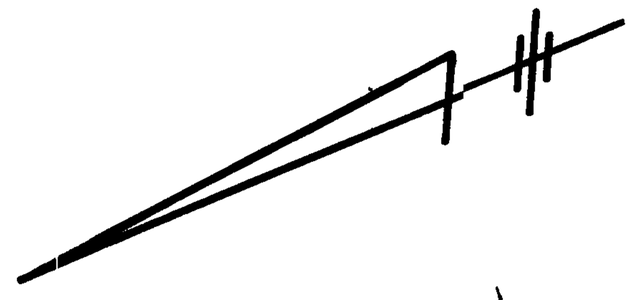
HANDICAP PARKING SPACE SH BE VAN ACCESSABLE. PARKING AND ACCESS AISLE SHALL BE PA MARKED AND IDENTIFIED WITH S IN ACCORDANCE WITH BALTIMOR COUNTY STANDARDS AND COMA 05.02.02

SITE PLAN 1"=20'-0"

7/24/02



PROPERTY INSET
SCALE: 1" = 200'



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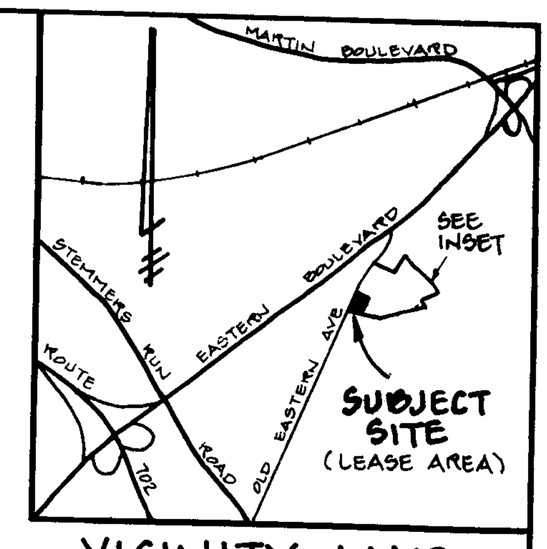
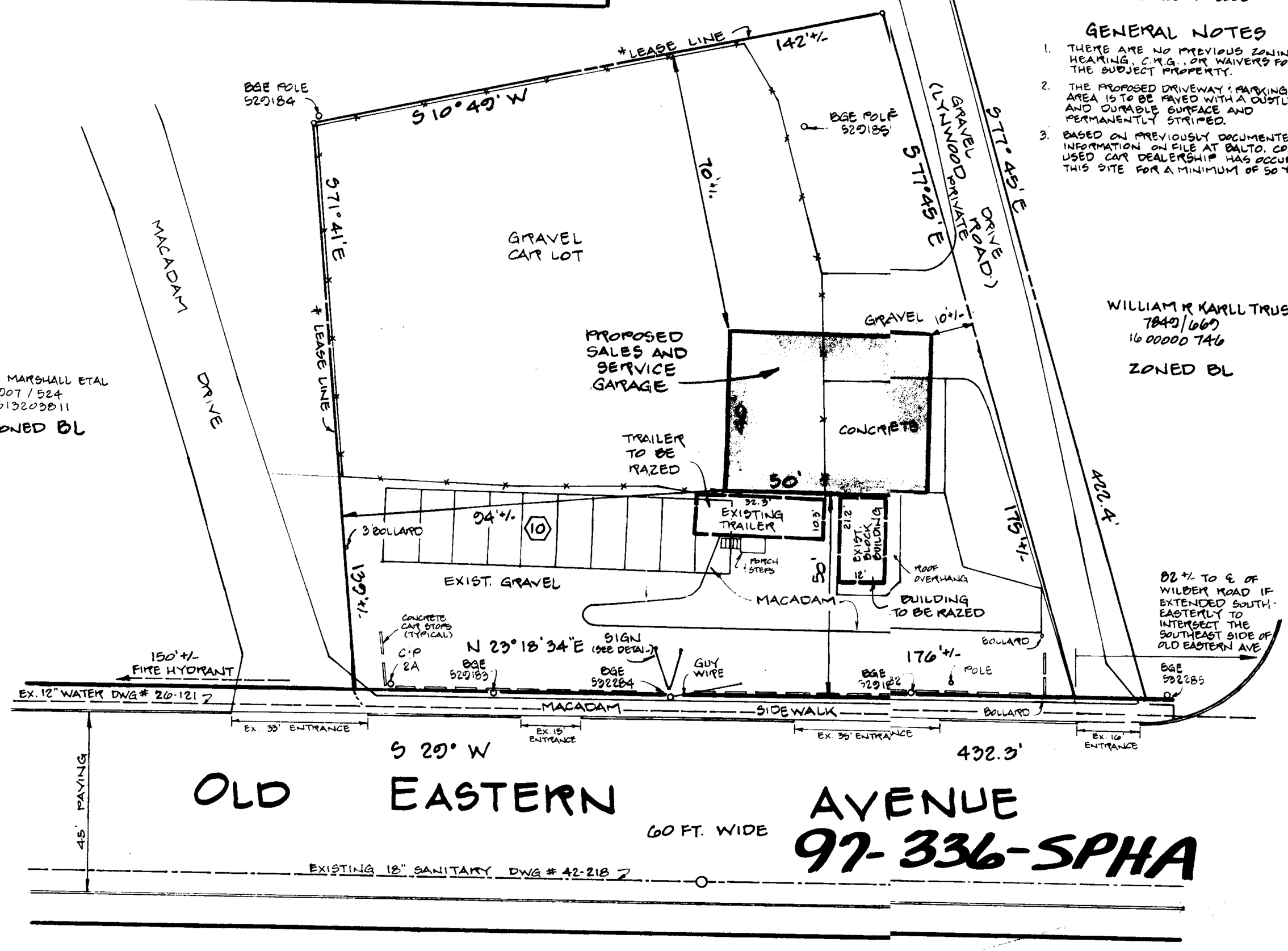
1513203811
ZONED BL

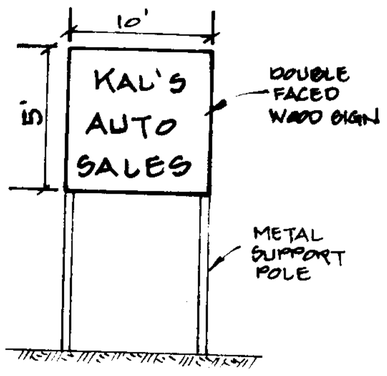


VICINITY MAP
SCALE: 1" = 2000'

GENERAL NOTES

1. THERE ARE NO PREVIOUS ZONING HEARING, C.R.G., OR WAIVERS FOR THE SUBJECT PROPERTY.
2. THE PROPOSED DRIVEWAY & PARKING AREA IS TO BE PAVED WITH A DUSTLESS AND DURABLE SURFACE AND PERMANENTLY STRIPED.
3. BASED ON PREVIOUSLY DOCUMENTED INFORMATION ON FILE AT BALTO. CO., A USED CAR DEALERSHIP HAS OCCURED THIS SITE FOR A MINIMUM OF 50 YEARS.





SIGN DETAIL
NOT TO SCALE

ZONING PETITION NOTE:

THIS PLAT IS TO ACCOMPANY A ZONING PETITION FOR A SPECIAL HEARING TO CONFIRM A PRE-EXISTING NON-CONFORMING USE AND A ZONING PETITION FOR A VARIANCE TO SECTION 104.3 OF THE BCZR TO ALLOW FOR AN INCREASE IN FLOOR AREA OF A NON-CONFORMING USE OF 341% IN LIEU OF THE ALLOWED 25%.

PETITION PHOTO

SITE DATA

LEASE AREA	0.59 ACS.+/-
ELECTION DISTRICT	15
COUNCILMANIC DISTRICT	5
EXISTING ZONING	BL
DEED REFERENCE	1907/524
TAX MAP / PARCEL / GRID	00/000/23
TAX ACCOUNT No.	1513203810
EXISTING USE	AUTO SALES
PROPOSED USE	AUTO SALES & SERVICE

PARKING CALCULATIONS

TOTAL FLOOR AREA PROPOSED: 2,000 SF

PARKING REQUIRED
5 SPACES PER 1,000 SF
2,000 SF / 5 SP = 10 SPACES

PARKING PROVIDED:
10 SPACES

REVISIONS

NO.	DATE	DESCRIPTION
1	12/12/96	REV. PER OWNERS COMMENTS
2	1/31/97	ZONING OFFICE COMMENTS

SPELLMAN, LARSON & ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
SUITE 406, JEFFERSON BLDG., TOWSON, MD 21204
PHONE: 823-3535

PLAT TO ACCOMPANY ZONING PETITION

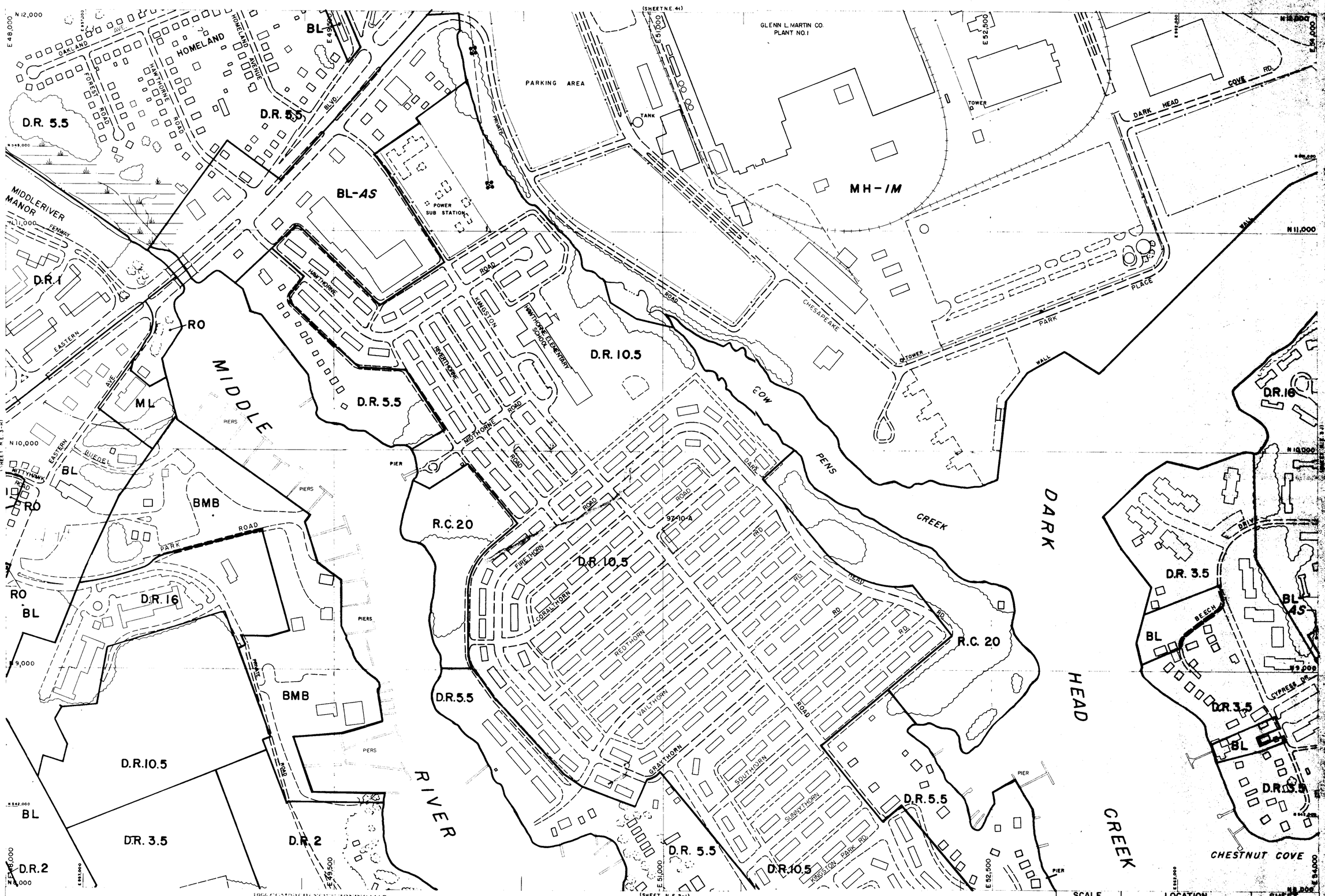
1901 OLD EASTERN AVE KAL'S AUTO SALES

MICROFILMED

15TH ELECTION DISTRICT — BALTIMORE COUNTY, MD

SCALE: 1" = 20'	DES. BY:	SHT. 1 OF 1
DATE: 11/15/96	DRN. BY: P.M.N	

96070



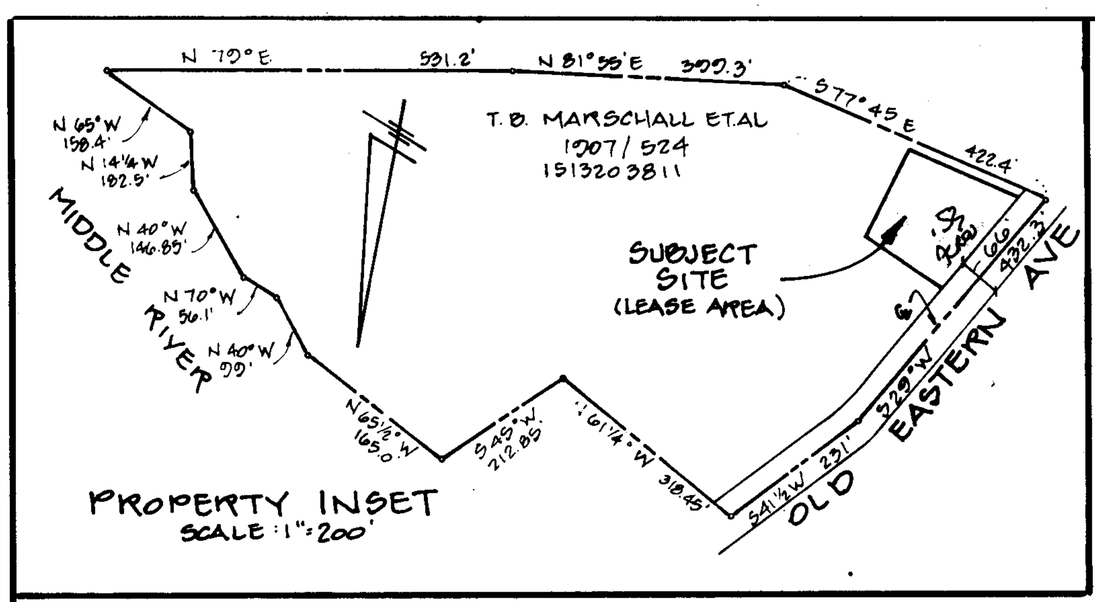
1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
on February 5, 1996
Bills No. 32-96, 33-96, 34-96, 35-96, 36-96, 37-96, 38-96, 39-96, 40-96, 41-96, 42-96, 43-96, 44-96, 45-96, 46-96, 47-96, 48-96, 49-96, 50-96, 51-96, 52-96, 53-96, 54-96, 55-96, 56-96, 57-96, 58-96, 59-96, 60-96, 61-96, 62-96, 63-96, 64-96, 65-96, 66-96, 67-96, 68-96, 69-96, 70-96, 71-96, 72-96, 73-96, 74-96, 75-96, 76-96, 77-96, 78-96, 79-96, 80-96, 81-96, 82-96, 83-96, 84-96, 85-96, 86-96, 87-96, 88-96, 89-96, 90-96, 91-96, 92-96, 93-96, 94-96, 95-96, 96-96, 97-96, 98-96, 99-96, 100-96, 101-96, 102-96, 103-96, 104-96, 105-96, 106-96, 107-96, 108-96, 109-96, 110-96, 111-96, 112-96, 113-96, 114-96, 115-96, 116-96, 117-96, 118-96, 119-96, 120-96, 121-96, 122-96, 123-96, 124-96, 125-96, 126-96, 127-96, 128-96, 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96
Kevin Kamenetz
Baltimore County Executive

I-SE
I-NE

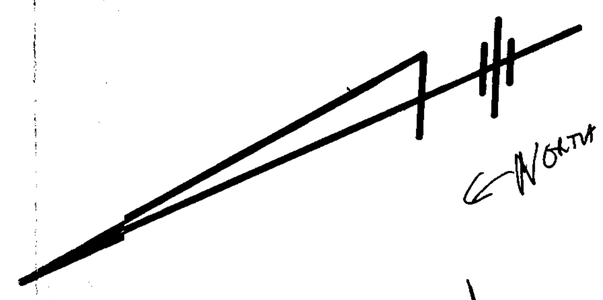
THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

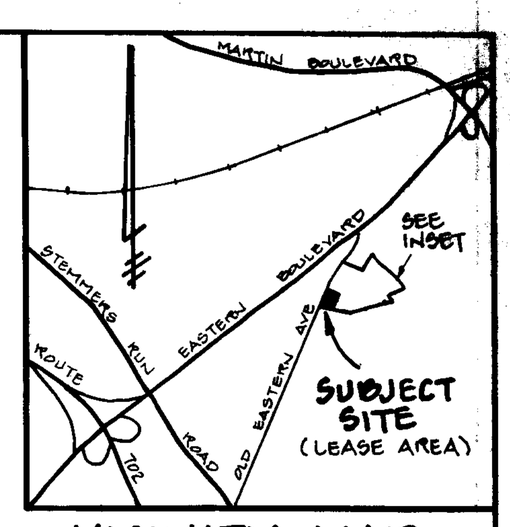
BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	MIDDLE RIVER KINGSTON	N.E. 3-I
DATE OF PHOTOGRAPHY JANUARY 1986		



PROPERTY INSET
SCALE: 1" = 200'





VICINITY MAP
SCALE: 1" = 2000'

GENERAL NOTES

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2. THE PROPOSED DRIVEWAY & PARKING AREA IS TO BE PAVED WITH A DUSTLESS AND DURABLE SURFACE AND PERMANENTLY STRIPED.
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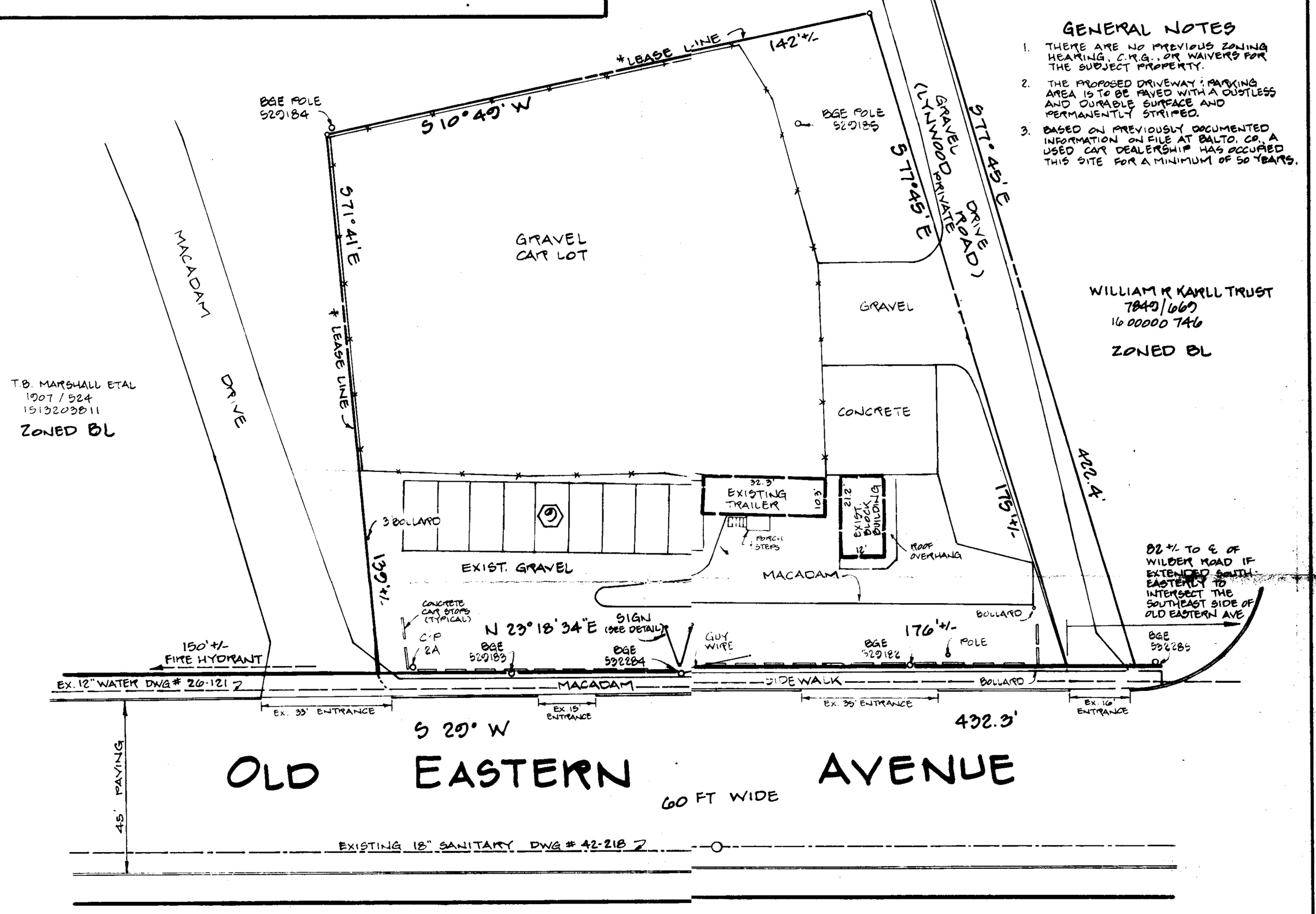

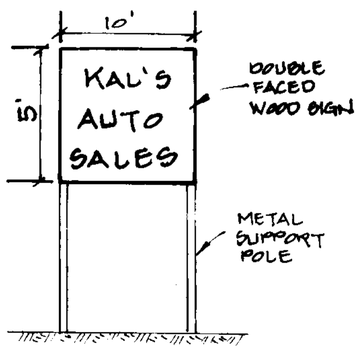

SIGN DETAIL
NOT TO SCALE

ZONING PETITION NOTE:

THIS PLAT IS TO ACCOMPANY A ZONING PETITION FOR A SPECIAL HEARING TO CONFIRM A PRE-EXISTING NON-CONFORMING USE.

SITE DATA

LEASE AREA	0.59 ACS.+/-
ELECTION DISTRICT	15
COUNCILMANIC DISTRICT	5
EXISTING ZONING	BL
DEED REFERENCE	1907 / 524
TAX MAP / PARCEL / GRID	90/999/23
TAX ACCOUNT No.	1513203810
EXISTING USE	AUTO SALES
PROPOSED USE	AUTO SALES

PARKING CALCULATIONS

TOTAL FLOOR AREA 587 SF
PARKING REQUIRED
5 SPACES PER 1000 SF
0.587 x 5 SPS = 3 SPACES
PARKING PROVIDED - 9 SPACES

Pet. Exh. #1

Amended Plat

REVISIONS

NO.	DATE	DESCRIPTION
1	12/12/96	REV. PER OWNERS COMMENTS
2	1/31/97	ZONING OFFICE COMMENTS
3	2/26/98	REV. PER ATTORNEYS INSTRUCTIONS

SPELLMAN, LARSON & ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
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PLAT TO ACCOMPANY ZONING PETITION

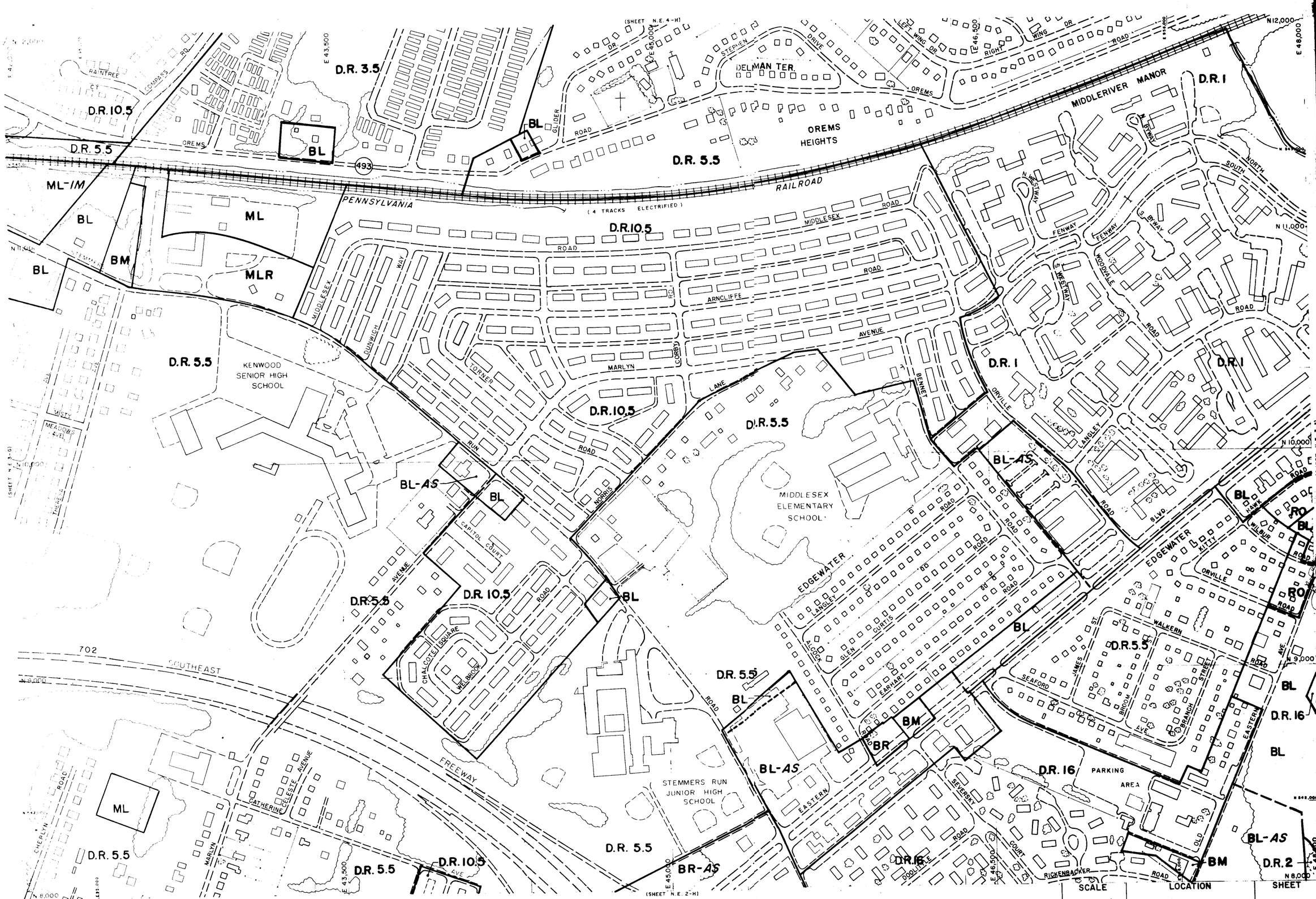
1901 OLD EASTERN AVE KAL'S AUTO SALES

MICROFILMED

15TH ELECTION DISTRICT — BALTIMORE COUNTY, MD

SCALE: 1" = 20'	DES. BY:	SHT. 1 OF 1
DATE: 11/15/96	DRN. BY: P.M.N	

96070



I - SW I - SE
I - NW I - NE

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

1996 COMPREHENSIVE ZONING MAP
ADOPTED BY
THE BALTIMORE COUNTY COUNCIL
ON
Bill No.
Ken Kennedy
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	STEMMERS RUN AERO ACRES	N. E. 3-H
DATE OF PHOTOGRAPHY JANUARY 1986		

being sold on the subject site without interruption. Ms. Mueller also submitted a commercial lease dated October 12, 1995 (Petitioner's Exhibit #4), indicating Roberta Day is the current lessee, with Kal's Auto being the current business in operation.

On cross-examination, Ms. Mueller stated again that her memory of the subject site dated back to 1938, and that there has never been any interruption in the use of a used car dealership for a period of one year or more. She further stated this was the first time she was required to show compliance to a nonconforming use, which only surfaced due to the current lessee's request for a variance to increase the size of the original block building, which has remained unchanged since it was first constructed by Mr. Carey in 1941. Ms. Mueller further indicated that she had no intentions to modify or increase the block building in any way, and also indicated a trailer has existed on the property for approximately 3 years.

Ms. Annabelle Vleck also testified on behalf of the Petitioner. She stated she has lived at 1811 Old Eastern Avenue, which is one block away from the subject site, since the World War II years. She essentially confirmed the testimony of the previous witness, indicating a used car lot has operated on this site without interruption since at least the late 1930s, and also referenced the block building as always existing there, while the trailer has been at the property only recently.

Finally, in order for this Board to grant the Petition for Special Hearing, it is the burden of the Petitioner to establish that a nonconforming use, as defined in Section 101 of the BCZR,

MICROFILMED