IN THE MATTER OF THE APPLICATION OF G.D.& R.L., LTD. FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE N/S BALTIMORE NATIONAL PIKE, 478' E OF C/L JOHNNYCAKE RD (5539 BALTIMORE NATIONAL PIKE) 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT (Case No. 99-324-SPH)	* * * * * *	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY **File No. 3-C-00-003846**
PETITION OF People's Counsel for Baltimore County	*	

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CLARIFICATION OF THE BOARD ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY PURSUANT TO THE ORDER OF THE HONORABLE JOHN F. FADER II, JUDGE

This case was remanded back to the Baltimore County Board of Appeals subsequent to a Petition for Judicial Review to the Circuit Court for Baltimore County by People's Counsel for Baltimore County. At the conclusion of the Circuit Court hearing held on October 31, 2000, The Honorable John F. Fader II remanded the case back to this Board for "clarification of its decision granting the petition of G.D. & R.L., Ltd., to use 5539 Baltimore National Pike as an 'automobile sales room and adjoining outdoor sales area' for used cars under Baltimore County Zoning Regulations (BCZR) Sec 233." Judge Fader indicated that the Board had not determined in its "Opinion and Order" what constitutes an "automobile sales room" nor any etiology of the definition, as used in the zoning regulations; and, hence, he could not determine whether the granting of the use was legally correct.

The Board, having reviewed Judge Fader's Order, determined at a public deliberation held on January 24, 2001, that it would be necessary to hold a limited public hearing to receive testimony and evidence to respond to Judge Fader's directive relative to the definition question,

the construction of the premises, and the indoor usage of the building to address "the point which to me [Judge Fader] appears to be all important to inclusion vs. exclusion of the intended use in the zoning regulation." This was necessary since the scope of judicial review of an agency's factual determinations is extremely narrow. [*Liberty Nursing Center v. Department of Health and Mental Hygiene*, 330 Md. 433, 442, 624 A.2d 941, 945 (1993)]; and a reviewing court must defer to the agency's factual findings and inferences that are supported by substantial evidence. [*United Parcel v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994).

On Wednesday, February 14, 2001, the Board held its public hearing. Representing the Petitioner was Anthony J. DiPaula, Esquire. Peter Max Zimmerman, People's Counsel for Baltimore County, participated at this proceeding. Both Mr. DiPaula and Mr. Zimmerman had written to the Board prior to the hearing relative to their opinions concerning the remand directed by Judge Fader. After brief opening statements, Mr. DiPaula called Mr. Gary Dickson. The other partner, Mr. Ray Lewis, who had been involved in the original case, had subsequently been killed in an automobile accident. Mr. Dickson is the sole principal of the new company, now known as Catonsville Motors, which he runs on a day-to-day basis.

The site offers the sale of used cars and auto repair services. Mr. Dickson opined that he services what he sells. He holds a Department of Motor Vehicles (DMV) license for the sale of used cars and repairs made on the premises. There are three repair "bays" on the site. Some repair work is farmed out. Petitioner's Exhibit No. 1(a)-(d) were submitted and discussed in detail by the witness. These photos, reviewed by the Board, reflect cars for sale on the outside lot, and there is an 18-foot by 15-foot sales room inside of the building with tables, chairs, computers, and other office equipment. There was a picture of Mr. Dickson's personal office, a bulletin board inside the premises demonstrating the cars for sale on the lot, a picture window

from the sales office looking into the first bay from a 5-foot by 5-foot window facing the first bay, four photos reflecting cars in the first bay area looking from the first bay into the office, and two pictures looking from the sales room window into the lot. Mr. Dickson opined that from the showboard indicating those cars for sale, a customer can select a car that he /she is interested in; and the car can be brought into the premises for further examination. He explained that in the used car business customers are interested in viewing the car on the bay lift to examine the underbody and ask questions from the salesman or mechanic. The first bay closest to the sales room window is generally left open for this purpose, although it can be used for general repair work. The inside office is used to relate the history of the vehicle, and perform any required paperwork necessary to consummate the sale. Mr. Dickson indicated that at any given time between 20 and 25 used cars are for sale on the premises.

On cross-examination by Mr. Zimmerman, the witness indicated that 95 percent of his usual cars come from dealers, with the oldest being "88" or "89" models. At night, three of the newer cars are brought inside. Two of the three bays are equipped for service; one is just for washing cars. The first bay was equipped for service. The first bay closest to the window was used to examine any used car before it was sold to the customer. Mr. Dickson stated there was one full-time sales person on the lot, in addition to himself if needed. He generally works, however, at his service station up the street.

Mr. Zimmerman called Mr. Carl Richards as a witness. He is the Zoning Supervisor for Baltimore County and responsible for zoning review matters. Mr. Richards was accepted as an expert in zoning by the Board. Mr. Richards reviewed the history of the zoning in question through the years. He has been associated with the zoning office since 1966. He opined that the applicable zoning regulations come under § 233 and § 236.4, and that these have not changed in

46 years since the zoning regulations were enacted by the County Council in 1955. It was his belief that § 233 covered new car sales, and § 236.4 covered the sale of used cars. He acknowledged that no Code definition of what constitutes as a "Sales Room" was present – but, again, because §. 236.4 specifically references the word "used," his office had always applied § 233 as referencing "new" cars, although that wording does not specifically appear in that section. He reviewed People's Counsel's Exhibit No. 1 (BCZR regulations "1969" – four pages) and People's Counsel's Exhibit No. 3, 1955 BCZR regulations, book #404.

Closing statements were offered by both counsel. The Board conducted a public deliberation immediately following a short recess to review the individual member's notes and evidence submitted at the hearing. At issue is a legal interpretation of § 233.2 of the BCZR (Business Major, B.M.), zone use regulations, BCZR 1955. The Petitioner operates out of a facility located in the B.M. zone. It is the position of People's Counsel that § 236 of the BCZR applies, Business Roadside (B.R.), zone use regulations, BCZR 1955. Some of the pertinent facts are clear and not in dispute.

1. There does exist on site an "outdoor sales area" where used cars are displayed for sale, and

2. There was no testimony or evidence that dismantled or junked cars unfit for operation on the highways are stored outdoors.

Section 233.2, as to what constitutes an "automobile sales room" is not specifically defined in the BCZR; and *Webster's Third New International Dictionary of the English Language, Unabridged,* references "salesroom, also saleroom" as: "a place where goods are displayed for sale; showroom, esp: an auction room." The matter is further complicated in that the BCZR § 233.2 references "Automobile Sales Room," as compared to *Webster's* "salesroom." There is obviously confusion over the interpretation of the phrase, "automobile sales room" as it appears

in § 233 of the BCZR. The Zoning Commissioner found it to be confusing, the Board of Appeals found it to be confusing, and, as Judge Fader indicated, he had no idea what the term means. From a lay person's perspective, Mr. Dickson also found it to be confusing based on the zoning booklet he had obtained from the zoning office which led him to believe that proper zoning was in place and ultimately to his $450,000 investment in the property, which mostly consisted of borrowed funds.

The etiology of the definition is indeed indefinite itself. The term has been in use since adopted by the County Council (see People's Counsel's Exhibit #3, BCZR 1955, Book #404, belonging to Mr. Carl Richards, Jr. and People's Counsel's Exhibit #1, BCZR 1969 regulations, book #331). For 45 years, the zoning department has construed § 233.2 as applying to new automobiles, and § 236.4 as applying to used motor vehicle sales. There is no legislative trail that recites precisely what the intent of the County Council was in passing the legislation. The present interpretation is simply one followed through the years by the zoning officials.

While the Board is appreciative of the comments made by People's Counsel relative to § 26-135, "Authority of the Director of Permits and Development Management" to "make, adopt, promulgate, and approve...such policies, rules, or regulations relating to or in connection with the zoning regulations as may be deemed necessary or proper to carry out and enforce the provisions of this Title and which are not inconsistent therewith," nevertheless, it is the responsibility of this Board to insure that the public interests are safeguarded against bureaucratic abuses or interpretation of the rules, regulations, that are inconsistent with the facts of the case. As it was stated in Petitioner's Exhibit No. 1, in the original hearing, § 270, "Use Chart": "This chart is intended as a quick guide to use regulations in Baltimore County. It is

only a table; and does not supersede the uses listed in each zoning classification in the BCZR (i.e., the tables are not the determining factor)."

The term "automobile sales room" is not defined in the BCZR. *Webster* references "showroom," also "salesroom," – a place where goods are displayed for sale; showroom, especially an auction room. § 233.2 references "Automobile Sales Room" (two capitalized words). The Board, lacking knowledge of the County Council's intent, concurs that a salesroom and showroom are synonymous under the present zoning law. The Board will accept *Webster's* as the source guide for the County Council's intent – even though poorly drafted and confusing in the minds of both lay people and professionals.

Having reached that conclusion, the Board is required to determine if the facts of the case support the presence of both "a sales room and showroom" on the premises. Clearly based on the testimony and photographs submitted by Mr. Dickson, there is a sales room where the business of selling used motor vehicles occurs. There is an area replete with desk, chairs, computers, and other business fixtures which are necessary to complete the paperwork of selling and buying a used car. It is at this point that the Board must comment concerning changes in the methodology in which used cars are sold at the present time. Back in 1955, purchasing such vehicles was a much less sophisticated matter. You simply went to the used car lot, looked at the offering, and went into a small building to finalize the transaction. On the subject site, innovations have been introduced. The testimony of Mr. Dickson and photos clearly demonstrate a different style of "showmanship." The photos reflect "an adjoining outdoor sales area" of relatively recent vintage with used automobiles for sale. (Petitioner's Exhibit No. 1) Petitioner's Exhibits No. 2 and 3 reflect a show board in the interior of the premises of those cars for sale. The customer may select, while in the building, those cars on which he /she desires a

closer look, recognizing the fact that used cars require closer inspection from all views, including the underside. These vehicles can be moved inside for closer inspection in the first bay, or visible from the viewing area via the glass partition within the confines of the building. (Petitioner's Exhibits 4A, 4B, 4C, and 5) While noting that a "showroom" is one normally accustomed in a "new" car dealership, there is a "showroom" present where photos are displayed; and a viewing area on the site where the cars can be viewed on an individual basis; and the customer is provided the opportunity to inspect the underside of the vehicle, along with the salesman and a mechanic if that is necessary.

The Board concludes that within the *Webster* definition of a showroom, goods may be displayed in many formats. For example, real estate properties are frequently "displayed" in photographs or computer fashion within the real estate office. The actual goods themselves may or may not be present. In this case, the photos of the cars are on display. The actual cars can be displayed on bay one of the premises. The massive changes in the marketing approach require that what may have been applicable in 1955 may not be relevant today. The Board finds, as fact, the method of both selling the vehicles and displaying the vehicles satisfy the requirements of § 233.2.

Judge Fader was also concerned, as was the Board, that § 233.2 makes no distinguishment between "new" and "used" cars. The zoning office takes the position that because § 236.4 specifically references "used motor vehicle outdoor sales area," by inference § 233.2 referencing "Automobile Sales Room" must necessarily apply to new automobiles to the exclusion of "used motor vehicles." It would have been a very easy matter for the County Council to have eliminated the problem by simply stating "new" Automobile Sales Room in the statute. They chose not to do so, which creates the interpretative question. Where there is doubt

or confusion, the public is entitled to a favorable and reasonable interpretation that the statute includes both new and used automobiles and not simply "inferences" drawn by the zoning officials. Where confusion and ambiguity exists, it is fundamental law that construction must go against the drafter of the regulation. The citizens of Baltimore County are entitled to know exactly how the regulation applies. It should not be a guessing game. In the instant case, they are entitled to read the statute as it is...and, there is no distinguishment between "new" or "used" cars.

Hence, the Board finds that both "new" and "used" automobiles are valid uses in the B.M. zone, provided there is an "Automobile Sales Room and Adjoining Outdoor Sales Area...." The Board concludes as a matter of fact that the present site meets the statutory requirement. The Board recognizes that People's Counsel is concerned over the interpretation which is given by this Board. However, if there is an intent on the part of the County Council to distinguish between the two regulations at issue, it could be very easily resolved by simply adding the term "new" in § 233.2, and if the sales room /showroom is an issue, that also can be very easily rectified by specifically defining what constitutes a sales room /showroom under § 101 of the BCZR.

ORDER

IT IS THEREFORE, for the reasons as stated above, this 26th day of March, 2001 by the County Board of Appeals of Baltimore County

ORDERED that the Board accepts *Webster's Third New International Dictionary of the English Language*, Unabridged, definition of "salesroom as "salesroom, also saleroom, a place where goods are displayed for sale"; and it is further

ORDERED that the term "automobile sales room" as found in § 233 of the *Baltimore County Zoning Regulations* applies to both used automobile sales and new vehicle sales, provided there is an "automobile sales room and adjoining outdoor sales area"; and it is further

ORDERED, for the reasons as stated above, that Petitioner has met the requirements of the Baltimore County Zoning Regulations; and it is further

ORDERED that the Board will affirm its decision dated March 30, 2000, in which the subject Petition for Special Hearing was GRANTED.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Charles L. Marks

Donna M. Felling

IN THE MATTER OF THE APPLICATION OF G.D. & R.L., LTD. – PETITIONER 5539 BALTIMORE NATIONAL PIKE	* * * *	IN THE CIRCUIT COURT BALTIMORE COUNTY Case No: 3-C-3846

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ORDER OF COURT REMANDING CASE
TO BOARD OF APPEALS FOR CLARIFICATION

As a result of a hearing before this court on October 31, 2000, it is ORDERED by the Circuit Court for Baltimore County this 20TH day of December, 2000 that the above case is remanded to the Board of Appeals for Baltimore County for clarification of its decision granting the petition of G.D. & R.L., Ltd., to use 5539 Baltimore National Pike as an "automobile sales room and adjoining outdoor sales area" for used cars under Baltimore County Zoning Regulation (BCZR) Sec. 233. Specifically, I have no idea what "automobile sales room" means, as used in the zoning regulation, and therefore I cannot determine whether the granting of the use was legally correct.

A.

Permitted use in a Business Major Zone (B.M.) includes "automobile sales room and adjoining sales area provided that dismantled or junked cars unfit for operation on the highways shall not be stored outdoors." See BCZR 233.2 While the Board of Appeals decision of 3/30/2000 approved that requested use for 5539 Baltimore National Pike, there is no definition of the term "automobile sales room" supplied in the opinion, and no etiology of the definition to be supplied. Does it mean a showroom where cars are on display? Does it mean a big or small sales

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room where the sales contracts are signed with the vehicles being displayed on the outside of the building? Are "salesroom" and "showroom" synonymous under the zoning law, or are they to be given a different meaning according to their usual and expected English language definition?

As important is also the fact that I am having difficult ascertaining exactly what will be constructed on the premises. How will the inside of the building be used? Is that use, as described in the testimony and exhibits before the Board of Appeals, included within the definition of "automobile salesroom" as used in the regulation, and if so, why?

There may be some discussion among the parties and the Board of Appeals concerning a difference between "new" and "used" car sales. Should that make a difference legally to the granting or denial of the use requested against the words of BCZR 233.2 which does not seem to indicate a difference was envisioned? If so, why?

B.

As a circuit court judge, I must defer to the expertise of the agency making administrative decisions. Nothing in the Board of Appeals decision seems to have addressed the point which appears to me to be all important to inclusion vs. exclusion of the intended use in the zoning regulation. Because I cannot ascertain the basis of the agency decision, I must ask for clarification.

The scope of judicial review of an administrative agency has been explained by the Court of Appeals in the case *MVA v. Karwacki*, 340 Md. 271, 666 A.2d 511 (1995):

> The scope of judicial review of an agency's factual determinations is extremely narrow. *Liberty Nursing Center v. Department of Health and Mental Hygiene*, 330 Md. 433, 442, 624 A.2d 941, 945 (1993). A reviewing court must defer to the agency's factual findings and inferences that are supported by substantial evidence. *United Parcel v. People's Counsel*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994);

> **Caucus**, 320 Md. at 324, 577 A.2d at 788; *Lindsey*, 318 Md. at 334, 568 A.2d at 33. In other words, a reviewing court evaluates the administrative agency's fact finding results; it does not make an independent, *de novo* assessment of the evidence. *Zeitschel v. Board of Education*, 274 Md. 69, 82, 332 A.2d 906, 913 (1975). If there is any substantial evidence in the record to support an agency's factual determinations, the reviewing court must affirm the agency's decision, which on its face is correct, and presumed to be valid. *Liberty Nursing Ctr., supra,* 330 Md. at 442, 624 A.2d at 945; *Anderson v. Department of Public Safety* , 330 Md. 187, 212, 623 A.2d 198, 210 (1993); *Department of Health and Mental Hygiene v. Shrieves*, 100 Md. App. 283, 302, 641 A.2d 899, 908 (1994). For purposes of determining whether an administrative agency's decision is supported by substantial evidence in the record, substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Caucus,* 320 Md. at 324, 577 A.2d at 788. *See also Liberty Nursing, supra,* 330 Md. at 442, 624 A.2d at 945; *State Election Board v. Billhimer*, 314 Md. 46, 58, 548 A.2d 819, 825 (1988), *cert. denied,* 490 U.S. 1007, 109 S. Ct. 1644, 104 L. Ed. 2d 159 (1989); *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119, 1123 (1978); *Supervisor of Assessments v. Peter & John Radio Fellowship, Inc.*, 274 Md. 353, 355-56, 335 A.2d 93, 94 (1975); *Dickinson-Tidewater Inc. v. Supervisor of Assessments,* 273 Md. 245, 256, 329 A.2d 18, 25 (1974); *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448, 168 A.2d 390, 392 (1961).

Id. at 280-81.

In *United Steelworkers of America AFL-CIO, Local 2610 v. Bethlehem Steel Corporation*, 298 Md. 665, 472 A.2d 62 (1983), the Court of Appeals stated that it is necessary that administrative agencies "resolve all significant conflicts in the evidence and then chronicle, in the record, full, complete and detailed findings of fact and conclusions of law."*Id* at 678. In the judicial review of an agency, **"the court may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency."***Id.* at 679. **[Emphasis by bold]**

More recently, the Court of Special Appeals has held:

> A reviewing court may not make its own findings of fact, *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664 (1988), or supply factual findings that were not made by the agency. *Ocean Hideaway Condo. v. Boardwalk*

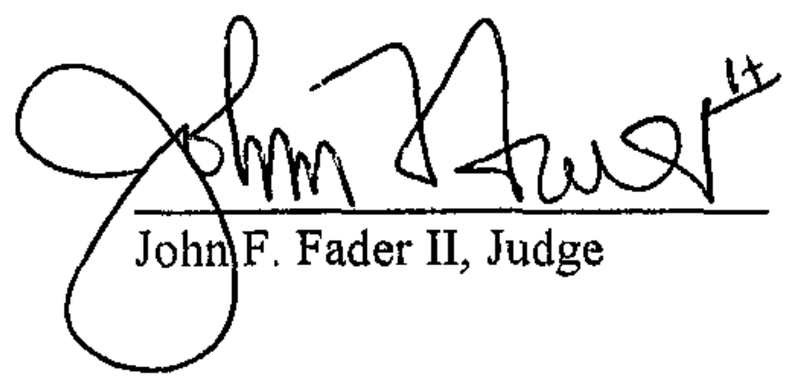
> *Plaza*, 68 Md.App. 650, 662, 515 A.2d 485 (1986). Findings of fact are essential in order for the reviewing court to review meaningfully the agency's decision. *See Gray v. Anne Arundel Co.*, 73 Md.App. 301, 307-09, 533 A.2d 1325 (1987). Moreover, it is the agency's function to determine the inferences to be drawn from the facts. On review, neither the circuit court nor this Court may substitute its judgment for that of the agency. *Eberle v. Baltimore County*, 103 Md.App. 160, 165, 652 A.2d 1175 (1995).

Maryland Securities Commissioner v. U.S. Securities Corporation, et al., 122 Md.App. 574, 586, 716 A.2d 290 (1998).

C.

When the Board of Appeals has clarified this issue, the case should be redirected to me and I will hold another hearing to determine any matter still the subject of an appeal. In making its decision, the Board of Appeals is to proceed as it sees fit, with or without any additional hearing as it determines to be appropriate.

Any consideration to having this clarification accomplished within a 30-45 day period of time will be appreciated.



John F. Fader II, Judge

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IN THE MATTER OF G. D. & R. L., LTD., Legal Owner 5538 BALTIMORE NATIONAL PIKE 1ST ELECTION DISTRICT; 1ST COUNCILMANIC	* * * * * *	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO.: 99-324-SPH

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MEMORANDUM OF APPELLEE, G. D. & R. L., LTD.

G. D. & R. L., Ltd., Petitioner below and Appellee before the Board, by its undersigned counsel, submits this Memorandum in lieu of closing argument.

INTRODUCTION

This action was begun by the filing of a Petition for Special Hearing with respect to the property located at 5538 Baltimore National Pike in the Catonsville area of Baltimore County, which property is zoned BM-CCC. The Petition requested the Zoning Commissioner to approve the use of the subject property as an automobile sales room and adjoining outdoor sales area for used cars, pursuant to §233.2 of the Baltimore County Zoning Regulations (BCZR). The matter was heard by Commissioner Lawrence Schmidt on April 2, 1999, and on June 30, 1999 he issued his Findings of Fact and Conclusions of Law granting the Petition, thus permitting the subject property to be used for the sale of used cars. An appeal was filed to the Board by People's Counsel on its own behalf, and not on behalf of any protestant or community group. The basis for the appeal is a claim that §233.2 of the BCZR setting forth the uses permitted in a BM zone does not allow the sale of

used cars alone, and that a property must be zoned BR (Business Roadside) for the sale of only used cars. As will be discussed later in this Memorandum, the authority for this claim and the underlying basis for same is suspect at best, and has apparently never been challenged.

SUMMARY OF FACTS

Because the matter was heard de novo before the Board, G. D. & R. L. as Petitioner below presented its case first. Testimony was presented by Mary Sites, President of the Catonsville Manor Community Association, Inc. Mrs. Sites spoke on behalf of the entire community of its overwhelming support for the Petitioner and the proposed use at this location, namely that of a used car sales dealership, with service bays to not only service the cars acquired for sale, but also to service the vehicles that are sold and which return for repairs as well as to provide automotive service to the general public. She testified how she is in constant contact with Councilman Moxley's office and how the entire community is backing the Petitioner. She verified that the individuals who are the principals of the Petitioner, Gary Dickson and Ray Lewis, are longstanding members of the community, and how Mr. Dickson already has quite an investment in the area with Dickson's Mobil located a short distance from the subject property. Mrs. Sites also confirmed that the subject property has always been used for the sale of used cars and as a garage, whether part of some larger dealership, or otherwise. She is actively involved with the planning office in revitalization efforts for the community, and

believes that the use of the property as a used car dealership with accompanying garage is harmonious with those revitalization efforts.

Gary Dickson, one of the principals of G. D. & R. L., testified how the zoning regulations and the zoning office were consulted before they acquired the property. They even consulted an attorney, although not a zoning specialist, and were under the distinct understanding that the use listed in §233.2 of the BCZR under BM zoning, namely, "Automobile sales room and adjoining outdoor sales area...", and the additional use listed in that same section, that of a "Garage, service", fit their intended uses. After investing substantial funds acquiring the property and making improvements with total expenditures of between $400,000 and $500,000, they were unable to have their application for a used car dealer license processed by the zoning office because the property was zoned BM and not BR. Mr. Dickson testified, as any layman would, that he still does not understand the confusion and why the language in §233.2 does not apply to their proposed use. He further testified to his ties to the community, the fact that he grew up in the area and owns another business nearby, the character of the surrounding area and the uses that have failed and those which are presently located near the subject property, and why this use is a perfect fit for this area. It is interesting to note that several new car dealerships in the immediate area have failed over time, attempting to sell both new and used cars. Mr. Dickson recalled the subject property being used for many years as a site from which used cars were sold and automobile service was

provided, either in conjunction with one of those prior dealerships, or standing alone.

George Psoras, an attorney with offices not only in Towson but also in the area of the subject property, testified regarding his personal knowledge of the site and the area. Mr. Psoras grew up in the area, has known Mr. Dickson for many years, and Mr. Psoras's mother still lives in the area near the subject property. He testified in great detail regarding the uses that have been in the area but have vacated, as well as the uses that are currently in place, and how the used car use is harmonious with the area. He testified in further great detail regarding the previous car dealerships that did not survive in the area and which ultimately vacated. The character and clientele of the area dictates a need for reasonably priced reliable used cars. Approximately nineteen (19) photographs were introduced into evidence through Mr. Dickson and Mr. Psoras, marked as Exhibits 4 through 7, giving to the Board a detailed view of the surrounding area. The photographs were further keyed to the site plan, Petitioner's Exhibit No. 2, for orientation purposes.

The final brief witness who testified on behalf of G. D. & R. L. was Ray Lewis, the other principal who knows the used car business, had in the past purchased used cars from the subject property, and is also familiar with the area. He further testified how a reliable community-based used car dealership is needed in the area.

Other than documentary evidence in the form of 200 scale zoning maps, a 1000 scale map, a tax map, and copies of various regulations, the case presented by the Appellant, People's Counsel, consisted of the testimony of John Lewis, a Planner II from the Office of Permits and Development who has been with the County for 13 years. He testified generally that it is the zoning office's interpretation, as further stated in the Planning Office's comment which is part of the file in this matter and reintroduced before this Board as People's Counsel Exhibit No. 3, that the sale of used cars alone requires a special exception and BR Zoning. He further explained the office's interpretation that the use listed under the BM zoning in §233.2, notwithstanding the absence of any limiting adjectives, applies only to either new cars or new and used cars combined, but not used cars alone. The reasoning behind this will be addressed further in this Memorandum as part of the Argument Section.

ARGUMENT

The facts as reviewed above are important from the standpoint that Petitioner is comprised of local business people, with ties to the community, who have made a substantial investment in a property with the total backing of the community, yet a government interpretation of a clear and unambiguous regulation hinders a use that everyone wants. The subject property has been used for many years no differently than as proposed by Petitioner/Appellee, and ceased only because it was part of a larger use that involved the sale of new cars which could not survive in the area. As a stand-alone operation, the reasons given as to why

the use cannot continue are difficult to comprehend. The question becomes why should the Petition for Special Hearing not be granted? Should the Board, as the Zoning Commissioner did, approve the use of the subject property in a BM-CCC zone, as an "automobile sales room with adjoining outdoor sales area, [for the sale of used cars], provided that dismantled or junked cars unfit for operation on the highways shall not be stored outdoors"? A review of the reasons given by People's Counsel, in support of its appeal, is in order.

It is important to note that People's Counsel admitted in opening statement that this is the first time that this issue has been brought before the Board of Appeals. Additionally, it should also be noted that John Lewis, People's Counsel's witness, acknowledged that despite his knowledge of the County's interpretation of the BCZR, he knew of no previous instance where a Petitioner with property zoned BM (Business, Major) has ever made application to utilize the property for the sale of used cars alone, but was denied. This is undoubtedly a case of first impression, whereupon the Board is called to determine whether Commissioner Schmidt was wrong in his interpretation of the regulations, and to determine whether the stated use in §233.2 is applicable to the sale of used cars alone.

The primary reason offered by People's Counsel that the sale of used cars as proposed in this case is not permitted in a BM zone is due to the fact that there is a special exception use listed in §236.4, under BR zoning, namely, "Used motor vehicle outdoor sales area, separated from sales agency building". A copy of this section was introduced by People's Counsel as its Exhibit #1, along with the

special exception chart from §270 of the BCZR which People's Counsel claims as support for its position. The uses on the chart are listed alphabetically, and it must be remembered that it is a chart listing only special exceptions, not uses permitted as of right. Thus, in alphabetical fashion, there is no listing in the chart for "automobile sales room and adjoining outdoor sales area,..." on page 2-115 of the Regulations where the chart begins. This is because it is not a special exception use, but is rather a use as of right in a BM zone. The only use in the special exception chart that even mentions motor vehicle sales is the special exception use in the BR zone listed on page 2-118 of the Regulations of the BCZR (part of People's Counsel Exhibit #1), and that use is listed as, "Used motor vehicle sales area (separate from building)". The simple answer is that this listed use is not the use which is proposed in this case. This is exactly what Commissioner Schmidt found below, that the BR special exception use and the use described in §233.2 under BM zoning are "clearly different". This special exception use permitted in a BR zone would seemingly apply to a used car sales lot which is unattended, separated from whatever building or business in which sales are transacted. As mentioned in Petitioner's opening statement, this use would seem to apply to a lot similar to that maintained by the Al Packer dealership on Belair Road where the main dealership is located at one location, with new and used cars displayed on lots, but with a separate used car lot as much as several blocks further up the road, unattended.

Along this same vein, People's Counsel argues that because used cars are mentioned in the BR regulations as a special exception use, than the use listed in §233.2, under BM zoning, must therefore apply to new automobiles only, or new and used together. The logic behind this is difficult to follow, if present at all, and Commissioner Schmidt described it best when he stated in his Findings that,

> "...[T]his interpretation endorsed by DPDM is strained. Not only does the use designated in §233.2 not utilize either the words "new" or "used", but the uses described in §233.2 and 236.4 above are clearly different. That is, certain restrictions on the use described in §236.4 relate only to an outdoor lot, without a building, whereas the use defined in §233.2 clearly requires some structure.[1]

The next argument posited by People's Counsel in support of this strained interpretation of the use described in §233.2 is that the Baltimore County Zoning Commissioner's Policy Manual, excerpts of which were introduced as People's Counsel Exhibit #2, also make it clear that the sale of used cars alone is not a permitted use in a BM zone. This argument does not hold up for several reasons. First, what People's Counsel left out of its Exhibit was the page that precedes the chart, which page was introduced as Petitioner's Exhibit #1. As stated right at the beginning of the chart or table, the policy manual makes it clear that it is intended solely as a "quick guide to use regulations"; that it is "only a table and does not supersede [sic] the uses listed in each zoning classification"; and most importantly, it states at the end of the introductory statement that, "tables are <u>not</u> the determining factor".

---

[1]See pages 3 and 4 of Commissioner Schmidt's Opinion.

The second reason why the policy manual chart is not applicable is because it is simply a recapitulation of the special exception use chart set forth in §270 of the BCZR, a copy of which was introduced as People's Counsel Exhibit #1 and which has already been discussed above.

The next Argument set forth by People's Counsel that the Petition for Special Hearing should have been denied by Commissioner Schmidt is reliance upon a decision of the Court of Special Appeals of Maryland in the case of People's Counsel for Baltimore County, et al. vs. County Line, Inc., a per curiam opinion filed February 7, 1996, and unreported. This opinion was introduced as People's Counsel Exhibit #7, over objection, because unreported opinions under Maryland Rule 8-114 of the Rules of Procedure are not considered precedent nor persuasive authority, and are frankly not supposed to be cited for any reason other than in a related proceeding involving the same parties. To the extent the Board relies upon this opinion for any reason, People's Counsel obviously introduced it solely because of the four lines on page 5 of the opinion where the Court of Special Appeals restates People's Counsel's position regarding where a used car sales operation is permitted. Unfortunately, it was not an issue in the County Line case because the property in that case was zoned BR, and the issue on appeal was whether the special exception granted below should have been granted at all. Whether used cars are permitted in a BM zone was not an issue in that case at all nor was it decided by the Court of Special Appeals. That gratuitous statement by

the Court of Special Appeals in its unsigned opinion played no role in the decision in that case. It is dicta at best.

The final arguments offered by People's Counsel in support of overturning the Zoning Commissioner's decision were offered through its witness, John Lewis. The general thrust of John Lewis' testimony was simply that, "this is the way we've done it in the past, even before me". He offered the same opinion that was presented to Zoning Commissioner Schmidt, namely that the mention of "used cars" under the BR special exception uses (§236.4) therefore means that the use listed in the BM zone as of right (§233.2) which refers to simply "Automobile sales room and an adjoining outdoor sales area" must mean new cars or new and used cars. This is supposedly so because the County Council specifically meant to limit used cars to BR zones by specifically mentioning used cars therein. He could offer no authority for this rule of interpretation, and then frankly engaged in the most convoluted exercise in semantics ever witnessed. Although he never expressly stated so, Mr. Lewis apparently interprets "automobile sales room" as a showroom where cars are displayed under roof. Section 233.2 does not say "showroom", nor is "automobile sales room" a defined term anywhere in the BCZR. A review of §101 with its 32 pages of definitions reveals no specific definition of "automobile sales room". Mr. Lewis would not acknowledge that the proposed office portion of the building shown on the site plan introduced as Petitioner's Exhibit #2 would constitute an "automobile sales room", nor would he acknowledge that the outdoor sales area, into which one would step immediately upon exiting the building, was

adjacent to the sales room. Instead, Mr. Lewis opined that the use described and as shown on Petitioner's Exhibit #2, the site plan, exactly fit the special exception use described in a BR zone, namely a, "used motor vehicle outdoor sales area, separated from sales agency building". To avoid continued beating of the proverbial dead horse during the course of cross-examination, further attempts to understand his reasoning were halted. Even during the drafting of this Memorandum, undersigned counsel could not comprehend Mr. Lewis' interpretation of the BM use with a sales room and adjoining outdoor sales area, verses the BR special exception use being just a sales area, separated from sales agency building. He was not of the opinion that the use listed in the BR zone was that of an unattended sales lot, and was willing to go so far as to offer the opinion that, in light of the Zoning office's current interpretation of the BCZR, a property owner with BM zoning could not operate a used car sales operation in Baltimore County, even with a showroom. It seems inconceivable that this would be a prohibited use in Baltimore County, but it is not the same as the use listed in the BR regulations as Commissioner Schmidt found.

The Board is called upon to interpret §233.2 to determine whether the zoning office's interpretation should be followed. Maryland law is replete with countless opinions of our appellate courts when called upon to perform statutory interpretation. The primary goal is always to discern and effectuate the legislative intent. In doing so, the courts have said that if the language of an ordinance or regulation is unambiguous and establishes the intent of the legislature, then the

court's inquiry need go no further. If there is any ambiguity, then the court looks further, but strives to avoid interpretations "...that are illogical, unjust, unreasonable, unworkable, and nonsensical". See Gunpowder Horse Stables, Inc. vs. State Farm Auto Insurance, Co., 108 Md. App. 612, 617 (1996). It has been further stated that,

> Where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning.

Eastern Correctional Institution vs. Howe, 105 Md. App. 167,171 (1995) (citations omitted); Maisel vs. Montgomery County, 94 Md. App. 31, 37 (1992); Gallaudet University vs. National Society of the Daughters of the American Revolution, 117 Md. App. 171, 185 (1997). Additionally, the courts have stated that, "[s]tatutes should be interpreted according to their plain language,...all parts should be construed in harmony as a whole". Eastern Correctional Inst., 105 Md. App. at 171, citing Columbia Road Citizens' Ass'n v. Montgomery County, 98 Md. App. 695, 702 (1994). The courts have further stated that, "[w]hen we look at the statutory language we attempt give effect to all the words in the statute". Eastern Correctional, 105 Md. App. at 170, citing and quoting, Motor Vehicle Administration v. Seidel Chevrolet, Inc., 326 Md. 237, 248-49 (1992).

The language of §232.2 and the use listed therein is simple and clear. The legislature, the Baltimore County Council, obviously knew how to use adjectives, and did so when listing the separate and distinct use under the BR regulations, permitted by special exception, namely an outdoor sales area for used motor vehicles. The legislature did not limit the BM use as of right in §233.2 when it decided to permit an "automobile sales room and adjoining sales area." It did not stipulate that same was for new cars or new and used cars. Furthermore, if the legislature did not intend for §233.2 to apply to used cars with or without new car sales, why would the legislature add the proviso that "dismantled or junked cars unfit for operations on the highways shall not be stored outdoors"? The zoning office's interpretation fails to give effect to this language, which the courts strive to do. To accept the zoning office's interpretation would also be exactly what the court seeks to avoid, an interpretation that is "illogical, unjust, unreasonable, unworkable, and nonsensical". See Gunpowder Horse Stables, Inc, 108 Md. App. at 617. This interpretation certainly is illogical, and it is extremely unjust in this case when considering the investment of the Petitioner in this site, the ties to the community, and the community support. As shown above, the County's interpretation clearly lacks any logical justification, and frankly does not make sense. Simply because "It is the way we have always done it" is not a reason to continue such an interpretation. It simply means that it has never before been challenged. The language of §233.2 is "plain and free from ambiguity and expresses a definite and sensible meaning", contrary to the county's interpretation.

For all of the reasons stated, the Findings of Fact and Conclusions of Law as stated by Commissioner Schmidt should be adopted by the Board and his decision should be left intact. His reasoning is sound and in fact the Board should go one step further and determine that not only is what is proposed in this case appropriate for this site, but the Board should determine that one can operate and maintain an automobile sales room and adjoining outdoor sales area for the sale of used cars alone in BM zone, in accordance with the plain language of §233.2 of the BCZR.

Respectfully submitted,

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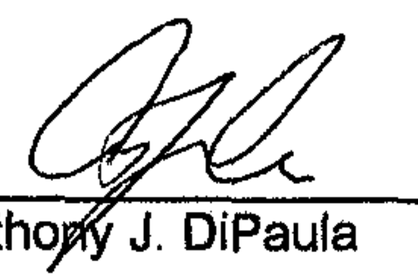
Attorney for G. D. & R. L., Ltd.
Appellee/Petitioner Below

CERTIFICATE OF SERVICE

IT IS HEREBY certified that on this 24th day of January, 2000, a copy of the foregoing Memorandum was Hand-Delivered to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Room 47, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204.



Anthony J. DiPaula

RE: PETITION FOR SPECIAL HEARING 5538 Baltimore National Pike, N/S Baltimore National Pike, 478' E of c/l Johnny Cake Road 1st Election District, 1st Councilmanic	*	BEFORE THE
	*	COUNTY BOARD OF APPEALS
	*	FOR BALTIMORE COUNTY
G.D. & R.L., LTD. Petitioner	*	**Case No. 99-324-SPH**

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PEOPLE'S COUNSEL'S MEMORANDUM

I. Introduction

The single legal question presented is whether an outdoor used car sales area is permitted by right as a principal use in the Business Major (B.M.) Zone, or whether rather it is denominated as a special exception in the Business Roadside (B.R.) Zone.

In both petition and site plan, Petitioner describes and requests approval of a used car display and sales area as the principal use under BCZR 233.2. The Petitioner also does automobile repair service at the site, but this is not claimed as the primary use. Conversely, there is no claim that the sales use is merely accessory.

If this petition is granted, then used car sales must be allowed for any property in the B.M. zone. It could not be discretionary, on a "case by case" basis. The Zoning Commissioner's suggestion to the contrary was a weak excuse for an erroneous and unprecedented ruling which opens up the floodgates to use car lots in the B.M. zone.

At the CBA hearing, Petitioner produced evidence on the good character of its key partners, their beneficial work in the community and at this site, and the suitability of the site for a used car dealership. But all of that is immaterial. The Board must still decide whether the zoning classification allows the proposed use.

If it is not so zoned, then the use is simply not permitted. There are, however, other legal avenues or remedies. Petitioner may succeed in persuading the County Council comprehensively to rezone the property to B.R. in the year 2000 process. It may then apply for a special exception. Alternatively, if Petitioner believes that the regulations are too strict for used car lots, or outmoded, it may request that the Council amend the zoning text.

Petitioner may also consider modification of its principal use to a service garage, with accessory used car sales. But that is not the factual or legal situation here. Moreover, it does not appear to fit Petitioner's candid and true intent.

Petitioner's principals said there is intense competition among area service garages along the Baltimore National Pike, including Dickson's own Mobil station. Petitioner thus views used car sales as the key to a unique competitive advantage.

But if allowed here, then all of the service garage operations may reinvent themselves as used car lots. After all, the zoning maps show that the predominant zoning along Baltimore National Pike is B.M. zoning. Indeed, this is a typical business zone along main roads in Baltimore County.

With this background, we turn to the legal analysis.

Statutory Interpretation

The cardinal rule of statutory interpretation is to determine legislative intent or purpose. This involves review of language, history, and context. It comprises all relevant parts or sections of the legislation. It also includes pertinent canons of statutory construction.

The Court of Appeals discussed statutory construction in depth in Section III of Kaczorowski v. Baltimore, 309 Md. 505, 513-16 (1987). Legislation "... usually has some

objective, goal, or purpose. It seeks to remedy some evil, to advance some interest, to attain some end." 309 Md., at 513. Judge Adkins wrote:

> "Moreover, despite Kaczorowski's pleas that we examine the trees so closely that we do not see the forest, the plain-meaning rule does not force us to read legislative provisions in rote fashion and in isolation. What we are engaged in is the divination of legislative purpose or goal... The 'meaning of the plainest language' is controlled by the context in which it appears." 309 Md., at 514.

He referred to Justice Holmes for the concept that "the general purpose is a more important aid than any rule which grammar or formal logic may lay down." *Ibid.* He gave examples of cases in which legislative history was critical to proper interpretation.

> "The purpose, in short, determined in light of the statute's context, is the key. And that purpose becomes the context within which we apply the plain-meaning rule. Thus 'results that are unreasonable, illogical or inconsistent with common sense should be avoided... with the real legislative intention prevailing over the intention indicated by the literal meaning.'" 309 Md., at 516.

In Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990), the Court wrote:

> "Thus, we have said that a statute must be construed in context, because the meaning of the 'plainest language may be governed by the context in which it appears.'... In this regard, words in a statute must be read in a way that advances the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent."

Similarly, in Comptroller v. Jameson, 332 Md. 723, 733 (1993), the Court said:

> "In addition, we look to the context surrounding the enactment of a statute to determine the intention of the legislature. For example, we recently said:
>
> > 'When we pursue the context of statutory language, we are not limited to the words of the statute as they are printed in the Annotated Code. We may and often must consider other "external manifestations" or "persuasive evidence," including a bill's title and

> function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case.'"

As the Court stated concisely in Stanford v. Maryland Police Training, 346 Md. 374, 380 (1997):

> "The statutory language is not read in isolation, but 'in light of the full context in which [it] appear[s], and in light of external manifestations of intent or general purpose available through other evidence.'"

See also Porter v. Bayliner, 349 Md. 609, 617 (1998).

In assessing context, moreover, a court "... will not read any part of a statute to be superfluous." Polomski v. Baltimore, 344 Md. 70, 83 (1996). In Montgomery County v. Buckman, 333 Md. 516, 523-4 (1994), the Court employed this rule to differentiate between two types of service-connected disability retirements and refused to fold one into the other. In County Commissioners v. Bell Atlantic, 346 Md. 160 (1997), the rule applied to determine the rights of public utilities under the Miss Utility Act.

Even where language is clear, it is often helpful to review history. Here, this includes a consistent Zoning Office interpretation, now embodied in the Zoning Commissioner's Policy Manual. The practice of the Office of Planning corroborates and reinforces this understanding.

In sum, the language, history, policy, and consistent practice of the relevant offices all show the proposed outdoor use car display and sales area is permitted only by special exception in the B.R. zone.

Permitted Uses under the BCZR

BCZR 102.1 states:

"No land shall be used or occupied and no building or structure shall be erected, altered, located, or used except in conformity with these regulations."

In Kowalski v. Lamar, 25 Md. App. 493 (1975), Judge Rita Davidson reviewed the structure of BCZR zoning use classifications. She wrote:

"Any use other than those permitted and being carried on as of right or by special exception is prohibited." 25 Md. App., at 498.

The Board of Appeals had allowed a commercial fishing operation by right in a rural zone because it was not explicitly prohibited. This ruling both misunderstood and misapplied the law. The CSA underlined that commercial fishing was permitted neither by right nor special exception and, so, was prohibited. We will discuss this case further below.

II. The Structure and Language of the Business Zones

In 1955, the County Council enacted a comprehensive revision of the original 1945 zoning regulations. This created the three main business zones still in force today: Business-Local, Business-Major, and Business-Roadside. BCZR 230, 233, 236. These zones are cumulative in their enumeration of permitted uses. BCZR 233.1, 236.1. The B.M. Zone incorporates all B.L. Zone uses, and adds its owns listing. The B.R. zone, in turn, incorporates B.L. and B.M. and adds still another layer of uses. The B.R. Zone is thus the most intense or permissive of these zones.

The B.L. Zone lists as uses permitted by right "Automobile accessory shop" and "Automobile parking lot" and, by special exception, subject to BCZR 270 and 502, "Fuel Service Station," "Garage, Service", and "Carwash." BCZR 230.9, 230.13. The B.M. Zone adds by right "Automobile sales room and adjoining outdoor sales area...," designates "Garage, service"

as permitted uses by right. BCZR 233.2. It also explicitly repeats the "Fuel Service Station" special exception, although this seems unnecessary. 233.4.

The B.R. zone in BCZR 236.4 reaffirms the "Fuel Service Station" and "Carwash" special exception uses, and goes on to add these new special exception uses: "Bus Terminal", "Theatre, drive-in", and the use most critical here:

> **"Used motor vehicle outdoor sales area, separated from sales agency building."**

BCZR 236.4 also identifies these uses as subject to BCZR 270 and 502.

The diversity of automotive uses reflects the particularity with which the Council has delineated these uses in the Business Zones. The Council, in its wisdom, plainly allocated outdoor used car sales areas to the B.R. zone only. These traditionally involved outdoor lots with small sales offices. They differ from "automobile sales rooms", which traditionally display new cars.

While some used car sales rooms have appeared in the 1990s, they occur infrequently. This certainly was not the mode when the Council enacted the regulations in 1955. Indeed, the proposed GDRL used car lot is of the traditional type.

The overall structure and allocation of uses thus prove that the Council chose not to allow used car lots in the B.M. zone. If viewed in isolation, it might be arguable that "automobile sales room and adjoining sales area" use extends to pure used car lots. But the specific identification of outdoor used motor vehicle sales areas contradicts such an argument and removes any doubt. To fold used car lots into "automobile sales room and adjoining sales areas" would render the more restrictive B.R. zone special exception provision superfluous.

The Court of Appeals faced a question comparable to the present in Smith v. Miller, 249 Md. 390 (1968). Miller, the property owner, operated a sawmill, a permitted use on M-2 (general

industrial) zoned land in Harford County. He sought, however, to move to land zoned A-1 (agricultural) and sought a conditional use, equivalent to a special exception. The Board of Appeals allowed the petition, on the basis that the proposal fit under the broad definition of "Processing of dairy products and farm products, riding stables, kennels, ***." Judge Singley described the reasoning, which parallels the argument here, at 249 Md. 393:

> "The logic adopted by the Board is simple; timber is a farm product; a sawmill processes it; therefore, Mr. Miller is entitled to build a sawmill in an agricultural district."

The Court of Appeals reversed. It found that the Board's interpretation "... would open the county's agricultural district to any industrial development remotely connected with the processing of dairy and farm products without limitation..." *Ibid.* Significantly, Judge Singley continued (249 Md., 393-94), it:

> "... would make meaningless the provision of the Ordinance which attempts to confine sawmills, flour and grain mills, grain drying and poultry feed manufacturing, meat packing, pickle, sauerkraut or sausage manufacturing, poultry slaughterhouses and vinegar manufacturing to a general industrial district."

The Court then discussed St. Clair v. Colonial Pipeline, 235 Md. 578 (1964), where the pipeline company sought conditional use approval of above-ground storage facilities for petroleum products in an agricultural district. The Board accepted the contention that this was a permitted conditional use under the rubric of "public utility structures and properties." In reversing, the Court underlined that above-ground storage of petroleum products was allowed as a conditional use only in the M-2 zone, and not in any other zone. The petitioner could not avoid or circumvent this specific intent by going to the more generally permitted "public utility" use. Judge Horney went on:

> "The zoning ordinance does not specify the type of buildings classifiable as 'public utility structures,' but whatever the term was intended to embrace, it clearly does not include above ground petroleum storage facilities, and we so hold." 249 Md., at 394.

Subsequently, in Arundel Supply Corp. v. Cason, 265 Md. 371 (1972), Arundel argued that washing, screening, and batching sand and gravel fit within the scope of the permitted "gravel pit" use in the residential zone. Judge McWilliams wrote to reject this contention, and emphasized the special exception available in the industrial zone:

> "The plausibility of what we have said is enhanced by the fact that under the 1949 ordinance washing, screening and batching required a highly restrictive special exception."

Indeed, in the Kowalski case, *supra*, the Court of Special Appeals rejected the idea that commercial fishing was a permitted accessory use in the Rural Deferred Planning Zone. Judge Davidson noted that some of the uses in question --- berthing, launching, and maintenance of boats --- might be allowed by special exception as a "boat yard" or "marina."

In sum, where a use is specifically identified and delineated in a zoning classification, especially by special exception, it is improper to slide it into a general use category in a more highly protected zone. Otherwise, it would subvert the purpose of the zoning scheme, and render the particular use delineation meaningless and nugatory.

The BCZR 270 Schedule of Special Exceptions

The BCZR 270 schedule operates in conjunction with the use regulations for each zoning classification. It is usually consistent with the use regulations.

That is the case here. The schedule shows used car lots to be a particular use permitted only in the B.R. zone, by special exception. It reinforces our conclusion.

Consistent Agency Practice; The Policy Manual

The County Council is presumed to be aware of consistent departmental practice. John Lewis testified without contradiction to the Zoning Office interpretation that used car lots such as the one proposed here are allowed only in the B.R. by special exception, essentially based on the reasoning given above. As the frontline agency responsible for implementation of the zoning law, "... its interpretation of the provisions of the... Act is entitled to deference if it is 'based on a permissible construction of the statute.'" Sugarloaf Citizens v. Maryland Department of Environment, 344 Md. 271, 313 (1996).

Moreover, under Code Sec. 26-135, the Council must review the Zoning Policy Manual, which the Zoning Commissioner submits for review and approval. While this Table is said to be a guide, it is still sanctioned by the County Council. Therefore, unless the Manual is clearly inconsistent with the Code or Zoning Regulations, it is entitled to great weight.

The 1992 Manual also contains a BCZR 270 Table. It shows even more clearly the distinction between new car dealerships (with accessory or incidental used car sales) and used car lots.

The Council is thus familiar with Zoning Office's policy and practice. So, when the Council engages in comprehensive rezoning, one of its assumptions is that used car lots are narrowly designated and limited to the B.R. zone. At the very least, the 1992 and 1996 comprehensive zoning ordinances were enacted with this understanding.

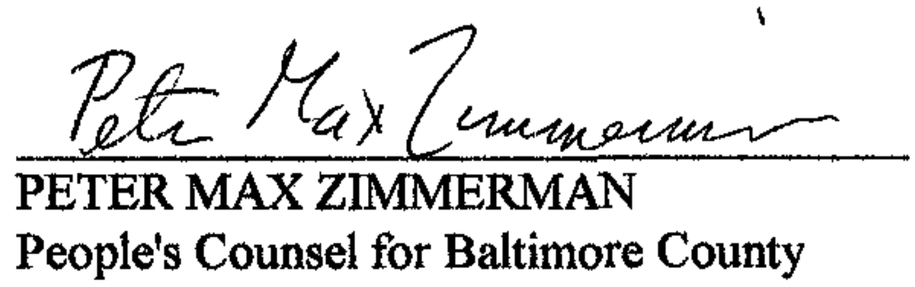
It is remarkable, therefore, that the Zoning Commissioner in the current 1999 case not only misinterpreted and misapplied the law, but also disregarded Zoning Office practice and his own Policy Manual. The Manual may be a Guide. But it should be followed where, as here, it surely articulates a permissible construction of the statute.

Conclusion

All the recognized rules of statutory construction point to one conclusion. The proposed used car lot is allowed only in the B.R. zone by special exception.

Counsel for Petitioner attempted in cross-examination to make light of John Lewis' testimony, especially his additional observation that the BCZR do not contemplate a used car sales room as a permitted use by right or special exception. Lewis happens to be correct.

But this point is immaterial here. There is no used car showroom proposed. If there were such a proposal, we could address whether or not it fits within any of the currently defined automotive uses. The Policy Manual distinguishes generally between new car and used car uses. Given this Policy delineation, it is arguable that a used car showroom might fit within the B.R. zone special exception. It certainly is not allowed in the B.M. zone. In any event, the Board need not reach this issue because it is not fairly presented on the facts of this case.



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(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of January, 2000, a copy of the foregoing People's Counsel's Memorandum was mailed to Anthony J. DiPaula, Esq., Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, MD 21204, attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF **People's Counsel for**
Baltimore County *
Old Courthouse, Room 47
400 Washington Avenue *
Towson, Maryland 21204
*
FOR JUDICIAL REVIEW OF THE OPINION OF CIVIL ACTION
THE COUNTY BOARD OF APPEALS * No. **3-C-00-3846**
OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE CASE OF: IN THE MATTER OF *
THE APPLICATION OF
G.D.&R.L., LTD. *
FOR A SPECIAL HEARING
FOR PROPERTY LOCATED ON THE N/S BALTIMORE *
NATIONAL PIKE, 478' E OF C/L JOHNNYCAKE ROAD
*
1st ELECTION DISTRICT
1st COUNCILMANIC DISTRICT *

CASE NO. 99-324-SPH *

Box 225

* * * * * * * * * * *

SUPPLEMENTAL RECORD OF PROCEEDINGS
(CLARIFICATION OF THE BOARD ON REMAND)
BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Lawrence S. Wescott, Charles L. Marks, and Donna M. Felling, constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith supplement the previously filed record with the following entries and/or documents:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS

No. 3-C-00-3846 (99-324-SPH)

December 20, 2000 Order of the Circuit Court remanding this matter to the Board for clarification pursuant to that Order (CCt Order filed 12/27/00)

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BALTIMORE COUNTY

IN RE: PETITION FOR SPECIAL HEARING N/S Baltimore National Pike, 478' E of the c/l Johnnycake Road (5538 Baltimore National Pike) 1st Election District 1st Councilmanic District G.D. & R.L., Ltd. Petitioners	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 99-324-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, G.D. & R.L., Ltd., by Gary Dickson, President, through their attorney, Anthony J. DiPaula, Esquire. The Petitioners request a special hearing to approve the use of the subject property as a used automobile sales room and adjoining outdoor sales area for used cars, provided that dismantled or junked cars unfit for operation on the highways shall not be stored outdoors, pursuant to Section 233.2 of the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and relief requested are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the public hearing held in this case were Ray Lewis and Gary S. Dickson, President of G.D. & R.L., Ltd., owners of the subject property, David M. Green, the Registered Property Line Surveyor who prepared the site plan of this property, and Anthony J. DiPaula, Esquire, attorney for the Petitioners. Appearing in support of the request was Mary Sites, President of the Catonsville Manor Community Association. Diana Itter, a representative of the Office of Planning was also present. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a triangularly shaped lot, containing a gross area of .4043 acres, zoned B.M.-C.C.C., and is improved with a one-story block building that is presently vacant. The property is located on Baltimore National Pike (Maryland Route 40), not far from that road's intersection with Johnnycake Road in Catonsville.

ORDER RECEIVED FOR FILING
Date 6/30/99
By

Mr. Dickson testified that he and Mr. Ray Lewis are the principals of G.D. & R.L., Ltd., owners of the subject property. He testified that he also owns a nearby gasoline service station, known as Dickson's Mobil, which has existed at the corner of Ingleside Avenue and Johnnycake Road for many years. Mr. Dickson testified that he and Mr. Lewis purchased the subject property and have made efforts to rehabilitate same. Formerly, the property was used as a gasoline service station; however, that operation was shut down a number of years ago. The gasoline storage tanks on the site were subsequently removed and the Petitioners have had environmental tests performed to insure that the property is not contaminated. In addition to the gasoline station, the property was also previously used for different automotive uses, including the sale of used vehicles.

Mr. Lewis testified that they wish to utilize the site for the sale of used cars and trucks. The existing building will be used as an office and vehicles will be stored on-site and sold from the premises. It is anticipated that approximately 30 to 50 cars will be sold from the property each month.

Testimony was also offered by George Psoras, Jr., an attorney who is familiar with the area. Mr. Psoras has an office across the street from Dickson Mobil and grew up in the area. He indicated that automobile dealerships and garages are located near the subject site, all along Baltimore National Pike. Mr. Psoras supports the proposed use and believes that Mr. Dickson and Mr. Lewis will be an asset to the business community.

These comments were echoed by Ms. Sites who appeared on behalf of the Catonsville Manor Community Association. She indicated that this portion of Route 40 (Baltimore National Pike) has been an eyesore for many years, and that this particular property was run down. She noted that the current owners have cleaned up the site and believes that the proposed use is consistent with surrounding uses in the area.

Lastly, testimony was offered from Mr. Green, the Surveyor who prepared the site plan for this property. He described the zoning of the property, its shape and size. He also indicated that the proposed use is appropriate for the area. Ms. Itter testified in opposition to the request (see the Zoning Plans Advisory Committee (ZAC) comment from the Office of Planning).

ORDER RECEIVED FOR FILING
Date 4/30/99
By

From a practical standpoint, I am persuaded that the proposed use is appropriate for this property and neighborhood. Photographs of the site were submitted which show this particular property and the surrounding locale. In my judgment, the proposed use is consistent with the other uses in the area, and clearly will not be detrimental to the health, safety and general welfare of the surrounding locale. It appears that the property owners have made efforts to clean up the site and rehabilitate same. The property is small and has limited development potential; however, the proposed use appears appropriate.

The issue in this case is not so much the impact of the proposed use, but its permissibility, pursuant to the B.C.Z.R. Several sections thereof need be evaluated to consider this Petition. As noted above, the property is zoned B.M. Section 233.2 of the B.C.Z.R. itemizes those uses permitted by right in the B.M. zone. Among the uses designated as permitted by right are "automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operation on the highways shall not be stored outdoors." It is of note that this use contains no language describing the nature of the automobiles. That is, the use does not specify whether a sales room and outdoor sales area must be for new vehicles, only, or whether used vehicles can be sold.

Apparently, the Zoning Office (the Department of Permits and Development Management {DPDM}), has always construed that Section to be limited to new vehicles. That construction is based on a use designated in Section 236.4 of the B.C.Z.R., which defines the special exceptions permitted in the B.R. zones. Therein, a designated use is "a used motor vehicle outdoor sales area, separated from a sales agency building." Since this use is identified in the B.C.Z.R., the Zoning Office has opined that, when these two uses are considered in conjunction with one another, that the use designated in Section 233.2 (i.e. automobile sales room and adjoining outdoor sales area...) is for new cars, only. The reasoning is that because the use defined in Section 236.4 designates used vehicles, the absence of such language in Section 233.2 must mean that the vehicles to be sold are new.

To say the least, this interpretation endorsed by DPDM is strained. Not only does the use designated in Section 233.2 not utilize either the words "new" or "used", but the uses described in Sections 233.2 and 236.4 above are clearly different. That is, certain restrictions on the use described in Section 236.4 relate only to an outdoor lot, without a building, whereas the use defined in Section 233.2 clearly requires some structure.

Complicating the issue is the definition of "service garage", as set out in Section 101 of the B.C.Z.R. The language therein defines that use as "a garage, other than a residential garage, where motor driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale." (emphasis added) Thus, the sales of motor driven vehicles is a primary component of the service garage use. Service garages are permitted by right in the B.M. zone

In my judgment, the proper approach is to consider each Petition on a case by case basis. In reviewing the record of this case, it is my judgment that the proposed use should be permitted. This determination is reached based on a number of factors as set out above. First, the locale, and particularly the properties fronting Baltimore National Pike, feature a mix of commercial, business, and retail uses. Moreover, there are a number of automobile related uses in the vicinity, including gasoline service stations, service garages, new car dealerships, and the like. Clearly, the proposed use is consistent with those uses. Moreover, I am persuaded that the property's limited development possibilities restrict the potential uses which could thrive on this site. In this regard, testimony was offered from Ms. Itter indicating that revitalization efforts are occurring in this region. It is questionable, due to the size and shape of the property, that many preferred uses could be accommodated here. Last, the testimony of the residents of the community, particularly Mrs. Sites, is persuasive: The property owners are local businessmen with a vested interest in this site and the neighborhood. I believe that an active business use on the property, as opposed to its vacant condition, would generally benefit the community.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held and for the reasons set forth herein, the relief requested shall be granted.

ORDER RECEIVED FOR FILING
Date 11/30/99
By

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 30th day of June, 1999 that the Petition for Special Hearing seeking approval to use the subject property for a used automobile sales room and adjoining outdoor sales area for used cars, pursuant to the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Any dismantled or junked cars unfit for operation on the highways shall not be stored outdoors.

3) When applying for a building permit, the site plan and/or landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

ORDER RECEIVED FOR FILING
Date 6/30/99
By

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 5538 Baltimore National Pike
which is presently zoned BM-CCC

This Petition shall be filed with the Department of Permits and 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 the use of the subject property as ~~an~~ Used automobile sales room and adjoining outdoor sales area for used cars, provided that dismantled or junked cars unfit for operation on the highways shall not be stored outdoors, pursuant to section 233.~~1~~ 2 of the BCZR.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded 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:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Legal Owner(s):

G.D. & R.L., Ltd.
Name - Type or Print

By:
Signature Gary Dickson, President

Name - Type or Print

Signature

5900 Johnnycake Road
Address Telephone No.

Baltimore MD 21207
City State Zip Code

Attorney For Petitioner:

Anthony J. DiPaula
Name - Type or Print

Signature

Covahey & Boozer, P.A.
Company

614 Bosley Avenue 410-828-9441
Address Telephone No.

Towson MD 21204
City State Zip Code

Representative to be Contacted:

Anthony J. DiPaula
Name

614 Bosley Avenue 410-828-9441
Address Telephone No.

Towson MD 21204
City State Zip Code

ORDER RECEIVED FOR FILING
Date 2/25/99
By

Case No. 99-324-SPH

REV 9/15/98

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2.00 hrs

UNAVAILABLE FOR HEARING CALL ATTY

Reviewed By Date 2-19-99

SURVEY ASSOCIATES OF MARYLAND INC
32 LEE STREET, PO BOX 6599, ANNAPOLIS, MARYLAND 21401
(410) 266 7211 FAX (410) 266 0918
dated: 2/18/99

Job AS98104 Gary Dickson

ZONING DESCRIPTION

Beginning at a point on the north side of Baltimore National Pike (US RTE 40) 150 feet wide, 478 feet East of the centerline of Johhnycake Road approx 60 feet wide, thence the following courses and distances:

1) North 42 degrees 17 minutes 20 seconds West 151.98 feet;
2) South 37 degrees 38 minutes 50 seconds West 236.72 feet;
3) by a curve to the right of radius 14398.95 feet the arc distance of 258.00 feet

to the place of beginning.

As recorded in Deed Liber 13078 Folio 501.

324

STATE OF MARYLAND
DAVID L. GREEN
No. 211
REGISTERED
PROPERTY LINE SURVEYOR

99-324-SPH

CERTIFICATE OF POSTING

RE: Case No. 99-324-SPH

Petitioner/Developer: GD&RL, LTD; ETAL
c/o A. DIPAULA, ESQ

Date of Hearing/Closing: 4/2/99

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 ONSITE @ #5538 BALTO. NATIONAL PIKE

The sign(s) were posted on 3/16/99
(Month, Day, Year)

Sincerely,

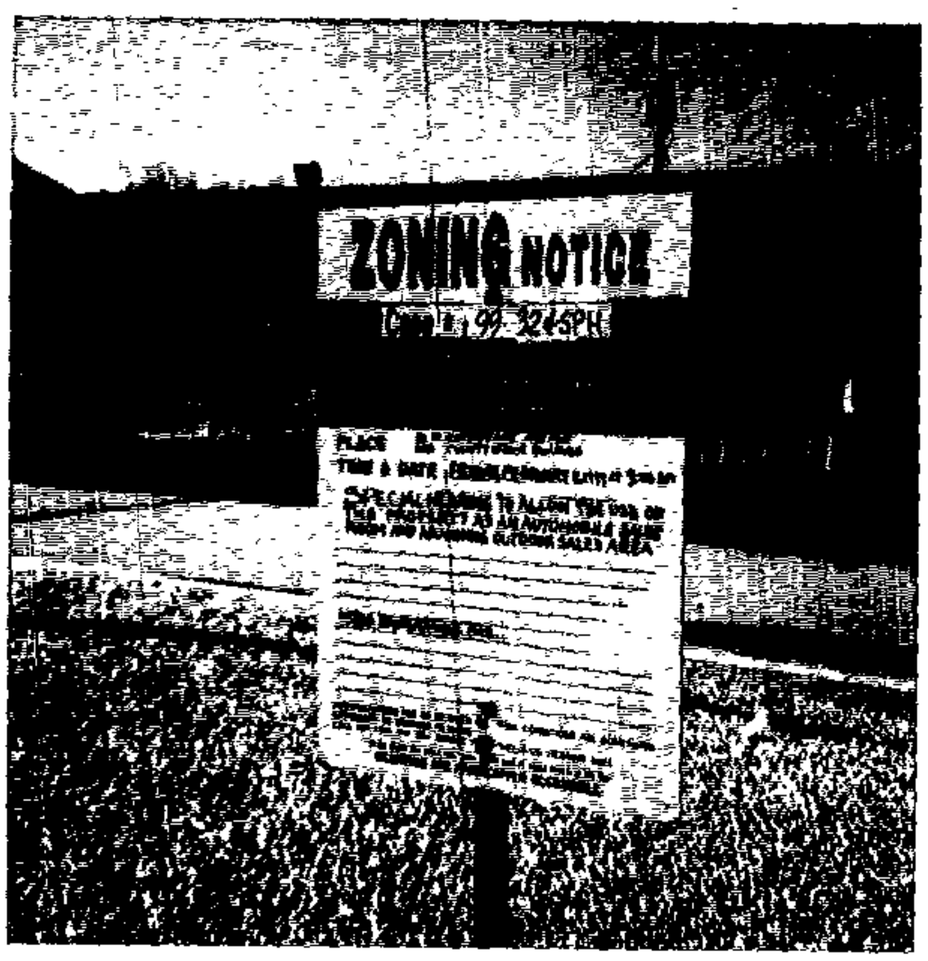
Patrick M. O'Keefe 3/22/99
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)



99-324-SPH
BALTO. NAT. PIKE
P- 3/16/99 4/2/99

NOTICE OF ZONING 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: #99-324-SPH
6538 Baltimore National Pike
N/S Baltimore National Pike, 478' E of centerline Johnny Cake Road
1st Election District
1st Councilmanic District
Legal Owner(s): G.D. & R.L., Ltd.

Special Hearing: to approve a used automobile sales room and adjoining outdoor sales area.
Hearing: Friday, April 2, 1999 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

/272 Mar. 18 C297879

CERTIFICATE OF PUBLICATION

TOWSON, MD., 3/18/, 1999

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 3/18/, 1999.

THE JEFFERSONIAN,

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 99-324 SPH

Petitioner/Developer: GD & RI LTD.

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 5538 BALTIMORE NATIONAL PIKE

The sign(s) were posted on 7/30/99
(Month, Day, Year)

Sincerely,

Gary Freund 7/30/99
(Signature of Sign Poster and Date)

GARY FREUND
(Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number)

9/96
cert.doc

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) 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 the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 99-324-SPH

Petitioner: G.D. + R.L., LTD.

Address or Location: 5538 BALT. NAT'L PIKE

PLEASE FORWARD ADVERTISING BILL TO:

Name: ANTHONY J. DiPAULA, ESQ.

Address: 614 BOSLEY AVE.
TOWSON, MD 21204

Telephone Number: 410-828-9441

Revised 2/20/98 - SCJ

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.: 99-324-SPH

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

PLACE: _____

DATE AND TIME: _____

REQUEST: A Special Hearing to allow the use of the property as an automobile sales room & adjoining outdoor sales area for used cars, provided that dismantled or junk cars unfit for operation on the highways shall not be stored outdoors pursuant to section 233.3 of the BCZR.

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

TO: PATUXENT PUBLISHING COMPANY
March 18, 1999 Issue – Jeffersonian

Please forward billing to:
Anthony J. DiPaula, Esquire 410-828-9441
614 Bosley Avenue
Towson, MD 21204

NOTICE OF ZONING 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: 99-324-SPH
5538 Baltimore National Pike
N/S Baltimore National Pike, 478' E of centerline Johnny Cake Road
1st Election District – 1st Councilmanic District
Legal Owner: G.D. & R.L., Ltd.

Special Hearing to approve a used automobile sales room and adjoining outdoor sales area.

HEARING: Friday, April 2, 1999 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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

March 2, 1999

NOTICE OF ZONING 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: 99-324-SPH
5538 Baltimore National Pike
N/S Baltimore National Pike, 478' E of centerline Johnny Cake Road
1st Election District – 1st Councilmanic District
Legal Owner: G.D. & R.L., Ltd.

Special Hearing to approve a used automobile sales room and adjoining outdoor sales area.

HEARING: Friday, April 2, 1999 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue

Arnold Jablon
Director

c: Anthony J. DiPaula, Esquire
G.D. & R.L., Ltd.

NOTES: (1) **THE PETITIONER/ MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MARCH 18, 1999.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink
on Recycled Paper

Baltimore County Zoning Regulations

1998 Edition

Originally printed as amended through July 6, 1998

SERIAL NO. .....92.....

GENERAL CODE PUBLISHERS CORP.
72 Hinchey Road
Rochester, NY 14624

1998

People's Counsel
#1

Section 236
Business, Roadside (B.R.) Zone Use Regulations
[BCZR 1955]

The following uses only are permitted:

236.1 Uses permitted and as limited in the B.M. Zone.

236.2 Animal boarding place, Class A **[Bill No. 85-1967]**
Animal boarding place, Class B **[Bill No. 85-1967]**
Bottling establishment, soft drink
Brewery, Class 7, if within the urban rural demarcation line **[Bill No. 185-1995]**
Greenhouse
Laboratory
Motel or motor court
Printing, lithographing or publishing plant employing over 25 persons
Volunteer fire company

236.3 The following uses when located at least 50 feet from the residential zone boundaries at the ends of the commercially zones frontages: **[Resolution, November 21, 1956]**

Building materials storage and sales yard
Farm implements, sales and service
Feed and grain sales and storage
Kennel
Lumberyard
Public utility storage yard
Stone or monument works
Storage of inflammable liquids and gases underground (see Baltimore County Building Code for requirements)
Tire retreading or recapping

236.4 Special exceptions. The following uses when permitted as special exceptions (Sections 270 and 502):

After-hours club, provided it is located at least 1,000 feet from any residentially used dwelling, residential zone line, church, park, child care center or school existing prior to the filing of the application for special exception **[Bill No. 85-1994]**
Airport
Amusement park
Arcade, subject to the provisions of Section 423B **[Bill No. 29-1982]**
Automotive-service station, subject to the provisions of Section 405 **[Bill Nos. 40-1967; 85-1967]**[39]
Bus terminal
Car wash **[Bill Nos. 108-1964; 85-1967]**

---

[39] **Editor's Note: The entry entitled "Boat yard," which originally followed, was omitted from the draft of Bill No. 85-1967 through the copying of an apparently incomplete list of special exceptions as it appeared in a post-1955 edition of the zoning regulations. It is assumed, therefore, that the omission of the entry from the bill as enacted was inadvertent. (No intent regarding the regulation of boat yards is reflected in either the title of the bill or in any record pertaining to the bill.) The words "and/or marine railway" were previously repealed by Bill No. 64-1963.**

Cemetery (Section 401)
Contractor's equipment storage yard
Drive-in restaurant **[Bill Nos. 40-1967; 85-1967]**
Excavations, controlled (Section 403)[40]
Golf driving range, miniature golf and baseball batting range
Heliport, Type I **[Bill No. 85-1967]**
Heliport, Type II **[Bill No. 85-1967]**[41]
Living quarters in a commercial building
Moving and storage establishments **[Bill No. 18-1976]**
Pawnshop **[Bill No. 112-1995]**
Poultry, commercial killing of
Public utility uses other than those noted in Sections 200.11,[42] 230.9 and 236.3 (Section 411)
Racetrack, commercial
Riding stable, commercial
Sanitary or rubble landfills (Section 412) **[Bill No. 97-1987]**
Shooting range
Signs, outdoor advertising, subject to Section 450 **[Bill No. 89-1997]**[43]
Sludge disposal facility – co-landfilling (Section 412A.2.A) **[Bill No. 46-1982]**
Sludge disposal facility – composting (Section 412A.2.B) **[Bill No. 46-1982]**
Sludge disposal facility – handling in general (Section 412A.2.C) **[Bill No. 46-1982]**
Sludge disposal facility – incineration (Section 412A.2.D) **[Bill No. 46-1982]**
Sludge disposal facility – landspreading (Section 412A.2.E) **[Bill No. 46-1982]**
Storage of inflammable liquids and gases aboveground (see Baltimore County Building Code for requirements)
Striptease business **[Bill No. 137-1990]**
Theater, drive-in
Trailer park (Section 414)
Truck stops **[Bill No. 18-1976]**[44]
Used motor vehicle outdoor sales area, separated from sales agency building

---

40 **Editor's Note: "Filling station," which originally followed, was repealed by Bill No. 85-1967.**

41 **Editor's Note: "Hospital, Class B," which originally followed, was repealed by Bill No. 37-1988.**

42 **Editor's Note: Section 200.11 [BCZR 1955] was repealed by Bill No. 100-1970. It read as follows:**
"Public utility uses as follows:
"a. Telephone and telegraph lines.
"b. Electric light and power lines, including transformers and transformer banks, when located on poles, on or contiguous to public highways, alleys, rear lot lines, railroad rights-of-way or if carrying less than 35,000 volts.
"c. Conduits, cables; gas, sewer, storm drain, and water mains, all located underground.
"d. Railroad."

43 **Editor's Note: A previous entry for outdoor advertising signs was inserted in the draft of Bill No. 85-1967 through the copying of an apparently erroneous entry in a post-1955 edition of the zoning regulation. It is assumed, therefore, that the inclusion of the entry in the bill as enacted was inadvertent. (No intent regarding the regulations of outdoor advertising signs is reflected in either the title of the bill or in any record pertaining to the bill.) Pursuant to Bill No. 212-1992, the deletion of outdoor advertising signs in the BR Zone shall not affect or apply to any special exception granted prior to the effective date of Bill No. 87-1991, or to any petition for special exception filed prior to the effective date of Bill No. 87-1991.**

44 **Editor's Note: "Truck terminal," which originally followed, was repealed by Bill No. 19-1976.**

Section 270 Schedule of Special Exceptions (See Section 502) [BCZR 1955[1]]

SCHEDULE OF SPECIAL EXCEPTIONS[2]

S.E. Use Permitted by Special Exception Only.
-- Use Permitted Without Special Exception.
X Use Prohibited.

USE	R.40[3]	R.20[3]	R.10[3]	R.6[3]	R.G.[3]	R.A.[3]	B.L.	B.M.	B.R.	M.L.	M.H.	M.L.R.[2]
Airport	S.E.	X	X	X	X	X	X	X	S.E.	X[4]	X	
Amusement park	X	X	X	X	X	X	X	X	S.E.	X[5]	X[2]	
Animal boarding place, Class A[6]	--	S.E.	S.E.	S.E.	X	X	S.E.	--	--	--[7]	--	X
Animal boarding place, Class B[6]	S.E.	S.E.	S.E.	X	X	X	X	X	--	--[7]	--	X
Antique shop[6]	S.E.	X[8]	X	S.E.[9]	X	X[10]	--	--	--	--[7]	X	X
Boardinghouse[13]	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	--	--	--	X	X	
Boatyard[14]	S.E.	S.E.	S.E.	S.E.	X	S.E.	S.E.	--	--	--	--	
Bus terminal	X	X	X	X	X	X	X	S.E.	S.E.	--	--	
Car wash[15]	X	X	X	X	X	X	S.E.	S.E.	S.E.	X[16]	X	
Cemetery	S.E.	S.E.	S.E.	S.E.	X	X	X	X	S.E.	S.E.[7]	S.E.	
Commercial beach[14]	S.E.	S.E.	S.E.	S.E.	X[17]	S.E.	S.E.	--	--	--[7]	--	
Community building, swimming pool, or other structural or land use devoted to civic, social, recreational and educational activities[14]	S.E.	S.E.	S.E.	S.E.	X[17]	S.E.	S.E.	--	--	--[18]	--	
Conservatory, music and arts[19]	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.						
Contractor's equipment storage yard	X	X	X	X	X	X	X	X	S.E.	--	--	

(All notes appear at end of table.)

SCHEDULE OF SPECIAL EXCEPTIONS

S.E. Use Permitted by Special Exception Only.
-- Use Permitted Without Special Exception.
X Use Prohibited.

USE	R.40[3]	R.20[3]	R.10[3]	R.6[3]	R.G.[3]	R.A.[3]	B.L.	B.M.	B.R.	M.L.	M.H.	M.L.R.[2]
Public utility service center	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	--	--	--	--	--	
Public utility storage yard	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	--	--	--	
Racetrack, commercial	S.E.	S.E.	X	X	X	X	X	X	S.E.	X[5]	X	
Radio studio	S.E.	S.E.	S.E.	S.E.	X	X	--	--	--	--[40]	--[41]	
Residential art salon[6]	S.E.	X[42]	X[42]	S.E.	X	X[42]	--	--	--	X	X	X
Riding stable, commercial	S.E.	S.E.	X	X	X	X	X	X	S.E.	X[5]	X	
Rooming house	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	--	--	--	X	X	
Sanitary landfill	S.E.	S.E.	X[43]	X	X	X	X	X	S.E.	S.E.	--	
Shooting range	S.E.	S.E.	X	X	X	X	X	X	S.E.	S.E.	S.E.	
Signs, outdoor advertising	X	X	X	X	X	X	S.E.	S.E.	X[44]	S.E.	S.E.	
Storage of inflammable liquids and gases aboveground	X	X	X	X	X	X	X	X	S.E.	--	--	
Television studio	S.E.	S.E.	S.E.	S.E.	X[17]	X[17]	--	--	--	--[40]	--[41]	
Theater, drive-in	S.E.[45]	S.E.[45]	X	X	X	X	X	X	S.E.	X	X	
Theater, excluding drive-in	X	X		X	X	X	S.E.	--	--	X	X	
Tourist home	S.E.	S.E.	S.E.	S.E.	X[17]	X[17]	--	--	--	X	X	
Trailer park	S.E.	S.E.	S.E.	X	X	X	X	X	S.E.	S.E.[7]	S.E.	
Truck terminal	X	X	X	X	X	X	X	X	S.E.	S.E.	--	
Used motor vehicle sales area (separate from building)	X	X	X	X	X	X	X	X	S.E.	X[5]	X	
Veterinarian's office[6]	S.E.	S.E.	S.E.	S.E.	X[17]	X[17]	--	--	--	--[40]	--	X
Veterinarium[6]	S.E.[45]	S.E.[45]	S.E.[45]	S.E.[45]	X	X	--	--	--	--[7]	--	X

(All notes appear at end of table.)

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1845

September Term, 1994

PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY, ET AL.

V.

COUNTY LINE, INC.

Bishop,
*Alpert,
Salmon,

JJ.

Per Curiam

Filed: February 7, 1996

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

#93-CV-10476

People's Counsel #7

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

I. FACTS

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

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

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

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

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

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

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

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

AREA ZONING

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

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

At the time of the Board's hearing, Section 259.2 of the Baltimore County Zoning Regulations (B.C.Z.R.) provided that it was the council's intent that the C.N.S. district include, *inter alia*, less than 15 retail stores in total, no department or junior department stores, and that it serve a resident neighborhood population of approximately 10,000 persons or less. Section 259.2e of the B.C.Z.R. provided that a C.S.A. overlay district was to be applied to an area contiguous with commercial core districts[1] or commercial town center districts, which would service commercial areas for community or town center commercial cores.

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

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

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

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

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

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

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

PROPOSED USE

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

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

QUESTION PRESENTED

> Was the Board's denial of the special exception arbitrary and capricious.[2]

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

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[2]Appellant phrases the issue:

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

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

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

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

II. STANDARD OF REVIEW

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

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

> 502.1--Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:
>
> a. Be detrimental to the health, safety, or general welfare of the locality involved;
>
> b. Tend to create congestion in roads, streets or alleys therein;
>
> * * *
>
> g. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations....

A. <u>Consideration of the C.N.S. Overlay District</u>

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

> 1. The majority of County Line's business (if the special exception were granted) would be "repeat customers" who would come "from [Mr. Parsons's] other two sites located on Reisterstown Road, which is outside the community."
>
> 2. The C.N.S. overlay district is [designed] to serve a smaller community than that which would be served by the proposed used-car lot.

3. The proposed used-car lot would "attract people from well beyond the neighborhood shopping district with a resident neighborhood population of approximately 10,000 people or less."

4. The proposed used-car lot "would be contrary to the spirit and intent of the C.N.S. overlay district."

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

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

It is clear that the Board's denial of County Line's special exception request was based, in substantial part, on the fact that the property was in a C.N.S. overlay district rather than a C.S.A. district.[3] If the law had not changed since the Board's decision,

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

> Q. And in light of the CNS overlay district, the category to which this property falls, do you think that a used car use is inconsistent with the zoning regulations?
>
> A. I think it's inconsistent with the intent of the CNS district that has been placed in a BR zone.

(continued...)

---

[3](...continued)

* * *

Q. And this is not an adaptable use?

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

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

A. I doubt it seriously.

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

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

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

MS. DEMILIO [PEOPLE'S COUNSEL]: Objection.

THE CHAIRMAN: Overruled.

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

* * *

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

A. Yes.

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

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

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

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

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

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

Q. It's not like a use ordinance? It's not an absolute legal requirement that everything in this CNS

(continued...)

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

> Maryland consistently has followed the rule that "an appellate court is bound to decide a case according to existing laws, even though a judgment rightful when rendered by the court below should be reversed as a consequence," as Judge Markell, for the Court, repeated in ***Woman's Club v. State Tax Comm.***, 195 Md. 16, 19 (or, it may be noted, even when a judgment wrong when rendered is made right by the change in the law). See also for this proposition that a change in the law after a decision below and before final decision by the appellate Court will be applied by that Court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent, ***Keller v. State***, 12 Md. 322; ***Day v. Day***, 22 Md. 530; ***Gordon v. Prince***, 175 Md. 688; ***Cockerham v. Children's Society***, 185 Md. 97; and ***Tudor Arms Apts. v. Shaffer***, 191 Md. 342.
>
> The rule has been applied in zoning cases (citing cases).

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

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[3](...continued)
be commercial neighborhood shopping?

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

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

Q. Yes.

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

B. The Woodlawn/Liberty Community Plan

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

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

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

III. TRAFFIC CONGESTION

A. Intersection of Flannery Lane and Liberty Road

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

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

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

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

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

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

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

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

B. Visual Dissonance

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

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

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

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

C. Crime/Vandalism and Property Values

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

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

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

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

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

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

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

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

Real Property Information

Maryland Department of Assessments and Taxation
Real Property System

[Go Back] BALTIMORE COUNTY [Start Over]

DISTRICT: 01 ACCT NO: 0118101633

Owner Information

Owner Name: GD & RL LTD **Use:** COMMERCIAL

Mailing Address: 5400 JOHNNY CAKE RD
BALTIMORE MD 21207-1534 **Principal Residence:**NO

Transferred

From: JOHNS HOPKINS UNIVERSITY **Date:** 08/14/1998 **Price:** $175,000

Deed Reference: 1) /13078/ 501 **Special Tax Recapture:**
2)
* NONE *

Tax Exempt: NO

Location Information [View Map]

Premises Address: 5538 BALTO NATL PIKE

Zoning: BM

Legal Description: .4043 AC
5538 BALTO NATL PIKE
JOHNNY CAKE RD &

Map	Grid	Parcel	Subdiv	Sect	Block	Lot	Group	Plat No:
95	21	98					82	Plat Ref:

Special Tax Areas **Town:**
Ad Valorem:

Primary Structure Data

Year Built:	Enclosed Area:	Property Land Area:	County Use:
0000		17,611.00 SF	20

Value Information

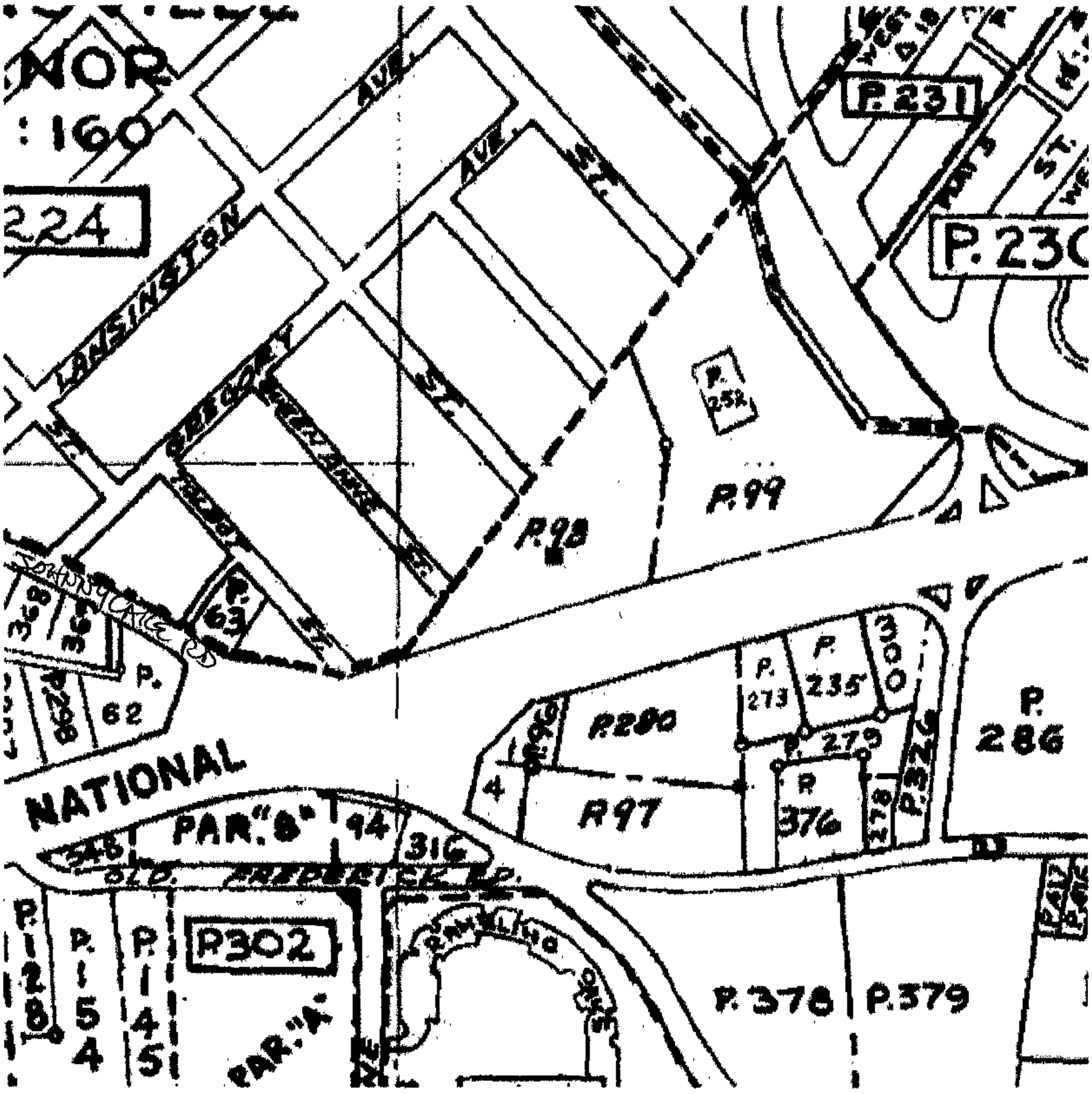
	Base Value	Current Value As Of 01/01/1997	Phase-In Value As Of 07/01/1999	Phase-in Assessments As Of 07/01/1998	Phase-in Assessments As Of 07/01/1999
Land:	207,610	207,610			
Impts:	68,510	77,080			
Total:	276,120	284,690	284,690	112,730	113,870
Pref Land:	0	0	0	0	0

People's Counsel #8

Real Property Information

Maryland Department of Assessments and Taxation
Real Property System

[Go Back] **Account ID : 04010118101633** [Zoom In]



Property maps provided courtesy of the Maryland Office of Planning © 1998.
For more information on electronic mapping applications, visit the Maryland Office of Planning web site at www.op.state.md.us.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 15, 1999

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

SUBJECT: 5538 Baltimore National Pike

INFORMATION:

Item Number: 324
Petitioner: G.D. & R.L. Ltd.
Property Size: .4043 ac.
Zoning: BM-CCC
Requested Action:
Hearing Date:

The property in question, 5538 Baltimore National Pike, is located on one of the county's prime commercial corridors. Revitalization efforts are occurring on vacant properties along Route 40 West. However, the proposed used car sales as a principal use is not permitted in a BM-CCC zone, Business Major, Commercial, Community Core district; it requires a Special Exception in a BR, Business Roadside zone as per Section 236.4 of the Baltimore County Zoning Regulations. The BM zone allows medium intensity retail, office and service uses including new automobile sales and service.

SUMMARY OF RECOMMENDATIONS:

This office strongly recommends denial of the requested Special Hearing as it is not in keeping with either the Baltimore County Master Plan 1989-2000 or the spirit and intent of the BM zone.

Section Chief: Jeffrey W. Long

AFK:DI

RECEIVED
MAR 16 1999
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

People's Counsel
Baltimore Co.
#3

\\NCH_NW\\ OL3\WORKGRPS\COMPLAN\DIANA\Item 324.doc

MAP 33

SW 1 F or 1E

People's Counsel

JB 1000 #4

ZONING COMMISSIONERS POLICY MANUAL

SECTION 270 - USE CHART - This chart is intended as a quick guide to Use Regulations in Baltimore County. It is only a table and does not supersede the uses listed in each zoning classification in the B.C.Z.R. (i.e. tables are <u>not</u> the determining factor).

Petitioner's Exh #1

P : Use Permitted
C : Use Permitted Subject to Conditions
@ : Permitted as Accessory Use Subject to Limitations
SE: Use Permitted Only by Special Exception
X : USE PROHIBITED

M.H.	M.R.	M.L.R.	M.L.	B.R.	B.M.	B.L.	O.T.	O-2	O-1	R.O.	R.A.E.-2	R.A.E.-1	D.R.-16	D.R.-10.5	D.R.-5.5	D.R.-3.5	D.R.-2	D.R.-1	R.C.-50	R.C.-20	R.C.C.	R.C.-5	R.C.-4	R.C.-3	R.C.-2	
																			P	P					P	AGRICULTURAL OPERATIONS (See 404) (also see Farm)
																					SE				SE	AGRICULTURAL-SUPPORT USES - Farm Machines Storage, Sales & Service, Inc. Blacksmith
																			P	SE					SE	AGRICULTURAL-SUPPORT USES - Fertilizer Sales or Storage
																			SE	SE					SE	AGRICULTURAL-SUPPORT USES - Feed & Grain Mills or Driers
																			SE	SE					SE	AGRICULTURAL-SUPPORT USES - Saw Mills
																					P					AGRICULTURAL RELATED - Retail, Office and Service Uses
																					P					AGRICULTURAL RELATED - Supply and Feed Store
		SE	SE	SE													SE							SE	SE	AIRPORT
			@	P	P	P					@	@														ALCOHOL/PACKAGE LIQUOR STORE
				C	C	C															@					AMUSEMENT DEVICES (see 422)
				SE																						AMUSEMENT PARKS
P				P	P	SE			SE	SE					SE	SE	SE	P						SE	SE	ANIMAL BOARDING PLACE (see 421) CLASS A
P				P												SE	SE	SE						SE	SE	ANIMAL BOARDING PLACE (see 421) CLASS B
							@	@	@	@	C	C	@	@	@	@	@	@	@	@		C	C	C	C	ANTENNAS
				P	P	P							SE				SE	SE			P	SE	SE	SE	SE	ANTIQUE SHOP (see 402B)
				P	P	P																				APPLIANCE STORE (HOUSEHOLD)
																					P					APPLIANCE REPAIR SHOP (HOUSEHOLD)
																			P	SE						AQUACULTURE

P : Use Permitted
C : Use Permitted Subject to Conditions
@ : Permitted as Accessory Use Subject to Limitations
SE: Use Permitted Only by Special Exception*
X : USE PROHIBITED

M.H.	M.R.	M.L.R.	M.L.	B.R.	B.M.	B.L.	O.T.	O-2	O-1	R.O.	R.A.E.-2	R.A.E.-1	D.R.-16	D.R.-10.5	D.R.-5.5	D.R.-3.5	D.R.-2	D.R.-1	R.C.-50	R.C.-20	R.C.C.	R.C.-5	R.C.-4	R.C.-3	R.C.-2	
				SE	SE	SE																				ARCADE (see 423)
				SE	SE	SE														P						ARTS AND CRAFT STUDIO
																				P						AUCTION BUILDING/SALES
				P	P	P																				AUTO ACCESSORY SHOP
				P	P																					AUTOMOBILE SALES (new & used cars)
				SE																						AUTOMOBILE SALES (used cars only)
			@																							AUTOMOBILE/TRUCK RENTALS
		SE	@ SE	SE	SE	SE	@	@	@	@			@	@	@	@	@	@								AUTOMOTIVE SERVICE STATION (see 405)
P	P	P	P								@															BAKERY OR BAKERY OUTLET
				P	P	P	@	@																		BANKS - DRIVE THRU WINDOW OR ATM'S
P	P	C	@	P	P	P	@	@			@									P						BANKS & OTHER FINANCIAL INSTITUTIONS
			@	P	P	P					@	@								P						BARBER SHOP/BEAUTY SHOP BASEBALL BATTING RANGE (SEE GOLF)
				P	P	SE																				BEACH, COMMERCIAL
								C	C	C			C	C	C	C	C	C	C	C	C	C	C	C	C	BED & BREAKFAST HOME (see 402D)
								C	C	C			C	C	C	C	C	C	C	C	C	C	C	C	C	BED & BREAKFAST INN (see 402D)
				P	P	P																				BILLIARD & POOL ROOM
				P	P	P		SE	SE	SE			SE	SE	SE	SE	SE	SE								BOARDING HOUSE
P		C		P	P	SE		SE	SE	SE			SE	SE	SE	SE		SE				SE		SE		BOAT YARDS (also see Marina)
											@															BOOK STORE

CMCA

TO WHOM IT MAY CONCERN,
ON DECEMBER 8TH OUR PRESIDENT MARY SITES HAS PERMISSION FROM HER BOARD OF DIRECTORS TO SPEAK ON THE CATONSVILLE MANOR COMMUNITY ASSOCIATION'S BEHALF SHOWING OUR SUPPORT FOR G.D&R.L.,LTD(CATONSVILLE MOTORS) LOCATED ON BALTIMORE NATIONAL PIKE. THE COMMUNITY AND BOARD OF DIRECTORS FULLY SUPPORTS THE G.D.&R.L.,LTD BUSINESS.

VICE - PRESIDENT

Bonnie Winstead

SECRETARY

Mildred Cunningham

CATONSVILLE MANOR COMMUNITY

6400 JOHNNYCAKE RD
BALTIMORE MD 21207

Phone: 410.719.7591
catwoodvol@aol.com

Petitioners Exhibit #3

CMCA

CATONSVILLE MANOR COMMUNITY ASSOCIATION INC. WAS INCORPORATED IN OCTOBER OF 1995. THE FOUNDER AND PRESIDENT OF CATONSVILLE MANOR COMMUNITY ASSOCIATION IS MARY SITES -
ADDRESS :

1121 MCADDO AVE
BALTIMORE MD 21207

MARY SITES HAS BEEN A MEMBER OF THE CATONSVILLE MANOR COMMUNITY FOR 15 YEARS. IN 1995 MARY SITES STARTED OUR COMMUNITY ASSOCIATION WHICH HAS A POPULATION OF 1100 HOMES AND 37 STREETS. OUR BOUNDARIES ARE FROM RT.40 AND INGELSIDE AVE INCLUDING THE BUSINESS DISTRICT TO FRANKLIN AVE LOCATED BEFORE THE RT 70 BRIDGE, OUR BOUNDARIES ALSO INCLUDE THE BUSINESS DISTRICT ALONG THE RT. 40 CORRIDOR WESTBOUND FROM ST. AGNES LANE TO INGELSIDE AVE., JOHNNYCAKE RD FROM RT. 40 TO THE BRIGADOON COMMUNITY . WE HAVE A LARGE POPULATION OF SENIOR CITIZENS WHOM HAVE LIVED IN THE MANOR FOR MANY YEARS AND A GROWING NUMBER OF YOUNG FAMILIES STARTING THEIR HOMES IN THE MANOR. OVER THE PAST FIVE YEARS OUR COMMUNITY HAS GROWN TO BECOME A VERY ACTIVE WORKING COMMUNITY. OUR BOARD OF DIRECTORS ARE:

MARY SITES - PRESIDENT
BONNIE WINSTEAD - VICE PRESIDENT
SUE GLANVILLE - CITIZENS ON PATROL
MILDRED CUNNINHAM - SECRETARY
JOAN HERION - BUSINESS ASSOCIATE
CORENE GARRETT- BOARD MEMBER
RON TANKERSLEY - PUBLISHER

OUR COMMUNITY PUBLISHES 4-5 NEWSLETTERS A YEAR AND HAS A COMMUNITY MEETING AT LEAST FIVE TIMES A YEAR. WE HAVE STARTED MANY DIFFERENT PROJECTS IN THE MANOR SINCE 1995, WE NOW HAVE A COMMUNITY PARK NAMED LEADERSHIP PARK AND WE HAVE OUR SAFETY KID PROGRAMS WHICH ARE RUN BY CHILDREN IN OUR COMMUNITY, THE MIGHTY DUCKS. THE MIGHTY ANGELS AND THE MIGHTY RIDERS. OUR CITIZEN ON PATROL AND NEIGHBOR CARE PROGRAMS ARE VERY GOOD CRIME PREVENTION PROGRAMS FOR OUR COMMUNITY, OUR CITIZENS LEARN HOW TO PROTECT THEMSELVES AND THEY ALSO GET THE CHANCE TO HELP KEEP OUR COMMUNITY CRIME FREE . WE HAVE POSTED COMMUNITY SIGNS ON ALL OF OUR STREETS. MEMBERS OF OUR BOARD OF DIRECTORS ARE INVOLVED IN MANY COMMUNITY COMMITTEES INCLUDING , THE CATONSVILLE 4TH JULY COMMITTEE, THE BALTIMORE COUNTY POLICE COMMUNITY RELATIONS COUNCIL. WE HAVE BEEN AWARDED WITH AWARDS FOR OUR COMMUNITY SPIRIT AND OUR COMMUNITY CRIME PREVENTION, OUR SAFETY KIDS PROGRAMS HAVE RECEIVED AWARDS ON A JOB WELL DONE. WE ARE CONTINUING TO WORK VERY HARD FOR OUR COMMUNITY TO KEEP IT A SAFE PLACE TO LIVE.

MARY SITES

CATONSVILLE MANOR COMMUNITY

6400 JOHNNYCAKE RD
BALTIMORE MD 21207

Phone: 410.719.7591
catwoodvol@aol.com

Section 233
Business, Major (B.M.) Zone Use Regulations
[BCZR 1955]

The following uses only are permitted (Section 233.3):

233.1. Uses permitted in B.L. Zone.

233.2[29] Animal boarding place, Class A **[Bill No. 85-1967[30]]**
Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors[31]
Boatyard **[Bill Nos. 64-1963; 85-1967]**
Bowling alleys
Carpentry, electrical, plumbing, heating, sheet metal, electroplating and painting shops
Catering hall **[Bill No. 110-1993]**
Clothes cleaning and dyeing where not more than two units with combined capacity of not more than 50 pounds are employed
Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area and boat rental **[Bill Nos. 64-1963; 85-1967]**
Commercial recreation enterprises, including dance halls, skating rinks and others which, in the judgment of the Zoning Commissioner, are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades
Community building, swimming pool or other structural or land use devoted to civic, social, recreational and educational activities **[Bill Nos. 64-1963; 85-1967; 26-1988]**
Funeral establishment **[Bill No. 43-1970]**
Garage, service
Golf course, country club or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line **[Bill Nos. 64-1963; 85-1967]**
Hotel
Machinery sales store
Marina **[Bill Nos. 64-1963; 85-1967]**
Nightclub[32]
Printing, lithographing or publishing plant, employing not more than 25 persons
Secondhand store[33]

---

29 Editor's Note: All of the provisions of this subsection that are not followed by bracketed historical references were reenacted without substantive amendment by Bill No. 85-1967. The entries indicated in this section as originally having been added by Bill No. 64-1963 were, according to a literal reading of that bill, to have been added to "[Section]...232.2, title 'B.M. zone'...". However, Section 232.2 regulates side yards, not uses, and is part of the regulations of the B.L. zoning classification, not the B.M. classification.

30 Editor's Note: This bill also repealed "Animal hospital," which originally followed.

31 Editor's Note: "Billiard and pool rooms," which followed this item, was repealed by Bill No. 61-1967.

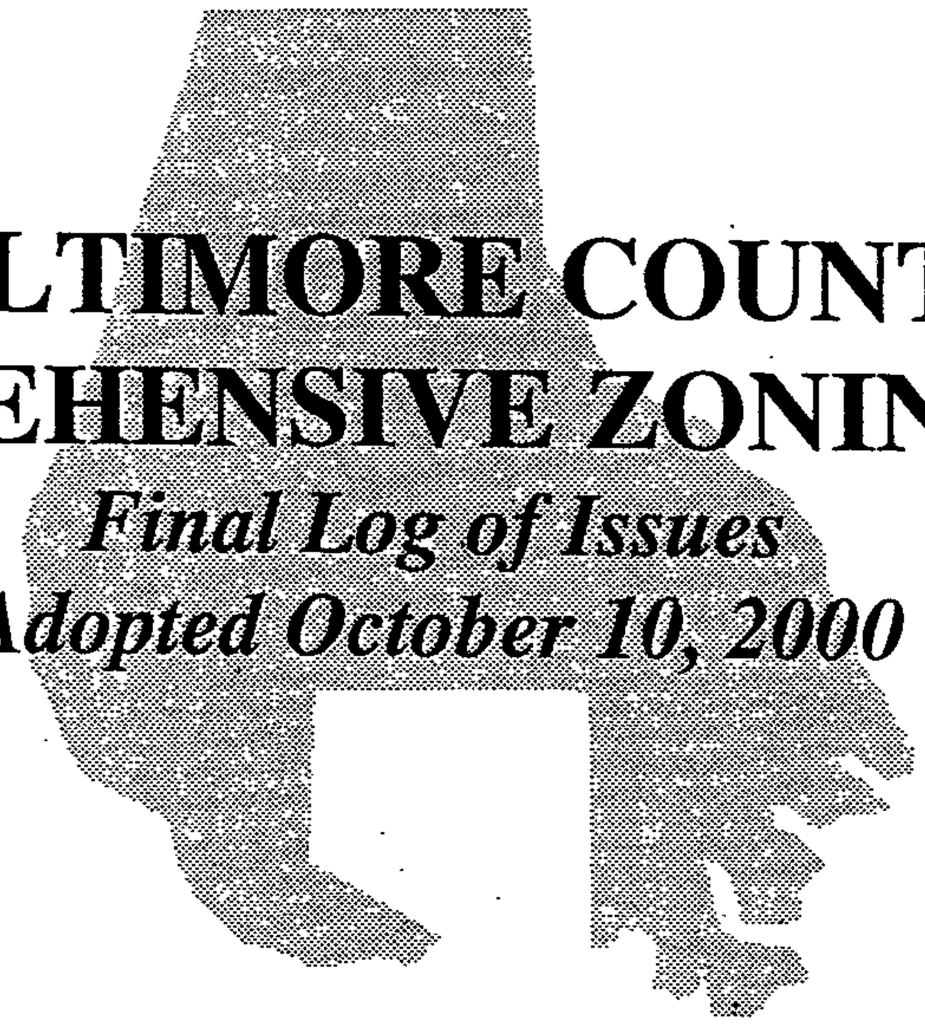
32 Editor's Note: "Pawnshop," which originally followed, was repealed by Bill No. 112-1995.

33 Editor's Note: "Tavern," which originally followed, was repealed by Bill No. 85-1967.

Petitioner's Exhibit #8

BALTIMORE COUNTY
COMPREHENSIVE ZONING MAP

Final Log of Issues
Adopted October 10, 2000



2000 CZMP Map Issues: District 1

3

4

2

1

BALTIMORE CITY

1-054
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1-040
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1-023
1-071
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1-037
1-052
1-042
1-043
1-063

70
695
895

Councilmanic District
Secondary Roads
Major Roads
Map Issues

N
W E
S

1 inch = 2 miles

2 0 2 4 Miles

1:126720

Prepared by: Baltimore County Office of Planning
OIT/GIS Services Unit, January 2000

Sources: Roads and Councilmanic Districts-Baltimore Metropolitan Council 1999 1:24000
CZMP Issues-Baltimore County Office of Planning. Digitized from 1996
Tax Maps 1:7200 This map is for display purposes only. Land use decisions
involving zoning designations should be
verified with the zoning office. Issues as of January 18, 2000

Councilmanic Districts

3
6
4
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5
1
7

Baltimore County 2000 Comprehensive Zoning Map Issues

sue :mber	Owner, Petitioner	Location	Existing Zoning and Acres	Requested Zoning and Acres	Planning Board Recommendations	County Council Decisions	Comments
1-036	Tuck Capital Investment, Inc	5153 Baltimore National Pk, southeast corner of Baltimore National Pk and Charing Cross Rd	RO 1.2 DR 5.5 0.6 Total 1.8	BL AS 1.8 Total 1.8	RO 1.2 DR 5.5 0.6 Total 1.8	BM 1.8 Total 1.8	Covenant Agreement
1-037	Philip Valenzia	2912 Hammonds Ferry Rd, 150' south of Hammonds Ferry Rd and Fifth St	DR 5.5 0.4 Total 0.4	RO 0.4 Total 0.4	RO 0.4 Total 0.4	RO 0.4 Total 0.4	See Issue 1-052
1-038	Gary Dixon	5538 Baltimore National Pk	BM CCC 0.4 Total 0.4	BR 0.4 Total 0.4	BR 0.4 Total 0.4	BM CCC 0.4 Total 0.4	
1-039	Dennis Sardona Mendoza	1700 Hill Dr, 220' northwest from Grove Ave	MLR 0.8 Total 0.8	BM 0.8 Total 0.8	BM 0.8 Total 0.8	BM 0.8 Total 0.8	See Issue 1-009
1-040	William W. & Barbara P. Birago	3500 Granite Rd, south of Marriotsville Rd	RC 2 36.1 Total 36.1	RC 3 36.1 Total 36.1	RC 2 36.1 Total 36.1	RC 2 36.1 Total 36.1	
1-041	Braveheart, LLC	408 Commonwealth Ave at Route 40 West	DR 16 0.5 Total 0.5	BL 0.5 Total 0.5	DR 16 0.5 Total 0.5	DR 16 0.5 Total 0.5	
1-042	Relay Improvement Association	West side of Viaduct Ave opposite Woodland Dr	DR 3.5 13.5 Total 13.5	DR 1 13.5 Total 13.5	DR 3.5 13.5 Total 13.5	DR 1 13.5 Total 13.5	
1-043	Relay Improvement Association	1846 Sutton Ave, 250' southeast of South St	RO 2.5 Total 2.5	DR 5.5 2.5 Total 2.5	ROA 1.3 DR 5.5 1.2 Total 2.5	RO 1.3 DR 5.5 1.2 Total 2.5	Overlay Adopted

BALTIMORE COUNTY

ZONING REGULATIONS

1969

0331

This is the property of:

Name _____

Address _____

_____

Phone _____

People's Counsel #1

Section 233—Use Regulations

The following uses only are permitted (see Section 233.3):

233.1—Uses permitted in B.L. Zone.

233.2—Animal boarding place, Class A; [Bill No. 85, 1967]
["Animal hospital," etc. - deleted by Bill No. 85, 1967]
Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors;
["Billiard and pool rooms;" - deleted by Bill No. 61, 1967]
Boat yard; [Bill No. 64, 1963]
Bowling alleys;
Carpentry, electrical,plumbing, heating, sheetmetal, electroplating and painting shops;
Clothes cleaning and dyeing where not more than 2 units with combined capacity of not more than 50 pounds are employed;
Commercial beach, with provision of adequate parking area; and permitting dressing facilities, snack bar, picnic area, and boat rental; [Bill No. 64, 1963]
Commercial recreation enterprises, including dance halls, skating rinks, and others which—in the judgement of the Zoning Commissioner—are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades;
Community building, swimming pool, or other structural or land use devoted to civic, social, recreational, and educational activities; off-street parking areas shall be provided to such extent and be so located as the Zoning Commissioner or County Board of Appeals, on appeal, shall agree to be needed in relation to their surroundings; [Bill No. 64, 1963]
Garage, service;
Golf Course, country club, or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot, or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line; [Bill No. 64, 1963]
Hotel;
Machinery sales store;
Marina; [Bill No. 64, 1963]
Night club;
Pawn shop;

P.C. #1

B. R. Zone—Business, Roadside

Section 236—Use Regulations

The following uses only are permitted:

236.1—Uses permitted and as limited in B. M. Zone.

236.2—Animal boarding place, Class A; [Bill No. 85, 1967]
Animal boarding place, Class B; [Bill No. 85, 1967]
Bottling establishment, soft drink;
Greenhouse;
Laboratory;
Motel or motor court;
Printing, lithographing, or publishing plant, employing over 25 persons;
Volunteer fire company.

236.3—The following uses when located at least 50 feet from the residential zone boundaries at the ends of the commercially zoned frontage; [Revised by Resolution, November 21, 1956]

Building materials storage and sales yard;
Farm implements, sales and service;
Feed and grain sales and storage;
Kennel;
Lumber yard;
Public utility storage yard;
Stone or monument works;
Storage of inflammable liquids and gases underground (for requirements see Baltimore County Building Code);
Tire retreading or recapping.

236.4—Special Exceptions — The following uses when permitted as Special Exceptions (see Sections 270 and 502):

Airport;
Amusement park;
Automotive-service station, subject to the provisions of Section 405; [Bill No. 40, 1967]
["Boat yard" etc. — deleted by Bill No. 64, 1963; Bill No. 85, 1967]
Bus Terminal;
Car wash; [Bill No. 108, 1964]
Cemetery (see Section 401);
Contractor's equipment storage yard;
Drive-in restaurant; [Bill No. 40, 1967]
Excavations, controlled (see Section 403);
Filling station (see Section 405);
Golf driving range, miniatrue golf, and baseball batting range;
Heliport, Type I; [Bill No. 85, 1967]
Hospital Class B (see Section 407);

P.C. #1

Living quarters in a commercial building;
Poultry, commercial killing of;
Public utility uses other than those noted in Sections 200.11; 230.9 and 236.3 (see Section 411);
Race track, commercial;
Riding stable, commercial;
Sanitary landfill;
Shooting range;
Signs-Outdoor Advertising (see Section 413.3 & 413.5); [Bill No.85, 1967]
Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code);
Theatre, drive-in;
Trailer park (see Section 414);
Truck terminal;
Used motor vehicle outdoor sales area, separated from sales agency building;
Wireless transmitting and receiving structure, except as a minor accessory use or structure (which is permitted without a special exception), provided that, for the purposes of this subsection, no exterior antenna greater than 50 feet above grade level shall be considered as an accessory use or structure. [Revised by Bill No. 61, 1967]

Section 237—HEIGHT REGULATIONS

Same as in B. L. Zone.

Section 238—AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

238.1—Front Yard — For residences, as in Sections 302 and 303.1; for commercial buildings the front building line shall be not less than 50 feet from the front property line if on a dual highway; and not less than 25 feet from the front property line and not less than 50 feet from the center line of any other street, except as specified in Section 303.2;

238.2—Side and Rear Yards — For residences, as in Section 302; for other buildings, 30 feet;

238.3—Parking Areas and Loading Space — In accordance with the provisions of Section 409;

238.4—Storage and display of materials, vehicles and equipment are permitted in the front yard but not more than 15 feet in front of the required front building line.

238.5—Floor Area Ratio—The maximum permitted floor area ratio for any site in a B.R. Zone, excepting C.T. Districts, shall be 2.0. [Bill No. 7, 1962; revised by Bill No. 111, 1968]

P.C. #1

W. CARL RICHARDS, JR.
4610 Schenley Road
Baltimore, MD 21210

Educated at City High and Towson, as well as Loyola Evening College. In 1966, at 19 years old, began working as a draftsman in Zoning Administration. Since 1966, he has worked in the zoning, permits and development offices as an engineering aide, planning associate, planning and zoning associate, branch office manager, zoning coordinator, and since January 3, 1986, supervisor of 13 employees in the Zoning Review Bureau of the Department of Permits and Development Management. Carl has represented the Baltimore County zoning office at public and private meetings, professional, civic, and community groups. He has been accepted as an expert witness on zoning matters before the zoning commissioner, Board of Appeals, and Circuit Court.

People's Counsel #2

BALTIMORE COUNTY

ZONING REGULATIONS

1955

BOOK № 404

[redacted]

This is the property of:

Name Carl Richards Jr.

Address

Phone

People's Counsel #3

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

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

1955

Michael J. Birmingham
President

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

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

PC #3

PREFACE

The first Zoning Regulations to be adopted in Baltimore County went into effect in 1945. These Regulations served well enough until the tremendous growth of the County beginning about 1950 made it obvious that these Regulations were not sufficiently comprehensive to give adequate protection to the public in the large Metropolitan area which rapidly began to take shape throughout the entire suburban area of the County.

Shortly after the Election of 1950 a County administration requested the then Planning Commissioner to undertake studies looking toward the adoption of complete new and more comprehensive zoning regulations. These studies, under the direction and supervision of Mr. Malcolm H. Dill, then Planning Commissioner, in cooperation with Mr. Augustine J. Muller, the then Zoning Commissioner, later succeeded as Zoning Commissioner by Mr. Wilsie H. Adams, continued over a period of several years. The services of Mr. Flavell Shurtleff, a zoning consultant of recognized national standing were obtained and he participated in many conferences and discussions leading up to the adoption of the new Regulations.

Many varied interests were also brought into consultation including numerous architects, engineers, builders, developers and real estate brokers, all of whom contributed substantially to the Regulations as finally adopted and who are entitled to the thanks of the public for their contribution to this important undertaking. The Director of Planning and the Zoning Commissioner studied many zoning regulations from other jurisdictions and incorporated in these Regulations ideas gleaned from these sources.

After a Preliminary draft of the Regulations had been completed numerous further meetings and discussions were had with various architects, builders and developers in which Mr. Malcolm H. Dill, as Director of Planning, Mr. Wilsie H. Adams, as Zoning Commissioner, Mr. Augustine J. Muller, as a member of the Board of County Commissioners, and former Zoning

PC #3

Commissioner, and Mr. George M. Berry, Deputy County Solicitor, participated.

As a result of these many conferences a final draft of the new Regulations was prepared and finally adopted by the County Commissioners on March 30, 1955. We have now had more than two years of experience with these new Regulations. Some amendments have been found necessary and undoubtedly further amendments will be found desirable from time to time. On the whole, however, we believe that these Regulations have provided the people of Baltimore County with a sound basis for the protection of property values and the general welfare of the public.

Realizing that future amendments are a certainty and in order to afford an easy and economical method of keeping these Regulations up-to-date, the loose-leaf form was adopted. Recognizing the importance of keeping the public informed of current amendments and revisions these Regulations will be sold on a subscription basis, with the initial cost to include loose-leaf re-prints of any amendments or revisions during the subscription period. The subscription period begins with the date of publication and terminates five years thereafter at which time the service will be made available on some different basis at a nominal cost.

The County authorities wish to extend their sincere thanks to the many persons who gave so generously of their time and effort in making these Regulations as effective and useful as we believe they are.

PC #2

B. L. ZONE

Section 232—AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

232.1—Front Yard—For residences, as in Sections 302 and 303.1; for commercial buildings the front building line shall be not less than 10 feet from the front property line and not less than 40 feet from the center line of the street, except as specified in Section 303.2.

232.2—Side Yards—

a. For residences, as in Section 302;
b. For commercial buildings, none required on interior lots, except that where the lot abuts a lot in a residence zone there must be a side yard not less than the greater minimum width required for a dwelling on the abutting lot and on corner lots the side yard on the street side shall be not less than 10 feet in width.

232.3—Rear Yard—

a. For residences, as in Section 302;
b. For commercial buildings, none required except that where the rear lot line abuts on a residence zone there shall be a rear yard not less than 20 feet deep.

232.4 — *Parking Area and Loading Space* — In accordance with the provisions of Section 409.

B. M. Zone—Business, Major

Section 233—USE REGULATIONS

The following uses only are permitted (see Section 233.3):

233.1—Uses permitted in B. L. Zone.

233.2 — Animal hospital, when 100 feet from a residential zone;

Automobile sales room and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways shall not be stored outdoors;

Billiard and pool rooms;

Bowling alleys;

Carpentry, electrical, plumbing, heating, sheetmetal, electroplating and painting shops;

PC #3

B. R. Zone—Business, Roadside

Section 236—USE REGULATIONS

The following uses only are permitted:

236.1—Uses permitted and as limited in B. M. Zone.

236.2—Bottling establishment, soft drink;
Greenhouse;
Laboratory;
Motel or motor court;
Printing, lithographing, or publishing plant, employing over 25 persons;
Volunteer fire company.

236.3—The following uses when located at least 50 feet from the residential zone boundaries at the ends of the commercially zoned frontage:
Building materials storage and sales yard;
Farm implements, sales and service;
Feed and grain sales and storage;
Kennel;
Lumber yard;
Public utility storage yard;
Stone or monument works;
Storage of inflammable liquids and gases underground (for requirements see Baltimore County Building Code);
Tire retreading or recapping.

236.4 — Special Exceptions — The following uses when permitted as Special Exceptions (see Sections 270 and 502):

Airport;
Amusement park;
Boat yard and/or marine railway;
Bus terminal;
Cemetery (see Section 401);
Contractor's equipment storage yard;
Excavations, controlled (see Section 403);
Filling station (see Section 405);
Golf driving range, miniature golf, and baseball batting range;
Hospital Class B (see Section 407);
Living quarters in a commercial building;
Poultry, commercial killing of;
Public utility uses other than those noted in Sections 200.11, 230.9 and 236.3 (see Section 411);
Race track, commercial;

PC #3

Riding stable, commercial;
Sanitary landfill;
Shooting range;
Storage of inflammable liquids and gases above ground (for requirements see Baltimore County Building Code);
Theatre, drive-in;
Trailer park (see Section 414);
Truck terminal;
Used motor vehicle outdoor sales area, separated from sales agency building;
Wireless transmitting and receiving structure.

Section 237—HEIGHT REGULATIONS

Same as in B. L. Zone.

Section 238—AREA REGULATIONS

Minimum requirements, except as provided in ARTICLE 3, shall be as follows:

238.1—Front Yard—For residences, as in Sections 302 and 303.1; for commercial buildings the front building line shall be not less than 50 feet from the front property line if on a dual highway; and not less than 25 feet from the front property line and not less than 50 feet from the center line of any other street, except as specified in Section 303.2;

238.2—Side and Rear Yards—For residences, as in Section 302; for other buildings, 30 feet;

238.3 — Parking Areas and Loading Space — In accordance with the provisions of Section 409;

238.4—Storage and display of materials, vehicles and equipment are permitted in the front yard but not more than 15 feet in front of the required front building line.

M. R. Zone—Manufacturing, Restricted

Section 250—USE REGULATIONS

250.1—In order to provide greater freedom in the selection of industrial areas and at the same time to secure and maintain effective control over the location, type, and arrangement of industrial uses and to protect the uses in neighboring residential zones, areas for Restricted Manufacturing Zones may be designated on the zoning map and/or may be created by petition in accordance with the procedure outlined in the following sections.

PC #3

Section 270—SCHEDULE OF SPECIAL EXCEPTIONS
(See Section 502)

S.E.: Use permitted by Special Exception only.
—: Use permitted without Special Exception.
x: Use prohibited.

USE	R.40	R.20	R.10	R.6	R.G.	R.A.	B.L.	B.M.	B.R.	M.L.	M.H.
Airport	S.E.	x	x	x	x	x	x	x	S.E.	x	x
Amusement park	x	x	x	x	x	x	x	x	S.E.	x	x
Boarding house	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	—	—	—	x	x
Boat yard	S.E.	S.E.	S.E.	S.E.	x	x	x	x	S.E.	—	—
Bus terminal	x	x	x	x	x	x	x	S.E.	S.E.	—	—
Cemetery	S.E.	S.E.	S.E.	S.E.	x	x	x	x	S.E.	S.E.	S.E.
Conservatory, Music & Arts	S.E.	S.E.	S.E.	S.E.	x	x	x	x	x	x	x
Contractor's equipment storage yard	x	x	x	x	x	x	x	x	S.E.	—	—
Convalescent home	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	—	—	—	x	x
Conversion of dwelling for tea room or restaurant	S.E.	S.E.	x	x	x	x	—	—	—	—	x
Elevator apartment with Accessory Business uses	x	x	x	x	x	S.E.	x	x	x	x	x
Excavations, controlled	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.†	S.E.†
Filling station	x	x	x	x	x	x	S.E.	S.E.	S.E.	S.E.	S.E.
Funeral establishment	S.E.	S.E.	S.E.	S.E.	x	S.E.	—	—	—	x	x
Garage, service	x	x	x	x	x	x	S.E.	—	—	—	x
Golf driving range, including miniature golf, etc.	S.E.	S.E.	x	x	x	x	S.E.	S.E.	S.E.	x	x
Heavy manufacturing uses listed in Section 256.4	x	x	x	x	x	x	x	x	x	x	S.E.
Hospital, Class B	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	x	x	S.E.	x	x
Hotel	x	x	x	x	x	x	S.E.	—	—	x	x
Junk yard	x	x	x	x	x	x	x	x	x	x	S.E.
Kennel	S.E.	S.E.	S.E.	S.E.	x	x	x	x	—	x	x
Laboratory	S.E.	x	x	x	x	x	S.E.	S.E.	—	—	—
Living quarters in a commercial building	x	x	x	x	x	x	S.E.	S.E.	S.E.	x	x
Marine railway	S.E.	S.E.	S.E.	S.E.	x	x	x	x	S.E.	—	—
Motel or motor court	x	x	x	x	x	x	S.E.	S.E.	—	x	x
Offices and office buildings	x	x	x	x	x	S.E.	—	—	—	—	—
Open dump	x	x	x	x	x	x	x	x	x	x	S.E.

Note: *On farm only—that is, 3 acres or more.
†Special Exception only when explosives are used, otherwise permitted without Special Exception.

P.C. #3

Section 270—SCHEDULE OF SPECIAL EXCEPTIONS
(See Section 502)

S.E.: *Use permitted by Special Exception only.*

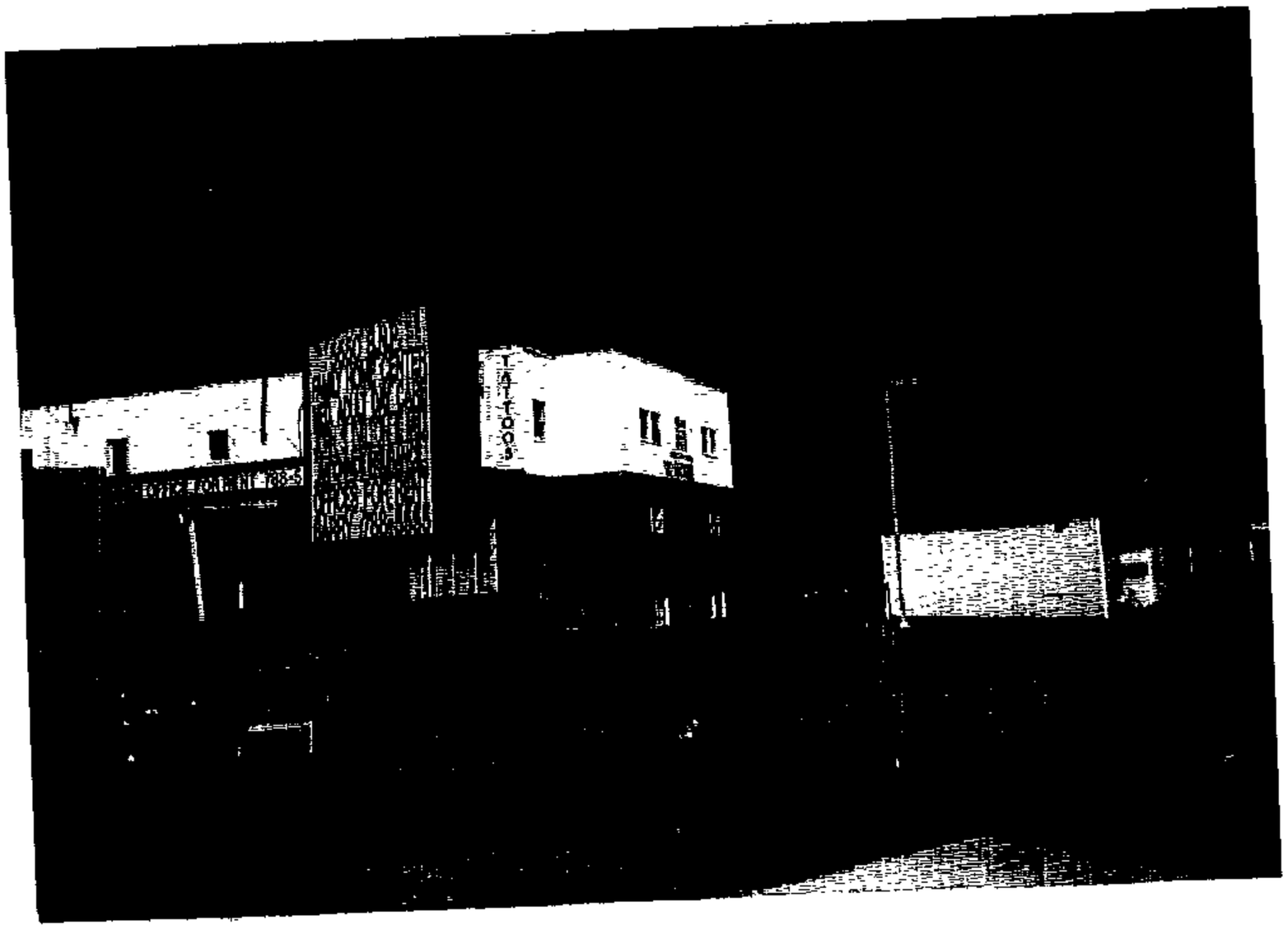
—: Use permitted without Special Exception.

x: Use prohibited.

USE	R.40	R.20	R.10	R.6	R.G.	R.A.	B.L.	B.M.	B.R.	M.L.	M.H.
Poultry, commercial killing of	S.E.*	S.E.*	S.E.*	S.E.*	S.E.*	x	x	x	S.E.	—	—
Private colleges, nursery or dancing schools, dormitories, fraternity and sorority houses, but excluding business or trade schools)	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	—	—	—	x	x
Public utility uses in Section 200.15 excluding service centers and storage yards	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	—	—
Public utility service center	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	—	—	—	—	—
Public utility storage yard	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	—	—	—
Race track, commercial	S.E.	S.E.	x	x	x	x	x	x	S.E.	x	x
Radio studio	S.E.	S.E.	S.E.	S.E.	x	x	—	—	—	—	—
Riding stable, commercial	S.E.	S.E.	x	x	x	x	x	x	S.E.	x	x
Rooming house	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	—	—	—	x	x
Sanitary landfill	S.E.	S.E.	S.E.	x	x	x	x	x	S.E.	S.E.	—
Shooting range	S.E.	S.E.	x	x	x	x	x	x	S.E.	S.E.	S.E.
Signs, outdoor advertising	x	x	x	x	x	x	S.E	S.E.	x	S.E.	S.E.
Storage of inflammable *liquids and gases above* ground	x	x	x	x	x	x	x	x	S.E.	—	—
Television studio	S.E.	S.E.	S.E.	S.E.	x	x	—	—	—	—	—
Theatre, drive-in	S.E.	S.E.	x	x	x	x	x	x	S.E.	x	x
Theatre, excluding drive-in	x	x	x	x	x	x	S.E.	—	—	x	x
Tourist home	S.E.	S.E.	S.E.	S.E.	x	x	—	—	—	x	x
Trailer park	S.E.	S.E.	S.E.	x	x	x	x	x	S.E.	S.E.	S.E.
Truck terminal	x	x	x	x	x	x	x	x	S.E.	S.E.	—
Used motor vehicle sales area (separate from building)	x	x	x	x	x	x	x	x	S.E.	x	x
Volunteer fire company	S.E.	S.E.	S.E.	S.E.	x	x	S.E.	x	—	—	—
Wireless transmitting and receiving structure	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.

Note: *On farm only—that is, 3 acres or more.
†Special Exception only when explosives are used, otherwise permitted without Special Exception.

P.C. #3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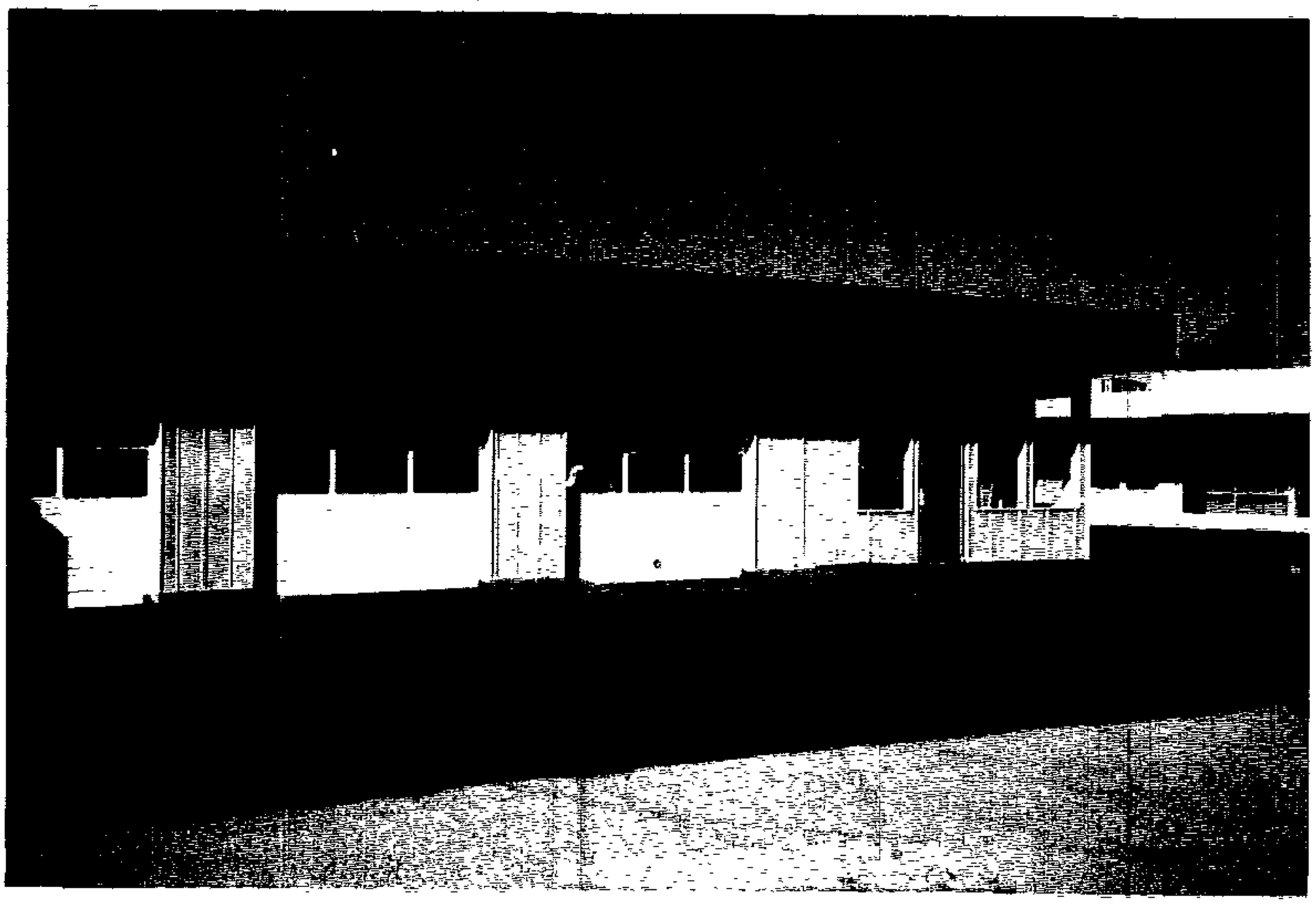
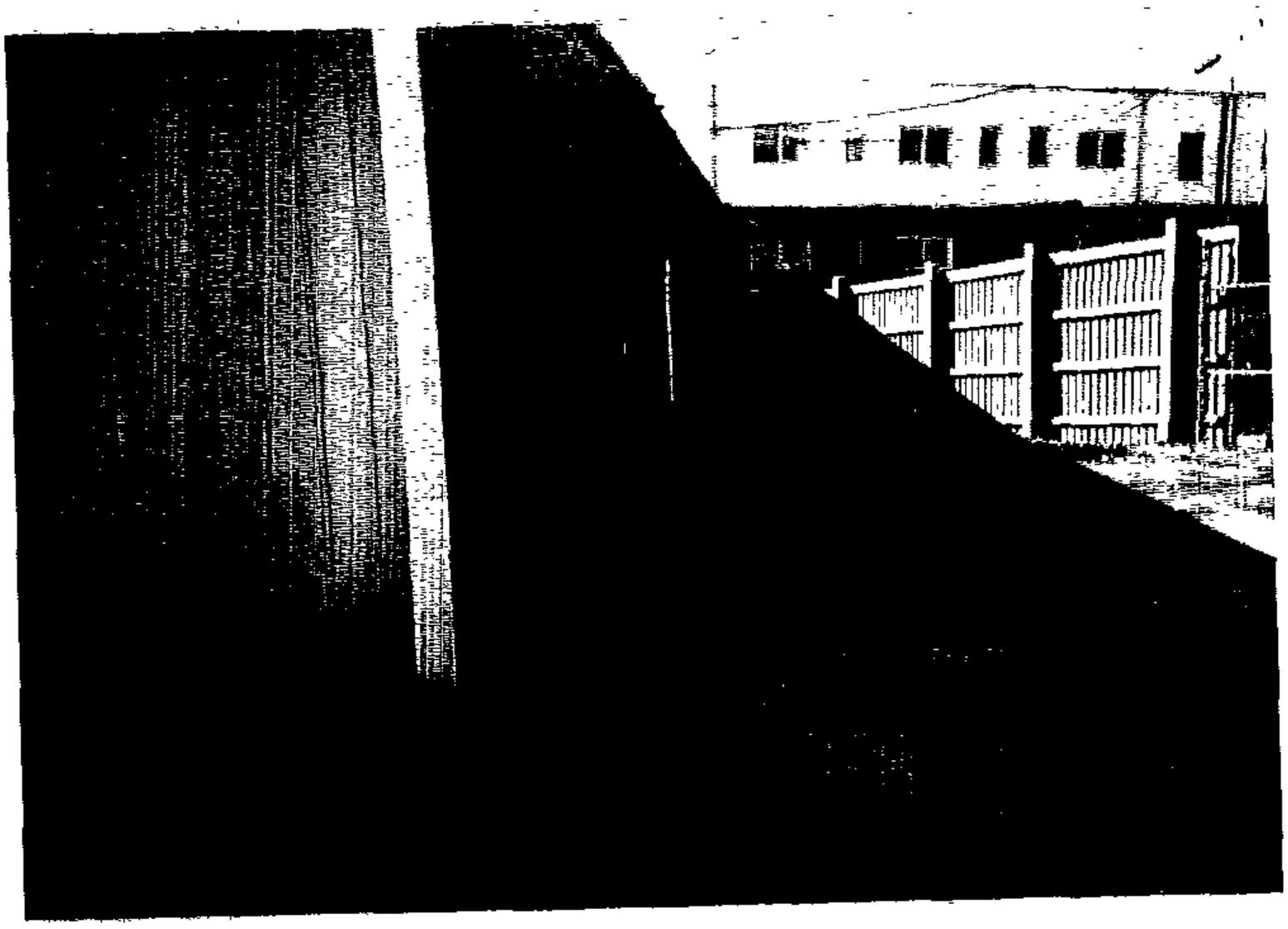
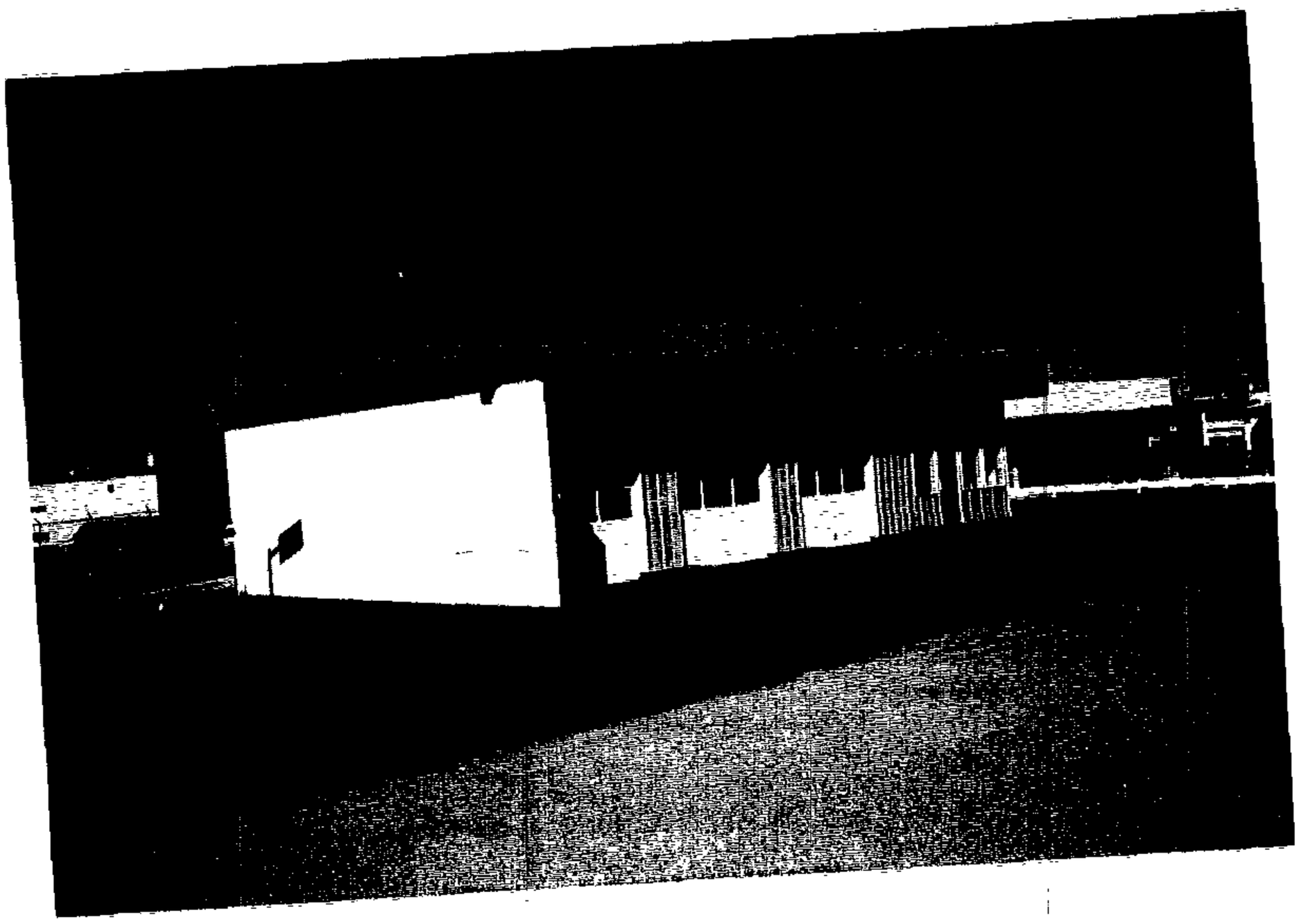
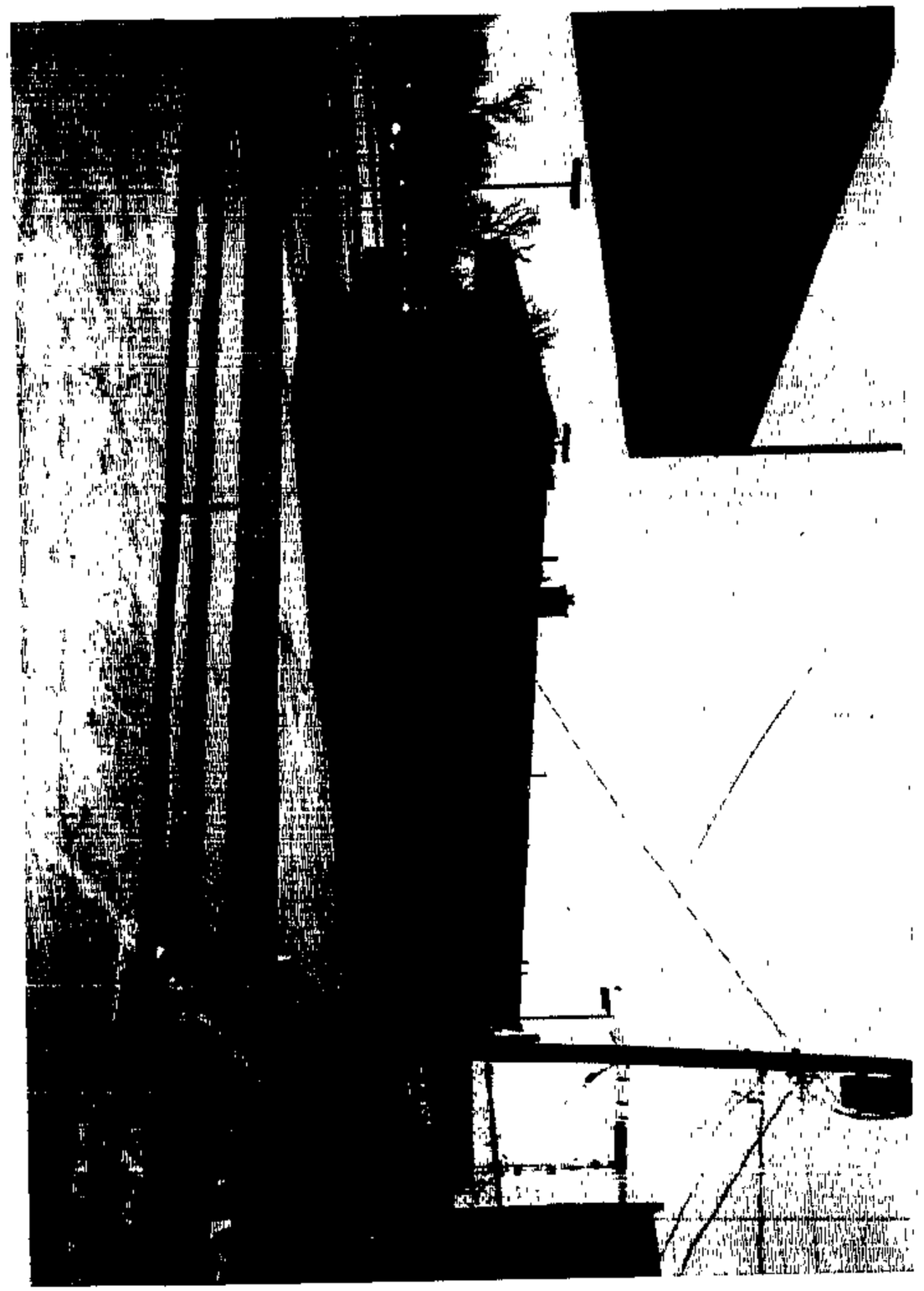








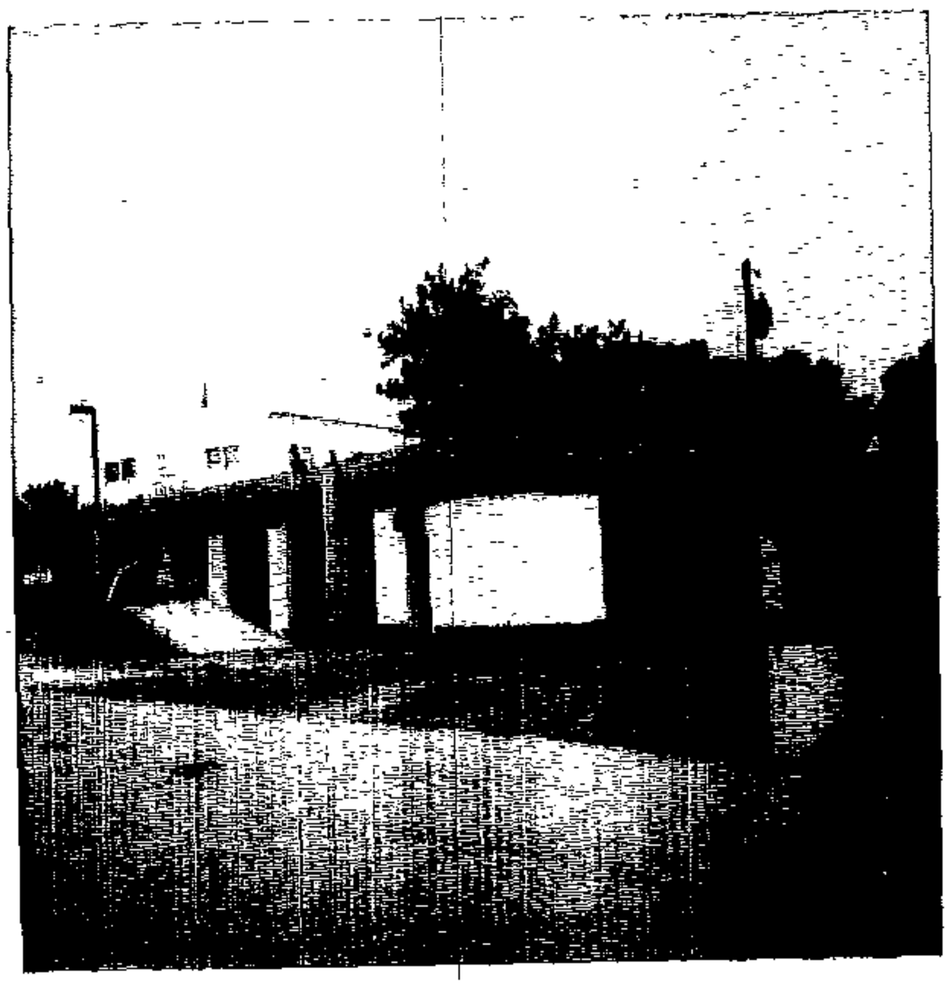
photographs
99-324-SPH

County Board of Appeals
Room 219, Court House
Towson, Maryland 21204

Petitioners 4A-4C (3)
" 5A-5G (7)
" 6A-6D (4)
" 7A-7E (5)

19 photos

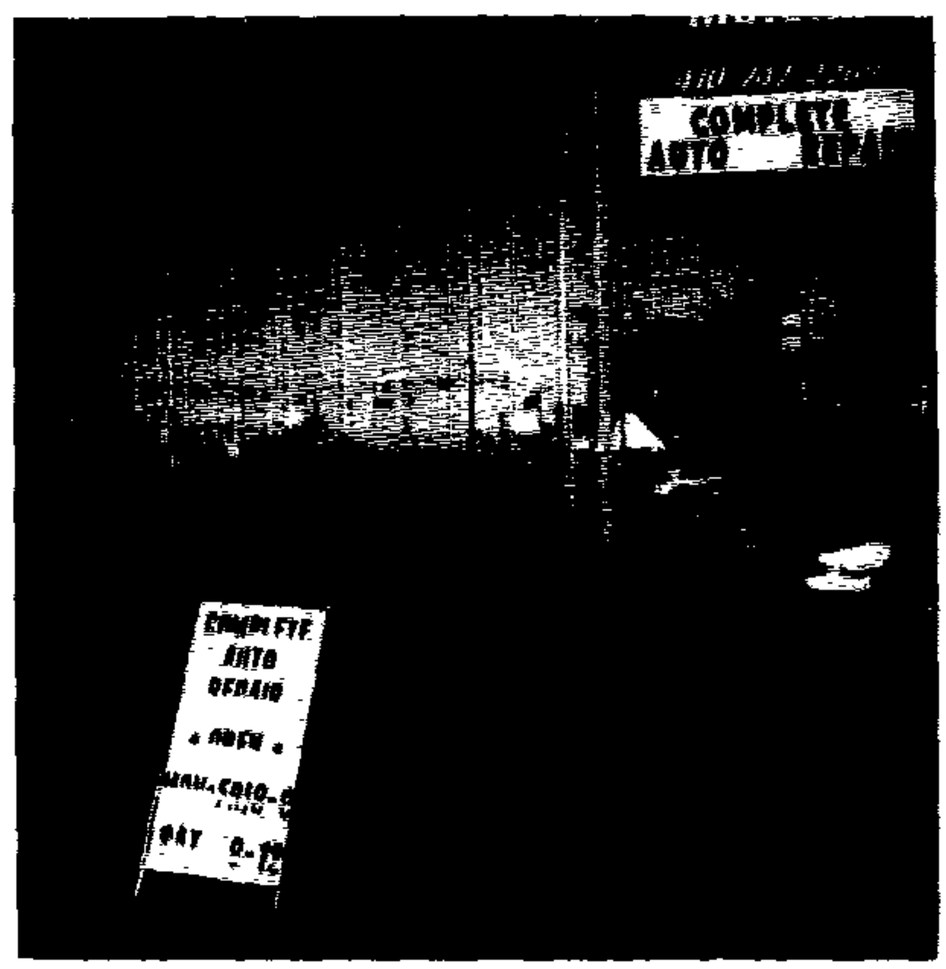
99-324-SPH
GD & RL Ltd.



Petitioner
#4A
12/8/99

Petitioner Exh
#4B
12/8/99

Petitioner Exh
#4C
12/8/99



Petitioner
#5D

Case No. 99-324-SPH

G.D.&R.I., Ltd., - Petitioners

N/s Baltimore National Pike, 478' E of the c/o Johnnycake Road (5538 Baltimore National Pike)

1st Election District — Appealed: 7/16/99

(See attached Plan to acc. zoning petition - Pet's. Ex. #1)

BALTIMORE COUNTY, MARYLA
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

Form 324 No. 062296

DATE 2-19-99

ACCOUNT R-001-6150

AMOUNT $ 250.00

RECEIVED FROM: Anthony W. Di Paula, Esq.

FOR: Commercial Special Hearing/Appeal
at # 5538 Balto. Nat'l. Pike

99-324-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
DATE 2/19/1999 ACCOUNT R-001-6150 AMOUNT $250.00
MISCELLANEOUS CASH RECEIPT
Receipt # 062296
CR MI. 06296
250.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 3.3.99

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

RE: Baltimore County
Item No. 324 JJS

Dear. Ms Stephens:

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

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

for Michael M. Lenhart, Acting Chief
Engineering Access Permits Division

My telephone number is _____

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

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

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

TO: Arnold Jablon, Director
Permits and Development Management

DATE: _____

FROM: R. Bruce Seeley, Project Manager
Development Coordination
DEPRM

SUBJECT: Zoning Advisory Committee

Distribution Meeting Date: 3/1/99

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

Item #'s: 315
319
320
322
323
324

Baltimore County
Department of Permits and
Development Management

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

March 25, 1999

Anthony J. DiPaula, Esq.
Covahey and Boozer, P.A.
614 Bosley Avenue
Towson, MD 21204

RE: Case No.: 99-324-SPH
Petitioner: G.D. & R.L., Ltd.
Location: 5538 Baltimore Nat'l Pike

Dear Mr. DiPaula:

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM), on February 19, 1999.

The Zoning Advisory Committee (ZAC), which consists of representatives from several Baltimore County approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Zoning Supervisor
Zoning Review

WCR:ggs

Enclosures

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on Recycled Paper

fp 4/2

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 15, 1999

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

SUBJECT: 5538 Baltimore National Pike

INFORMATION:

Item Number: 324
Petitioner: G.D. & R.L. Ltd.
Property Size: .4043 ac.
Zoning: BM-CCC
Requested Action:
Hearing Date:

The property in question, 5538 Baltimore National Pike, is located on one of the county's prime commercial corridors. Revitalization efforts are occurring on vacant properties along Route 40 West. However, the proposed used car sales as a principal use is not permitted in a BM-CCC zone, Business Major, Commercial, Community Core district; it requires a Special Exception in a BR, Business Roadside zone as per Section 236.4 of the Baltimore County Zoning Regulations. The BM zone allows medium intensity retail, office and service uses including new automobile sales and service.

SUMMARY OF RECOMMENDATIONS:

This office strongly recommends denial of the requested Special Hearing as it is not in keeping with either the Baltimore County Master Plan 1989-2000 or the spirit and intent of the BM zone.

Section Chief: Jeffrey W. Long

AFK:DI

\\NCII_NW\VOL3\WORKGRPS\COMPLAN\DIANA\Item 324.doc

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

INTEROFFICE CORRESPONDENCE

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

Date: March 19, 1999

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for March 1, 1999
Item No. 324

The Bureau of Development Plans Review has reviewed the subject zoning item. Subject to Landscape Manual. Submit landscape plan.

RWB:HJO:jrb

cc: File

ZONE0301.324

Baltimore County
Fire Department

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

March 11, 1999

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

RE: Property Owner: G.D.& R., LTD. - 324
KATHY STUMPF FARACE - 323
CRAIG FETTER'S AUTO & TRUCK CENTER, INC. - 322
KINGSVILLE PLAZA LIMITED PARTNERSHIP - 320
RODICK REALTY PARTNERSHIP 1 - 318

Location: DISTRIBUTION MEETING OF FEBRUARY 29, 1999

Item No.: 324 323, 322, 320, 318 Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1994 edition prior to occupancy.

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

cc: File

RECEIVED
MAR 15 1999
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT

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

July 19, 1999

Anthony J. DiPaula, Esquire
Covahey & Boozer
614 Bosley Avenue
Towson, MD 21204

Dear Mr. Boozer:

RE: Petition for Special Hearing, Case No. 99-324-SPH, 5538 Baltimore Natl. Pike

Please be advised that an appeal of the above referenced case was filed in this office on July 16, 1999 by People's Counsel. 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 the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:scj

c: G.D. & R.L., Ltd., 5900 Johnnycake Road, Baltimore, MD 21207
David Green, Survey Assoc. of Md., Inc., 32 Lee Street, Annapolis, MD 21401
Mary Sites, Catonsville Manor Pres., 1121 McAdoo Avenue, Balto., MD 21207
Dianne Itter, Office of Planning
Bob Neale, PO Box 9412, Catonsville, MD 21228
People's Counsel

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on Recycled Paper

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 14, 1999

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING
5538 Baltimore National Pike, N/S Baltimore National Pike, 478' E of c/l Johnny Cake Rd,
1st Election Dist., 1st Councilmanic
G.D. & R.L., LTD., Petitioners
Case No.: 99-324-SPH

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Finding of Fact and Conclusions of Law dated June 30, 1999 of the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

RECEIVED
1 6 1999
RECEIVED
JUL 16 1999
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

PMZ/CSD/caf

cc: Anthony J. DiPaula, Esq., Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, MD 21204, Attorney for Petitioners

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

October 12, 1999

NOTICE OF ASSIGNMENT

CASE #: 99-324-SPH

IN THE MATTER OF: G.D. & R.L., LTD. -Legal Owner
/5538 Baltimore National Pike
1st Election District; 1st Councilmanic

(6/30/99 -Decision of the Z.C. in which Petition for Special Hearing was GRANTED with restrictions.)

ASSIGNED FOR: **WEDNESDAY, DECEMBER 8, 1999 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: Appellant : Peter Max Zimmerman, People's Counsel for Baltimore Co
Carole S. Demilio, Deputy People's Counsel

Counsel for Petitioner : Anthony J. DiPaula, Esquire
Petitioner : Gary Dickson & Ray Lewis / G.D. & R.L., Ltd.
David Green /Survey Assoc. of Md., Inc.

Mary Sites /Catonsville Manor
Bob Neale

Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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IN THE MATER OF: G.D. & R.L., LTD.-Legal Owner 5538 Baltimore National Pike 1st Election District; 1st Councilmanic District	* * *	BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS
	*	CASE NO. 99-324-SPH

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

TO: Mary Sites
Catonsville Manor Community Assoc., Inc.
1121 McAdoo Avenue
Baltimore, Maryland 21207

YOU ARE HEREBY COMMANDED TO: Personally appear in Baltimore County Board of Appeals, 400 Washington Ave., Room 48, Towson, Maryland 21204 on **Wednesday, December 8, 1999 at 10:00 a.m.**

RECEIVED
COUNTY BOARD OF APPEALS
99 DEC -8 AM 9:51

ANTHONY J. DIPAULA
Covahey & Boozer, P.A.
614 Bosley Avenue
Towson, Maryland 21204
410-828-9441
Attorney for Petitioner

The witness named above is hereby ORDERED to so appear before the County Board of Appeals. The Board requests the Private Process Server to issue the summons set forth herein.

Charlotte E. Radcliffe
BALTIMORE COUNTY
BOARD OF APPEALS

ldr991216

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

December 8, 1999

Peter Max Zimmerman
People's Counsel
for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

Anthony J. DiPaula, Esquire
COVAHEY & BOOZER, P.A.
614 Bosley Avenue
Towson, MD 21204

RE: In the Matter of G.D. & R.L. Ltd.
-Legal Owner /Case No. 99-324-SPH

Dear Counsel:

This letter will confirm that written memorandums (original and three copies) are due in the Board's office by 3:30 p.m. on Monday, January 24, 2000. A date and time for public deliberation will be scheduled and notice sent to all parties at that time.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

FILE

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Case No. 99-324-SPH

SPH -To approve use as used auto sales room and adjoinng outdoor sales area for used cars (dismantled/junked cars not to be stored outdoors).

6/30/99 -Z.C.'s decision in which Petition for Special Hearing was GRANTED with restrictions.

10/12/99 -Notice of Assignment for hearing scheduled for Wednesday, December 8, 1999 at 10:00 a.m. sent to following:

Peter Max Zimmerman, People's Counsel for Baltimore Co
Carole S. Demilio, Deputy People's Counsel
Anthony J. DiPaula, Esquire
Gary Dickson & Ray Lewis / G.D. & R.L., Ltd.
David Green /Survey Assoc. of Md., Inc.
Mary Sites /Catonsville Manor
Bob Neale
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

12/08/99 -Hearing concluded; memos due 45 days from hearing (January 24, 2000); deliberation to be scheduled upon receipt of memos. (Marks, Wescott, Felling). Letter to counsel confirming due date of 1/24/2000.

1/21/2000 -People's Counsel's Memorandum filed.

1/24/2000 -Memorandum of Appellee GD&RL, Ltd. filed by Anthony J. DiPaula, Esquire, on behalf of Petitioner.

1/27/2000 -Copies of memos to C, S, and F by mail with copy of Notice of Deliberation, scheduled for Thursday, March 2, 2000 at 9:15 a.m.

3/02/00 -Deliberation concluded; existing auto sales permitted use in BM-CCC zone; complies with regulations.

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 14, 1999

Arnold Jablon, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re: PETITION FOR SPECIAL HEARING
5538 Baltimore National Pike, N/S Baltimore National Pike, 478' E of c/l Johnny Cake Rd,
1st Election Dist., 1st Councilmanic
G.D. & R.L., LTD., Petitioners
Case No.: 99-324-SPH

Dear Mr. Jablon:

Please enter an appeal of the People's Counsel for Baltimore County to the County Board of Appeals from the Finding of Fact and Conclusions of Law dated June 30, 1999 of the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

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JUL 16 1999
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

PMZ/CSD/caf

cc: Anthony J. DiPaula, Esq., Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, MD 21204, Attorney for Petitioners

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

July 19, 1999

Anthony J. DiPaula, Esquire
Covahey & Boozer
614 Bosley Avenue
Towson, MD 21204

Dear Mr. Boozer:

RE: *Petition for Special Hearing, Case No. 99-324-SPH, 5538 Baltimore Natl. Pike*

Please be advised that an appeal of the above referenced case was filed in this office on July 16, 1999 by People's Counsel. 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 the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon
Director

AJ:scj

c: G.D. & R.L., Ltd., 5900 Johnnycake Road, Baltimore, MD 21207
David Green, Survey Assoc. of Md., Inc., 32 Lee Street, Annapolis, MD 21401
Mary Sites, Catonsville Manor Pres., 1121 McAdoo Avenue, Balto., MD 21207
Dianne Itter, Office of Planning
Bob Neale, PO Box 9412, Catonsville, MD 21228
People's Counsel

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on Recycled Paper

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

June 30, 1999

Anthony J. DiPaula, Esquire
Covahey & Boozer
614 Bosley Avenue
Towson, Maryland 21204

RE: PETITION FOR SPECIAL HEARING
N/S Baltimore National Pike, 478' E of the c/l Johnnycake Road
(5538 Baltimore National Pike)
1st Election District – 1st Councilmanic District
G.D & R.L., Ltd. - Petitioners
Case No. 99-324-SPH

Dear Mr. DiPaula:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted, 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,

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Gary Dickson, President, G.D. & R.L., Ltd.
5900 Johnnycake Road, Baltimore, Md. 21207
Ms. Mary Sites, 1121 McAdoo Avenue, Baltimore, Md. 21207
People's Counsel; Case File

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BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: C. Marks
L. Wescott
D. Felling

DATE: January 27, 2000

FROM: Kathi

SUBJECT: Case No. 99-324-SPH /G.D. & R.L., Ltd. -Memos filed by Counsel and Public Deliberation.

The subject matter has been scheduled for public deliberation on Thursday, March 2, 2000 at 9:15 a.m. A copy of that Notice of Deliberation is attached for your information and calendar.

Also enclosed are copies of the following memos as filed by Counsel:

1. People's Counsel's Memorandum; and

2. Memorandum of Appellee filed by Anthony J. DiPaula, Esquire, on behalf of Petitioner.

Should you have any questions regarding the above, please let me know.

kathi

Attachments

FILE

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

January 27, 2000

NOTICE OF DELIBERATION

IN THE MATTER OF:

G.D.& R.L., LTD. -Petitioner
CASE NO. 99-324-SPH

Having heard this matter on December 8, 1999, the following date/time has been scheduled for deliberation:

DATE AND TIME : THURSDAY, MARCH 2, 1999 at 9:15 a.m.

LOCATION : Room 48, Basement, Old Courthouse

(NOTE: MEMOS IN THIS MATTER WERE FILED BY COUNSEL AS REQUESTED NO LATER THAN 1/24/2000.

Kathleen C. Bianco
Administrator

c: Appellant : Peter Max Zimmerman, People's Counsel for Baltimore Co
Carole S. Demilio, Deputy People's Counsel

Counsel for Petitioner : Anthony J. DiPaula, Esquire
Petitioner : Gary Dickson & Ray Lewis / G.D. & R.L., Ltd.

David Green /Survey Assoc. of Md., Inc.

Mary Sites /Catonsville Manor
Bob Neale

Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copies to: C.S.F.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

March 30, 2000

Peter Max Zimmerman
People's Counsel for Baltimore County
Room 47, Old Courthouse
400 Washington Avenue
Towson, MD 21204

RE: In the Matter of G.D.& R.L., Ltd.
- Petitioner /Case No. 99-324-SPH

Dear Mr. Zimmerman:

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 of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed form this decision should be noted under the same civil action number.** 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

Enclosure

c: Anthony J. DiPaula, Esquire
Gary Dickson /G.D.&R.L., Ltd.
David Green /Survey Assoc of Md., Inc.
Mary Sites, President
Catonsville Manor Community Assn
Bob Neale
Pat Keller /Planning Director
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:		G.D. & R.L., Ltd. -Petitioner Case No. 99-324-SPH	
DATE	:	Thursday, March 2, 2000	
BOARD /PANEL	:	Charles L. Marks Lawrence S. Wescott Donna M. Felling	(CLM) (LSW) (DMF)
SECRETARY	:	Kathleen C Bianco /Administrator	

PURPOSE: To deliberate Case No. 99-324-SPH /Petition for Special Hearing to approve use as used auto sales room and adjoining outdoor sales area for used cars (dismantled/junked cars not to be stored outdoors). Appeal from Zoning Commissioner's decision approving same filed by Office of People's Counsel.

Panel members discussed:

Facts of case – interpretation is key element. Property is zoned BM-CCC; Petitioner purchased property after having sought legal advice re same; support of community; used in similar vein for many years.

People's Counsel argues that this use is not permitted in BM zone; but rather in BR with special exception. It's a question of interpretation of two BCZR sections. PMZ in brief went into legal analysis; history, language, etc.

Section 233 –BM zone regulations; automobile sales – no junk cars stored outdoors; BR –used, etc., permitted by special exception. Ambiguity in way reg is written; automobile sales room – new and used per PDM interpretation, going back possibly to the 1950s. "Used" in BR regs; not mentioned in BM. CLM read definition of "automotive" from accepted dictionary; didn't differentiate between new /used in definition. Mr. Mark's analysis – intent of County Council per Mr. DiPaula – intended for independent facility away from sales facility; outdoor sales area separate from main building – down the street, etc.

Ultimately, unanimous decision as to interpretation as to new/used in regulations, including LSW who questioned this extensively. Questions raised: does "automobile sales room" necessarily include "showroom"? Final decision of the board that cars need not be there; just area where sales are conducted.

DMF indicated this was "splitting hairs" – but that she also found that the word "showroom" is not included in the regulations; also her opinion that County Council intended to prevent car lot in one location and small sales building down the street. She finds from the evidence and her interpretation of the regs that this is a permitted use.

Board found that this is permitted; and, referring to Mr. Zimmerman's point as to Zoning Commissioner's manual, if permitted by right, then it is in concert with that Manual. Found no problem with the Board and ZC interpretation. While Mr. Zimmerman is concerned about little sales office and proliferation of same with small shed and small lot, that is not the case here; this is adjacent, adjoining and provides service primarily on those vehicles to be sold. Bureaucratic interpretation narrow and restrictive; Board found that this to be a permitted use. Mr. Wescott again indicated that at first blush he was not certain;

but on a re-reading of the regulations, it does not say "showroom"; therefore, he agrees that this is a permitted use.

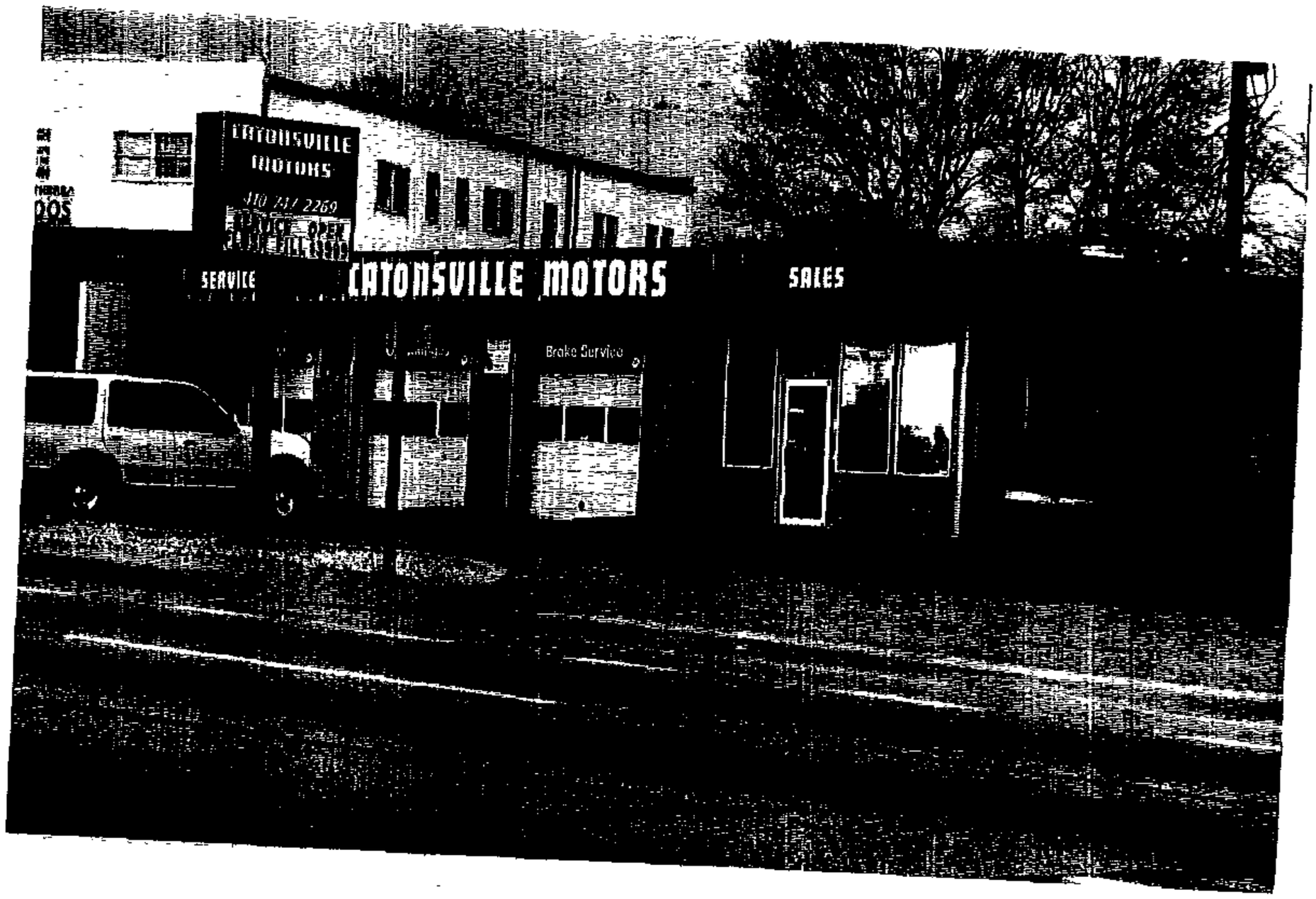
Unanimous decision of the Board that the special hearing is granted with restrictions similar to those imposed by the Zoning Commissioner, including compliance with sign regulations.

Final Decision: Petition for Special Hearing is GRANTED with appropriate restrictions to be included in written Order.. Written Opinion and Order to be issued; appellate period to run from date of written Order and not today's date.

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this zoning case. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted

Kathleen C. Bianco, Administrator
County Board of Appeals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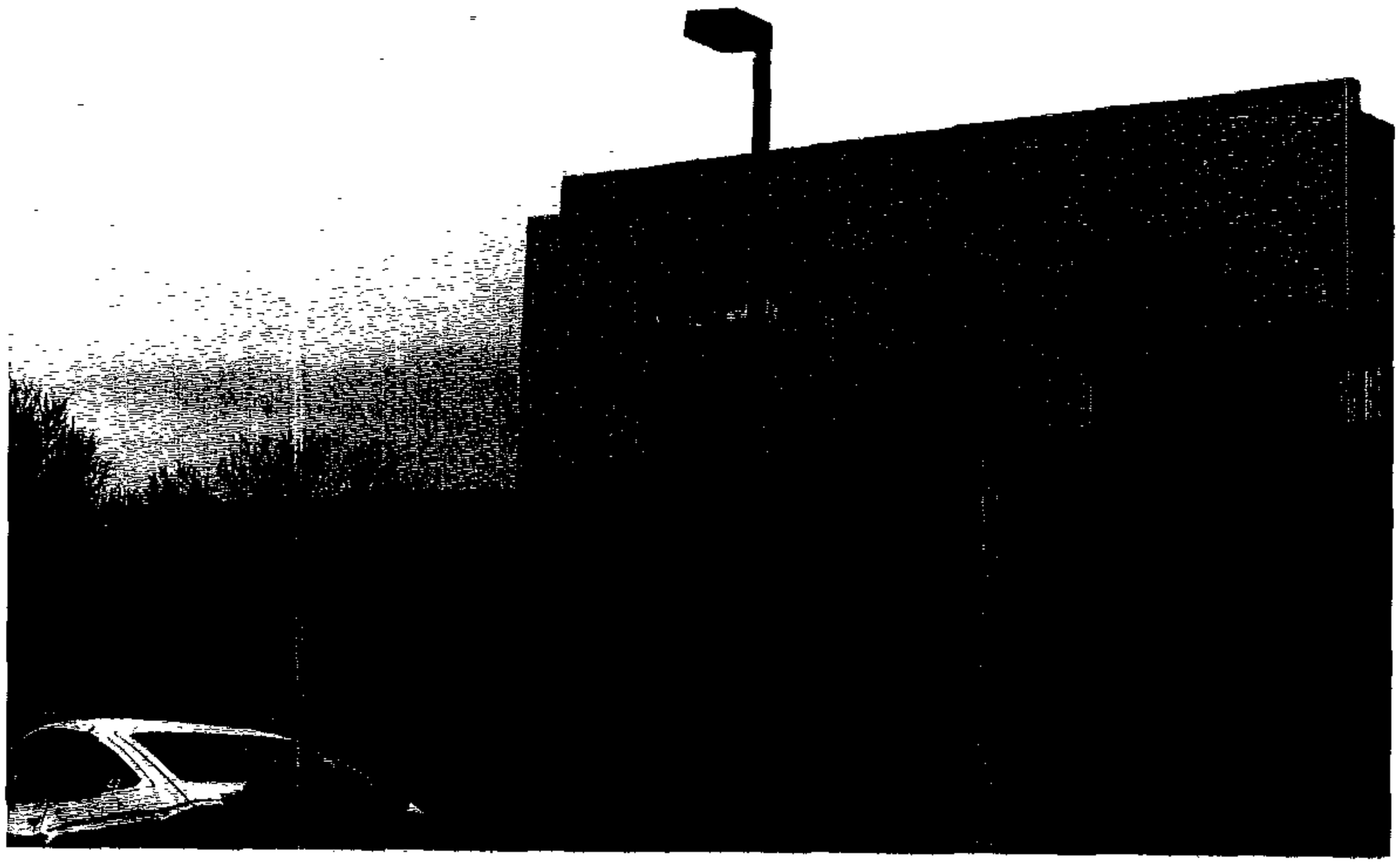

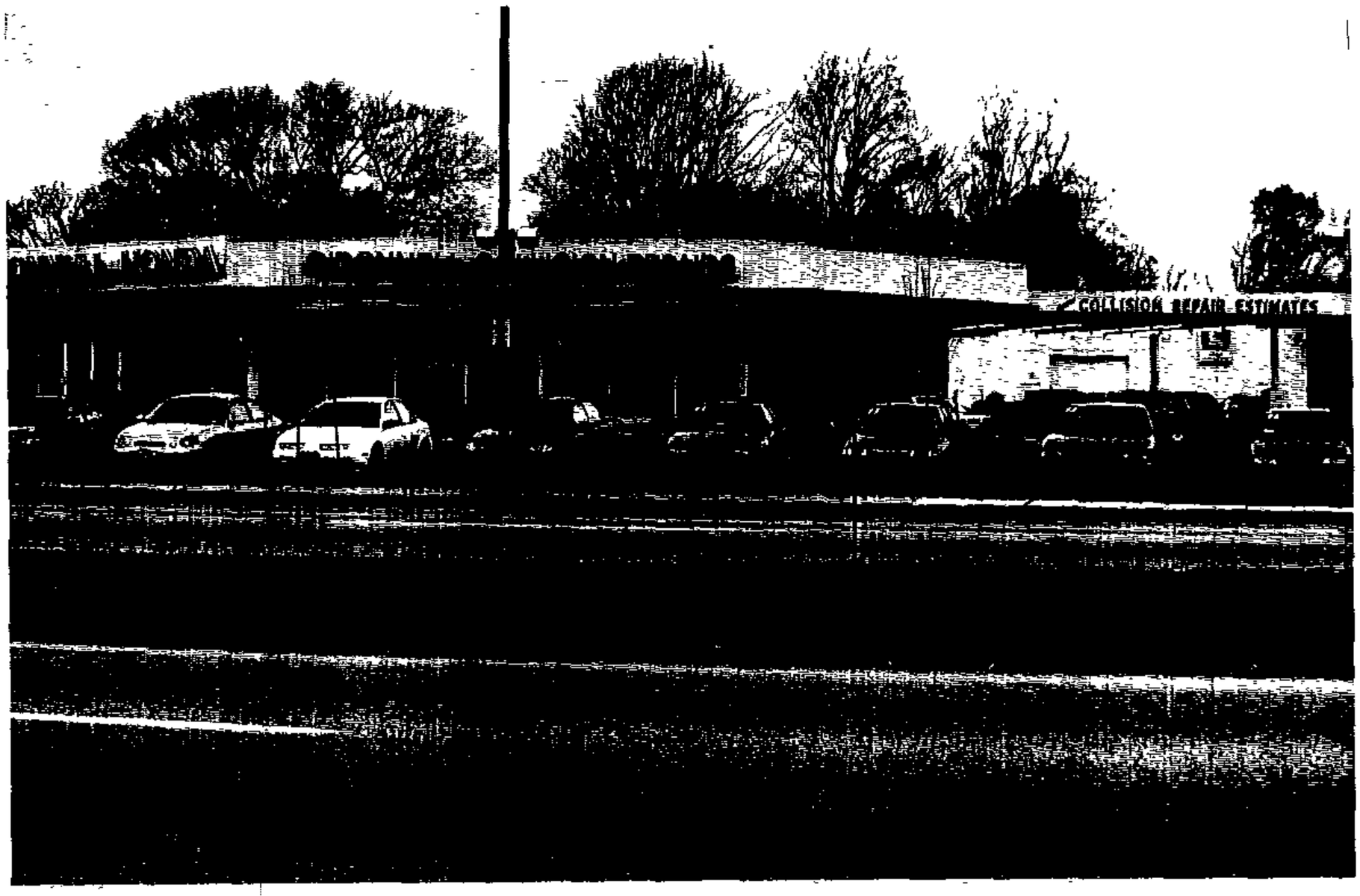
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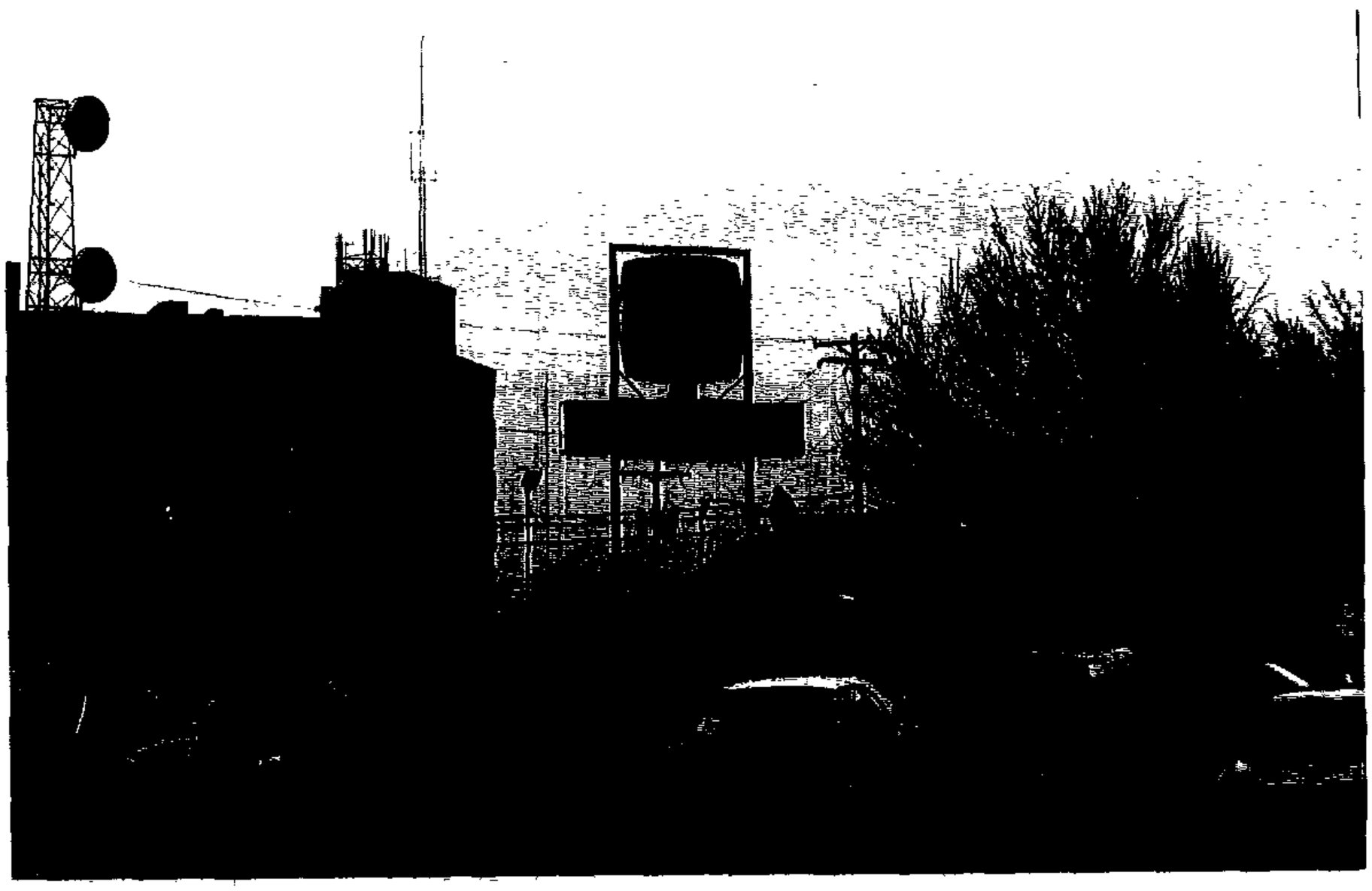

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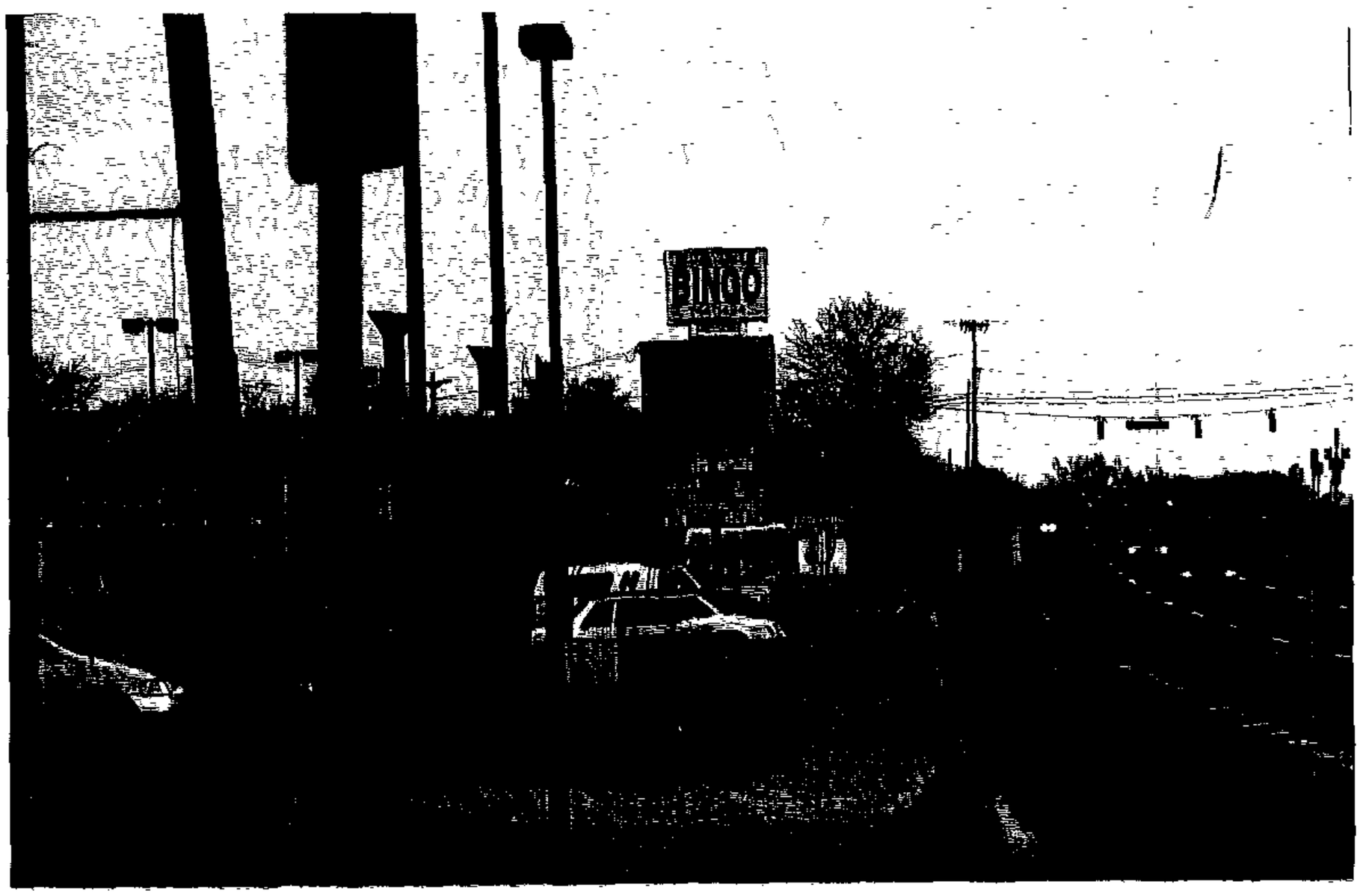
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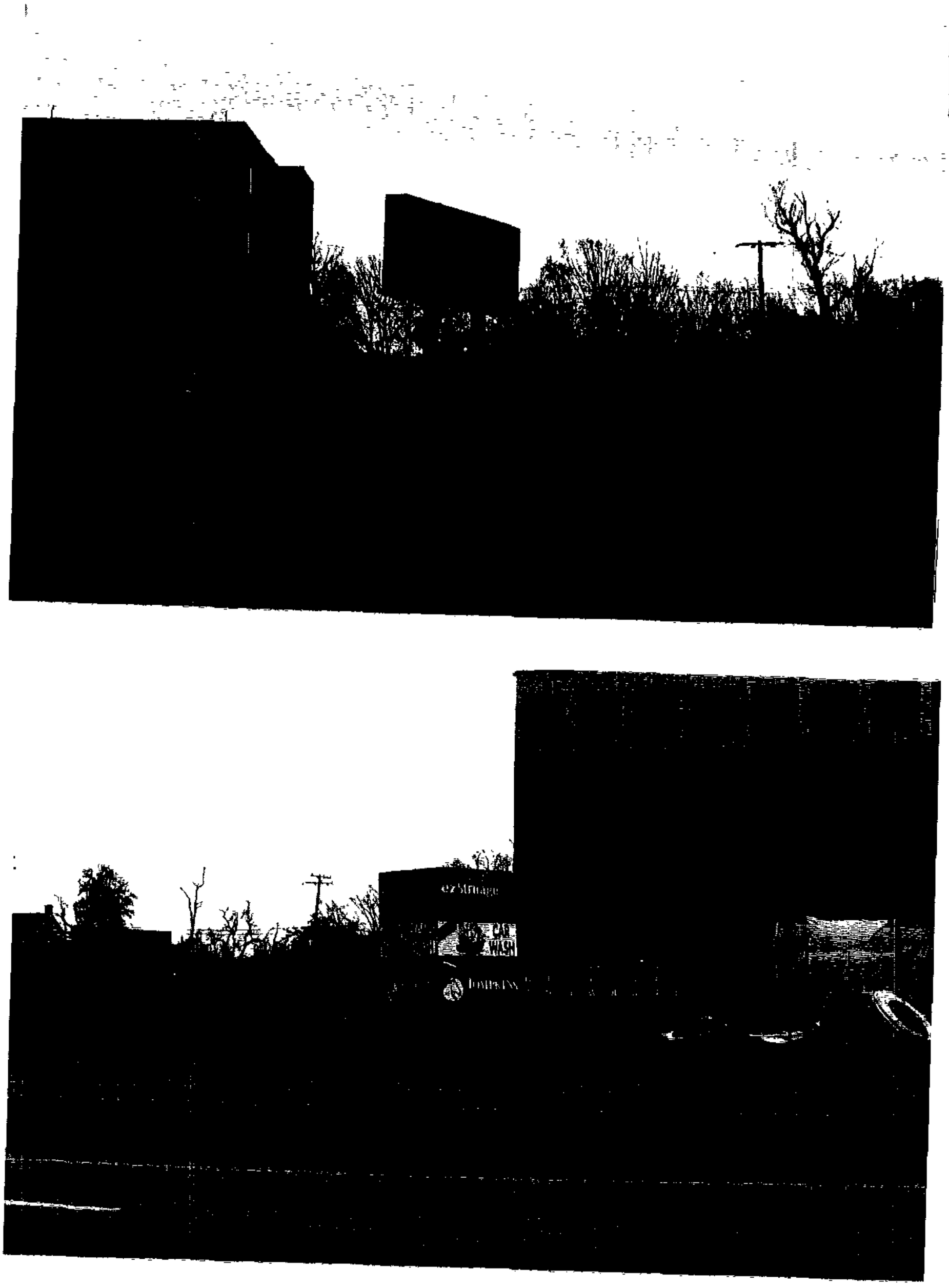
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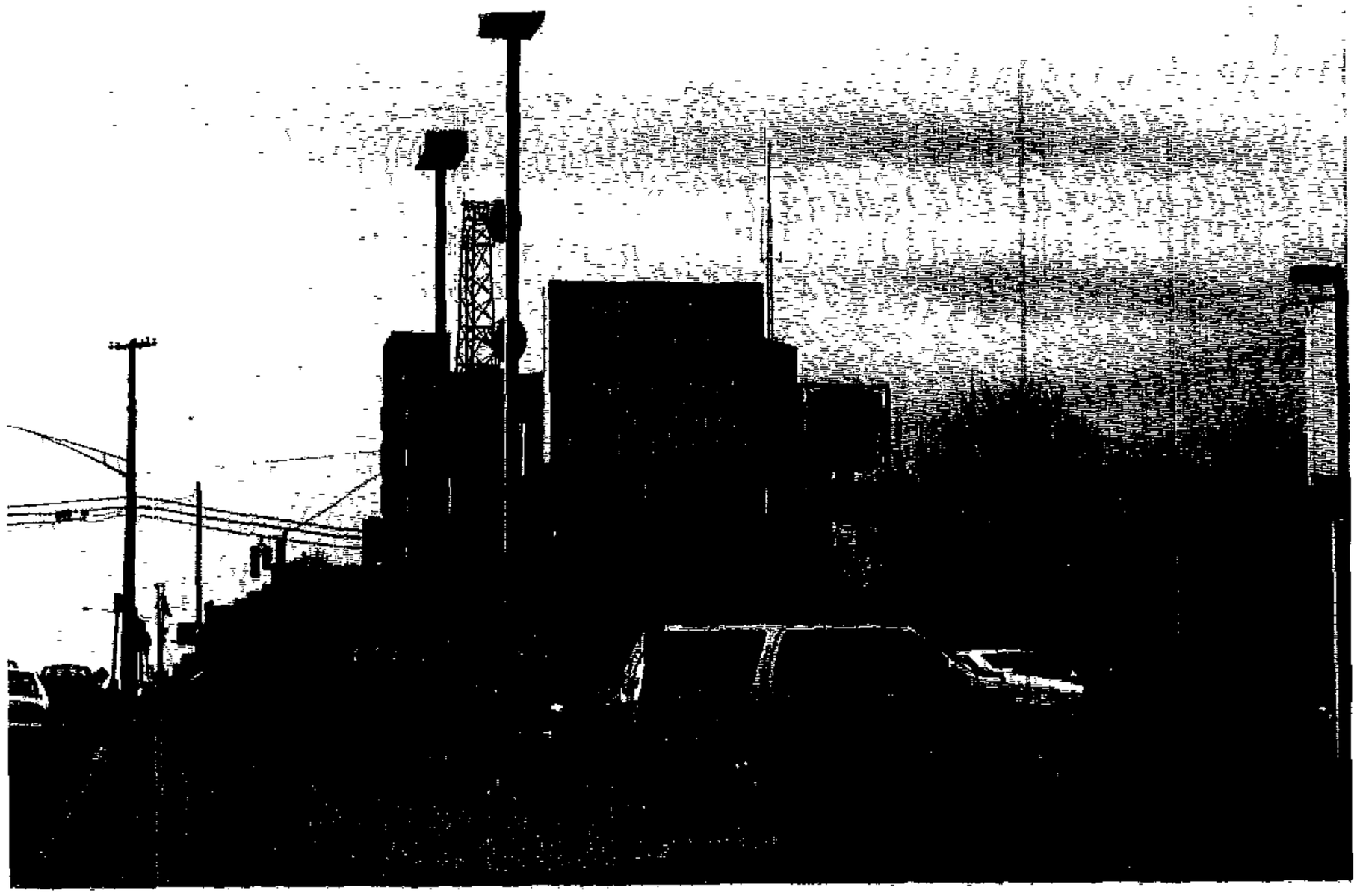

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

October 10, 2001

The Honorable John F. Fader, II, Judge
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Hand-delivered

Re: Petition for Judicial Review of the Decision
of the County Board of Appeals (On Remand)
In the Matter of **G.D. & R.L., Ltd.** (Zoning Special Hrg.)
Case Number: 3-C-00-3846

Dear Judge Fader:

We appreciate your continuing this case until December 14, 2001. While we await Mr. DiPaula's further communication regarding his client's position as to the new law, we have obtained a certified copy of the County Council's records showing the legislative history of Bill 71-01. Accordingly, we enclose a certified copy of the Baltimore County Council notes to the Agenda for Legislative Day Number 16, September 4, 2001, including particularly Page 7 on Bill 71-01. The entire Agenda of 44 pages is available but the remainder deals with other legislation. In addition, we enclose certified copy of the Council notes to Proposed bill 57-01, which dealt with the same subject but was withdrawn.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/caf
Enclosures

cc: Anthony J. DiPaula, Esq., Attorney for Petitioner/Appellee
✓Clerk's Office, File 3-C-00-3846

RECEIVED AND FILED
01 OCT 11 PM 2:25
CLERK

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

January 10, 2001

NOTICE OF ASSIGNMENT -DELIBERATION
/ DISCUSSION ON REMAND FROM CIRCUIT COURT

IN THE MATTER OF:
G.D. & R.L. LTD
CASE NO. 99-324-SPH

NOTE: This special deliberation has been scheduled pursuant to the December 20th Order of the Circuit Court remanding this case back to the Board of Appeals for clarification as ordered by Judge Fader; and has been assigned for:

DATE AND TIME : **WEDNESDAY, JANUARY 24, 2001 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

athleen C. Bianco
dministrator

c: Appellant

Peter Max Zimmerman, People's Counsel for Baltimore Co
Carole S. Demilio, Deputy People's Counsel

Counsel for Petitioner : Anthony J. DiPaula, Esquire
Petitioner : Gary Dickson / G.D. & R.L., Ltd.
David Green /Survey Assoc. of Md., Inc.

Mary Sites /Catonsville Manor
Bob Neale

Pat Keller, Planning Director
Lawrence E. Schmidt /ZC
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copy: C.F.S.

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County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 24, 2001

NOTICE OF ASSIGNMENT /Limited Hearing on Remand

CASE #: 99-324-SPH

IN THE MATTER OF: G.D. & R.L., LTD. -Legal Owner /5538 Baltimore National Pike
1st Election District; 1st Councilmanic

ON REMAND FROM CIRCUIT COURT FOR BALTIMORE COUNTY

After public deliberation on Remand, the Board has convened a specially set date for limited argument and hearing on the specific issues as raised by Judge Fader in his Remand Order; and this matter has been

ASSIGNED FOR: **WEDNESDAY, FEBRUARY 14, 2001 at 11:00 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: Appellant

Peter Max Zimmerman, People's Counsel for Baltimore Co

Counsel for Petitioner : Anthony J. DiPaula, Esquire
Petitioner : G.D. & R.L., Ltd.
David Green /Survey Assoc. of Md., Inc.

Mary Sites /Catonsville Manor
Bob Neale

Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
The Honorable John F. Fader II /Judge
Circuit Court for Baltimore County (3-C-00-003846)

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Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

January 17, 2001

01 JAN 17 PM 3:24

Charles L. Marks, Panel Chairman
County Board of Appeals
of Baltimore County
401 Washington Avenue, Room 49
Towson, MD 21204

Hand-delivered

Re: **ON REMAND FROM CIRCUIT COURT FOR BALTO. CO.**
PETITION FOR SPECIAL HEARING
5538 Baltimore National Pike,
N/S Baltimore National Pike, 478' E of c/l Johnny Cake Rd,
1st Election District, 1st Councilmanic
G.D. & R.L., Ltd., Petitioner
Case No.: 99-324-SPH (Cir.Ct. No. 3-C-00-3846)

Dear Chairman Marks:

The purpose of this letter is to assist the Board as it approaches its January 24, 2001 deliberation of this matter on remand from the Circuit Court. We also enclose copies of our memorandum and reply memorandum filed in Court.

Judge Fader asks the meaning of the term "automobile sales room" within the B.M. zone listing at issue. Does it intend a showroom or display area, or does it simply involve an office where there may be conversation and handling of transactional work?

If it means a show or display area, which better fits the common usage of the language, then GD & RL does not qualify. In this connection, we note that just about every sales business has some office area, and it is not necessary to give it a separate zoning description.

On the other hand, if all it requires is an office area of some kind, then every used car operation would qualify. This is illogical as a matter of language usage. It also goes against the Board's statement that its opinion should not be understood to embrace

used car lots generally. Indeed, that would render superfluous the B.R. zone special exception for used car operations.

In order to test our argument, we reviewed Webster's Third New International Dictionary. Pursuant to BCZR Sec. 101, this is the authoritative source for definitions of words not specifically defined in that section.

We found that the definition of "**salesroom**" is: "a place where goods are displayed for sale: SHOWROOM; esp: an auction room." Correspondingly, the definition of "**showroom**" is: "1) a room where merchandise is exposed for sale or where samples are displayed; 2) a room where a show is exhibited."

Our further review of West's Words and Phrases, Volume 39 discloses that, under "**showroom**" there is the following item: "where use clause in lease provided for a 'showroom' for automobiles, the term **salesroom** was implicit in the clause." (Citation omitted). For the Board's convenience, we attach copies of the relevant excerpts from Webster's and Words and Phrases.

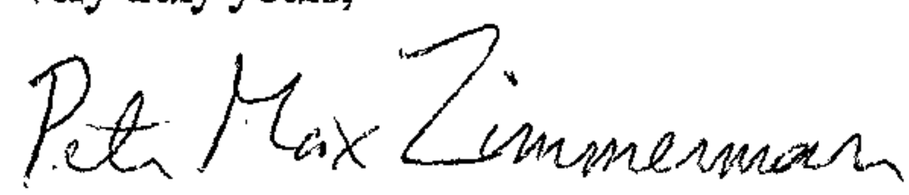
It is thus clear beyond doubt that the word "salesroom" is synonymous with "showroom." Because GD & RL's proposal lacks any showroom or room where goods are displayed for sale, or otherwise exposed or exhibited, the Petition fails. We also refer the Board to our summary of Gary Dickson's testimony on pages 1 to 3 of our Reply Memorandum, which confirms that the plans do not include a salesroom.

Judge Fader also asks whether the B.M. zone listing is limited to new car operations, or extends to primary used car operations. While the legislative drafting is imperfect, we believe the use of the term "sales room" and the separate listing for B.R. zone special exceptions resolves the issue in favor of limitation to new cars, with any used car sales under the more limited "accessory use" concept.

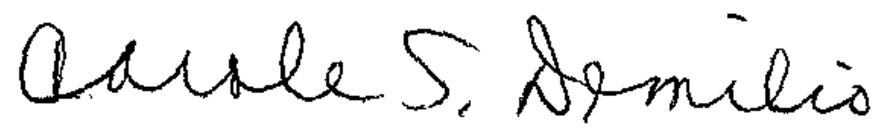
If there is any doubt, we remind the Board of the consistent practice of the zoning office to limit the BCZR 233.2 listing ("automobile sales room and adjoining outdoor sales area") to new car sales rooms only. This is explicitly confirmed in the BCZR 270 Chart in the Zoning Policy Manual, which is authorized under Sec. 26-135 of the County Code.

Finally, while Judge Fader anticipates that he will review the Board's decision on remand promptly, it appears to us that the avenue back to the judge will require a new Board Order and a second petition for judicial review by any party who wishes to challenge it.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/caf
Enclosures

cc: Anthony J. DiPaula, Esq., attorney for Petitioner
(Via facsimile and first class mail)

APR 14 1987

Webster's Third New International Dictionary

OF THE ENGLISH LANGUAGE UNABRIDGED

A Merriam-Webster
REG. U.S. PAT. OFF.

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AND
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WORDS AND PHRASES

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Volume 39

Set — Solution

All Judicial Constructions and Definitions of Words and Phrases by the State and Federal Courts From the Earliest Times, Alphabetically Arranged and Indexed

Kept to Date by Cumulative Annual Pocket Parts

ST. PAUL, MINN.
WEST PUBLISHING CO.

SHOWROOM

Where use clause in lease provided for a "showroom" for automobiles, the term salesroom was implicit in the clause. Colonial Operating Corporation v. Hannan Sales & Service, 39 N.Y.S.2d 217, 219, 265 App.Div. 411.

The word "showroom" as used in lease of premises to be used "only for a showroom for automobiles and automobile accessories" was a word of many connotations, and hence where landlord brought summary proceedings against tenant for nonpayment of rent, trial court properly admitted evidence that only new automobiles had been sold on the premises during the period of a prior lease, and that tenant had a lease, secured by landlord as broker, of an adjoining lot on which tenant kept secondhand automobiles on display for sale. Colonial Operating Corporation v. Hannon Sales & Service, 36 N.Y.S.2d 745, 746, 178 Misc. 885.

SHOWS AND AMUSEMENTS

"Shows and amusements," as used in S.H.A. ch. 24, §§ 23-54, 23-55, authorizing city councils to license and tax theatricals and other exhibitions, "shows and amusements," includes horse races held in an inclosure. Webber v. City of Chicago, 36 N.E. 70, 72, 148 Ill. 313.

SHOWS, CIRCUSES AND MENAGERIES

A company giving an entertainment consisting of panoramic reproductions of battles of the Anglo-Boer war, with portrayal of military maneuvers, but with no circus rings, trapeze acting, wild beasts, or clowns, is assessable with a license tax, under Acts 1902-03, p. 205, c. 148, § 108, providing for the assessment of a license tax upon "theatrical performances, panoramas, etc.," and not under section 111, providing for a license tax upon "shows, circuses, and menageries." Boer War Spectacle v. Commonwealth, 60 S.E. 85, 86, 107 Va. 653.

SHOW WINDOW

Under facts shown, held, that a store window was a "show window" within condition of burglary policy limiting liability in case of merchandise being taken from such a window by persons breaking the glass from the outside. H. Liebes & Co. v. United States Casualty Co., 211 P. 842, 59 Cal.App. 758.

SHRINES

Shrines are images or statues of virgins, saints, martyrs, etc. Commonwealth v. Gombert, 11 Pa.Dist. 435, 439.

SHRINKING

Patent No. 1,533,351, claims 10, 14, and 19, issued to Homer A. Genest, for "felting," "shrinking," and "crozing" "felt" hat "bats," is valid and infringed. "Bat" is the name for the felt fabric out of which hats are made; "felt" is rabbit fur, the separate hairs of which, when agitated in hot water, congeal into a seamless fabric. At first this is very flimsy and must be handled with great care, but, as the barbs on the hairs interlock more and more completely, it becomes more closely knit and stouter. This process is called the "hardening" stage; it always was, and still is, done by hand. Then follows an initial "shrinking" stage, at the end of which the "bat" is a fur cone, tough and hard, but still too big; this stage too has always been manual. The final stage is called "sizing;" it consists of still further shrinking the "bat" until it gets to the proper size for a hat. Workmen must from time to time open out the "bat" and fold it in a new line; this is called "crozing." United States Hat Machinery Corporation v. Boesch Mfg. Co., C.C.A.Conn., 108 F.2d 417, 420.

SHRUB

"A shrub is a low, small plant, whose branches grow directly from the earth without any supporting trunk or stem," and does not include a young tree, for a tree is a woody plant, whose branches spring from and are supported upon a trunk or body. Clay v. Postal Tel. Co., 11 So. 658, 659, 70 Miss. 406.

Under Tariff Act July 24, 1897, c. 11, § 1, Schedule G, par. 252, 30 Stat. 170, relating (1) to "rose plants" and (2) to "cuttings" of "shrubs" and of "plants," rooted rose cuttings that have been placed in sand to facilitate handling, but have never been in soil, fall within the latter provision as cuttings of shrubs or plants. United States v. American Exp. Co., 158 F. 808, 86 C.C.A. 68.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION
ON REMAND FROM CIRCUIT COURT

IN THE MATTER OF:	G.D. & R.L., Ltd. -Petitioner Case No. 99-324-SPH	
DATE :	Tuesday, January 24, 2001	
BOARD /PANEL :	Charles L. Marks Lawrence S. Wescott Donna M. Felling	(CLM) (LSW) (DMF)
RECORDED BY :	Kathleen C Bianco /Administrator	

PURPOSE: To deliberate Case No. 99-324-SPH /Petition for Special Hearing – remand order of Judge John Fader II – and questions posed by him on remand.

Panel members discussed:

Issues and questions of Judge Fader on remand –

✓ Interpretation based on facts and evidence in case /record – what does term "salesroom" mean?

- Referenced Section 233.2; discussed intent of County Council and legislation;
- Automobile sales room; will have some type of used car operation – no junked cars, etc.
- Discussed material supplied by People's Counsel; response letter from T. DiPaula
- Salesroom v showroom – are they synonymous as used? Combination of salesroom and showroom
- Council did not say "showroom"
- Law does not differentiate between the two

✓ Reviewed record of prior hearing before the Board; reviewed exhibits presented

- What will actually be there
- What type of building exists (three bays and small sales area)
- Would rehab and sell used cars
- Law does not say "used" or "new"
- Discussed B.R. regs and B.M.
- Was intent that 233.2 applies to new cars or can it apply to used cars

✓ Findings and Decision after deliberation:

- Discussed need for additional evidence and testimony / argument on limited issues on remand
- After additional discussion, pointed out that "salesroom" as defined in *Webster's* is one word; "sales room" as used in 233 = two words; may or may not be significant
- Reviewed definitions of "sales" and "room" as two separate words rather than one word as provided by People's Counsel

- In light of gray areas and possible confusion, determined that additional hearing would be necessary, but again as to limited issues on remand (intent of CC as to legislation and also whether or not this facility complies with the regulations as stated).
- Upon final discussion, unanimous by Board that additional date will be scheduled
- Confirmed 2/14/01 with calendars of Board and counsel; Notice of Assignment to be sent for hearing /argument on limited issues
- Courtesy copy of Notice to be forwarded to Judge Fader (with additional hearing required, unable to respond with final decision in 30 to 45 days requested; will receive argument /testimony; deliberate; and issue final Order, with copy to Judge Fader as soon as possible thereafter).

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date regarding this matter on remand. Upon conclusion of additional hearing on remand and deliberation of same, a final decision will be issued by the Board and forwarded to Circuit Court per Judge Fader's Order. A copy of these minutes and a copy of the Notice of Assignment for limited hearing on remand have been forwarded to The Honorable John Fader II, Judge, Circuit Court for Baltimore County.

Respectfully submitted

Kathleen C. Bianco

Kathleen C. Bianco, Administrator
County Board of Appeals

TO: CARL RICHARDS
FROM: PETER ZIMMERMAN

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

January 24, 2001

NOTICE OF ASSIGNMENT /Limited Hearing on Remand

CASE #: 99-324-SPH

IN THE MATTER OF: G.D. & R.L., LTD. -Legal Owner /5538 Baltimore National Pike
1st Election District; 1st Councilmanic

ON REMAND FROM CIRCUIT COURT FOR BALTIMORE COUNTY

After public deliberation on Remand, the Board has convened a specially set date for limited argument and hearing on the specific issues as raised by Judge Fader in his Remand Order; and this matter has been

ASSIGNED FOR: **WEDNESDAY, FEBRUARY 14, 2001 at 11:00 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: Appellant

Peter Max Zimmerman, People's Counsel for Baltimore Co

Counsel for Petitioner : Anthony J. DiPaula, Esquire
Petitioner : G.D. & R.L., Ltd.
David Green /Survey Assoc. of Md., Inc.

Mary Sites /Catonsville Manor
Bob Neale

Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney
The Honorable John F. Fader II /Judge
Circuit Court for Baltimore County (3-C-00-003846)

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County Board of Appeals of Baltimore County

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*** HEARING ROOM – *Room 48* ***
Basement –Old Courthouse
400 Washington Avenue

APPEAL HEARINGS SCHEDULED FOR THE WEEK OF **JANUARY 22, 2001**

TUESDAY **01/23** **9:30 am** Somerford Place /PDM XI-808
Somerford Corporation –Developer N/s of Joppa Rd, E of Magledt Road 11th E; 6th C

CBA-00-160 and
00-523-SPHX
PUBLIC DELIBERATION (heard 11/29; 11/30; 12/06/00; 1/03 and 1/11/01) (Memos by noon on 1/17/01) order to be issued by 2/07/01

" " *(11 a.m. 00-404-SPH /Reinke reassigned to 1/10/01)*

WEDNESDAY **01/24** **9 a.m.** G.D.& R.L., Ltd. – Petitioner
5539 Baltimore National Pike

99-324-SPH
Public Deliberation /Discussion on Remand

" " **10 a.m.** Richard A. Moore – Petitioner
No specific location /
Interpretation of 426.5(d) BCZR

99-371-SPH
SPH –Interpretation of BCZR /ZC determined that SE required for erection of wireless telecom tower in CR district

---

THURSDAY **01/25** **9:30 am** Carroll Community Church /Estate of Catherine V. Bond
1701 Emory Road 4th E; 3rd C
SE –For a church per BCZR § 1A02.2C.6

99-503-X

And

CBA-00-105
Day #9 from 10/19/00
To 2/15/01 for Day #10
RE: Denial of b(9) limited exemption

---

c: Executive Office
Law Office
Director /PDM
People's Counsel
Planning Office
Court Info. Desk
County Council
Board Members
Court Reporter

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BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION
LIMITED HEARING ON REMAND

IN THE MATTER OF: G.D. & R.L., Ltd. -Petitioner
Case No. 99-324-SPH

DATE : Wednesday, February 14, 2001 (immediately after limited hearing)

BOARD /PANEL : Charles L. Marks (CLM)
Lawrence S. Wescott (LSW)
Donna M. Felling (DMF)

RECORDED BY : Kathleen C Bianco /Administrator

PURPOSE: To deliberate Case No. 99-324-SPH /Petition for Special Hearing – limited hearing pursuant to deliberation of 1/24/01; limited to questions posed by Judge John Fader II in his remand order.

Question: Definition of auto sales room and adjoining outdoor sales area

Cited Section 233; discussed what each pertinent zone allows

- **Definitions of: (1) sales (2) room (3) salesroom**

✓ "sales room" (2 words) as used in county zoning regulations
✓ "salesroom" (1 word) is definition provided in memo to the Board from PMZ; held that "salesroom" is same as "showroom"
✓ "salesroom" is defined as a place where goods are displayed for sale
✓ likened to real estate sales room – houses for sale; houses are not, however, located in the sales room; photographs are utilized (as on the internet); also used CarMax as example of modern operation
✓ Interpret law as it is written – "sales room" – cannot make it what it is not
✓ As long as there is a sales room /area near cars – meets the law
✓ Cannot know what 1955 County Council was thinking
✓ Heard testimony at today's hearing
✓ Remains as originally decided

- Reviewed testimony and exhibits received today at hearing –
  - cars visually displayed on board
  - upon request, car is brought in; put in bay
  - customer looks it over

- If County Council wanted to restrict, should have included word "new"; this was not done. In absence of word "new" this refers to automobile – whether new or used

  - Board cannot interpret what County Council was trying to convey; does not specify new or used

---

12/20/00 – Order of the Circuit Court remanding this matter to the Board for clarification pursuant to that Order. CCt Order filed 12/27/00.

1/10/01 – Notice of Deliberation /Discussion sent to parties and to panel members (Marks, Felling and Wescott); deliberation /discussion on remand scheduled for Wednesday, January 24, 2001 at 9:00 a.m.

1/17/01 – Letter from Peter M Zimmerman with attached definitions and copies of CCt memos.

1/24/01 – Letter from T. DiPaula, Esquire, with regard to above submittal by P. Zimmerman; requests that unsolicited filing not be considered; and also that additional hearing may be necessary.

-- Deliberation concluded; Board determined, after much discussion and review, that additional testimony and evidence may be necessary on limited issues pursuant to remand; term used in law = two words (sales room); as in definition of *Webster's* = one word (salesroom); an additional date will be scheduled for hearing on limited issue of Judge Fader's remand order; (1) intent of CC as to legislation; and testimony and evidence as to use of building /nature and structure of same.

-- Notice of Assignment /Limited Hearing sent to parties; assigned for Wednesday, February 14, 2001 at 11:00 a.m. (confirmed date and time with T. DiPaula thru R. Sullivan and also with P. Zimmerman; Board members available).

2/14/01 –Board convened for limited hearing. Upon conclusion of hearing, a public deliberation was held after a brief recess; the Board affirmed its original order in which the special hearing was granted; defined "automobile sales room" as used in the regulations; a written Opinion /Order on remand to be issued; to be forwarded to Judge Fader as requested in his remand order. (C.S.F.)

- Business meets what is written in the law
- If there is ambiguity in the law, it is construed against the drafter of the legislation
- Board cannot add words
- Understand concerns of PMZ; but law is as written; cannot find that this determination will open flood gates; this business /operation meets the law as written

Conclusion /Decision –

In response to Judge Fader's questions, Board has defined "sales room" as it appears in the regulations. Petitioner does meet the law and the petition as filed is granted; the Board's prior decision to grant same is affirmed.

NOTE: These minutes, which will become part of the case file, are intended only to indicate for the record that a public deliberation took place this date after limited hearing on remand from the Circuit Court on questions raised by Judge Fader. Board defined terms as requested and affirms its original decision to grant Petitioner's request for used car sales. A written Opinion and Order will be issued by the Board and forwarded to The Honorable John Fader II, Judge, Circuit Court for Baltimore County, pursuant to his remand order.

Respectfully submitted

Kathleen C. Bianco

Kathleen C. Bianco, Administrator
County Board of Appeals

County Board of Appeals of Baltimore County

10 cf

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*** HEARING ROOM – *Room 48* ***
Basement –Old Courthouse
400 Washington Avenue

APPEAL HEARINGS SCHEDULED FOR THE WEEK OF FEBRUARY 12, 2001

*TUESDAY	**02/13**	**10 am**	Joel and Robynn Segall 3750 Greenway Lane, Owings Mills, MD 21117 CBA-00-127 RE: False Alarm Fees /#0003716-2
"	"	**1 pm**	The Gates of Owings Mill 201 Owings Gate Court, Owings Mills, MD 21117 CBA-00-122 RE: False Alarm Fees /#0990457-6
		2:30 pm	Dickee Howard 19020 York Road, Parkton, MD 21120 CBA-00-123 RE: False Alarm Fees #059995-9
WEDNESDAY	**02/14**	**9:30 am**	Belair Road White Marsh Joint Venture 4201 Wholesale Club Road 00-309-XA 14th E.D.; 6th C.D. **PUBLIC DELIBERATION (hearing on 12/27/00)**
"	"	**11:00 am**	G.D.&R.L., Ltd. –Legal Owner /Petitioner 5538 Baltimore National Pike 99-324-SPH 1st E.D. 1st C.D. **Limited hearing on remand from the Circuit Court (3-C-00-3846) /Order of Judge Fader**
THURSDAY	**02/15**	**9:30 am**	**SWEARING IN – C. LYNN BARRANGER** * * * * * * *
"	"	**10:00 am**	Rae Myrl Nicholson –Owner /Defendant 9603 Dundawan Road, Balto., MD 21236 CBA-00-146 RE: Decision of AHB – Case DD2274
"	"	**12:30 pm**	Manor Care of Ruxton ALF Adsit and Vitale-LO /Long Term Care Corp CBA-01-104 t/a Harbor Management Services-CP/Dev. **Development Plan Appeal; complete by 3/17/01** W/s Falls Road at Hollins Lane

c: Executive Office, Law Office, Director /PDM, People's Counsel, Planning Office, Court Info. Desk, County Council, Board Members, Court Reporter

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WCR

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
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TOWSON, MARYLAND 21204
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May 4, 2001

Anthony J. DiPaula, Esquire
34 S. Main Street
Bel Air, Maryland 21014

RE: G.D.&R.L., LTD. /99-324-SPH
Civil Action No. 3-C-00-3846

Dear Mr. DiPaula:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on April 2, 2001, in the Circuit Court for Baltimore County for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-00-3846.

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

Very truly yours,

Charlotte E. Radcliffe

Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Gary Dickson /G.D.&R.L., Ltd. (Catonsville Motors)
David Green /Survey Assoc. of Md., Inc.
Mary Sites, Pres. /Catonsville Manor
Bob Neale
Pat Keller, Director /Planning
Arnold Jablon, Director /PDM
Lawrence E. Schmidt /Z.C.
Virginia W. Barnhart, County Attorney

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01-1348
MAY - 7 2001

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

Box 2275

)1/08/01

Case Number: 03-C-00-003846 AE
Date Filed: 04/12/2000
Status: Closed/Active
Judge Assigned: To Be Assigned,

In The Matter Of: G D & R L Ltd

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Administrative Agency	99 324 sph
Case Folder ID	C00003846V01

INVOLVED PARTIES

ype	Num	Name(Last,First,Mid,Title)	Addr Str/End	Disposition Addr Update	Entered
ES	001	G D & R L L T D		CT DO 12/27/00	04/17/00
	Mail:	Baltimore National Pike 478 East Of C/1 Johnny Cake Road 5538 Balt Natl Pike Baltimore, MD	04/17/00	04/18/00	
	Attorney:	0014355 DiPaula, Anthony J DiPaula & Sullivan, LLC 34 South Main Street Bel Air, MD 21014 (410)893-4255		05/24/00	
ET	001	Peoples Counsel For Baltimore County		CT DO 12/27/00	04/17/00
	Mail:	Old Courthouse Room 47 400 Washington Avenue Baltimore, MD 21204	04/17/00		

RECEIVED
COUNTY BOARD OF APPEALS
01 JAN -9 PM 1:14

Received in Office (Letter)

DiPAULA & SULLIVAN, LLC

Anthony J. DiPaula*
Roger J. Sullivan

*also Admitted in D.C.

ATTORNEYS AT LAW

34 South Main Street
Bel Air, Maryland 21014

Telephone: 410-893-4255
Fax: 410-893-4277

Towson Office

300 Allegheny
Avenue
Suite 106
Towson, MD 21204
410-823-8705

January 24, 2001

RECEIVED
JAN 24 AM 8:57
BALTIMORE COUNTY BOARD OF APPEALS

Charles L. Marks, Panel Chairman
Baltimore County Board of Appeals
401 Washington Avenue, Room 49
Towson, Maryland 21204

RE: G.D. & R.L., Ltd., Petitioner
Case No.: 99-324-SPH
Petition for Special Hearing
5538 Baltimore National Pike
On remand from Circuit Court for Baltimore County

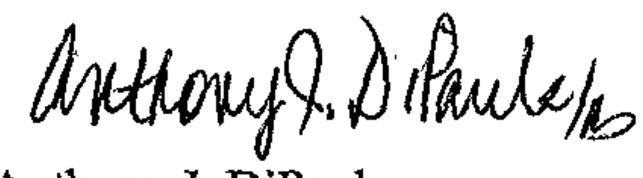
Dear Mr. Marks:

Petitioner would like to go on record as objecting to People's Counsel submitting another unsolicited filing, much in the nature of a memorandum with additional information for the Board's consideration. I am referring to the letter of January 17, 2001 hand delivered to your office, with enclosures.

The Board has scheduled a public deliberation for January 24, 2001 for the Board to discuss and resolve the issues remanded by the Circuit Court for consideration. While I know from a review of the Board's file and specifically, the minutes of the original public deliberation, the Board made certain findings regarding "sales room" and "show room", there appears to be a factual gap in the record concerning what is provided on the Petitioner's site. That appears to be an issue, and People's Counsel's representations in its unrequested submittal cannot be treated as factual, nor should the filing be considered part of the record. To the extent it is an issue regarding what the Petitioner provides in the building structure on the site, be it in the nature of a sales room or show room, the Petitioner believes that a further hearing, however brief, may be required in that regard. I say that with some trepidation in that I understand the Board did make certain findings during the course of its original public deliberation, although those findings possibly were not clearly included in the Board's opinion, which the Circuit Court felt it needed to see.

Thus, Petitioner has two (2) requests. First, do not consider the unsolicited filing by People's Counsel, in the nature of a legal memorandum, arguing the law and citing the Board to legal authorities. Furthermore, to the extent People's Counsel makes factual representations in its filing, those too should be especially overlooked and not considered. Petitioner further proffers to the Board that to the extent there is a factual gap concerning exactly what is provided in the building and sales room on the subject property, Petitioner can submit testimony and evidence to satisfy the Board that whatever definition the Board chooses to apply is in fact met in this case.

Very truly yours,



Anthony J. DiPaula

AJD/ds
cc: People's Counsel
G.D. & R.L., Ltd. d/b/a Catonsville Motors
s:\das\ajd\GD&RL\Board.ltr.1

DiPAULA & SULLIVAN, LLC

Anthony J. DiPaula*
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Roger J. Sullivan
rjs@dipaulasullivan.com

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410-823-8705

June 26, 2001

The Honorable John F. Fader, II
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: In the Matter of the Application of G.D. & R.L., Ltd.
Case No.: 03-C-00-3846

Dear Judge Fader:

Thank you for sending me a copy of your Memorandum to the Assignment Office regarding this case.

The purpose of this letter is simply to set the record straight regarding a troublesome statement in the Memo regarding the timeliness of the brief on behalf of the Respondent. Your Honor's Memorandum of June 20, 2001 indicates that my brief "should have been filed some time ago", and that same had not been filed "due to a mix-up in that [my] office". I realize it is a brief memorandum, and that may be the way the message reached Your Honor through your clerk, but I would just like to go on record that, according to my calculations, my brief was not late at all, but was due thirty (30) days after Mr. Zimmerman filed his, in accordance with Rule 7-207, which made the due date June 25, 2001, some five days after Your Honor's Memorandum. The "mix-up" was whether the undersigned was going to be remaining in the case or if other counsel was going to take over. I learned at the eleventh hour that I was to remain in the case, and then did not have sufficient time to prepare the memorandum. I am usually careful with marking dates and tracking deadlines, and double checked to make sure that I was not late with the brief, and had not missed a deadline.

Thank you.

Very truly yours,

Anthony J. DiPaula

AJD/dh
cc: Peter Max Zimmerman, Esquire
s:\das\ajd\GD&RL\Fader.ltr.1

DiPAULA & SULLIVAN, LLC

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July 10, 2001

The Honorable John F. Fader, II
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

RE: In the Matter of the Application of G.D. & R.L., Ltd.
Case No.: 03-C-00-3846

Dear Judge Fader:

Enclosed please find courtesy copy of the Memorandum of Appellee, the original of which has been filed with the Clerk.

Thank you.

Very truly yours,

Anthony J. DiPaula

AJD/dh
enclosure
cc: Peter Max Zimmerman, Esquire
s:\das\ajd\GD&RL\Fader.ltr.2

PASSED 9/4/01

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 15

Bill No. 71-01

Councilmembers Olszewski, Kamenetz, McIntire & Moxley

By the County Council, August 6, 2001

A BILL
ENTITLED

AN ACT concerning

Zoning Regulations - Automobile Sales

FOR the purpose of amending the Zoning Regulations to provide that new car sales are permitted as of right in the B.M. Zone, and to provide that used car outdoor sales areas are permitted in the B.M. Zone by Special Exception as part of a Commercial Planned Unit Development; and generally relating to car sales in the County's business zones.

By repealing and re-enacting, with amendments,

Section 233.2, automobile sales room use, and Section 440.4.C.

Baltimore County Zoning Regulations, as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Section 233.2, automobile sales room use, and Section 440.4.C. of the Baltimore County Zoning Regulations, as amended, be and they are hereby repealed and

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

1 re-enacted, with amendments, to read as follows:

2 Section 233. Business, Major (B.M.) Zone Use Regulations

3 The following uses only are permitted (Section 233.3):

4 233.2

5 [Automobile] NEW AUTOMOBILE sales [room] FACILITY and adjoining outdoor

6 sales area, provided that dismantled or junked cars unfit for operations on the highways [shall]

7 MAY not be stored outdoors.

8 Section 440. Planned Unit Development - Commercial (PUD-C)

9 440.4 Permitted uses. Subject to the design and performance standards and the

10 procedures specified in this section, the following uses are permitted in a PUD-C, in areas

11 delineated on the map approved pursuant to Section 440.3.B:

12 C. Any use permitted by special exception by the underlying zone or district is permitted

13 by special exception only in that underlying zone or district and is not permitted in any other

14 zone or district which may be part of a PUD-C, EXCEPT THAT USED MOTOR VEHICLE

15 OUTDOOR SALES AREAS ARE PERMITTED BY SPECIAL EXCEPTION AS PART OF A

16 PUD-C IN THE B.M. ZONE.

17 SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect forty-

18 five days after its enactment.

b07101.bil

Thomas J. Peddicord, Jr.

BALTIMORE COUNTY COUNCIL
NOTES TO THE AGENDA
LEGISLATIVE SESSION 2001

Issued: August 23, 2001
Work Session: August 28, 2001
Legislative Day No. 16: September 4, 2001

TRUE COPY TEST:

THOMAS J. PEDDICORD, JR.
LEGISLATIVE COUNSEL/SECRETARY

The accompanying notes are compiled from unaudited information provided by the Administration and other sources.

OFFICE OF THE COUNTY AUDITOR

BALTIMORE COUNTY COUNCIL

September 4, 2001

NOTES TO THE AGENDA

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Bill 67-01 44

BALTIMORE COUNTY COUNCIL AGENDA
LEGISLATIVE SESSION 2001, LEGISLATIVE DAY NO. 16
SEPTEMBER 4, 2001 *7:00 P.M.*

Page

CALL OF BILLS FOR FINAL READING AND VOTE

ED GILLISS, COUNTY ATTORNEY
1 Bill 66-01 - Mr. Moxley(By Req.) - County Code, 1988 - Seventeenth Enactment

JOHN WEBER, DIRECTOR, DEPARTMENT OF RECREATION AND PARKS
44 Bill 67-01 - Mr. Moxley(By Req.) - CEB - Patrons of the Parks Program

JIM O'NEILL, ADMINISTRATOR, BUREAU OF CORRECTIONS
2 Bill 68-01 - Mr. Moxley(By Req.) - CEB - Court Ordered Community Service Weekend Work Crew Program

STEPHANIE RUSKIN, OFFICE OF COMMUNITY CONSERVATION
4 Bill 69-01 - Mr. Moxley(By Req.) - CEB - Affordable Housing Program

CAPTAIN RICHARD DEFLAVIS, FIRE DEPARTMENT
6 Bill 70-01 - Mr. Moxley(By Req.) - Fire Prevention Code of Baltimore County

COUNCIL
7 Bill 71-01 - Councilmembers Olszewski, Kamenetz & McIntire - Zoning Regulations - Automobile Sales

FRED HOMAN, DIRECTOR, OFFICE OF BUDGET AND FINANCE
8 Bill 73-01 - Mr. Moxley(By Req.) & All Councilmembers - Employees' Retirement System - School Bus Drivers

APPROVAL OF FISCAL MATTERS/CONTRACTS

ROE DAVIS, EXECUTIVE DIRECTOR, LOCAL MANAGEMENT BOARD
9 1. Agreements - (2) - After School Therapeutic Programs

SHIRLEY MURPHY, CHIEF, BUREAU OF LAND ACQUISITION
11 2. Contract of Sale - Suzanne R. Sherwood - Additional Parkland for the Cromwell Valley Park
13 4.. Contracts of Sale - (3) - Village of Tall Trees Project

FRED HOMAN, DIRECTOR, OFFICE OF BUDGET AND FINANCE
18 3. Agreements - (3) - Temporary Personnel Services

MISCELLANEOUS BUSINESS

COUNCIL
1. Res. 94-01 - Mr. Kamenetz - Property Tax Exemption - Jesse E. Taylor
2. Res. 95-01 - Property Tax Exemption - Robert R. Griffith

TONY SHARBAUGH, DIRECTOR, OFFICE OF PERSONNEL
3. Approval of Compensation for County Administrative Officer

DAVID CARROLL, DIRECTOR, DEPT. OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT
21 4. Res. 96-01 - Mr. Moxley(By Req.) - Approval of certain applications sale of development rights easements on agricultural properties
27 5. Res. 97-01 - Mr. Moxley(By Req.) - Approval of certain applications for the sale of development rights easements

MAJOR WILLIAM KALISTA, BALTIMORE COUNTY POLICE DEPARTMENT
34 6. Res. 98-01 - Mr. Moxley(By Req.) - Accept donation for Police Dept. from Armament and Chemical Acquisition
36 7. Res. 99-01 - Mr. Moxley(By Req.) - Accept donation for Police Dept. from Department of Defense

SHIRLEY MURPHY, CHIEF, BUREAU OF LAND ACQUISITION

11 8. Res. 100-01- Mr. Moxley(By Req.) - Accept donation for Recreation and Parks from Suzanne R. Sherwood

ED ADAMS, DIRECTOR, DEPT. OF PUBLIC WORKS

38 9. Res. 101-01 - Mr. Moxley(By Req.) - Sanitary Sewer Extension - White Marsh Area - Fifth Councilmanic District

39 10. Res. 102-01 - Mr. Moxley(By Req.) - Amendment to Baltimore County Water Supply and Sewerage Plan

STEPHANIE RUSKIN, OFFICE OF COMMUNITY CONSERVATION

4 11. Res. 103-01 - Mr. Moxley(By Req.) - Loan Agreement with Aigburth Vale, LLLP - Affordable elderly housing

40 12. Res. 104-01 - Mr. Moxley(By Req.) - Payment of Property Taxes - Randallstown Non-Profit Housing Corporation - Randallstown Cooperative Apartments

14. Reappointment - Mr. Moxley(By Req.) - Hon. Francis X. Kelly - Revenue Authority

Baltimore County Council

FISCAL SUMMARY
Supplementary Appropriations
FY 2002

As of September 4, 2001

Operating Budget:	Funding Source				
	County	State	Federal	Other	Total
Bill 66-01	--	--	--	--	$0
Bill 67-01	--	--	--	$700	700
Bill 68-01	--	$16,938	--	--	16,938
Bill 69-01	$403,349	--	--	--	403,349
Bill 70-01	--	--	--	--	0
Bill 71-01	--	--	--	--	0
Bill 72-01	--	--	--	--	0
Bill 73-01	--	--	--	--	0
Total This Agenda	403,349	16,938	0	700	420,987
Prior Balance	32,354	510,091	73,822	5,218	621,485
Year-to-Date Total	435,703	527,029	73,822	5,918	1,042,472
Adopted Budget	1,274,130,369	402,505,586	115,468,442	65,568,757	1,857,673,154
Adjusted Budget	$1,274,566,072	$403,032,615	$115,542,264	$65,574,675	$1,858,715,626

Capital Budget:					
None on this Agenda	--	--	--	--	$0
Total This Agenda	0	0	0	0	0
Prior Balance	0	0	0	0	0
Year-To-Date Total	0	0	0	0	0
Adopted Budget	366,256,000	36,726,000	2,261,000	10,525,000	415,768,000
Adjusted Capital Budget	$366,256,000	$36,726,000	$2,261,000	$10,525,000	$415,768,000

Baltimore County Council

FISCAL SUMMARY
Fiscal Matters and Miscellaneous Business
FY 2002

As of September 4, 2001

Operating Budget:	Funding Source				
	County	State	Federal	Other	Total
FM-1	--	$171,936	--	--	$171,936
FM-2	--	226,000	--	--	226,000
FM-3	$710,000 *	230,000 *	$60,000 *	--	1,000,000
Total This Agenda	710,000	627,936	60,000	0	1,397,936
Prior Balance	11,908,335	2,327,630	0	0	14,235,965
Year-to-Date Total	$12,618,335	$2,955,566	$60,000	$0	$15,633,901

* - Actual $ amount of individual funding sources to be determined; sources split based upon funding %'s in adopted budget.

Capital Budget:					
CM-4	$476,000	--	--	--	$476,000
Total This Agenda	476,000	0	0	0	476,000
Prior Balance	2,247,089	0	0	0	2,247,089
Year-to-Date Total	$2,723,089	$0	$0	$0	$2,723,089

Bill 71-01 - Councilmembers Olszewski, Kamenetz and McIntire - Zoning Regs. - Automobile Sales

Bill 71-01 proposes to amend the Zoning Regulations in order to clarify the types of automobile sales facilities permitted in the business zones of the County.

Under current law, new automobile sales rooms are permitted in the BM (Business, Major) zones of the County as a matter of right, while used car sales are permitted by special exception in the BR (Business, Roadside) zones of the County. A recent decision by the County Board of Appeals has caused some confusion in this area. The Board has recently held that since there is no definition of the term "automobile sales room" in the Zoning Regulations, both new and used car sales facilities are permitted as a matter of right in the BM zones.

Bill 71-01 proposes to amend Section 233.2 of the Zoning Regulations (uses permitted by right in the BM zones of the County) by clarifying that new automobile sales facilities are permitted as a matter of right in the BM zones of the County.

The bill also amends Section 440.4.C. in order to permit a used motor vehicle outdoor sales area (currently permitted by special exception only in the BR zones) in the BM zones by special exception if it is part of a commercial planned unit development (PUD-C).

WITHDRAWN

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 12

Bill No. 57-01

Mr. John Olszewski, Sr., Councilman

By the County Council, June 4, 2001

A BILL
ENTITLED

AN ACT concerning

Zoning Regulations - Automobile Sales

FOR the purpose of amending the Zoning Regulations in order to provide that new or used automobile sales facilities are permitted in certain business zones under certain conditions; and generally relating to car sales uses in business zones.

BY repealing and re-enacting, with amendments,

Section 233.2, automobile sales room use
Baltimore County Zoning Regulations, as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Section 233.2, automobile sales room use, of the Baltimore County Zoning Regulations, as amended, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

1 Section 233 Business, Major (B.M.) Zone Use Regulations

2 The following uses only are permitted (Section 233.3):

3 233.2

4 [Automobile] NEW OR USED AUTOMOBILE sales [room] FACILITY and adjoining

5 outdoor sales area, provided that dismantled or junked cars unfit for operations on the highways

6 [shall] MAY not be stored outdoors.

7 A USED CAR SALES FACILITY THAT IS NOT ASSOCIATED WITH A NEW CAR

8 FACILITY SHALL BE AT LEAST 5,000 SQUARE FEET IN SIZE, CONSTRUCTED ON A

9 FOUNDATION, AND INCLUDE AN INDOOR VEHICLE DISPLAY AREA AND

10 CUSTOMER SERVICES AREAS, INCLUDING AREAS DESIGNATED FOR SALES OR

11 CREDIT APPLICATION, BUSINESS OFFICES, AND OTHER FUNCTIONS RELATED TO

12 THE SALE OR REPAIR OF AUTOMOBILES. SUCH A FACILITY MAY NOT BE

13 LOCATED WITHIN 500 FEET OF AN EXISTING USED CAR FACILITY.

14 SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect forty-

15 five days after its enactment.

16 b05701.ord

WITHDRAWN

720

Bill 57-01 - Mr. Olszewski - Zoning Regs. - Automobile Sales

Bill 57-01 proposes to amend the zoning regulations in order clarify the types of automobile sales facilities permitted in the business zones of the County.

Under current law, automobile sales rooms are permitted in the BM (Business, Major) zones of the County as a matter of right, while used car sales are permitted by special exception in the BR (Business, Roadside) zones of the County. A recent decision by the County Board of Appeals has caused some confusion in this area. The Board has recently held that since there is no definition of the term "automobile sales room" in the zoning regulations, both new and used car sales facilities are permitted as a matter of right in the BM zones.

Bill 57-01 proposes to amend Section 233.2 of the Zoning Regulations (uses permitted by right in the BM zones of the County) by clarifying that both new and used automobile sales facilities are permitted as a matter of right in the BM zones of the County. However, a used car facility which is not associated with a new car facility must meet certain requirements in order to permitted as a matter of right in the BM zone. Those requirements are:

- The used car facility must be least 5,000 sq. ft. in size.
- The facility must be constructed on a foundation.
- The facility must include an indoor vehicle display area and customer service areas (including areas designated for sales or credit application, business offices, and other functions related to the sale or repair of automobiles).
- The facility may not be located within 500 feet of an existing used car facility.

A used car facility which does not meet these requirements is not permitted in the BM zone.

TJP:ml
b57-01.zonreg.autosales.wpd

TRUE COPY TEST:

COUNCIL/SECRETARY

Bill 57-01 720

	B.M. Zone (Business, Major)	B.R. Zone (Business, Roadside)
Current law (Zoning Regulations)	New car sales as of right	Used car sales by special exception
Circuit Court/ Bd. Of Appeals	New <u>and</u> used car sales as of right*	Used car sales by special exception
Bill 57-01	New car sales and **<u>some</u> used car sales as of right	**Some used car sales as of right All other used car sales by special exception

* Because there is no definition in the regulations of "automobile sales room" (the current term), the term includes new and used cars.

**The used car facility must be at least 5,000 sq. ft. in size.

The facility must be constructed on a foundation.

The facility must include an indoor vehicle display area and customer service areas (including areas designated for sales or credit application, business offices, and other functions related to the sale or repair of automobiles).

The facility may not be located within 500 feet of an existing used car facility.

automobile.chart.wpd

DiPAULA & SULLIVAN, LLC

ATTORNEYS AT LAW

Anthony J. DiPaula*
ajd@dipaulasullivan.com

Roger J. Sullivan
rjs@dipaulasullivan.com

*also Admitted in D.C.

34 South Main Street
Bel Air, Maryland 21014

Telephone: 410-893-4255
Fax: 410-893-4277

Towson Office

300 Allegheny
Avenue
Suite 106
Towson, MD 21204
410-823-8705

June 11, 2002

The Honorable John F. Fader, II
Circuit Court for Baltimore County
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

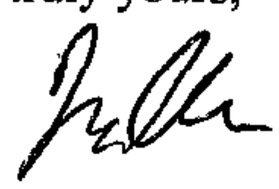
RE: In the Matter of G.D. & R.L., Ltd.
Case No.: 03-C-00-3846

Dear Judge Fader:

While I appreciate Mr. Zimmerman's ongoing research and efforts to keep the Court up to date on new developments in the law, I would be remiss if I did not note for the Court that his letter of May 31, 1002 enclosing the case of Powell v. Calvert County is inapposite to our case. That case involved a special exception that had not been finally approved, which special exception was needed for the owner to engage in its intended use. Our case involves a question of interpretation of the Regulation which the Petitioner contends is a use of right, and the format of using a Petition for Special Hearing was utilized in lieu of an action for mandamus so as not to run the risk of having the Court dismiss the action for failure to exhaust administrative remedies. Arguably, the Zoning Office should have approved the original use permit and was subject to a Writ of Mandamus in lieu of the special hearing route which was chosen.

Thank you for the Court's consideration.

Very truly yours,



Anthony J. DiPaula

AJD/dh
cc: Peter Max Zimmerman, Esquire
G.D. & R.L., Ltd.
s:\das\ajd\GD&RL\Fader.ltr.4

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

DATE: August 27, 2002

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

FROM: Theresa R. Shelton
Board of Appeals

SUBJECT: **G D & R L Ltd.**
PDM Case No.: 99-324-SPH
Case No.: 99-324-SPH
Circuit Court Case No.: 03-C-00-003846

Judge Kahl of the Circuit Court issued an Order on 7/15/2002 AFFIRMING BOA. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

APPEAL

Petition for Special Hearing
5538 Baltimore National Pike
N/S Baltimore National Pike, 478' E of centerline Johnnycake Road
1st Election District – 1st Councilmanic District
G.D. & R.L., Ltd. - Legal Owner
Case Number: 99-324-SPH

Petition for Special Hearing

Description of Property

Certificate of Posting (Patrick O'Keefe – 3/16/99)

Certification of Publication (Jeffersonian – 3/18/99)

Notice of Zoning Hearing (3/2/99)

Entry of Appearance by People's Counsel

Petitioner(s) Sign-In Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits:
1. Plan to Accompany Zoning Hearing

13 Photographs (not marked as exhibits)

Zoning Commissioner's Order dated June 30, 1999 (Granted, with restrictions)

Notice of Appeal received on July 16, 1999 from People's Counsel

c: Anthony J. DiPaula, Esquire
G.D. & R.L., Ltd.
David Green, Survey Assoc. of Md., Inc.
Mary Sites, Catonsville Manor
Bob Neale
Dianna Itter, Office of Planning
People's Counsel of Baltimore County, MS #2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Petitioner's

PLEASE PRINT CLEARLY

~~PROTESTANT~~(S) SIGN-IN SHEET

NAME	ADDRESS
ANTHONY J. DiBULA, ESQ.	614 BOSLEY AVE - TOWSON MD 21204
Gary S Dickson	5900 Johnny Cake RD
David M. Green	SURVEY ASSOC OF MD INC 32 Lee St Annapolis MD 21401
Mary Silva	1121 McCadoo Ave Catonsville Balt. Md 21107 Mano. President
DIANA Allen	
Bob Neale (called 6/5/99) P.O. Box 9412 Catonsville, 21228	
99-324-SPH and cases	

RE: PETITION FOR SPECIAL HEARING 5538 Baltimore National Pike, N/S Baltimore National Pike, 478' E of c/l Johnny Cake Rd, 1st Election District, 1st Councilmanic	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	FOR
Legal Owners: G.D. & R.L., Ltd.	*	BALTIMORE COUNTY
Petitioner(s)	*	Case Number: 99-324-SPH

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

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates of 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
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of ~~February,~~ March 1999, a copy of the foregoing Entry of Appearance was mailed to Anthony J. DiPaula, Esq., Covahey & Boozer, P.A., 614 Bosley Avenue, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN

County Board of Appeals of Baltimore County
ROOM 49 OLD COURTHOUSE
TOWSON, MARYLAND 21204

Address Service Requested

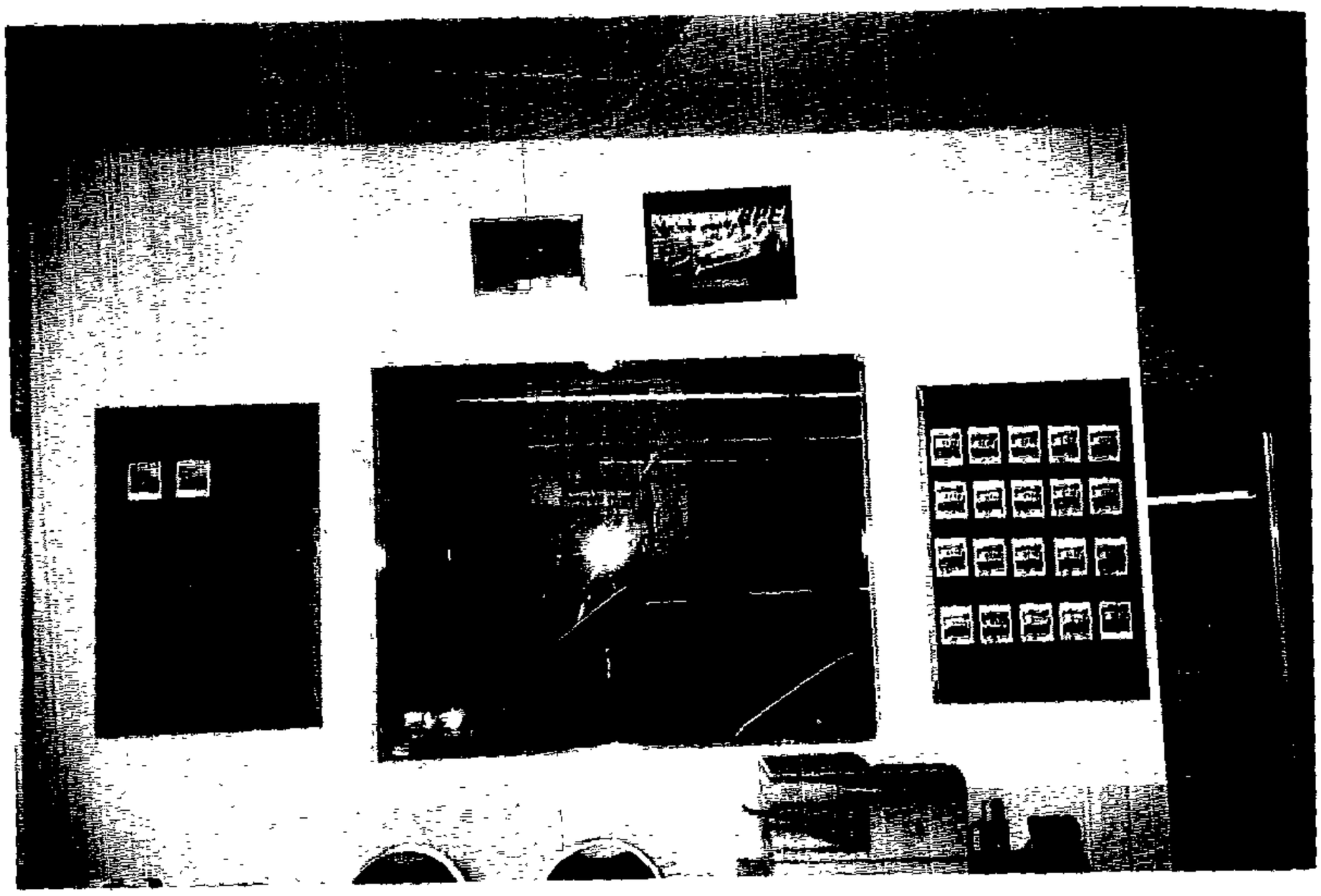
99-324-SPH

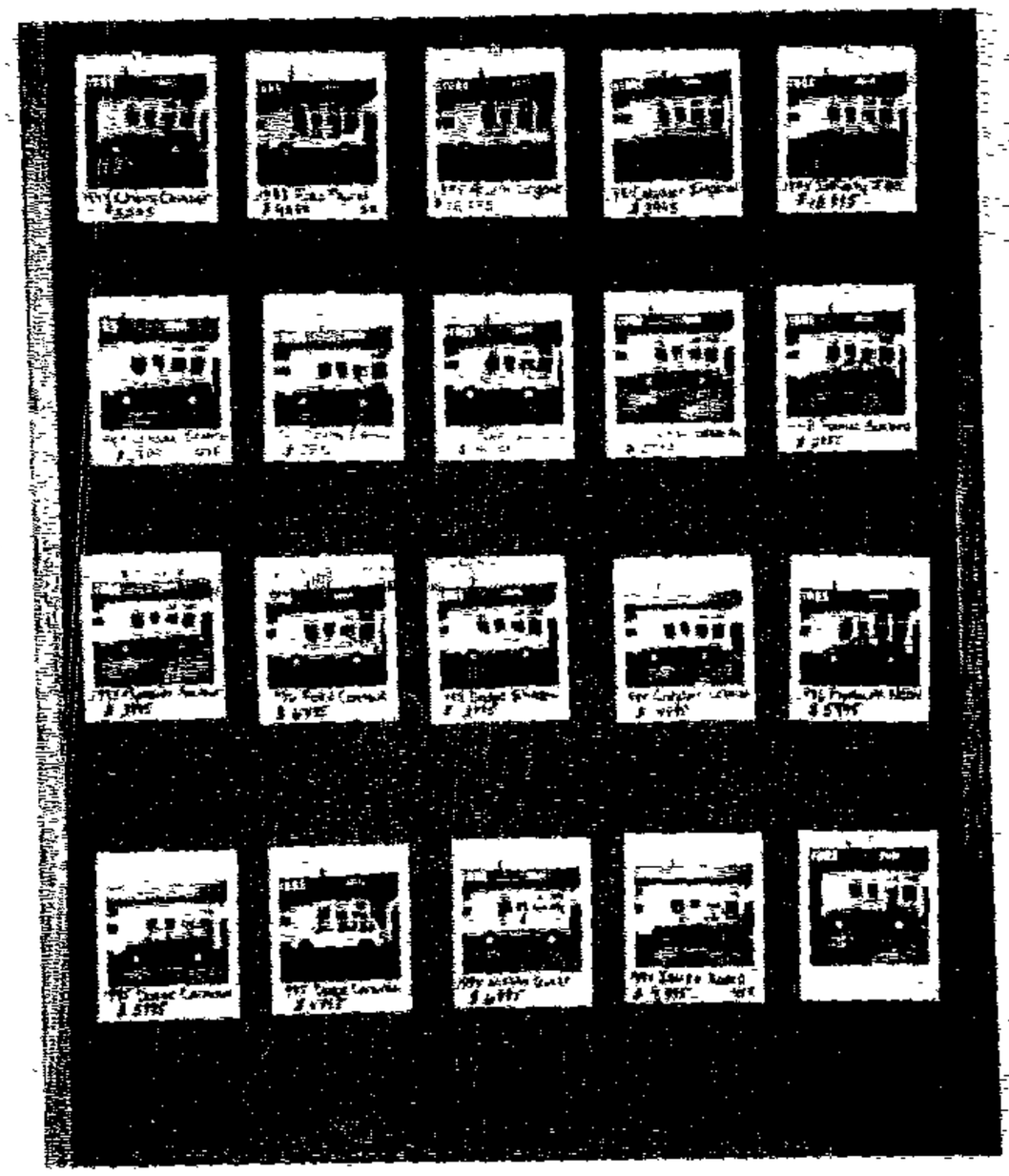
G.D. & R.L.

PETITIONER'S
EXHIBITS
NOS. 1 – 6

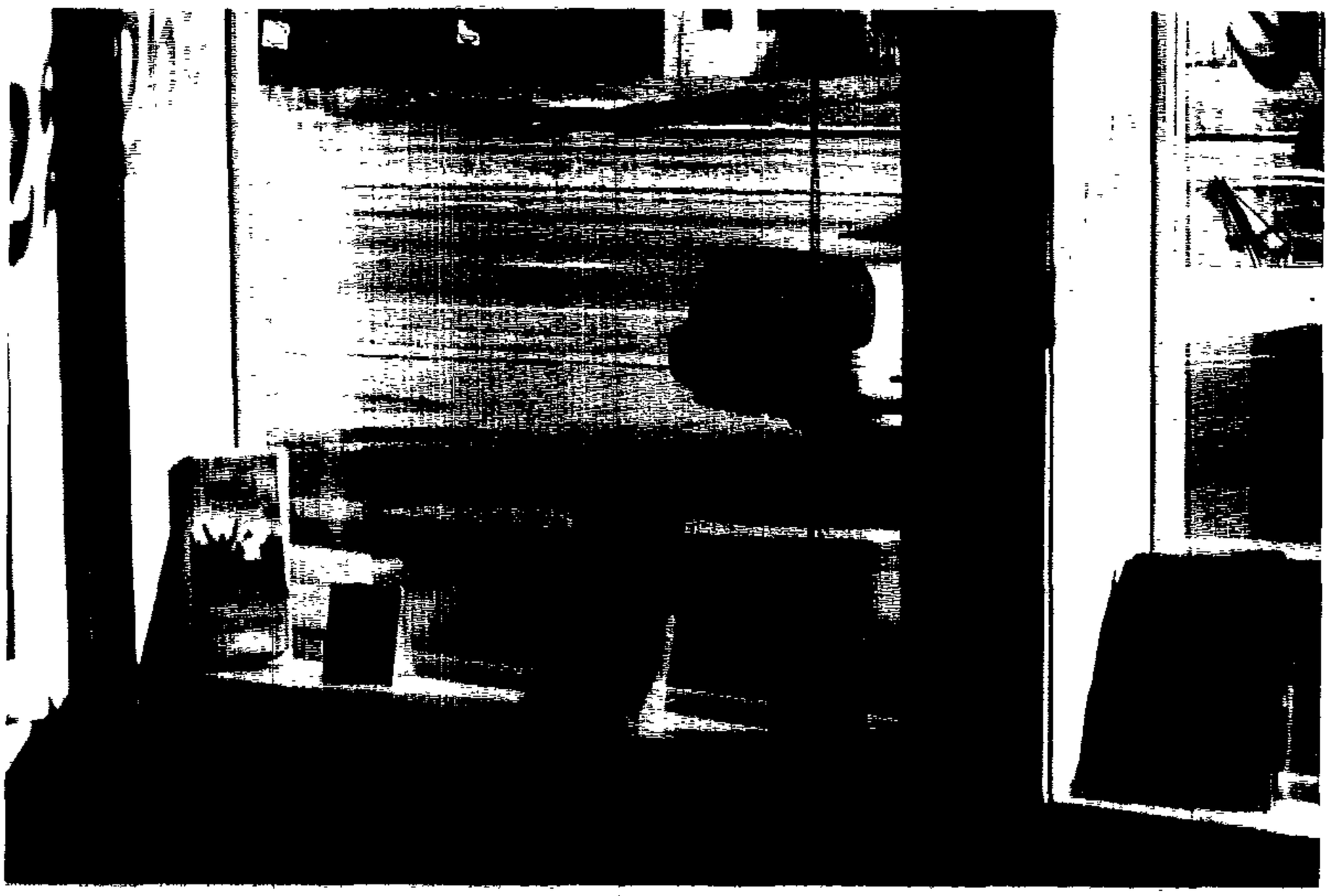
PHOTOS

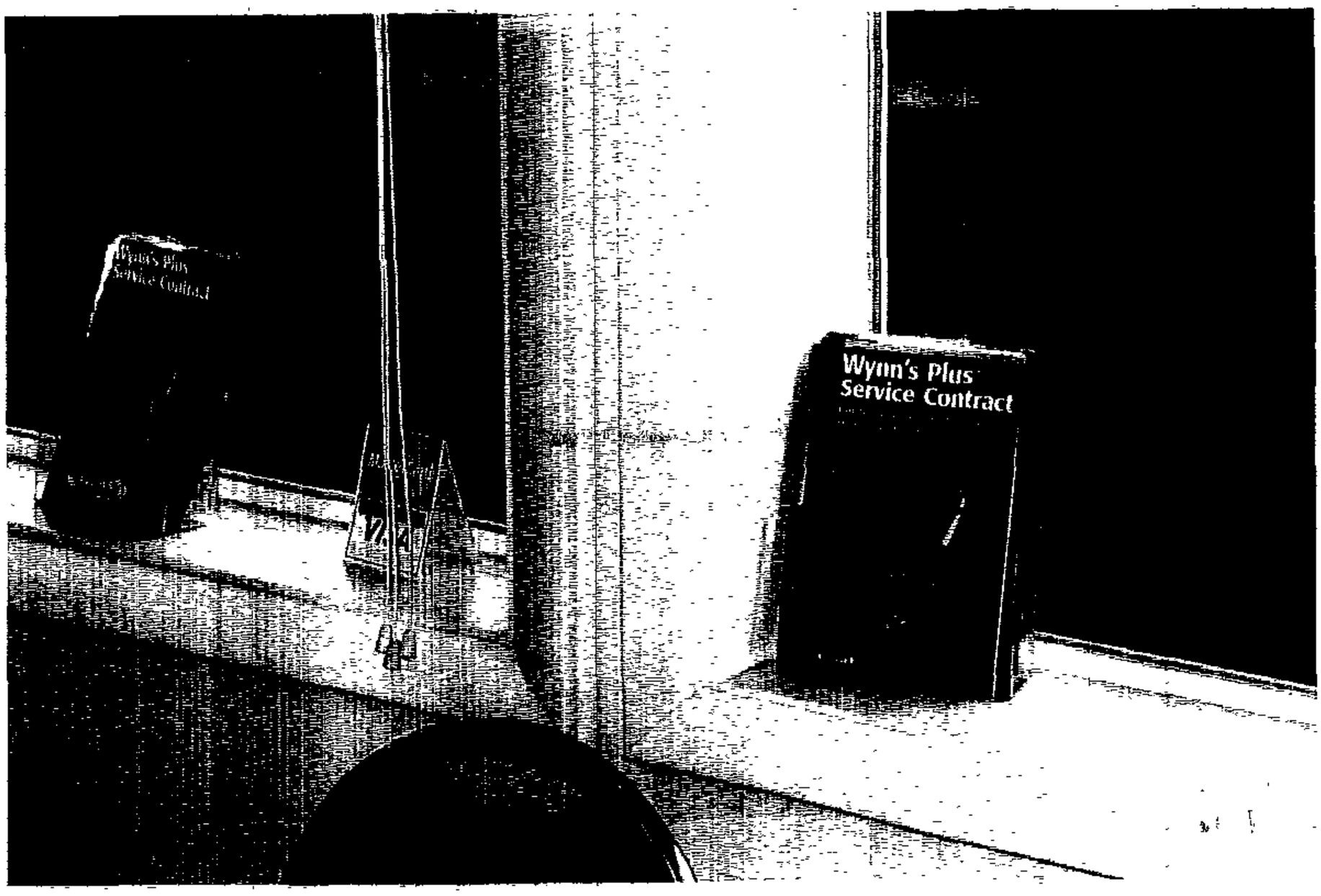
ERVICE
CATONSVILLE MOTORS
O'Donnell Collision

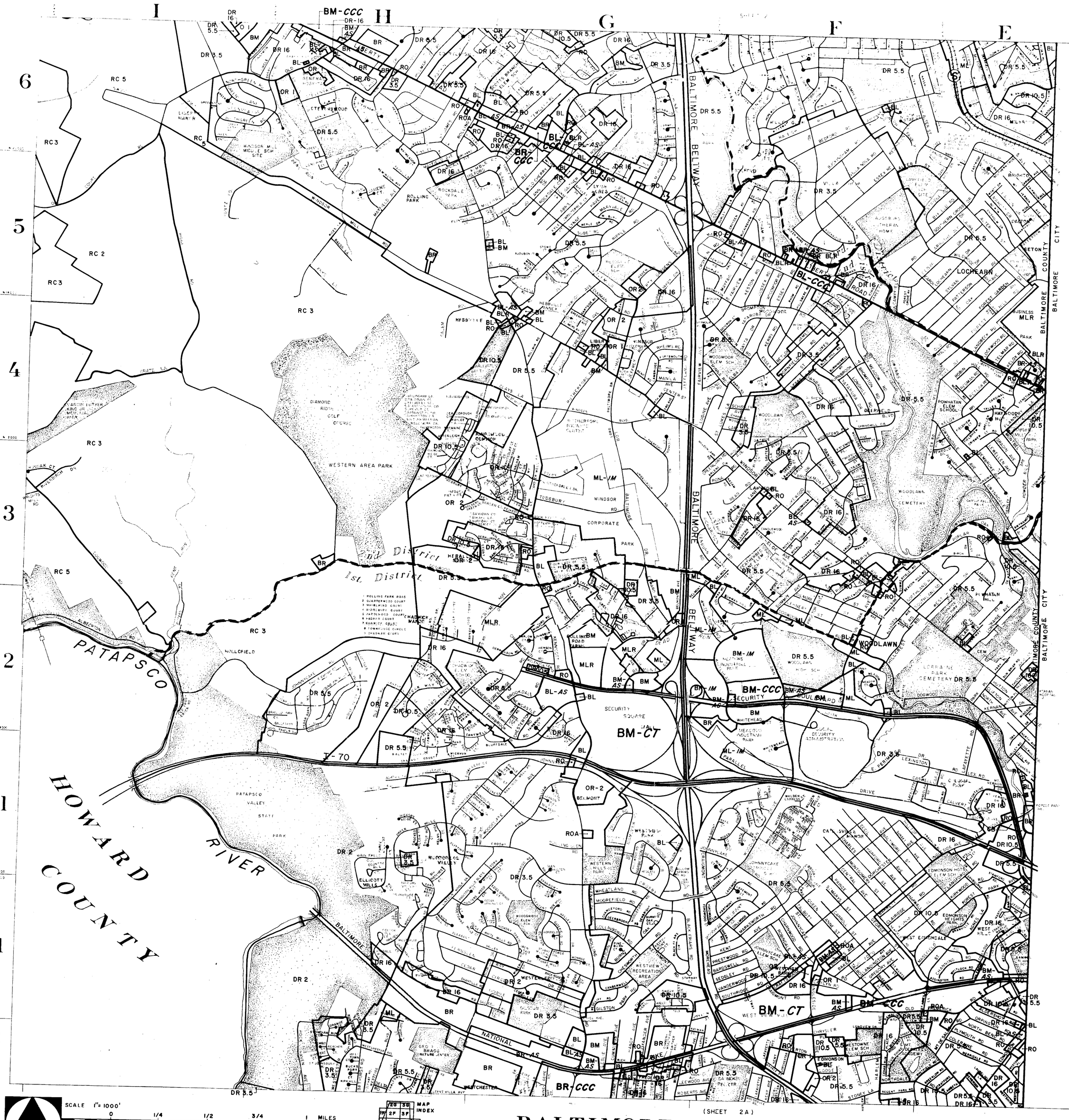




CATONSVILLE
MOTORS




Wynn's Plus
Service Contract



People's Counsel #6

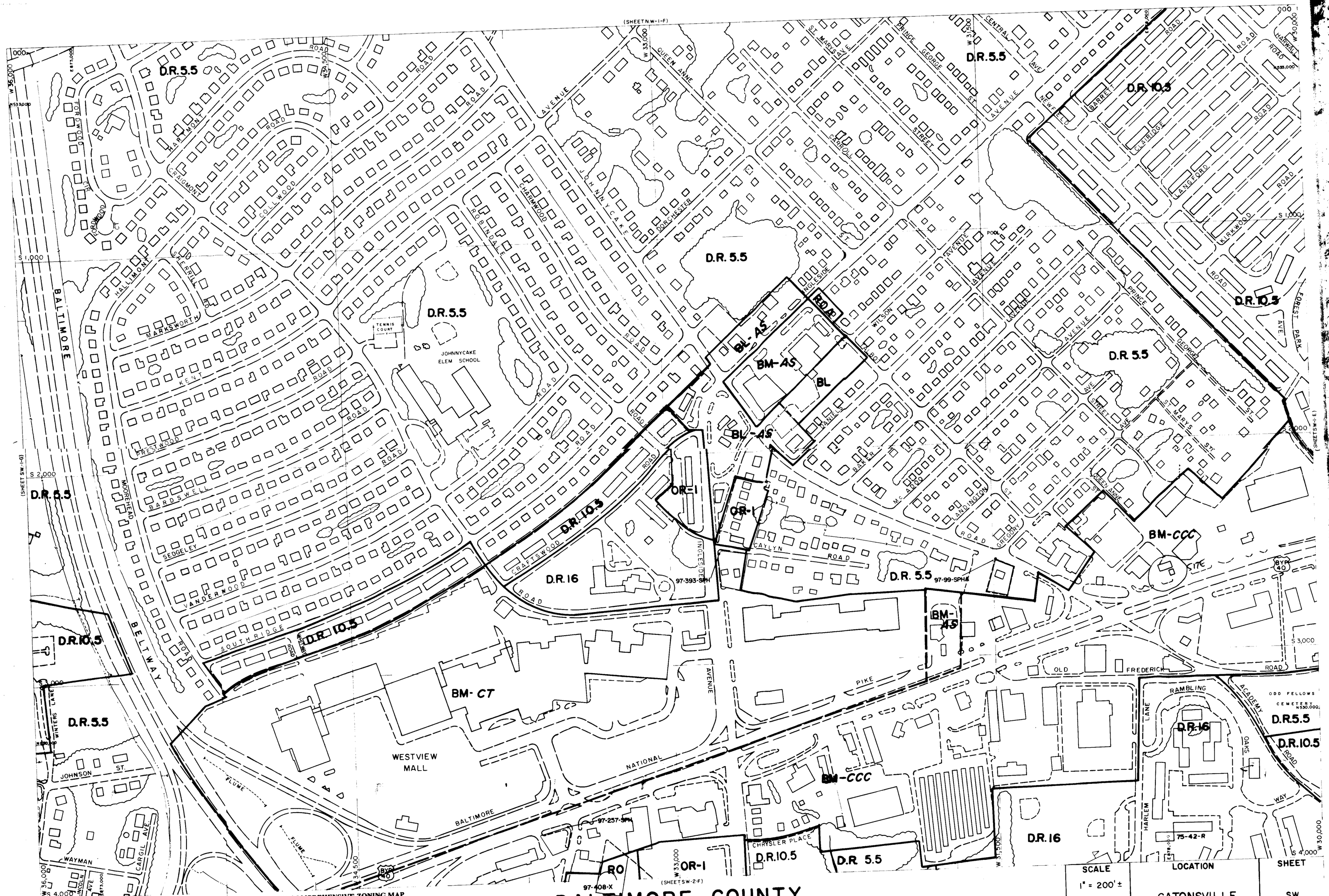
BALTIMORE COUNTY OFFICE OF PLANNING

WESTERN AREA

BALTIMORE COUNTY BASE MAP SERIES

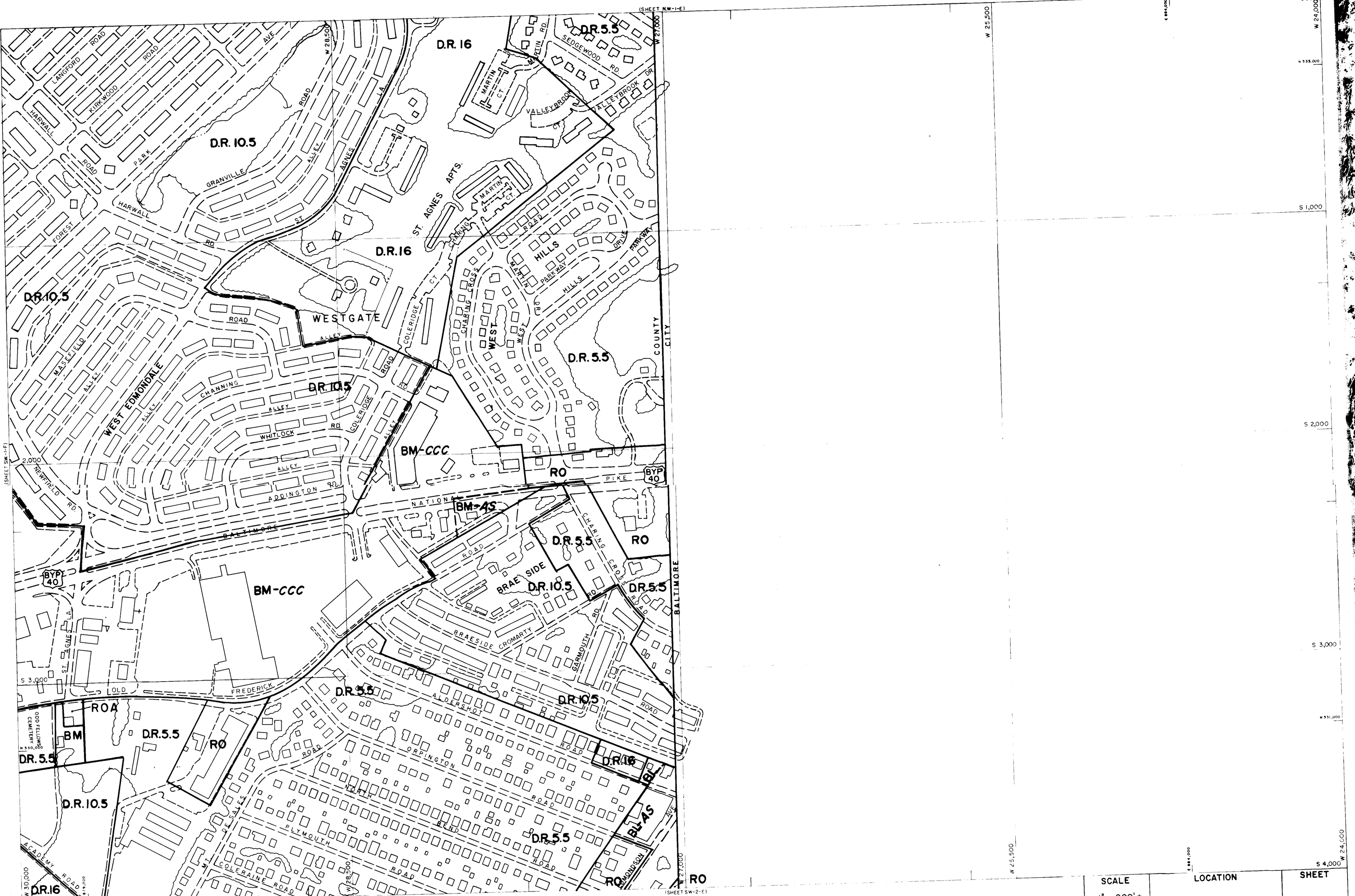
REVISED DATE FEB. 95

2B



SW I-F

People's Counsel Reference 9/Mike
5ft



L-SE K-SW
H-NE G-NW

1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 8, 1996
Bills Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

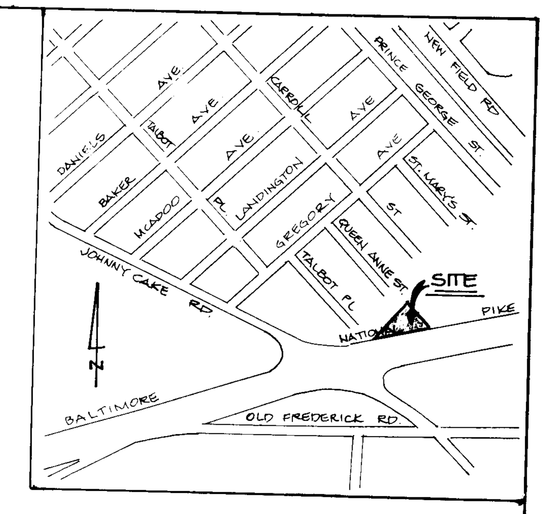
Kevin Kamenetz
Chairman, County Council

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

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	CATONSVILLE	S.W. I-E
DATE OF PHOTOGRAPHY JANUARY 1986		

SW I-E



VICINITY MAP
SCALE: 1" = 500'

OWNERSHIP: GD & RL LTD
5400 JOHNNY CAKE RD.
BALTIMORE, MD. 21207
13078/501
0.4045 AC.± GROSS
- ZONED: BM-CCC -
TAX MAP 95, BLOCK 21, PARCEL 98

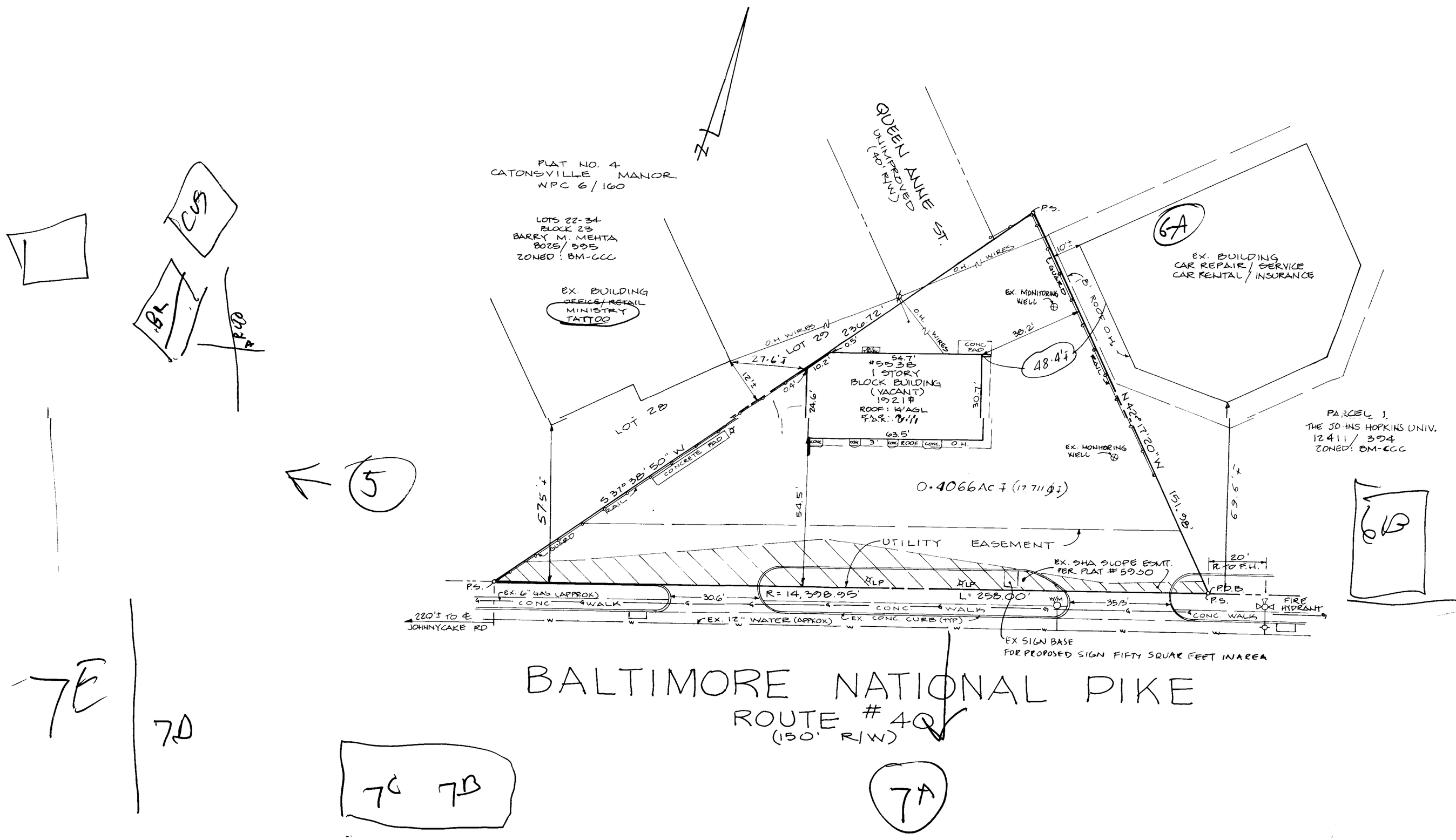
ZONING HISTORY:

1. CASE NO. 4140-X - JUNE 11, 1957
ORDER GRANTING SPECIAL EXCEPTION FOR GASOLINE SERVICE STATION

2. CASE NO. 78-261X - JUNE 20, 1978
ORDER GRANTING A SPECIAL EXCEPTION FOR A SERVICE GARAGE AS DEFINED IN SECTION 101, PURSUANT TO SECTION 230.13.

ZONING RELIEF:
USE OF SUBJECT PROPERTY AS AN AUTOMOBILE SALES ROOM AND ADJOINING OUTDOOR SALES AREA FOR USED CARS PURSUANT TO SECTION 230.2 OF THE BCZR.

NOTE: WORK DONE HEREON WITHOUT BENEFIT OF TITLE REPORT.

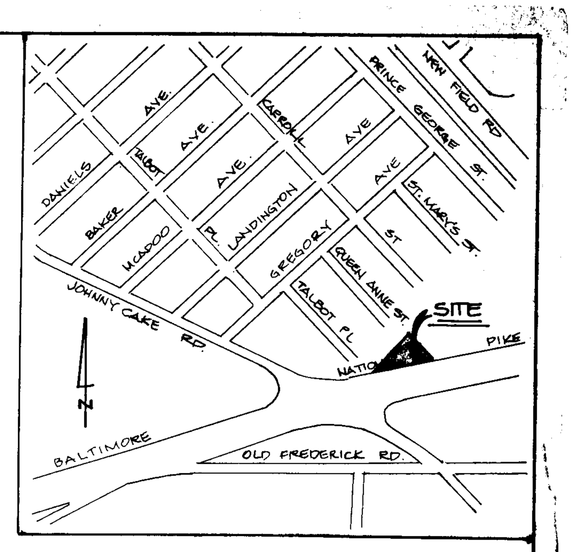


Protestants Exhibit #2
12/8/99
Ex 1

SURVEY ASSOCIATES OF MD., INC.
108 OLD SOLOMONS ISLAND ROAD, #100
ANNAPOLIS, MARYLAND, 21401
PHONE: 410 266-7211 FAX: 410-266-0018

CLIENT: GARY DICKSON

PLAN TO ACCOMPANY ZONING HEARING
5538 BALTIMORE NATIONAL PIKE
OWNERS: GARY DICKSON AND RAY LEWIS
1ST COUNTY COUNCIL DISTRICT
1ST ELECTION DISTRICT, BALTIMORE COUNTY, MD.
SCALE: 1" = 20'
JANUARY, 1999 REV A
A5081&4



VICINITY MAP
SCALE: 1"=500'

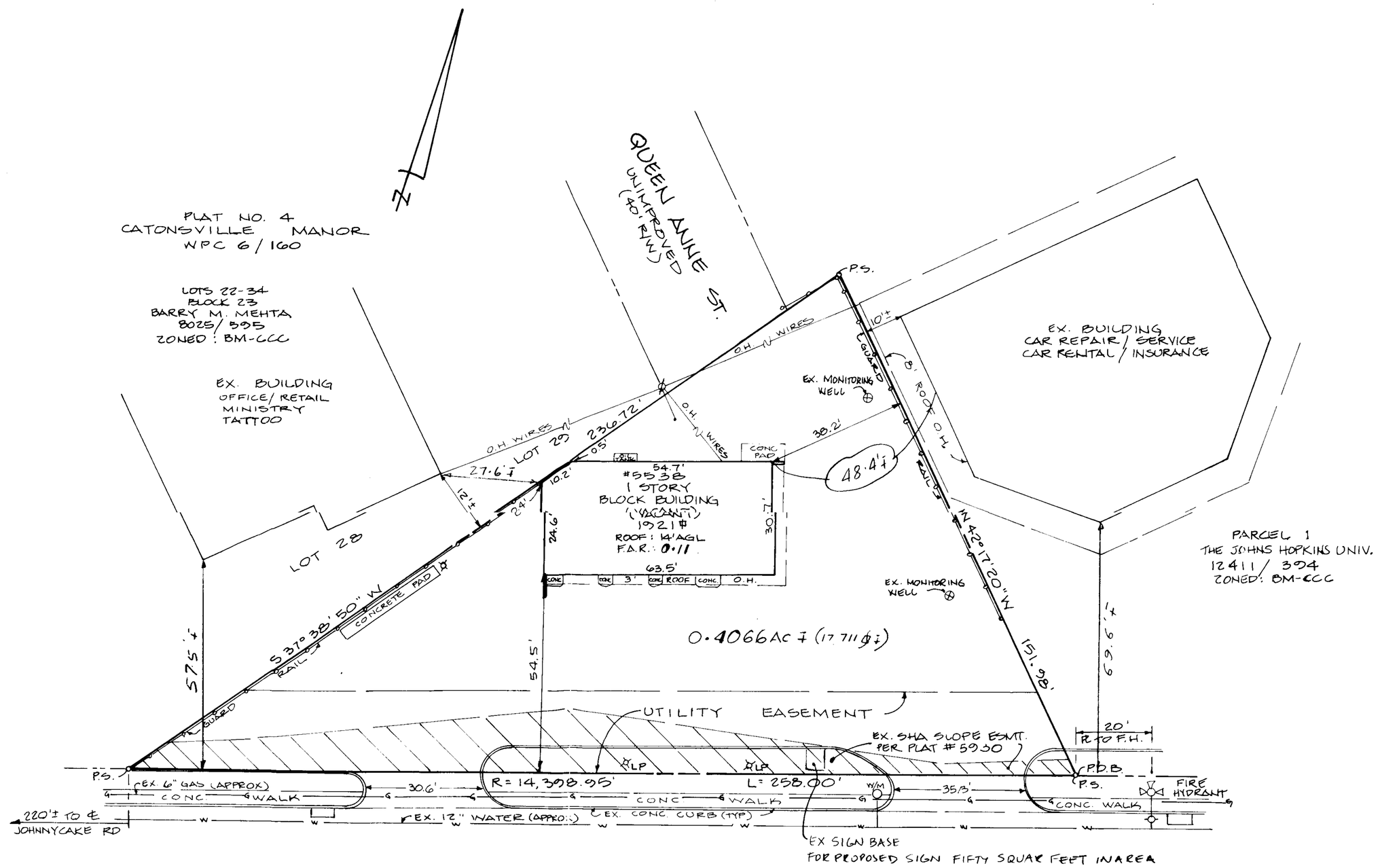
OWNERSHIP: GD & RL LTD
5400 JOHNNY CAKE RD.
BALTIMORE, MD. 21207
13078/501
0.4048 AC.± GROSS
- ZONED: BM-CCC -
TAX MAP 95, BLOCK 21, PARCEL 98

ZONING HISTORY:
1. CASE NO. 4148-X - JUNE 11, 1957
ORDER GRANTING SPECIAL EXCEPTION FOR GASOLINE SERVICE STATION

2. CASE NO. 78-261X - JUNE 20, 1978
ORDER GRANTING A SPECIAL EXCEPTION FOR A SERVICE GARAGE AS DEFINED IN SECTION 101, PURSUANT TO SECTION 230.13.

ZONING RELIEF:
USE OF SUBJECT PROPERTY AS AN AUTOMOBILE SALES ROOM AND ADJOINING OUTDOOR SALES AREA FOR USED CARS PURSUANT TO SECTION 230.2 OF THE BCZR.

NOTE: WORK DONE HEREON WITHOUT BENEFIT OF TITLE REPORT.



BALTIMORE NATIONAL PIKE
ROUTE #40
(150' R/W)

324

Red No 1

99-324-SPH

SURVEY ASSOCIATES OF MD, INC.
108 OLD SOLOMONS ISLAND ROAD, #100
ANNAPOLIS, MARYLAND, 21401
PHONE: 410 266-7211 FAX: 410-266-0018

CLIENT: GARY DICKSON

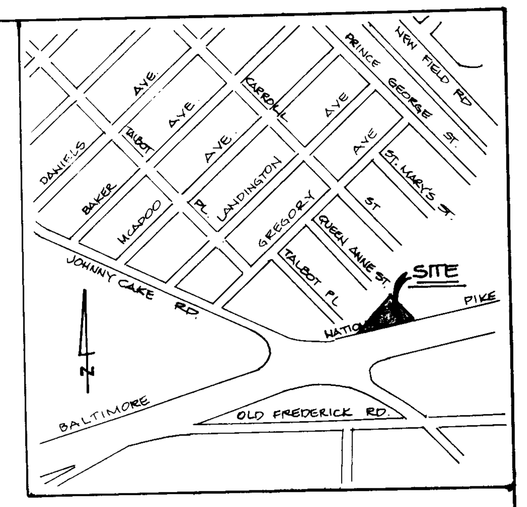
PLAN TO ACCOMPANY ZONING HEARING
5538 BALTIMORE NATIONAL PIKE
OWNERS: GARY DICKSON AND RAY LEWIS
1ST COUNTY COUNCIL DISTRICT
1ST ELECTION DISTRICT, BALTIMORE COUNTY, MD.
SCALE: 1"= 20'
JANUARY, 1999 REV A
AS98104

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200' ±	CATONSVILLE	S.W.
DATE OF PHOTOGRAPHY JANUARY 1986		I-F

99-324

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



VICINITY MAP
SCALE: 1"=500'

OWNERSHIP: GD & RL LTD
5400 JOHNNY CAKE RD.
BALTIMORE, MD. 21207
13078/501
0.4045 AC.± GROSS
- ZONED: BM-CCC -
TAX MAP 95, BLOCK 21, PARCEL 98

ZONING HISTORY:
1. CASE NO. 4140-X - JUNE 11, 1957
ORDER GRANTING SPECIAL EXCEPTION FOR GASOLINE SERVICE STATION

2. CASE NO. 78-261X - JUNE 20, 1978
ORDER GRANTING A SPECIAL EXCEPTION FOR A SERVICE GARAGE AS DEFINED IN SECTION 101, PURSUANT TO SECTION 230.13.

ZONING RELIEF: USE OF SUBJECT PROPERTY AS AN AUTOMOBILE SALES ROOM AND ADJOINING OUTDOOR SALES AREA FOR USED CARS PURSUANT TO SECTION 230.2 OF THE BCZR.

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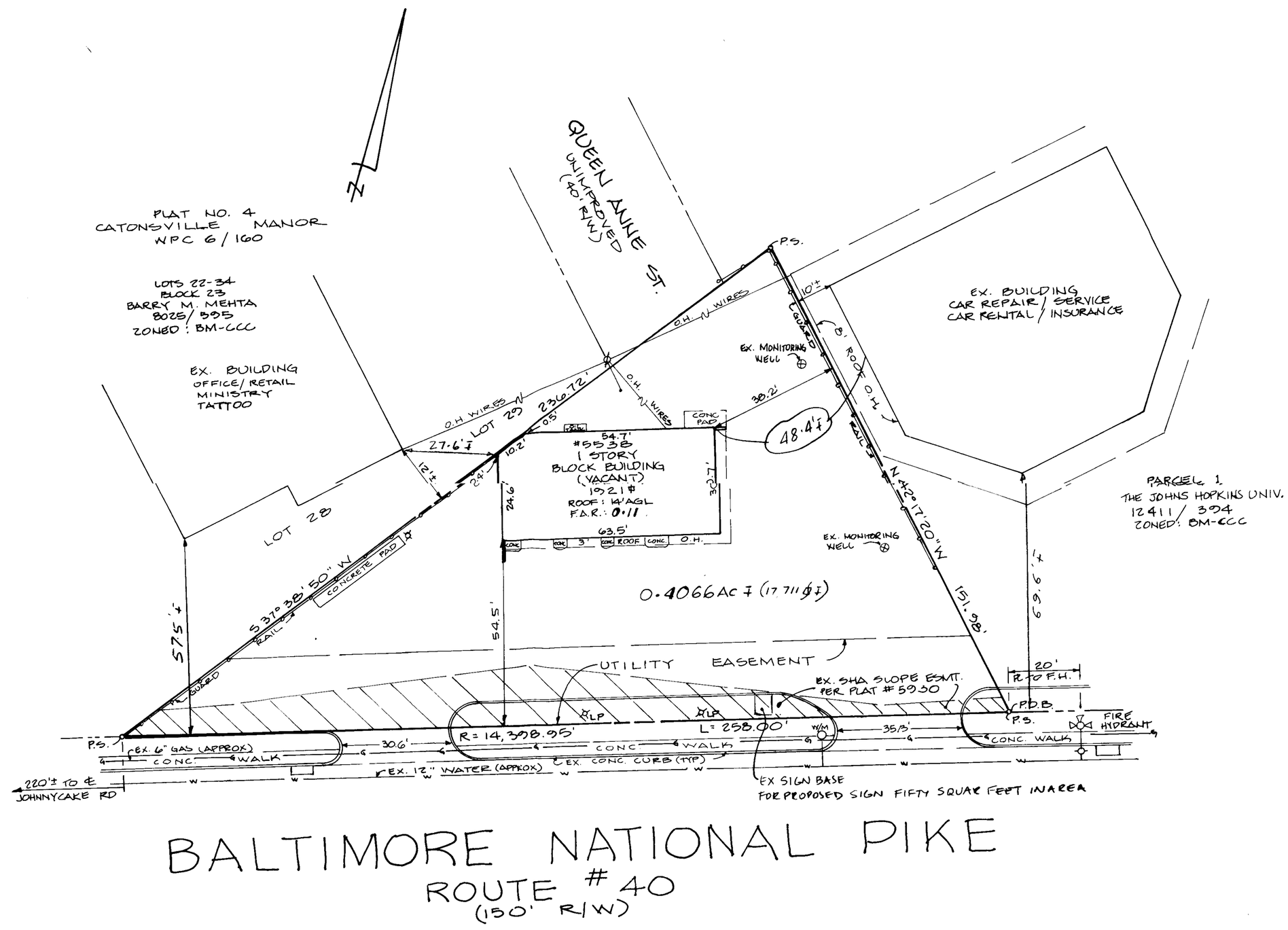

BALTIMORE NATIONAL PIKE
ROUTE #40
(150' R/W)

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CLIENT: GARY DICKSON

SURVEY ASSOCIATES OF MD, INC.
108 OLD SOLOMONS ISLAND ROAD, #100
ANNAPOLIS, MARYLAND, 21401
PHONE: 410 266-7211 FAX: 410-266-0018

1992 Edition

Baltimore County
Zoning Commissioner's Policy Manual

Zoning Administration & Development Management

BALTIMORE COUNTY MARYLAND

Perpetual Calendar

amended May 13, 1992

adopted May 21, 1991

Administrative Supplement to the Baltimore County Zoning Regulations

IN RE: Zoning Commissioner's Policy Manual (ZCPM)

PURSUANT TO: Sections 2-416 thru 422 and 26-135 of the Baltimore County Code

WHEREAS, on August 13, 1990, Baltimore County Council Bill No. 88-90 became effective establishing a Code of Baltimore County Regulations and the method for adoption and amendment of same; and

WHEREAS, on March 26, 1992, the Zoning Commissioner's Policy Manual (ZCPM) amendments received the approval of the County Attorney; and

WHEREAS, a public hearing was scheduled, and advertised in two newspapers of general circulation, and copies of the amendments to the Zoning Commissioner's Policy Manual (ZCPM) were made available for review; and

WHEREAS, on May 13, 1992, the Director of the Office of Zoning Administration and Development Management held a Public Hearing on the Zoning Commissioner's Policy Manual (ZCPM); and

WHEREAS, there being no adverse testimony submitted either written or verbal; and

NOW THEREFORE, IT IS ORDERED by the Director of the Office of Zoning Administration and Development Management, this 13th day of May, 1992, that the Zoning Commissioner's Policy Manual as Amended, be and is hereby **ADOPTED** and shall be incorporated into the Code of Baltimore County Regulations.

Arnold Jablon, Director
Zoning Administration &
Development Management

P : Use Permitted
C : Use Permitted Subject to Conditions
@ : Permitted as Accessory Use Subject to Limitations
SE: Use Permitted Only by Special Exception
X : USE PROHIBITED

M.H.	M.R.	M.L.R.	M.L.	B.R.	B.M.	B.L.	O.T.	O-2	O-1	R.O.	R.A.E.-2	R.A.E.-1	D.R.-16	D.R.-10.5	D.R.-5.5	D.R.-3.5	D.R.-2	D.R.-1	R.C.-50	R.C.-20	R.C.C.	R.C.-5	R.C.-4	R.C.-3	R.C.-2	
				SE	SE	SE																				ARCADE (see 423)
				SE	SE	SE															P					ARTS AND CRAFT STUDIO
																					P					AUCTION BUILDING/SALES
				P	P	P																				AUTO ACCESSORY SHOP
				P	P																					AUTOMOBILE SALES (new & used cars)
				SE																						AUTOMOBILE SALES (used cars only)
			@																							AUTOMOBILE/TRUCK RENTALS
		SE	@ SE	SE	SE	SE	@	@	@	@			@	@	@	@	@	@								AUTOMOTIVE SERVICE STATION (see 405)
P	P	P	P								@															BAKERY OR BAKERY OUTLET
				P	P	P	@	@																		BANKS - DRIVE THRU WINDOW OR ATM'S
P	P	C	@	P	P	P	@	@			@										P					BANKS & OTHER FINANCIAL INSTITUTIONS
			@	P	P	P					@	@									P					BARBER SHOP/BEAUTY SHOP
																										BASEBALL BATTING RANGE (SEE GOLF)
				P	P	SE																				BEACH, COMMERCIAL
								C	C	C			C	C	C	C	C	C	C	C	C	C	C	C	C	BED & BREAKFAST HOME (see 402D)
								C	C	C			C	C	C	C	C	C	C	C	C	C	C	C	C	BED & BREAKFAST INN (see 402D)
				P	P	P																				BILLIARD & POOL ROOM
				P	P	P		SE	SE	SE			SE	SE	SE	SE	SE	SE								BOARDING HOUSE
P		C		P	P	SE		SE	SE	SE			SE	SE	SE	SE		SE				SE		SE		BOAT YARDS (also see Marina)
											@															BOOK STORE

SCHEDULE OF SPECIAL EXCEPTIONS

S.E. Use Permitted by Special Exception Only.
-- Use Permitted Without Special Exception.
X Use Prohibited.

USE	R.40[3]	R.20[3]	R.10[3]	R.6[3]	R.G.[3]	R.A.[3]	B.L.	B.M.	B.R.	M.L.	M.H.	M.L.R.[2]
Hotel	X	X	X	X	X	X	S.E.	--	--	X[30]	X	
Junkyard	X	X	X	X	X	X	X	X	X	X	S.E.	
Kennel	--[6]	S.E.	S.E.	S.E.	X	X	X	X	--	S.E.[6]	S.E.[6]	X[6]
Laboratory	S.E.[31]	X[31]	X[31]	X[31]	X[31]	X[31]	S.E.	S.E.	--	--	--	
Living quarters in a commercial building	X	X	X	X	X	X	S.E.[22]	S.E.[22]	S.E.[22]	X[32]	X[32]	
Marina[14]	S.E.[33]	S.E.[33]	S.E.[33]	S.E.[33]	X	S.E.[33]	S.E.	--	--	--	--	
Marine railway	S.E.[34]	S.E.[34]	S.E.[34]	S.E.[34]	X[34]	X[34]	X[35]	X[35]	S.E.[35]	--	--[36]	
Motel or motor court	X	X	X	X	X	X	S.E.	S.E.	--	X[30]	X	
Offices and office buildings	X	X	X	X	X	S.E.	--	--	-	--	--	
Pet shop[6]	X	X	X	X	X	X	--	--	--	X	X	X
Poultry, commercial killing of	S.E.*	S.E.*	S.E.*	S.E.*	S.E.*	X[37]	X	X	S.E.	--	--	
Private colleges, nursery or dancing schools, dormitories, fraternity and sorority houses, but excluding business and trade schools[19,38]	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	--	--	--	X	X	
Public utility uses in Section 200.15, excluding service centers and storage yards[39]	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	S.E.	--[18]	--	

(All notes appear at end of table.)