IN RE: PETITION FOR SPECIAL EXCEPTION

AND VARIANCE

SE/S Eastern Boulevard and

SW/S Seversky Court

15th Election District

5th Councilmanic District

(1627 Eastern Boulevard)

Mark McAllister *

Petitioner

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 01-506-XA

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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*

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Exception and Variance filed by the legal owner of the subject property, Mark McAllister. The special exception request involves property located at 1627 Eastern Boulevard, which property is zoned BL-AS. The special exception request is to approve a service garage pursuant to Section 230.13 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, variance relief is being requested to allow a rear yard setback abutting a residential zone of 0 ft. in lieu of the required 20 ft. and to allow existing fences in lieu of the required total screening of damaged or disabled motor vehicles.

Appearing at the hearing on behalf of the special exception request were Ronald Heim, appearing on behalf of the owner of the property, J. Scott Dallas, the property line surveyor who prepared the site plan of the property and Alfred L. Brennan, Jr., attorney at law, representing the Petitioner. There were no others in attendance.

Testimony and evidence indicated that the property, which is the subject of this request, consists of 0.213 acres, more or less, zoned BL-AS. The subject property is located on the southwest corner of the intersection of Eastern Boulevard and Seversky Court, in the Essex area of Baltimore County. The subject property is improved with a one-story service garage, wherein

ORDER RECEIVED FOR FILING Date //// the Petitioner performs service work on automobiles. The details of the property are more particularly shown on Petitioner's Exhibit No. 1, the site plan of the property.

Testimony further revealed that the subject property was formerly operated as a gasoline service station. The gasoline pumps have been removed from the property and the Petitioner operates an automobile service repair facility on the site. The owner was unaware that a special exception was necessary in order to operate his business. He is now requesting permission to continue to operate his service garage and has also requested variances to permit the storage of vehicles and a rear yard setback of 0 ft. in lieu of the required 20 ft.

While no one appeared in opposition to the Petitioner's request, several letters in strong opposition to the Petitioner's request were submitted by Andrea Van Arsdale, the Commercial Revitalization Director of the Department of Economic Development. In addition, a letter of opposition was submitted by Arnold F. Keller, III, the Director of the Office of Planning. It is noted within those comments, that the subject property is located in the heart of the Essex-Middle River Revitalization area. It is also located within Baltimore County's Eastern Boulevard Streetscape Project, which involves the expenditure of \$5 million dollars, which is to be used to enhance the appearance, image, safety and pedestrian access to Eastern Boulevard. Furthermore, it is noted that Baltimore County has recently purchased the property immediately behind the subject site which is known as "The Village of Tall Trees". That particular property is to be torn down and redeveloped as a public park.

The Office of Planning, as well as the Department of Economic Development, has viewed the subject property as not furthering the efforts of the revitalization of this area. These agencies believe that the Petitioner's operation undermines the efforts being made to improve the

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appearance of Eastern Boulevard. They, therefore, strongly request that the special exception and variances be denied.

After considering the testimony and evidence offered at the hearing, the photographs submitted and my site visit to the property, as well as the strong positions of the Office of Economic Development and Office of Planning, I find that the Petitioner's special exception and variance requests should be denied.

THEREFORE, IT IS ORDERED this Aday of August, 2001, by this Deputy Zoning Commissioner, that the Petitioner's Request for Special Exception to permit a service garage on the subject property, be and is hereby DENIED.

IT IS FURTHER ORDERED, that the Petitioner's Request for Variance, to allow a rear yard setback abutting a residence home of 0 ft. in lieu of the required 20 ft. and to allow existing fences in lieu of the required total screening of damages or disabled motor vehicles, be and is hereby DENIED.

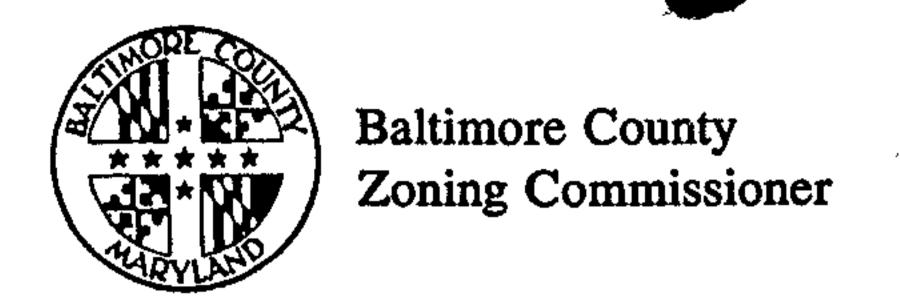
IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.

TIMOTHY M/KOTROCO

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

TMK:raj



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

Fax: 410-887-3468

August 7, 2001

Alfred L. Brennan, Jr., Esquire Brennan & Brennan 825 Eastern Boulevard Baltimore, Maryland 21221

RE: Petitions for Special Exception & Variance

Case No. 01-506-XA

Property: 1627 Eastern Boulevard

Dear Mr. Brennan:

Enclosed please find the decision rendered in the above-captioned case. The Petitions for Special Exception and Variance have been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Office of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

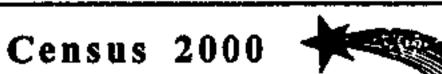
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Timothy M. Kotroco

Deputy Zoning Commissioner

TMK:raj Enclosure











9/5/07

IN THE MATTER OF
THE APPLICATION OF
MARK MCALLISTER –LEGAL OWNER
FOR SPECIAL EXCEPTION AND VARIANCE
ON PROPERTY LOCATED ON THE SE/S
EASTERN BOULEVARD & SW/S SEVERSKY
COURT (1627 EASTERN BOULEVARD)

15TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT * BEFORE THE

* COUNTY BOARD OF APPEALS

k OF

* BALTIMORE COUNTY

* Case No. 01-506-XA

OPINION

This case comes to the Baltimore County Board of Appeals based on an "Opinion and Order" by the Deputy Zoning Commissioner dated August 8, 2001 in which a special exception to permit a service garage was denied, and in which two variances, one to allow a rear yard setback of 0 feet in lieu of the required 20 feet and the other relative to allow existing fences in lieu of the required total screening of damaged or disabled motor vehicles, also were denied. The appeal was filed on September 5, 2001. Counsel representing the Petitioner was Alfred L. Brennan, Jr., Esquire. No protestants appeared in opposition to the Petitioner's request at this Board's public hearing held on June 4, 2002.

The Petitioner called three witnesses, and, in lieu of closing argument, the Board requested that Counsel for the Petitioner prepare a written Brief for the Board in which he should state his position relative to the uniqueness or unusual nature of the property, citing some cases for the Board, and also the requirements of § 502.1 as to the special exception request and § 405 of the *Baltimore County Zoning Regulations* (BCZR). The Board had the opportunity to read their individual notes and the complete transcript which was provided, along with an examination of the evidence that was submitted at the public hearing. A public deliberation was held on August 8, 2002.

Mr. J. Scott Dallas, a licensed property surveyor for 15 years and active in the profession for over 25 years, was accepted by the Board as an expert in property line surveying. Mr. Dallas opined concerning his physical inspection of the subject site (Petitioner's Exhibit #1). The building is an L-shaped building at the corner of Eastern Boulevard and Seversky Court, consisting of a lot size of 0.21 acre, with a gross area of 0.35 acre. It presently has a zoning of B.L.-A.S. The rear of the property faces the former Village of Tall Trees apartment complex, which has now been demolished and which is to be converted in to a Baltimore County public park. The property abuts a 15-foot alley in the rear. Mr. Dallas opined that, if the Petitioner was required to have a 20-foot setback, "the exterior dimensions he'd be left with would only be 9 feet in width, so it would effectively be unusable, less than 7 feet for 50 feet of building, and then he has the small addition that would stick out from that 9-foot section, 12 feet by 25 feet, but it would be very difficult to use it, certainly, in his type of business." He also indicated that he was not aware of "any other type business that could operate in a 7-foot wide...that wouldn't be any effective usable area for office space or any kind of individual space." [T p 10] Mr. Dallas related the history of the site, and that on August 17, 1950 a special permit for a service station was issued (Case No. 1791, Ordered in 1950 / Petitioner's Exhibit #2). Aerial photographs from the Office of Planning, dated January 4, 1954, which focused essentially on the side of the subject site, were accepted as Petitioner's Exhibit #3A and #3B and were examined by the Board.

Mr. Ronald J. Heim was the second witness for the Petitioner. He is currently leasing the property, operating as M & G Auto Services, performing general auto repairs. He related his work experience at the site when it was Eyler's Gulf, and at that time, the Gulf station had two repair bays. The gasoline tanks were removed in 1982/1983, and he continued to work as an

employee doing general repair work. He opined that he had a long history and experience of the site and its usage for over 35 years. He stated that the repair work would include tune-ups, performance work, exhaust, tires, and alignment. In answer to the direct question relative to facility repairing any damaged vehicles, Mr. Heim responded, "We may do some suspension work, but we don't do very much collision work at all," and that "most cars are in and out the same day, but if you have to order a part, I would say two or three days, tops." [T p 16] Mr. Heim explained that most of the work came from local residents within 5 miles of the site.

Petitioner's Exhibit #4A was introduced representing a front view of the site. Another photograph was taken looking at an angle (Petitioner's Exhibit #4B); another reflected the subject property and building adjacent thereto (Petitioner's Exhibit #4C); another looking over across the Court and the M & G sign (Petitioner's Exhibit #4E), with Petitioner's Exhibit #4F reflecting the M & G sign at the corner of Eastern Boulevard and Seversky Court. Additionally, Petitioner's Exhibit #4G was admitted reflecting the back wall and the back structure of the garage and the alleyway.

Mr. Heim indicated that extensive curb work was being presently performed on the sidewalk in association with the Essex Revitalization Program initiated by the County. Trees were to be placed in front of the facility and were to be maintained by the State.

Mr. Mark McAllister, the owner of the building, had flown up from Florida, his present residence, to attend the hearing. Mr. McAllister has owned the building since 1997. He operated a business there from 1993 doing general repair work. He did not have a Maryland vehicle inspection certificate. He indicated a fire had occurred in August 1999 with extensive damage to the building to the extent of \$200,000. A permit was subsequently received from the County to rebuilld (electrical # 354898 and building # 352254). The entire roof, he indicated, had to be

replaced. Mr. McAllister opined that the business could not function if the 20-foot setback was mandated. As to the fence /screening, he opined concerning the former Village of Tall Trees and the numerous incidents of vandalism which had occurred to the property on which the substantial repairs had to be made. The Petitioner rested his case.

In accordance with the request of the Board, Mr. Brennan submitted a copy of the transcript and an extensive Brief. The Board publicly deliberated the case on August 8, 2002. The Board members found the transcript and the Brief to be quite helpful in reaching their final conclusions.

As to the special exception, this case was heard by the Board on a *de novo* basis. As was explained by the Court of Special Appeals in *Pollard's Towing, Inc., v. Berman's Body Frame and Mechanical, Inc.*, 137 Md.App. 277, 288, 768 A.2d 138, 137 (2001), "Unless otherwise limited by statute or Court rule, a de novo hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered."

The Board is well aware of the case of Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1989), and also the case of Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore, 128 Md. App. 499, 739 A.2d 854 (1999), Cert. denied, 358 Md. 163 (2000). In Schultz, the Court held that:

The appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special use irrespective of its location within the zone.

It is quite evident from the testimony and evidence presented to the Board that the subject site had been used as a garage /service station from 1983. In 1983, the gasoline pumps were removed, and the business opened as a service center, which has existed up to the present time.

There were no complaints as to its operation. The management recently requested a permit to operate a Maryland State Vehicle Inspection facility on site. At that time, Mr. Heim was advised by Baltimore County officials that a special exception was necessary to continue his service operations.

There were no Protestants at this public hearing of the Board. The testimony and photographs clearly reflect to the Board a commercial district on Eastern Boulevard. The former apartments in the rear, which were the Village of Tall Trees, has now been demolished, and is to become a Baltimore County public park. The Board has also examined the requirements of § 502.1 of the BCZR (A through H). Based on the testimony, evidence and Brief submitted by Counsel, the Board has determined that, in each case, there is no conflict with those requirements, and the granting of the special exception would be within the spirit and intent of the legislation. The Board finds that the particular use requested at this site proposed would not have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location with the zone. Therefore, the special exception will be granted.

As to the variance requested relative to the rear yard setback, the Board finds that the L-shaped structure of the building on an irregularly configured lot consisting of 0.21 acre constitutes uniqueness as required by Maryland Court decisions based on a fact-finding review of the evidence, photographs, and testimony.

The second prong of Cromwell v. Ward requires that the "practical difficulty" standard be applied to an area variance. Unquestionably the effect of the rear yard requirement of § 232.3 would indeed be to render the property essentially unusable as reflected in the testimony of Mr. Dallas and Mr. Heim. Examining the site plan and other documentation, there would be but a 7-

foot wide usable area after the 20-foot requirement was implemented. From a practical standpoint, it would be difficult for any business which could effectively operate in a 7-foot wide building as testified by Mr. Dallas. The Board finds that uniqueness and practical difficulty are present in the subject site, and will grant the variance relative to § 232.3 of the BCZR.

The Board, however, is not disposed to grant a variance under § 405A.1 to allow the existing fence in lieu of the required total screening of damaged or disabled vehicles. Section 405A.1 requires that, "all such vehicles shall be screened from all sight views by walls (including building walls) or fences at least 8 feet in height." The Board cannot reasonably conclude that, as Counsel for Petitioner has alleged, "that the regulation obviously contemplates that such vehicles are either physically damaged and thus unsightly or that such vehicles are disabled and cannot be moved for a long period of time." The statute does not reference the word "physically." The testimony of Mr. Heim and Mr. McAllister was not sufficiently convincing to the Board to persuade it that vehicles on which work is being performed does not constitute "damaged vehicles" or "disabled" ones. Damaged automobiles and those inoperable may or may not present an unsightly condition. The purpose of the screening is to shield such vehicles from the general public.

It is the Board's conclusion that damaged vehicles include inoperable vehicles. If such vehicles are to be on the premises longer than one day, proper screening should be required.

The Board considers the efforts on the part of Baltimore County in the demolition of the Village of Tall Trees a sincere effort on the part of Baltimore County to revitalize and rehabilitate the Essex area. The contemplation of a public park in the rear of the Petitioner's facility will be enhanced and fit the requirement of § 405A of the BCZR to protect the park from an unattractive setting where there is the presence of damaged cars or inoperative vehicles. Clearly this is a

situation in which the Petitioner did not meet the burden of the weight of the evidence in establishing his case for a variance being granted. The variance requested, therefore, under § 405A of the BCZR is hereby denied.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this

5th day of September 2002, that the Petition for Special Exception to permit a service garage on the subject property be and is hereby GRANTED; and it is further

ORDERED that the variance request to one to allow a rear yard setback of 0 feet in lieu of the required 20 feet pursuant to § 232.3 of the *Baltimore County Zoning Regulations* (BCZR) be and the same is hereby GRANTED; and it is further

ORDERED that the variance request to allow existing fences in lieu of the total screening of damaged or disabled motor vehicles required by § 405A of the BCZR be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Charles L. Marks, Chairman

Lawrence M. Štahl

C. Lynn **B**arranger



County Board of Appeals of Baltimore County

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

September 5, 2002

Alfred L. Brennan, Jr., Esquire 825 Eastern Boulevard Baltimore, MD 21221

> RE: In the Matter of: Mark McAllister -Legal Owner / Petitioner /Case No. 01-506-XA

Dear Mr. Brennan:

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, with a photocopy provided to this offic concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from 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,

Karllen C. Binco tos Kathleen C. Bianco Administrator

Enclosure

Mark McAllister c:

> J. Scott Dallas /J.S. Dallas, Inc. Office of People's Counsel Pat Keller, Planning Director Lawrence E. Schmidt, Zoning Commissioner Arnold Jablon, Director /PDM

7/8/07

BEFORE THE

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 01-506-XA

IN RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCE

SE/S Eastern Boulevard and SW/S Seversky Court (1627 Eastern Boulevard) 15th Election District 5th Councilmanic District

Mark McAllister
Petitioner

Alfred L. Brennan, Jr.
Brennan and Brennan,
Attorneys at Law, P.A.
825 Eastern Boulevard
Baltimore, Maryland 21221
(410) 687-3434

Attorneys for Petitioner

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TABLE OF AUTHORITIES	. 3
STATEMENT OF THE CASE	
QUESTIONS PRESENTED	
STATEMENT OF FACTS	
ARGUMENT	6
1. Standard of Review.	
2. The Operation of an Automotive Service Center at 1627 Eastern Boulevard Does Not	
Have Any Adverse Effects Above and Beyond Those Inherently Associated with the	
Operation of an Automotive Service Center Irrespective of its Location Within the Zone	7
3. The Provisions of the BCZR which are the Subject of the Variance Petitions Do Not	-
Apply to the Property	11
4. The Requested Variance Petitions Should Be Granted	
	18



TABLE OF AUTHORITIES

CASES

Anderson v. Board of Zoning Appeals, 22 Md. App. 28, 40, 322 A.2d 220, 227 (1974)
Cromwell v. Ward, 102 Md. App. 691, 694, 651 A.2d 424, 426 n.1
Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore, 128 Md. App. 494,
739 A.2d 854 (1999)7
McLean v. Soley, 270 Md. 208, 214-215, 310 A.2d 783, 787 (1973)
Pollard's Towing, Inc. v. Berman's Body Frame and Mechanical, Inc
Riffin v. People's Counsel of Baltimore County, 137 Md.App. 90, 767 A.2d 922 cert den. 363
Md. 660 (2001)
Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 554, 214 A.2d 210 (1965) 14
<u>Schultz v. Pritts</u> . 291 Md. 1, 432 A.2d 1319 (1981)7
Sycamore Realty Co. Inc. v. People's Counsel of Baltimore County, 344 Md. 57, 67, 684 A.2d
1331, 1336 (1996)
STATUTES
230
230.1210
230.134
230.910
232.2
232.3
232.3B
307.1
405A12, 15
405A.14, 12, 16
405A.1
502.1
502.1
OTHER AUTHORITIES
Black's Law Dictionary 10, 11

IN RE: PETITION FOR SPECIAL
EXCEPTION AND VARIANCE
SE/S Eastern Boulevard and
SW/S Seversky Court
(1627 Eastern Boulevard)
15th Election District

5th Councilmanic District

Mark McAllister,

Petitioner

BEFORE THE

COUNTY BOARD OF APPEALS

OF BALTIMORE COUNTY

Case No. 01-506-XA

BRIEF OF PETITIONER

Petitioner Mark McAllister, by his attorneys Alfred L. Brennan, Jr. and Brennan and Brennan, hereby file the Brief of Petitioner, as follows:

STATEMENT OF THE CASE

This is an appeal by Petitioner of the decision of the Deputy Zoning Commissioner of Baltimore County (the "Commissioner"), on August 8, 2001, to deny a special exception request to approve the operation of an automotive service station at 1627 Eastern Boulevard (the "Property") pursuant to § 230.13 of the Baltimore County Zoning Regulations ("BCZR"). The Commissioner also denied Petitioner's request for variance relief to permit a rear yard setback abutting a residential zone of zero feet in lieu of the required twenty feet, as required by BCZR § 232.3B, and to allow existing fencing in lieu of the required total screening of "damaged or disabled motor vehicles" pursuant to BCZR § 405A.1.

Protestants noted a timely appeal on September 5, 2001. The case was heard before the County Board of Appeals of Baltimore County on June 2, 2002...

QUESTIONS PRESENTED

- 1. Does the operation of an automotive service center on the Property have any adverse effects above and beyond those inherently associated with the operation of an automotive service center irrespective of its location within the zone?
- 2. Do the Provisions of the BCZR which Form the Basis of the Variance Petitions Apply to the Property?
- 3. Assuming that the Above BCZR Provisions Apply to the Property, Should the Variance Petitions, Requesting a Zero Foot Rear Yard Setback in Lieu of the Required Twenty Feet, and Allowing Existing Fencing in Lieu of Required Total Screening, be Granted?
 - a. Is the Property unique and unusual in a manner different from the nature of the surrounding properties, such that the uniqueness and peculiarity of the Property causes the Regulations to impact disproportionately upon the Property?
 - b. Would strict compliance with the Regulations impose a practical difficulty upon the Petitioner?
 - c. Is the grant of the variance in strict harmony with the spirit and intent of the Regulations, and does the variance grant relief to Petitioner without injury to public health, safety, and general welfare?

STATEMENT OF FACTS

The Property has been operated as an automotive service center since 1950. Hearing before the Baltimore County Board of Appeals, June 4, 2002, Extract, ("E"), at 10-11. At that time, gasoline was sold in conjunction with the automotive service repair business. Id. Special permit No. 1791 was issued on August 17, 1950 to permit this use [E. 10.] Gasoline was sold at the site until about 1982 or 1983, when a fire damaged the property. Shortly thereafter, the gasoline tanks were removed [E. 14.] General automotive repair is performed at the service center; tune ups, exhaust work, tires and alignment. No body work is performed on the Property. Thus, most cars are in and out of the Property within one day. [E. 16.]

The automotive service center on the Property has been an integral part of the community for many years. Most of the customers are local residents, and many senior citizens use its services [E.17]. Petitioner has been a good corporate citizen, repainting the back wall of the Property after it had been defaced with graffiti, repairing the fence, and complying with all requests made by zoning inspectors [E. 26-28].

The Property is physically small, having a net lot size of only 0.21 acres [E. 7]. Ten parking spaces exist on the Property [E. 8]. The Property is accessible from both Eastern Boulevard and Seversky Court [E. 8]. Aerial photographs taken by the Baltimore County Office and Planning demonstrate that the current location of the building on the Property is the same as it was in 1954 [E.12].

Were the 20 foot rear yard requirement of BCZR § 232.3B to be enforced, the Property would be rendered essentially unusable, as Petitioner would be left with only seven feet of usable space in his building [E.10]. He would be unable to operate virtually any type of business in this small space [E.10, 26].

ARGUMENT

1. Standard of Review.

Section 603 of the Baltimore County Charter provides that "[a]ll hearings held by the [B]oard [of Appeals] shall be held *de novo*. As the Court of Special Appeals explained in Pollard's Towing, Inc. v. Berman's Body Frame and Mechanical, Inc., 137 Md. App. 277, 288, 768 A.2d 131, 137 (2001), "unless otherwise limited by statute or court rule, a *de novo* hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered." The Board of Appeals can therefore render its decision based on the evidence before it.

2. The Operation of an Automotive Service Center at 1627 Eastern Boulevard Does Not Have Any Adverse Effects Above and Beyond Those Inherently Associated with the Operation of an Automotive Service Center Irrespective of its Location Within the Zone.

The basic standard for resolving special exception issues is Schultz v. Pritts. 291 Md. 1, 432 A.2d 1319 (1981). Schultz was recently applied by the Court of Special Appeals in Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore. 128 Md. App. 494, 739 A.2d 854 (1999) cert den. 358 Md. 163 (2000). Under Schultz and its progeny, a proposed special exception or conditional use "is prima facie valid absent any fact or circumstance negating the presumption....This presumption in favor of conditional uses [and special exceptions] exists because the legislature made a policy determination that the conditional use is a permitted use provided certain conditions are met." Eastern Outdoor, supra. 128 Md. App at 525, 739 A.2d at 870. See also BCZR § 502 ("All of the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal."). Therefore:

the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the 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.

Schultz, supra. 291 Md. at 22-23, 432 A.2d at 1331. Thus, in Eastern Outdoor, the Court of Special Appeals overturned the Board of Appeals' decision to bar an outdoor billboard because the Board failed to make any finding that the proposed billboard would have "specific adverse effects...in its proposed location above and beyond those inherent to such a sign as would obtain generally elsewhere in the City within a B-5-1 district." Eastern Outdoor, supra, 128 Md. App. at 527-28, 739 A.2d at 872. There is similarly no evidence in the instant record indicating that the operation of an automotive service center at 1627 Eastern Boulevard would have "specific

adverse effects" at that location above and beyond those inherently associated with the operation of an automotive service center in the BL-AS zone.

Section 502.1 of the BCZR enumerates the conditions which the Baltimore County Council has determined must be considered in granting a special exception:

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;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- 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;
- H. Be inconsistent with the impermeable surface and vegetative retention provision of these Zoning Regulations...¹

A. The Operation of the Automotive Service Center on the Property is Not Detrimental to the Health, Safety or General Welfare of the Locality.

The operation of the service center at 1627 Eastern Boulevard provides a service to the local community. Most of its customers are local residents, and many senior citizens also use the service center [E. 17]. As very little collision work is performed at the shop [E. 16], it is unlikely that severely damaged cars would be parked on the premises. The owner of the property has been a good citizen by complying with all requests by zoning inspectors [E. 27], as

well as repairing the fences on the property numerous times and repainting the back wall of the Property after it had been defaced with graffiti [E. 26].

B. The Automotive Service Center Will Not Tend to Create Congestion in Roads, Streets or Alleys in the Zone.

The main frontage of the Property is along Eastern Boulevard [E. 7] which is a major thoroughfare in the Essex community. Ingress and egress is also possible from Seversky Court [E. 8]. As there is a maximum of 10 parking spaces on the Property [E. 8], the operation of an automotive service center on the Property will not cause congestion in the roads of the zone. As customers tend to drop off and pick up their cars, the amount of traffic caused by the operation of the service center is small in comparison to other businesses such as donut shops or gasoline stations, in which traffic is constantly in and out of such premises.

C. The Operation of the Automotive Service Center on the Property Does not Create a Potential Hazard from Fire, Panic or Other Danger.

The hazard from fire has been reduced at the Property since 1982 or 1983 when the gasoline storage tanks were removed [E. 14]. Furthermore, since no body work is performed on the Property [E. 16], the risk of accidents from welding torches used in the performance of body repair is reduced in comparison to other automotive service centers which perform such work.

D. The Automotive Service Center Will Not Tend to Overcrowd Land and Cause Undue Concentration of Population.

The total square footage of the building on the Property is 2475 square feet [E. 8] with a total capacity of 10 parking spaces [E. 8-9]. The facility is therefore too small to have an adverse impact on land or population density.

¹ The last factor is applicable only to R.C.2, R.C.4, R.C.5 or R.C.7 zones; the instant zone is BL-AS.

E. The Operation of the Automotive Service Center on the Property Will Not Interfere with Adequate Provisions for Schools, Parks, Water, Sewerage, Transportation or Other Public Requirements, Conveniences or Improvements.

See response to paragraph (D) above.

F. The Height of the Building on the Property Does Not Interfere with Adequate Light and Air.

Petitioner's Exhibit 4 is a photograph of the front of the service center. Exhibit 4B depicts the service center from across the street. Exhibit 4C shows the building on the Property with other buildings adjacent to it. Petitioner's Exhibit 4G is a photograph of the back wall and the back structure of the garage and the alleyway [E. 17-20]. These photographs demonstrate that the height of the building on the Property is not sufficient to interfere with the surrounding properties' enjoyment of adequate light and air.

G. The Operation of the Automotive Service Center is Not Inconsistent with the Purposes of the Current Zoning Classification Nor Inconsistent with the Spirit or Intent of the BCZR.

The Property is situated in a B.L., or Business, Local zone. The permissible uses in a B.L. zone are regulated by § 230 of the BCZR. The intent of the Business, Local zone is to permit the operation of small businesses. For example, the businesses listed in § 230.9, permitted in a B.L. zone, are small businesses. Examples of the businesses listed in § 230.9 are an antique shop, automobile accessory shop, bowling alley, dairy products store, florist, gift shop, hobby shop and transit facilities. Section 230.12 provides that no more than 5 persons can be "engaged in the repair or fabrication of goods on the premises (subsection B) and no more than 5 horsepower "shall be employed in the operation of any one machine used in repair or fabrication" (total of 15 horsepower limit on all machines)(subsection C).

The operation of the automotive service center on the Property is such a small business contemplated by the Business, Local zoning classification. Most of the customers are local

residents [E. 17]. The premises are physically small, with the building on the premises comprising only 2475 square feet, with ten parking spaces [E. 8-9]. The total net acreage of the Property is 0.21 acres [E. 7]. The automotive service center on the Property is manifestly a small business contemplated within the spirit and intent of the Business, Local zoning classification.

H. The Presence of an Automotive Service Center on the Property Predates the Establishment of the Impermeable Surface and Vegetative Retention Provisions of the BCZR.

Subsection 502.1H of the BCZR was enacted in 1982. The automotive service center on the Property has existed there since at least 1954, as indicated in the aerial photos from the Baltimore County Office of Planning (Petitioner's Exhibits 3A and 3B). The lot has been completely covered in concrete since that time. Thus, other than occasional weeds, there has been no vegetation on the Property since 1954.

The Property does not violate any of the criteria set forth in § 502.1 of the BCZR, nor is there any evidence from the record of any possible adverse impacts above and beyond the adverse impacts of an automotive service center within the Business, Local zone.

- 3. The Provisions of the BCZR which are the Subject of the Variance Petitions Do Not Apply to the Property.
- A. Section 232.3 of the BCZR Does Not Apply to the Property Because the Rear Lot Line of the Property Does Not "Abut a Lot."

Section 232.2 of the BCZR requires a rear yard for commercial buildings under the following circumstances: "B. For commercial buildings, none [a rear yard] required, except that where the rear lot line abuts a lot in a residence zone, there shall be a rear yard not less than 20 feed deep."

Black's Law Dictionary defines a lot as follows:

A share; one of several parcels into which property is divided. Any portion, piece, division or parcel of land. Fractional part or subdivision of block,

according to plat or survey....; portion of platted territory measured and set apart for individual and private use and occupancy....A lot is commonly one of several other contiguous parcels of land making up a block. Real property is typically described by reference to lot and block numbers on recorded maps and plats.

Black's Law Dictionary, (5th ed. 1979) at 853. According to the site plan submitted as Exhibit A, the rear lot line of the Property abuts a 15 foot alley, which does not fall within the definition of a "lot" as set forth above. The width of the alley ranges from 18 to 41 feet from the nearest curb line. Therefore, the Property does not "abut a lot", which is a prerequisite for the BCZR 20 foot rear yard requirement.

B. No "Damaged" or "Disabled" Vehicles are Stored on the Premises.

Section 405A of the BCZR related to the storage of damaged or disabled vehicles on the premises of a service garage. Section 405A.1 requires that "all such vehicles shall be screened from off-site view by walls (including building walls) or fences at least eight feet in height. The regulation obviously contemplates that such vehicles are either physically damaged and thus unsightly, or that such vehicles are disabled and cannot be moved for a long period of time. These vehicles might be used for spare parts. Such inoperable vehicles would most likely also be in an unsightly condition. The purpose of the screening is therefore to shield these unattractive sights from the general public.

The record indicates that no vehicles of this type are stored on the Property. No collision work is performed there [E. 16]. As the nature of the business is tune-up, exhaust work, tires, alignment and performance work, most cars are in and out on the same day [E. 16]. The longest period of time that a car is on the Property is 2-3 days, if a part must be ordered [E. 16].

Thus, the presence and movement of cars on the Property is more like an automotive parking facility than the type of facility contemplated by the regulation. This section is therefore applicable to the Property.

4. The Requested Variance Petitions Should Be Granted.

Section 307.1 of the BCZR states, in pertinent part, as follows:

[T]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations ... only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship ... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area .. regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare.

As a threshold matter, it should be noted that the phrase "practical difficulty or unreasonable hardship" has been interpreted by the Court of Appeals to mandate analysis under only one of those standards: "[T]he Court of Appeals emphasized that the grant of the requested area variance was justified on proof of 'practical difficulty' alone and that proof of hardship was not required because the governing zoning ordinance, which phrased the criteria of 'practical difficulty or unreasonable hardship' in the disjunctive, could be construed as requiring that only the lesser standard of proof be applied." Anderson v. Board of Zoning Appeals, 22 Md. App. 28, 40, 322 A.2d 220, 227 (1974). The instant variance is classified as an area variance. See Friends of the Ridge v. Baltimore Gas and Electric Co., 342 Md. 645, 651, 724 A.2d 34, 37 fn. 6 (1999) ("When variance issues are involved, some cases regarding setbacks or height restrictions refer to them as "dimensional" variances...and some as "deviational" variances. In Maryland, they are commonly referred to as "yard" variances, distinguishing them from "use" variances....) (citations omitted). The "unreasonable hardship" standard is applicable to use variances, while the "practical difficulty" standard is used for area variances. Cromwell v. Ward, 102 Md. App. 691, 694, 651 A.2d 424, 426 n.1. Therefore, in the instant case it is appropriate to apply the "practical difficulty" standard.

a. The Property is Unique and Unusual in a Manner Different from the Nature of the Surrounding Properties, such that the Uniqueness and Peculiarity of the Property causes the Regulations to Impact Disproportionately upon the Property.

This "uniqueness" element of the variance analysis is a threshold question. If the property is not unique under Cromwell, the analysis stops. See, Cromwell, supra, 102 Md. App. at 721, 651 A.2d at 439 ("We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been--a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists."); accord Riffin v. People's Counsel of Baltimore County, 137 Md.App. 90, 767 A.2d 922 cert den. 363 Md. 660 (2001).

In discussing the uniqueness requirement, the <u>Cromwell</u> court cited <u>Salisbury Board of</u> <u>Zoning Appeals v. Bounds</u>, 240 Md. 547, 554, 214 A.2d 210 (1965):

Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship.... [T]he hardship, arising as a result of the act of the owner ... will be regarded as having been self-created, barring relief...." The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....

Cromwell, supra, 102 Md. App. at 706, 651 A.2d at 431-32. The court noted that had the contractor in Cromwell checked the applicable height limitation, the situation could have been avoided. Id.

In contrast, Petitioner's predecessor in title could not have checked either of the

restrictions involved in this case, because they did not exist at the time the automotive service station was originally built. The 20-foot rear yard requirement, § 232.3 was enacted in 1963, while section 405A was enacted in 1969. Therefore, the circumstances existing in Cromwell, that the petitioner had exceeded the existing height limitations, are not applicable here. No rear yard limitations existed at the time the service center was constructed.

Significantly, at the time the service center was built, in 1950, Baltimore County had evaluated the peculiar circumstances existing at the time and concluded that an automotive service center could be built upon the Property, as evidenced by the issuance of permit no. 1791, issued on August 17, 1950 [E. 10-11]. Aerial photographs taken by the Baltimore County Office of Planning in January, 1954 indicate that the service center was in the same location then as it is now [E. 12, Exhibits 3A and 3B].

The instant factual scenario fits squarely within the definition of a vested right: '[W]hen a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations.' "

Sycamore Realty Co. Inc. v. People's Counsel of Baltimore County, 344 Md. 57, 67, 684 A.2d 1331, 1336 (1996). As stated above, the original zoning permit was issued in 1950, and the service station was definitely in existence in 1954, when the aerial photos were taken. The Petitioner's ability to use the Property as a service center cannot be affected by the subsequent passage of rear yard requirements in 1963, nor screening requirements in 1969. Additionally, the granting of the special permit in 1950, and use of the Property in conformance therein since then, constitutes "unique circumstances applicable to [the Property]" under Cromwell.

b. Strict Compliance with the Regulations Imposes a Practical Difficulty upon the Petitioner.

Anderson set forth the three-part "practical difficulty" standard as follows:

Where the standard of 'practical difficulty' applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard In order to justify the grant of an area variance the applicant need show only that: '1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. '2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners. '3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.'

Anderson, supra, 22 Md. App. at 39, 322 A.2d at 226, citing McLean v. Soley, 270 Md. 208, 214-215, 310 A.2d 783, 787 (1973). Cromwell also requires that the condition causing the practical difficulty cannot be self-inflicted, the result of the applicant's own actions. Cromwell, supra, 102 Md. App. at 722, 651 A.2d at 440.

1) Compliance with the Strict Letter of the Regulations would Unreasonably Prevent the Petitioner from Using the Property for a Permitted Purpose or would Render Conformity with Such Restrictions Unnecessarily Burdensome.

The effect of the rear yard requirement of § 232.3 would be to render the Property essentially unusable. There would be a seven-foot wide usable area after the 20 foot yard requirement was implemented [E. 10]. Petitioner's expert property line surveyor was unaware of any business which could effectively operate in a seven-foot wide building [E. 10].

The "strict letter" of the screening requirement of § 405A,1 states that "[a]ll such [disabled or damaged] vehicles shall be screened from off-site view by walls (including building walls) or fences at least eight feet in height." Although Petitioner has argued that the vehicles it

services are not "damaged or disabled", the logical consequence if this were not the case would be for the entire property to be screened, as such vehicles would be "stored" anywhere on the Property. Taken to the extreme, "strict" reading, a sliding gate mechanism might even be required, as a gap in the screening large enough for vehicle ingress and egress would probably result in the "damaged or disabled" vehicles being visible "from off-site view".

The grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district.

The grant of the variance would do substantial justice to the applicant as he would be able to continue to conduct his business as it has been conducted since the 1950's. Enforcement of the rear yard requirement would cause disruption to adjoining property owners as a significant amount of demolition would take place. Furthermore, the resulting offset would result in an unusual and distracting appearance which would create a disharmony in the strip of buildings to which the Property is adjacent, as the other buildings next to the Property share the same zero setback as the Property.

The screening requirement would also detract from the appearance of the surrounding properties. As the photographs indicate, the vicinity of Eastern Boulevard in which the Property is located is characterized by wide open space. Enforcement of the screening requirement would create a jarring, prison-like appearance created by an eight-foot tall impermeable barrier around the Property, no matter how aesthetically it was designed.

Relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The spirit of the rear-yard requirement is that a 20 foot spacing should exist between the back of a commercial establishment and a residential lot. In fact, the testimony indicates that

there is 41 feet of concrete in back of the building on the Property, as well as the fact that the Property does not actually abut a residential lot, but abuts an alley [E. 9]. Furthermore, the area in back of the Property is a condominium which has been demolished, and which is a proposed park area [E. 8-9]. Therefore, the intent of the regulation, which is to create space between commercial establishments and residences, is preserved by granting the requested relief.

In addition, the spirit of the screening regulation is also preserved, as there are no "disabled or damaged" vehicles on Petitioner's property.

CONCLUSION

Petitioner has demonstrated that there are no adverse effects above and beyond those inherently associated with the operation of an automotive service center irrespective of its location within the zone. Furthermore, Petitioner have demonstrated that the physical characteristics of the Property are unique, that they would suffer a practical difficulty if the Regulations were strictly enforced against them, and that grant of the variance is in accordance with the spirit of the Regulations, and would not adversely effect the public health, safety and welfare. Therefore, Petitioner respectfully requests that the Petitions for Special Exception and Variances be granted.

BRENNAN AND BRENNAN, ATTORNEYS AT LAW, P.A.

Alfred L. Brennan, Jr.

825 Eastern Boulevard

Baltimore, Maryland 21221

(410) 687-3434

Attorneys for Petitioner



REV 09/15/98

Petition for Special Exception

to the Zoning Commissioner of 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

for the property located at 1627 Eastern Boulevard

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 Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

Service Garage pursuant to BCZR 20.13

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Special Exception, 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.

			is the subject of	this Petition.	(-)	- From only or	
Contract Purchaser/L	essee:		<u>Legal Owner</u>	<u>r(s):</u>			
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Attorney For Petitione	r:		4081 Bahia	Isle Circle	(5	61) 784-	9958
Alfred L. Brennan,	Jr.		Address Wellington		FL	Telephor 334	
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Brennan and Brennan Company	, Attorneys	at Law, P.A.	<u>Alfred L. B</u> Name	rennan, Jr.		v. · · · · · · · · · · · · · · · · · · ·	
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REV 9/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1627 Eastern Boulevard which is presently zoned BL-AS

I/We do solemnly declare and affirm, under the penalties of

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 Variance from Section(s)

See Attached

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

To be discussed at hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above Variance, 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.

			is the subject of this Petition.	wner(s) of th	іе ргорепу	wnich
Contract Purchaser/Lessee:			Legal Owner(s):			; ; ;
Name - Type or Print	· 		Mark McAllister Name - Type or Print		^	
Signature			Signature Mul allies	5	<u></u>	r 1
Address		Telephone No.	Name - Type or Print		 	· · · · · · · · · · · · · · · · · · ·
City	State	Zip Code	Signature	!		-
Attorney For Petitiones	<u>r:</u>		4081 Bahia Isle Circle Address	<u>∍ (56</u>		9958 hone No.
Alfred L. Brennan, J	r.		Wellington	FL	33467	,
Name - Type or Print Signature			Representative to be Co	State ntacted:		Zip Code
Brennan and Brennan,	Attorneys	at Law, P.A.	Alfred L. Brennan, J	r.		,
825 Eastern Blvd.		(410) 687-3434	Name 825 Eastern Boulevar	đ		87 – 3434
Address	1470	Telephone No.	Address	M	,	one No.
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	<i>y</i> / - (-)		UNAVAILABLE FOR HEAR Reviewed By CTM	ING Date	5/30	2/01

1627 EASTERN BOULEVARD ZONING VARIANCE

- 232.3B TO ALLOW A REAR YARD SETBACK ABUTTING A RESIDENCE ZONE OF 0 FEET IN LIEU OF THE REQUIRED 20 FEET.
- 405A.1 TO ALLOW EXISTING FENCES IN LIEU OF THE REQUIRED TOTAL SCREENING OF DAMAGED OR DISABLED MOTOR VEHICLES.

409.6 TO ALLOW 10 PARKING SPACES (INCLUDING 4 IN THE BAYS) IN LIEU OF THE REQUIRED 17 SPACES.

A BCZR

J. S. DALLAS, INC.

SURVEYING & ENGINEERING

13523 LONG GREEN PIKE P.O. BOX 26 BALDWIN, MD 21013 (410) 817-4600 FAX (410) 817-4602

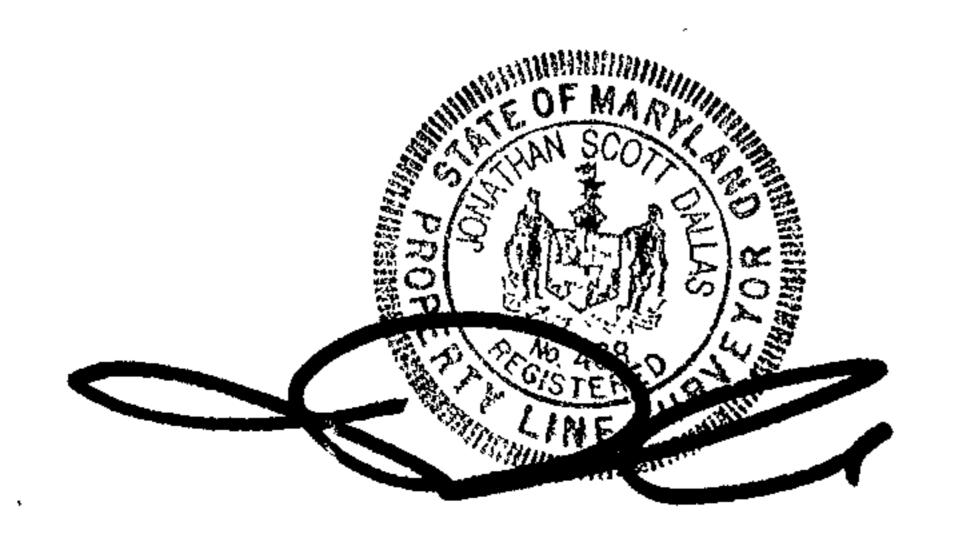
ZONING DESCRIPTION OF #1627 EASTERN BOULEVARD

BEGINNING at the intersection of the southeast side of Eastern Boulevard, 150 feet wide and the southwest side of Seversky Court, 60 feet wide, thence leaving said Seversky Court and running with and binding on said southeast side of Eastern Boulevard (1) South 51 degrees 48 minutes 12 seconds West 125 feet thence leaving said Eastern Boulevard and running the two following courses and distances: (2) South 38 degrees 19 minutes 50 seconds East 74 feet, more or less and (3) North 51 degrees 16 minutes 05 seconds East 125 feet to said southwest side of Seversky Court thence running with and binding on said southwest side of Seversky Court (4) North 38 degrees 19 minutes 50 seconds West 73.72 feet to the place of beginning.

CONTAINING 9287 square feet (or 0.213 acres) of land, more or less.

ALSO known as #1627 **Eastern Boulevard** and located in the 15^{th} Election District , 5^{th} Councilmanic District.

Note: above description is based on existing deed and is for zoning purposes only.



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:

Cor. SE/S Eastern Boulevard and SW/S Seversky Court 15th Election District 5th Councilmanic District Legal Owner(s): Mark McAllister Special Exception: for a service garage in a BL — AS zone. Variance: to allow a rear yard setback abutting a residence zone of 0 feet in lieu of the required 20 feet; to allow existing fences in lieu of the required total screening of damaged or disabled motor vehicles. Hearing: Friday, July 27, 2001 at 2:00 p.m. In Room 407, County Courts Building, 401 Bosley Avenue. LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations

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.

7/121 July 12 C480499

CERTIFICATE OF PUBLICATION

7/12,2001	
THIS IS TO CERTIFY, that the annexed advertisement was pub	lished
in the following weekly newspaper published in Baltimore County,	Md.,
once in each ofsuccessive weeks, the first publication appearance on	aring
The Jeffersonian Arbutus Times Catonsville Times	
☐ Towson Times ☐ Owings Mills Times	
☐ NE Booster/Reporter ☐ North County News	
S. Willing	,
- CONDADVERTICING	

BALTIMORE COUNTY, MARYLAN 5625 No. OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT ACTIAL FAMENT TIME 19/06/2001 9/05/2001 14:13:11 DATE 9-5-01 ACCOUNT ROOI 006.6150 CASHIER JRIC HR DRAWER >>#ECE1PT # 061191 5 529 ZONING WEIFTCATION OR MO. 00565 Recet Tot 460,00 FROM: MECEIVED ALFRED L BRENNAN JR .00 CA 460.00 CK Baltimore County, Maryland FOR: APPEAL 01-506-XA.

MARK MCALLISTER 1627 EASTERN BOULEVARD DISTRIBUTION CASHIER'S VALIDATION PINK - AGENCY WHITE - CASHIER **YELLOW - CUSTOMER**

CERTIFICATE OF POSTING

RE: Case No.: 0/-506-XA

Petitioner Developer: ME ALLISTER FIA

Date of Hearing/Closing: 7/6

Baltimore County Department of Permits and Development Management County Office Building, Room ! ! ! 111 West Chesapeake Avenue Towson, MD 21204

Attention: Ms. Gwendolyn Stephens

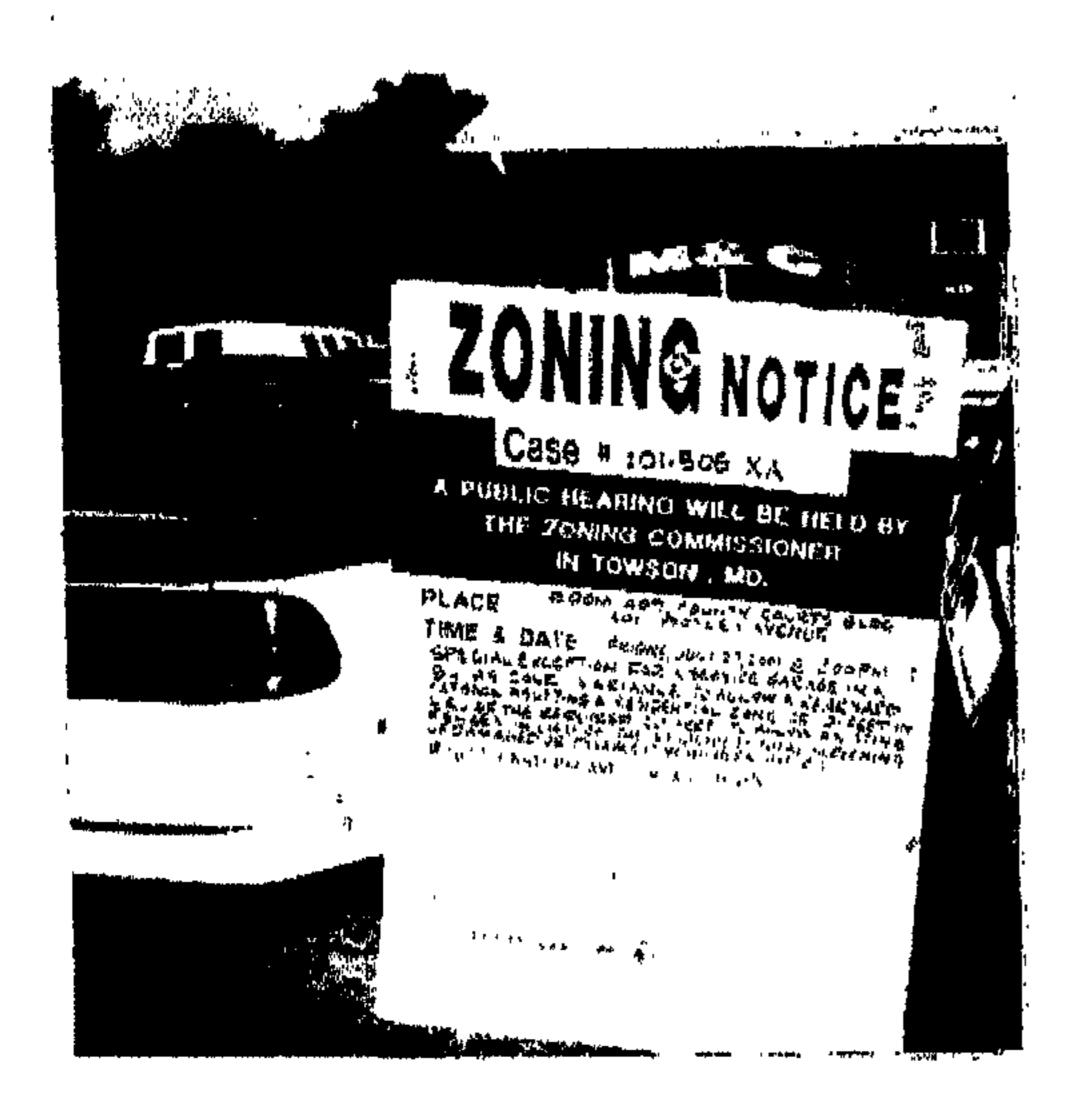
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TO ROBIN/BETTY	From OKEEFE
	^{II} Co.
Phone #507 4386	Phone #
Fex * 887-3468	Fex# . 3-324-4 30

Ladies and Gentlement

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 # 1607 EASTERN) AVE C

The sign(s) were posted on __

(Month, Day, Year)



(Signature of Sign/Poster and Date)

PATRICK M. O'KEEFE (Printed Name)

523 PENNY LANE

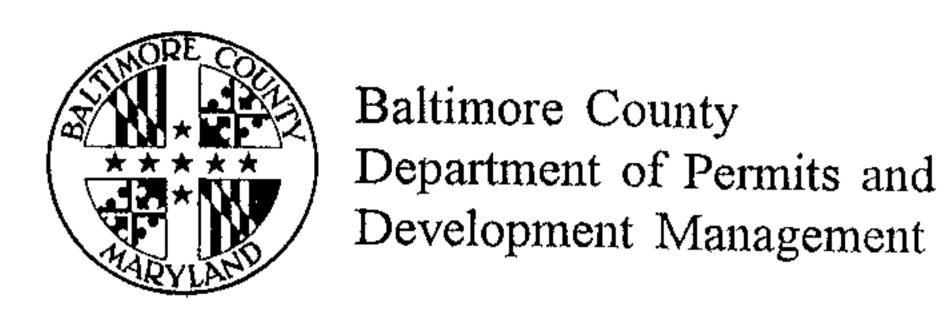
(Address)

HUNT VALLEY, MD. 21030

(City, State, Zip Code)

410.666:5366 ; CELL.410.905.857

(Telephone Number)



Director's Office .
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353

Fax: 410-887-5708

June 25, 2001

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: 01-506-XA 1627 Eastern Boulevard

Cor. SE/S Eastern Boulevard and SW/S Seversky Court

15th Election District – 5th Councilmanic District

Legal Owner: Mark McAllister

Special Exception for a service garage in a BL – AS zone. Variance to allow a rear yard setback abutting a residence zone of 0 feet in lieu of the required 20 feet; to allow existing fences in lieu of the required total screening of damaged or disabled motor vehicles.

HEARING:

Friday, July 27, 2001 at 2:00 p.m. in Room 407, County Courts Building,

401 Bosley Avenue

Arnold Jablon GDマ

Director

C: Alfred L Brennan Jr, Brennan & Brennan, Attorneys at Law PA, 825 Eastern Boulevard, Baltimore 21221

Mark McAllister 4081 Bahia Isle Circle, Wellington, FL 33467

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, JULY 12, 2001.

(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.



will

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

*** HEARING ROOM - Room 48 ***

Basement –Old Courthouse 400 Washington Avenue

APPEAL HEARINGS SCHEDULED FOR THE WEEK OF JUNE 03, 2002

TUESDAY

·6/04

10:00 am

Case No.: 01-506-XA

/HEARING

In the Matter of:

Albert Bierman – Mark McAllister – Legal Owner 1627 Eastern Boulevard, SE/s Eastern Boulevard and SW/S Seversky Court 15th Election District / 5th Councilmanic District

RE: To approve service garage per § 230.13 BCZR; VAR – rear yd setback; existing fences/screening

WEDNESDAY

6/05

9:00 am

Case No.: 02-328-SPHXA

/HEARING

In the Matter of:

Patricia F. MacDonald – Legal Owner/Petitioner 105 Sudbrook Lane 3rd Election District; 2nd Councilmanic District

RE: Rehab and use of existing dwelling w/proposed bldg / Class B Office Building; SE — Class B office building; VAR — buffers and sign

6/05

10:00 am

Case No.: 02-098-SPH

/HEARING

In the Matter of:

Constellation Power Source Generation, Inc. S/s Carroll Island Road, 840' E of c/l Beach Drive 10001 Carroll Island Road 15th Election District; 5th Councilmanic District

RE: Approval to amend previously approved SE and variance Case Nos. 4077 and 74-102-ASPH in order to construct a slag processing facility on property

THURSDAY-

6/06

10:00 am

Case No.: 02-057-SPH

/HEARING

RECEIVED

2 9 2**002**

In the Matter of:

Jack Antwerpen – Legal Owner
3636 Brenbrook Drive
2nd Election District; 2nd Councilmanic District

PER AF

MAY

Printed with Stype and In allow sale of used automobiles in B.M. zone

c: Executive Office
Law Office
Director /PDM

People's Counsel Planning Office Court Info. Desk

County Council
Board Members
Court Reporter



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

FAX: 410-887-3182

July 16, 2002

NOTICE OF DELIBERATION

IN THE MATTER OF:

MARK MCALLISTER - Petitioner Case No-01-506-XA

Having heard this matter on 6/04/02, public deliberation has been scheduled for the following date /time:

DATE AND TIME

THURSDAY, AUGUST 8, 2002 at 9:00 a.m.

LOCATION

Hearing Room 48, Basement, Old Courthouse

Kathleen C. Bianco Administrator

c:

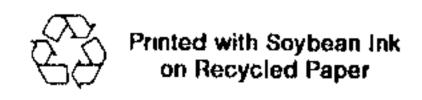
Counsel for Appellant /Petitioner Appellant /Petitioner : Alfred L. Brennan, Jr., Esquire

: Mark McAllister

J. Scott Dallas /J.S. Dallas, Inc.

Office of People's Counsel Pat Keller, Planning Director Lawrence E. Schmidt, Zoning Commissioner Arnold Jablon, Director /PDM

fyi: C.L.B.





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

April 2, 2002

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #01-506-XA

IN THE MATTER OF: MARK McALLISTER – Legal Owner /Petitioner 1627 Eastern Boulevard 15th Election District; 5th Councilmanic District

8/08/01 – Petition for Special Exception and Petition for Variance DENIED by Deputy Zoning Commissioner.

which was assigned to be heard on 5/30/02 has been **POSTPONED** at the request of Counsel for Petitioner due to court schedule conflict; and has been

REASSIGNED FOR:

TUESDAY, JUNE 4, 2002 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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco Administrator

c:

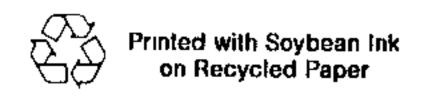
Counsel for Appellant /Petitioner
Appellant /Petitioner

: Alfred L. Brennan, Jr., Esquire

: Mark McAllister

J. Scott Dallas /J.S. Dallas, Inc.

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM





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

March 5, 2002

O2 Demonstration of the Control of t

NOTICE OF ASSIGNMENT

CASE #01-506-XA

NTHE MATTER OF: MARK McALLISTER – Legal Owner /Petitioner 1627 Eastern Boulevard 15th Election District; 5th Councilmanic District

8/08/01 Petition for Special Exception and Petition for Variance DENIED by Deputy Zoning Commissioner.

ASSIGNED FOR:

THURSDAY, MAY 30, 2002 at 10:00 a.m.

NOTICE:

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

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).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco Administrator

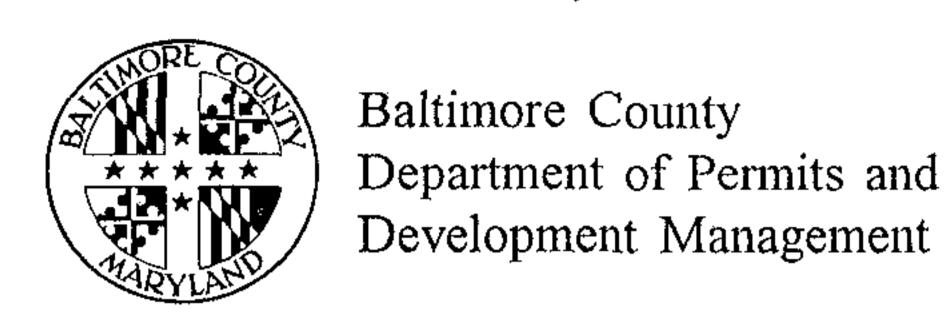
c:

Counsel for Appellant /Petitioner Appellant /Petitioner : Alfred L. Brennan, Jr., Esquire

: Mark McAllister

J. Scott Dallas /J.S. Dallas, Inc.

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM



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

July 23, 2001

Alfred L Brennan Jr Brennan & Brennan, Attorneys At Law PA 825 Eastern Boulevard Baltimore MD 21221

Dear Mr. Brennan:

RE: Case Number: 01-506-XA, 1637 Eastern Boulevard

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 30, 2001.

The Zoning Advisory Committee (ZAC), which consists of representatives from several 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, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr. らりて Supervisor, Zoning Review

WCR: gdz

Enclosures

c: Mark McAllister, 4081 Bahia Isle Circle, Wellington FL 33467 People's Counsel



Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

June 25, 2001

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Gwen Stephens

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF June 25, 2001

Item No.: 506, 507, 509, and 520

Dear Ms. Stephens:

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: LIEUTENANT JIM MEZICK, Fire Marshal's Office PHONE 887-4881, MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

DATE: July 18, 2001

Department of Permits & Development Mgmt.

FROM:

Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For July 2, 2001 Item Nos. 502, 503, 505, 506, 507, 508, 509, 510, 511, 512, 513, 516, 517, 519,

and 520

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

RWB:HJO:jrb

cc: File

Baltimore County Government Department of Economic Development



400 Washington Avenue Towson, MD 21204

(410) 887-8000 Fax (410) 887-8017

MEMORANDUM

Ta:

Diana Itter

Office of Planning

From: Andrea Van Arsdale W

Commercial Revitalization Director

Date: July 16, 2001

Re:

McAllister Property - Petition for Special Exception

The subject property is located at 1627 Eastern Boulevard in the Essex Commercial Revitalization District. The petitioner has requested two variances to the current zoning regulations applicable to his property. The Department of Economic Development would like to take this opportunity to comment on the requested variances.

The Essex Revitalization District is currently undergoing a streetscape along Eastern Boulevard. The streetscape project will invest over \$5 million in County and state funds to enhance the appearance, image, safety, and pedestrian access to the corridor. Also, the County will invest millions of dollars to purchase and demolish the Village of Tall Trees, located directly behind the subject property. After demolition, the County will redevelop the land as a public park.

The requested variances would greatly alter the impact of both the park and the streetscape along Eastern Boulevard. The first variance request is to reduce the rear yard setback abutting a residential zone to 0 feet. If the variance were granted the service garage would not be able to provide space to screen the parking from the future adjacent park. The Department supports the Department of Public Work's compromise of 6 feet in order to provide space for a landscape screen or fencing. This would allow the County to maintain the appearance and appeal of the park. However, anything less than 6 feet would not support an effective landscaped buffer.

The second variance request is to allow existing fences in lieu of the required total screening of damaged or disabled vehicles. Allowance of this request would result in the storage of disabled vehicles in full view of the public. Again, this would serve to undermine the impact of the streetscape project, a significant part of the County's revitalization efforts in Essex. The requested variance goes against the County's goal is to improve the image and appearance of the area. This variance should not be granted.

Thank you for your time and attention to this matter. If you have any questions, please contact me at extension 2055.

01-506 XA



Baltimore County
Department of Permits and
Development Management

Director's Office County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 410-887-3353

Fax: 410-887-5708

September 5, 2001

Peter M. Zimmermann People's Counsel 400 Washington Avenue Towson MD 21204

Dear Mr. Zimmermann:

RE: Case No. 01-506-XA, 1627 Eastern Boulevard

Please be advised that an appeal of the above-referenced case was filed in this office on September 5, 2001 by Alfred L. Brennan, Jr., Brennan and Brennan on behalf of Mark McAllister. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

All parties receiving this letter should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold Jablem Goz

Director

AJ: gdz

c: Alfred L Brennan Jr, Brennan & Brennan, 825 Eastern Blvd, Essex 21221 People's Counsel

01 SEP -6 AM G: L: 2

Case No. 01-506-XA

SE – To approve a service garage; VAR –To allow rear yard setback abutting a residential zone of 0 feet ilo required 20 feet; to allow existing fences ilo required total screening of damaged or disabled motor vehicles.

8/08/01 –D.Z.C.'s Order in which Petition for Special Exception and Petition for Variance were DENIED.

3/05/2002 -Notice of Assignment sent to following; assigned for hearing on Thursday, May 30, 2002 at 10:00 a.m.:

Alfred L. Brennan, Jr., Esquire
Mark McAllister
J. Scott Dallas /J.S. Dallas, Inc.
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

3/29/02 – Letter requesting postponement of 5/30/02 hearing submitted by Alfred L. Brennan, Jr.; District Court conflict. Copy provided to Office of People's Counsel.

4/02/02 – Notice of PP and Reassignment sent to parties; reassigned to Tuesday, June 4, 2002 at 10 a.m.

6/04/02 - Board convened for hearing (Marks, Stahl, Barranger); completed this date; written closing argument due in 30 days; deliberation to be scheduled upon receipt of written closing argument.

7/08/02 - Brief of Petitioner filed by Alfred L. Brennan, Jr., Esquire; awaiting copies of transcript of Board's 6/04/02 hearing referenced in Petitioner's Brief. Then transmit to Board. (No other counsel nor individual in opposition to Petition appeared at hearing before the Board as indicated in the record.)

7/11/02 - Received copies of transcript from Mr. Brennan as referenced in his Brief filed on July 8, 2002.

7/16/02 - Notice of Deliberation sent to parties with FYI copy to C.L.B along with copies of the above-referenced Brief filed by Counsel for Petitioner. Deliberation assigned for Thursday, August 8, 2002 at 9:00 a.m.

8/08/02 – Board convened for deliberation (Marks, Stahl, Barranger); G –special exception; G –Variance as to 0' setback; D –variance as to waiver of fence requirement. Written Opinion and Order to be issued; appellate period to run from date of written Order and not from today's date.

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:

Mark McAllister

Case No.: 01-506-XA

DATE:

August 8, 2002

BOARD/PANEL:

C. Lynn Barranger

CLB

Charles L. Marks

CLM

Lawrence M. Stahl

LMS

RECORDED BY:

Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate Petition for Special Exception filed by Alfred L. Brennan, Jr., Esquire, on behalf of Mark McAllister, Legal Owner, to approve a service garage pursuant to § 230.13 of BCZR; Petition for Variance also filed to allow rear yard setback abutting residential zone of 0' in lieu of required 20' and to allow existing fences in lieu of the required total screening of damaged or disabled motor vehicles.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- Section 405.A damaged and/or disabled
- the property abuts a alley / alley does not fit description of lot / there are no residents
- original permit was issued in 1950 / inherit fairness
- the Board finds the property unique (size, shape and characteristic)

FINAL DECISION: Unanimous decision by the Board:

Special Exception – GRANTED

Petition for Variance – GRANTED with the restriction that adequate screening be put in place.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. 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,

Theresa R. Shelton

County Board of Appeals

Heres R. Shel.

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

DATE:

November 14, 2002

TO:

Arnold Jablon, Director

Permits & Development Management

Attn.: David Duvall

FROM:

Theresa R. Shelton (70)

Board of Appeals

SUBJECT:

CLOSED APPEAL CASE FILES

The following case(s) have been finalized and the Board of Appeals is closing the copy of the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

BOARD OF APPEALS	PDM FILE NUMBER	NAME	LOCATION
CASE NUMBER			
01-506-XA	01-506-XA	Mark McAllister	1627 Eastern Blvd.
02-283-A	02-283-A	Sheryl Gardner	5516 McCormick Avenue

Attachment: SUBJECT FILE(S) ATTACHED

BALTIMORE COUNTY, MARYLAND Board of Appeals of Baltimore County

Brief: Mark McAllister - Petitioner

DATE: July 16, 2002

TO:

C. Marks

L. Stahl

L Barranger

FROM:

Kathi

SUBJECT:

Case No. 01-506-XA /In the Matter of: Mark McAllister

Scheduled for Deliberation on August 8, 2002 at 9:00 a.m.

The subject case is scheduled for public deliberation on Thursday, August 8, 2002 at 9:00 a.m. (10 a.m. zoning case to follow – same panel).

The following documents were filed by Alfred L. Brennan, Jr., Esquire, on behalf of Petitioner, and are attached for your review prior to deliberation.

- Brief of Petitioner
- Transcript of June 4, 2002 hearing before the Board as referenced in Petitioner's Brief.

Please note that, as indicated in the record, no one appeared at the Board's June 4th hearing in opposition to the Petition. Therefore, the only closing brief filed was by Counsel for Petitioner.

A copy of the Deliberation notice is also attached for your information and calendar to alert of early start on August 8th.

Should you have any questions, please call me.

Kathi

Attachments (Brief, Transcript, and Notice)



BRENNAN AND BRENNAN ATTORNEYS AT LAW, P.A.

825 EASTERN BOULEVARD ESSEX, BALTIMORE, MD. 21221

JAMES C BRENNAN ALFRED I., BRENNAN, JR.

TELEPHONE (410) 687-3434 TELEFAX (410) 391-4963

DEBORAH M. ENGRAM

REBECCA A. BURKE, Paralegal

September 4, 2001

PDM

111 W. Chesapeake Avenue - Room 111 Towson, Maryland 21204

Attn: Arnold Jablon

Director

Re: Petitions for Special Exception Variance

Case No. 01-506-XA

Property: 1627 Eastern Boulevard

Dear Mr. Jablon:

As attorney for Mark McAllister, I am hereby filing an appeal in the above captioned case. I am enclosing my escrow check no. 40855 in the amount of \$460.00 to cover the cost of the appeal.

If there is any further information that you need, please do not hesitate to contact me.

Very truly yours,

ALFRED L. BRENNAN, JR.

ALB, JR/beg Enclosure



ESSEX, BALTIMORE, MD. 21221

iames c. Brennañ Alfred L. Brennan, Jr.

DEBORAH M. ENGRAM

TELEPHONE (410) 687-3434 TELEFAX (410) 391-4963

July 8, 2002

County Board of Appeals of Baltimore County Old Court House Washington and Pennsylvania Avenues Towson, Maryland 21204

Re:

Re:

Petition for Special Exceptions and Variance

SE/S Eastern Boulevard and SW/S Seversky Court

(1627 Eastern Boulevard) Case No. 01-506-XA

Dear Board Members:

Enclosed please find an original and three (3) copies of Mark McAllister, Petitioner's, Brief with regard to the above captioned case which was heard on June 2, 2002.

Very truly yours,

ALFRED L. BRENNAN, JR.

ALB,JR/beg Enclosures

02 JUL -8 AH 10: 38





BRENNAN AND BRENNAN ATTORNEYS AT LAW, P.A.

825 EASTERN BOULEVARD ESSEX, BALTIMORE, MD. 21221

JAMES C. BRENNAN ALFRED L. BRENNAN, JR.

DEBORAH M. ENGRAM

TELEPHONE (410) 687-3434 TELEFAX (410) 391-4963

July 10, 2002

County Board of Appeals of Baltimore County Old Court House Washington and Pennsylvania Avenues Towson, Maryland 21204

Re:

Petition for Special Exceptions and Variance

SE/S Eastern Boulevard and SW/S Seversky Court

(1627 Eastern Boulevard) Case No. 01-506-XA

Dear Board Members:

Enclosed please find an original and two (2) copies of the transcript of the June 2, 2002 hearing in the above captioned matter.

If there is any further information that you need, please do not hesitate to contact me.

Very truly yours,

ALFRED L. BRENNAN, JR.

ALB,JR/beg Enclosures

PP request

BRENNAN AND BRENNAN ATTORNEYS AT LAW, P.A.

825 EASTERN BOULEVARD ESSEX, BALTIMORE, MD. 21221

JAMES C. BRENNAN

ALFRED L. BRENNAN, JR.

DEBORAH M. ENGRAM

TELEPHONE (410) 687-3434 **TELEFAX** (410)391-4963

02 M

[1] **LC**)

March 28, 2002

County Board of Appeals of Baltimore County Attn: Kathleen C. Bianco, Administrator Old Courthouse, Room 49 400 Washington Avenue Towson, Maryland 21204

Re:

Mark McAllister

1627 Eastern Boulevard, Baltimore, MD

Case No. 01-506-XA

Dear Ms. Bianco:

I received the Notice of Assignment regarding the above-captioned matter, setting the matter in for Thursday, May 30, 2002 at 10:00 a.m. I have a previously scheduled District Court of Maryland case in Essex District Court for May 30, 2002 at 9:00 a.m. (State vs. Herrmann case no. 3C00149754). I respectfully request that you either hold your case until I am finished in the Essex District Court or postpone the matter to a new date and time.

Thank you for your cooperation and assistance with regard to this matter.

Very truly yours,

ALFRED L. BRENNAN, JR.

ALB,JR./dv

Mark A. McAllister cc:

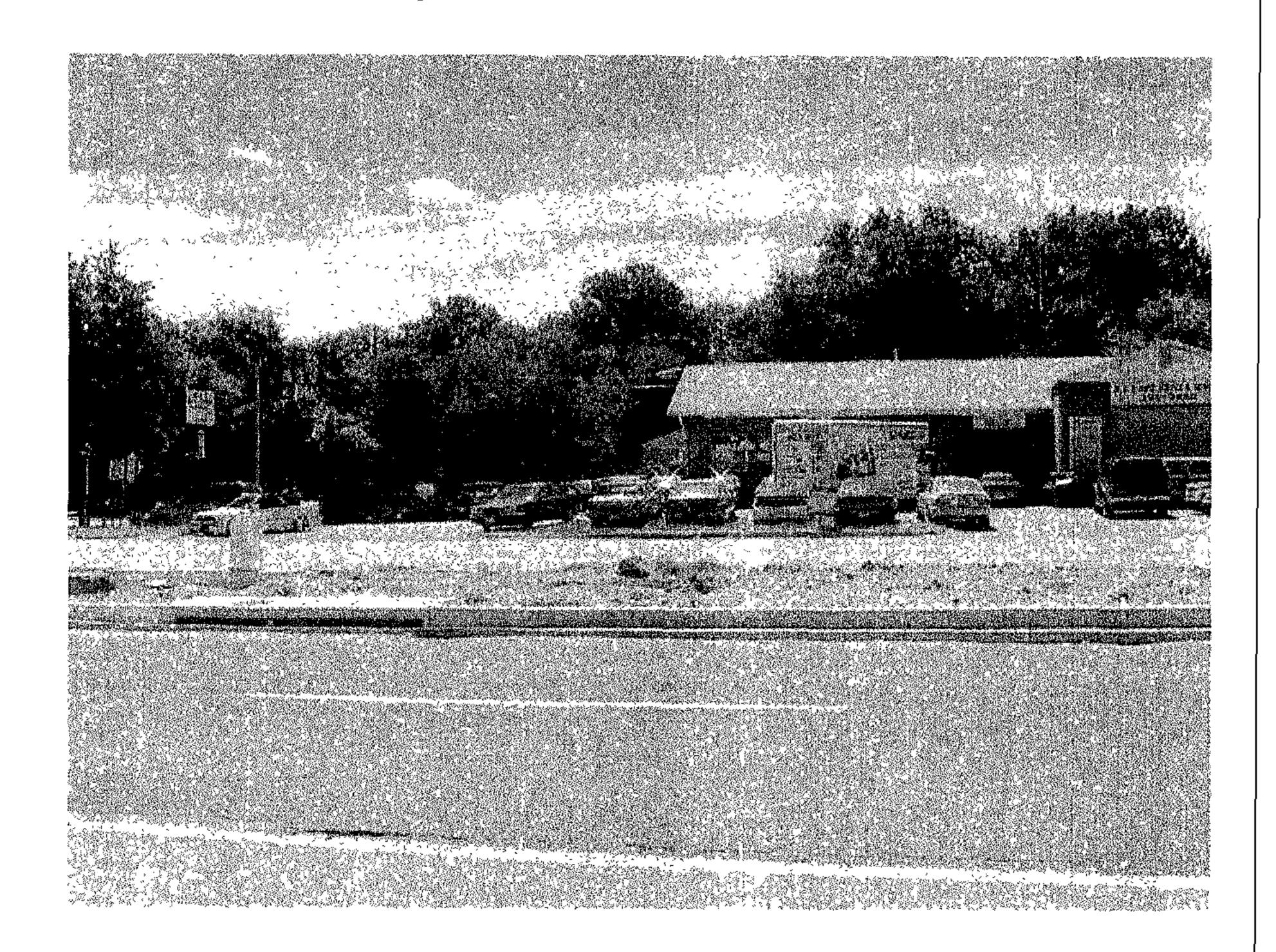
PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
AlCid L. Birnan Jn.	825 EAstean Blud
•	BALL. never, A/d 2,22/
Ronald J. Heim	1621 EASTERN BIND
·	BAHO MD 21221
J. Scott Dallas	13523 Long Green Pike
**************************************	Baldwin, MD. 21013
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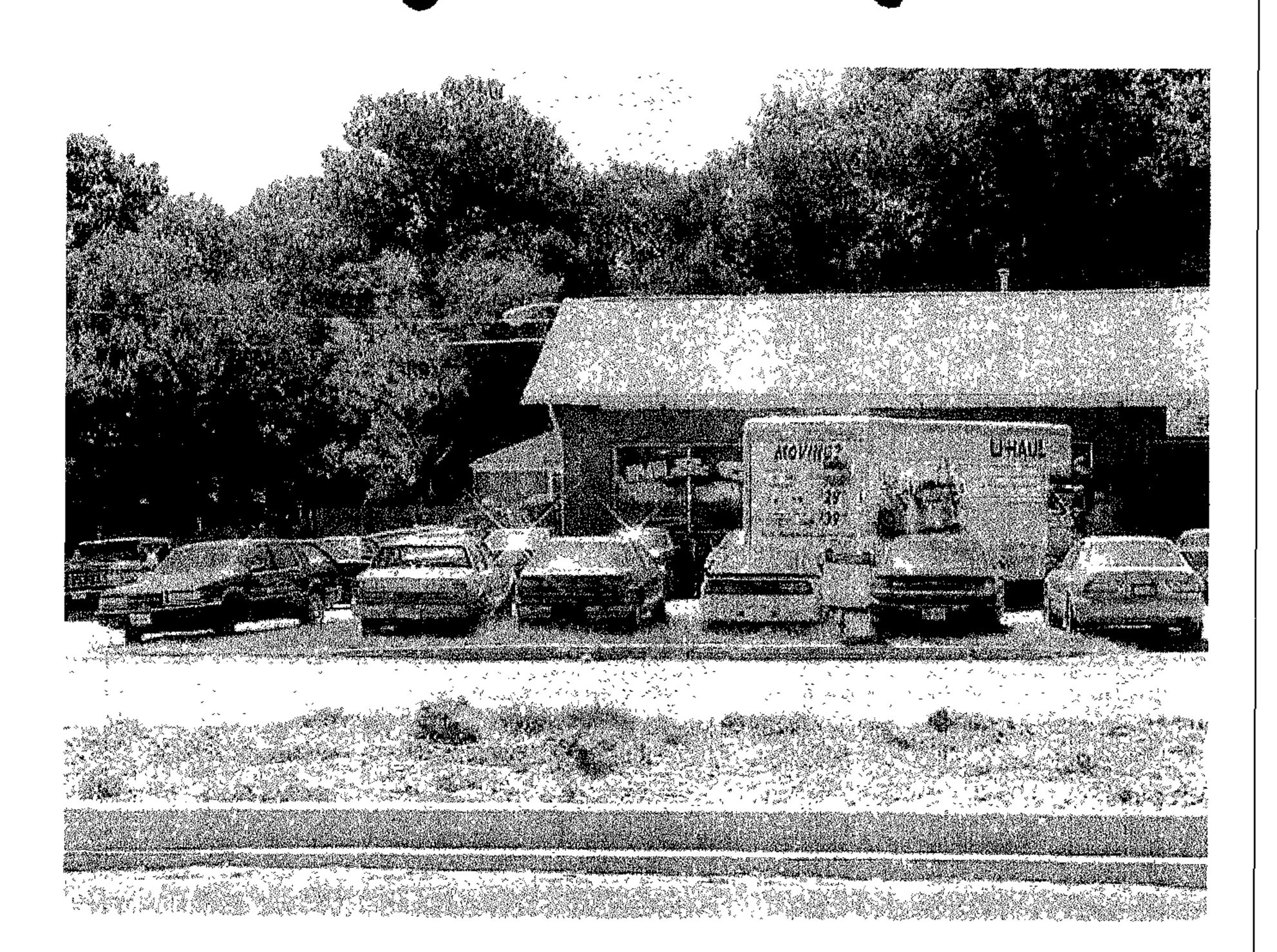
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IN THE MATTER OF
TREES PROPERTY / PDM III-369
S/S OF OLD COURT ROAD, E OF
BRANCHWOOD ROAD
3RD ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

RE: FINAL APPROVAL OF DEVELOPMENT PLAN

BEFORE

COUNTY BOARD OF APPEALS

OF.

BALTIMORE COUNTY

CASE NO.: CBA-95-180

OPINION

This case comes on appeal of the Deputy Zoning Commissioner's August 24, 1995 decision in which the instant development plan was approved with restrictions. Pursuant to Baltimore County Code (BCC) Section 26-209, the matter was set for hearing and was heard on October 10, 1995. Appearing for the developer was Benjamin Bronstein, Esquire; appearing for the Old Court /Greenspring Improvement Association and Elaine O'Mansky, Appellants, was Stephen J. Nolan, Esquire, NOLAN, PLUMHOFF AND WILLIAMS; appearing for the Arundel Corporation, Appellants was Nancy E. Paige, Esquire, and, also appearing as interested party and member of the BAR was Phyllis Friedman, formerly People's Counsel for Baltimore County.

As in other appeals on the final action of the development plan, the case before the Board was limited to argument only; however, due to developer's Motion, in his rebuttal, to striking of Old Court /Greenspring Improvement Association as an aggrieved party the Board allowed Ms. O'Mansky to testify on the narrow issue of her and her civic association's position as an aggrieved party pursuant to Section 26-209 and, subsequently pursuant to Section 26-209(b), and to Rule 8 of the Board's Rules of Procedure.

Old Court /Greenspring Improvement Association, et al, alleged that they, in fact, have standing pursuant to BCC Section 26-209;

that the Deputy Zoning Commissioner exceeded his authority and made his decision which was not supported by substantial evidence for his decision; that the Deputy Zoning Commissioner's granting of two density units on what has come to be known as Parcel A in the instant case was unlawful and that the waiver of storm water management efforts was inappropriate for the subject property. Further, Old Court /Greenspring Improvement Association, et al alleges that despite the fact that the minor subdivision, which includes this property, was approved in 1991, that there exists no reservation of density and is precluded from allowing two lots on Parcel A in addition to problems on Lots 5 and 7 on the proposed development plan as no density plat, record plat nor final development plan has been filed and recorded to date. Finally, they allege that due to the sale of a portion of that property under the minor subdivision approved in 1991, that the Petitioner improperly obtained approval of this final development plan where Baltimore County Zoning Regulations (BCZR) Section 1B02.3A.7 b requires amendment of that subdivision using special exception procedures.

The Arundel Corporation, as Protestants, allege that the requirements for the approval of the panhandle drive pursuant to BCC Section 26-262 were not met; that the minimum width of the panhandle for 4 lots as being 40-feet are the same width requirements as a public road ordinarily contemplated in this type of situation; that permitting the panhandle driveway results in a 5.3-acre area of the Arundel Corporation property to be undevelopable due to access difficulty along Greenspring Avenue;

and, finally, the Arundel Corporation alleges that the 500-foot maximum length of a panhandle driveway was exceeded on Lots 5 and 7 in the proposed development plan and that the Deputy Zoning Commissioner did not adequately address this issue as it pertains to Lot 5.

Old Court /Greenspring Improvement Association, et al alleges that the Deputy Zoning Commissioner did, in fact, adequately address the panhandle driveway issue.

The developer points out that this case included substantial evidence before the Deputy Zoning Commissioner. They allege that the 5.3-acre parcel referenced by Arundel Corporation is not landlocked; however, the developer recognizes that the Arundel Corporation parcel is undesirable due to slopes, streams and other features but that it is, in fact, not land-locked. Further, the developer alleges that requirement of a public road would render the development of the "Trees" property as unviable and therefore, undevelopable to the benefit of the Arundel Corporation. Additionally, the developer points out that the subject property was the subject of a minor subdivision and that the issue of storm water management efforts and reservation of density were addressed; at that time. The developer further contends that the subject case is not a small lot subdivision, that minimum lot size is not among requirements for a large subdivision and that the panhandle drive and public road issue were adequately considered below.

In the file below, the Board finds that the Old Court
/Greenspring Improvement Association indeed has standing before
this Board in the subject case, pursuant to Section 26-

209(a)(2)a.2, where the issues of density on Parcel A may have an impact on other properties within the area of the association, including Ms. O'Mansky.

Regarding this Board's possible actions in the instant case, BCC Section 26-209(d) reads in pertinent part, "...the Board may:

- 1) Remand the case to the hearing officer;
- 2) Affirm the decision of the hearing officer; or
- 3) Reverse or modify the decision if a finding, conclusion, or decision of the hearing officer:
 - a. Exceeds the statutory authority or jurisdiction of the hearing officer;
 - b. Results from an unlawful procedure;
 - c. Is affected by any other error of law;
 - d. Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or
 - e. Is arbitrary or capricious.
- 4) Notwithstanding any provisions to the contrary, if the hearing officer fails to comply with the requirements of section 26-206(i) and an appeal is filed pursuant to section 26-206(j), the board may impose original conditions as is otherwise set out in section 26-206(o) of these regulations."

Where adequate information exists to support the findings of the Deputy Zoning Commissioner, the Board, on appellate review of this case, cannot substitute its judgment for that of the Deputy Zoning Commissioner. The Board finds as a fact that adequate information exists in the record to support the Deputy Zoning Commissioner's decision regarding the issues of the panhandle drive. The record clearly reflects substantial evidence for which the Deputy Zoning Commissioner accounted in his findings; therefore, the Board shall affirm the decision of the Deputy Zoning Commissioner on this issue. The Board also finds that the Deputy

Zoning Commissioner had similar ample evidence and testimony below to support his decision on the storm water management waiver, where he seems to rely heavily on the authority having jurisdiction in their capacity of analysis of storm water management efforts.

The Board finds as a fact that the sale of the parcel, known : as Lot 1 on the minor subdivision plan, to a party known as the Schons, occurred prior to final approval of the instant development The record reflects nothing to support the instant plan approval where assignment of density on Parcel A was accomplished through lawful recordation following the sale of Lot 1 to the Schons. BCZR Section 1801.3A.7.b. requires that amendment of a development plan, in this case the minor subdivision plan approved in 1991, must be amended through special exception procedures provided under BCZR Section 502. The Board does find that adequate. information exists to support a finding that 2 density units may be assigned to Parcel A in the instant case but that such finding would have had to have been accomplished via the special exception procedures. In the alternative, if the assignment of 2 density units to Parcel A was accomplished through lawful recordation of a record plat or other means, then the density issue is moot; the record does not reflect any evidence of such a recordation where the intent to accomplish the same is evident on the information provided on the minor subdivision plan.

Therefore, the Board will remand to the Deputy Zoning Commissioner this case to make findings of fact that 2 density units were, in fact, reserved on Parcel A through lawful recordation of same. If no such record exists for Parcel A, and

therefore Tract B, then the Board finds that this development plan should be remanded to the Deputy Zoning Commissioner to make findings of fact in pursuit of the requisite approval of the final development plan under special exception procedures required by BCZR 1B01.3A.7.b.

ORDER

IT IS THEREFORE THIS 25th day of October , 1995 by the County Board of Appeals of Baltimore County

ORDERED that this matter be REMANDED to the Hearing Officer pursuant to Section 26-209(d)(1) for further proceedings consistent with this opinion and order.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

Robert Chan

Robert O. Schuetz, Chairman

Charles L. Marks

Harry E. Buchheister, Jr.



•



Jour 6/04/02 01-506-XA 5×41B175

DUTTINOZ

mark mc ALLISTER

JUN54 02

SITE PLAN POT 2 DOC. From 17-91 SPOCIAL PORMIT -\$1950 POTBA AGRIBE PHOTUS PUTUSB ADMIRE PHOTES PETCHA- PHOTOS OF SITE FRONT 43 5,00 AN GGG 4C - 5100 W/ ADJACENT BLDG LOOKING CUT OCROSS BASTONN SORI BASKI BLUD 140 LOOKING ACROSS SANONS 16 COURT SOUGREKY MF SAYOTESTE! LOOKIN G ACRUSS COULT سل كلار ŧ ŧ ROAR W/ FONCO TOW AND

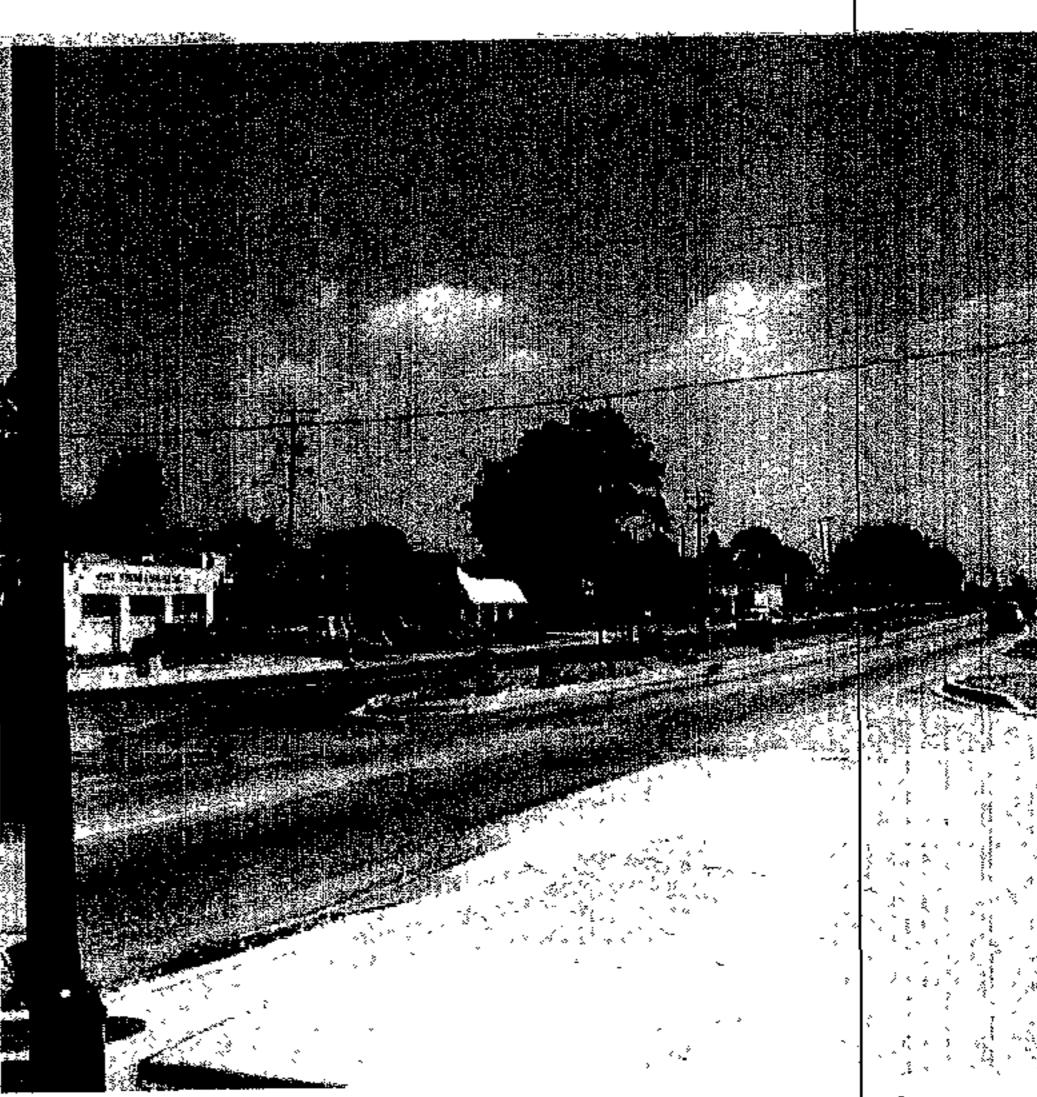
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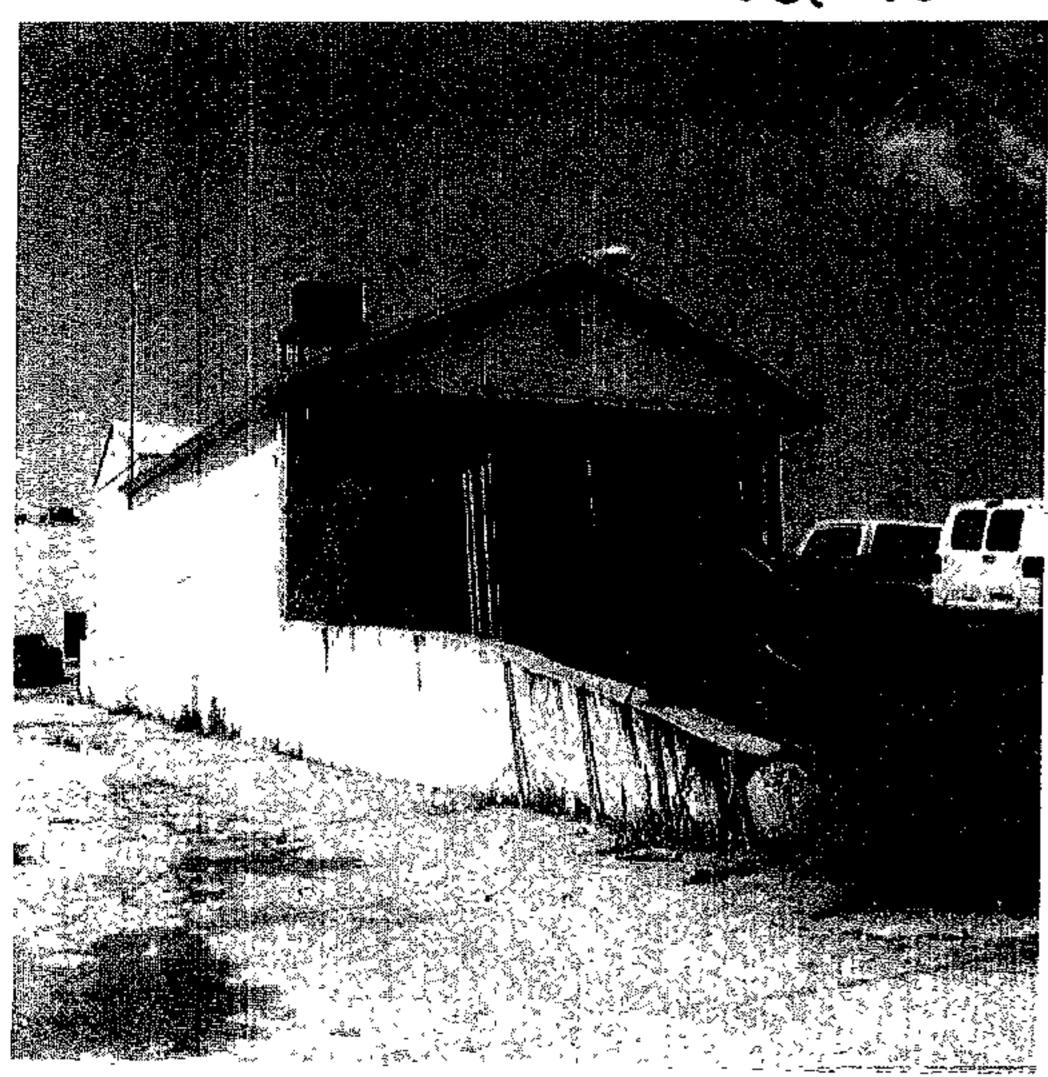
POT 4C

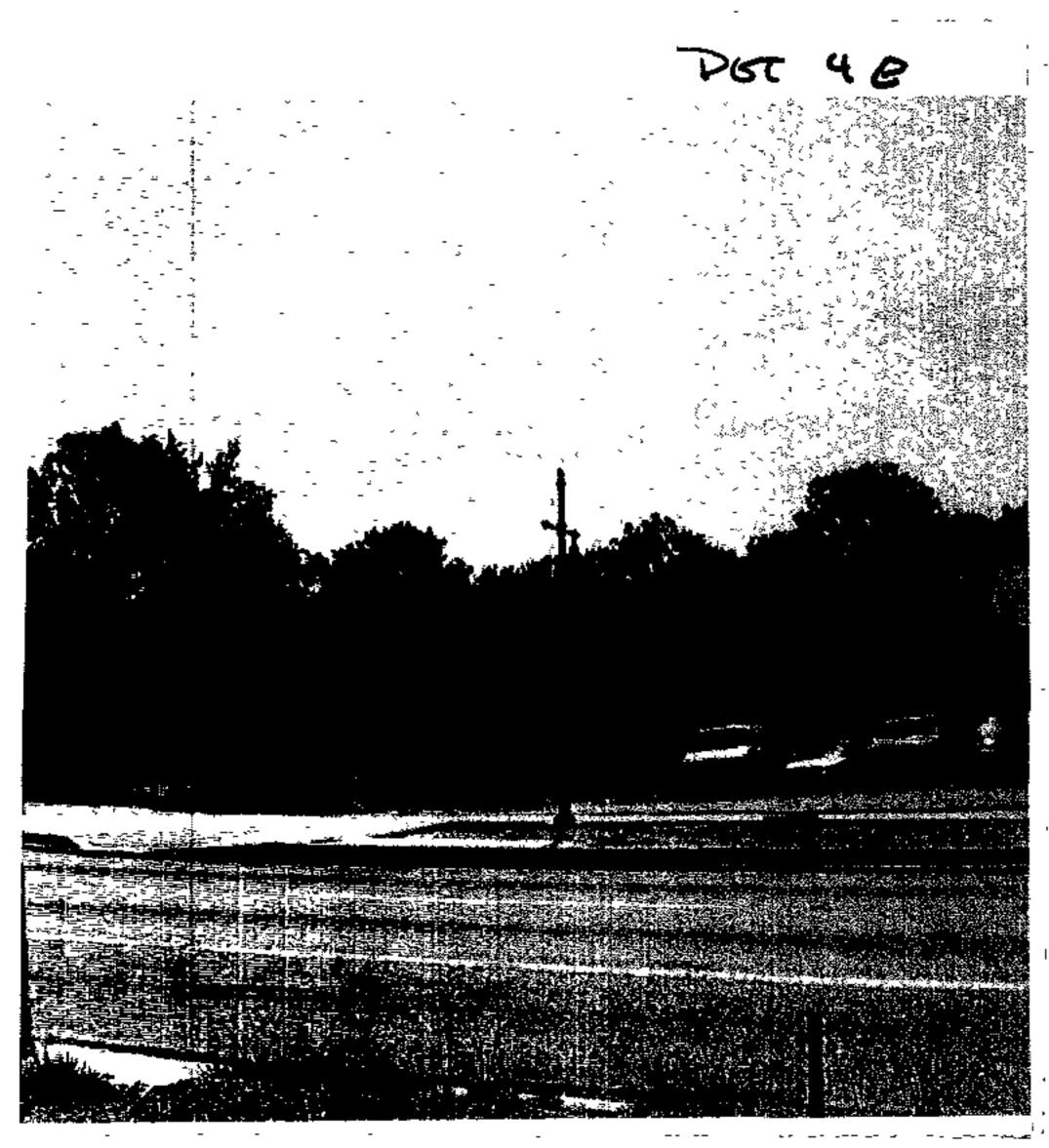




DUT 4D

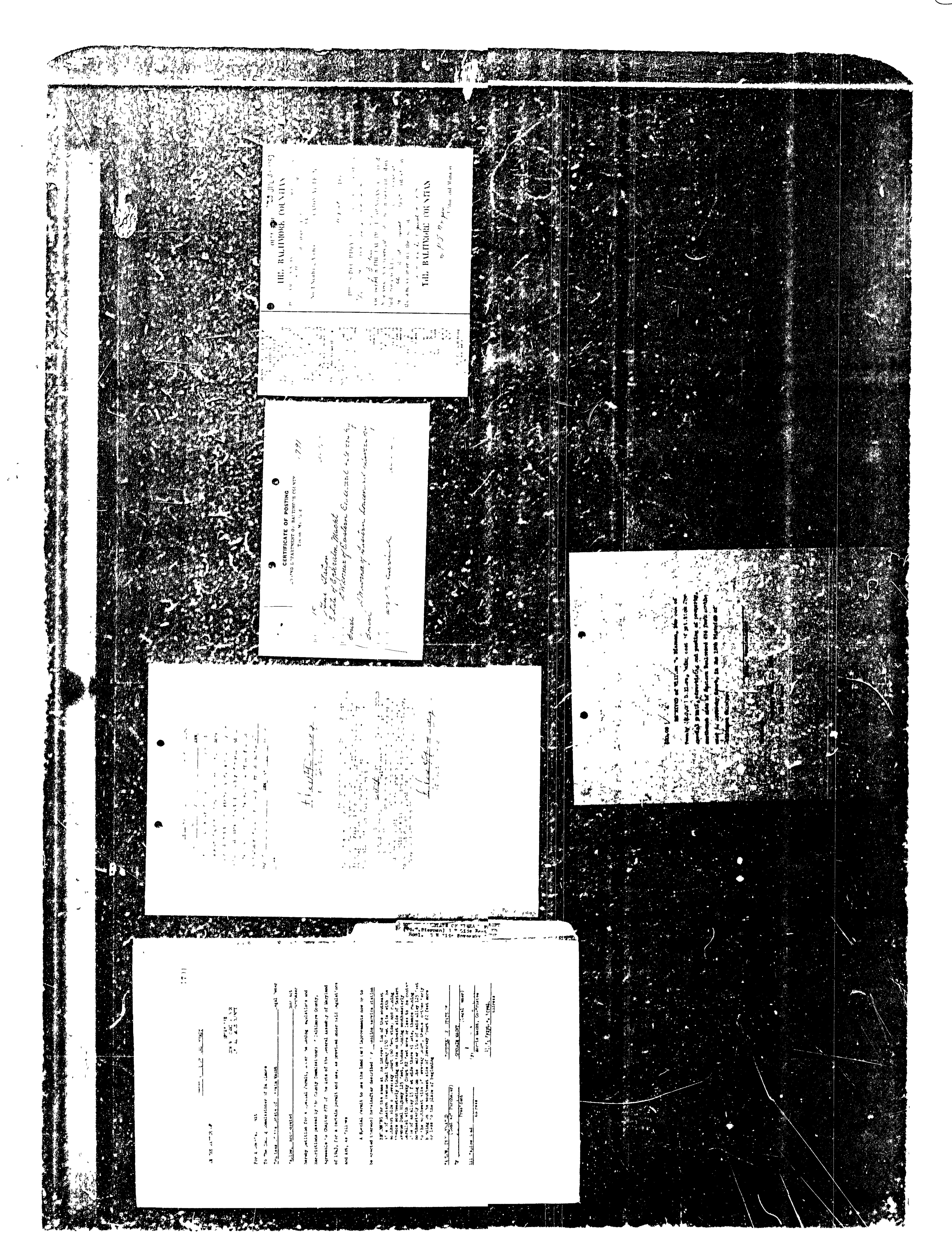
DOT 46



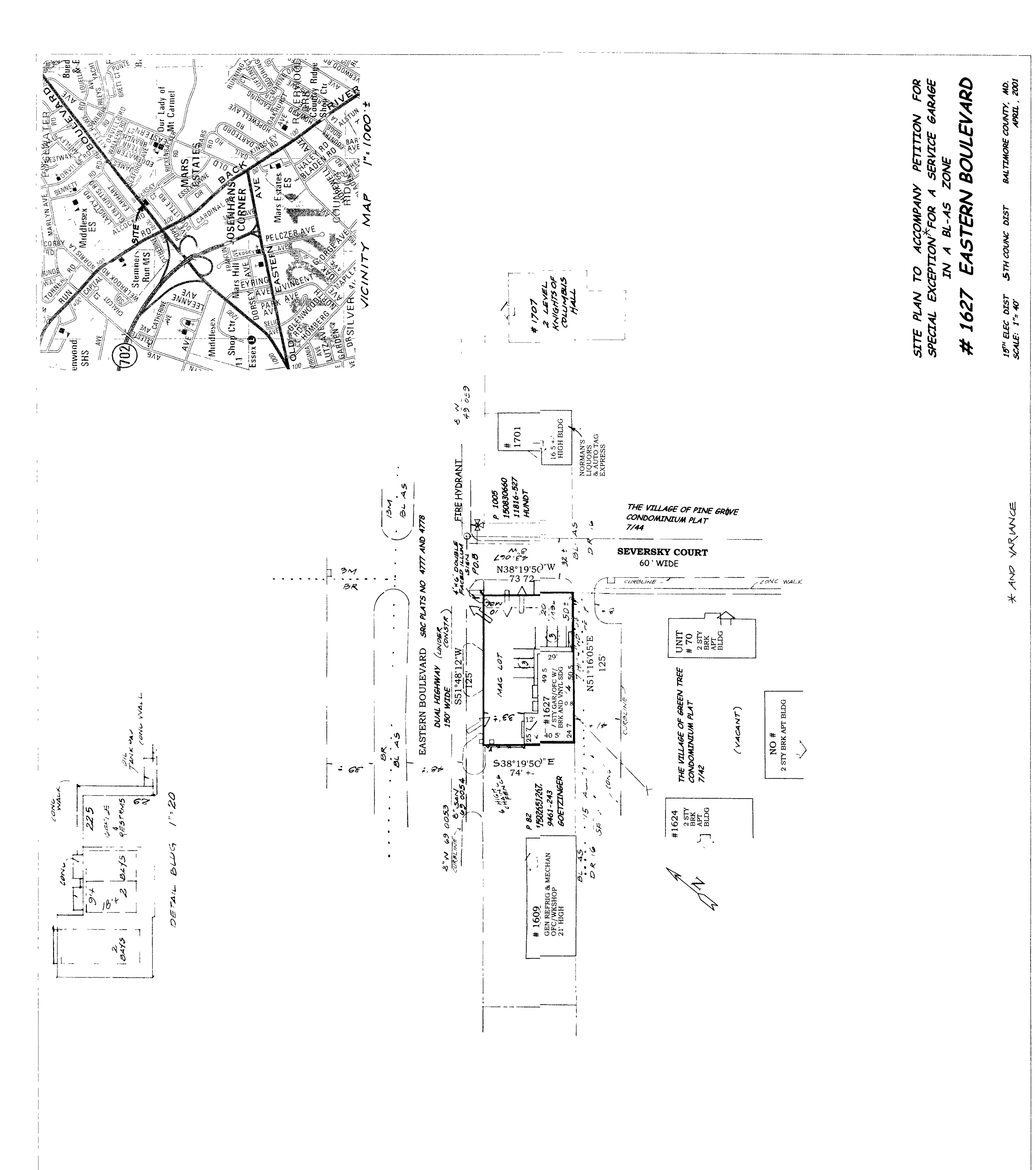




75T 4F







APPEAL SIGN POSTING REQUEST

CASE NO. 01-506-XA

MARK MCALLISTER

SE/s Eastern Boulevard & SW/s Seversky Court (1627 Eastern Boulevard)

15th Election District

Appealed: 9/05/01

Attachment – (Plan to accompany Petition - Petitioner's Exhibit No.1)