1/23/08

PETITION OF	*	**IN THE**
Auto Properties, LLC **N.E. Corner East Ave. &** **East Ave. Relocated** **Baltimore, MD 21221**	*	**CIRCUIT COURT**
	*	**FOR**
	*	**BALTIMORE COUNTY**
v.	*	
FOR JUDICIAL REVIEW OF **THE BOARD OF APPEALS** **OF BALTIMORE COUNTY** **400 Washington Ave.** **Towson, MD 21204**	*	
	*	**Case No.: 03-C-07-4972**
IN THE MATTER OF **The Application of** **Auto Properties, LLC**	*	(Case #03-360-SPHA & 06-109-SPH)

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

ORDER

A Hearing on Petitioner's Appeal was held in this matter on January 10, 2008. Counsel for the Petitioner was present, as was People's Counsel for Baltimore County. The Court considered Auto Properties, LLC's Petition for Judicial Review, the pleadings, record and arguments of counsel and finds that the Baltimore County Board of Appeals did not abuse its discretion in rendering it's decision.

Further, upon consideration of the record and arguments of counsel, it is this 23rd day of January 2008,

ORDERED that the Use Permit granted for off street parking in Case No. 68-177-RX on March 14, 1968, is no longer valid because:

1. it was never perfected as required by the then applicable Baltimore County Zoning Regulation ("BCZR") § 409.4;

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2. the code applicable at the time the 1968 permit was issued (BCZR § 409.4) changed to the current code (BCZR § 409.8), requiring more stringent standards, and the 1968 Use Permit does not conform to those standards.

MICKEY J. NORMAN, JUDGE
CIRCUIT COURT FOR BALTIMORE COUNTY

Copy to:

Arnold Jablon, Esq., VENABLE LLP, 210 Allegeheny Ave., Towson, MD 21204
Peter M. Zimmerman, Esq., People's Counsel for Baltimore County, Old Courthouse, 400 Washington Ave., Towson, MD 21204.
Court File

CLERK: PLEASE DOCKET AND MAIL TO THE PARTIES.

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

Assignment Date: 10/15/07

Case Title: In the Matter of Auto Properties L L C
Case No: 03-C-07-004972 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 10/30/07
2. All Motions (excluding Motions in Limine) are due by..... 12/01/07
3. TRIAL DATE is..... 01/10/08
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

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

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

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

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

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Arnold Jablon Esq 210 Allegheny Ave Towson MD 21204

cc: Peter M Zimmerman Esq Room 47 [redacted] use 400 Washington Ave Towson MD 2120[redacted]
cc: Carole S Demilio Esq Old Courthouse Room 47 400 Washington Ave Towson MD 21204
Issue Date 10/15/07

8/10/07

IN THE PETITION OF **AUTO PROPERTIES, LLC** FOR JUDICIAL REVIEW OF THE **DECISION OF THE COUNTY BOARD OF APPEALS** OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
IN THE CASE OF **AUTO PROPERTIES, LLC,** LEGAL OWNERS/PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE NE corner East Avenue & East Avenue Relocated; Eside East Avenue; 34 feet to centerline East Avenue	*	FOR
11th Election District, 6th Councilmanic District	*	BALTIMORE COUNTY
Case Nos. 03-360-SPHA & 06-109-SPH Before the County Board of Appeals	*	Case No.: 03-C-07-4972

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

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IN THE PETITION OF **AUTO PROPERTIES, LLC** FOR JUDICIAL REVIEW OF THE **DECISION OF THE COUNTY BOARD OF APPEALS** OF BALTIMORE COUNTY	*	IN THE
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* * * * * * * * * * * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

This memorandum covers the key issues topically. It is important to approach these companion cases with a holistic perspective, and with due regard to context. Before we begin, here is a note on the legal function of our office.

The Role of People's Counsel

People's Counsel appears on behalf of the public interest to defend the comprehensive zoning maps. Sec. 524.1(b) of the Baltimore County Charter. People's Counsel v. A.V. Williams 45 Md. App. 617 (1980); People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491, 496-97 (1989). Board of Child Care v. Harker 316 Md. 683 (1989); People's Counsel v. Mangione 85 Md. App. 738 (1991); Red Roof Inns v. People's Counsel 96 Md. App. 219 (1993); United Parcel Service v. People's Counsel 336 Md. 569 (1994); Security Management Co. v. Baltimore County 104 Md. App. 234 (1995), cert. denied 339 Md. 643 (1995); People's Counsel v. Beachwood 107 Md. App. 627 (1995), cert. denied 342 Md. 472 (1996); Umerley v. People's Counsel 108 Md. App.

497, cert. denied 342 Md. 584 (1996); People's Counsel v. Prosser 119 Md. App. 150 (1998); Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001); Marzullo v. Kahl 366 Md. 158 (2001); People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002); and Lucas v. People's Counsel 147 Md. App. 209 (2002); Antwerpen v. Baltimore County 163 Md. App. 194, 209 (2005). Maryland Marine, Harker, Marzullo, and Antwerpen involved special hearings to determine questions of zoning law. Mangione, Red Roof, Umerley, Riffin, Country Ridge Shopping Center and Lucas involved special exceptions and/or variances.

The present cases combine a special hearing to determine issues of zoning law, a use permit for accessory business parking in a residential zone (akin to a special exception), and variances. The defense of the law and the public interest calls for this office's active participation.

I. Preface: How we got here: an overview "What's it all about, Alfie?"("Are we meant to take more than we give?")

a. The procedural context: a tale of two petitions, a rezoning application, and some ancient history.

In Case No. 03-360-SPHA, filed in February, 2003, Petitioner Auto Properties, LLC's asked for a use permit and variances for business parking of Honda automobile inventory in a residential (D.R. 5.5) zone. The use permit depended on satisfaction of special exception standards along with other requirements. The variances involved residential transition area (RTA) setbacks.

Deputy Zoning Commissioner (DZC) Timothy Kotroco issued an opinion on June 2, 2003 approving it, subject to conditions. The County Board of Appeals (CBA)

postponed the trial of People's Counsel's *de novo* appeal. In 2004, Petitioner asked for the case to put on hold as it applied to the County Council to reclassify legislatively the contested residential parcel to the Business-Major Zone. Such a rezoning would have allowed parking of inventory by right as part of a permitted B.M. Zone new car dealership use. But the County Council voted in October, 2004 to retain the existing D.R. 5.5 Density Residential Zone. PC (Appellant's) Exh. 11, 28.

In 2005, the CBA case resumed. Upon convening, Petitioner's counsel advised of discovery of a 1968 decision by Deputy Zoning Commissioner (DZC) Edward Hardesty. He had approved then owner Harford Warehouse Corporation's (HWC's) request for a use permit for business parking on the site. Pet. (Appellee's) Exh. 5. Another postponement ensued. Petitioner filed a new special hearing petition to determine if the 1968 approval allows its current request for business parking. ZC William Wiseman granted this petition on November 9, 2005. People's Counsel filed another appeal.

The CBA consolidated both appeals for a *de novo* hearing under Charter Sec. 603. Accordingly, the case proceeded as if the proceedings below had not occurred. Hill v. Baltimore County 86 Md. App. 642, 655 (1991); Pollard's Towing v. Berman's Body & Mechanical 137 Md. App. 277, 288 (2001).

b. The use permit and RTA variances: Case No. 03-360-SPHA

Auto Properties, Inc. owns the property. Mile One is the operating arm for Heritage Honda and associated dealerships at the Harford Road/East Avenue location and other metropolitan Baltimore locations. In this context, analysis of the proposed use permit and variances included a consideration of the entire assemblage of Mile One and

Heritage auto dealerships at the Harford Road location zoned for business uses. See PC Exh. 4, the Heritage website.

The CBA considered the history of the area and the classic purpose of a borderline residential zone to provide a measure of protection for the East Avenue residential neighborhood. Petitioner tried to isolate the residentially zoned parcel at the center of the controversy and suggest that its continuing function as a transition area is oppressive to the Mile One enterprise. The CBA properly resisted this temptation.

The real issue was whether Mile One's drive for aggrandizement and increased revenue was legitimate and justified further penetration and adverse impact in an established community of single-family homes. A review of the law showed that the proposed inventory parking is clearly not a permitted use in the residential zone. Even if it were, the proposal did not meet the standards applicable to accessory business parking in a residential zone. Nor did it satisfy the criteria for variances. The County Council's 2004 decision to retain the residential zone classification confirmed and reinforced the legislative intent to reject the proposed encroachment.

c. The Special Hearing relating to the 1968 Harford Warehouse Corporation use permit: Case No. 6-109-SPH.

This involved the claim that the 1968 use permit issued to Harford Warehouse Corporation (HWC) for parking on the property survives to allow the current request. "The special hearing is, in legal effect, a request for a declaratory judgment." Antwerpen v. Baltimore County 163 Md. App. 194, 209 (2005).

First of all, there were specific conditions in the 1968 permit approval. DZC Hardesty's Order stated that the use permit was,

> "... granted, subject to the requirements of Section 409 of the Baltimore County Zoning Regulations, all subject to the approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning"

BCZR 409.4 (1963) established a series of statutory conditions relating to, *inter alia*, lighting, screening, paving, an approved site plan, and specified method of maintenance and operation. PC Exh. 7. HWC never satisfied these conditions. HWC simply failed to pursue or consummate the permit approval. The parcel remained vacant grassland for 38 years, with the exception of occasional parking during construction of the Honda new car facility a few years ago. Therefore, the permit never became valid or effective.

Secondly, the 1968 case involved a substantially different site plan and modest principal use in a less intensely developed area. See Pet. Exh. 5, 1968 site plan. Several witnesses testified that the business uses along Harford Road in the 1960s tended to be neighborhood uses. The traffic was moderate compared to today. Now, we are dealing with a conglomerate regional assemblage of auto dealerships in a highly congested area with a nearby deficient traffic intersection at Harford and Joppa Roads. There is no resemblance between the 1968 use permit and the permit requested in 2006.

Thirdly, there were substantial changes in the law since 1968. Bill 100, 1970, replaced the R-6 Zone with the D.R. 5.5 Zone, a successor zone with significant differences. PC Exh. 31. Bill 100 also established controls on residential transition areas, which survive in amended form in BCZR 1B01.1.B. PC Exh. 32. The 1968 permit did not conform to these controls, in the same way that the current request conflicts with

applicable setback and buffer requirements. Separately, in 1988, the County Council enacted comprehensive new offstreet parking controls in Bill 26-88. PC Exh. 29-30. Significantly, the new BCZR 409.1 stated explicitly that its intended target is accessory offstreet parking. PC Exh. 18. The new BCZR 409.8.B established an entirely new and stricter set of standards for business parking in a residential zone. The 1968 permit did not conform to these standards. Therefore, even if the 1968 permit conditions were met and the use had become legitimately operational, it would have become nonconforming under the 1970 RTA and 1988 offstreet parking standards. A nonconforming use terminates upon abandonment or discontinuation for one year. BCZR 104.1. So the new Honda inventory use would be subject to review under the current law anyway.

d. The County Board of Appeals decides "Towson Legal: Untangling the web"

The CBA heard three days of testimony (6/21, 11/ 2, and 11/14, 2006), reviewed many exhibits, conducted a public deliberation, and decided unanimously to deny both petitions. It issued its written opinion on April 6, 2007. It was serendipitous that the three CBA panel members are all attorneys: Chairman Lawrence S. Wescott, Lawrence B. Stahl, and Wendell H. Grier. This may account for the concise yet penetrating analysis.

The opinion began with a helpful description of the background (Pages 1-3). The CBA then took up the legal issues posed by Case No. 06-109-SPH, the 2006 special hearing petition to determine the impact of the 1968 HWC use permit decision. After a review of the key contentions of the parties and the pertinent testimony and exhibits, the CBA made these findings of fact and conclusions of law,

"The Board feels that a vested right for parking has not been obtained by the Petitioner. The Board cites the case of *Sunrise Development,* 330 Md. 307, 410-411 in which the court stated:

> Generally in order to obtain a vested right in an existing use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning and construction and committing the land to the permitted use before the change in the zoning ordinance has occurred.
>
> * * * * *
>
> ...in Maryland it is established that in order to obtain a "vested right" in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance; (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. See *Feldstein v. LaVale Zoning Board*, 246 Md. 204, 211, 227 A.2d 731,734 (1967), indicating that [*Mayor and_City County v. Shapiro*], 187 Md. 623, 51 A.2d, 273 (1947) as well as *Chayt v. Board of Zoning Appeals* 177 Md., 426, 9 A.2d 747 (1939) established as one of the test for determining the existence of a nonconforming use "is whether such use was known in the neighborhood." 254 Md. 255-56, 255 A.2d 404.

It seems clear to this Board that the parking use was not vested in that, while cars may have been parked on the lot during several occasions in the 1970's, the lot has not been used for parking since the 1980's. Moreover, the County Council enacted new off-street parking controls in Bill 26-88 in 1988. Section 409.1.A of the BCZR indicates that parking is for accessory use for buildings to accommodate the persons using the buildings.

The housing of inventory is central to the principal use of a car dealership. It is distinguishable from the accessory use by employees and customers for parking.

Section 409.8 states as follows:

B. Business or Industrial Parking in Residential Zones.

1. Upon application, the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6 under the following procedure:

* * * * *

Section 409.6 sets forth the number of parking spaces that should be available for buildings or homes depending upon their size. It does not contemplate the parking of inventory of new or used car dealers. New car dealerships are dealt with in § 233 of the BCZR. Since §409 of the BCZR was amended or rewritten in 1988, to more strictly curtail parking in residential zones, the unvested parking use granted in the 1968 Zoning Commissioner's decision did not survive."

The CBA then turned its attention to the primary request for a use permit and variances in Case No. 03-360-SPH. Here is what the CBA found, at pages 6-7,

"In this case, the Petitioner filed a request for special hearing to permit business parking in a residential zone to include storage of unlicensed passenger vehicles. It also requested a variance to permit a 25-foot buffer and 25-foot set back in lieu of the required 50-foot RTA buffer and 75-foot RTA set back.

The Zoning Commissioner granted the use permit and the variances without even considering § 409 of the BCZR. As stated above, it is the position of this Board that § 409 pertains only to accessory parking provided for employees and customers. To reiterate, § 409.8.B.1 allows the Zoning Commissioner to issue a permit for the use of land in a residential zone for parking facilities to meet the requirements of § 409.6 of the BCZR. There has been no evidence presented that the Petitioner could not meet the requirements under § 409.6 since there is ample parking for employees and customers. The sole purpose of the request for special hearing is to park inventory of automobiles on the lot. The Board feels that this is not warranted in this situation.

Since the Board has found that an inventory of new cars could not be parked on the lot in accordance with § 409 of the BCZR, the Board sees no reason to discuss the RTA questions regarding variances to the buffers"

For the above reasons, the CBA entered an order denying both Petitions for Special Hearing. Petitioner thereupon requested judicial review.

Questions presented

We shall address the 2003 request for use permit and variances first, and then turn to issues relating to the 1968 use permit. Taking the more current request first tracks the recent litigation chronology and also is most helpful to an understanding of the entire picture. In answering the questions presented below, we shall also answer the questions presented in Auto Properties, LLC's memorandum.

Case No. 03-360-SPHA

1. Did the County Board of Appeals act rationally, reasonably, and not arbitrarily in finding that Petitioner's request for automobile inventory parking is impermissible, as a matter of law, because the law limits business parking in a residential zone to accessory customer and employee parking?

2. Did the County Board of Appeals act rationally, reasonably, and not arbitrarily in finding, as a matter of fact and law, that Petitioner's request further did not qualify because it failed to meet another threshold requirement, that such business parking occur only in situations where there is insufficient parking area in the main Business Zone?

3. If the County Board of Appeals had reached the additional issues concerning the proposed use permit (akin to a special exception) and variances, would the CBA also have had to deny the proposal on the merits for failure, as a matter of law, to meet the additional relevant standards?

Case No. 06-109-SPH

4. Did the County Board of Appeals act rationally, reasonably, and not arbitrarily in finding that the 1968 Harford Warehouse Corporation use permit did not confer vested rights or otherwise authorize the very different 2003 proposed use?

Note on relevant legislation

Baltimore County Council bills and Baltimore County Zoning Regulations are included as People's Counsel's CBA Exhibits and cited as such in this memorandum.

II. Scope of judicial review of agency decisions "Respecting the administrative function: factual inferences, judgment, *and* legal interpretation"

The legislature has delegated to the administrative agency the authority to make decisions based on fact-finding, legal interpretation, and application of the law to the facts. So long as the agency is acting within the scope of its authority and in a rational way, the scope of judicial review is narrow and deferential. The courts must respect the agency's function to hear, view, and assess evidence and also to use specialized expertise and analysis in its assigned field of law. This is the central theme of administrative law.

As Judge Charles Moylan said in Riffin v. People's Counsel for Baltimore County, a zoning case, 137 Md. App. 90, 93-94,(2001):

> "With regard to the standard of review to be applied in a case such as this, we explained in Stover v. Prince George's County, 132 Md. App. 373, 380-381 (2000), that:
>
> '[w]hen reviewing a decision of the administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative agency action is narrow. The court's task on review is *not* to substitute its judgment for the expertise of those persons who constitute the administrative agency."
>
> '**Rather, *"[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on the substantial evidence test."* The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." *The court cannot substitute its judgment for that of the agency, but instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions."* (Citations omitted; emphasis supplied)."**

All that is required to sustain an agency's finding of fact is that it be supported by "substantial evidence." In Snowden v. Mayor and City Council of Baltimore, 224 Md. 443, 447-48 (1961) the Court of Appeals noted:

"The substantial evidence test 'means that the reviewing court's inquiry is whether on the record the agency could reasonably make the finding' . . . Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' . . . (Citation omitted).

The Court reiterated in Eger v. Stone, 253 Md. 533, 542 (1969):

"We have made it quite clear that *if the issue before the administrative body is "fairly debatable," that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body,* in the absence of an unconstitutional taking of property for public use without the payment of just compensation" . [Citations omitted] .

"This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence. (Internal citations omitted; emphasis supplied)."

Judge Moylan discussed the "substantial evidence" standard once again in Futoryan v. Mayor and City Council of Baltimore, 150 Md. App. 157, 177 (2003):

As to the quality of "substantial evidence," Judge Harrell had earlier descried that quality in *Friends of the Ridge v. Baltimore Gas and Electric Co.,* 120 Md. App. 444, 446, (1998), vacated in part, 352 Md. 645 (1999):

***The substantial evidence standard* applicable to the Board's findings of fact and resolution of mixed questions of law and fact, *sometimes referred to as the "fairly debatable" test,* is implicated by our assessment of whether the record before the Board contained at least "a little more that a scintilla of evidence" to support the Board's scrutinized action. *If such substantial evidence exists,* even if we would not have reached the same conclusions as the Board based on all the evidence, *we must affirm.* Stated another way, *substantial evidence pushes the Board's decision into the unassailable realm of a judgment call, one for which we may not substitute our own exercise of discretion.* (Emphasis supplied)."**

Judge Moylan also there discussed the related "fairly debatable" standard,

"If there is some evidence pointing in each direction, the issue is, by definition, "fairly debatable," and the decision of the administrative agency, whichever way it goes, may not be reversed on judicial review as having been arbitrary or capricious." 150 Md. App. at 172.

In Snowden, *supra* at 448, Judge Hall Hammond, later Chief Judge, underlined the significance of the drawing of factual inferences:

> **"The heart of the fact finding process is often the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. 'The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported.' The test is reasonableness not rightness."**

Judge Cathell echoed Snowden in a more recent Baltimore County zoning case, Marzullo v. Kahl, 366 Md. 158, 172 (2001), reversing the Court of Special Appeals and Circuit Court and reinstating the finding of the Board of Appeals,

> **" . . . A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record. . . . A reviewing court `"must review the agency's decision in the light most favorable to it; . . . the agency's decision is *prima facie* correct and presumed valid, and . . . it is the agency's province to resolve conflicting evidence" and to draw inferences from that evidence.' . . . A reviewing court `"must review the agency's decision in the light most favorable to it; . . . the agency's decision is *prima facie* correct and presumed valid, and . . . it is the agency's province to resolve conflicting evidence" and to draw inferences from that evidence.' . . . (Citations omitted).**

Moreover, in any zoning case, it is the Petitioner's burden both to produce evidence and to persuade the decision-maker with respect to the facts and the law. In Pollard's v. Bermans, 137 Md. App. 277, 289 (2001), Judge Moylan emphasized that it is virtually impossible to reverse an agency where it is simply not persuaded,

> **"In this case, all that was required was that the Board be not persuaded that there was a need for additional towing service. To the extent its finding was weightier than that, the incremental weight was surplusage. Far less is required to support a merely negative instance of non-persuasion than is required to support an affirmative instance of actually being persuaded of something."**
>
> "[I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded . . . Mere non-persuasions . . . require nothing but a state of honest

doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard." Id. 290 (citing Stark v. Stark, 134 Md. App. 663 (2000)) (Italics in original).

Finally, it follows that deference due to agency determinations extends to legal interpretations and application of the law. Judge Eldridge, wrote in Board of Physician Quality Assurance v. Banks, 354 Md. 59, 67 (1999),

> **" . . . Despite some unfortunate language that has crept into a few of our opinions, a `court's task on review is *not* to "substitute its judgment for the expertise of those persons who constitute the administrative agency,". . . Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts . . . *McCullough v. Wittner*, 314 Md. 602, 612 (1989) ('The interpretation of a statute by those officials charged with administering the statute is . . . entitled to weight'). Furthermore, the expertise of the agency in its own field should be respected."** (citations omitted).

Judge Cathell cited Banks with approval in Marzullo v. Kahl, *supra* 366 Md. at 171.

Judge Eldridge returned to the subject in Fosler v. Panoramic Design, Ltd., 376 Md. 118, 136 (2003). Citing Marzullo, *supra*, among other cases, he recognized the deference due to the agency, as he wrote:

> **"(When construing a statute intended to be administered by an administrative agency, courts normally give significant weight to an agency's interpretation of the statute.)"**

Here, the County Board of Appeals decision involved mixed findings of fact and legal interpretation. The CBA's findings, interpretations, and conclusions on the absence of vested rights and legal insufficiency of the current proposal for a use permit were not only reasonable (i.e. all that is required), but also clearly correct as a matter of law. Put another way, the Petitioner failed to persuade the CBA of the merits of its proposal.

In this context, the CBA did not need to reach the additional issues concerning the use permit proposal's satisfaction of special exception and other standards, including those relating to the variances. Had the CBA reached these issues, the CBA also would have had to find that the Petition fails as a matter of law. Accordingly, this memorandum shall address all of the issues, those decided by the CBA and those which were unnecessary to decide in light of the threshold findings and conclusions.

III. The relevant property, area, history, and expansion "The Octopus"

The .8 acre parcel targeted for additional Heritage Honda inventory parking is part of an assemblage of parcels occupying about 5 acres. PC Exh. 3, 8, 11A. The property owner is Auto Properties, LLC. Through its corporate family, "Mile One" now operates four Mile One auto dealerships: Honda, Jeep, Chrysler, and (most recent) Volkswagen.

Auto Properties purchased the parcels from Barbara Griffith in 1999. PC Exh. 3. Doug Griffith Honda had operated a single Honda dealership there for many years. There also had been a mix of other commercial uses, such as Rice's Bakery. Their impact on the East Avenue residential area was moderate.

Since taking over, Mile One expanded the Honda dealership, built a new modern facility on the south side of East Avenue, and added three other dealerships closer to Harford Road. This expansion reflects the trend toward "megadealerships" or conglomerate facilities. See Heritage Honda and Mile One Websites. App. Exh. 4.

Unfortunately, as neighboring residents testified, the expansion already had a major adverse impact. Additional commercial traffic has aggravated congestion problems

on East Avenue and hindered access to Harford Road. More directly, residents have suffered from the parking, loading, and unloading of tractor-trailers at the S-turn of East Avenue relocated and from test-drives up and down East Avenue. T. 11/2/06, 92-154.

Mile One has now decided to try to expand further. This would invade the residential zone, which has functioned as a transition area for many years. It is also a kind of gateway. Each incremental expansion puts more pressure on the neighborhood.

The bottom line is that Mile One's latest drive for expansion went too far. In the context of the size, location, and zoning of the property, adjoining an established neighborhood of single-family homes, it was time to say no. Auto Properties and Mile One must live within the boundaries of their Business Zone. They should also make efforts to reduce the adverse impact already attributable to their expansion.

IV. The 2004 comprehensive zoning map process (CZMP) "Thus spake the Council"

The 2004 CZMP became a microcosm of the case. It both reflected and corroborated the legislative intent that this .88 acre transitional residential zone be preserved and protected from the expansion of the dealership complex. Auto Properties, LLC put its chips down when it filed Issue 6-032 to request reclassification to the BM Zone. PC Exh. 27. The County Council Log of Issues records the legislative decision to retain the D.R. 5.5 Zone. PC Exh. 28.

A legislative reclassification would have made available to the property any permitted BM Zone use. But the request here directly related to the property owner's desire to extend inventory parking for Heritage Honda. The 2004 CZMP issue file, PC Exh. 27, included a key letter from attorney David Karceski,

"This firm represents Auto Properties, LLC with respect to the above-referenced zoning reclassification request for its property of approximately 0.88 acres located on East Avenue, west of Harford Road in Carney. Auto Properties operates a car dealership at this location, which has been so used since the 1960s. To better accommodate the dealership's growing volume of customers, an additional parking area is needed for storage of new automobile inventory.

In June of this year, Auto Properties obtained the zoning relief necessary to provide for the additional vehicle storage in Case No. 03-360-SPHA. A copy of the Order and site plan approved in the case is attached for your review. In granting the requested relief, the Deputy Zoning Commissioner imposed conditions that Auto Properties maintain an 85' x 130' "grassy" area along East Avenue and a 25' wide buffer between the vehicle storage area and an adjacent dwelling located at 3018 East Avenue. Our client fully intends to abide by the conditions in the Order and is filing this reclassification request to BM in order to validate the relief granted. We believe the Deputy Zoning Commissioner's decision is fair to the surrounding neighbors and Auto Properties.

The subject property is located in the vicinity of a stretch of Harford Road occupied by automobile dealerships, automotive service-related and other similar uses. If rezoned, Auto Properties would be permitted to use this pocket of vacant land for additional automobile parking, consistent with the auto storage lots directly to the north and south of the property. Given the surrounding commercial land uses and close proximity to Harford Road the requested rezoning is appropriate.

For these reasons it is respectfully submitted that, as shown on the attached exhibit, the portion of the property zoned DR 5.5 be reclassified to BM."

The thrust of the application for reclassification thus tracked exactly the pending request for use permit for parking in a business zone. Correlatively, the Greater Parkville Community Council (PC Exh. 22), the Carney Improvement Association, and interested neighbors participated in the 2004 CZMP to express their opposition to the rezoning.

Despite the differences between the legislative process and the administrative process, they ran parallel here. In a sense, the CBA administrative litigation paused, and the focus shifted to the County Council for the duration of the 2004 CZMP. Had the Council reclassified the property to B.M., the administrative litigation would have been

moot. When the Council determined to retain the residential zoning classification, the case came back downstairs to the CBA hearing room.

While considerations and standards with reference to use permits for business parking and RTA variances differ from the criteria for legislative judgments, there was a particular interrelationship here. The criterion of consistency with legislative intent applies to use permits, to the incorporated special exception standards, and to variances. A contemporaneous decision by the County Council to reject the legislative reclassification directed to the same result sent a clear message here that the use permit and variances would also undermine the legislative intent.

People's Counsel, as defender of the legislative comprehensive zoning maps, did not take a partisan position during the 2004 CZMP with respect to the issue before the County Council. Rather, the office has defended at the CBA the Council's consistent decision to retain the residential D.R. 5.5 Zone.

V. The proposed use permit "We must protect this corner"

a. Automobile dealership inventory parking is not a permitted use in the D.R. 5.5 Zone and is not authorized under the guise of accessory business parking under BCZR 409.8.B. As the CBA knew, the BCZR use regulations are set up in a structure with permitted uses by right and special exception enumerated affirmatively within each zoning classification. If a use is not listed, then it is prohibited. BCZR 102.1. Kowalski v. Lamar 25 Md. App. 493 (1975). In the B.M. Zone (PC Exh. 33), BCZR 233.2 lists among the uses permitted by right:

> "New automobile sales facility and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operation on the highways may not be stored outdoors."

In turn, BCZR 233.2B allows, in pertinent part:

> "Accessory uses or structures, ... garages and parking spaces for the use of owners, employees, tenants and invitees. ..."

These provisions mesh with BCZR 409.1.A, the introductory subsection to the offstreet parking law (PC Exh. 18), which begins,

> "All structures built and all uses established hereafter shall provide accessory offstreet parking and loading in accordance with the following regulations. When an existing structure or use is enlarged, accessory offstreet parking and loading shall be provided in accordance with the following regulations for the area or capacity of such enlargement."

The detailed requirements of BCZR 409.6 with respect to minimum offstreet parking for each type of use corroborate that BCZR 409 in its entirety addresses accessory offstreet parking for owners, employees, tenants, and invitees.

There is no dispute that a new automobile sales facility is not a permitted use in the Density Residential Zones. BCZR 1B01. Indeed, it is one of the more intense and troublesome business uses where located near residential areas.

In the case of a new automobile sales facility, the housing of automobile inventory is central to the principal use ("A main use of land, as distinguished from an accessory use. BCZR 101"). This is clearly distinguishable from accessory employee, tenant, and invitee parking. Indeed, the size of the inventory affects the principal use area, which then generates the need for accessory parking. Because the BCZR 409.8.B allowance for business parking in residential zones is conceptually limited to accessory parking, Auto Properties, LLC's request does not qualify for consideration.

In other words, the automobile dealership inventory is integral to dealership operations, and the overall land use impact increases with the magnitude of the business. In practical language, the extension of inventory parking into the residential zone is an impermissible encroachment of a principal business zone use into the residential zone.

John J. Dillon, Jr., planning consultant and former longtime Baltimore County OPZ staff member, contributed his expert testimony. /06 11/2, 154-218, T. 11/14/06, 3-54. His testimony included a discussion of various legal issues. He addressed the basic question as to permissibility of the proposed use, at T. 11/2/06, 185-88,

> "Q. Now, in reference to the current regulations, do you have any observations as to the character of the proposed use of parking of inventory for a car dealership on a parcel zoned D.R. 5.5, whether or not it is, in fact a permitted use?
>
> A. Yes, I do.
>
> Q. What is your observation?
>
> A. First, as I said, the property is zoned D.R. 5.5 residential. It is a --- the use that's being proposed there is not a use that I believe is permitted, or intended to be permitted under the off-street parking in a residential zone, Section 409.
> The reason I say that is what a property is developed such as the Honda dealership or Heritage dealerships, all of them, they are required to meet Section 409 of the parking regulations.
>
> That is based on square footage of building, number of spaces required for employees, for customers, for the owners and their invitees.
>
> It is not designed - - it does not have anything to do with inventory. And a car dealership, they need a large tract of land for their inventory.
>
> If this were a shoe store, they'd need storage area for shoes. In this case, the inventory happens to be automobiles.
>
> The off-street parking in residential zone is an accessory use to the principle use as identified within the regulations, and we are all familiar with the requirements of the regulation that no land can be used except in conformity with these regulations.
>
> And under 409, the beginning sentence that I think was read earlier, under 409.1, Applicability, (A), all structures build and all uses established hereafter shall provide accessory off-street parking and loading in accordance with the following regulations.
>
> If you go to the commercial zone, the B.M. zone, under Section 233, there is a use that is permitted for automobile dealership, and under 233.2B, accessory uses or structures including signs, garages and parking spaces for the use of owners, employees, tenants and invitees, and that's what the off-street parking regulations are about,
>
> It's not about parking inventory. It this were 84 Lumber, we wouldn't allow them to put their lumber over there on this D.R. 5.5 lot. That's their inventory, lumber.

If it were, again a shoe store, they wouldn't be putting a warehouse there for shoes.

This is clearly not a use that was intended by that section, in my opinion."

The CBA agreed with our position on this point. Its decision was not only reasonable and entitled to deference, but also clearly correct:

b. Correlatively, the proposal here does not meet the threshold requirement under BCZR 409.8.B that the use permit be for "... parking facilities to meet the requirements of Section 409.6,...."

Auto Properties, LLC never suggested any deficiency in the existing provision of accessory offstreet parking required for business uses under BCZR 409.6 ("Retail-general.... 5 per 1000 feet of gross floor area ...). Its traffic expert, Mickey Cornelius, confirmed this point. T. 6/21/06, 172-75, Therefore, the proposal failed to meet an essential requirement to qualify for accessory business parking in the residential zone. The CBA was also familiar with this requirement, having applied it in the recent Seminary Galleria (PC Exh. 36) and Cornblatt (PC Exh. 37) decisions.

Again, the CBA agreed with our position and acted both reasonably and correctly.

c. The proposal does not otherwise meet use permit criteria, including special exception and other enumerated requirements in BCZR 409.8.B.1.e.

The enumerated requirements refer to impact on the surrounding community (409.8.B.1.e.2), loading and method of operation, and hours (409.8.B.1.e.3, 409.8.B.2), and satisfaction of special exception objectives (409.8.B.1.e.4). PC Exh. 18. The proposal here is practically for a 24/7 operation. Even if the active operation were restricted, it does not satisfy the legislative test.

A special exception is a conditional use. Schultz v. Pritts 291 Md. 1, 11 (1981); Umerley v. People's Counsel 108 Md. App. 497 (1996). The deficiency with respect to RTA standards translates as a failure to meet relevant statutory conditions, This weighs heavily against the proposal. It is inconsistent with the purposes of the property's zoning classification. BCZR 502.1.G.

In any event, overwhelming evidence shows that the dealership's expansion across East Avenue relocated at this troublesome corner would have a major negative visual impact at this gateway to the East Avenue residential community. It would also aggravate existing problems caused by the dealership. These include tractor-trailer loading, unloading, and parking in the area, general congestion involving commercial vehicles, and test-drives of personal vehicles in the residential area. This all translated to particular adverse effects on the public safety, health and welfare of the locality as well as traffic congestion. BCZR 502.1.A, B. The paving over of one of the few remaining open spaces in the area would also contribute to stormwater runoff problems. BCZR 502.1.H. Meanwhile, there was a significant traffic congestion problem in the nearby Harford Road area. This was put in relief by the designation of the Harford Road/Joppa Road intersection as a Level F failing intersection. Bill 28-06. PC Exh. 5. The proposal thus aggravates congestion in the roads and streets. BCZR 502.1.B.

Jackie Megee, Daryl Corona, and Anthony Marchanti, East Avenue residents, contributed probative testimony about the history and the likely particular adverse impact of the proposal. T. 11/2/06, 92-154. Mary O'Hare of the Carney Improvement

Association and Ruth Baisden of the Greater Parkville Community Council added their community perspectives to this site-specific proposal. T. 11/14/06, 59-98.

John J. Dillon, Jr.'s expert testimony covered not only various legal issues, but also the likely particular adverse impact of the proposal. He identified the unique problems posed by extension of a large auto dealership into towards and into an interior residential area, away from the main arterial road. Traditionally, car dealerships have developed along the frontage of the main roads. More recently, large new dealerships such as Carmax have found sites in more isolated settings away from residential areas.

Here, Mile One took one dealership and grew three new ones within five years. Rather than finding an appropriately spacious business site to accommodate the parking demands, it has chosen a parasitic expansion into the residential zone. The dealership conglomerate behaves like a giant octopus extending its tentacles, heedless of the injurious impact to those within its reach.

Nevertheless, Auto Properties, LLC's experts, especially David Martin, painted a rose-colored scenario of inventory parking as a reasonable transitional use accompanied by the offer of some landscaping and access adjustments. They presented a favorable image on a promotional site plan with soft colors representing trees. The reality on the ground is quite different, and would only worsen if this proposal were approved.

The CBA did not reach this issue. Had it done so, it would have had to deny the use petition on this basis as well, especially for failing to satisfy the statutory conditions.

VI. The proposed residential transition area variances: "A zone too far"

a. The usual BCZR 307.1 variance standards apply; the record does not support the application of RTA variance or modification under BCZR 1B01.1.B.1.c.

Auto Properties' consultant David Martin's suggested that it was eligible for an RTA variance under this subsection. But there were procedural and substantive reasons to reject this suggestion. First of all, the subsection applies only to a hearing officer's hearing, which has not occurred here. Secondly, it refers to a compatibility review under Code Sec. 32-4-402. There was no compatibility review or recommendation by the Office of Planning with respect to the proposal here. In any event, the interjection of business parking in a residential zone adjacent to a single-family home residential community is essentially incompatible. The same reasons for denial of the use permit apply once again.

b. The proposal does not satisfy the BCZR 307.1 variance standards. The leading cases include Cromwell v. Ward 102 Md. App. 691 (1995) and McLean v. Soley 270 Md. 208 (1973) with respect to the interrelated issues of uniqueness and practical difficulty. The most recent Court of Special Appeals decision is Montgomery County v. Rotwein 169 Md. App. 716 (2006).

The history and pattern of variance law reflects that the great majority of variance cases involve residential use. It is virtually unheard of in the case law for a variance to be granted for a contested commercial or industrial use. The Court of Appeals has been guarded against variances for business uses which have an adverse impact on residential neighborhoods. In Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227, 231-32 (1970), the Court discussed the adverse impact on the "aesthetic

ambiance of the residentially zoned properties which lie in the immediate area." It also stated "the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan." This led the Court to reverse the CBA's approval of industrial zone setback variances. The Court of Appeals has also consistently rejected variances for commercial expansion because their essence is relative advantage or convenience to the property owner. Marino v. City of Baltimore 215 Md. 206 (1957); Cleland v. City of Baltimore, 198 Md. 440 (1951); Pem Constr. Co. v. City of Baltimore, 233 Md. 372 (1964). Correlatively, variance claims have been denied when based on financial or revenue considerations. Burns v. Mayor & City Council, 251 Md. 554 (1968); Daihl, *supra*; Cromwell, *supra*, quoting Xanthos v. Board of Adjustment, 685 P.2d 1032, 1037 (1985):

> "Hardship is not demonstrated by economic loss alone... Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program."

The present case is purely a business expansion for convenience and increased revenue. There is nothing unique about the property which poses any real difficulty to the auto dealership conglomerate. The only thing unique about the proposed use of the corner is the inevitable aggravation of problems generated by the use of the dealership.

As to practical difficulty, application of the McLean v. Soley criteria (270 Md. at 213-14) call for denial the variances: 1) a) In light of the history of the entire 5-acre property and the recent expansion to four dealerships, the preclusion of a parking lot on the subject .88 site is not an unreasonable denial of Auto Properties, LLC's ability to use the entire property for a permitted purpose. In this connection, as several witnesses

observed, if there were such a concern about the parking of Honda inventory, management could have set aside some of the land allocated to the other dealerships; b) Mr. Dillon indicated, moreover, that the .88-acre site itself can be developed for one or two residences. PC Exh. 19. While it might not be everyone's idea of a location for a dream home, this is not a perfect world. As Ruth Baisden showed, there are many homes in the area, old and new, which are adjacent to commercial uses. 2) In the balance of the scales of justice, the proposal would cause serious injustice to the neighborhood; and 3) There is an obvious inconsistency with the spirit and intent of the residential zone.

The CBA did not reach the merits of the variances. Had it done so, it would have had to deny them as a matter of law.

VII. The 1968 Harford Warehouse Corporation (HWC) use permit "The herring wore red"

Auto Properties, LLC frames the question as whether utilization is required in order for the 1968 use permit still to be valid. To frame the question this way misses or distorts the factual and legal context. As we shall show, Petitioner's arcane effort to resuscitate this case from the dustbin of history is a "red herring." Webster's II New Riverside University Dictionary (1984, 1988) defines "red herring" as follows, at 985:

> "1. A smoked herring with a reddish color. 2. Something that distracts attention from the matter or issue at hand."

a. The 1968 use permit was never complete and, in other words, never became effective or valid.

DZC Edward Hardesty's 1968 Order stated the "... use permit for off-street parking" was "... granted, subject to the requirements of Section 409 of the Baltimore

County Zoning Regulations; all subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning." Pet. Exh. 5. At that time, as shown in the 1963 BCZR (PC Exh. 7), BCZR 409.4 required regulation of lighting (409.4d), and the provision of screening "... required as deemed advisable by the Office of Planning (409.4e). BCZR 409.4g stated, "A satisfactory plan showing parking arrangement and vehicular access must be provided. Said plan shall also be approved by the Office of Planning." BCZR 409.4h stated, "Method and area of operation, provision for maintenance and permitted hours of use shall be specified, and regulated as required."

John J. Dillon, Jr. observed that Harford Warehouse Corporation (HWC) never fulfilled any of these requirements. T. 11/2/06, 178-80. There was no record of any site plan being submitted or approved by either the Bureau of Public Services or the Office of Planning. There was no plan or provision for controlled lighting or screening, or for method and area of operation, maintenance and hours. The aerial photos and testimony confirm the area remained open grassland from 1968 until the present date. Under these circumstances, the 1968 Permit remained incomplete and was never effective or valid.

Auto Properties, LLC argument is that the 1968 Permit is still valid because BCZR 409.4 set no specific time period for utilization, in contrast to special exceptions. Hofmeister v. Frank Realty Co. 35 Md. App. 691 (1977). But this is irrelevant. Here, the permit itself never was complete or perfected. HWC failed to satisfy the Order's BCZR 409.4 conditions precedent. HWC's failure to satisfy these statutory requirements rendered the permit ineffective and not subject to revival 38 years later. HWC did not reach the stage where it had a valid permit to utilize.

Auto Properties also introduced a series of 14 boilerplate affidavits to suggest that the subject .88 acre property was used for parking for the Doug Griffith dealership in the 1970s. Pet. Exh. 11. Not one of these people appeared to testify. Moreover, each of the 14 notarizations referred to one James Abbott. Apart from the procedural irregularity of admitting such affidavits without live testimony or opportunity or cross-examination, it is apparent from the series of aerial photographs, past and present (PC Exh.12A-D, 8), and from live testimony of area residents that the Doug Griffith dealership did not use this area. It has remained open grassland. Indeed, if Griffith had used this area, it would have been in violation of the use permit order because of the aforesaid failure to file for and obtain the required plan approval and failure to satisfy BCZR 409.4 requirements.

b. **The 1968 use permit related to a significantly different principal use, came with a preliminary site plan of lesser magnitude, was reviewed under a less stringent law, and would have had, in any event, a far more modest impact on the neighborhood.**

The 1968 offstreet parking situation must be placed in the context of the entire property, the relevant principal uses, the law then existing, and the neighborhood. The 1968 preliminary site plan was skeletal. It depicted as a principal use just a modest used car lot on the west side of East Avenue There was no Honda dealership. The area now occupied by the Honda showroom was then the site of Rice's Bakery. Needless to say, there was no dealership conglomerate.

As the citizens testified, the neighborhood has changed. The commercial uses thirty-six years ago were less intense local uses. The traffic was relatively mild. The

BCZR 409.4 standards at that time lacked any special exception criterion and were otherwise less demanding than current BCZR 409.8.B.

Therefore, even had the 1968 use permit been perfected and utilized, it would not justify the offstreet parking now requested in a very different factual and legal context. The quality and magnitude of the two situations are so dissimilar as to defy comparison. It makes no sense to import the 1968 permit by some sort of time machine into 2006.

Remarkably, there is a provision in the Zoning Commissioner's Policy Manual (1992) to address the problem of "Old Unused Permits." See Policy 409.8.B.2.g, attached to our CBA memorandum. The policy states, first of all, that the lack of an expiration date for permits issued under BCZR 409.4 "... does not necessarily mean that these permits continue forever if not utilized." In addition, the policy provides, among other things, that "1) The new use serviced by the proposed parking area must be substantially the same as the use for which the original permit was issued; and 2) The parking area must be the same or smaller than that proposed in the original permit or must be more in keeping with the present regulations or the character of the neighborhood."

Auto Properties, LLC's current proposal does not pass any of these tests. The new principal Honda dealership use is far more intense and covers a much greater area than the use shown on the 1968 preliminary site plan. There was never a finally approved site plan, so it is impossible to compare the present proposed parking area. Moreover, the Honda proposal fails to satisfy the present BCZR 409.8.B regulations and brings with it a far greater impact on the neighborhood.

c. The 1968 use permit does not, in any event, conform to current law relating to residential transition area setbacks and more demanding offstreet parking standards for business parking in residential zones. Because incomplete and ineffective, and in any event never properly used, the 1968 use permit became invalid. Even if it had been properly used for a period of time, it became nonconforming in 1970 and terminated as a result of discontinuity. Under all these circumstances, there were no vested rights even to the original HWC use.

As explained above, the HWC use was never perfected and was, moreover, different from the proposed use. Therefore, it is unnecessary to reach the further problem of vested rights. To cover all the bases, we shall still address this additional issue.

The 1968 use permit preceded the first RTA law of Bill 100, 1970 (PC Exh. 31), which also replaced the R.6 Zone with the D.R. 5.5 Zone. The use permit also preceded the major revision of the offstreet parking law enacted in Bill 26, 1988 (PC Exh. 29-30). Understandably, the approved HWC use did not conform to the Bill 100 RTA standards. It also conflicted with the current BCZR 409.1 "accessory" criterion and BCZR 409.8.B baseline standard of necessity to meet minimum parking requirements. Other added standards involved new tests and proof, such as special exception criteria. Mr. Dillon also provided a helpful elucidation of this history and its consequences. T. 11/2/06, 181-94.

So, even if HWC had perfected the use approved under its 1968 permit, it would have become nonconforming upon enactment of Bill 100, 1970 with respect to RTA standards. The nonconformity would rise to a greater degree upon passage of the stricter parking standards of Bill 26, 1988. The CBA found that whatever the use may have been in the 1970s, there clearly was no use from the 1980s forward. As a legal consequence, if there were a legal nonconforming use, it terminated under BCZR 104.1 because of

abandonment or discontinuation for a period of one year or more. See, e.g. Canada Tavern v. Town of Glen Echo 260 Md. 206 (1970).

Under these circumstances, there were no vested rights left even for the HWC use approved in 1968. To acquire vested rights, which afford protection from the adverse impact of a new law, a property owner must obtain a valid building permit and commence substantial above-ground construction prior to enactment of the adverse change in the zoning or other land use law. Rupp v. Earl H. Cline & Sons 230 Md. 573 (1962); Ross v. Montgomery County 252 Md. 497 (1969); Dal Maso v. Board of County Comm'rs. 264 Md. 691 (1972); County Council v. District Land Corp. 274 Md. 691 (1975); Steuart Petroleum Co. v. Board of Co. Comm'rs. 276 Md. 435 (1976); O'Donnell v. Bassler 289 Md. 501 (1981); Prince George's County v. Sunrise Dev. L.P. 330 Md. 297 (1993); Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996); Prince George's County v. Collington Corporate Center 358 Md. 296 (2000); Marzullo v. Kahl 366 Md. 158 (2001).; Powell v. Calvert County 368 Md. 400 (2002). This doctrine does justice both to the property owner and the public interest. It recognizes a major commitment to development by commencement of building or construction. It also serves to give physical notice to the public of the character of the development. At the same time, the construction must be pursuant to a valid permit.

Sunrise Development discussed the evolution of vested rights law. Judge Rodowsky quoted, *inter alia*, O'Donnell v. Bassler, at 330 Md. 307:

> "Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit,

the owner must make a substantial beginning in construction and committing the land to the permitted use before the change in the zoning ordinance has occurred."

He then discussed three streams of cases, of which the third is of particular interest because of its reference to Mayor & City Council v. Shapiro 187 Md. 623 (1947), a case involving a permit for the sale and dismantling of used cars.

Here is what Judge Rodowsky said, at 330 Md. 312-13:

"The third stream of cases involves the issue of vested rights, per se. By a per se vested rights case we mean one invoking 'that doctrine, which has a constitutional foundation [and which] rests upon the legal theory that when 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.' Prince George's County v. Equitable Trust Co. 44 Md. App. 272, 278 (1979).

The first case in this Court squarely raising that doctrine is Richmond Corp. v. Board of County Comm'rs for Prince George's County 254 Md. 244, 255 (1969). There the developer owned commercially zoned land abutting residentially zoned land. The developer had expended large sums of money in acquisition of the property and in preparing plans, leases and specifications for a shopping center on the commercially zoned tract that would utilize the residentially zoned tract for parking. Before there was any construction on the ground, the zoning ordinance was amended to require a special exception for parking on residentially zoned property as auxiliary to a commercial use. In rejecting a contention that the developer had vested rights under the earlier zoning, we borrowed from the law of nonconforming uses the concept of public knowledge in the neighborhood of the use, saying:

'In Maryland it is established that in order to obtain a "vested right" in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.' *See* Feldstein v. LaVale Zoning Board, 246 Md. 204, 210, 227 A.2d 731, 734 (1967), indicating that [*Mayor & City Council v. Shapiro*], 187 Md. 623 (1947) as well as Chayt v. Board of Zoning Appeals 177 Md. 426 (1939) established as one of the tests for determining the existence of a nonconforming use "is whether such use was known in the neighborhood." 254 Md. at 255-56.

In Rockville Fuel & Feed v. Gaithersburg 266 Md. 117 (1972), we said that 'such a "vested right" could only result when a lawful permit was obtained and the owner, in good faith, has proceeded with such construction under it as will advise the public that

the owner has made a substantial beginning to construct the building and commit the use of the land to the permission granted.' Id. at 127; *see* also County Council For Montgomery County v. District Land Corp., 274 Md. 691, 337 A.2d 712 (1975)."

The Court of Appeals quoted these passages with approval in Marzullo v. Kahl 366 Md. at 192-93 and Powell v. Calvert County 368 Md. at 410-11.

Of course, the law of vested rights applies to all uses, including parking uses. The only distinction is that instead of a building permit, the property owner must have a valid use permit and proceed to implement the actual use. Mayor & City Council v. Shapiro 187 Md. 623 (1947). As reflected in the Sunrise Development opinion, Shapiro is one of the important early vested rights cases. It is still good law. Here is Judge Henderson's conclusion on the permit for the sale and dismantling of used cars on a vacant lot,

> "Accepting the evidence produced by the appellees at its face value, the activity appears to have been merely preliminary or casual. Neither the existence of a plan (Chayt v. Board of Zoning Appeals, supra) nor the purchase of property and the expenditure of money for grading (Knox. v. Mayor and City Council of Baltimore, supra; Board of Com'rs of Anne Arundel County v. Snyder, Md., 46 A.2d 689, 692) are sufficient to show that the business was established or existing. The mere issuance of a permit, whether the permittee has not commenced the work or incurred substantial expense on the faith of it, does not create a vested right, or estop the municipal authorities from revoking it. Board of Com'rs of Anne Arundel County v. Sunder, supra; Geneva Inv. Co. v. St. Louis, 8 Cir., 87 F.2d 83, certiorari denied 301 U.S. 692, 57 S.Ct. 795, 81 L.Ed. 1348; Brett v. Building Commissioner of Brookline, 250 Mass. 73, 145 N.E. 269; and see Note, 138 A.L.R. 500, and cases there cited. After the adoption of the amendment, the issuance of a new permit, for a nonconforming use, would be nugatory and void. Lipsitz v. Parr, 164 Md. 222, 164 A. 743.
>
> We hold that dismantling cars on two occasions, on a vacant lot wholly unadapted for the conduct of business, does not establish an existing use within the meaning of the Ordinance, and that the finding of the Board was supported by substantial evidence. Heath v. Mayor and City Council of Baltimore, supra; compare Heaps v. Cobb, Md., 45 A.2d 73, 76.
>
> In view of our conclusion that the use was not established or existing in 1941, it is unnecessary to consider the question as to whether it was subsequently abandoned. The

order of the trial court is reversed, and the order of the Board of Zoning Appeals is affirmed."

Auto Properties, LLC argued below that Nutter v. City of Baltimore 230 Md. 6 (1962) overruled Shapiro with respect to vested rights law. This is not correct. Nutter did not involve the acquisition of vested rights prior to a change in law. Rather, the case involved an esoteric question as to whether a statutory time limit for exercise of a Baltimore City zoning variance ran from the date of the final action of the zoning board or from the issuance of the permit. The Court held that it ran from the date of the final action of the board. It did overrule a *dictum* in Shapiro, which had suggested it ran from the time of issuance of the permit. Judge Hammond pointed out, at the same time, that the time limit question made no real difference in Shapiro and that the real question there, not present in Nutter, involved the impact of a change in the law. He wrote,

> "In Shapiro, the Board had approved the application on July 1, 1941, and entered the written record of its action on July 2, the day the certificate of occupancy for vacant land was issued pursuant to the Board's approval. Under the facts it made no difference whether the twelve-month period ran from July 1 or July 2. This Court found the real issue to be whether a claimed use of the land involved existed at the time of the amendment of the ordinance, and not whether it had been abandoned and revived during the critical twelve-month period."

Shapiro is thus one in a consistent line of cases which hold that a valid permit and substantial construction or use are prerequisites to the acquisition of vested rights so as to avoid the impact of a new law to which the use does not conform.

While BCZR 409.4 did not have a time period for utilization, it did not immunize a use permit from a change in the law and the usual requirements for vested rights. Nor did it provide immunity from the law relating to termination of nonconforming uses. To reiterate, the record here revealed that Harford Warehouse Corporation never complied

with the 1968 permit Order's requirements to satisfy both BCZR 409.4 and explicit detailed conditions. There was never any use of the permit, much less any valid use. Therefore, when the RTA standards came into effect in 1970, there were no vested rights, and the use permit became invalid for that additional reason. The more stringent offstreet parking standards of Bill 26-88 made the 1968 permit even more obsolete. Moreover, as noted above, even had HWC properly implemented and use its 1968 permit, the CBA made an irrefutable finding that the use discontinued in the 1980s. The termination of the nonconforming use terminated any claim to vested rights.

The CBA decision did not discuss in detail HWC's failure to perfect its permit. Its discussion of the Sunrise Development case indicates, however, that the CBA recognized this failure. The decision held, in any event, that the use stopped in the 1980s, so that there were no surviving vested rights. The CBA's legal conclusion is unassailable.

d. **Zoning Commissioner (ZC) Wiseman's November 9, 2005 opinion is in error with respect to the law of vested rights.**

The CBA hearing was, as noted, a *de novo* hearing. Nevertheless, we identified at the CBA level the legal errors in ZC Wiseman's decision that the 1968 Use Permit justifies the current or new proposed use. We reproduce this analysis in an appendix here.

Conclusion

For the above reasons, the Circuit Court should affirm the County Board of Appeals opinion and order denying the Petition for Special Hearing and Variances for the use permit for business parking in a residential zone in Case 03-360-SPHA, and also denying the petition for special hearing in Case No. 06-109-SPH.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2007, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Ruth Baisden, President, Greater Parkville Community Council, 7706 Oak Avenue, Parkville, MD 21234 and to Arnold Jablon, Esquire, and Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorneys for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Appendix: A Discussion of ZC Wiseman's November 9, 2005 Opinion

To be sure, the *de novo* hearing record before the CBA was more complete and in depth than the record produced before ZC Wiseman. But this does not excuse the fundamental legal errors underlying his opinion that the 1968 permit authorized Auto Properties' proposed new use.

ZC Wiseman made the assumption (Page 4) that People's Counsel's argument hinged on the assumption that a use permit for parking is a special exception. That is clearly incorrect. The determination of vested rights does not depend on the use permit's status as a special exception or not a special exception.

He then proceeded (Page 5) to accept Auto Properties, LLC's false contention that Nutter v. City of Baltimore overruled Mayor & City Council v. Shapiro with respect to the law of vested rights. The Commissioner wrote, in paragraph 1) on page 5,

> "Thus, People's Counsel is incorrect, at page 3 of his memorandum, in arguing that "*Shapiro* is still good law."

Had the Commissioner read Sunrise Development, Marzullo, and Powell carefully, he might have realized that People's Counsel is correct.

ZC Wiseman then observed, strangely, in paragraph 2),

> "Perhaps more importantly, the issue of vesting in this matter may be a red herring."

Nevertheless, he acknowledged "... there is no different rule of vested rights for special exceptions and the like." Then, he admitted "that Petitioner did not actually conduct the storage operations under the 1968 use permit and thus (in the parlance of vesting) it has not proceeded under the permits to exercise it on the land involved. ... Thus, under

traditional doctrine, petitioners have no vested rights."

At this point, the Commissioner seemed back on track. Unfortunately, he again lost focus. In paragraph 3, he suggested that "... it does not appear as if the applicable zoning law has changed to prohibit the use allowed in the permit, and thus Petitioners would not need to invoke the doctrine of vested rights." This ignored that the use allowed in the 1968 related to a different principal use and was never validated by the submission of a proper plan as required by the Order. In addition, although ZC Wiseman did mention the enactment of the RTA law in 1970, he disregarded that the minimum setbacks and buffer requirements do prohibit the proposed parking use.

Ironically, in paragraph 4), Commissioner Wiseman cited Four Seasons Apt. v. City of Mayfield Heights 775F.2d 150 (6th Cir. 1985), where the Court upheld the city's revocation of a building permit which had been unused for three years. A new amendment to the building code prohibited the use, which previously would have been lawful. The Court rejected the developer's allegation of a violation of constitutional rights. The Commissioner acknowledged that this case "would seem to support People's Counsel's argument," but nevertheless distinguished it on the ground that the city had rescinded the permit there, while the county here has not taken any action to rescind the 1968 permit. This distinction, of course, is irrelevant. The determination of vested rights does not depend on the initiative of the bureaucracy. When the legislature passes a new law which would prohibit a particular use, the determination of vested rights depends on satisfaction of the standard established by the case law, not on the inertia, movement, or shifting winds of administrative officials. A case in point is Marzullo, where the

Baltimore County bureaucracy supported the establishment of a reptile-breeding facility despite conflict with the prevailing law. The Court of Appeals rejected the argument that departmental approval of the facility afforded vested rights. Here, of course, there were never even submitted to the county departments the required plans under the 1968 permit. There was never any departmental approval. The permit lay incomplete and ineffective, the property vacant, hardly a situation which would generate any vested rights.

In paragraph 5, page 6, Commissioner Wiseman rejected People's Counsel's additional argument that even if the property had ever been used by the Harford Warehouse Corporation, the use obviously had been discontinued for more than a year and so terminated for discontinuity of a nonconforming use under BCZR 104.1. The Commissioner got around this by suggesting that the RTA law is irrelevant because it is not a use regulation. This is an absurd suggestion. The RTA law addresses explicitly residential transition area uses. BCZR 1B01.1.B.1, "Residential transition areas and uses permitted therein." See, e.g. BCZR 1B01.1.B.1.d. with respect to the definition of residential transition uses. In any event, the law of nonconforming uses refers to the nonconformity of a use with any relevant standard. In another bizarre twist, the Commissioner attempted to downplay People's Counsel's argument, quoting out of context, "... inasmuch as he [People's Counsel] half-heartedly argues that the RTA legislation 'is substantially a use regulation.'" The use of the word "substantial," however, does not imply any hesitation or half-heartedness. It was part of People's Counsel's effort to describe the substance of the law. It also recognizes that the RTA law includes both use and area standards in an integrated way. In any event, as in the Shapiro

case, it is not really necessary for the CBA to reach the issue of discontinuity because the use never properly commenced.

Finally, in paragraph 6, Commissioner Wiseman suggested that People's Counsel relied on the argument that the use permit was a special exception, which lapsed under BCZR 502.3 for lack of utilization within two years. However, as the Commissioner admitted, People's Counsel recognized that a use permit had been held not to be a special exception and, therefore, was not relying on that provision. People's Counsel's argument rather is based on all of the other reasons stated above: the failure to do what was necessary to make the permit valid or effective, the change in the nature of the principal use and the site plan, the change in the neighborhood, the change in the law, and the failure to acquire vested rights.

HWC's 1968 thus permit never became perfected or valid, and whatever remained of its incompleteness was overtaken by time and by changes in the area and the law. It is no longer viable. A parting word is in order about ZC Wiseman's rumination "that the issue of vesting in this matter may be a red herring." To the contrary, the real red herring is the interjection of the 1968 use permit into this case. Webster's II New Riverside University Dictionary (1984, 1988) defines "red herring" as follows, at 985:

> "1. A smoked herring with a reddish color. 2. Something that distracts attention from the matter or issue at hand."

Auto Properties initially gained ground by the interjection of this red herring and the filing of the special hearing filed in Case No. 06-109-SPH. In the end, the CBA properly threw the red herring back in the ocean where it belongs.

7/11/07

PETITION OF	*	IN THE
Auto Properties, LLC NE/Corner East Ave and East Ave Relocated Baltimore, Maryland 21221	*	CIRCUIT COURT FOR BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF COUNTY BOARD OF APPEALS Of BALTIMORE COUNTY 400 Washington Ave. Towson, Maryland 21204	*	CIVIL ACTION NO. 3-C-07-4972
IN THE MATTER OF The Application of Auto Properties, LLC NE/Corner East Ave and East Ave Relocated	*	
Re: Case No. 03-360SPHA Case No. 06-109SPH	*	

RECEIVED AND FILED
2007 JUL 12 AM 10: 28
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

MEMORANDUM OF LAW

Auto Properties, LLC, by its attorney Arnold Jablon, with Venable, LLP, pursuant to Maryland Rule 7-207, files this Memorandum in support of its petition for Judicial Review and, in support thereof, states as follows:

INTRODUCTION

In the hearing before the Board of Appeals below, the Appellant presented substantial evidence to compel the Board to grant its Petition for Special Hearing, filed in Case No. 06-109SPH, to confirm that a use permit for off-street parking in a residential zone (hereinafter referred to as "Use Permit"), originally approved in 1968, remains valid today and is grandfathered under the Baltimore County Zoning Regulations (hereinafter referred to as "BCZR"). As is explained below, the Appellant filed Petitions for Special Hearing and Variance, Case No. 03-360SPHA, wherein Appellant requested a new Use

Permit for off-street parking and presented strong and substantial evidence to satisfy the conditions and requirements of the BCZR, sufficient for the Board to have granted a new Use Permit.

STATEMENT OF FACTS

The Appellant owns a parcel of land, located on the northeast corner of East Avenue and East Avenue Relocated (the "Parking Parcel"), adjacent and across from the another parcel it owns on which it operates its new car dealerships (the "Dealership Parcel"). The Parking Parcel and the Dealership Parcel are separated by East Avenue Relocated. The Dealership Parcel is located at and near the intersection of East Avenue and Harford Road. The Appellant owns and operates its car dealerships on both sides of East Avenue where it intersects with Harford Road. As East Avenue continues away from Harford Road, it curves forming an inverted "S", and becomes East Avenue Relocated. It thereafter straightens and traverses through an existing residential community. The Parking Parcel is split-zoned, primarily DR 5.5, a residential zone, with a sliver BM, business-major zone. The Dealership Parcels are zoned BM. The residential community adjacent to the Parking Parcel is zoned DR 5.5.

On 2 June 2003, the Appellant was granted a use permit for off-street business parking in a residential zone by the Deputy Zoning Commissioner of Baltimore County (hereinafter referred to as "Zoning Commissioner"), in Case No. 03-360SPH. See **Appellant's Exhibit 1**, in which the Appellant requested the use of the Parking Parcel for inventory parking of vehicles it sold at its adjacent dealerships. The residential zoning of the Parking Parcel permits business parking on residentially zoned property with the approval by the Zoning Commissioner after a public hearing, for the issuance of a Use

Permit. Baltimore County Zoning Regulations (BCZR), §409.8B. An appeal was filed in timely fashion by People's Counsel.

Subsequent to the appeal but prior to the hearing before the Board of Appeals, Appellant located a Use Permit for the same purpose granted by the Deputy Zoning Commissioner in 1968, which was for the identical parcel that was the subject of the 03-360SPHA case (the "1968 Permit"). In 1968, the combined property (Dealership Parcel and Parking Parcel) was the subject of a request for zoning reclassification (Case No. 68-177RX) to change the then existing zoning of R-A and R-6 to BR (on the Dealership Parcel, or "Parcel 1") and BM (on the Parking Parcel, or "Parcel 2"). Additional relief was requested for the Dealership Parcel in the form of a Petition for Special Exception for Used Motor Vehicle Sales on that part of the property. The Parking Parcel was proposed for "Vehicle Parking". **See Appellant's Exhibit 2**. After a public hearing, the Deputy Zoning Commissioner reached a compromise whereby he granted the rezoning for the Dealership Parcel and, with respect to the Parking Parcel, granted a "Use Permit" (hereinafter referred to as the "Use Permit" or "1968 Permit") to allow for the requested business parking on the still residentially-zoned lot (R-6). In 1970, by Bill No. 100-70, the R-6 zoning classification became DR 5.5. See §100.3A, BCZR, attached hereto as **Appellant's Exhibit 3.**

Due to the poor quality of the copies obtained from the case file of Case No. 68-177RX, the Order is restated below:

> *The Petitioner has requested a reclassification of his property consisting of two parcels, from an RA and R-6 zone to a BR and BM zone. BR is requested for Parcel 1 consisting of 1.27 acres and BM zoning is requested for Parcel 2 which contains 0.88 of an acre. A Special Exception to use Parcel 1 for an outdoor motor vehicle sales area is also requested.*

There is no question that the Petitioner is entitled to relief. His property is bordered on the North by BL land, on which is a gasoline service station; on the East across East Avenue by BR and BM zones land, on which are a used car lot and warehouses; on the West by BL land, on which is a large bakery distribution center. It is obvious to the Deputy Zoning Commissioner the present zoning on the subject property is in error.

After discussing the pros and cons of the case at the hearing, it was decided by all involved that relief should be granted but not in accordance with the original request.

After considering all evidence and arguments by Counsel, the Deputy Zoning Commissioner feels that the best solution would be to rezone Parcel 1 to BM and to grant a use permit for off-street parking in a residential zone on Parcel 2. In adopting this procedure, it is not necessary to discuss the merit of a Special Exception for an outdoor motor vehicle sales area on Parcel 1 since the same would not be necessary.

For the aforegoing reasons, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore this 14 day of March, 1968, that the herein described property or area known as Parcel 1 should be and the same is hereby reclassified from an RA zone to a BM zone and a use permit for off-street parking in a residential zone on Parcel 2 should be and the same is hereby granted, subject to the requirements of Section 409 of the Baltimore County Zoning Regulations; all subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning. The Special Exception requested for Parcel 1 should be and the same is DENIED.

/S/
Deputy Zoning Commissioner

Petitioner's Exhibit 2.

Due to the discovery of this order granting the 1968 Permit, the hearing before the Board of Appeals, Case No. 03-360SPHA, was continued. Appellant then filed a petition for special hearing, Case No. 06-109SPH, in which it requested the Zoning Commissioner to determine whether the 1968 Use Permit was still valid. The Zoning Commissioner issued an order in which he concluded that the 1968 permit was valid and the subject property could be utilized pursuant thereto. **Appellant's Exhibit 4.** People's Counsel then appealed this decision. Both matters were then consolidated before the Board of Appeals, and de novo hearing was held.

The Board, after conducting four days of hearing issued its decision, dated April 6th, 2007, in which it (1) denied Appellant in Case No. 06-109SPH it's request to confirm that the Use Permit granted in the 1968 case was still valid and could be utilized, and (2) denied the Appellant's request in Case No. 03-360SPHA to allow business parking in a residential zone because Appellant had requested the storage of new unlicensed passenger vehicles, which the Board described as "inventory" parking.

QUESTIONS PRESENTED

I. Does a Use Permit for business parking in a residential zone require utilization to be valid?

II. Is business parking in a residential zone limited solely to customer and employee parking?

III. Must there be less than the minimally required parking on site before a Use Permit for off-site business parking of vehicles may be granted?

STANDARD OF REVIEW

The Circuit Court for Baltimore County must conduct judicial review of the Board's actions. The Court must review both the factual findings and legal findings of the Board. In reviewing factual findings, the Court must determine if there is substantial evidence in the record to support such findings. See Eller Media Co. v. Mayor and City Council of Baltimore, 141 Md. App. 76 (2001). To make this determination, "A court must consider whether reasoning minds reasonably could have reached the agency's factual conclusion." See Regan v. Bd. of Chiropractic, 120 Md. App. 494, 508 (1998). Accordingly, great deference should be afforded the agency's factual determinations.

However, when the Court is called upon to review legal findings of the Board, the standard of review does not require such deference; instead, the Court must review such findings de novo. Id, at 509; see also Eller, 141 Md. App. at 76. The Board's decision may not be upheld "unless it is sustainable on the agency's findings and for the reasons stated by the agency". United Parcel Serv., Inc. v. People's Counsel for Baltimore County, 336 Md 569, at 577 (1994), citing United Steelworkers v. Bethlehem Steel, 298 Md. 665, 679 (1984). The Court, therefore, must not just examine the decision of the Board in the context of its fact-finding, but is required to determine whether the Board's application of its findings of fact to the requisite law was appropriate

ARGUMENT.

I. A Use Permit issued under Section 409 of the Baltimore County Zoning Regulations (hereinafter referred to as "BCZR") does not require utilization in order to remain valid.

The 1968 Use Permit issued in Case No. 68-177RX remains valid and permits the business parking of vehicles on the Parking Parcel without requiring Appellant to seek another Use Permit. As explained below, utilization was and is not required and, therefore, the 1968 Use Permit is still valid.

(A) "Utilization" and "Vesting" are not required. The Appellant is entitled to use the Parking Parcel for off-street business parking, pursuant to the 1968 Permit. The Board of Appeals in its decision concluded that the 1968 Permit had not been "vested", and is, therefore, no longer valid. The Board relied on Mayor & City Council v. Shapiro, 187 Md 623 (1947), and, further cited "Sunrise Development, 330 Md 307 at 410-411", in finding that the 1968 Permit ".did not survive." See Board of Appeals Opinion (hereinafter

referred to as "Opinion"), Page 6. **Appellant's Exhibit 5.** However, these cases are inapplicable to the instant matter and the Board's reliance on them is misplaced.

Vesting in all of its permutations and definitions and applications in Baltimore County has been and continues to be governed by statutory requirements. Specifically, a Use Permit under section 409.8, BCZR, does not need to be "utilized" in order to survive. **See for reference, Petitioner's Exhibit 6, §409.8, BCZR.** The Board in this case has interchangeably used and incorporated into the concept of "utilization" the concept of "vesting", and, by doing so, has incorrectly interpreted the statutory provisions of the BCZR.

As the Board noted, "People's Counsel contends that Harford Warehouse Corporation [the petitioner who first obtained the 1968 Permit] and subsequent owners, including the Petitioner herein, never acquired vested rights in the use permit for parking on the subject property." See Opinion, **Appellant's Exhibit 5,** Page 3. Following that rationale, the Board concluded: "It seems clear to this Board that the parking use was not vested in that, while cars may have been parked on the lot during several occasions in the 1970's, the lot has not been used for parking since the 1980's." See Opinion, **Petitioner's Exhibit 5,** Page 5.

The Board's reliance on what it constitutes as "vesting" is contrary to what is required by the BCZR to preserve the validity of a Use Permit for business parking in a residential zone. Utilization of a Use Permit issued under §409, BCZR, is not required to preserve its validity. Furthermore, vesting is not required and is never required under the BCZR unless a use originally permitted in a zone is later prohibited. Consequently, as explained below, vesting is inapplicable to the instant matter.

By analogy, the BCZR does not require that a Use Permit be utilized, no more than it requires a variance to be utilized—there is no such requirement. Therefore, as with variances, a Use Permit for business parking on residentially zoned land runs with the land.

(B) A "Use Permit" is not a BCZR §502 special exception. It appears the premise relied on by the Board of Appeals assumes a Use Permit is a §502, BCZR, special exception that is subject to the rules and regulations delineated in that Section. See for reference **Petitioner's Exhibit 7,** §502, BCZR. This assumption is fundamentally incorrect, contradicting both the plain language of the BCZR and established Maryland case law. The logic and case law quoted by the Board of Appeals, and referred to above, simply do not prove, or even support, the notion that a "Use Permit" requires "utilization" or "vesting" as a predicate to its validity. The cases are inapposite. They deal with the common law application of "vesting" and are entirely unrelated to the issues here.

The BCZR states as follows: "A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void." §502.3, BCZR.

However, §502.3, BCZR, is not applicable to a Use Permit. In Marek v. Baltimore Co. Bd. of App., 218 Md. 351, 357 (1958), the Court of Appeals specifically determined a "Use Permit" was not a "Special Exception". The Court of Special Appeals, in Hofmeister v. Frank Realty Co., 35 Md. App. 691 (1977), reached the same conclusion in a different way. In Hofmeister, the Court of Special Appeals identified two distinct types

of "special exceptions," while echoing Marek by clarifying that a "Use Permit" was not the same as the specific BCZR § 502 "Special Exception." Ultimately, these two Maryland cases, both of which originated in Baltimore County, hold that a "Use Permit" is a "Use Permit" and it is not a "Special Exception" as outlined in BCZR § 502. That has been Maryland's and Baltimore County's consistent interpretation for decades. See County Attorney opinion, dated 7 March 1978, attached hereto as **Appellant's Exhibit 8**. It does not change now. As such, a "Use Permit" is not subject to the two (2) year expiration regulations governing Special Exceptions (see BCZR §502.3), is not subject to the time limitation on reapplication of a petition denied (see Marek, supra (analyzing §500.12, BCZR), and is, therefore, not required to be "utilized".

Marek v. Baltimore Co. Bd. Of App., 218 Md. 351 (1958)

> *"Off-street parking is not mentioned among the many things which may be the subject of a special exception and the power to determine what situations shall be considered in that category is a legislative function, resting in this instance w/ the County Council of Baltimore County, and is not an administrative function of the Zoning Commissioner."*

Id. at 357

> *"There is nothing in [BCZR § 409.4—which is now 409.8] to suggest a special exception to the use permissible in the zoning area for the land in question but it is a provision for off-street parking on land in the restricted zone in aid of better use of land which it adjoins . . ."*

Id. at 358

Hofmeister v. Frank, 35 Md. App. 691 (1977)

> *"A 'use permit' both is and is not a 'special exception,' depending upon which meaning of 'special exception' the legislative authors of the phrase had in mind upon the particular occasion when they used it. A 'use permit' is within the generic meaning of 'special exception'; it may not be within the specific meaning of 'special exception.' "*

Id. at 695-696

> *"Whether the label employed on a particular occasion happens to be 'special permit,' 'conditional use,' 'special use,' 'use permit,' or 'special exception,' the type of relief described is the same. This broad phenomenon is what we shall refer to as the* ***genus****. Generally speaking, the name 'Special Exceptions' refers to this genus."*

Id. at 699

> *"The genus initially was a simple and undifferentiated life form (or zoning phenomenon). Over the years, however, certain specific instances of the* ***more general phenomenon were recognized as having some unique identifying characteristics, some unique problems, and some unique guidelines of their own****. As these ascertainable instances of the more general phenomenon were singled out for separate handling,* ***they came to be identified as distinct species within the broader genus.*** *This was* ***particularly true of that instance of 'Special Exceptions' which came to be known as the 'Use Permit' for off-street parking in a residential zone.***

Id. at 69-700

1. **"Use Permit" versus "Special Exception"**

Marek and Hofmeister confirmed the distinctive nature of Use Permits. In Marek, the petitioners requested a "use permit for off-street parking at a public beach in an R-6, or Residential, one and two family zone." 218 Md at 354. The Protestants argued that a petition for a Use Permit was "in legal effect a petition for a special exception" subject to the restrictions in BCZR §502 and its subsections. Marek, 218 Md at 356. The Court held "that this petition [for a Use Permit] is not a request for a special exception." Id at 357. The Court reasoned that "[o]ff street parking is not mentioned among the many things which may be the subject of a special exception [in the BCZR §270 Schedule of Special Exceptions] and the power to determine what situations shall be considered in that category is a legislative function and is not an administrative function of the Zoning

Commissioner." **Id**. The plain language of the zoning regulations shows that Use Permits are separate and distinct from special exceptions.

Nearly twenty years later, in Hofmeister, the Court of Special Appeals reached the same conclusion. The Petitioner in this case asked for and was granted a use permit for business parking in a residential zone. The Protestants argued, basing their argument on Marek, that a Use Permit and a special exception were "distinct legal phenomena" and there was no authority in the BCZR giving to the Zoning Commissioner the authority to issue them. Hofmeister, 35 Md App at 694. In concluding that the Zoning Commissioner possessed the authority to grant Use Permits, the Court, citing Marek as its guidepost, carefully dissected the definition of "special exception" and its corresponding relationship to Use Permits. The issue framed by the Protestants was whether the Zoning Commissioner and Baltimore County Board of Appeals had the authority, under the BCZR, to issue "Use Permits" for off-street business parking in residential zones. Hofmeister is not opposite to Marek, nor does it contradict Marek. The Zoning Commissioner and the Board do have authority to issue Use Permits.

Both cases held, *inter alia*, that a petition for a "Use Permit" was not the same thing as a petition for a special exception. In both, the Petitioners were petitioning for a "Use Permit" for off-street parking in a residential zone, as was the Petitioner in Case No. 68-177RX, and as is the Appellant in the instant case. In Marek, the Protestants argued the that the Use Permit requested by the petitioner was prohibited by BCZR § 500.12 because the petition filed for the Use Permit came less than 18 months after the entry of a final order in a prior case on the same property denying a petition for zoning reclassification. See §500.12, BCZR, for reference, **Appellant's Exhibit 9,**. Protestants

likened the petition for a "Use Permit" to a petition for a Special Exception, thinking that could easily block the permit application. However, the Court of Appeals found a "use permit" for off-street parking in a residential zone did not appear on the "Schedule of Special Exceptions" in BCZR § 270, and therefore was not the same thing as a "Special Exception."

In Hofmeister, the Court of Special Appeals found the BCZR actually refers to "special exceptions" in two different ways: (1) "special exceptions" (A.K.A. "the genus") a generalized grouping of zoning tools, all of which provide similar relief from the existing zoning regulations; and (2) "Special Exceptions" (A.K.A. "the species") a specific type of "special exception" that has its own set of rules and procedures, specifically outlined in BCZR § 502. See generally Hofmeister, 35 Md. App. at 699-700. In addition to "Special Exceptions" (the species), "special exceptions" (the genus) incorporate numerous other zoning tools, including "special permits;" "conditional uses;" "special uses" and "use permits." See id. at 699. The Court of Special Appeals found that under the BCZR, the Zoning Commissioner and Board of Appeals have specified powers with regard to "special exceptions;" and the Court clarified this broad reference encompassed more than simply "Special Exceptions" (the "species") (which are specifically addressed in BCZR §502). Use Permits were not included under §502 "special exception". Hofmeister in no way subjected "Use Permits" (then-governed by BCZR § 409.4, See for reference **Appellant's Exhibit 10**, now by §409.8) to the rules and procedures of "Special Exceptions" (governed by BCZR § 502).

> It is beyond cavil that the granting of a "Use Permit" for off-street parking in a residential zone under the provisions of 409.4 falls within this broad definition of "Special Exception." The Species "Use Permit" is indisputably a member of the Genus "Special Exception." It is also indisputably clear that

> the Baltimore County Council in 1960 used the term 'Special Exception' in its broad and generic sense.

Hofmeister, 35 Md. App. at 709. Consequently, the Court held that the Zoning Commissioner possessed the authority to grant Special Exceptions (the genus), and necessarily had the authority to grant the various species within that genus, including Use Permits. Id at 708-10.

In sum, two Maryland cases, in good standing, both of which originated in Baltimore County, hold that a 'Use Permit' is a 'Use Permit' and is not a §502, BCZR, 'Special Exception' subject to the §502 limitations. It does not change now. Neither Shapiro nor Sunrise is applicable. A 'Use Permit' is not subject to the two (2) year 'use it or lose it' provision governing Special Exceptions. The matter before this Court has nothing to do with the utilization of a building permit (the Board's reference to Shapiro), which is governed by different provisions and expectations.

See also Jacobs v. County Board of Appeals for Baltimore County, 234 Md 242 (1964), in which the Court of Appeals reiterated the Marek decision:

> *...(we held in Marek, supra, that the Use Permits granted under Section 409.4 did not constitute 'special exceptions')*
>
> *We reaffirm our decision in Marek.*

Id, 248, 249.

2. A Use Permit for business parking in a residential zone runs with the land.

The Use Permit granted in 1968 was a final adjudicatory order, binding on the property today. Use Permits approved pursuant to §409.4, BCZR (or §409.8 today) are not subject to the utilization requirement of §502.3. Therefore, the issue of 'vesting' as referred to by the Board is inapplicable. The zoning has not changed; the underlying use

of parking in a residential zone for business or industrial purposes was permitted in 1968 and it is still permitted in 2007. Only the nomenclature changed in 1970, from the 'R' zones to the 'DR' zones; the uses permitted in these residential zones have not changed.

The plain language of the BCZR establishes, and Maryland case law confirms, that Use Permits and Special Exceptions are distinctive forms of zoning relief. As such, with regard to the 1968 Use Permit, the Board of Appeals need only look to the order itself. Neither the order nor the law then in place required utilization.

Consequently, after the Zoning Commissioner granted the 1968 Use Permit, the owner could park vehicles on the Parking Parcel for business purposes. However, as with a variance, just because the owner chose not to immediately park vehicles on the Parking Parcel, or ceased using it for such, his right to do so was not foreclosed. *See* A. Rathkopf and D. Rathkopf, 3 *The Law of Zoning and Planning*, §58:23 (2006), attached as **Appellant's Exhibit 11**. In fact, the owner's right to utilize the 1968 Use Permit ran with the land, regardless of whether or not the owner utilized the Use Permit. *See id.* There is no time limitation imposed on its use by the BCZR. Its use is subject only to the discretion of the owner on whose property the Use Permit applies. Therefore, when Petitioner purchased the Property, it obtained not only the Parking Parcel, but also the right to park vehicles on that parcel, pursuant to the 1968 Permit.

3. The 1968 Use Permit is grandfathered.

Apparently, the Board's reference to Sunrise was an attempt to transcend the issue of what is and what is not a special exception and what is and what is not "utilization". In finding that the 1968 Permit somehow became non-conforming when the County Council enacted Bill 26-88 in 1988, the Board avoided these issues. According to the Board ". the

County Council enacted new off-street parking controls in Bill 26-88 in 1988." See Opinion, p. 5. The Board's conclusion that the Use Permit was not "vested" and is no longer valid somehow due to the passage of Bill 26-88 is in error. The Use Permit, the Board concludes, became invalid because whatever utilization there may have been was discontinued after the 1970's, and, then with the passage of Bill 26-88, the rules changed to somehow create a nonconforming use, which had been discontinued or abandoned. While the Board does not use the term "non-conforming", the Board's references to Bill 26-88 (comparing §409.4, BCZR, the applicable section in the BCZR in place in 1968, to §409.8, BCZR, the applicable section in the BCZR today) tends to draw a picture of a nonconforming use created by the adoption of Bill 26-88. The reference would make no sense otherwise.

A question left unanswered in the Board's decision is what changes in §409, BCZR, adopted in 1988 could create a nonconforming use? The answer is there were none. If business parking in a residential zone was permitted by Use Permit in 1968 and permitted in 2007, to what changes is the Board referring in order to support the application of the common law doctrine of "vested rights"? Bill 26-88 did not create nonconforming uses of use permits for parking in residential zones approved prior to its adoption. The Use Permit is not the use, the parking in a residential zone is.

The Board points to §409.1.A, BCZR, and states "...that parking is for accessory use for buildings to accommodate the persons using the buildings." See Opinion, p. 5. However, §409.1.A does not say or imply this. It cannot even be remotely read to support this conclusion. If the Board's reference somehow is intended to support the

conclusion that the 1968 Use Permit was not "vested", then its reliance on this section is misplaced.

The Board interpreted Bill 26-88 to more strictly curtail parking in residential zones, but it does not. At most, it adds criteria for the Zoning Commissioner to consider before determining whether a Use Permit should be granted or denied. Specifically, §409.8B.1.e.4, BCZR, refers to §502.1, BCZR, which was not referred to in §409.4. While this is a change, it makes no material difference in the criteria required nor does it in any way change the fact that a Use Permit is required for business parking in a residential zone. An applicant before the Zoning Commissioner or the Board of Appeals is not required to prove its case pursuant to the standards outlined in §502.1. It does not require adherence thereto. The clear language, the unambiguous language, is discretionary; it plainly indicates that if the Zoning Commissioner, or the Board, "deems necessary", the Use Permit may be granted or denied conditioned upon the "objectives" of §502.1. At best, BCZR § 409.8B.1.e.4 gives the Zoning Commissioner (or the Board, on appeal) the authority to consult BCZR § 502.1 when making the "use permit" decision, but it certainly does not require him to apply those conditions, nor does it automatically equate "Use Permits" with "Special Exceptions." "the Zoning Commissioner may either deny or grant a use permit conditioned upon: . . . (4) Any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1 of these regulations." BCZR § 409.8B.1.e.4 (emphasis added). The language added by Bill 26-88 does not "in materia" change or alter the use that is permitted in a residential zone by the

issuance of a Use Permit. A Use Permit continues to be a Use Permit and not a §502 special exception. Bill 26-88 did not create nonconforming uses.

The BCZR defines a "nonconforming use" as follows:

> [a] legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

§101, BCZR.

Although the term "use regulation" is not specifically defined in the BCZR, the Court of Appeals in Trip v. Baltimore, 392 Md 563, 573 (2006), held that "[a] valid and lawful nonconforming use is established if a property owner can demonstrate that before, and at the time of, the adoption of a new zoning ordinance, the property was being used in a then-lawful manner for a use that, by later legislation, became non-permitted." Further, the BCZR does not define "special regulation", but does specifically designate "special regulations" applicable in specific zones. See, e.g., BCZR §1B02.3 (providing "special regulations for certain existing developments or subdivisions and for small lots or tracts in DR Zones"); BCZR §235A (designating "special regulations for CCC Districts").

Under Maryland and Baltimore County law, a nonconforming use is only established when the use itself is no longer permitted by the Zoning Regulations or the use does not comply with certain "special regulations" enumerated in the BCZR.

Whatever changes made by the adoption of Bill 26-88, they neither mandated utilization nor required vesting. The changes did not create a nonconforming use for all use permits granted prior to the adoption of Bill 26-88. The use is the parking, not the use permit. The 1968 permit is grandfathered under the Baltimore County Zoning Regulations and, is therefore, still valid.

II. Business parking in a residential zone is not limited solely to customer and employee parking.

Even if the Board was correct in deciding that the 1968 Use Permit no longer is valid, the Appellant presented testimony and evidence to the Board sufficient to prove entitlement to a Use Permit under the current BCZR.

The Board concluded that §409.8, BCZR, does not allow inventory parking for car dealerships, implying that such parking can only be for customers or employees. The Board distinguished the 'housing of inventory' from the "accessory use by employees and customers for parking." See Opinion, p. 5.

The Board to justify the narrow context of its decision created the following syllogism: (a) "parking is for accessory use for buildings to accommodate the persons using the buildings" (see its interpretation of §409.1.A, BCZR); (b) housing of inventory is central to the principal use of a car dealership and is distinguishable from the accessory use by employees and customers for parking; and; therefore (c) (what is an "accessory use" after all), parking of inventory vehicles is not permitted. First, §101, BCZR, defines an accessory use and the Board's description of what constitutes accessory parking is contrary to that definition. Second, there is no language anywhere to which the Board can point that supports its conclusion. There is no language, explicit or implied, in §409, BCZR, generally, or in §409.8.B, specifically, limiting such business parking to customer and employees. §409.6, BCZR, delineate the parking spaces to be provided, nowhere does not categorize or characterize by purpose. See for reference **Appellant's Exhibit 12**. There is nothing in the law that is remotely ambiguous. The language is unequivocal and definitive. The distinction drawn by the Board is artificial and is contrary to the law.

The Board points to §233, BCZR. See for reference **Appellant's Exhibit 13.** This section provides area and bulk regulations for the BM zone. The Board is correct the BM zone permits new car dealerships. However, this is immaterial to the issuance of a Use Permit under §409, BCZR. Under §233, there are no parking requirements, not for any use. This is the purpose of §409; its reason to exist! §233 permit a myriad of uses, both by right and by special exception. Most, if not all, require parking, but not by §233, by §409! Parking for employees, customers, company vehicles, and inventory are not restricted, limited or the number dictated. If the Board's ruling stands, the end result would be to prohibit any retail use from parking its own vehicles on its parking lots. The use, area and bulk regulations of any zone are totally immaterial to a request for business parking in a residential zone. There is no limitation or any distinction in either §233, BCZR, or §409.8.B, BCZR, on the character of vehicles.

III. An applicant for a Use Permit need not establish that it cannot provide the minimum number of parking spaces under BCZR §409.6 as a prerequisite to obtaining a Use Permit.

Under §409.8.B.1, BCZR, the Zoning Commissioner "may issue" a use permit for the use of land in a residential zone for parking facilities "to meet the requirements" of §409.6, BCZR. §409.6 delineate the minimum number of parking spaces required for specific uses, contained and enumerated in chart format. Importantly, the law further provides if a particular use is not listed in the chart, the authority lies with the Director o the Department of Permits and Development Management ('PDM') to decide how many spaces a property owner must provide, in order to comply with §409.6. §409.6.A.2. New car dealerships are not listed in the chart and, therefore, the PDM director must determine the number of required spaces for such a use.

The Board's decision seems to require that before a Use Permit be approved, the applicant must prove that it cannot provide the number of on-site parking spaces required by §409.6. In other words, the Board's decision implies that a variance from §409.6 is a prerequisite for the granting of a Use Permit. According to the Board, before an applicant may seek to obtain a Use Permit, it must be incapable of providing the minimum number of spaces, and, thus, must only use the Use Permit for off-street business parking to 'meet' that requirement. For example, if an applicant under §409.8, BCZR, were to demonstrate to the Board that, pursuant to §409.6, it must have 25 parking spaces on-site to meet the minimum required, but only has room to provide 20 spaces, then the Board would be compelled to issue a Use Permit for 5 off-street business parking spaces in the residential zone to allow for applicant to 'meet' its requirements under §409.6.

The Board's rationale relies on the premise that a new car dealership's parking requirements are, as described above, somehow dictated by §233, BCZR, and by §409.6, BCZR; that is, if the car dealership use has the number of spaces on-site required by law, a Use Permit for parking on property located in a residential zone is ***ipso facto*** prohibited, says the Board. The Boards interpretation was based upon the arguments made by the Protestants at the hearing.

People's Counsel presented Jack Dillon, who the Board recognized as an expert in the zoning regulations of Baltimore County. Mr. Dillon opined that the inventory of vehicles proposed by the Appellant was not contemplated by §409.8.B, BCZR. (Board Hearing Transcript ("T"), 11/2/06, p. 186). His theory rested on two assumptions: the County Council did not intend for Use Permits to be granted for inventory parking and a

petition for variance from the BCZR parking regulations is a prerequisite for the granting of a use permit. Mr. Dillon summarized his argument during cross examination when he said "I believe the intent is to have the parking on the premises of the business. If [a property owner] can't meet that, then they may qualify to request for off-street parking in a residential zone." (T., 11/14/06, p 34). When asked if "as a predicate for the use permit, they have to prove they need a variance?", Mr. Dillon stated "I believe it is." (T., Id.) In other words, Mr. Dillon's argues that a property owner may only rely on a Use Permit to help provide the minimum number of parking spaces required under the BCZR for the business use at issue.

Following the hearing, the Board states in its order that: "There has been no evidence presented that the Petitioner could not meet the requirements under §409, since there is ample parking for employees and customers." Not only is the Board, as discussed above, incorrect in limiting its analysis solely to the provision of employee and customer parking (rather that new car inventory parking), but it is also incorrect in its assumption regarding the applicant's burden to show the parking facility must "meet" the requirements of §409.6, BCZR.

First of all, §409.6 does not ***limit*** (emphasis added) the number of parking spaces, but only requires a minimum number of parking spaces, pre-determined by use, if the use is listed. There is no limitation anywhere in the law to the number of parking spaces a use may have over and above the minimums provided in §409.6; that is, there is no mandated maximum. Therefore, an applicant may "meet" the requirements by providing the minimum number of spaces required under that Section, or any number of spaces in addition thereto e.g., if a minimum of 25 spaces is required, the landowner "meets" that

requirement by providing 25 spaces or 250 spaces. As such, the word 'meets', as used in §409.8, BCZR, cannot possibly imply that the applicant for a Use Permit may only obtain such a permit if the off-site parking would allow for the applicant to provide merely the minimum number of spaces for the business under §409.. This is true because §409.6 imposes no maximum and an applicant for a Use Permit would necessarily 'meet' its parking requirements by providing the minimum or any number in excess of the minimum.

Secondly, §409.8.B, BCZR, is not concerned with 'parking spaces' at all, especially the number of spaces. Rather, it relates generally to the parking of vehicles. Of course, the Zoning Commissioner may limit the number of spaces in issuing a Use Permit, consistent with the conditions and findings permitted and required under §409.8.B, but the section is clearly not concerned with, nor does it mandate, any particular number of parking spaces. In fact, the term 'parking space' appears nowhere within §409.8. It plainly and unambiguously relates to the regulation of vehicle parking for business purposes within a residential zone.

Lastly, even if §409.8.B were concerned with the number of spaces and somehow tied to the 'minimum number of spaces' requirements in §409.6, as the Board believes, in this particular case, the Board has still erred. As explained above, for new car dealerships, because the use is not listed in §409.6, the determination of the minimum number of required spaces resides with the Director of PDM, subject to review by the Zoning Commissioner. Discretionary to be sure, but this discretion is permitted by law. Therefore, when an applicant for a Use Permit under §409.8 requests the off-street business parking to support its new car sales business inventory which, as discussed

above, is permitted under §409, ~~8~~ in reviewing that application, the Zoning Commissioner (in conjunction with PDM) is necessarily reviewing and determining the minimum number of spaces required for that car dealership.

In other words, when a new car dealer decides that it has inadequate parking on site and applies for a Use Permit under §409.8, it is placing the issue before PDM and the Zoning Commissioner of exactly how many on-site parking spaces it needs for its business, pursuant to §409.6. Therefore, in approving a Use Permit for a new car dealer—as the Zoning Commissioner did for the Appellant in Case No. 03-360SPHA ~~the~~ Zoning Commissioner is, at the same time, determining that the new car dealer has not met the minimum number of on-site spaces required under BCZR §409.~~6 a~~ number that PDM and the Zoning Commissioner have the absolute discretion to determine. On the other hand, were the Zoning Commissioner to determine that the applicant did nor require additional parking spaces and, therefore, had the required number of spaces on-site, he would deny the Use Permit.

The Use Permit granted by the Zoning Commissioner in Case No. 03-360SPHA approved the parking of vehicles on the subject property, thus the approval 'met' the requirements of §409.6. The Zoning Commissioner decided after a public hearing that the requirements of §409.8.B had been satisfied, including the number of spaces the Appellant was to provide, thus concluded as a matter of law that the proviso contained in §409.6 had been met.

The Board's conclusion imposes a Draconian test for any commercial use that may decide it needs more parking, for whatever purpose. Accepting the Board's, and Mr. Dillon's, rationale would indisputably create a 'catch-22' for the business. ***First***, the

business would have to show that it does not meet the minimally required spaces on site; ***second***, a variance would be required for lack of spaces on site; ***third***, the business would be required to meet the BCZR §307 standards for a variance (i.e., practical difficulty, not self-created, and the satisfaction of the Cromwell v. Ward, 102 Md. App. 691 (1995) standards); ***fourth***, the variance would have to be granted before a Use Permit could be requested; and ***fifth***, if the variance were to be denied, then no number of spaces off-site could be permitted to meet that which is otherwise required by §409.6. This is not the scenario §409, BCZR, envisions.

CONCLUSION

The Board of Appeals has erroneously applied the law when it concluded that the Appellant has no right to utilize the 1968 Use Permit, which constitutes reversible error.

Further, the Board of Appeals erroneously applied the law when it concluded that inventory parking of vehicles is not included within the meaning of §409.8, BCZR, and denied the Applicant's request to do so. This failure to apply applicable law was arbitrary and illegal and thereby constitutes reversible error

Further, the Board of Appeals erroneously applied the law when it implied that a Use Permit for business parking in a residential zone may only be considered if the use of the off-site business parking will first support the minimum parking requirements on-site. This misinterpretation of the applicable law was arbitrary and illegal and thereby constitutes reversible error.

The Board of Appeals failure to abide by the statutory requirements in §409, BCZR, et. seq., constitutes reversible error.

The Final Order issued by the Board of Appeals is arbitrary, capricious and illegal, and constitutes reversible error.

Therefore, the Board's decision must be reversed.

Arnold Jablon
Venable LLP
210 Allegeheny Ave
Towson, Maryland 21204
410-494-6298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of July, 2007, copy of the foregoing Memorandum of Law were hand delivered to Peter M. Zimmerman., Esq., People's Counsel, Old Courthouse 400 Washington Ave., Towson, Maryland 21204.

Arnold Jablon

C-128/01

CIRCUIT COURT FOR BALTIMORE COUNTY
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Maryland Toll Free Number (800) 938-5802

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

Case Number: 03-C-07-004972 AA
Administrative Agency : 03-360SPHA
Administrative Agency : 06-109SPH
C I V I L

In the Matter of Auto Properties L L C

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 18th day of June, 2007.

Suzanne Mensh
Clerk of the Circuit Court

Box 547

Date issued: 06/28/07

TO: PETER ZIMMERMAN
People's Counsel For Baltimore County
Room 47 Courthouse
400 Washington Ave
Towson, MD 21204

6/18/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **03-C-07-4972**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *
NE/CORNER EAST AVE. & EAST AVE.
Case No.: 03-360-SPH *and* 06-109-SPH *

11th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD APPEALS AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY

RECEIVED
2007 JUN 18 P 1:37
CLERK OF THE CIRCUIT
BALTIMORE COUNTY

03-360-SPHA

Feb. 3, 2003	Petition for Special Hearing and Variance, along with property description, filed by Robert A. Hoffman, Esq., on behalf of Auto Properties, LLC.
Feb. 13, 2003	Entry of Appearance filed by Peter M. Zimmerman, People's Counsel and Carole S. Demilio, Deputy People's Counsel.
Feb. 27, 2003	Zoning Advisory Comments
Mar. 5, 2003	Notice of Zoning Hearing
Mar. 28, 2003	Certificate of Posting
Apr. 1, 2003	Certification of Publication
Apr. 16, 2003	Zoning Commissioner's Hearing/Sign-In Sheets
June 2, 2003	Deputy Zoning Commissioner's Findings of Fact and Conclusion of Law/Order – *GRANTING* – Petitioner's request subject to conditions and restrictions.
June 25, 2003	Letter of Appeal filed by People's Counsel.
June 30, 2003	Received file in the Board of Appeals.
	Blue Appeal Sign Posting Request issued by Board.
Aug. 4, 2003	Certificate of Posting signed by Gary Freund.
Sept. 15, 2003	Inter-Office Correspondence to Lawrence M. Stahl, Chairman from Arnold F. "Pat" Keller, III, Dir. Office of Planning – Summary of Recommendations. Memo stamped "**Received Post Appeal**."
Jan. 13, 2004	Letter from David H. Karceski, Esq. to Board Administrator requesting a postponement of the case due to a scheduling conflict.
	Note to notice file sheet – comments received 9/15/03 from Pat Keller – HOLD UNTIL ADOPTION OF 2004 Comprehensive Zoning Maps – possibly Moot.
Jan. 29, 2004	Hearing Postponed – to be resassigned.

Sept. 14, 2004	E-mail from Theresa Shelton, Secretary to the Board, to Robert A. Hoffman, Esq. of Venable.
Sept. 14, 2004	E-mail from Meg O'Hare – Carney CIA@msn.com to Theresa Shelton, Secretary to the Board
Sept. 21, 2004	Letter from People's Counsel to Board advising that the County Council voted against rezoning remains in place. Please reset this matter for hearing.
Oct5. 25, 2004	Notice of Assignment – Hearing
Jan. 6, 2005	Letter from Board Administrator to Ruth Baisden, President of the Greater Parkville Community Council regarding the withdraw of a request for postponement.
Jan. 6, 2005	In-House-Notes from 9/17/03 thru 1/6/05.
Jan. 24, 2005	Inter-Office Correspondence to Lawrence M. Stahl, Chairman from Arnold Keller, Dir., Office of Planning – Summary of Recommendations
Jan. 25, 2005	Case postponed on the record; re-set only on request.
Feb. 16, 2005	People's Counsel's Memorandum and Request for Hearing.
Apr. 8, 2005	Letter from Arnold Jablon, Esq. to the Board requesting a postponement of the May 24, 2005 hearing.
Apr. 15, 2005	Notice of postponement & reassignment of May 24, 2005 hearing.
July 21, 2005	Letter from Arnold Jablon, Esq. to Board stating that this matter may be moot and that he will be filing a petition for special hearing instead.
July 25, 2005	Notice of Continuance – No Reset Date

06-109-SPH

Aug. 23, 2005	Petition for Special Hearing/Zoning Description of Property
Aug. 30, 2005	Entry of Appearance by People's Counsel.
Sept. 9, 2005	Notice of Zoning Hearing
Sept. 25, 2005	Certificate of Posting

Sept. 27, 2005	Certificate of Publication
Oct. 12, 2005	Zoning Commissioner's Hearing/Sign-In-Sheets
Nov. 9, 2005	Finding of Facts and Conclusion of Law
Nov. 18, 2005	Notice of Appeal entered by People's Counsel.
Dec. 20, 2005	Letter from Timothy Kotroco, Dir./PDM to Arnold Jablon, Esq. that an appeal of the case had been filed with his agency on Nov. 18, 2005 by the Office of People's Counsel.
Dec. 21, 2005	File received in the Board of Appeals.
	Blue Appeal Sign Post Request
Feb. 2, 2006	Certificate of Posting by Jeff Radcliffe
Mar. 1, 2005	Notice of Assignment – Case Scheduled for May 4, 2006
Mar. 9, 2006	Letter from People's Counsel to the Board requesting a postponement.
Mar. 13, 2006	Notice of Assignment – Case Scheduled for June 21, 2006

CASE NO. 06-109-SPH & 03-360-SPHA

June 21, 2006 — Hearing before the Board – Day #1

PETITIONER'S EXHIBITS

1. Site Plan dated 1/21/05
2. Ariel photo of site & area – March 1995
3. Zoning Map – Ariel photo – 2002
4. 1955 Zoning Map of site area.
5. Reclassification Decision – 1968 – including plats
6. Photos A – K.
7. Jan. 24, 2005 letter from M. Schaffer to Board of Appeals.
8. Same plus handwritten notes.
9. June 14, 2006 letter from Newman to Board of Appeals.
10. Jan. 24, 2005 letter from Edwards to Board of Appeals.
11. A – G Affidavits of Petitioner's employees.
12. Curricula Vitia – David Martin
13. Russell case – 02-235-SPH (not appealed)
14. Entry of Appearance by People's Counsel.

APPELLANT'S EXHIBITS

1. Sign-In Sheet.
2. 1971 Comprehensive Zoning Map & 1966 Map - Showing changes to DR 5.5.
   A – 1971
   B – 1971
   C - 1966
3. Tax Assessments – Real Property Data Sheets & Maps.
4. Website excerpts of Honda.
5. Bill 28-06 – 3/20/06.
6. Attendance Sheet – 11/2/06.
7. BCZR (1963) BM Regs., Sec. 409.
8. 200 scale Ariel map done 4/2005.
9. Photos A – H.
10. Dillion – Resume
11. 2004 Comprehensive Zoning Map.
    11A. Overlay acetate
12. A – D Aerial photos (B & W) 1972 – 1982.
13. A – G Photos of Community – June 2005.
14. 1995 Photo enlargement of plat.
15. A – F Photos of site 6/30/05.
16. A – D Honda dealership 6/30/2005
17. Excerpts from 2010 Master Plan.
18. BCZR Sec. 409 - Off Street Parking.
19. Dillion proposed 2 lot subdivisions.
20. Affidavit & Rule 8 - Residence of Carney
21. Affidavit & Resolution under Rule 8 for Greater Parkville Community Council.
22. 4/20/2004 Greater Parkville Community Council 2004 Zoning Findings and Recommendations.
23. A – E photos.
24. 7 photos – collectively.
25. 6 photos – collectively.
26. 6 photos – collectively (5 photos)
27. Application by Auto properties for 2004 zoning process and letter attached.
28. Aug. 31, 2004 Final Log of Issues 2004 – Zoning Process.
29. Bill 26-88 Balto. Co. Council Bill.
30. Council Notes – Bill 26-88.
31. 1970 Bill 100.
32. Excerpts from RTA provision 1B01.
33. Section 233 of the BCZR – Business Major.
34. BCC 32-4-104.

35A.Co. Board of Appeals – 97-513-SPH – Aug. 1998.

35B.Circuit Court for Baltimore. Co. 12/4//2001 – The Honorable J. Cahill.
36A. 12/21/2004 - Case No. 04-052-SPHA.
36B. Circuit Court for Baltimore Co. Opinion/Order of 4/21/05 from The Honorable Judge Cavanaugh.
36C. Remand of 9/19/2005.
37. County Board of Appeals decision of 6/22/2005 in case no. 05-176-SPHXA.

Jun 22, 2006	Notice of Assignment – Day #2 - Hearing.scheduled for Nov. 2, 2006.
Nov. 2, 2006	Hearing before the Board – Day #2.
Nov. 8, 2006	Notice of Assignment – Day #3 – Hearing scheduled for Nov. 14, 2006.
Nov. 14, 2006	Hearing before the Board – Day #3.
Nov. 29, 2006	Notice of Deliberation – Deliberation set for Jan. 23, 2007.
Dec. 18, 2006	Petitioner's Post-Hearing Memorandum filed by Arnold Jablon, Esq. and David Karceski, Esq.
Dec. 19, 2006	People's Counsel for Baltimore County's Memorandum.
Jan. 23, 2007	Board publicly deliberated.
Apr. 6, 2007	Board issued its Opinion/Order. The Board Ordered that the Petition for Special Hearing filed in Case No.: 06-109-SPH, seeking approval that the use permit granted for off street parking in Case No.: 68-177-RX on March 14, 1968 is valid and that the subject property may be utilized pursuant to the use permit and in accordance with the Petitioner's request, was DENIED; and it was further Ordered that the special hearing relief requested in Case No.: 03-360-SPHA, to allow business parking in a residential zone to include the storage of new unlicensed passenger vehicles, was DENIED.
May 14, 2007	Notification from the Circuit Court that a Petition for Judicial Review was filed on May 2, 2007.
May 14, 2007	Certificate of Notice filed by the Board of Appeals.
June 4, 2007	Response to Petition for Judicial Review.

June 7, 2007 Transcript of Proceedings filed.

June 18, 2007 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered before the Board.

Respectfully submitted,

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals of Baltimore County
400 Washington Avenue, Room 49
Towson, MD 21204 (410) 887-3180

c: Peter Max Zimmerman,
People's Counsel
Arnold Jablon, Esq.
Timothy Kotroco, Dir./Permits &
Development Management

6/4/07

IN THE PETITION OF **AUTO PROPERTIES, LLC** FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
IN THE CASE OF **AUTO PROPERTIES, LLC,** LEGAL OWNERS/PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE NE corner East Avenue & East Avenue Relocated; Eside East Avenue; 34 feet to centerline East Avenue	*	FOR
11th Election District, 6th Councilmanic District	*	BALTIMORE COUNTY
Case Nos. 03-360-SPHA & 06-109-SPH Before the County Board of Appeals	*	Case No.: 03-C-07-4972

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, RUTH BAISDEN, MARGARET O'HARE, DARYL CORONA, AND JACKIE MEGEE , in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by AUTO PROPERTIES, LLC, and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

Ruth Baisden
RUTH BAISDEN
Greater Parkville Community Council
7706 Oak Avenue
Baltimore, Maryland 21234

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Meg O'Hare
MARGARET O'HARE
Carney Improvement Association
3012 Summit Avenue
Baltimore, Maryland 21234

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

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2007 JUN -4 P 2:20
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

24

DARYL CORONA
3106 East Avenue
Baltimore, Maryland 21234

JACKIE MEGEE
3112 East Avenue
Baltimore, Maryland 21234

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of ~~May,~~ June 2007, a copy of the foregoing Response to Petition for Judicial Review was mailed to:

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204

Kathleen C. Bianco, Administrator
County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

5/14/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **03-C-07-4972**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *
NE/CORNER EAST AVE. & EAST AVE.
Case No.: 03-360-SPH *and* 06-109-SPH *

11th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT

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

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

ARNOLD JABLON, ESQUIRE
VENABLE, BAETJER & HOWARD, LLP
210 ALLEGHENY AVENUE
TOWSON, MD 21204

PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
OLD COURTHOUSE – RM 47
400 WASHINGTON AVENUE
TOWSON, MD 21204

RECEIVED AND FILED
2007 MAY 14 A 11: 03
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

MR. DENNIS TURNBAUGH
MILEONE-HERITAGE
3001 EAST AVENUE
BLATIMORE, MD 21234

MR. THOMAS CHURCH
DEVELOPMENT ENGINEERING
6603 YORK ROAD
BALTIMORE, MD 21204

MS. JACKIE MEGEE
3112 EAST AVENUE
PARKVILLE, MD 21234

MR. ANTHONY MARCHANTI
3021 EAST AVENUE
PARKVILLE, MD 21234

MR. & MRS. JOHN B. BAKER, JR.
2307 ELLEN AVENUE
BALTIMORE, MD 21234

MS. RUTH BAISDEN
7706 OAK AVENUE
BALTIMORE, MD 21234

MS. MEG O'HARE
3012 SUMMIT AVENUE
CARNEY, MD 21234

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that on this 14th day of May, 2007, a copy of the foregoing Certificate of Notice has been mailed to:

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

County Board of Appeals of Baltimore County

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

May 14, 2007

ARNOLD JABLON, ESQUIRE
VENABLE, BAETJER & HOWARD, LLP
210 ALLEGHENY AVENUE
TOWSON, MD 21204

RE: Circuit Court Civil Action No. 03-C-07-4972
Petition for Judicial Review
Auto Properties, LLC
Board of Appeals Case No.: 03-360-SPHA *and* 06-109-SPH

Dear Mr. Jablon:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410- 486-8209
HEARING DATE(S): 6/21/2006, 11/02/2006 *and* 11/14/2006

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by July 2, 2007, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure
c: Carolyn Peatt, Court Reporter
People's Counsel for Baltimore County

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County Board of Appeals of Baltimore County

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

May 15, 2007

PEOPLE'S COUNSEL
FOR BALTIMORE COUNTY
OLD COURTHOUSE – RM 47
400 WASHINGTON AVENUE
TOWSON, MD 21204

RE: Circuit Court Civil Action No. 03-C-07-4972
Petition for Judicial Review
Auto Properties, LLC
Board of Appeals Case No.: 03-360-SPHA *and* 06-109-SPH

Dear Mr. Zimmerman:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on May 2, 2007 in the Circuit Court for Baltimore County, *and retrieved by the Board of Appeals on May 11, 2007,* from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No. 03-C-07-4972**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

Enc.

c: Arnold Jablon, Esq.
William J. Wiseman, III
Zoning Commissioner
Timothy M. Kotroco, Dir./PDM
Arnold F. Keller, III, Dir.
Office of Planning
Anthony Marchanti
Mr. & Mrs. John Baker, Jr.
Meg O'Hare/Carney Improve. Assoc.
Dennis Turnbaugh/Mileone-Heritage
Thomas Church/Development Engr.
Steven Fader
Daryl Corona
Jackie Megee
Mildred Schaffer
Tom Edwards
Ruth Baisden/Greater Parkville Comm.

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5/2/07

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF Auto Properties, LLC *
23 Walker Ave.
Baltimore, Maryland 21208 *

FOR JUDICIAL REVIEW OF THE DECISION *
OF THE BALTIMORE COUNTY BOARD OF APPEALS
Old Court House *
400 Washington Ave.
Towson, Maryland 21204 *

IN THE CASE OF: Civil Action No.
CBA No. 03-360SPHA and CBA 06-109SPH *
NE/Corner East Ave. and East Ave. Relocated
~~C-07-4907~~
C-07-4972

RECEIVED AND FILED
2007 MAY -2 P 4:25
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

* * * * * * * * * *

PETITION FOR JUDICIAL REVIEW

Petitioner, Auto Properties, LLC, by its attorney, Arnold Jablon, Venable, LLP, pursuant to Rule 7-201, et. seq., hereby request judicial review of the final decision of the Baltimore County Board of Appeals filed in the above entitled matters, and in connection therewith state:

1. Petitioner was a party to the proceeding before the County Board of Appeals;

2. The decisions sought to be reviewed are:
   (a) The denial in Case No. 06-109SPH of Petitioner's request to confirm the validity of a use permit granted in 1968 by the then Zoning Commissioner of Baltimore County for off-street parking, and

RR
cc: Jablon, Balto Co Bd of Appeals.

(b) The denial of Petitioner's request for special hearing to permit "business" parking in a residential zone to include the storage of new unlicensed passenger vehicles.

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

Attorney for Petitioner

Certification of Service

IT IS HEREBY CERTIFIED that copies of the foregoing Petition for Judicial Review were delivered to the Baltimore County Board of Appeals, Old Court House, Towson, Maryland 21204; Timothy Kotroco, Director of the Department of Permits & Development Management, County Office Bldg, Towson, Maryland 21204; and to Peter M. Zimmerman, Esq., People's Counsel for Baltimore County, Old Court House, Towson, Maryland 21204, on this 2ND day of MAY 2007.

Arnold Jablon

VENABLE® LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

1-May-07

Clerk, Administrative Appeals
Circuit Court for Baltimore County
New Courts Bldg
401 Bosley Ave.
Towson, Maryland 21202

Re: Petition for Judicial Review
In Re: The Application of Auto Properties, LLC
NE/Corner East Ave and East Ave. Relocated
CBA No. 03 -360 SPHA and
CBA No. 06-109SPH

Dear Clerk:

Please file the enclosed Petition for Judicial Review in the above-entitled matter, for which I enclose my check in the amount of $115.00 in payment of filing costs. A copy of this Petition has been delivered to the Baltimore County Board of Appeals and to the Director of the Baltimore County Department of Permits and Development Management this date, and a copy to Peter M. Zimmerman, Esq., People's Counsel for Baltimore County.

Sincerely,

Arnold Jablon

c: County Board of Appeals
Timothy Kotroco, Director, PDM
Peter M. Zimmerman, Esq., People's Counsel for Baltimore County

4/6/07

IN THE MATTER OF THE APPLICATION OF AUTO PROPERTIES , LLC NE/CORNER EAST AVENUE AND EAST AVENUE RELOCATED	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
11TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	CASE NO.: 03-360-SPHA AND CASE NO.: 06-109-SPH

* * * * * * * * * * *

OPINION

These cases are before the Baltimore County Board of Appeals on appeals of the decisions of the Zoning Commissioner, in Case No. 06-109-SPH, in which the Zoning Commissioner granted special hearing relief, and in Case No. 03-360-SPHA of a decision from the Deputy Zoning Commissioner in which petitions for special hearing and variance relief were granted with restrictions. The Petitioner was represented by Arnold Jablon, Esquire. People's Counsel appealed both the Zoning Commissioner's and the Deputy Zoning Commissioner's decisions and various individuals, as well as the Greater Parkville Community Council and the Carey Improvement Association, also appeared to protest the decisions.

Hearings were held on January 25, 2005, June 21, 2006, November 2, 2006 and November 14, 2006. A public deliberation was held on January 23, 2007.

Background

Auto Properties, LLC, hereinafter referred to as "Petitioner," owns the unimproved parcel located at the intersection of East Avenue relocated and East Avenue in Carney. This rectangular parcel is approximately 148 feet wide and 287 feet deep and contains a gross area of 38,250 square feet, or 0.8781 acre, more or less. It is predominately zoned D.R.5.5 with a small sliver of B.M. property along the north and western boundaries. The property is surrounded on

three sides by the Heritage Honda and Chrysler Plymouth automobile dealerships which are located across East Avenue from the subject site.

The subject property could not be used for business parking without prior zoning approval. In February of 2003, the Petitioner, in Case No. 03-360-SPHA, filed a request for a use permit and variances for business parking of its Honda automobile inventory on the subject property, which, as previously stated. is zoned primarily D.R.5.5. On June 2, 2003 the Deputy Zoning Commissioner, Timothy M. Kotroco, issued an Opinion approving the use permit and variances subject to certain conditions.

People's Counsel appealed his decision to the County Board of Appeals (CBA). While the matter was pending before the CBA, the Petitioner requested that the case be deferred while it applied to the County Council to legislatively reclassify the contested parcel from D.R.5.5 to B.M. zoning. Such rezoning would have allowed parking of the inventory by right as a part of the new car dealership use in a B.M. zone. However, the County Council voted in October 2004 to retain the existing D.R.5.5 density residential zone on the property.

While the matter was still pending before the CBA, Petitioner discovered a 1968 Zoning Commissioner decision which approved a use permit for business parking of automobiles on the subject parcel subject to the requirements of § 409 of the *Baltimore County Zoning Regulations* (BCZR) and subject to the approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

The Petitioner then filed a request for special hearing to confirm that the use permitted for off-street parking on the subject property, which was granted in Case No. 68- 177-RX on

March 14, 1968, was valid and that the subject property may be utilized pursuant to the use permit.

On November 9, 2005, the Zoning Commissioner found that the use permit granted for off-street parking, in Case No. 68-177-RX, on March 16, 1968, was valid and that the subject property could be utilized pursuant to that use permit in accordance with the Petitioner's site plan.

Case No. 06-109-SPH

People's Counsel argues several points with respect to the use permit granted by the Zoning Commissioner in the 1968 case. First, he argues that Harford Warehouse Corporation, the Petitioner in the 1968 case, did not fulfill the requirements of the decision rendered by the Zoning Commissioner in that the site plan was never approved by the Bureau of Public Services and the Office of Planning and Zoning, and there was no evidence that the requirements of § 409 of the BCZR (as the regulation stood at that time) were met. In any event, People's Counsel contends that Harford Warehouse Corporation and subsequent owners, including the Petitioner herein, never acquired vested rights in the use permit for parking on the subject property. In support of its position, People's Counsel cites *Mayor & City Council v. Shapiro* 187 Md. 623, 51 A.2d, 273 (1947). In that case the court stated:

> The mere issuance of a permit, where the permittee has not commenced the work or incurred substantial expense on the faith of it, does not create a vested right or stop the municipal authorities from revoking it.

People's Counsel contends that the subsequent Rural Transition Area (RTA) legislation passed by the Baltimore County Council, as well as subsequent amendments to § 409 of the BCZR,

invalidated the 1968 decision granting the use permit for parking in the D.R. Zone, because the use was never utilized.

The Petitioner presented six affidavits, five from employees and one from a person who had lived in the neighborhood, stating that they witnessed cars being parked on the property for storage and knew that these cars were moved to the sales lot for sale when needed.

Petitioner presented James Abbott who was employed by the previous owner, Doug-Griffith Chrysler Plymouth, since 1970 and employed by Heritage, the present owner, since 1999. He stated that they used to park wrecked cars on the lot and also stored some used cars there. He stated that in 1986 the company opened a Saturn store in Glen Burnie and stored Saturn automobiles on the lot. He also stated that since the 1980's the company has not stored cars on the lot.

Several witnesses presented by the Protestants indicated that they could not remember cars ever being stored on the lot except possibly during the construction phase of one of the buildings, when some of the employee parking was disrupted. Other than that, they could not remember seeing cars stored on the lot at any time. One witness, who lived in the area for 47 years, stated that nothing had been done with the lot since Doug Griffith had owned the lot. One of the individuals presented photographs of tractor-trailer car carriers unloading on East Avenue in the neighborhood and a trailer unhitched being parked on East Avenue in the neighborhood. In addition, the neighbors complained that cars would be test driven on their street, East Avenue, by prospective buyers thereby increasing the traffic on the road.

The Board feels that a vested right for parking has not been obtained by the Petitioner. The Board cites the case of *Sunrise Development*, 330 Md. 307, 410-411 in which the court stated:

> Generally in order to obtain a vested right in an existing use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning and construction and committing the land to the permitted use before the change in the zoning ordinance has occurred.
>
> * * * * *
>
> ...in Maryland it is established that in order to obtain a "vested right" in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance; (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. See *Feldstein v. LaVale Zoning Board*, 246 Md. 204, 211, 227 A.2d 731,734 (1967), indicating that [*Mayor and City County v. Shapiro*], 187 Md. 623, 51 A.2d, 273 (1947) as well as *Chayt v. Board of Zoning Appeals* 177 Md., 426, 9 A.2d 747 (1939) established as one of the test for determining the existence of a nonconforming use "is whether such use was known in the neighborhood." 254 Md. 255-56, 255 A.2d 404.

It seems clear to this Board that the parking use was not vested in that, while cars may have been parked on the lot during several occasions in the 1970's, the lot has not been used for parking since the 1980's. Moreover, the County Council enacted new off-street parking controls in Bill 26-88 in 1988. Section 409.1.A of the BCZR indicates that parking is for accessory use for buildings to accommodate the persons using the buildings.

The housing of inventory is central to the principal use of a car dealership. It is distinguishable from the accessory use by employees and customers for parking.

Section 409.8 states as follows:

B. Business or Industrial Parking in Residential Zones.

1. Upon application, the Zoning Commissioner may issue

> a use permit for the use of land in a residential zone for parking facilities to meet the requirements of Section 409.6 under the following procedure:
> * * * * *

Section 409.6 sets forth the number of parking spaces that should be available for buildings or homes depending upon their size. It does not contemplate the parking of inventory of new or used car dealers. New car dealerships are dealt with in § 233 of the BCZR. Since § 409 of the BCZR was amended or rewritten in 1988, to more strictly curtail parking in residential zones, the unvested parking use granted in the 1968 Zoning Commissioner's decision did not survive.

Case No.: 03-360-SPHA

In this case, the Petitioner filed a request for special hearing to permit business parking in a residential zone to include storage of unlicensed passenger vehicles. It also requested a variance to permit a 25-foot buffer and 25-foot set back in lieu of the required 50-foot RTA buffer and 75-foot RTA set back.

The Zoning Commissioner granted the use permit and the variances without even considering § 409 of the BCZR. As stated above, it is the position of this Board that § 409 pertains only to accessory parking provided for employees and customers. To reiterate, § 409.8.B.1 allows the Zoning Commissioner to issue a permit for the use of land in a residential zone for parking facilities to meet the requirements of § 409.6 of the BCZR. There has been no evidence presented that the Petitioner could not meet the requirements under § 409.6 since there is ample parking for employees and customers. The sole purpose of the request for special hearing is to park inventory of automobiles on the lot. The Board feels that this is not warranted in this situation.

Since the Board has found that an inventory of new cars could not be parked on the lot in accordance with § 409 of the BCZR, the Board sees no reason to discuss the RTA questions regarding variances to the buffers.

ORDER

THEREFORE, IT IS THIS 6th day of April, 2007 by the County Board of Appeals of Baltimore County

ORDERED, that the Petition for Special Hearing filed in Case No. 06-109-SPH, seeking approval that the use permit granted for off street parking in Case No. 68-177-RX on March 14, 1968 is valid and that the subject property may be utilized pursuant to the use permit and in accordance with the Petitioner's request, be and the same is hereby **DENIED**; and it is further

ORDERED that the special hearing relief requested in Case No. 03-630-SPHA, to allow business parking in a residential zone to include the storage of new unlicensed passenger vehicles, be and is hereby **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Lawrence M. Stahl

Wendell H. Grier

County Board of Appeals of Baltimore County

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

April 6, 2007

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

RE: *In the Matter of: Auto Properties, LLC;*
Case No. 06-109-SPH and Case No. 03-360-SPHA

Dear Mr. Zimmerman:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office 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,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Arnold Jablon, Esquire
Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader
Daryl Corona
Jackie Megee
Mildred Schaffer
Anthony Marchanti
Tom Edwards
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

12/19/06

RE: PETITION FOR SPECIAL HEARING AND VARIANCE NE corner East Avenue & East Avenue Relocated; Eside East Avenue; 34ft to Ctrline East Avenue 11th Election District, 6th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Legal Owner(s): Steve B. Fader, Managing Member Auto Properties, LLC Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 03-360-SPHA & 06-109-SPH

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BALTIMORE COUNTY
BOARD OF APPEALS

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

People's Counsel for Baltimore County's Memorandum

This memorandum shall cover the key issues in a topical format, beginning with an overview and then addressing each specific issue. An important theme is that it is particularly important to approach these companion cases with a holistic perspective, and with due regard to context.

I. Preface: How we got here: an overview
"What's it all about, Alfie?"("Are we meant to take more than we give?")

a. The procedural context: a tale of two petitions, a rezoning application, and some ancient history.

Case No. 03-360-SPHA involves Petitioner Auto Properties, LLC's request for a use permit and variances for business parking of Honda automobile inventory in a residential zone. This petition was filed in February, 2003. Deputy Zoning Commissioner Kotroco issued an opinion on June 2, 2003 approving it, subject to conditions. The County Board of Appeals (CBA) postponed the trial of People's Counsel's appeal for two reasons. In 2004, Petitioner requested that the case be deferred while it applied to the County Council to reclassify legislatively its contested parcel to the Business-Major

Zone. Such a rezoning would have allowed parking of inventory by right as part of a permitted B.M. Zone new car dealership use. But the County Council voted in October, 2004 to retain the existing D.R. 5.5 Density Residential Zone. Of this, more later.

In 2005, as the case resumed at the CBA, Petitioner discovered a 1968 Zoning Commissioner decision, which approved a use permit for parking on the site for Harford Warehouse Corporation. This prompted another request for postponement. Petitioner subsequently filed a special hearing to determine whether this 1968 approval effectively approves the current request. Zoning Commissioner William Wiseman granted this petition on November 9, 2005. People's Counsel thereupon filed a second appeal

The use permit application brings into play special exception standards along with other requirements. It is accompanied by a request for variances to residential transition area (RTA) setbacks. Separately, "The special hearing is, in legal effect, a request for a declaratory judgment." Antwerpen v. Baltimore County 163 Md. App. 194, 209 (2005). Here, it concerns the relevance or impact of the 1968 ZC decision.

The CBA has consolidated both appeals for hearing. It should be kept in mind that both appeals are *de novo* under Charter Sec. 603. As the CBA knows, the *de novo* nature of the hearing means that it proceeds as if the proceedings below had not occurred. Hill v. Baltimore County 86 Md. App. 642, 655 (1991); Pollard's Towing v. Berman's Body & Mechanical 137 Md. App. 277, 288 (2001).

b. The use permit and RTA variances: Case No. 03-360-SPHA

To evaluate properly the merits of the proposed use permit and variances, the CBA should focus on the entire assemblage of business parcels and constellation of Mile One

auto dealerships bordering Harford Road zoned for business uses. The CBA should also consider the history of the area and the classic purpose of a borderline residential zone to provide a measure of protection for the East Avenue residential neighborhood. This understanding helps resist the temptation to isolate the residentially zoned parcel at the center of the controversy and imagine that its continuing function as a transition area is oppressive to the Mile One enterprise.

The real issue is whether Mile One's recent drive for aggrandizement and increased revenue justifies further penetration and adverse impact in an established community of single-family homes. A careful review of the law will demonstrate that the proposed inventory parking is actually not a permitted use in the residential zone. Even if it were, the proposal does not meet the standards applicable to accessory business parking in a residential zone. Nor does it satisfy the criteria for variances. The County Council's 2004 decision to retain the residential zone classification confirms and reinforces the legislative intent to reject the proposed encroachment.

c. The Special Hearing relating to the 1968 Harford Warehouse Corporation use permit: Case No. 6-109-SPH.

This involves the claim that a 1968 use permit issued to Harford Warehouse Corporation (HWC) for parking on the property survives to allow the current request. Because of the complex history, it requires a more detailed and elaborate response.

Attention must be paid, first of all, to the specific conditions in the 1968 permit approval, which never were satisfied. Therefore, the permit never became valid or effective. This reflects HWC's obvious failure to pursue or consummate the permit

approval. Correspondingly, the parcel has remained vacant grassland for the last 36 years, with the exception of occasional parking during construction of the Honda new car facility a few years ago.

It also bears repetition that the context is important. The 1968 case involved a substantially different site plan and more modest principal use. This goes along with an understanding of the differences in the neighborhood. As pointed out by several witnesses, the business uses along Harford Road in the 1960s tended to be neighborhood uses. The traffic was moderate compared to today. Now, we are dealing with a conglomerate regional assemblage of auto dealerships in a highly congested area with a nearby deficient traffic intersection at Harford and Joppa Roads. There is really no legitimate comparison between the 1968 use permit and the permit requested in 2006.

There also have been substantial changes in the law since 1968. Bill 100, 1970, replaced the R-6 Zone with the D.R. 5.5 Zone, a successor zone which nevertheless has significant differences from its predecessor. More important, Bill 100 established controls on residential transition areas, which survive in amended form to this day in BCZR 1B01.1.B. The 1968 permit did not conform to these controls, in the same way that the current request conflicts with applicable setback and buffer requirements. Separately, in 1988, the County Council enacted comprehensive new offstreet parking controls in Bill 26-88. Significantly here, the new BCZR 409.1 stated explicitly that its intended target is accessory offstreet parking. The new BCZR 409.8.B established an entirely new and stricter set of standards for business parking in a residential zone. The 1968 permit did not conform to these standards. Therefore, even if the 1968 permit conditions had been

satisfied and the use had become operational, it would have become nonconforming under the 1970 RTA and 1988 offstreet parking standards, so the new Honda dealership use would be subject to review under the current law in any event.

II. The relevant property, area, history, and expansion "The Octopus."

The .8 acre parcel targeted for additional Heritage Honda inventory parking is part of an assemblage of parcels occupying about 5 acres. The property owner is Auto Properties, LLC. Through its corporate family, "Mile One" now operates four Mile One auto dealerships: Honda, Jeep, Chrysler, and (most recent) Volkswagen.

Auto Properties purchased the parcels from Barbara Griffith in 1999. See People's Counsel's (App.) Exh. 3. Doug Griffith Honda had operated a single Honda dealership there for many years. There also had been a mix of other commercial uses, such as Rice's Bakery. Their impact on the East Avenue residential area was moderate.

Since taking over, Mile One has expanded the Honda dealership, built a new modern facility on the south side of East Avenue, and added three other dealerships closer to Harford Road. This expansion reflects the trend toward "megadealerships" or conglomerate facilities. See Heritage Honda and Mile One Websites. App. Exh. 4.

Unfortunately, as neighboring residents have shown, the expansion has already had a major adverse impact.. Additional commercial traffic has aggravated congestion problems on East Avenue and hindered access to Harford Road. More directly, residents have suffered from the parking, loading, and unloading of tractor-trailers at the S-turn of East Avenue relocated and from test-drives up and down East Avenue.

Mile One now wants to take its expansion even further, into the residential zone which has functioned as a transition area for many years. It is a kind of gateway. Each incremental expansion puts more pressure on the neighborhood.

The bottom line is that Mile One's latest drive for expansion goes too far. In the context of the size, location, and zoning of the property, adjoining an established neighborhood of single family homes, it is time to say no. Auto Properties and Mile One must live within the boundaries of their Business Zone. They should also make efforts to reduce the adverse impact already attributable to their expansion.

III. The 2004 comprehensive zoning map process (CZMP) "Thus spoke the Council."

The 2004 CZMP is a microcosm of this entire case. It both reflects and corroborates the legislative intent that this .88 acre transitional residential zone be kept be preserved and protected from the expansion of the dealership complex. Auto Properties, LLC put its chips down when it filed Issue 6-032 to request reclassification to the BM Zone. PC Exh. 27. The County Council Log of Issues records the legislative decision to retain the D.R. 5.5 Zone. PC Exh. 28.

While it is true that a legislative reclassification would have, on paper, opened up the property to any permitted BM Zone use, it was obvious that the request directly related to the property owner's desire to extend inventory parking for Heritage Honda. The 2004 CZMP issue file, in PC Exh. 27, includes a key letter from attorney David Karceski. It is worth reviewing the entire letter:

> "This firm represents Auto Properties, LLC with respect to the above-referenced zoning reclassification request for its property of approximately 0.88 acres located on East Avenue, west of Harford Road in Carney. Auto Properties operates a car dealership at this location, which has been so used since the 1960s. To better accommodate the

dealership's growing volume of customers, an additional parking area is needed for storage of new automobile inventory.

In June of this year, Auto Properties obtained the zoning relief necessary to provide for the additional vehicle storage in Case No. 03-360-SPHA. A copy of the Order and site plan approved in the case is attached for your review. In granting the requested relief, the Deputy Zoning Commissioner imposed conditions that Auto Properties maintain an 85' x 130' "grassy" area along East Avenue and a 25' wide buffer between the vehicle storage area and an adjacent dwelling located at 3018 East Avenue. Our client fully intends to abide by the conditions in the Order and is filing this reclassification request to BM in order to validate the relief granted. We believe the Deputy Zoning Commissioner's decision is fair to the surrounding neighbors and Auto Properties.

The subject property is located in the vicinity of a stretch of Harford Road occupied by automobile dealerships, automotive service-related and other similar uses. If rezoned, Auto Properties would be permitted to use this pocket of vacant land for additional automobile parking, consistent with the auto storage lots directly to the north and south of the property. Given the surrounding commercial land uses and close proximity to Harford Road, the requested rezoning is appropriate.

For these reasons it is respectfully submitted that, as shown on the attached exhibit, the portion of the property zoned DR 5.5 be reclassified to BM."

The thrust of the application for reclassification thus tracked exactly the pending request for use permit for parking in a business zone. Correlatively, the Greater Parkville Community Council (PC Exh. 22), the Carney Improvement Association, and interested neighbors participated in the 2004 CZMP to express their opposition to the rezoning.

It should be noted that People's Counsel, in light of its function to defend the comprehensive zoning maps, does not take a partisan position during the CZMP with respect to the merits of a proposed legislative rezoning. Rather, it defends the Council's decision in accordance with the law pertinent to comprehensive zoning. Therefore, People's Counsel stood aside as the 2004 CZMP proceeded. The office would naturally respect the legislative determination.

Despite the differences between the legislative process and the administrative process, they ran parallel in this case. In a sense, the CBA administrative litigation moved

over to the County Council for the duration of the 2004 CZMP. Had the Council reclassified the property to B.M., the administrative litigation would have been moot. When the Council determined to retain the residential zoning classification, the case came back downstairs to the CBA hearing room.

While considerations and standards with reference to use permits for business parking and RTA variances differ from the criteria for legislative judgments, there is an area of interrelationship. The criterion of consistency with legislative intent applies to use permits, to the incorporated special exception standards, and to variances. A contemporaneous decision by the County Council to reject the legislative reclassification directed to the same result sends a clear message here that the use permit and variances would also undermine the legislative intent.

IV. The proposed use permit
"We must protect this corner."

a. Automobile dealership inventory parking is not a permitted use in the D.R. 5.5 Zone and is not authorized under the guise of accessory business parking under BCZR 409.8.B. As the CBA knows, the BCZR use regulations are set up in a structure with permitted uses by right and special exception enumerated affirmatively within each zoning classification. If a use is not listed, then it is prohibited. BCZR 102.1. Kowalski v. Lamar 25 Md. App. 493 (1975). In the B.M. Zone (PC Exh. 33), BCZR 233.2 lists among the uses permitted by right:

> "New automobile sales facility and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operation on the highways may not be stored outdoors."

In turn, BCZR 233.2B allows, in pertinent part:

> "Accessory uses or structures, ... garages and parking spaces for the use of owners, employees, tenants and invitees. ..."

These provisions mesh with BCZR 409.1.A, the introductory subsection to the offstreet parking law (PC Exh. 18), which begins,

> "All structures built and all uses established hereafter shall provide accessory offstreet parking and loading in accordance with the following regulations. When an existing structure or use is enlarged, accessory offstreet parking and loading shall be provided in accordance with the following regulations for the area or capacity of such enlargement."

The detailed requirements of BCZR 409.6 with respect to minimum offstreet parking for each type of use corroborate that BCZR 409 in its entirety addresses accessory offstreet parking for owners, employees, tenants, and invitees.

There is no dispute that a new automobile sales facility is not a permitted use in the Density Residential Zones. BCZR 1B01. Indeed, it is one of the more intense and troublesome business uses where located near residential areas.

In the case of a new automobile sales facility, the housing of automobile inventory is central to the principal use ("A main use of land, as distinguished from an accessory use. BCZR 101"). This is clearly distinguishable from accessory owner, employee, tenant, and invitee parking. Indeed, the size of the inventory affects the principal use area, which then generates the need for accessory parking. Because the BCZR 409.8.B allowance for business parking in residential zones is conceptually limited to accessory parking, Auto Properties, LLC's request does not qualify for consideration.

If it is argued that inventory parking involves less movement and impact than accessory parking, the answer is threefold. First of all, as explained above, the law has

resolved to address offstreet parking to accessory parking. Secondly, the size of inventory reflects the magnitude of dealership operations, and the overall land use impact increases with the magnitude of the business. In practical language, the extension of inventory parking into the residential zone represents an encroachment of a principal business zone use into the residential zone. It is not a permissible use.

b. Correlatively, the proposal here does not meet the threshold requirement under BCZR 409.8.B that the use permit be for "... parking facilities to meet the requirements of Section 409.6,...." It is noteworthy that Auto Properties, LLC never suggested any deficiency in the existing provision of accessory offstreet parking required for business uses under BCZR 409.6 ("Retail-general.... 5 per 1000 feet of gross floor area ...). Its witnesses (Mickey Cornelius and David Martin) confirmed this point.

Therefore, the proposal fails to meet an essential requirement to qualify for accessory business parking in the residential zone. The CBA is familiar with this requirement, having applied it in the recent Seminary Galleria (PC Exh. 36) and Cornblatt (PC Exh. 37) decisions.

c. The proposal does not otherwise meet use permit criteria, including special exception and other enumerated requirements in BCZR 409.8.B.1.e. The enumerated requirements refer to impact on the surrounding community (409.8.B.1.e.2), loading and method of operation, and hours (409.8.B.1.e.3, 409.8.B.2), and satisfaction of special exception objectives (409.8.B.1.e.4). PC Exh. 18. The proposal here, as a practical matter, is for a 24/7 operation. But even if the active operation were restricted as to hours, it does not satisfy the legislative test.

A special exception is a conditional use. Schultz v. Pritts 291 Md. 1, 11 (1981); Umerley v. People's Counsel 108 Md. App. 497 (1996). The deficiency with respect to RTA standards translates as a failure to meet relevant statutory conditions, This weighs heavily against the proposal. It is inconsistent with the purposes of the property's zoning classification. BCZR 502.1.G.

In any event, overwhelming evidence shows that the dealership's expansion across East Avenue relocated at this troublesome corner would have a unique negative visual impact at this gateway to the East Avenue residential community. Moreover, it would aggravate existing problems attributable to the dealership. These include tractor-trailer loading, unloading, and parking in the area, and general congestion involving commercial vehicles. There is also evidence of a pattern of test drives into the residential area. All of this translates to a particular adverse effect on the public safety, health and welfare of the locality as well as traffic congestion. BCZR 502.1.A, B. The paving over of one of the few remaining open spaces in the area would also inevitably contribute to stormwater runoff problems. BCZR 502.1.H. Meanwhile, there is a unique traffic congestion problem in the nearby Harford Road area. This is shown by the designation of the Harford Road/Joppa Road intersection as a Level F failing intersection. Bill 28-06. PC Exh. 5. The proposal thus aggravates congestion in the roads and streets. BCZR 502.1.B.

Jackie Megee, Daryl Corona, and Anthony Marchanti contributed the only live testimony and probative evidence from East Avenue residents. Meg O'Hare of the Carney Improvement Association and Ruth Baisden of the Greater Parkville Community

Council added community perspectives, which enriched their observations about the site-specific proposal.

John J. Dillon, Jr. contributed professional planning expert testimony about the particular adverse impact and other important issues. He highlighted the unique problems posed by extension of a large auto dealership into towards and into an interior residential area, away from the main arterial road. Traditionally, car dealerships have developed along the frontage of the main roads. More recently, large new dealerships such as Carmax have found sites in more isolated settings away from residential areas.

Here, Mile One has taken one dealership and grown three new ones within five years. Rather than finding an appropriately spacious business site to accommodate the parking demands, it has chosen a parasitic expansion into the residential zone. The dealership conglomerate behaves like a giant octopus extending its tentacles, heedless of the injurious impact to those within its reach.

Nevertheless, Auto Properties, LLC's experts, especially David Martin, painted a rose-colored scenario of inventory parking as a reasonable transitional use accompanied by the offer of some landscaping and access adjustments. This favorable image is isolated on a promotional site plan with soft colors of trees. The reality on the ground is quite different, and will only worsen if this proposal is approved.

V. The proposed residential transition area variances: "A zone too far."

a. The usual BCZR 307.1 variance standards apply; the record does not support the application of RTA variance or modification under BCZR 1B01.1.B.1.c.

Auto Properties suggested through David Martin's that it could be eligible for an RTA variance under this subsection. But there are procedural and substantive reasons to reject this suggestion. First of all, the subsection applies only to a hearing officer's hearing, which has not occurred here. Secondly, it refers to a compatibility review under Code Sec. 32-4-402. There has been no compatibility review or recommendation by the Office of Planning with respect to the proposal. In any event, the interjection of business parking in a residential zone adjacent to a single-family home residential community is essentially incompatible. The same reasons for denial of the use permit also apply here.

b. The proposal does not satisfy the BCZR 307.1 variance standards. Because the CBA is so familiar with variance law, we will not reinvent the wheel with respect to the criteria. The leading cases include Cromwell v. Ward 102 Md. App. 691 (1995) and McLean v. Soley 270 Md. 208 (1973) with respect to the interrelated issues of uniqueness and practical difficulty. The most recent Court of Special Appeals decision is Montgomery County v. Rotwein 169 Md. App. 716 (2006).

It should be underlined that the history and pattern of variance law reflects that the great majority of variance cases involve residential use. It is virtually unheard of in the case law for a variance to be granted for a contested commercial or industrial use.

The Court of Appeals has been quick to guard against variances for business uses which have an adverse impact on residential neighborhoods. In Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227, 231-32 (1970), the Court discussed the adverse impact on the "aesthetic ambiance of the residentially zoned properties which lie in the immediate area." It also stated "the detriment to the applicant

must be weighed against the benefit to the community in maintaining the general plan." This led the Court to reverse the CBA's approval of industrial zone setback variances.

The Court of Appeals has also consistently rejected variances for commercial expansion because their essence is relative advantage or convenience to the property owner. Marino v. City of Baltimore 215 Md. 206 (1957); Cleland v. City of Baltimore, 198 Md. 440 (1951); Pem Constr. Co. v. City of Baltimore, 233 Md. 372 (1964). Correlatively, variance claims have been denied when based on financial or revenue considerations. Burns v. Mayor & City Council, 251 Md. 554 (1968); Daihl, *supra*; Cromwell, *supra*, quoting Xanthos v. Board of Adjustment, 685 P.2d 1032, 1037 (1985):

> "Hardship is not demonstrated by economic loss alone... Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program."

The present case is purely a business expansion for convenience and increased revenue. There is nothing unique about the property which poses any real difficulty to the auto dealership conglomerate. The only thing unique about the proposed use of the corner is the inevitable aggravation of problems generated by the use of the dealership.

As to practical difficulty, application of the McLean v. Soley criteria (270 Md. at 213-14) confirms the necessity to deny the variances: 1) a) In light of the history of the entire 5-acre property, and especially of the recent expansion to four dealerships, the preclusion of a parking lot on the subject .88 site is not an unreasonable denial of Auto Properties, LLC's ability to use the entire property for a permitted purpose. In this connection, as several witnesses observed, if there were such a concern about the parking of Honda inventory, management could have set aside some of the land allocated to the

other dealerships; b) Mr. Dillon indicated, moreover, that the .88-acre site itself can be developed for one or two residences. PC Exh. 19. While it might not be everyone's idea of a location for a dream home, this is not a perfect world. As Ruth Baisden showed, there are many homes in the area, old and new, which are adjacent to commercial uses. 2) In the balance of the scales of justice, the proposal would cause serious injustice to the neighborhood; and 3) There is an obvious inconsistency with the spirit and intent of the residential zone.

VI. The 1968 Harford Warehouse Corporation use permit: Ancient history. "The herring wore red."

a. The 1968 use permit was never complete and, in other words, never became effective or valid. The Deputy Zoning Commissioner issued his 1968 Order in which the "use permit for off-street parking" was "... granted, subject to the requirements of Section 409 of the Baltimore County Zoning Regulations; all subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning." Pet. Exh. 5. At that time, as shown in the 1963 BCZR (PC Exh. 7), BCZR 409.4 required regulation of lighting (409.4d), and the provision of screening "... required as deemed advisable by the Office of Planning (409.4e). BCZR 409.4g stated, "A satisfactory plan showing parking arrangement and vehicular access must be provided. Said plan shall also be approved by the Office of Planning." BCZR 409.4h stated, "Method and area of operation, provision for maintenance and permitted hours of use shall be specified, and regulated as required."

As noted by John J. Dillon, Jr., Harford Warehouse Corporation never fulfilled any of these requirements. There is no record of any site plan being submitted or approved by either the Bureau of Public Services or the Office of Planning. There was no plan or provision for controlled lighting or screening, or for method and area of operation, maintenance and hours. The aerial photos and testimony confirm the area remained open grassland from 1968 until the present date. Under these circumstances, the 1968 Permit remained incomplete and was never effective or valid.

Auto Properties, LLC has argued that the 1968 Permit is still valid because BCZR 409.4 set no specific time period for utilization, in contrast to special exceptions. Hofmeister v. Frank Realty Co. 35 Md. App. 691 (1977). But this is irrelevant. Here, the permit itself never was perfected. Harford Warehouse Corporation never satisfied the terms of the Order and never satisfied the requirements of BCZR 409.4. Therefore, the permit never reached the stage where it properly came into effect or could validly be utilized. The failure of Harford Warehouse Corporation to satisfy the requirements of the Order and the law within a reasonable time rendered the permit ineffective and not subject to revival 36 years later.

Auto Properties has also introduced a series of 14 boilerplate affidavits to suggest that the subject .88 acre property was used for parking for the Doug Griffith dealership in the 1970s. Not one of these people appeared to testify. Moreover, each of the 14 notarizations referred to one James Abbott. Apart from the procedural irregularity of admitting such affidavits without live testimony or opportunity or cross-examination, it is apparent from the series of aerial photographs, past and present (PC Exh.12A-D, 8), and

from live testimony of area residents that the Doug Griffith dealership did not use this area. It has remained open grassland. Indeed, if Griffith had used this area, it would have been in violation of the use permit order because of the aforesaid failure to file for and obtain the required plan approval and failure to satisfy BCZR 409.4 requirements.

b. The 1968 use permit related to a significantly different principal use, came with a preliminary site plan of lesser magnitude, was reviewed under a less stringent law, and would have had, in any event, a far more modest impact on the neighborhood. As with everything else in this case, the offstreet parking must be placed in the context of the entire property, the relevant principal uses, the law then existing, and the neighborhood. In 1968, the preliminary site plan was skeletal. It depicted as a principal use just a modest used car lot on the west side of East Avenue There was no Honda dealership. Indeed, the area now occupied by the Honda showroom was then the site of Rice's Bakery. Needless to say, there was no dealership conglomerate.

As various citizens pointed out, the neighborhood has changed. The area commercial uses thirty-six years ago were less intense local uses. The traffic was mild compared to today. The BCZR 409.4 standards at that time lacked any special exception criterion and were otherwise less demanding than current BCZR 409.8.B.

Therefore, even had the 1968 use permit been perfected and utilized, it would not justify the offstreet parking now requested in a very different factual and legal context. The quality and magnitude of the two situations are so dissimilar as to defy comparison. It makes no sense to import the 1968 permit by some sort of time machine into 2006.

Remarkably, there is a provision along these lines in the Zoning Commissioner's Policy Manual (1992) to address the problem of "Old Unused Permits." See Policy 409.8.B.2.g, attached. The policy states, first of all, that the lack of an expiration date for permits issued under BCZR 409.4 "... does not necessarily mean that these permits continue forever if not utilized." In addition, the policy provides, among other things, that "1) The new use serviced by the proposed parking area must be substantially the same as the use for which the original permit was issued; and 2) The parking area must be the same or smaller than that proposed in the original permit or must be more in keeping with the present regulations or the character of the neighborhood."

Auto Properties, LLC's current proposal does not pass any of these tests. The new principal Honda dealership use is far more intense and covers a much greater area than the use shown on the 1968 preliminary site plan. There was never a finally approved site plan, so it is impossible to compare the present proposed parking area. Moreover, the Honda proposal fails to satisfy the present BCZR 409.8.B regulations (for reasons explained earlier) and brings with it a far greater impact on the neighborhood.

c. The 1968 use permit does not conform to current law with respect to residential transition area setbacks and the more demanding offstreet parking standards for business parking in residential zones. Because incomplete and ineffective, and in any event never used, the 1968 use permit became invalid because Harford Warehouse Corporation never acquired vested rights. For the reasons given above, it is actually unnecessary to reach the further problem of vested rights. Nevertheless, for the sake of completeness, we shall discuss this additional issue.

It is undisputed that the 1968 use permit preceded the first RTA law of Bill 100, 1970 (PC Exh. 31), which also effectuated the change from the R.6 Zone to the D.R. 5.5 Zone. The use permit also preceded the major revision of the offstreet parking law enacted in Bill 26, 1988 (PC Exh. 29-30).

Clearly, the 1968 use permit does not conform to current RTA standards. It conflicts with the current BCZR 409.1 "accessory" criterion and BCZR 409.8.B baseline standard of necessity to meet minimum parking requirements. Other added standards articulate new tests and proof, such as the special exception criteria.

To acquire vested rights, which afford protection from the adverse impact of a new law, a property owner must obtain a valid building permit and commence substantial above-ground construction prior to enactment of the adverse change in the zoning or other land use law. Rupp v. Earl H. Cline & Sons 230 Md. 573 (1962); Ross v. Montgomery County 252 Md. 497 (1969); Dal Maso v. Board of County Comm'rs. 264 Md. 691 (1972); County Council v. District Land Corp. 274 Md. 691 (1975); Steuart Petroleum Co. v. Board of Co. Comm'rs. 276 Md. 435 (1976); O'Donnell v. Bassler 289 Md. 501 (1981); Prince George's County v. Sunrise Dev. L.P. 330 Md. 297 (1993); Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996); Prince George's County v. Collington Corporate Center 358 Md. 296 (2000); Marzullo v. Kahl 366 Md. 158 (2001).; Powell v. Calvert County 368 Md. 400 (2002). This doctrine does justice both to the property owner and the public interest. It recognizes a major commitment to development by commencement of building or construction. It also serves to give

physical notice to the public of the character of the development. At the same time, the construction must be pursuant to a valid permit.

Sunrise Development provides an excellent discussion of the evolution of vested rights law. Judge Rodowsky quoted, *inter alia*, O'Donnell v. Bassler, at 330 Md. 307:

> "Generally, in order to obtain a vested right in an existing zoning use that will be protected against a subsequent change in a zoning ordinance prohibiting that use, the owner must initially obtain a valid permit. Additionally, in reliance upon the valid permit, the owner must make a substantial beginning in construction and committing the land to the permitted use before the change in the zoning ordinance has occurred."

He went on to discuss three streams of cases. The third stream is of particular interest, both because of its insights and its reference to Mayor & City Council v. Shapiro 187 Md. 623 (1947) one of the leading early vested rights cases, which addressed a permit for the sale and dismantling of used cars.

Here is what Judge Rodowsky said, at 330 Md. 410-11:

> "The third stream of cases involves the issue of vested rights, per se. By a per se vested rights case we mean one invoking 'that doctrine, which has a constitutional foundation [and which] rests upon the legal theory that when 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.' Prince George's County v. Equitable Trust Co., 44 Md. App. 272, 278, 408 A.2d 737, 741 (1979).
>
> The first case in this Court squarely raising that doctrine is Richmond Corp. v. Board of County Comm'rs for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969). There the developer owned commercially zoned land abutting residentially zoned land. The developer had expended large sums of money in acquisition of the property and in preparing plans, leases and specifications for a shopping center on the commercially zoned tract that would utilize the residentially zoned tract for parking. Before there was any construction on the ground, the zoning ordinance was amended to require a special exception for parking on residentially zoned property as auxiliary to a commercial use. In rejecting a contention that the developer had vested rights under the earlier zoning, we borrowed from the law of nonconforming uses the concept of public knowledge in the neighborhood of the use, saying:

'In Maryland it is established that in order to obtain a "vested right" in the existing zoning use which will be constitutionally protected against a subsequent change in the zoning ordinance prohibiting or limiting that use, the owner must (1) obtain a permit or occupancy certificate where required by the applicable ordinance and (2) must proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use.' *See* Feldstein v. LaVale Zoning Board, 246 Md. 204, 210, 227 A.2d 731, 734 (1967), indicating that [*Mayor & City Council v. Shapiro*], 187 Md. 623, 51 A.2d 273 (1947) as well as Chayt v. Board of Zoning Appeals, 177 Md. 426, 9 A.2d 747 (1939), established as one of the tests for determining the existence of a nonconforming use "is whether such use was known in the neighborhood." 254 Md. at 255-56, 255 A.2d at 404.

In Rockville Fuel & Feed Co. v. Gaithersburg, 266 Md. 117, 291 A.2d 672 (1972), we said that 'such a "vested right" could only result when a lawful permit was obtained and the owner, in good faith, has proceeded with such construction under it as will advise the public that the owner has made a substantial beginning to construct the building and commit the use of the land to the permission granted.' Id. at 127, 291 A.2d at 677; *see* also County Council For Montgomery County v. District Land Corp., 274 Md. 691, 337 A.2d 712 (1975)."

The Court of Appeals quoted these passages with approval in Marzullo v. Kahl 366 Md. at 192-93 and Powell v. Calvert County 368 Md. at 410-11.

Of course, the law of vested rights applies to all uses, including parking uses. The only distinction is that instead of a building permit, the property owner must have a valid use permit and proceed to implement the actual use. Mayor & City Council v. Shapiro 187 Md. 623 (1947). As reflected in the Sunrise Development opinion, Shapiro is one of the important early vested rights cases. It is still good law. Here is Judge Henderson's conclusion on the permit for the sale and dismantling of used cars on a vacant lot,

"Accepting the evidence produced by the appellees at its face value, the activity appears to have been merely preliminary or casual. Neither the existence of a plan (Chayt v. Board of Zoning Appeals, supra) nor the purchase of property and the expenditure of money for grading (Knox. v. Mayor and City Council of Baltimore, supra; Board of Com'rs of Anne Arundel County v. Snyder, Md., 46 A.2d 689, 692) are sufficient to show that the business was established or existing. The mere issuance of a permit, whether the permittee has not commenced the work or incurred substantial expense on the faith of it, does not create a vested right, or estop the municipal authorities from revoking it. Board of Com'rs of Anne Arundel County v. Sunder, supra; Geneva Inv. Co.

v. St. Louis, 8 Cir., 87 F.2d 83, certiorari denied 301 U.S. 692, 57 S.Ct. 795, 81 L.Ed. 1348; Brett v. Building Commissioner of Brookline, 250 Mass. 73, 145 N.E. 269; and see Note, 138 A.L.R. 500, and cases there cited. After the adoption of the amendment, the issuance of a new permit, for a nonconforming use, would be nugatory and void. Lipsitz v. Parr, 164 Md. 222, 164 A. 743.

We hold that dismantling cars on two occasions, on a vacant lot wholly unadapted for the conduct of business, does not establish an existing use within the meaning of the Ordinance, and that the finding of the Board was supported by substantial evidence. Heath v. Mayor and City Council of Baltimore, supra; compare Heaps v. Cobb, Md., 45 A.2d 73, 76.

In view of our conclusion that the use was not established or existing in 1941, it is unnecessary to consider the question as to whether it was subsequently abandoned. The order of the trial court is reversed, and the order of the Board of Zoning Appeals is affirmed."

Auto Properties, LLC has argued that Nutter v. City of Baltimore 230 Md. 6 (1962) overruled Shapiro with respect to vested rights law. This is not correct. The Nutter case did not involve an issue relating to the acquisition of vested rights prior to a change in the law. There was no change in the law in Nutter. Rather, the case involved an esoteric question of law as to whether a statutory time limit for exercise of a Baltimore City zoning variance ran from the date of the final action of the zoning board or from the issuance of the permit. The Court held that it ran from the date of the final action of the board. It did overrule the *dictum* in Shapiro which had suggested it ran from the time of issuance of the permit. Judge Hammond pointed out, at the same time, that the time limit question made no real difference in Shapiro and that the real question there, which was not present in Nutter, involved the impact of a change in the law. He wrote,

"In Shapiro, the Board had approve the application on July 1, 1941, and entered the written record of its action on July 2, the day the certificate of occupancy for vacant land was issued pursuant to the Board's approval. Under the facts it made no difference whether the twelve-month period ran from July 1 or July 2. This Court found the real issue to be whether a claimed use of the land involved existed at the time of the

amendment of the ordinance, and not whether it had been abandoned and revived during the critical twelve-month period."

The bottom line is that Shapiro is just one in a consistent line of cases extending back well over a half century in which the Court of Appeals has reiterated that a valid permit and substantial construction or use are prerequisites to the acquisition of vested rights so as to avoid the impact of a new law to which the use does not conform. While BCZR 409.4 did not have a time period for utilization, it did not immunize a use permit from a change in the law and the usual requirements for vested rights.

More recently, the Baltimore County Board of Appeals applied the same standard to confirm the applicability of new law recently in another automobile dealership case. The case went to the Court of Special Appeals, which affirmed the CBA's decision that there were no vested rights. Antwerpen v. Baltimore County, 163 Md. App. 194 (2005).

To reiterate, the record here reveals that Harford Warehouse Corporation never complied with the 1968 permit Order's requirements to satisfy both BCZR 409.4 and explicit detailed conditions. There was never any use of the permit, much less any valid use. Therefore, when the RTA standards came into effect in 1970, there were no vested rights, and the use permit became invalid for that additional reason. The more stringent offstreet parking standards of Bill 26-88 made the 1968 permit even more obsolete.

d. Zoning Commissioner Wiseman's November 9, 2005 opinion is in error with respect to the law of vested rights. The hearing before the County Board of Appeals is, as noted, a *de novo* hearing. Nevertheless, because Zoning Commissioner

Wiseman emphatically held that the 1968 Use Permit justifies the current or new proposed use, we shall give a critique of his legal analysis.

As is natural in this process, the parties produced a more substantial factual record here than was presented to the Zoning Commissioner. Perhaps a more complete understanding of the facts would have enlightened the Commissioner and produced a different conclusion. Whether or not that is true, his opinion is riddled with legal errors.

The Commissioner made the assumption (Page 4) that this office's argument hinges on the assumption that a use permit for parking is a special exception. That is clearly incorrect. The determination of vested rights does not depend on the use permit's status with respect to special exception law.

The Commissioner then proceeded blindly (Page 5) to accept Auto Properties, LLC's false contention that Nutter v. City of Baltimore overruled Mayor & City Council v. Shapiro with respect to the law of vested rights. The Commissioner wrote, in paragraph 1) on page 5,

> "Thus, People's Counsel is incorrect, at page 3 of his memorandum, in arguing that "*Shapiro* is still good law."

Had the Commissioner taken the trouble to read Sunrise Development, Marzullo, and Powell carefully, he might have realized that People's Counsel is correct.

The Commissioner then observed, strangely, in paragraph 2),

> "Perhaps more importantly, the issue of vesting in this matter may be a red herring."

Nevertheless, he acknowledged "... there is no different rule of vested rights for special exceptions and the like." Then, he admitted "that Petitioner did not actually conduct the

storage operations under the 1968 use permit and thus (in the parlance of vesting) it has not proceeded under the permits to exercise it on the land involved. ... Thus, under traditional doctrine, petitioners have no vested rights." At this point, the Commissioner seemed to be getting back on track. Unfortunately, he lost focus once again.

In paragraph 3, he suggested that "... it does not appear as if the applicable zoning law has changed to prohibit the use allowed in the permit, and thus Petitioners would not need to invoke the doctrine of vested rights." This ignored that the use allowed in the 1968 related to a different principal use and was never validated by the submission of a proper plan as required by the Order. In addition, although Commissioner Wiseman did go on to mention the enactment of the RTA law in 1970, he disregarded that the minimum setbacks and buffer requirements do prohibit the proposed parking use.

Ironically, in paragraph 4), Commissioner Wiseman cited Four Seasons Apt. v. City of Mayfield Heights 775F.2d 150 (6th Cir. 1985), where the Court upheld the city's revocation of a building permit which had been unused for three years. A new amendment to the building code prohibited the use, which previously would have been lawful. The Court rejected the developer's allegation of a violation of constitutional rights. The Commissioner acknowledged that this case "would seem to support People's Counsel's argument," but nevertheless distinguished it on the ground that the city had rescinded the permit there, while the county here has not taken any action to rescind the 1968 permit. This distinction, of course, is irrelevant. The determination of vested rights does not depend on the initiative of the bureaucracy. When the legislature passes a new law which would prohibit a particular use, the determination of vested rights depends on

satisfaction of the standard established by the case law, not on the inertia, movement, or shifting winds of administrative officials. A case in point is Marzullo, where the Baltimore County bureaucracy supported the establishment of a reptile-breeding facility despite conflict with the prevailing law. The Court of Appeals rejected the argument that departmental approval of the facility afforded vested rights. Here, of course, there were never even submitted to the county departments the required plans under the 1968 permit. There was never any departmental approval. The permit lay incomplete and ineffective, the property vacant, hardly a situation which would generate any vested rights.

In paragraph 5, page 6, Commissioner Wiseman rejected People's Counsel's additional argument that even if the property had ever been used by the Harford Warehouse Corporation, the use obviously had been discontinued for more than a year and so terminated for discontinuity of a nonconforming use under BCZR 104.1. The Commissioner got around this by suggesting that the RTA law is irrelevant because it is not a use regulation. This is an absurd suggestion. The RTA law addresses explicitly residential transition area uses. BCZR 1B01.1.B.1, "Residential transition areas and uses permitted therein." See, e.g. BCZR 1B01.1.B.1.d. with respect to the definition of residential transition uses. In any event, the law of nonconforming uses refers to the nonconformity of a use with any relevant standard. In another bizarre twist, the Commissioner attempted to downplay People's Counsel's argument, quoting out of context, "... inasmuch as he [People's Counsel] half-heartedly argues that the RTA legislation 'is substantially a use regulation.'" The use of the word "substantial," however, does not imply any hesitation or half-heartedness. It was part of People's

Counsel's effort to describe the substance of the law. It also recognizes that the RTA law includes both use and area standards in an integrated way. In any event, as in the Shapiro case, it is not really necessary for the CBA to reach the issue of discontinuity because the use never properly commenced.

Finally, in paragraph 6, Commissioner Wiseman suggests that People's Counsel also relied on the argument that the use permit was a special exception, which lapsed under BCZR 502.3 for lack of utilization within two years. However, as the Commissioner admitted, People's Counsel recognized that a use permit had been held not to be a special exception and, therefore, was not relying on that provision. People's Counsel's argument rather is based on all of the other reasons stated above: the failure to do what was necessary to make the permit valid or effective, the change in the nature of the principal use and the site plan, the change in the neighborhood, the change in the law, and the failure to acquire vested rights.

This concludes our summary of the reasons given by Commissioner Wiseman for deciding that the 1968 permit still exists and justifies Auto Properties, LLC's new and different use. None of these reasons are valid. The 1968 permit never became fully valid, and whatever remained of its incompleteness was overtaken by time and by changes in the area and the law. There is no validity left to the 1968 permit.

The Commissioner ruminated that the issue of vesting may be a red herring. To the contrary, the real red herring is the interjection of the 1968 use permit into this case. Webster's II New Riverside University Dictionary (1984, 1988) defines "red herring" as follows, at 985:

"1. A smoked herring with a reddish color. 2. Something that distracts attention from the matter or issue at hand."

So far, Auto Properties has gained ground by the interjection of this red herring.. The special hearing filed in Case No. 06-109-SPH is a big red herring, or at least as big and red as a herring can be.

The time has come to throw it back in the ocean and let it go. The CBA has the opportunity to do that now in this *de novo* hearing. This case also provides a nice opportunity for the County Board of Appeals to provide constructive criticism to Commissioner Wiseman with respect to the law of vested rights.

Conclusion

For all of the above reasons, the County Board of Appeals should deny the Petition for Special Hearing and Variances for the use permit for business parking in a residential zone in Case 03-360-SPHA. The CBA should also deny the petition for special hearing in Case No. 06-109-SPH.

Peter Max Zimmerman

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CERTIFICATE OF SERVICE

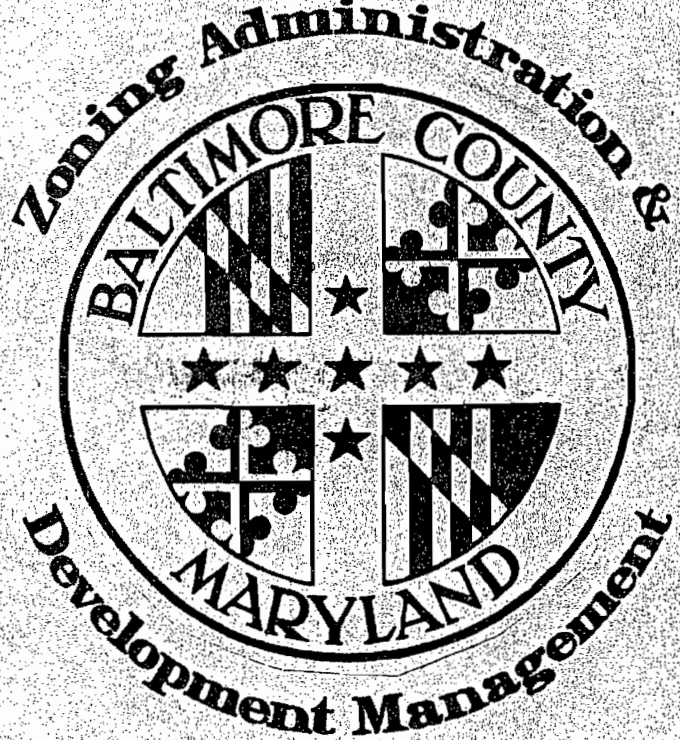
I HEREBY CERTIFY that on this 19th day of December, 2006, a copy of the foregoing People's Counsel for Baltimore County's Memorandum was mailed to Ruth Baisden, President, Greater Parkville Community Council, 7706 Oak Avenue, Parkville, MD 21234 and to Arnold Jablon, Esquire, and Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

1992 Edition

Baltimore County
Zoning Commissioner's Policy Manual



amended May 13, 1992

adopted May 21, 1991

Administrative Supplement to the Baltimore County Zoning Regulations

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

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

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

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

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

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

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

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

Arnold Jablon, Director
Zoning Administration &
Development Management

409.8.B.2.g BUSINESS & INDUSTRIAL PARKING IN A RESIDENTIAL ZONE - REQUIREMENTS

(1) NEW PERMITS:
Because of the ambiguity between Sections 409.8.B.1.e and 409.12.B B.C.Z.R., any conflict will be handled during the course of the public hearing. Only hardship requests for business or industrial parking in a residential zone will absolutely require a public hearing because no discretion is allowed under Section 409.12.B. B.C.Z.R.

(2) OLD UNUSED PERMITS:
Any use permit which has not been utilized within two years of its date of issue or final order of the Zoning Commissioner after a public hearing; shall be reviewed on a case by case basis to determine whether they substantially comply with the spirit and intent of the originally approved use permit.

Use permits for parking in residential zones have not and are not issued under the authority of Section 502 B.C.Z.R. and do not have an automatic termination date; such as in special exceptions under Section 502.3 where construction must have begun within two years. Use permits for parking in residential zones issued pursuant to Section 409.4 (1955 B.C.Z.R.) and until the adoption of Bill Nos. 26-88 and 36-88 does not necessarily mean that these permits continue forever if not utilized. Because these are still Special Exceptions in the legal sense of the terminology (see Section A400 Z.C.P.M., Page 4-1).

(a) Eligibility: The right to use property in the residential zones for business or industrial parking is contingent upon the applicant providing satisfactory documentation that a Use Permit was granted by the Zoning Commissioner. The determination of the existence or continuation of that use permit may be subject to a special hearing before the Zoning Commissioner.

(b) Conditions: If the eligibility criteria above is met, the applicant may be allowed to construct or expand the parking area subject to either of the following:

i. INTENSIFICATION OF EXISTING USE:
1) The use already exists and what is proposed is merely an intensification of that principal use; and
2) The area of development must be substantially the same as that proposed in the original permit.

ii. CHANGE OF PRINCIPAL USE:
1) The new use serviced by the proposed parking area must be substantially the same as the use for which the original permit was issued; and
2) The parking area must be the same or smaller than that proposed in the original permit or must be more in keeping with present regulations or the character of the neighborhood.

(c) Interpretation: The Zoning Commissioner retains the right under Section 500.6 B.C.Z.R. to interpret whether the spirit and intent of these regulations are being adhered to on a case by case basis; i.e., a permit issued originally for office parking is substantially different than parking for a 24-hour gas and go, and a change may be judged by the Zoning Commissioner as not within the spirit and intent of the original approval.

(d) See the following cases: 88-506SPHX
88-388SPH
88-349SPH
88-335SPH
88-253SPH

12/18/06

IN THE MATTER OF: AUTO PROPERTIES, LLC NE/cor East Avenue and East Avenue Relocated 6th Councilmanic District 11th Election District Auto Properties, LLC Petitioner	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos. 06-109-SPH 03-360-SPHA

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PETITIONER'S POST-HEARING MEMORANDUM

Auto Properties, LLC ("Petitioner") by Arnold Jablon and David H. Karceski with Venable LLP, its attorneys, respectfully submits this Post-Hearing Memorandum in support of its Petitions for Special Hearing and Variance, filed in Case Nos. 06-109-SPH and 03-360-SPHA, as follows:

INTRODUCTION

In the *de novo* hearing before the Board of Appeals, as described below, Petitioner presented substantial evidence to grant the Petition for Special Hearing, filed in Case No. 06-109-SPH, to confirm that a use permit for off-street business parking in a residential zone (a "Use Permit") that was granted in 1968 remains valid today. Additionally, Petitioner presented substantial evidence proving that the Use Permit granted in 1968 is grandfathered under the Baltimore County Zoning Regulations (the "BCZR", "Zoning Regulations", or "Regulations") in place at that time and, as such, the current Zoning Regulations, including those provisions establishing residential transition area ("RTA") buffers and setbacks, are not applicable. Accordingly, the Petitions for Special Hearing and Variance, filed in Case No. 03-360-SPHA, seeking a new Use Permit and a Variance from the RTA buffers and setbacks, are not necessary. However, in the event the Board disagrees, Petitioner also presented strong and substantial evidence to satisfy the conditions and requirements for the granting of the Petitions filed in Case No. 03-360-SPHA.

FACTUAL BACKGROUND

Petitioner intends to use a parcel of land it owns, located on the northeast corner of East Avenue and East Avenue Relocated (the "Parking Parcel"), for inventory parking of vehicles

sold at its car dealership located on a parcel east of and adjacent to the Parking Parcel (the "Dealership Parcel")[1]. The Parking Parcel is zoned D.R. 5.5 – a residential zone – which, under the current Zoning Regulations, allows business parking only by Use Permit. *See* BCZR §409.8.B.

Additionally, the current Zoning Regulations subject all proposed development on any vacant D.R.-zoned land containing fewer than two acres, containing a buildable area at least 20 feet by 30 feet on which a dwelling meeting all setbacks could be erected, and lying adjacent to land zoned D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5, or R.C. – like the Parking Parcel – to RTA buffer and setback requirements. *See* BCZR §1B01.1.B.1.b. The RTA "is a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed." BCZR §1B01.1.B.1.a.(1). Any proposed parking lot within the RTA -- like that proposed on the Parking Parcel – "shall provide a fifty-foot buffer and seventy-five-foot setback...within the one-hundred foot transition area." BCZR §1B01.1.B.1.e.(5).

Under normal circumstances, because of the zoning, size, and orientation of the Parking Parcel, in order to develop it as a parking lot, Petitioner would have to obtain approvals for a Use Permit and for Variances from the RTA buffer and setback restrictions. Indeed, Petitioner sought such relief in Case No. 03-360-SPHA, and, by way of a June 2, 2003 order, the Deputy Zoning Commissioner granted Petitioner's requested relief. People's Counsel appealed.

However, while on appeal, counsel for Petitioner discovered a 1968 zoning case – Case No. 68-177-RX – wherein the owner of the Parking Parcel at that time was granted a Use Permit for the property. In that case, the owner of the Dealership Parcel and Parking Parcel requested a zoning reclassification for both properties. *See* Petitioner's Board of Appeals Hearing Exhibit ("Pet. Ex.") No. 5. At the time, the Property was zoned R-A and R-6 (both residential classifications), and the owner sought to rezone the Dealership Parcel (known as "Parcel 1" on the petition) Business Roadside ("BR") and to rezone the Parking Parcel (known as "Parcel 2" on the petition) Business Major ("BM"). The petition indicated that the Parking Parcel was proposed to be used for "Vehicle Parking," and, at the same time, the owner filed a Petition for Special Exception for Used Motor Vehicle Sales for the Dealership Parcel. The Deputy Zoning Commissioner, by way of an Order dated March 14, 1968 (the "1968 Order"), rezoned the Dealership Parcel BM, denied the Petition for Special Exception for that parcel, and granted a

[1] The Parking Parcel and the Dealership Parcel together comprise the "Property."

Use Permit to allow for business parking on the residentially-zoned Parking Parcel ("the 1968 Permit"). *See* Pet. Ex. No. 5. In 1970, by Bill 100-70, the R-6 zoning classification became D.R. 5.5. *See* BCZR §100.3A. Petitioner subsequently purchased both the Dealership Parcel and the Parking Parcel.

Upon discovery of the 1968 case, Petitioner filed a Petition for Special Hearing in Case No. 06-109-SPH "to confirm that [the 1968 Permit] is valid for the property on which the use permit was approved, and that the subject property may be utilized pursuant to the use permit," and the Board suspended the hearing in Case No. 03-360-SPHA. Following a hearing, the Zoning Commissioner granted the Petition in Case No. 06-109-SPH by way of a November 9, 2005 Order. People's Counsel appealed and the Board consolidated the appeal in Case No. 06-109-SPH with the appeal in Case No. 03-360-SPHA, hearing contemporaneous arguments on both appeals.

STANDARD OF REVIEW

On appeal from the Zoning Commissioner, requests for zoning relief, whether in the form of a Petition for Variance, Special Hearing, or Special Exception, are heard *de novo* by the Board of Appeals. *See* Baltimore County Charter §603; *Cf. People's Counsel for Baltimore County v. Crown Dev.* Corp., 328 Md. 303 (1992). The standards for each particular petition are discussed in detail below.

ARGUMENT

Petitioner articulates three arguments in support of its Petitions in Case Nos. 06-109-SPH and 03-360-SPHA. First, the 1968 Permit is valid and runs with the land and, therefore, Petitioner is entitled to use the Parking Parcel for business parking, pursuant to the 1968 Order, without seeking further relief. Second, Petitioner's use of the 1968 Permit is grandfathered under the Regulations in place at the time the permit was granted and, therefore, Baltimore County's subsequent adoption of the RTA buffer and setback provisions has no effect on the utility of the permit. Finally, even if the Board determines the 1968 Permit is not valid and the Parking Parcel is subject to the present Regulations, Petitioner meets the requirements for a new Use Permit, under BCZR Section 409.8.B and Variances from the RTA buffer and setback provisions.

I. PETITIONER MAY USE THE PARKING PARCEL FOR OFF-STREET BUSINESS PARKING, PURSUANT TO THE 1968 ORDER, WITHOUT ADDITIONAL ZONING RELIEF.

Petitioner is entitled to use the Parking Parcel for off-street business parking, pursuant to the 1968 Order. Despite People's Counsel's contrary argument, the 1968 Order *did not, in effect, grant a BCZR Section 502 Special Exception.* Utilization of the Use Permit issued by way of the 1968 Order was not required to preserve its validity, the permit runs with the land, and, therefore, Petitioner may now use the permit, without seeking additional zoning relief.

A. A Use Permit Is Not A BCZR Section 502 Special Exception.

People's Counsel assumes the 1968 Permit is the same as a BCZR Section 502 Special Exception and is subject to the rules and regulations outlined in that Section.[2] This assumption is fundamentally incorrect, contradicting both the plain language of the BCZR and established Maryland law.

1. The BCZR clearly distinguishes between Special Exceptions and Use Permits.

The 1968 Permit was granted pursuant to the Zoning Regulations adopted in 1955 and amended in 1963 (the "1963 Regulations"), and the relevant provisions of those Regulations are substantially similar to the present Regulations. Section 409.4 of the 1963 Regulations governed Use Permits.[3] *See* Memorandum Exhibit ("Memo Ex.") No. 1. That Section stated:

> Upon application the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking areas subject to the following conditions. If granted, such use permit *shall be conditioned as follows*....

The section goes on to explicitly list eight conditions. None of the conditions requires compliance with BCZR Section 502 and there is otherwise no mention of that section or Special Exceptions within Section 409.4. It is entirely clear that Section 409.4 was meant to be the sole regulator of off-street business parking in residential zones and to operate exclusive of all other Zoning Regulations, including those that govern Special Exceptions.

In fact, the BCZR treats parking, in general, separately and distinctly from other types of uses. The 1963 Regulations (and the current Regulations) dedicate an entire section solely to parking – Section 409. Even more, the "Schedule of Special Exceptions" in Section 270 of the 1963 Regulations lists no form of "parking" among the uses permitted by Special Exception. *See* Memo Ex. No. 2; *see also Marek v. Baltimore County Bd. of Appeals,* 218 Md. 351, 357 (1958)

[2] Section 502 governs Special Exceptions in both the 1963 Regulations and the current Regulations.
[3] Use Permits are governed by Section 409.8.B of the current Regulations.

(Memo Ex. No. 3). Parking is effectively regarded as its own use category, governed by the regulations set forth in Section 409.

Therefore, under the 1963 Regulations, the provisions of Section 409.4 governing Use Permits operated exclusive of those governing Special Exceptions, and the same exclusivity remains today.

2. The Maryland Court of Appeals and Court of Special Appeals have ruled that Use Permits are not BCZR Section 502 Special Exceptions.

Maryland Courts have reviewed and interpreted the BCZR and have confirmed the distinctive nature of Use Permits. While facing different factual quandaries and enunciating discrete rationales, the Court of Appeals in *Marek*, and the Court of Special Appeals in *Hoffmeister v. Frank Realty Co.*, 35 Md. App. 691 (1977) (Memo Ex. No. 4), both concluded that a Use Permit *is not the same as a BCZR Section 502 Special Exception.*

In *Marek*, the petitioners petitioned, pursuant to the 1963 Regulations, for a "use permit for off-street parking at a public beach...in an R-6, or Residential, one and two family zone." 218 Md. at 354.[4] The protestants in the case argued that a petition for a Use Permit, pursuant to BCZR 409.4, was, "in legal effect a petition for a special exception," subject to the restrictions in BCZR Section 502 and other related sections.[5] *Marek,* 218 Md. at 356. Upon review of the 1963 Regulations, the *Marek* Court held "that this petition [for a Use Permit] is *not a request for a special exception.*" *Id.* at 357 (emphasis supplied). The Court reasoned that "[o]ff-street parking is not mentioned among the many things which may be the subject of a special exception [in the BCZR Section 270 Schedule of Special Exceptions] and the power to determine what situations shall be considered in that category is a *legislative function*...and is *not an administrative function* of the Zoning Commissioner." *Marek,* 218 Md. at 357. (emphasis supplied). Furthermore, the Court held:

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[4] The petitioners originally filed for a Use Permit in June, 1956, which the Board of Zoning Appeals of Baltimore County denied in December, 1956. Subsequently, in January, 1957, petitioners sought to rezone the subject property from R-6 to Business, Local, but the Board likewise denied this request on May 9, 1957. Thereafter, on May 17, 1957, petitioners again filed a petition with the Zoning Commissioner for a Use Permit for off-street business parking on the subject property. This latest petition was the subject of the appeal before the Court of Appeals.

[5] The practical reason for the protestants' assertion was that BCZR Section 500.12 specifically prohibited landowners from petitioning for a Special Exception within eighteen months following the final order of the Board *denying* a prior petition for Special Exception or zoning reclassification. Protestants argued, therefore, that, because a Use Permit was the same as a Special Exception and because the Board had denied a petition for zoning reclassification merely days before, the petitioners could not thereafter file the latest petition for 18 months.

> There is nothing in [BCZR Section 409.4] to suggest a special exception to the use permissible in the zoning area for the land in question but it is a provision for off-street parking on land in the restricted zone in aid of better use of land which it adjoins....

Marek, 218, Md. at 358. The Court of Appeals, therefore, confirmed that the plain language of the BCZR shows that Use Permits are separate and distinct from Special Exceptions.

Nearly twenty years later, the Court of Special Appeals reached the same conclusion in *Hoffmeister*. The petitioner in that case petitioned for, and was granted, a Use Permit. The protestants in the case argued that the Zoning Commissioner lacked the statutory authority to grant Use Permits. The protestants argued that, based on the Court of Appeals' decision in *Marek*, a Use Permit and Special Exception were "distinct legal phenomena." *Hoffmeister,* 35 Md. App. at 694.[6] In concluding that the Zoning Commissioner possessed the authority to grant Use Permits, the Court of Special Appeals, using *Marek* as a guidepost, carefully dissected the definition of "Special Exception" and its corresponding relationship to Use Permits.

The *Hoffmeister* Court determined that the BCZR refers to "Special Exceptions" in two different ways: (1) the "genus" – a generalized grouping of zoning tools; and (2) the "species" – a specific type of Special Exception (the genus) that is governed by BCZR Section 502. *See Hoffmeister,* 35 Md. App. at 699-709. "The species 'Special Exceptions' is...a part of the genus 'Special Exceptions.'" *Id.* at 701. Numerous other zoning mechanisms, including special permits, conditional uses, special uses and *Use Permits*, are also part of the genus "Special Exceptions." *See id.* at 699. The Court further rationalized the *Marek* decision by finding:

> [T]he Court of Appeals in *Marek* was distinguishing the Species "Special Use Permit for Off-Street Parking"...from the Species "Special Exceptions"....The Court was *by no means indicating that the Species "Special Use Permit for Off-Street Parking" was no longer a part of the Genus "Special Exceptions"....*

Id. at 704-05 (emphasis supplied). After highlighting this subtle, yet important distinction, the Court found:

> It is beyond cavil that the granting of a "Use Permit" for off-street parking in a residential zone under the provisions of 409.4 falls within this broad definition of

[6] The substance of protestants' argument was that the BCZR gave express authority to the Zoning Commissioner to grant only certain forms of zoning relief. While the authority to grant "special exceptions" was explicitly included, there was no such express authority to grant "Use Permits." Furthermore, protestants noted that, at one time, the BCZR explicitly gave the Zoning Commissioner the authority to grant Use Permits, but that subsequent legislation negated such authority. Protestants argued, therefore, that, because *Marek* held that Special Exceptions and Use Permits were distinct forms of zoning relief and because the BCZR no longer expressly gave the Zoning Commissioner the authority to grant Use Permits, he necessarily lacked such authority.

> "Special Exception." The Species "Use Permit" is indisputably a member of the Genus "Special Exception." It is also indisputably clear that the Baltimore County Council in 1960 used the term "Special Exception" in its broad and generic sense.

Id. at 709. Consequently, the Court held that, because the Zoning Commissioner possessed the authority grant Special Exceptions (the genus), he necessarily had the authority to grant the various species within that genus, including Use Permits. *See id.* at 708-10.

Confusing? Definitely. Clearly, however, the *Hoffmeister* Court, to employ an analogy, found the term "Special Exception" to be an umbrella, under which there are two arms holding it up. One being the uses found in each zone under the wording of "Special Exception" and requiring application of BCZR Section 502, and the other being Use Permits, special permits, special uses, and conditional uses. Both arms are the species, the umbrella is the genus.

Perhaps the most important finding the *Hoffmeister* Court made, for purposes of this Board's analysis, was the Court's statement that it *"[did] not agree that [BCZR Section] 502 need be complied with in order to obtain a use permit for off-street parking which is governed exclusively by [BCZR Section] 409.4."* *Id.* at 701 n.7 (emphasis supplied).

In sum, two Maryland cases, both interpreting BCZR Section 409, hold that a Use Permit is a distinct form of zoning relief in and of itself, *entirely separate from* BCZR Section 502 Special Exceptions. That has been Maryland's interpretation for 48 years and it should not change now.

B. Because The 1968 Permit Is Not A BCZR Section 502 Special Exception, It Does Not Require Utilization And It Runs With The Land, So That Petitioner May Now Use The Parking Parcel For Off-Street Business Parking, Pursuant To The 1968 Order.

The plain language of the BCZR establishes, and as Maryland case law confirms, that Use Permits and Special Exceptions are distinctive forms of zoning relief. As such, with regard to the 1968 Permit, the Board of Appeals need only look to Section 409.4 of the 1963 Regulations. Upon review of that section, the Board has no choice but to hold that, because the Section does not require utilization, and because the 1968 Order likewise did not require the same, the Petitioner may now park vehicles on the Parking Parcel.

People's Counsel, under the assumption that Use Permits are the same as BCZR Section 502 Special Exceptions, argues that, pursuant to BCZR Section 502.3, if a Use Permit holder does not utilize the permit within two years of its issuance, the permit is void. Based on this

theory, People's Counsel insists that, because Petitioner's predecessor failed to utilize the 1968 Permit by parking vehicles on the Parking Parcel within two years of its issuance, it is now void.

Even assuming that People's Counsel can prove that the Use Permit was never utilized, the argument is moot. As established above, Use Permits are neither the same as a BCZR Section 502 Special Exceptions, nor are such permits otherwise subject to the conditions of Section 502. *See Marek,* 218 Md. at 357; *Hoffmeister,* 35 Md. App. at 701 n.7. Just as the *Marek* Court's finding that Use Permits are not Special Exceptions made the eighteen-month re-filing provision for Special Exceptions inapplicable to Use Permits, the Board should now find that the two-year utilization requirement for Special Exceptions is likewise inapplicable. *See Marek,* 218 Md. at 356-57. The 1968 Permit is only subject to the requirements and conditions of BCZR Section 409.4, and, therefore, utilization is not required.

Consequently, after the Zoning Commissioner granted the 1968 Permit, the owner could park vehicles on the Parking Parcel for business purposes. However, as with a variance, just because the owner chose not to immediately park vehicles on the site, his right to do so has not been foreclosed. *See* A. Rathkopf and D. Rathkopf, 3 *The Law of Zoning and Planning,* §58:23 (2006). In fact, the owner's right to utilize the 1968 Permit ran with the land, regardless of whether or not the owner utilized the permit. *See id.* There is no time limitation imposed on its use by the BCZR. Its use is subject only to the discretion of the owner on whose property the Use Permit applies. Therefore, when Petitioner purchased the Property, it obtained not only the Parking Parcel, but also the right to park vehicles on that parcel, pursuant to the 1968 Order.[7]

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[7] People's Counsel makes two additional related arguments. It first argues that, under the current Regulations, BCZR § 409.8.B.1.e.(4) *specifically requires* the zoning commissioner to consider the conditions governing Special Exceptions in BCZR § 502.1. Next, it points out that this language represents a change in the law and that Petitioner's proposed use of the Parking Parcel is substantially different from the primary use for which the 1968 Permit was approved, which, pursuant to the Zoning Office's Policy Manual governing "old unused permits," requires the permit to be reviewed anew using the Section 502.1 standards. These arguments are without merit.

With regard to the first argument, Section 409.8.B.1.e.(4) *does not require* the Zoning Commissioner to adhere to the BCZR Section 502.1 standard when conditioning approval or denial of Use Permits for off-street business parking, nor does it *require* a petitioner for a Use Permit to prove its case pursuant to the standard outlined in that section. The clear intent of the language is *discretionary*; it plainly indicates that, if the reviewing zoning authority "deems necessary," it may grant or deny a permit conditioned upon the objectives of Section 502.1. There is no obligation on the Board to review Petitioner's Petition for Special Hearing pursuant to Section 502.1, as People's Counsel insists. However, should the Board exercise its discretion to condition its grant or denial of Petitioner's Use Permit upon the objectives of Section 502.1, Petitioner, as discussed in detail below, presented evidence establishing that the proposed use meets all such objectives. This still does not require application of BCZR Section 502.3. *See Marek,* 218 Md. at 357; *Hoffmeister*, 35 Md. App. at 701 n.7.

Regarding the second argument, People's Counsel misinterprets the policy language, fabricating a requirement that does not exist. Its argument implies that, because the BCZR provisions governing Use Permits for off-street

II. PETITIONER'S ABILITY TO USE THE PARKING PARCEL FOR OFF-STREET BUSINESS PARKING IS GRANDFATHERED UNDER THE 1963 REGULATIONS AND THE ADOPTION OF THE RTA STANDARDS DID *NOT* MAKE THE OFF-STREET BUSINESS PARKING USE A NONCONFORMING USE.

As established above, the 1968 Permit and its accompanying rights are grandfathered under the 1963 Regulations and, as with a Variance, the permit and its rights ran with the land. When the Baltimore County Council adopted legislation in 1970 to add RTA buffer and setback restrictions in D.R. zones, it had no effect on the validity or utility of the 1968 Permit. The RTA buffer and setback provisions are not "use regulations" or "special regulations," as those terms are contemplated in the BCZR. Therefore, the County Council's adoption of the RTA buffer and setback provisions did not make the off-street business parking use granted under the 1968 Order a "nonconforming use."

A. The BCZR Definition Of "Nonconforming Use" Limits Its Application To Circumstances Where A Once-Permitted Use Is No Longer Permitted Or The Current Use Does Not Comply With Certain "Special Regulations."

The BCZR defines "nonconforming use" as

> [a] legal use that does not conform to a *use regulation* for the zone in which it is located or to a *special regulation* applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use.

BCZR §101 (emphasis supplied). Although the term "use regulation" is not specifically defined in the BCZR, the Court of Appeals in *Trip v. Baltimore,* 392 Md. 563, 573 (2006), has held that "[a] valid and lawful nonconforming use is established if a property owner can demonstrate that before, and at the time of, the adoption of a new zoning ordinance, the property was being used in a then-lawful manner for a *use* that, by later legislation, *became non-permitted*" (Emphasis supplied). Furthermore, the BCZR does not specifically define "special regulations," yet it specifically designates "special regulations" applicable in specific zones. *See, e.g.,* BCZR §1B02.3 (providing "Special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones"); BCZR §235A (designating "Special Regulations for C.C.C.

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business parking have changed, that the 1968 Permit must be reviewed anew to assure *compliance with the new Regulations*. However, the clear language of the policy says that the unused permit "shall be reviewed on a case-by-case basis to determine whether [it] substantially compl[ies] with the *spirit and intent of the originally approved use permit.*" Consequently, because Petitioner's proposal to use the Parking Parcel to store vehicle inventory for the adjacent car dealership is consistent with the established purpose for 1968 Permit, the Board should be compelled to sustain the 1968 Permit. In any event, despite People's Counsel's efforts, a Baltimore County policy cannot trump established Maryland law that clearly holds "[BCZR Section] 502 need [not] be complied with in order to obtain a use permit for off-street parking." *Hoffmeister,* 35 Md. App. at 701 n.7.

Districts"); BCZR §235B (outlining "Special Regulations for C.T. Districts"); BCZR §235C (creating "Special Regulations for B.M. Lots Within 750 Feet of an R.C. Zone").

Therefore, under Maryland and Baltimore County law, a nonconforming use is only established when the use itself is no longer permitted by the Zoning Regulations or the use does not comply with certain "special regulations" enumerated in the BCZR.

B. The RTA Buffer and Setback Provisions Established In 1970 Are Not Designated As "Special Regulations" Under The BCZR And They Do Not Prohibit Off-Street Business Parking Use In Residential Zones.

The RTA buffer and setback provisions are not "use regulations," as they *do not affect how the property is used*; rather, they *affect the layout and orientation* of the property. The RTA buffer and setback provisions plainly permit all uses otherwise permissible in D.R. zones, including off-street business parking permitted by Use Permit. *See* BCZR §1B01.1.B.1.d (defining "residential transition use" as "any use: (1) Permitted as of right [in the D.R. zone]; or (2) Any use permitted by special exception [in the D.R. zone] except an accessory use permitted only by special exception; or (3) Any parking area permitted under Section 409.8.B..."). The required buffers and setbacks merely dictate *where* on the property an owner may employ the desired use. In other words, the RTA buffer and setback provisions should not be read to mean that a property owner may *not* use his or her property in a way that is otherwise permitted in the D.R. zone, but instead that a property owner may use his or her property as otherwise permitted in the D.R. zone, but such use may not encroach upon the required buffer or setback areas. This crucial distinction establishes that the RTA buffer and setback provisions are not "use regulations" because the County Council's adoption of the RTA buffer and setback provisions did not prohibit a use that was permitted prior to adoption. *See Trip,* 392 Md. at 573. Indeed, the RTA, itself, does not prohibit any use otherwise permitted in the zone.

Similarly, the RTA buffer and setback provisions are not "special regulations" under the BCZR. As mentioned above, the BCZR designates certain "special regulations." The RTA buffer and setback provisions are not among them. Were the County Council to have intended the RTA buffer and setback provisions to be "special regulations," it would have specifically designated them as such. In fact, by way of Bill 100-70, under which the Council adopted the RTA buffer and setback provisions, the Council also adopted BCZR Section 1B02.3, which contains "*Special regulations* for Certain existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones" (Emphasis supplied). Had the Council intended to do so, it could

have included the RTA among these "special regulations," but it chose not to. Consequently, the RTA buffer and setback provisions are not considered "special regulations" under the BCZR.

Therefore, the RTA buffer and setback provisions established in 1970 were not "use regulations" or "special regulations," as those terms are contemplated under State and County law.

C. The Adoption Of The RTA Buffer and Setback Provisions In 1970 Did Not Establish A Nonconforming Use On The Parking Parcel And, Therefore, Petitioner Has Not Abandoned The Off-Street Business Parking Use.

As a part of its utilization argument, People's Counsel argues that, even if Petitioner was not required to utilize the 1968 Permit within two years of its issuance, the RTA regulations rendered nonconforming the off-street business parking use on the site. Therefore, pursuant to BCZR Section 104.1, People's Counsel argues that, at the very least, Petitioner has *abandoned* the off-street business parking use by virtue of having discontinued the use for more than one year since the issuance of the permit. This argument must fail.

In 1968, the property owner was granted a Use Permit for off-street business parking purposes on the Parking Parcel. The permit confirmed that the parking use was permitted in the residential zone. Subsequently, in 1970, the addition of the RTA buffer and setback provisions to the BCZR had *no effect on the owner's ability to use the property for off-street business parking purposes.* Furthermore, the County Council declined to designate the RTA buffer and setback provisions as "special regulations" in the BCZR. Accordingly, the RTA buffer and setback provisions did not establish a nonconforming use on the Parking Parcel, making BCZR Section 104.1 inapplicable. Therefore, Petitioner has not abandoned the off-street business parking use by discontinuing the use for more than one year.

Indisputably, there were conditions imposed by the 1968 Order and these conditions, to the extent needed, must be adhered to. Clearly, there is no timeline imposed to do so. Otherwise, the 1968 Order would have said so.

III. EVEN IF THE 1968 PERMIT IS NO LONGER VALID, PETITIONER HAS PROVEN THAT IT IS ENTITLED TO A NEW PERMIT AND A VARIANCE FROM THE RTA RESTRICTIONS.

If the Board decides that the 1968 Order granting the 1968 Permit is not valid or that the RTA buffer and setback provisions created a nonconforming use, which was abandoned, Petitioner has presented testimony and evidence sufficient to prove entitlement to a Use Permit

and Variances from the RTA buffer and setback provisions, under the current Zoning Regulations.

A. Petitioner Has Satisfied Its Burden Of Proof With Respect To The Petition For Special Hearing To Approve A New Use Permit For Off-Street Business Parking In A Residential Zone.

As noted above, Use Permits are governed by Section 409.8.B of the current Regulations, and to qualify for a Use Permit, Petitioner must meet the procedural requirements and other criteria outlined in that Section.

1. ***Petitioner's proposed vehicle inventory parking use is a use contemplated by BCZR Section 409.8.B and Petitioner need not establish the need for a variance under BCZR 409.6 as a prerequisite.***

People's Counsel's witness, Jack Dillon, testified that, in his opinion, the inventory parking use proposed by Petitioner is not the type of off-street business parking use contemplated by BCZR Section 409.8.B. (T., 11/02/06, p. 186). His theory rests on two assumptions: (1) the County Council did not intend for Use Permits to be granted for inventory parking for car dealerships; and (2) a Petition for Variance from BCZR Section 409.6 is a prerequisite for the granting of a Use Permit.[8] This theory is entirely baseless.

First, there is no language, explicitly stated or implied, within Section 409.8.B prohibiting the granting of Use Permits for inventory parking purposes. Furthermore, there is nothing in Section 409 that can be read as being ambiguous. The language is unequivocal and definitive. Mr. Dillon's arbitrary and capricious distinction is without merit in law or in fact. This was confirmed by the Zoning Commissioner when, in Case No. 02-235-SPH, he granted a Use Permit for car dealership inventory parking in a residential zone. *See* Pet. Ex. No. 13.

Additionally, Mr. Dillon's interpretation of the language in BCZR Section 409.8.B, that a Variance from Section 409.6 is a prerequisite for the granting of a Use Permit, is simply unfounded. The language, on its face, does not make a Variance a prerequisite. Instead, Mr. Dillon twists the plain language – "to meet the requirements of Section 409.6" – insisting that it means a Use Permit may be used to aid the adjoining business use in satisfying the parking

[8] Mr. Dillon's second assumption is difficult to follow. He seemed to summarize his argument during cross-examination when he said "I believe the intent is to have the parking on the premises of the business....If [a property owner] can't meet that, *then* they *may qualify* to request for off-street parking in a residential zone." (T., 11/14/06, p. 34 (emphasis supplied)). When asked if "as a predicate for the use permit, they have to prove they need a variance?," Mr. Dillon replied, "I believe it is." (*Id.*). In other words, Mr. Dillon seems to argue that a property owner may only rely on a Use Permit to help provide the amount of parking required under BCZR Section 409.6 for

required by Section 409.6, *only if the parcel on which the business use is situated may not otherwise satisfy the requirements*. However, Mr. Dillon completely ignores the fact that Section 409.6 provides *minimum parking requirements*, with no limit on the number of spaces that may be provided over and above the minimum required amount. Therefore, because Section 409.6 allows for unlimited parking spaces, if a certain business use must provide one hundred parking spaces, and those one hundred spaces are provided on-site, the property owner may nevertheless be granted a Use Permit for additional spaces and still "meet the requirements of Section 409.6." Accepting Mr. Dillon's interpretation could indisputably create a "catch-22" for a business owner who requires additional parking to satisfy customers – e.g., (a) a variance is needed for lack of spaces on the commercially-zoned site; (b) residentially-zoned property is available across the street and the owner applies for a Use Permit; (c) the parking variance is denied; (d) the petition for the Use Permit is, therefore, moot; and (e) the owner cannot legally operate its business on the commercially-zoned site because it cannot provide adequate parking.

In sum, Mr. Dillon's theory impermissibly stretches the plain meaning of the language in Section 409.8.B. There simply is no requirement that a petitioner for a Use Permit must first file a Petition for Variance from Section 409.6 for the on-site parking for the business use. Were the County Council to have intended for such a Variance to be a prerequisite, it would have explicitly stated so. As discussed in detail below, in Section 409.8.B the Council set forth *numerous* conditions and other criteria that a petitioner for a Use Permit must meet, but it has not listed the filing of a Petition for Variance among them. Furthermore, Case No. 02-235-SPH, discussed above, confirms that, in practice, the filing of a Variance is not a prerequisite to the granting of a Use Permit. Mr. Dillon did not cite any cases to the contrary.

2. *Petitioner presented substantial evidence in support of its petition for a Use Permit for off-street business parking on the Parking Parcel.*

Petitioner's witness David Martin, accepted as an expert in land use, zoning, and the Baltimore County development regulations (T., 11/02/06, p. 6-7), outlined each requirement and explained how Petitioner's proposed use met each one.

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the business use at issue.

First Mr. Martin testified regarding the criteria under Section 409.8.B.2 (*see* Memo Ex. No. 5[9]), which relate to business or industrial parking in residential zones, in general, offering his expert opinion as to how the proposed use meets each one:

- 409.8.B.2.a – The site will adjoin an alley or street that adjoins the business that is proposing to use the parking. (T., 11/02/06, p. 17).
- 409.8.B.2.b – Petitioner will use the parking lot "for vehicle passenger automobiles" and "no buses." (T., 11/02/06, p.17).
- 409.8.B.2.c – "There's no loading or service adjoining the building. It's simply, again, parking of the vehicles." (T., 11/02/06, p. 18).
- 409.8.B.2.d – "[M]aybe there [will be] no lighting that was being provided for this specific lot. But in any event, in today's technology, there are cutoff fixtures that prevent spillover of light to adjoining properties, and certainly that can be utilized, and it should be utilized." (T., 11/02/06, p. 18)
- 409.8.B.2.e – "Certainly, that is shown on the plan....The parking stalls are eighteen foot deep. The drive aisle is twenty-two feet, which is the minimum for a commercial parking area, I believe the width of the parking spaces are designated at eight and a half feet wide, which is the criteria also in Baltimore County..." (T., 11/02/06, pp. 18-19).
- 409.8.B.2.f – "[T]hese are actually spaces again more for storage than ongoing parking use...[and] since the [dealership] business has hours of operation commonly used for the building, it's unlikely that some other strange hours of operation would be utilized for the parking." (T., 11/02/06, pp. 19-20).
- 409.8.B.2.g – "The Zoning Commissioner [has] some latitude to require, on a request like this, for items such as screening with fences or walls [or] landscaping." (T., 11/02/06 p. 20).

Next, Mr. Martin addressed Section 409.8.B.1 (*see* Memo Ex. No. 5), which provides procedural requirements the Board must follow when considering an application for a Use Permit. He began by opining that Petitioner's request satisfies the requirements of BCZR Section 409.6. (T., 11/02/06, p. 22). Next, he confirmed that the property had been posted for the required fifteen days, as required by Section 409.8.B.1.a. (T., 11/02/06, p. 22).

[9] For convenience, we have attached as exhibits copies of the various criteria discussed in this Memo.

After indicating that Sections 409.8.B.1.b through .d were not applicable to the instant matter, Mr. Martin then addressed the four categories of conditions upon which the granting or denial of a Use Permit may be based, as outlined in Section 409.8.B.1.e. (T., 11/02/06, pp. 23-35). First, he noted that a decision may be conditioned upon the findings of the Zoning Commissioner or Board following the public hearing. (*See id.* at p. 24). Second, he indicated that a decision may be conditioned upon "the character of the surrounding community and the anticipated impact of the proposed use on that community." (*Id.*). He opined that, because Petitioner's site plan proposed a twenty-five foot buffer between the parking lot and adjacent house with landscaping and fencing and an eighty-five foot setback from the portion of East Avenue that serves the residential neighborhood, the use "would, in fact, and could, in fact, not have an adverse detrimental effect on the community." (*Id.*). He elaborated that

> [t]he reason for the eighty-five foot setback on East Avenue running east/west is that it pulls the parking or the paving edge and/or the fence back behind the existing line of the residential rear structures, so that's a significant buffer on the front. It will continue to keep that as an open area of lawn, which is a good transition to the residential neighborhood. Then behind that where this property is already basically surrounded on three sides, certainly, by the auto use, the commercial uses, is where the actual use of this paved area, or the paved area itself, the landscaping and the fence is located.

(T., 11/02/06, pp. 24-25). Third, he verified that a decision may be conditioned upon "the requirements of Section 409.8.B.2," which he said "refers back to...what are called the design criteria of the parking lot themselves. Their location to street and alleys, and what they are being used for, and lighting and screening, and what have you." (T., 11/02/06, p. 30). As discussed on page 14 above, he concluded Petitioner met these requirements. (T., 11/02/06, pp. 17-20). Lastly, Mr. Martin noted that additional conditions may be imposed, consistent with the objectives of BCZR Section 502.1. (T., 11/02/06, pp. 30-31). Although, despite People's Counsel's assertions to the contrary, the conditioning of a decision upon the objectives set out in Section 502.1 is discretionary. Mr. Martin specifically addressed each 502.1 requirement (*see* Memo Ex. No. 6), testifying that, in his opinion, the proposed project satisfies those objectives:

- 502.1.A – The use will have no detrimental impact on the health, safety, or general welfare of the locality. (T., 11/02/06, p. 32).
- 502.1.B – Because of the proximity of the parking lot to the dealership itself, and based on the testimony of Petitioner's traffic expert, Mickey Cornelius, Mr. Martin does not

believe that the proposed use will tend to cause congestion in the roads, streets, or alleys of the locality. (T., 11/02/06, p. 33). Mr. Cornelius testified that the proposed use "would not create congestion on the roads, streets, and alleys" in the immediate area of the site. (T., 06/21/06, p. 172). He generally opined that "inventory of vehicles is not a traffic generator." (*Id.* at p. 170). Specifically, based on Petitioner's witness Dennis Turnbaugh's testimony that parking vehicles at the proposed site would alleviate the need to transfer vehicles to Bel Air for storage several times a day (*Id.* at pp. 114-16), Mr. Cornelius opined that Petitioner would be "reducing traffic on the road system....There is absolutely no increase in traffic, and based upon the existence of the off site lot, there would be a decrease in traffic on the road system." (*Id.* at pp.170-71).

- 502.1.C – The proposed use will not create potential hazard from fire, panic, or other danger because "[t]he only thing they are storing are automobiles. There's no building associated, no hazardous material associated with parking cars." (T., 11/02/06, p. 33).
- 502.1.D – The proposed use is "not going to over-crowd the land....there is a significant front yard buffer....I would say the site is only being utilized about two-thirds of its area for the proposed parking." (T., 11/02/06, pp. 33-34).
- 502.1.E – "[I]t's a parking lot. Obviously, we are not going to interject students in the school system. This is a parking lot that does not require water and sewer, like a building would....And so I would say there's no adverse impact" on the provisions for schools, parks, water, sewerage, transportation or other public requirements. (T., 11/02/06, pp. 33-34).
- 502.1.F – "Since this is a flat plane of a parking lot, no buildings are being proposed here. It's certainly not going to interfere with the provisions for adequate light to the site or the air." (T., 11/02/06, pp. 34-35).
- 502.1.G – "[C]learly, it's not inconsistent with the D.R. 5.5 zone. The provision[s] are very clear in both D.R. 5.5 to permit parking in that zone, it's a permitted use, and 409 further clarifies that for a commercial parking lot in a residential zone....I can't think of any inconsistencies [with the spirit and intent of the Zoning Regulations] here at all." (T., 11/02/06, p. 35).

In sum, Mr. Martin's testimony regarding the procedural and conditional aspects of a Use Permit provides the substantial evidence necessary to grant the Use Permit.

B. Petitioner Has Satisfied Its Burden Of Proof With Respect To The Petition For Variance From The RTA Buffer And Setback Requirements.

Assuming the Board determines that Petitioner's proposed use is subject to the RTA regulations, Petitioner presented substantial evidence to support the requested Variances. Specifically, Petitioner has sought the following RTA variances: (1) variance from BCZR Section 1B01.1.b.1.e.(5) to permit a 25-foot buffer in lieu of the required 50-foot buffer and (2) variance from BCZR Section 1B01.1.b.1.e.(5) to permit a 25-foot setback in lieu of the required 75-foot setback. The requested variance locations are shown and indicated on Pet. Ex. No. 1. Petitioner has presented substantial evidence to satisfy the specialized Variance standard for RTA requirements in BCZR Section 1B01.1.B.1.c (*see* Memo Ex. No. 7). If the Board does not agree that the specialized standard applies, Petitioner has likewise presented substantial evidence to satisfy the traditional Variance standard within BCZR Section 307.1 (*see* Memo Ex. No. 8).

1. ***The requested variances are subject to BCZR Section 1B01.1.B.1.c, and Petitioner has presented substantial evidence establishing compliance with that Section.***

The RTA Variances requested by Petitioner are subject to the specialized Variance standard outlined in BCZR Section 1B01.1.B.1.c. Although this section states that the "hearing officer" may grant Variances, Mr. Martin testified that, in his experience, "[i]t is a policy that [such Variances are] done all the time via a special hearing." (T., 11/02/06, p. 37). The terms "hearing officer" and "zoning commissioner" are interchangeably used in the BCZR, and in reality, there is little distinction between the two terms – the zoning commissioner is the hearing officer and the hearing officer is the zoning commissioner. Mr. Martin continued by clarifying the applicability of Section 1B01.1.B.1.c. He explained that, in this particular case, Section 1B01.1.B.1.c.(1) is *not* applicable because the proposed site is not more than two acres. (T., 11/02/06, p. 37). However, he indicated that Section 1B01.1.B.1.c.(2) was applicable and he went on to explain how the proposed use meets the requirements of that Section and, therefore, why a Variance should be granted pursuant thereto. (T., 11/02/06, pp. 38-46).

Mr. Martin first discussed the requirement that the Zoning Commissioner "may not reduce the amount of RTA unless the officer specifically finds and determines that such a reduction will not adversely impact the residential community or development on the land adjacent to the property to be developed." BCZR §1B01.1.B.1.c.(2). He opined that the proposed use injects no adverse impact to the adjacent residential dwelling because:

- the parking lot will be setback eighty-five feet from the portion of East Avenue that serves the residential uses;
- the lot will be "behind the rear line and lined up with that [adjacent] dwelling";
- there will be an open lawn between the parking lot and East Avenue, plus a twenty-five foot buffer, Class A screen landscaping, and fencing between the parking lot and residential uses; and
- ultimately "it is an exchange of ground plane which is currently in lawn for an asphalted parking area."

(T., 11/02/06, pp. 39-40); *see also* Pet. Ex. No. 1. Furthermore, he stated that

> beyond this adjacent dwelling, they are either out of the site visibility just for either distance or the fact that the screening is going to be here, it's a ground plane surface, plus the interjection just immediately south of an already existing parking area, this parking area just lines up with that, and you still have this big green space. *So in my opinion, it has absolutely no impact to the rest of the community down the street.*

(T., 11/02/06, p. 40 (emphasis supplied)).

Next, he discussed the requirement that "[t]he RTA for a tract may be modified as directed by findings pursuant to [Baltimore County Code] §32-4-402," which relates to compatibility. BCZR §1B01.1.B.1.c.(2). He specifically addressed how the proposed use complies with each of the eight compatibility objectives of Section 32-4-402 (*see* Memo Ex. No. 9):

- 32-4-402(d)(1) – "I've already mentioned parking in the green space and its relationship to the front of the existing buildings. It is compatible. It's exactly the same." (T., 11/02/06, pp. 41-42).
- 32-4-402(d)(2) – "There's no building. The parking lot layout reinforces the existing building and streetscape patterns, and ensures the placement of buildings and parking lots have no adverse impacts on the neighborhood....It runs in the same pattern as...the already existing commercial uses and parking lots, and it does respect the front yard setbacks, et cetera, so I would say this meets the requirement." (T., 11/02/06, p. 42).
- 32-4-402(d)(3) – "[T]here are no proposed streets. The streets exist." (T., 11/02/06, p. 42).

- 32-4-402(d)(4) – "[T]he only open space in the neighborhood is the private yard spaces. Again, we talked about the fact they're going to remain a yard space [*sic*] of eight-five feet of frontage depth from East Avenue running east/west, and roughly a hundred thirty feet in its width, or frontage." (T., 11/02/06, p 43).
- 32-4-402(d)(5) – "There are [no locally significant features of the site such as distinctive buildings]. There are no vistas. [T]his deals with new development, typically." (T., 11/02/06, p. 44).
- 32-4-402(d)(6) – "[T]here's a significant lawn that does match, I mentioned it, in fact, perceptively, it would appear to be a large side yard to the [adjacent] dwelling." (T., 11/02/06, pp. 44).
- 32-4-402(d)(7) – "There are no accessory structures, to my understanding, there are no exterior signs associated with this parking lot. The site lighting, I'm not sure I heard testimony there is, in fact, even going to be lighting on this lot, but if so, there are compatible light fixtures in this day and age that have cut-off fixtures to prevent spillover of light." (T., 11/02/06, pp. 44-45).
- 32-4-402(d)(8) – "Number eight talks about the scale and proportion of buildings. Again, there are no buildings involved...." (T., 11/02/06, p. 45).

Ultimately, Mr. Martin opined:

> I believe [the proposed use] does meet the compatibility standard, again for all the reasons that I mentioned several times about *proximity,* where the parking lot actually is in relationship to the existing buildings, the existing commercial uses, the *landscape buffer* that's being proposed, as well as the *most significant front lawn area,* I will call it, that faces or is on the immediate corner of the subject property.

(*Id.* (emphasis supplied)).

Finally, in concluding his extensive testimony establishing the compatibility of the proposed use with the neighborhood and the non-existent adverse impact of the proposed use on the neighborhood, Mr. Martin opined that the requested Variance satisfies the terms and conditions of BCZR Section 1B01.1.B.1.c.(2). (*See* T., 11/02/06, p. 46). He specifically noted that he has "seen and designed parking lots that almost mirror this exactly that have met [Section 1B01.1.B.1.c.(2)] and been granted, those uses and those buffer variance requirements." (T., 11/02/06, p. 46).

Therefore, based on Mr. Martin's expert testimony, the Board should grant Petitioner's RTA Variance request, pursuant to the specialized standard outlined in BCZR Section 1B01.1.B.1.c.(2).

2. *In addition to or in the alternative to Section 1B01.B.1.c.(2), the requested Variances satisfy section 307 of the Zoning Regulations.*

If the Board finds that Section 1B01.1.B.1.c is not applicable, the requested Variances comply with the requirements of Section 307.1.

a. *The requested Variances comply with BCZR Section 307.1.*

The Board of Appeals may grant a request for a Variance "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." BCZR § 307.1.[10]

The proper application of Section 307.1 requires the Board to determine first that the property on which a use is proposed is unique and that such "uniqueness" causes a disproportionate impact in terms of the application of the Zoning Regulations. *See Cromwell v. Ward*, 102 Md. App. 691, 694 (1995). Second, the Board must determine whether those unique circumstances make it practically difficult for the owner to utilize the property for a permitted use without conflicting with the Zoning Regulations. *See id.* at 694-95.

Once uniqueness is shown, proving practical difficulty is *not* intended to be a particularly stringent test. Simply put, practical difficulty means that, considering the interests of the property owner and neighboring property owners, requiring strict compliance with the Zoning Regulations would unnecessarily burden the property owner when the owner attempts to use the property for a permitted use. *See McLean*, 270 Md. at 214-15. In determining whether practical difficulty exists, the Board of Appeals should consider: whether requiring conformity with the applicable Zoning Regulations would be unnecessarily burdensome; whether granting the Variances would do substantial justice; and whether the requested Variances would be consistent with the spirit of the ordinance and the interests of public safety and welfare. *See id.* At the

[10] The Court in *McLean v. Soley,* 270 Md. 208, 213 (1973), noted that the "requirements 'practical difficulty or unreasonable hardship' are in the disjunctive." The Court then further explained that the "practical difficulty" requirement applies to area variance cases, such as the request in the instant case, while "unreasonable hardship" applies to "use variance" cases. *See id.* at 215; *see also Montgomery Co. v. Rotwein,* 169 Md. App. 716, 729 (2006) (citing *Loyola Fed. Savs. & Loan Ass'n v. Buschman,*227 Md. 243, 249 (1961)).

hearing before the Board, Petitioner produced strong and substantial evidence that the requested Variances are warranted.

b. *The overwhelming evidence confirms that the Parking Parcel is unusual and unique.*

As outlined above, in order to grant a Variance, the Board must find that "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request." BCZR §307.1. A review of the record produced before the Board of Appeals brings into focus the true uniqueness of the Parking Parcel. Petitioner produced sufficient evidence that special circumstances exist with regard to the Parking Parcel through Thomas A. Church, accepted by the Board as an expert in engineering and the zoning and development regulations of Baltimore County (T., 06/21/06, p. 25), and Mr. Martin.

Testifying first, Mr. Church described the Parking Parcel, split-zoned commercial (BM) and residential (DR5.5), as a "finger" that protrudes into and is bounded by commercial automobile-related uses on three of its four sides. (*Id.* at p. 50); *see also* Pet. Ex. No. 1. In addition to these unusual conditions, it is the location of the Parking Parcel in relation to East Avenue Relocated that further contributes to its uniqueness. The State Highway Administration relocated old East Avenue to its current configuration, now known as "East Avenue Relocated," to install an exit ramp from I-695. (T. 06/21/06, pp. 50-51). Utility lines within the former roadbed that cut through Petitioner's dealership were *not* relocated consistent with the realignment and remain there. (T., 11/02/06, p. 49) The 1955 County zoning map indicates the prior alignment of East Avenue, and the current configuration of East Avenue Relocated is shown on the 1995 County aerial photograph. *See* Pet. Ex. Nos. 2 and 4. The result of these I-695 improvements is an unusual "S" shaped road alignment that not only bounds the Parking Parcel on both its west and south sides but limits vehicular access to the Parking Parcel. (T., 06/21/06, pp. 51-53); *see also* Pet. Ex. No. 1; Deputy Zoning Commissioner's Order (Case No. 03-360-SPHA), pp. 4-6. The curvature of East Avenue Relocated is an "unsafe condition" that creates site distance issues with installing an access point for the Parking Parcel onto East Avenue. (T. 06/21/06, pp. 103-04) Additionally, the location of a drainage ditch that lies within and adjacent to the entire length of the Parking Parcel's southern property line further complicates the possibility of access to the site by way of East Avenue. (T., 06/21/06, pp. 30-32; T., 11/02/06, pp. 49-50); *see also* Pet. Ex. No. 6D. According to Mr. Church, the only

acceptable vehicular entrance to the Parking Parcel is, therefore, through the adjacent dealership to the north of the subject site and *not* by way of East Avenue Relocated. (T., 06/21/06, p. 50); *see also* Pet. Ex. No. 1.[11]

Next, Petitioner produced the testimony of Mr. Martin to further establish the uniqueness of the Parking Parcel. Based on his expertise and research of Baltimore County's development and land records, Mr. Martin also expressed an opinion that the Parking Parcel is "unique." (T., 11/02/06, pp. 47-48). His research included review of the County's past aerial photography maps that include the site, public utility drawings, and deeds recorded in the County Land Records, and, through this research, he formulated his opinion. (*Id.* at pp. 48-49); *see also* Pet. Ex. No. 2. Mr. Martin explained that it is not only the unusual "S" road alignment cited by Mr. Church that renders the Parking Parcel unique, but it is also the effect that the realignment had on the parcel. (T., 11/02/06, p. 48). The relocation of East Avenue "severed" the Parking Parcel from the "parent" Dealership Parcel, as Mr. Martin referred to it. (*Id.*). Prior to this severance, the Parking Parcel and Dealership Parcel together were an integrated part of the commercial uses in the area, but now the Parking Parcel is "a missing tooth out of...the commercial use...to the north and south and west of the [Parking Parcel]." (*Id.* at pp. 47-48). Ultimately, the resulting separation is responsible for two bifurcated parts of one Property and, on that basis, the Parking Parcel is unique. (*Id.*); *see also* Pet. Ex. No. 1.

As the testimony and evidence presented by each of Petitioner's experts demonstrates, the Parking Parcel is "unique" and its unusual features present a practical difficulty for Petitioner as outlined below.

c. *The evidence confirms that Petitioner had a practical difficulty in strictly complying with the BCZR.*

Having presented clear and convincing evidence that the property is unique, Petitioner next demonstrated that, as a result of Petitioner's special circumstances, requiring strict compliance with the BCZR would result in a practical difficulty for Petitioner. Without the requested RTA buffer and setback Variances, a parking lot cannot be installed on the Parking

[11] Appellants' own land planner, Jack Dillon, opined on direct examination by People's Counsel that the alignment of East Avenue Relocated is *not* a common situation...in this kind of area." (T., 11/02/06, p. 199 (emphasis supplied)). The only logical conclusion of Mr. Dillon's statement is that such an uncommon alignment must be unique rather than ordinary.

Parcel that would be suitable to support the Dealership Parcel. (T., 06/21/06, p. 51; T., 11/02/06, pp. 55-56).

Petitioner, through Dennis Turnbaugh, Petitioner's Division President for this Honda Dealership, provided an understanding of the business necessity of providing parking on the Parking Parcel. (T., 06/21/06, pp. 115-17, 146-48, 156). Installation of a parking lot on the Parking Parcel will allow Petitioner readily-accessible inventory to adequately serve its customers and avoid loss of business due to lack of on-site inventory. (*Id.* at p. 146). Mr. Turnbaugh described the automobile dealership business as "a very competitive business" and indicated that if Petitioner does not take steps to improve its operations it will "go backwards," meaning the business' viability will suffer. (*Id.* at p. 156). Currently, Petitioner stores its automobile inventory at a location off-site. (*Id.* at p. 115). This arrangement requires Petitioner to transport its for-sale inventory numerous times a day from this off-site location, the effect of which has a direct impact of the success of Petitioner's business. (*Id.* at pp. 115-16, 134). On cross-examination, Mr. Turnbaugh explained that relocation of this dealership to another location is not an option available to Petitioner. In the automobile industry, manufacturer's agreements restrict dealership locations. (*Id.* at p. 148). As a result, Petitioner has no choice but to improve its operations at this location in order to remain a successful business. (*Id.* at p. 156).

Denial of the Petition for Variance would, therefore, result in a practical difficulty for Petitioner as established through Mr. Turnbaugh's testimony. Since Petitioner requires additional on-site inventory storage and relocation of the dealership is not possible, the only other alternative to the Petitioner is the practical difficulty, in its most literal sense, of bringing cars to the site and continuing the associated deleterious effects of doing so.

Further, a grant of the Petition for Variance will not result in an adverse impact on anyone or be inconsistent with the applicable Zoning Regulations, as attested to by Mr. Martin and Mr. Cornelius. Mr. Martin explained that a parking lot on the Parking Parcel with the benefit of the requested Variances, will not affect the neighboring property owners any more than a smaller parking lot that conforms to the applicable RTA buffer and setback requirements. (T., 11/02/06, pp. 50-52). Simply put, a parking lot is a parking lot in the instant case. This is merely a request to allow for an exchange of unpaved surface for additional paved surface, the result of which is disturbance of the "ground plane" of the property only. (*Id.* at p. 52). As there are no structures planned for the Parking Parcel, there is no "verticality" (*i.e.*, buildings)

associated with the instant Petition. (*Id.* at pp. 50-51). Mr. Martin testified that, as shown on Pet. Ex. No. 1, wood stockade fencing and a buffer area complete with a Class A landscape screen are proposed to shield the Parking Parcel from the neighboring properties to the east of the site on East Avenue. (T., 11/02/06, p. 40). These proposed site features will act as a "curtain" between activity on the Parking Parcel and those properties to the east. (*Id.* at p. 51). Whether the Parking Parcel is larger by way of a grant of the Variance or not, this "curtain" proposed by Petitioner will protect the neighboring community. (*Id.*). Installation of additional paved parking surface on the lot will result in additional disturbed ground area but no more of an impact on the surrounding locale than installation of a smaller paved surface without the requested Variances.

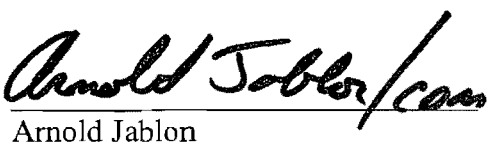
To further prove that a grant of the Petition for Variance will not have an impact on the surrounding locale, Petitioner offered the testimony of Mr. Cornelius. According to Pet. Ex. No. 1, vehicular access to the subject site is proposed through the adjacent dealership only, without use of "S" curved section of East Avenue Relocated. *See* Pet. Ex. No. 1. Additionally, Mr. Cornelius explained that the presence of automobile inventory on the property will not be a traffic generator. (T., 06/21/06, p. 170). In fact, Petitioner now stores its automobile inventory at an off-site location, which does generate traffic on a daily basis, and the proposed relocation of inventory on-site will result in an overall traffic reduction on the road system. (*Id.* at pp. 170-01). On this basis, he concluded that the proposed use of the property for parking would not have a negative impact on traffic in the immediate area of the site. (*Id.* at p. 172).

Based on this testimony, the Board of Appeals should find that granting the Variances from Section 1B01.1.b.1.e to permit the requested RTA buffer and setback, would alleviate what would, otherwise, be an unnecessary burden on Petitioner and would not result in an adverse impact on the surrounding community.

CONCLUSION

Petitioner has presented substantial evidence proving that the 1968 Order remains valid and that Petitioner may utilize the 1968 Permit, pursuant to that Order, without seeking additional zoning relief. Therefore, Petitioner respectfully requests that the Board grant the Petition for Special Hearing in Case No. 06-109-SPH, thereby confirming the validity of the 1968 Order. In the event the Board decides the 1968 Order is not valid, Petitioner has also presented substantial evidence proving its entitlement to a Use Permit under the current Zoning Regulations and the corresponding RTA Variances necessary to develop the Parking Parcel as a parking lot. Therefore, should the board deny the Petition for Special Hearing in Case No. 06-109-SPH, Petitioner respectfully requests that the Board subsequently grant the Petition for Special Hearing and Petition for Variance in Case No. 03-360-SPHA.

Respectfully Submitted,



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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December, 2006, a copy of the foregoing PETITIONER'S POST-HEARING MEMORANDUM was hand delivered to Peter Max Zimmerman, 400 Washington Avenue, Room 47, Towson, MD 21204, People's Counsel for Baltimore County.

Arnold Jablon

ARNOLD JABLON

2/16/05

RECEIVED
FEB 16 2005
BALTIMORE COUNTY
BOARD OF APPEALS

RE: PETITION FOR SPECIAL HEARING AND VARIANCE NE corner East Avenue & East Avenue Relocated; Eside East Avenue; 34ft to Ctrline East Avenue 11th Election District, 6th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Legal Owner(s): Steve B. Fader, Managing Member Auto Properties, LLC Petitioners	*	FOR BALTIMORE COUNTY
	*	Case No. 03-360-SPHA

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

PEOPLE'S COUNSEL'S MEMORANDUM AND REQUEST FOR HEARING

People's Counsel for Baltimore County files this memorandum:

Introduction

The County Board of Appeals should hold a hearing to review the impact of the 1968 zoning decision submitted by Petitioner Auto on January 25, 2004. In Harford Warehouse Corporation Case 68-177-RX, Exh. 1, the Zoning Commissioner (ZC) on March 14, 1968 approved a use permit for parking in an R.6 residential zone, accessory to a service garage, pursuant to then BCZR 409.4 (1955). Exh. 2. The residentially zoned property there (Parcel 2) appears to be the same property at issue here.

The discovery of this decision led to Petitioner's request for postponement, which the CBA granted without objection. Upon careful review, and for reasons explained below, People's Counsel submits that the 1968 decision is not effective to approve the use proposed by Petitioner.

The next hearing should resolve this issue and then move on to the merits of the present requested use permit for commercial parking in a residential zone and variances from the residential transition area standards.

Questions Presented as to the 1968 Decision

1. Did the 1968 use permit confer any vested rights prior to the enactment of residential transition area standards (Bill, 100. 1970) and modified use permit standards (Bill 26, 1988)?

2. In any event, if the use permit were followed by actual use, did it nevertheless become nonconforming upon the enactment of the residential transition area standards and modified use permit standards, and, if so, did it terminate under BCZR 104.1 for discontinuity in the 1970s and 1980s?

3. Furthermore, would the new petition for parking in conjunction with a large car dealership be different in impact from parking approved or used in 1968 in conjunction with a service garage? Would this constitute a material change in the use so as to require a new use permit?

Argument

I. The 1968 Use Permit Does Not Confer Vested Rights on Heritage Honda; Its Proposal Is Subject to Review for Compliance with Residential Transition Area Standards and with the modified parking standards under Bill 26-88.

The ZC approved the HWC use permit on March 14, 1968. We assume this was a final decision. There is no evidence as to the commencement of the use or the utilization of the permit. In the absence of such use, a property owner does not acquire vested rights against the impact of subsequent legislation relevant to the use of the property.

On August 5, 1970, the County Council passed Bill 100. This included a comprehensive revision of the 1955 BCZR residential zoning law. Among other things, it established the structure and controls for "density" residential zones. Along with the

creation of the D.R. zones, it established for the first time use restrictions for "residential transition areas." Bill 100, Section 5, Pages 19-22 includes the pertinent standards. Exh. 3

The 1968 decision reflects the property was then zoned R.6. It is now zoned D.R. 5.5. It was likely rezoned to D.R. 5.5 in the 1971 comprehensive map process. The zoning history should confirm this. Under these circumstances, the Bill 100 RTA standards would have come into play, and a variance would have been necessary at that time. While the RTA standards have been amended from time to time, the different versions would all require variances for this property to be used for business parking.

Later, the 1988 Council enacted a comprehensive revision of the BCZR 409 parking controls. It expanded and strengthened the controls and standards for approval of business parking in residential zones. In this connection, BCZR 409.8.B replaced BCZR 409.4 and, most prominently, added the special exception standard.

A use permit alone, even with preliminary site work, is not sufficient for a property owner to acquire vested rights in the absence of actual and substantial use prior to the enactment either of new standards which control, restrict, or prohibit it. Mayor & City Council v. Shapiro 187 Md. 623 (1947) is most pertinent as it held that a permit for a used car lot did not vest any rights in the absence of actual and substantial use apparent to the public. Exh. 4.

The path of the case law on vested rights is consistent on this point, and Shapiro is still good law. Yorkdale Corp. v. Powell 237 Md. 121 (1964); Mandel v. Bd. Of Co. Comm'rs 238 Md. 208 (1965); Ross v. Montgomery County 252 Md. 497 (1969); Richmond Corp. v. Board of County Comm'rs 254 Md. 244 (1969); Dal Maso v. Board

of Co.Comm'rs 264 Md. 691 (1971); O'Donnell v. Bassler 289 Md. 501 (1981); Prince George's County v. Sunrise Dev. 330 Md. 297 (1993); Sycamore Realty v. People's Counsel 344 Md. 57 (1996); Prince George's County v. Collington Corp. Center 358 Md.196 (2000); Marzullo v. Kahl 366 Md. 158 (2001). The most recent decision came down in Powell v. Calvert County 368 Md. 400 (2002).

Thus, absent vested rights, even a proposal for the precise use approved in 1968 would be subject again to review to determine whether RTA variances would be appropriate and whether the use meets the strengthened BCZR 409.8.B.

II. Even if the use permit were followed by actual use sufficient to vest, the use became nonconforming upon enactment of the residential transition area standards and modified use permit standards. Any such nonconforming use appears to have terminated upon its later discontinuation for a year or more.

It appears to be undisputed that this corner property has been vacant for many years. HWC is long gone. Several citizens who oppose the present petition have lived on East Avenue for a long time. Anthony Marchanti has lived there since about 1975 and Daryl Corona since about 1985. Our understanding is that they will testify that the site has been vacant for as long as they can remember.

An auto dealer named Doug Griffith had a dealership on some of the commercially zoned property to the north and west. There was a rezoning case on a part of that property in the 1980s. See People's Counsel v. Mockard 73 Md. App. 340 (1987). But he did not use the subject property. Auto Properties (the Heritage auto group) acquired various parcels from Barbara Griffith in 1999 and has gradually expanded. It operates a number of dealerships. The latest addition appears to be the Honda dealership

on the south side of East Avenue. The present case amounts to a further expansion for parking, mainly for that dealership.

Shapiro also notes that if vested rights do accrue, the use ordinarily becomes nonconforming upon the subsequent passage of legislation which restricts the use. This is elementary. The law relevant to nonconforming uses then comes into play. Baltimore County defines nonconforming uses under BCZR 101:

> "**Non-conforming use:** A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically names use described by the adjective "nonconforming" is a nonconforming use."

The Bill 100 RTA legislation, originally and as amended, is substantially a use regulation in that it controls the uses in the RTA. It also is a type of special regulation. The same can be said for the BCZR 409 control on business parking in residential zones. It is a use and a special regulation.

BCZR 104 regulates both the continuation and termination of nonconforming uses. The key provision is BCZR 104.1, which states:

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

The subject of discontinuity of nonconforming uses has come up in several recent cases, such as Ramsay/Savader, 2108 Alma Avenue, Case No. 04-250-SPH. There, the CBA recognized the objective test for determination of discontinuity.

It is to be remembered that one of the fundamental purposes of zoning is to eliminate nonconforming uses. To this end, the law must be construed strictly where

there is a question of continuation. Judge Rita Davidson made this plain in an extensive and learned discussion in Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1982). She identified a key issue as the reconciliation of this purpose with the need to accommodate existing vested rights. She wrote:

> "Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *The Arundel Corp. v. Board of Zoning Appeals of Howard County,* 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); *Stieff v. Collins,* 237 Md. 601, 604, 207 A.2d 489, 491 (1965); *Colati v. Jirout,* 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); *Beyer v. Mayor of Baltimore,* 182 Md. 444, 446, 34 A.2d 765, 766 (1943); *See Kastendike v. Baltimore Ass'n for Retarded Children, Inc.,* 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).
>
> Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. *Feldstein v. La Vale Zoning Board,* 246 Md. 204, 211, 227 A.2d 731, 734 (1967); *Phillips v. Zoning Comm'r of Howard County,* 225 Md. 102, 109, 169 A.2d 410, 413 (1961); *Board of Zoning Appeals of Baltimore County v. Gue,* 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. *Mayor of Baltimore v. Byrd,* 191 Md. 632, 638, 62 A.2d 588, 591 (1948); *Colati,* 186 Md. at 658-59, 47 A.2d at 616; *Knox v. Mayor of Baltimore,* 180 Md. 88, 96, 23 A.2d 15, 18 (1941); *see City of Hagerstown v. Wood,* 257 Md. 558, 563, 263 A.2d 532, 534 (1970); *Hewitt v. County Comm'rs of Baltimore County,* 220 Md. 48, 59, 151 A.2d 144, 150 (1959)."

Baltimore County zoning law follows the prevailing pattern of nonconforming use law. In this respect, the law here is reminiscent of the law described in Canada Tavern, Inc. v. Town of Glen Echo 260 Md. 206 (1970), where Judge McWilliams wrote:

> "We think the Council, having in mind a larger purpose, intended to align itself with those local governments which have found it desirable to delete the factor of intent in respect of the abandonment, discontinuation, or cessation of nonconforming uses rather than continuing to run the gamut of its judicial determination in a succession of infinitely variable situations."

Canada's Tavern held that expiration of the statutory period of discontinuity terminates the use. There, the lessee restaurateur closed when the liquor license was not renewed. It took time for the owner to get a new lessee to reopen. By then, the statutory period had run. The owner nevertheless applied for and got a certificate of occupancy from the Department of Inspections and Licenses, also approved by the County Attorney. Upon objection by the town, the Board of Appeals affirmed the departmental approval of the certificate, opining that the owner had diligently attempted to find a tenant to continue restaurant operation. The Circuit Court reversed, finding that the intent was irrelevant. The Court of Appeals affirmed the reversal, resulting in the denial of the certificate. Judge McWilliams emphasized the language of the statute is clear and objective.

So, if Harford Warehouse Corporation ever acquired any vested rights in the use of the property for business parking in a residential zone, the use became nonconforming upon the passage of Bill 100, 1970. The evidence appears to be undisputed that the property was vacant for many years in the 1970s, 1980s, and 1990s, up until the present. Clearly, any nonconforming use has terminated. The proposed new use by Auto Properties is subject, therefore, to review as a new proposal for a use permit under BCZR 409.8B and for variances to the RTA standards under BCZR 1B01.1B and 307.1.

III. The Proposed Use Permit Is Subject to a New Hearing Under the BCZR and the Policy Manual in any Event

Even if HWC had acquired vested rights and its use had continued as a nonconforming use to the present day, Auto Properties would still be subject to a new use

permit and variance review because the proposed use is materially different from the use approved in 1968 for HWC.

The use permit here was approved under BCZR 409.4 (1955). Several cases involved use permits under this prior law. Marek v. County Board of Appeals 218 Md. 351 (1958) held a use permit was not a special exception for the purpose of the BCZR 500.12 prohibition on filing a new petition on the same property within 18 months after a final order. BCZR 500.12. On the other hand, in Hofmeister v. Frank Realty Co. 35 Md. App. 691 (1977), the Court held that use permits were types of "special exceptions" within the delegated authority of the Zoning Commissioner to grant "special exceptions and variances." After discussing in depth the vocabulary of zoning, Judge Moylan explained that the name "special exceptions" refers to a genus which includes "special permit," "conditional use," "special use," "use permit", or "special exception." 35 Md. App. at 699. Citing Marek, he distinguished the specific Article 4 special exceptions, including use permits, from the species special exceptions under BCZR 502. 35 Md. App. at 704. But both of these decisions predated the 1988 addition of BCZR 502.1 standards.

In addition to other requirements, BCZR 409.8B.1.e.4 now includes:

> "Any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1of these regulations."

Its source, as noted, is Bill 26-88, which included a comprehensive revision of BCZR 409. BCZR 409.8B replaced BCZR 409.4 (1955), a more abbreviated prior section on use permits which did not incorporate a BCZR 502.1 standard.

In 1992, the Baltimore County Zoning Office adopted a Zoning Policy Manual pursuant to the authority of then County Code Sec. 26-135, codified now as Sec. 32-3-105. That manual includes a detailed provision 409.8.B.2.g.(2) governing "OLD UNUSED PERMITS." Exh. 5. In general, the viability of a proposed use in the wake of an old unused permit must be reviewed based on the circumstances of each case. The factors to be considered include the existence or continuation of the original use and any material change in the principal use. The review "... on a case by case basis shall determine whether they comply with the spirit and intent of the originally approved use permit." The manual confirms:

> "The Zoning Commissioner retains the right under Section 500.6 BCZR to interpret whether the spirit and intent of these regulation are being adhered to on a case by case basis ..."

The Auto Properties proposal is substantially different from the proposal approved in 1968, especially with regard to the principal use. In addition, Bill 26-88 established a new set of standards for use permits, including the BCZR 502.1 standards not required under BCZR 409.4. This is yet another reason why the Auto Properties proposal, coming 37 years later, should be reviewed as a new proposal.

Conclusion

For these reasons, the County Board of Appeals should hold an evidentiary hearing to review any questions presented concerning the effect of the 1968 Zoning Commissioner decision. Ultimately, the CBA should hold that it does not confer any rights on Auto Properties to protect or advance its current proposal.

The CBA should then hold a *de novo* hearing on the merits of the Auto Properties petitions for special hearing for a use permit and for RTA variances. People's Counsel reserves the right to present all relevant factual and legal claims and defenses with respect to these petitions.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of February, 2005, a copy of the foregoing People's Counsel for Baltimore County's Memorandum and Request for Hearing was mailed to Ruth Baisden, President, Greater Parkville Community Council, 7706 Oak Avenue, Parkville, MD 21234 and to Arnold Jablon, Esquire, and Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Hartford Warehouse Corp., legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a party hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an B. A. and B. B. zone to an B. R. and B. M. zone; for the following reasons:

(1) Error in the adoption of the zoning map.

(2) Change in conditions.

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Automotive vehicle sales

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

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

HARTFORD WAREHOUSE CORPORATION

By: [signature]

Contract purchaser — Legal Owner

Address — Address: P. O. Box 8615, Baltimore 21234

[signature]

Petitioner's Attorney — Protestant's Attorney

Richard C. Murray

Address: 22 W. Pennsylvania Avenue

Towson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 1st day of January, 1968, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building, in Towson, Baltimore County, on the 5th day of February, 1968, at 2:00 o'clock

Zoning Commissioner of Baltimore County

Exhibit 1

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

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

1955

Michael J. Birmingham
President

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

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

Exhibit 2

2

County Council of Baltimore County Maryland

Legislative Session 1970, Legislative Day No. 11

BILL NO. 100

Introduced by Mr. Bartenfelder, Councilman

(Request of County Executive)

By the County Council, July 6, 1970.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for establishment of zoning classifications, conversion and redesignation of "Residence" zoning classifications; to provide for the deletion and addition of terms and definitions; to provide for the application of light manufacturing zoning regulations to areas covered by previously submitted subdivision plans; to establish Rural and Rural-Suburban zoning classifications, "Density" Residential (D.R.) zoning classifications and Elevator-Apartment-Residence Zoning Classifications; to amend the special regulations for Community-Core Commercial (C.C.C.) Districts; to revise the use regulations in Light Manufacturing (M.L.) Zones; to revise the regulations governing automotive service stations in permitted parking garages; to establish regulations for Unit Developments and the classifications and authorizations thereof; to provide for the continuing validity of special exceptions granted for elevator apartment buildings or office buildings under R.A. Zoning Classifications; to provide that the Planning Board may adopt and implement certain policies and procedures in furtherance of the Zoning Regulations; by repealing and re-enacting with amendments Subparagraph 100. 1. A. 2; by adding new Subsection 100.3A; by deleting and adding certain definitions to Section 101, entitled "Definitions"; by amending Subsection 103.1; by adding new Articles 1A and 1B; by repealing designation and title, "Article 2-Zones and Districts: Use, Height and Area Regulations" and the subtitle, "R.40 Zone-Residence, One-Family" and enacting in lieu thereof a new designation and title as follows:

Exhibit 3

to erect a filling station was treated differently from applications for other uses, thus emphasizing the caution to be exercised in the consideration of an application for a filling station.

[4] Upon a consideration of evidence contained in this record, there is evidence from which a reasonable conclusion can be drawn that the number of filling stations in the area of the site of the proposed filling station has reached a saturation point. The Board could well hold if a filling station is erected upon the proposed site, that it will constitute a menace to the safety and security of the residents in that locality. We have repeatedly held that if the evidence before the Board substantially supported its conclusion that its finding would not be disturbed even though this court did not agree with its conclusion. Mayor & City Council v. Biermann, supra, and cases cited; Heath v. Mayor & City Council, Md. 49 A.2d 799; Mahoney v. Byers, Md. 48 A.2d 600.

[5] If, because appellant asserts that his constitutional rights are denied without due process, he is entitled to the independent judgment of the court on the law and the facts so far as his constitutional rights are concerned, what we have already said, and what was said in the Pocomoke City, Kramer and Biermann cases, supra, is sufficient to show that appellant has failed to show any impairment of his constitutional rights or to overcome the strong presumption that denial of a permit for a filling station, whether by legislative or administrative action, is within the police power.

[6, 7] It was argued that the Zoning Board did not make a finding of fact of what its members saw when they visited the site of this proposed filling station. However this may be, what the members of the Board saw at that time must have been depicted by the evidence adduced before them. The conditions with which the Board had to deal were vividly described in the record. It is contended that negative testimony does not disprove positive evidence, and that the respective certifications of the City officials are uncontradicted. But the condition surrounding the site of this proposed filling station does not harmonize with the conclusion that the security and safety of the people in that vicinity would not be menaced. In Heaps v. Cobb, Md., 45 A.2d 73, there was no evidence in the case to support the finding of the Board of Trustees, but in this case there is evidence to support the finding of the Board of Zoning Appeals. It is true that the reason set out in the resolution of the Zoning Board for refusing to grant this permit is not based on the reason pointed out in this opinion. Without deciding the question of whether the reason given by the Board is correct or not, it is none the less true that if its conclusion was correct it will not be set aside, even if the reason given therefor is wrong.

Judge Sayler, who heard this case in the Baltimore City Court, was "unable to hold that the decision of the Board of Zoning Appeals was discriminatory, unreasonable, arbitrary or not founded upon substantial facts". In this view we are in accord.

Judgment of June 12, 1946, and Order of June 17, 1946, affirming the decision of the Board of Zoning Appeals, dated April 20, 1946, affirmed, with costs.

WEST KEY NUMBER SYSTEM

MAYOR AND CITY COUNCIL OF BALTIMORE v. SHAPIRO et al.

No. 60.

Court of Appeals of Maryland.

Feb. 12, 1947.

1. Municipal corporations ⇐621

The fact that private persons, who were denied right to intervene in Baltimore City court for purpose of appeal from order reversing action of Board of Zoning Appeals of Baltimore City and declaring that permit issued by board for dismantling of used automobiles in vacant lot was valid, agreed to reimburse city for costs if city would appeal to Supreme Court, did not require dismissal of city's appeal where city had a legitimate interest in the out-

Exhibit 4

1992 Edition

Baltimore County
Zoning Commissioner's Policy Manual

amended May 13, 1992

adopted May 21, 1991

Exhibit 5

Administrative Supplement to the Baltimore County Zoning Regulations

5

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE NE/Corner East Avenue and East Avenue Relocated 11th Election District 6th Councilmanic District (NE/C or East Ave. & East Ave. Relocated) Auto Properties, LLC *Petitioner*	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 03-360-SPHA KAR

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, Auto Properties, LLC. The variance request involves property located at the intersection of East Avenue and East Avenue Relocated, which area is situated near the intersection of Harford Road and I-695 in Carney. The special hearing request is to approve business parking in a residential zone, to include the storage of unlicensed passenger vehicles. In addition, variance relief is requested to allow a 25 ft. buffer and a 25 ft. setback in lieu of the required 50 ft. buffer and 75 ft. ~~buffer~~ setback.

Appearing at the hearing on behalf of the special hearing and variance requests were Steve Fader, the managing member of Auto Properties, LLC, Dennis Turnbaugh, appearing on behalf of the auto dealership which operates at this location, Tom Church, the professional engineer who prepared the site plan of the property, and Robert Hoffman, attorney at law, representing the Petitioner. Appearing in opposition to the Petitioner's request were many residents of the surrounding community, particularly Mildred Schaffer, an adjacent property owner, as well as Anthony Marchani, Jackie Megee and Tom Edwards, and many other citizens whose names appear on the Citizens Sign-In Sheet.

ORDER RECEIVED FOR FILING
Date 6/2/03
By

Testimony and evidence indicated that the property, which is the subject of this special hearing and variance request, consists of 0.8781 acres, more or less, split-zoned BM and D.R.5.5. The subject property is located at the intersection of East Avenue Relocated and East Avenue in Carney. As the site plan indicates, these two roadways meet at a 90° angle. The subject property is an unimproved lot containing a width of 148 ft. and a depth of 287 ft. The subject lot is surrounded on three sides by the Heritage Honda Automobile Dealership and a Chrysler Plymouth Automobile Dealership. The owner of the property, Auto Properties, LLC, is interested in utilizing the unimproved vacant lot for the purpose of storing new car inventory thereon.

Testimony further revealed that Auto Properties, LLC recently relocated a Honda Dealership to this property. Substantial and major improvements have been made to the buildings and parking areas which were previously utilized as a Doug Griffith Chrysler Plymouth Dealership. The relationship between new car dealers and the manufacturers of the vehicles they sell have changed in recent times. The manufacturers require that their franchisees keep and maintain a certain amount of inventory on hand for sale to the general public. This has caused not only this particular new car dealer, but others around Baltimore County, to seek out and obtain additional storage area for their new car inventory. This is what has occurred at this location and is the purpose behind the filing of the special hearing and variance herein.

As stated previously, many residents of the surrounding neighborhood appeared in opposition to the Petitioner's request. The cumulative testimony of the residents was that they are opposed to any further expansion of the Heritage Dealership. These neighbors are upset with the renovations and expansions that have occurred up to the date of this hearing. For example, many of the residents in attendance object to the increase and amount of lighting that is

ORDER RECEIVED FOR FILING
Date 6/2/03
By L. Jameson

associated with the automobile dealerships located along Harford Road. The citizens object to the manner in which the light spills into their residential community. They, therefore, asked that the owner of the property investigate this matter and make appropriate corrections to alleviate this adverse condition.

The citizens in attendance also objected to the manner in which new cars are delivered to the subject property. Several residents testified that on many occasions the car carriers which deliver inventory to this property park their tractor trailers on East Avenue Relocated and proceed to unload their cargo. Doing this blocks a full lane of travel and impedes the view of motorists utilizing this roadway. This problem was discussed with the general manager of the dealership who advised that an alternative method of delivering vehicles will be implemented so that this objectionable condition does not continue.

The residents also complained about the amount of trash and debris which has accumulated in the area of the body and fender shop which is located on the Petitioner' property. Photographs were submitted evidencing the trash and debris that existed on the property, even as of the date of the hearing before me. Furthermore, within one hour of the public hearing before me, I personally visited the area of the property identified by the citizens where the trash has accumulated. Indeed, the photographs were accurate and the condition of the Petitioner's property at that location was deplorable. However, to the credit of the manager of the dealership, several employees were cleaning up the trash and debris which had accumulated in that area of the property. These employees were also picking up trash that had blown onto neighboring properties. This is particularly troublesome given the existence of a stream in that area of the property.

ORDER RECEIVED FOR FILING
Date 6/2/03
By J. Jansen

It was apparent that most of the trash and debris that had accumulated in this area of the property was generated by the dumpsters within which this trash was suppose to be stored. These dumpsters are often filled to capacity. This overflow of trash causes the paper products to blow out of the dumpsters and into this corner of the Petitioner's property. Some of the trash had blown over the Petitioner's security fence and into the stream valley. Representatives of the dealership agreed to service the dumpsters on a more frequent basis or agreed to add an additional dumpster so as to eliminate this overflow problem.

While these problems did not specifically apply to the vacant lot, which is the subject of this special hearing request, it did give these neighbors great apprehension regarding the further expansion of this automobile dealership. These neighbors believe that the further expansion of the dealership will further compound the problems that their neighborhood has experienced with the growth of this automobile dealership at this location.

Additional concerns were raised by the residents which specifically addressed the use of this lot for the storage of new car inventory. The neighbors object to an additional access point onto East Avenue Relocated from this storage lot. They believe that the manner in which East Avenue Relocated is designed, that is, with two 90° turns in close proximity to one another, poses an unsafe traffic condition. Adding an additional vehicular access point on one of those 90° turns, as proposed by this Petitioner, would only exacerbate that unsafe condition. The neighbors were also concerned that installing fencing and screening on the southern portion of the unimproved lot in the area of the second 90° turn would impede the vision of motorists attempting to negotiate that sharp turn in the road. Therefore, they are opposed to the utilization of the unimproved lot in the fashion suggested by this property owner.

ORDER RECEIVED FOR FILING
Date 6/2/03
By J. Jamison

A great deal of discussion ensued between the neighbors in attendance and particularly Steve Fader, who is the owner of Auto Properties, LLC. Mr. Fader is not only involved in this particular auto dealership, but many others in and around Baltimore County. He was troubled by the problems identified by these citizens and the photographs which were submitted into evidence. He committed to these citizens that the matters identified would be corrected. He also suggested that he would be willing to modify the request to utilize the subject property by eliminating the access point to East Avenue Relocated and leaving the corner of the lot in its natural condition. He also offered to convey this portion of the property to the community as a small community park.

After considering the testimony and evidence offered at the hearing by the citizens, as well as representatives of the Petitioner, I find that the special hearing request and variance should be granted in a modified manner so as to permit the Petitioner to utilize a portion of the property for the storage of new car inventory. Conditions and restrictions shall be imposed to eradicate the objections that were raised by the citizens in attendance, many of which pertained to the operation of the dealership itself and not necessarily to the lot which is the subject of this request.

THEREFORE, IT IS ORDERED, this 2nd day of June, 2003, by this Deputy Zoning Commissioner, that the Special Hearing relief, to allow business parking in a residential zone, to include the storage of new unlicensed passenger vehicles, be and is hereby GRANTED, as modified by the conditions and restrictions imposed at the end of this Order.

IT IS FURTHER ORDERED, that the Variance relief, to allow a 25 ft. buffer and setback in lieu of the required 50 ft. buffer and 75 ft. setback, be and is hereby GRANTED, subject also to the following conditions and restrictions:

ORDER RECEIVED FOR FILING
Date 6/2/03
By D. Grimm

1. The Petitioner shall be permitted to utilize the subject property for the storage of unlicensed new car inventory. However, the Petitioner shall leave undisturbed that portion of the property situated adjacent to the intersection of East Avenue and East Avenue Relocated. That is, the first 85 ft. of the subject lot, as measured from the road right-of-way of East Avenue, shall remain in its open, natural and grassy condition. This was a suggestion made by one of the citizens in attendance and agreed to by Mr. Fader on behalf of the owner of the property. The Petitioner may, but shall not be required to convey this portion of the property to the community as a small park, if the community is willing to accept such a conveyance. If not, then that rectangular portion of the lot, the dimensions of which are approximately 85 ft. x 130 ft., shall remain open and meticulously maintained by Auto Properties, LLC.

2. There shall be no curb cut or access from the proposed inventory storage lot directly onto East Avenue Relocated. The Petitioner shall eliminate that driveway access from their site plan. All access to the vehicles which may be stored on this lot shall occur from the contiguous property currently owned by Auto Properties, LLC, the Petitioner herein. There shall be no new access points to East Avenue Relocated, other than those which currently exist today.

3. The Petitioner shall continue to maintain a 25 ft. buffer area as shown on their site plan adjacent to the residential property located at 3018 East Avenue. That buffer area, as well as the boundaries of this parking lot adjacent to East Avenue Relocated and East Avenue, shall be appropriately screened as within the discretion of Avery Harden, Landscape Architect for Baltimore County. In furtherance thereof, the Petitioner shall be required to submit a landscaping and lighting plan to Mr. Harden for his full review and approval. In addition, Mr. Harden shall review not only the lighting proposed for this new parking lot, but also shall review the manner in which the automobile dealership is illuminated. Mr. Harden shall pay particular attention to the effect of this lighting upon the property owned by Mildred Schaffer, whose property is located at 3017 East Avenue. The Petitioner shall be required to adjust their lighting so as to mitigate the effects that said lighting has upon the Schaffer residential property and any other residences so affected.

4. Mr. Harden shall also review the fencing and natural vegetation, and the manner in which the Petitioner's property abuts that property owned by Mildred Schaffer at 3017 East Avenue. Mr. Harden shall use his discretion and expertise in landscape buffering to make any adjustments or improvements to the manner in which Ms. Schaffer's property is screened by that which exists in the field today.

5. All trash and debris that is associated in any way with the automobile dealerships operating at this location, including the auto paint and body shop, shall be stored in appropriate trash receptacles and disposed of on a regular basis so as to prevent any trash and debris from blowing about the Petitioner's property or any adjacent properties.

ORDER RECEIVED FOR FILING
Date 6/12/03
By P. Jamison

6. The Petitioner shall be absolutely prohibited from loading or unloading automobiles from car carriers in the roadbed of East Avenue Relocated or East Avenue. All loading and unloading of vehicles must occur on the auto dealership property and not in the public road right-of-way.

7. The Petitioner shall be required to submit a new site plan for review by the appropriate agencies of Baltimore County indicating a redesign of the property upon which this commercial parking shall occur consistent with the terms and conditions of this Order

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

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 6/12/03
By R. Johnson

Baltimore County
Zoning Commissioner

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

June 2, 2003

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, Maryland 21204

Re: Petitions for Special Hearing & Variance
Case No. 03-360-SPHA
Property: NE/C East Avenue & East Avenue Relocated

Dear Mr. Hoffman:

Enclosed please find the decision rendered in the above-captioned case. The petitions for special hearing and variance have been granted 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 Department 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,

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

Printed with Soybean Ink on Recycled Paper

Copies to:

Steve Fader
23 Walker Avenue
Baltimore, MD 21208

Dennis Turnbaugh
3001 East Avenue
Baltimore, MD 21234

Tom Church
6603 York Road
Towson, MD 21212

Mildred Schaffer
3017 East Avenue
Baltimore, MD 21234

Anthony Marchani
3021 East Avenue
Baltimore, MD 21234

Tom Edwards
3032 East Avenue
Baltimore, MD 21234

Jackie Megee
3112 East Avenue
Baltimore, MD 21234

Copies to:

Steve Fader
23 Walker Avenue
Baltimore, MD 21208

Dennis Turnbaugh
3001 East Avenue
Baltimore, MD 21234

Tom Church
6603 York Road
Towson, MD 21212

Mildred Schaffer
3017 East Avenue
Baltimore, MD 21234

Anthony Marchani
3021 East Avenue
Baltimore, MD 21234

Tom Edwards
3032 East Avenue
Baltimore, MD 21234

Jackie Megee
3112 East Avenue
Baltimore, MD 21234

Baltimore County
Department of Permits and
Development Management

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

April 11, 2003

Robert Hoffman
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Hoffman:

RE: Case Number: 03-360-SPHA, Northeast corner of East Avenue and East Avenue relocated

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 3, 2003.

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.
Supervisor, Zoning Review

WCR:klm

Enclosures

c: People's Counsel
Auto Properties, LLC, Steven Fader, Managing Member, 23 Walker Avenue, Baltimore 21208
Thomas A. Church, P.E. Development Engineering Consultants, 6603 York Rd., Baltimore 21212

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on Recycled Paper

Baltimore County
Fire Department

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

February 11, 2002

ATTENTION: Rebecca Hart

Distribution Meeting of: February 11, 2003

Item No.: 351-360

Dear Ms. Hart:

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.

7. *The Fire Marshal's Office has no comments at this time.*

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

cc: File

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SHA
Driven to Excel
State Highway Administration

MARYLAND DEPARTMENT OF TRANSPORTATION
Robert L. Ehrlich, Jr., *Governor* · Michael S. Steele, *Lt. Governor* · Trent M. Kittleman, *Acting Secretary*

Date: 2.7.03

Mr. George Zahner
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 360 DT

Dear. Mr. Zahner:

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

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

Very truly yours,

K. A. McDonald

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: February 27, 2003

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

SUBJECT: Zoning Advisory Committee Meeting
For February 18, 2003
Item Nos. 351, 352, 353, 354, 355,
356, 357, 358, and 360

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

RWB:CEN:jrb

cc: File

ZAC-2-18-2003-NO COMMENT ITEMS-02272003

Alo Properties

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence M. Stahl
Chairman, Board of Appeals

DATE: September 15, 2003

RECEIVED
POST-APPEAL

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

RECEIVED
SEP 17 2003
BALTIMORE COUNTY
BOARD OF APPEALS

SUBJECT: East Avenue

INFORMATION:

Item Number: 03-360

Zoning: DR 5.5/BM

Requested Action: Variance/Special Hearing

SUMMARY OF RECOMMENDATIONS:

Thank you for giving the Office of Planning the opportunity to comment on the East Avenue petition for variance. The petitioner in this case is seeking a 25' RTA buffer and 25' setback in lieu of the required 50' buffer and 75' setback and a Special Hearing for business parking in a residential zone.

The Office of Planning offers the following comments:

1) We believe the variance should not be allowed.
2) If the variance is allowed, we believe the following conditions should be met.
   A) Provide an opaque 6' high screening/privacy fence along the eastern property line
   B) Submit a landscape showing planting along the east, south, and west property lines to the Office of Planning and to Avery Harden, County landscape architect, for review and approval.
   C) Provide vehicular connection to the parking area from the adjacent lot to the north.
   D) Submit a lighting plan that conforms to IESNA standards for review and approval.

RECEIVED
POST-APPEAL

RECEIVED
POST-APPEAL

E) Prohibit any speaker-driven pager system.

Prepared by: _____

Section Chief: _____

AFK/LL:MAC:

cc. Peter Zimmerman – People's Counsel
Robert Hoffman – Venable, Baetjer and Howard

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE NE corner East Ave & East Ave Relocated; Eside East Ave, 34ft to ctrline East Ave 11th Election & 6th Councilmanic Districts Legal Owner(s): Steve B. Fader, Managing Member; Auto Properties, LLC Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 03-360-SPHA

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February, 2003, a copy of the foregoing Entry of Appearance was mailed to Thomas A. Church, PE, Development Engineering Consultants, Inc, 6603 York Road, Baltimore, MD 21212, and Robert A. Hoffman, Venable, Baetjer & Howard, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, Maryland

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

June 25, 2003

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

Hand-delivered

Re: PETITION FOR SPECIAL HEARING
AND VARIANCE
NE/Corner East Avenue and
East Avenue Relocated
(NE/C of East Ave & East Ave Relocated)
11th Election District 6th Councilmanic
Legal Owner: Auto Properties, LLC
Case Nos. 03-360-SPHA

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated June 2, 2003 of the Baltimore County Deputy Zoning Commissioner in the above-entitled case.

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

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio /RMW

Carole S. Demilio
Deputy People's Counsel

RECEIVED
JUN 25 2003
Per...

PMZ/CSD/rmw

cc: Robert A Hoffman, Esquire
Thomas A Church, P.E.

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

June 30, 2003

Mr. Robert A. Hoffman
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Hoffman:

RE: Case No. 03-360-SPHA

Please be advised that an appeal of the above-referenced case was filed in this office on June 25, 2003. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you 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,

Timothy Kotroco
Director

KT:rlh

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Auto Properties, LLC, Steven B. Fader, Managing Member, 23 Walker Avenue, Baltimore 21208
Thomas E. Church, Development Engineering Consultants, 6603 York Road, Baltimore 21212

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on Recycled Paper

APPEAL

Petition for Special Hearing and Variance
Northeast corner of East Avenue
E/side East Avenue 34 feet to centerline
11th C.D. – 6th E.D.
Auto Properties, LLC – Legal Owner

Case No.: 03-360-SPHA

Petition for Special Hearing (February 3, 2003)

Zoning Description of Property

Notice of Zoning Hearing (March 5, 2003)

Certification of Publication (The Jeffersonian issue April 1, 2003)

Certificate of Posting (March 26, 2003) by SSG Robert Black

Entry of Appearance by People's Counsel (February 13, 2003)

Petitioner(s) Sign-In Sheet
One Sheet

Protestant(s) Sign-In Sheet
None

Citizen(s) Sign-In Sheet
One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. To accompany Petition for Special Hearing and Variance
2. Site Map
3. Landscape Plan

Protestants' Exhibits:
1a-1N. Photographs
2. A list of people opposed to expansion of parking
3. Resolution from Parkville Community Council

Miscellaneous (Not Marked as Exhibit)
1. None

Deputy Zoning Commissioner's (June 2, 2003)

Notice of Appeal received on June 25, 2003 by Peter M. Zimmerman, People's Counsel of Baltimore County

c: People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Auto Properties, LLC, Steven B. Fader, Managing, 23 Walker Avenue, Baltimore 21208
date sent 6/30/02 rlh

APPEAL

Petition for Special Hearing and Variance
Northeast corner of East Avenue
E/side East Avenue 34 feet to centerline
11th ~~E.D.~~ C.D. – 6th ~~E.D.~~ C.D.
Auto Properties, LLC – Legal Owner

Case No.: 03-360-SPHA

+ Variance

✓ Petition for Special Hearing (February 3, 2003)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (March 5, 2003)

✓ Certification of Publication (The Jeffersonian issue April 1, 2003)

✓ Certificate of Posting (March 26, 2003) by SSG Robert Black

✓ Entry of Appearance by People's Counsel (February 13, 2003)

✓ Petitioner(s) Sign-In Sheet
One Sheet

✓ Protestant(s) Sign-In Sheet
None

✓ Citizen(s) Sign-In Sheet
One Sheet

RECEIVED
JUN 30 2003
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit
✓ 1. To accompany Petition for Special Hearing and Variance
✓ 2. Site Map
✓ 3. Landscape Plan

✓ Protestants' Exhibits: 1A - 1O
✓ 1a-1o Photographs
✓ 2. A list of people opposed to expansion of parking → (9 pages)
3. Resolution from Parkville Community Council

✓ Miscellaneous (Not Marked as Exhibit)
1. None

✓ Deputy Zoning Commissioner's (June 2, 2003)

✓ * Notice of Appeal received on June 25, 2003 by Peter M. Zimmerman, People's Counsel of Baltimore County

RUTH BAISDEN, PRESIDENT
GREATER PARKVILLE COMMUNITY COUNCIL
7706 OAK AVENUE
BALTIMORE, MD 21234

c: * People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Auto Properties, LLC, Steven B. Fader, Managing, 23 Walker Avenue, Baltimore 21208
date sent 6/30/02 rlh

Robert A. Hoffman, Esquire
Venable, Baetjer & Howard, LLP
210 Allegheny Avenue
Towson, Maryland 21204

Steve Fader
23 Walker Avenue
Baltimore, MD 21208

Dennis Turnbaugh
3001 East Avenue
Baltimore, MD 21234

Tom Church
6603 York Road
Towson, MD 21212

Mildred Schaffer
3017 East Avenue
Baltimore, MD 21234

Anthony Marchani
3021 East Avenue
Baltimore, MD 21234

Tom Edwards
3032 East Avenue
Baltimore, MD 21234

Jackie Megee
3112 East Avenue
Baltimore, MD 21234

Carney Improvement Association
c/o Meg O'Hare
3012 Summit Avenue
Carney, MD 21234

E

Case No. 03-360-SPHA

In the Matter of: Auto Properties, LLC -Legal Owner /Petitioner

SPH – To approve business parking in residential zone, to include storage of unlicensed passenger vehicles;
VAR –To allow 25' buffer and a 25' setback ilo required 50' buffer and 75' setback.

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance were GRANTED subject to restrictions.

9/17/03 – Summary of Recommendations received from Pat Keller, Director, Office of Planning; marked "received post-appeal" and placed in case file.

9/23/03 -Notice of Assignment sent to following; assigned for hearing on Thursday, January 29, 2004 at 10 a.m.:

Office of People's Counsel
Robert A. Hoffman, Esquire
Auto Properties, LLC /Steven B. Fader, Managing Member
Dennis Turnbaugh
Tom Church /Professional Engineer
Mildred Schaffer
Anthony Marchani
Tom Edwards
Jackie Megee
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

1/13/04 – Request for postponement filed by David Karceski, Esquire, VENABLE; R. Hoffman, counsel for the petitioners, will be at a previously scheduled ZC hearing on 1/29/04. Requests postponement.

1/15/04 – Conversation with P. Zimmerman; he has no objection to postponement request so long as no parking is taking place pending CBA hearing. R. Baisden has also indicated to Mr. Zimmerman that she has no objection at this time. Mr. Zimmerman to also contact D. Karceski.

1/16/04 – T/C from D. Karceski; parking will not take place during this appeal; will also speak with P. Zimmerman. Notice of Postponement sent this date to parties; case to be assigned a new hearing date upon confirmation with counsel as to appropriate date.

2/06/04 – T/C with David Karceski – will hold this matter in "pending" until such time as a request is received to schedule for hearing.

9/14/04 – E-mail from Meg O'Hare to T. Shelton requesting placement in the file in this matter (in response to an e-mail forwarded to this office from PDM). Added to file with home address.

9/21/04 – Letter from P. Zimmerman, People's Counsel, requesting that the matter be scheduled for hearing before the Board (Council voted against rezoning to commercial; residential zoning remains).

10/25/04 – Notice of Assignment sent to parties; assigned for Tuesday, January 25, 2005 at 10:00 a.m.

1/05/05 – Letter via FAX from Ruth Baisden requesting postponement of 1/25/05 hearing; she will be out of town at a conference during that time frame.

1/06/05 – T/C from Ms. Baisden withdrawing her postponement request (will not be attending conference); letter to Ms. Baisden acknowledging her withdrawal of PP request and that case will go forward on 1/25/05 at 10 a.m.; copy also to Messrs. Hoffman and Zimmerman with copy of notice. (Added Ms. Baisden to notice of assignment this date.)

1/24/05 - Interoffice Memo from Pat Keller, Planning Director: Summary of Recommendations; Office of Planning supports DZC Kotroco's Order dated June 2, 2003 in which relief was granted with specified additions /modifications.

1/25/05 – Board convened for hearing (Wescott, Ramsey, Brassil); postponed on the record; to be held for further review by counsel; reset only upon request.

2/16/05 – People's Counsel's Memorandum and Request for Hearing filed by People's Counsel for Baltimore County. Awaiting response from opposing counsel prior to administrative determination re hearing.

3/15/05 – Notice of Assignment sent this date; hearing assigned for Tuesday, May 24, 2005 at 10:00 a.m. (no response received to People's Counsel's Memorandum). Holding copies of Memo to be distributed to panel for 5/25/05 hearing first week of May 2005.

4/08/05 – Request for postponement filed by Arnold Jablon, Esquire, counsel for Petitioner; both and Mr. Hoffman will be out of town for previously scheduled and long-standing convention. Indicates no objection by People's Counsel.

4/15/05 – Notice of PP and Reassignment sent to parties; case reassigned to Thursday, August 4, 2005 at 10 a.m.

7/21/05 – Letter from Arnold Jablon, Esquire, on behalf of Petitioners – requesting indefinite continuance of this matter from 8/04/05 hearing date; petition for special hearing to be filed by Petitioner with the Zoning Commissioner as to validity of use permit issued in 1968. No objection by Appellant, People's Counsel; to be granted.

7/25/05 – Notice of Continuance – No Reset Date sent this date to all parties; case has been pulled from 8/04/05 hearing date; no further action or reassignment at this time; to hold on Board's continued /HOLD docket until further request from either party.

3/13/06 –Scheduled for hearing with Case No. 06-109-SPH; Notice sent to parties for both cases scheduled to be heard on Wednesday, June 21, 2006 at 10:00 a.m.

6/21/06 – Board convened for hearing (Wescott, Stahl, Grier); concluded day #1; to be assigned for second day of hearing.

6/22/06 – Notice of Assignment /Day #2 assigned for Thursday, November 2, 2006 at 10:00 a.m. FYI copy to 3-2-4.

11/02/06 – Concluded day #2; need additional date for day #3. Agreed with counsel and the Board that, since 11/14/06 was coming open on the Board's schedule, this matter could be assigned for that date. Notice to be sent.

11/08/06 – Notice of Assignment, Day #3 sent to parties; assigned for Tuesday, November 14, 2006 at 10:00 a.m. as agreed; FYI copy sent to 3-2-4. Copy to counsel via FAX this date.

11/14/06 – Completed hearing; memos due 12/19/06; delib 1/23/07; notice to be sent.

11/29/06 – Notice of Deliberation sent to parties; assigned for Tuesday, January 23, 2007 at 9:00 a.m. FYI copy to 3-2-4.

12/18/06 – Memo filed by Arnold Jablon, Esquire, and David Karceski, Esquire /VENABLE on behalf of Petitioner. Filed in case file for related Case No. 06-109-SPH

12/19/06 – People's Counsel for Baltimore County's Memorandum filed this date. Filed in case file for related Case No. 06-109-SPH.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence M. Stahl
Chairman, Board of Appeals

DATE: January 24, 2005

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

RECEIVED
JAN 24 2005
BALTIMORE COUNTY
BOARD OF APPEALS

SUBJECT: East Avenue

INFORMATION:

Item Number: 03-360

Zoning: DR 5.5/BM

Requested Action: Variance/Special Hearing – Board of Appeals

SUMMARY OF RECOMMENDATIONS:

Upon further review the Office of Planning submits the following comments regarding item number 03-360 to be heard before the Board of Appeals on January 25, 2005. The Office of Planning supports the Hearing Officer's order dated June 2, 2003 with the following additions/modifications.

1) No lighting is to be provided on the site. The Director of Planning observed the site after dark and believes there is more than adequate spill over lighting from the existing adjacent automobile operation, also owned by the petitioner, to provide for security.
2) An 8' high board on board fence is to be provided on the northeast and southwest side of the property. This fence will be specified by Baltimore County Landscape Architect Avery Harden. If a fence is desired on the other portions of the site, it shall be black vinyl coated chain link with all components (posts and fasteners) of the fence to be black vinyl coated. Barbed wire is not to be used.
3) A landscaping plan shall be submitted to Baltimore County Landscape Architect Avery Harden for final approval.
4) The proposed lawn area shown on the southwest side of the site (approximately 85' x 130') shall be offered to the local community association for conveyance. If they decline, it shall be offered to Baltimore County for conveyance. The community association or Baltimore County may choose to allow it to remain open as passive open space or proposed active open

space uses. Finally, if both parties decline the conveyance, the area shall be placed in an open space easement, remain open and meticulously maintained by Auto Properties LLC.

5) The petioner agrees to not seek rezoning on this property for at least 2 future zoning cycles.

6) No speaker driven pager system shall be utilized on this property.

7) All other recommendations as stated in the Hearing Officer's order, which are not modified herein, shall apply.

Prepared by: David Pinning

Section Chief: Mac A Cunningham by dr.

AFK/LL:MAC:

cc. Peter Zimmerman – People's Counsel
Robert Hoffman – Venable, Baetjer and Howard

Theresa Shelton - Carney Improvement Association Information

From: "Meg OHare" <CarneyCIA@msn.com>
To: <tshelton@co.ba.md.us>
Date: 9/14/2004 5:00 PM
Subject: Carney Improvement Association Information
CC: "Ruth Baisdan GPCC" <gpcc@bcpl.net>

Dear Ms. Shelton,

The email address from which you are receiving this message is the email address for the Carney Improvement Association. The mailing address is P.O. Box 28282, Carney, MD 21234 or you may mail to me at my home, 3012 Summit Avenue, Carney, MD 21234.

My home phone number is 410.668.5183.

Carney Improvement Association also has a website www.carneymaryland.org

Meg O'Hare
President Carney Improvement Association

Dear Ms. OHare:

In response to your EMail, please note that the case you are inquiring about is 03-360-SPHA - Appeal taken 6/25/2003 by the Office of People's Counsel.

The Board of Appeals file indicates by Administrative Note dated 2/06/04 that this matter is to be held in 'pending' until such time as a request is received to schedule for hearing. No hearing date has been requested by the Office of People's Counsel or Mr. Hoffman's office. Upon that request, this matter will be scheduled for a hearing or other appropriate action taken.

In addition, in reviewing the Board's file to respond to your EMail, that was forwarded to us, it is noted that your organization does not appear on the notification list from zoning. Please provide an EMail to this office (or facsimile to Board of Appeals 410-887-3182), requesting notification of hearing date and please include in that request the organization's address.

If you need any further assistance, please feel free to contact me at the Board of Appeals 410-887-3180.

Theresa Shelton

CC: Bianco, Kathleen; Counsel, People's; Kotroco, Timothy; Matthews, Kristen; Popelarski, Catherine (Kitty)

03-360-SPHA **NEW DATE - after adoption of 2004 zoning maps**	Auto Properties, LLC –Legal Owner NE/cor of East Avenue E/s East Avenue, 34' to centerline 11th E; 6th C	SPH – To approve business parking in residential zone, to include storage of unlicensed passenger vehicles; VAR – to allow 25' buffer and 25' setback ilo required 50' buffer & 75' setback	(Hoffman)*PC 6/25/03

Note to notice file sheet – comments received 9/15/03 from Pat Keller
HOLD UNTIL ADOPTION OF 2004 Comprehensive Zoning Maps – possibly moot.

Theresa Shelton

From: Timothy Kotroco
To: OHare, Mary Margaret
Date: 09/13/2004 6:14:23 PM
Subject: Re: Carney Improvement Association President Meg O'Hare

Dear Meg, We will look into this for you asap. My assistant Kitty will try to get this info for you. You may follow up with her at 410-887-3020. Good luck. Tim K.

Timothy M. Kotroco, Director
Permits & Development Management
Phone: 410-887-3020

>>> "Mary Margaret OHare" <moots711@msn.com> 9/10/2004 10:22:40 PM >>>
Dear Mr. Kotroco,

Bd. of Appeals x 3180

I have been trying to find the date, time and location, for the appeal of the special use granted to Auto Properties LLC (Heritage Automotive Conglomerate) for the property on East Avenue. This property was recently kept residential during the 2004 Comprehensive Zoning Process.

I would like to let the community know when this appeal will occur so that they may attend.

Thank you.

Meg O'Hare
Carney Improvement Association President

CC: Popelarski, Catherine (Kitty)

03-360

Circuit Court - 2614

03-359

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

(410) 887-2188

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 21, 2004

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

Re: In the Matter of: Auto Properties, LLC
Case No.: 03-360-SPHA

Dear Ms. Bianco:

Please be advised that we have learned that the County Council voted against rezoning the property involved in this case to commercial zoning. Therefore, the residential zoning remains in place. Please reset this matter for hearing on our office's appeal at your earliest convenience.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw

cc: Robert A. Hoffman, Esquire
Meg O'Hare
Ruth Baisden

RECEIVED
SEP 21 2004
BALTIMORE COUNTY
BOARD OF APPEALS

GREATER PARKVILLE COMMUNITY COUNCIL

January 5, 2005

Post-it™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Kathleen Bianco	From Ruth Baisden
Co. Administrator	Co. GPCC
Dept. Board of Appeals	Phone # 410 668-2580
Fax # 410 887-3182	Fax #

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

RE: Case #: 03-360-SPH
Auto Properties, LLC, NE/corner of East Avenue
Assigned for Tuesday, January 25, 2005, at 10:00 AM

Dear Chairman and Members of the Board:

The purpose of this letter is to request a postponement of the case referenced above. I have not requested any prior postponements in this case and will be out of town due to a business conference to be held during the scheduled hearing date. As zoning representative and president of the Greater Parkville Community Council, I have been a party to this case and had testified at the Zoning Commissioner Hearing. The subject property is within our council's boundaries and it was our intention to participate in the Board of Appeals hearing since decisions made on this case may potentially impact our community.

Thank you for your attention to this matter and consideration of this postponement. I look forward to your response and can be reached at my home phone number - 410 668-2580.

Sincerely,

Ruth Baisden

Ruth Baisden, President
Greater Parkville Community Council
7706 Oak Avenue
Baltimore, MD 21234

RECEIVED
JAN - 5 2005
BALTIMORE COUNTY
BOARD OF APPEALS

cc: Peter Zimmerman, People's Council

GREATER PARKVILLE COMMUNITY COUNCIL

January 25, 2005

Timothy Katroco, Director
Baltimore County Office of Permits and Management
111 W. Chesapeake Avenue
Towson, MD 21204

RE: Auto Properties, LLC (Honda Heritage)
East Avenue at East Avenue Relocated
near Harford Road north of 695

Dear Mr. Katroco:

The purpose of this letter is to request that Baltimore County Department of Permits and Management does not issue any use permits for property owned by Auto Properties, LLC, located at East Avenue and East Avenue relocated in the Parkville / Carney area.

The reason for this request is that the granting of a use permit is currently being argued at the Board of Appeals, Case #03-360-SPHA, an appeal taken from your previous zoning order Case# 03-360-SPHA, June 2, 2003. Today at the Board of Appeal hearing there has been some confusion of whether / or not a prior use permit granted for this property in 1968 still applies. Therefore, the Greater Parkville Community Council requests that your office does not confuse this matter further by granting a use permit until a Court's opinion has been rendered.

In addition, under the freedom of Information Act, I am requesting a copy of all zoning orders, site plans, and permits issued for this property. I am available to pick up this information. You can reach me at 410 668-2580.

Thank you for your consideration in this matter. I look forward to you response.

Sincerely,

Ruth Baisden, President
Greater Parkville Community Council
7706 Oak Avenue
Baltimore, MD 21234

cc: Carl Richards, Zoning
Peter Zimmerman, People's Council
Meg O'Hare, Carney Improvement Association
Mary Robbins, Patuxent Publishing

FAX MEMO

To: Mr. Timothy Katroco, Director Permits and Management
FAX: 410 887 5708

From: Ruth Baisden, President, Greater Parkville Community Council
Phone: 410 668-2580

Please find attached letter for your immediate attention.

Pages 2

Tony Marchanti
410-661-1406
03-360 SPH

requesting PDM
does not issue
any permits owned
by Auto Properties

HOID Permits

Kitty -
Heritage Honda File
Hold for further
discussion

Ruth Bausden etc...

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 03-360
DATE 4/16/03

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Robert Hoffman	210 Allegheny 21204	TOWSON 21204	
Dennis Turnbaugh	3001 East Ave	Baltimore, MD 21234	
Steve FADER	23 WALKER AVE	BALTIMORE MD. 21208	
Tom Church	6603 York Rd	Towson, 21212	

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 02-360
DATE 4/16/03

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
VINNY ZAREK	3007 FIRST Ave	BALTimore Md 21234	
MARTIN LANG	9135 SPERL AVE	BALTO. MD. 21234	
THOMAS J. LANG	9135 SPERL AVe	BALTO. MD 21234	
Mildred S Schaffer	3017 East Ave	Balto, Md 21234	* *
RUTH BASDEN, PRESIDENT	GREATER PARKWILL & COMMUNITY CO.	7706 OAC AVE. BALTO. MD 21234	*Send copy of order
MICHAEL G. PARR	9131 SPERL AVE	BALTO, MD 21234	
James W. Patten	3038 East Avenue	Baltimore, Maryland 21234	
Anthony Marchant	3021 EAST AVE	BALTO Md 21234-3104	
Jackie Meges	3112 East Avenue	Balto. Md. 21234	*
Thomas Edwards	3032 EAST Ave	BALTE MD 21234	*
Martha Edwards	3032 EAST Ave	Balt MD 21234	
Paul S Hunt	3034	Balt Md 21234	
Joseph Horodowicz	9503 Country Ave	Balto, MD 21234	
Kwintanty Horoposnice	3018 East Ave	Balto. MD 21234	
Olga Horodowicz	3018 East Ave	Balto MD 21234	

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at NORTHEAST CORNER OF EAST AVENUE AND EAST AVENUE RELOCATED

which is presently zoned DR-5.5 & BM

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

Business parking in a residential zone (D.R.5.5) to include storage of unlicensed passenger vehicles.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Robert A Hoffman / SHL
Signature

Venable, Baetjer and Howard, LLP
Company

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Auto Properties, LLC
Name - Type or Print

Signature

Steven B. Fader, Managing Member
Name - Type or Print

Signature

23 Walker Avenue (410) 415-0501
Address Telephone No.

Baltimore, Maryland 21208
City State Zip Code

Representative to be Contacted:

Thomas A. Church, P.E.
Development Engineering Consultants, Inc.
Name

6603 York Road (410) 377-2600
Address Telephone No.

Baltimore Maryland 21212
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By D.THOMPSON Date 2/3/03

Case No. 03-360-SPHA

ORDER RECEIVED FOR FILING
Date 2/2/03
By [illegible]

REV 9/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at EAST AVE. & EAST AVE. RELOCATED

which is presently zoned DR-5.5 & BM

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)

Variance from Section 1B01.1.b.1.e (5) of the Baltimore County Zoning Regulations to allow a 25' buffer and 25' setback in lieu of the required 50' buffer and 75' setback.

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 determined 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.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Robert A. Hoffman
Name - Type or Print

Robert A Hoffman
Signature

Venable, Baetjer and Howard, LLP
Company

210 Allegheny Avenue (410) 494-6200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Auto Properties, LLC
Name - Type or Print

Signature

Steven B. Fader, Managing Member
Name - Type or Print

Signature

23 Walker Avenue (410) 415-0501
Address Telephone No.

Baltimore, Maryland 21208
City State Zip Code

Representative to be Contacted:

Thomas A. Church, P.E.
Development Engineering Consultants, Inc.
Name

6603 York Road (410) 377-2600
Address Telephone No.

Baltimore, Maryland 21212
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING
Reviewed By D.THOMPSON Date 1/3/03

Case No. 03-360-SPHA

UNDER HEARING FOR FILING
Date 6/2/03
By D. Grimsett

REV 9/15/98

DEVELOPMENT ENGINEERING CONSULTANTS, INC.

Site Engineers & Surveyors

6603 York Road
Baltimore, Maryland 21212
(410) 377-2600
(410) 377-2625 Fax

ZONING DESCRIPTION
FOR
PARCEL OF LAND
ON THE NORTHEAST CORNER OF
EAST AVENUE AND EAST AVENUE RELOCATED

BEGINNING at a point on the east side of East Avenue Relocated, which is 50 feet wide, at the distance of 34 feet ± north of the centerline of the nearest improved street East Avenue which is 33 feet wide, thence the following courses and distances: 1) North 33 degrees 50 minutes 40 seconds East 152.84 feet, 2) 55.21 feet along the arc of a tangent curve to the left having a radius of 80.00 feet, 3) North 32 degrees 23 minutes 14 seconds East 64.22 feet, 4) South 56 degrees 36 minutes 46 seconds East 148.20 feet, 5) South 33 degrees 43 minutes 26 seconds West 287.15 feet, 6) North 56 degrees 24 minutes 43 seconds West 111.30 feet, 7) North 09 degrees 39 minutes 04 seconds West 25.51 feet, to the place of beginning, as recorded in Deed Liber 13959, Folio 350.

Containing 38,250 sqare feet or 0.878 acres of land, more or less and situated in the 11th Election District.

00-117

January 10, 2003

03-360-SPHA

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: #03-360-SPHA
Northeast corner of East Avenue and East Avenue relocated
E/side East Avenue 34 feet to centerline East Avenue
11th Election District - 6th Councilmanic District
Legal Owner(s): Auto Properties, LLC, Steven B. Fader, Managing Member

Special Hearing: to permit Business parking in a residential zone (D.R. 5.5) to include storage of unlicensed passenger vehicles. **Variance:** to permit a 25 foot buffer and 25 foot setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearing: Monday, April 7, 2003 at 10:00 a.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 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.

3/258 Mar 20 C593016

CERTIFICATE OF PUBLICATION

3/21, 2003

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 3/20/, 2003.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

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: #03-360-SPHA
Northeast corner of East Avenue and East Avenue relocated
E/side East Avenue 34 feet to centerline
11th Election District - 6th Councilmanic District
Legal Owner(s): Auto Properties, LLC, Steven B. Fader, Managing Member

Special Hearing: to permit Business parking in a residential zone (D.R. 5.5) to include storage of unlicensed passenger vehicles. **Variance:** to permit a 25 foot buffer and 25 foot setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearing: Wednesday, April 16, 2003 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/4/603 Apr. 1 C595500

CERTIFICATE OF PUBLICATION

4/4/, 2003

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 4/1/, 2003.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 03-360-SPHA

Petitioner/Developer: AUTO PROPERTIES LLC STEVEN B. FADER

Date of Hearing/Closing: 4/16/03

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

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at NORTHEAST CORNER OF EAST AVENUE AND EAST AVENUE RELOCATED; EAST SIDE EAST AVENUE 34 FEET TO CENTERLINE.

The sign(s) were posted on 3/28/03
(Month, Day, Year)

Sincerely,

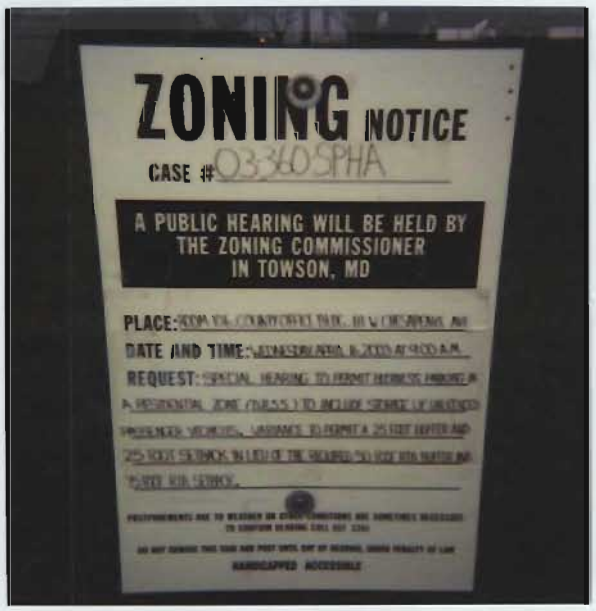
3/28/03
(Signature of Sign Poster and Date)

SSG ROBERT BLACK
(Printed Name)

1508 Leslie Rd
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 21010

DATE 2/3/03 ACCOUNT 001006 6150

AMOUNT $ 650.00

RECEIVED FROM: VENABLE, BAETJER + HOWARD

(360)

FOR: ITEM # 03-360-SPHA

REZ.

NE/COR EAST AVE, EAST AVE. BY D.T.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME
2/03/2003	2/03/2003	11:16:29

REG WALKIN KWEN KEN DRAWER 4
>>RECEIPT # 131940 2/03/2003 01:1
DESC 5 SIGN POSTING VERIFICATION
CR NO. 021010
Receipt Tot $650.00
650.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

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

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

For Newspaper Advertising:

Item Number or Case Number: 03-360-SPHA

Petitioner: AUTO PROPERTIES, LLC

Address or Location: NE CORNER OF EAST AVENUE AND EAST AVENUE RELOCATED

PLEASE FORWARD ADVERTISING BILL TO:

Name: D.E.C.

Address: 6603 York Rd.
Balto. Md. 21212

Telephone Number: (410) 377-2600

Revised 2/20/98 - SCJ

APPEAL SIGN POSTING REQUEST

CASE NO.: 02-471-A and 03-360-SPHA

AUTO PROPERTIES, LLC - LEGAL OWNERS

3001 East Avenue, Baltimore, MD 21234

11th ELECTION DISTRICT APPEALED: 7/3/2002 and 6/25/2003

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1 / from 02-471-A)

**********COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No.: 02-471-A / 03-360 SPHA

Petitioner/Developer:

This is to certify that the necessary appeal sign was posted conspicuously on the property located at: 3001 East Ave

The sign was posted on 8/4, 2003

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

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

February 12, 2003

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: 03-360-SPHA
Northeast corner of East Avenue and East Avenue relocated
E/side East Avenue 34 feet to centerline East Avenue
11th Election District – 6th Councilmanic District
Legal Owner: Auto Properties, LLC, Steven B. Fader, Managing Member

Special Hearing to permit Business parking in a residential zone (D. R. 5.5) to include storage of unlicensed passenger vehicles. Variance to permit a 25 foot buffer and 25 foot setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback

Hearings: Monday, April 7, 2003 at 10:00 in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

AJ:rlh

C: Robert Hoffman, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson 21204
Auto Properties, LLC, Steven B. Fader, Managing Member, 23 Walker Avenue, Baltimore 21208
Thomas Church, Development Engineering Consultants, Inc., 6603 York Road, Baltimore 21212

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, MARCH 22, 2003.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed with Soybean Ink on Recycled Paper

Baltimore County
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

March 4, 2003

Robert A. Hoffman
Venable, Baetjer & Howard
210 Allegheny Avenue
Towson, MD 21204

Dear Mr. Hoffman:

RE: Case Number: 03-360-SPHA

The above matter, previously scheduled for April 7, 2003, has been postponed at your request. Once the hearing has been rescheduled you will be notified by mail.

Please be advised that, as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with notice of the original hearing date, as quickly as possible a notice of the new hearing date should be affixed to the sign(s).

Very truly yours,

Arnold Jablon
Director

AJ:rlh

C: Auto Properties, LLC, Steven B. Fader, Managing Member, 23 Walker Avenue, Baltimore 21208
Thomas A. Church, Development Engineering Consultants Inc., 6603 York Road, Baltimore 21212

Printed with Soybean Ink on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Tuesday, April 1, 2003 Issue - Jeffersonian

Please forward billing to:
Thomas Church 410-377-2600
Development Engineering Consultants
6603 York Road
Baltimore, MD 21212

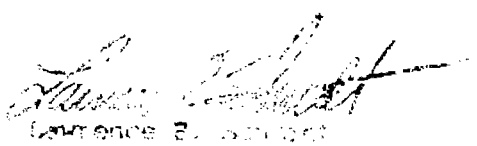
NOTICE OF ZONING HEARING

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: 03-360-SPHA
Northeast corner of East Avenue and East Avenue relocated
E/side East Avenue 34 feet to centerline
11th Election District – 6th Councilmanic District
Legal Owner: Auto Properties, LLC, Steven B. Fader, Managing Member

Special Hearing to permit Business parking in a residential zone (D. R. 5.5) to include storage of unlicensed passenger vehicles. Variance to permit a 25 foot buffer and 25 foot setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearings: Wednesday, April 16, 2003 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue



LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

March 5, 2003

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: 03-360-SPHA
Northeast corner of East Avenue and East Avenue relocated
E/side East Avenue 34 feet to centerline
11th Election District – 6th Councilmanic District
Legal Owner: Auto Properties, LLC, Steven B. Fader, Managing Member

Special Hearing to permit Business parking in a residential zone (D. R. 5.5) to include storage of unlicensed passenger vehicles. Variance to permit a 25 foot buffer and 25 foot setback in lieu of the required 50 foot RTA buffer and 75 foot RTA setback.

Hearings: Wednesday, April 16, 2003 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake Avenue

Arnold Jablon
Director

AJ:rlh

C: Robert A. Hoffman, Venable, Baetjer & Howard, 210 Allegheny Avenue, Towson 21204
Auto Properties, LLC, Steven B. Fader, Managing Member, 23 Walker Avenue, Baltimore 21208
Thomas Church, Development Engineering Consultants, Inc., 6603 York Road, Baltimore 21212

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, APRIL 1, 2003.**
(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.

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VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

(410) 494-6285 dhkarceski@venable.com

January 13, 2004

HAND-DELIVERED

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

Re: Case No.: 03-360-SPHA
Location: N/E Corner East Avenue and East Avenue Relocated
Owner: Auto Properties, LLC

Dear Mrs. Bianco:

I am writing on behalf of Robert Hoffman to request a postponement of the above-captioned matter. People's Counsel appealed the decision of the Deputy Zoning Commissioner granting Petitions for Special Hearing and Variance filed in the case. The appeal is scheduled to be heard by the County Board of Appeals on Thursday, January 29, 2004, at 10 a.m.

Due to a scheduling conflict, I am respectfully requesting that the Board reschedule this matter to another date. Mr. Hoffman has another hearing the morning of January 29th before the Zoning Commissioner (Case No. 04-295-XA).

Thank you for your consideration of this request.

Very truly yours,

David H. Karceski

DHK/bl
cc: Peter M. Zimmerman, Esquire
TO1DOCS1/DHK01/#175795 v1

RECEIVED
JAN 13 2004
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

January 16, 2004

NOTICE OF POSTPONEMENT

CASE #: 03-360-SPHA **IN THE MATTER OF: AUTO PROPERTIES, LLC**
-Legal Owner /Petitioner NE/cor East Avenue
11th Election District; 6th Councilmanic District

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance Variance were GRANTED with restrictions.

which was assigned to be heard on 1/29/04 has been **POSTPONED** at the request of Counsel for Petitioner due to hearing schedule conflict.

THIS MATTER WILL BE REASSIGNED UPON CONFIRMATION OF NEW HEARING DATE WITH COUNSEL.

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: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : Robert A. Hoffman, Esquire
Petitioner /Legal Owner : Auto Properties, LLC /Steven B. Fader, Managing Member
Dennis Turnbaugh

Tom Church /Professional Engineer

Mildred Schaffer
Anthony Marchani
Tom Edwards
Jackie Megee

Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Assigned for 1/25/05 @ 10 am

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County Board of Appeals of Baltimore County

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

PP's; to be messengered upon entry w/ counsel

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 23, 2003

NOTICE OF ASSIGNMENT

CASE #: 03-360-SPHA

IN THE MATTER OF: AUTO PROPERTIES, LLC
-Legal Owner /Petitioner NE/cor East Avenue
11th Election District; 6th Councilmanic District

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance Variance were GRANTED with restrictions.

ASSIGNED FOR: **THURSDAY, JANUARY 29, 2004 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: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : Robert A. Hoffman, Esquire
Petitioner /Legal Owner : Auto Properties, LLC /Steven B. Fader, Managing Member
Dennis Turnbaugh

Tom Church /Professional Engineer

Mildred Schaffer
Anthony Marchani
Tom Edwards
Jackie Megee

Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

January 6, 2005

Ruth Baisden, President
Greater Parkville Community Council
7706 Oak Avenue
Baltimore, MD 21234

Re: *In the Matter of: Auto Properties, LLC*
Case No. 03-360-SPHA

Dear Ms. Baisden:

This letter will acknowledge your telephone call this date in which you indicated that you are withdrawing your request for postponement filed via facsimile on January 5, 2005.

The hearing in this matter will go forward on Tuesday, January 25, 2005, at 10:00 a.m. as previously assigned. A copy of the notice of assignment is enclosed.

Thank you for contacting this office so promptly with regard to this matter. Should you have any questions, please contact me at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Robert A. Hoffman, Esquire
Peter M. Zimmerman, People's Counsel
for Baltimore County

FILE

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

October 25, 2004

NOTICE OF ASSIGNMENT

CASE #: 03-360-SPHA

IN THE MATTER OF: AUTO PROPERTIES, LLC
-Legal Owner /Petitioner NE/cor East Avenue
11th Election District; 6th Councilmanic District

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance Variance were GRANTED with restrictions.

ASSIGNED FOR: TUESDAY, JANUARY 25, 2005 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: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : Robert A. Hoffman, Esquire
Petitioner /Legal Owner : Auto Properties, LLC /Steven B. Fader, Managing Member
Dennis Turnbaugh

Tom Church /Professional Engineer

Mildred Schaffer
Anthony Marchani
Tom Edwards
Jackie Megee
Meg O'Hare / Carney Improvement Assn.

Ruth Baisden /Greater Parkville Comm Council

William J. Wiseman III/Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

pp'd to 8/04/05 req. of Counsel for Petitioner

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 15, 2005

NOTICE OF ASSIGNMENT

CASE #: 03-360-SPHA

IN THE MATTER OF: AUTO PROPERTIES, LLC
-Legal Owner/Petitioner NE/cor East Avenue
11th Election District; 6th Councilmanic District

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance Variance were GRANTED with restrictions.

which was postponed on the record 1/25/05, without objection, at the request of Counsel for Petitioner, has been reassigned for hearing pursuant to People's Counsel's Memorandum and Request for Hearing filed 2/16/05; and has been

ASSIGNED FOR: TUESDAY, MAY 24, 2005 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 B, 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: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : Robert A. Hoffman, Esquire
Petitioner /Legal Owner : Auto Properties, LLC /Steven B. Fader, Managing Member
Dennis Turnbaugh

Tom Church /Professional Engineer

Mildred Schaffer
Anthony Marchani
Tom Edwards
Jackie Megee
Meg O'Hare / Carney Improvement Assn.
Ruth Baisden, President /Greater Parkville Comm. Council

William J. Wiseman III/Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

8 April 2005

RECEIVED
APR 8 - 2005
BALTIMORE COUNTY
BOARD OF APPEALS

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

Re: Auto Properties, LLC
Case No. 03-360spha
Hearing Date: 5/24/05

Dear Ms. Bianco:

We are in receipt of notice of hearing in the above captioned matter, scheduled for May 24th. Unfortunately, both Mr. Hoffman and I will be out of town for a previously and long standing matter, specifically a convention that has been scheduled for at least a year. We must therefore request that this matter be continued. I have spoken with Mr. Zimmerman, who does not object.

Thank you for your consideration.

Sincerely,

Arnold Jablon

c: Peter M. Zimmerman, Esq.
Ruth Baisden, Greater Parkville Com council
Meg O'Hare, Carney Improvement Assn

County Board of Appeals of Baltimore County

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

Continued "sine die" @ req. of Counsel for Petitioner, no objs. from appellants

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

April 15, 2005

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 03-360-SPHA

IN THE MATTER OF: AUTO PROPERTIES, LLC
-Legal Owner /Petitioner NE/cor East Avenue
11th Election District; 6th Councilmanic District

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance Variance were GRANTED with restrictions.

which was assigned to be heard on 5/24/05 has been **POSTPONED** at the request of Counsel for Petitioner, and without objection by Appellant, People's Counsel for Baltimore County; and has been

REASSIGNED FOR: THURSDAY, AUGUST 4, 2005 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 B, 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: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : Robert A. Hoffman, Esquire
Arnold Jablon, Esquire

Petitioner /Legal Owner : Auto Properties, LLC /Steven B. Fader, Managing Member
Dennis Turnbaugh

Tom Church /Professional Engineer

Mildred Schaffer
Anthony Marchani
Tom Edwards
Jackie Megee
Meg O'Hare / Carney Improvement Assn.
Ruth Baisden, President /Greater Parkville Comm. Council

William J. Wiseman III/Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

Assigned for Hearing on 6-21-06 w/ Case # 06-109-SPH

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

July 25, 2005

NOTICE OF CONTINUANCE – NO RESET DATE

CASE #: 03-360-SPHA

IN THE MATTER OF: AUTO PROPERTIES, LLC
-Legal Owner /Petitioner NE/cor East Avenue
11th Election District; 6th Councilmanic District

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance Variance were GRANTED with restrictions.

which was reassigned to be heard on 8/04/05 has been **CONTINUED** and placed on the Board's "HOLD" docket; no further action to be taken until such time as a request to do so is received from either party.

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 B, 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: Appellant : Office of People's Counsel

Counsel for Petitioner /Legal Owner : Robert A. Hoffman, Esquire
Arnold Jablon, Esquire

Petitioner /Legal Owner : Auto Properties, LLC /Steven B. Fader, Managing Member
Dennis Turnbaugh

Tom Church /Professional Engineer

Mildred Schaffer
Anthony Marchani
Tom Edwards
Jackie Megee
Meg O'Hare / Carney Improvement Assn.
Ruth Baisden, President /Greater Parkville Comm. Council

William J. Wiseman III/Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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VENABLE LLP

210 Allegheny Avenue
Post Office Box 5517
Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

21 July 2005

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

RECEIVED
JUL 21 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Auto Properties, LLC
Case No. 03-360spha
Hearing Date: 5/24/05

Dear Ms. Bianco:

The instant matter is presently scheduled for August 4th.

When this matter was first before the Board, we raised an issue that the relief granted by the Deputy Zoning Commissioner, which is the subject of this appeal, might be moot because of a 1968 case in which the then Zoning Commissioner granted a use permit for parking in a residential zone for this subject property.

We believe that the 1968 case is dispositive of the issue. The Board then agreed to continue this matter so that we could determine how best to proceed on this issue.

After much review, and as this issue, we believe, is not now properly before the Board, there is agreement that the proper procedure is to file a petition for special hearing with the Zoning Commissioner. The issue to be presented would be whether the use permit granted in the 1968 case is still valid. Obviously, a decision on this issue would have a direct bearing on the appeal now pending. Therefore, we are requesting that the instant matter be continued, at this

PP and Told

point indefinitely. We will file a petition within the next 30 to 60 days.

I have discussed this with People's Counsel and he is not opposed to this request. On behalf of my client, I agreed with Mr. Zimmerman that the subject property would continue in its present status and nothing would be done to disturb its current condition until the Board has the opportunity to hear and decide these cases.

Thank you for your consideration.

Sincerely,

Arnold Jablon

c: Peter M. Zimmerman, Esq.
Ruth Baisden, Greater Parkville Com council
Meg O'Hare, Carney Improvement Assn
Timothy M. Kotroco, Esq.
Director, PDM

RECEIVED
JUL 2 1 2005
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County

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

November 29, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF: **AUTO PROPERTIES, LLC – Petitioner**
Case No. 06-109-SPH and Case No. 03-360-SPHA

Having heard this matter on 6/21/06; 11/02/06; and 11/14/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **TUESDAY, JANUARY 23, 2006 at 9:00 a.m.**

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

NOTE: Closing briefs are due on Tuesday, December 19, 2006
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Daryl Corona
Jackie Megee
Mildred Schaffer
Anthony Marchanti
Tom Edwards
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Copy to: 3-2-4

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 13, 2006

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-109-SPH **IN THE MATTER OF: AUTO PROPERTIES, LLC – Petitioner**
NE/cor East Avenue and East Avenue Relocated
11th Election District; 6th Councilmanic District

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

and

CASE #: 03-360-SPHA **IN THE MATTER OF: AUTO PROPERTIES, LLC**
-Legal Owner /Petitioner NE/cor East Avenue

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance
Variance were GRANTED with restrictions.

Case No. 06-109-SPH, which had been assigned for hearing on 5/04/06, has been **POSTPONED** at the request of People's Counsel due to conflict with Court of Special Appeals calendar and assigned to the next open date on the Board's schedule; and, upon review of the Board's Continued Docket, has been reassigned with Case No. 03-360-SPHA, continued by notice dated 7/25/05; and has been

REASSIGNED FOR: **WEDNESDAY, JUNE 21, 2006 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 B, 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: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Jackie Megee
Anthony Marchanti
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

Mildred Schaffer
Tom Edwards

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

June 22, 2006

NOTICE OF ASSIGNMENT /Day #2

CASE #: 06-109-SPH **IN THE MATTER OF: AUTO PROPERTIES, LLC – Petitioner**
NE/cor East Avenue and East Avenue Relocated
11th Election District; 6th Councilmanic District

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

and

CASE #: 03-360-SPHA **IN THE MATTER OF: AUTO PROPERTIES, LLC**
-Legal Owner /Petitioner NE/cor East Avenue

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance
Variance were GRANTED with restrictions.

Day #2 from 6/21/06

ASSIGNED FOR: **THURSDAY, NOVEMBER 2, 2006 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 B, 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: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Daryl Corona
Jackie Megee
Mildred Schaffer
Anthony Marchanti
Tom Edwards
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 8, 2006

NOTICE OF ASSIGNMENT /Day #3

CASE #: 06-109-SPH **IN THE MATTER OF: AUTO PROPERTIES, LLC – Petitioner**
NE/cor East Avenue and East Avenue Relocated
11th Election District; 6th Councilmanic District

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

and

CASE #: 03-360-SPHA **IN THE MATTER OF: AUTO PROPERTIES, LLC**
-Legal Owner /Petitioner NE/cor East Avenue

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance
Variance were GRANTED with restrictions.

Day #3 from 11/02/06 as agreed

ASSIGNED FOR: TUESDAY, NOVEMBER 14, 2006 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 B, 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: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Daryl Corona
Jackie Megee
Mildred Schaffer
Anthony Marchanti
Tom Edwards
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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Prot Ex 2

We The undersign residence of Carney
Are opposed To The EXPANSION OF HERITAGE
commerical parking LoT

110 sign

1

Sign	Address
Shirley E. Jardeen	9401 AVONDALE RD.
Mrs. Roland S. Marshall	9415 Avondale RD.
Nicole & Robert Gulber	9502 Avondale Rd
Mary Parker	9410 avondale Road
Mike Ilg	Warren Ashburn
9407 AVONDALE RD	9301 Avondale Rd
21234	
Gus Weisenborn	
9407 AVONDALE RD	9407 AVONDALE RD.
21234	
GINA Weisenborn	
Konstantin Horodiskiy	3018 East Ave
S Hitrodeeva	9304 Avondale Rd
Paula Heckel	9302 Avondale Rd.
Gary Mergel	9227 Avondale Road, 21234
Christine Heffelfinger	9300 AVONDALE ROAD, 21234
Antoinette Hammett	3051 East Avenue

Prot Ex #3

Greater Parkville Community Council

Approved by the Board of Directors – January 3, 2001
Approved by the General Membership – January 10, 2001

RESOLUTION

The Greater Parkville Community Council (GPCC) is an umbrella organization consisting of community associations, civic groups, and residents living in the Parkville, Carney, and Cub Hill area of Baltimore County. A goal and purpose of the GPCC is to preserve and improve the quality of life in our residential neighborhoods so that our community remains a desirable place to live, shop, and raise a family. As such, the GPCC has been charged by the community to review proposed land-use changes and make recommendations based on the good of the community.

RESIDENTIAL HOUSING MARKET.

RESOLVED: that the position of the GPCC as adopted by the Board of Directors and general membership is as follows:

- The purpose of zoning regulations and land-use planning is to protect property values and quality of life of the surrounding property owners and community. We are a Baltimore County Community Conservation Area in which these minimum standards are critical to keeping our community viable and shall be upheld. The GPCC does not support any variances, special exceptions, use permits, or deviations from county code regulations, unless specifically voted acceptable.

*

- The Parkville, Carney, Cub Hill area is severely deficient of open space by the State of Maryland and Baltimore County regulation standards. Therefore, GPCC does not support any waivers of open space regulations, or any modifications of landscape buffers or RTA buffers.

2ND HIGHEST IN DEFICIT OPEN SPACE

- The Board of Directors and/or Zoning Committee will review proposed development plans to ensure that proposed developments do not have an adverse impact to surrounding and nearby residents or the character of the neighborhood.

As part of GPCC review and position, the community concerns that need to be addressed will involve (but not limited to) the following:

- There shall be no visual impacts from the proposed development.
- The proposed development shall have landscape and fence design that provides privacy and screening to surrounding residential properties. Maintenance requirements of buffer areas shall be stated in zoning order and development/site plan.
- A lighting plan shall be submitted and approved by the county prior to approval of a development /site plan. Light from the development shall not reflect on to residential property or surrounding roads.
- All signage shall be conducive to the surrounding residential community. New businesses shall use a joint sign, instead of separate signs for each business. This will eliminate excess sign clutter.

- All rooftop equipment shall be screened so that this equipment is not visible from the ground floor window level of adjacent residents.
- The proposed streets shall be connected with the existing neighborhood road network wherever possible and the sidewalks are located to support the functional patterns of the neighborhood.
- The arrangement and orientation of proposed buildings and development/site improvements are patterned in a similar manner to those in the neighborhood.
- The scale, height, proportions, massing and detailing of the buildings shall be in proportion to those existing in the existing neighborhood.
- Any proposed business use shall architecturally blend in with the surrounding residential community. Architectural elements shall be submitted and review by the Office of Planning and the GPCC designated representatives prior to approval of site plan and permits.
- The building and parking lot layouts reinforce existing building and streetscape patterns and assure that placement of buildings and parking lots have no adverse impact on the neighborhood.
- Commercial and employee parking shall not be allowed on residentially zoned property or over flow on to residential streets.
- Where development will add more than 30 vehicles trips a day, a traffic impact study shall be required prior to the approval of development.
- Ensure that storm water drainage does not impact surrounding property owners, and nearby streams. No storm water management waivers shall be granted
- Excess noise shall be controlled and hours of truck deliveries shall be limited and not use residential streets or accept deliveries at night.
- Trash dumpsters shall not be near residential property. Maintenance requirements for picking up trash and emptying dumpsters shall be stated in zoning order and development/site plan.

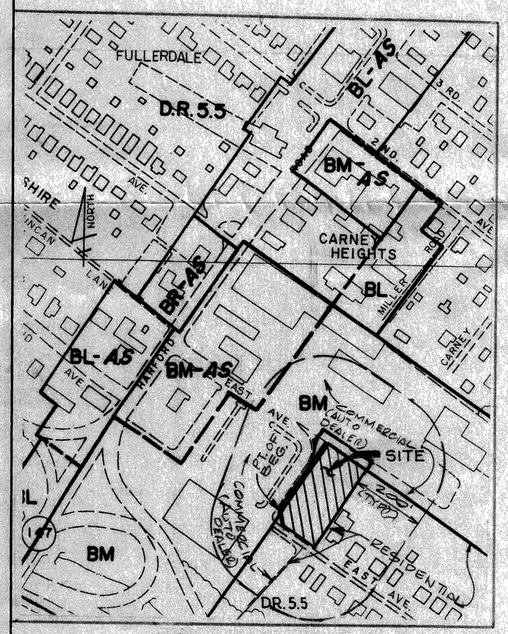
As witness this day of January 10, 2001.

ATTEST: Greater Parkville Community Council

Secretary President

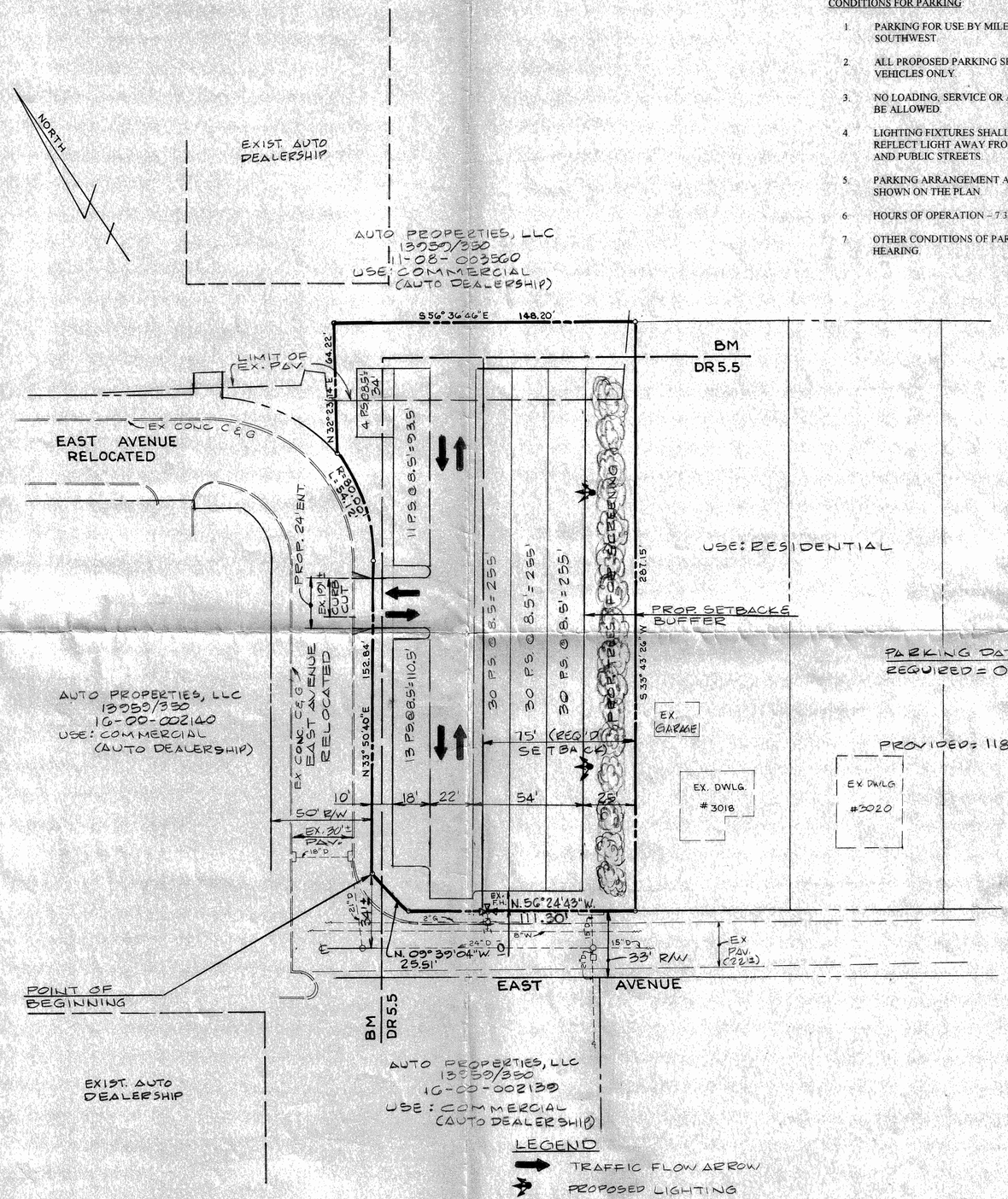
Board Witness Board Witness

PLAT TO ACCOMPANY PETITION FOR ZONING: ☒ VARIANCE, ☒ SPECIAL HEARING



ZONING MAP

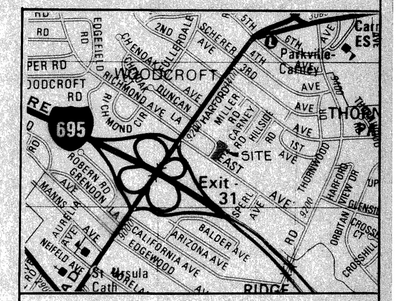
SCALE: 1" = 200'
(MAP NE9E)



CONDITIONS FOR PARKING

1. PARKING FOR USE BY MILE ONE ADJACENT TO THE SITE TO THE SOUTHWEST.
2. ALL PROPOSED PARKING SPACES TO BE USED FOR PASSENGER VEHICLES ONLY.
3. NO LOADING, SERVICE OR ANY USE OTHER THAN PARKING WILL BE ALLOWED.
4. LIGHTING FIXTURES SHALL BE LOCATED AND ARRANGED AS TO REFLECT LIGHT AWAY FROM ADJACENT RESIDENTIAL SITES AND PUBLIC STREETS.
5. PARKING ARRANGEMENT AND VEHICULAR ACCESS SHALL BE AS SHOWN ON THE PLAN.
6. HOURS OF OPERATION – 7:30 A.M. TO 9:00 P.M.
7. OTHER CONDITIONS OF PARKING, IF ANY, TO BE DETERMINED AT HEARING.

PARKING DATA
REQUIRED = 0
(NO BUILDING PLANNED FOR SITE, AND REQUIRED PARKING FOR ADJACENT BUSINESSES MET ON THE SITES OF THE BUSINESSES.



NORTH

VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT #: 11
COUNCILMANIC DISTRICT #: 6
1"=200' SCALE MAP #: NE 9-E

ZONING: BM, DR 5.5
LOT SIZE: 38,250 SF = 0.8781 AC

	PUBLIC	PRIVATE
SEWER:	☒	☐
WATER:	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☐	☒

PRIOR ZONING HEARINGS: NONE
PREVIOUS COMMERCIAL PERMIT: NONE

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
DT	360	03-360-SPHA

PROPERTY/OWNER INFORMATION

TAX ACCOUNT NO.: 11-08-003563
OWNER: AUTO PROPERTIES LLC
23 WALKER AVENUE
BALTIMORE, MD, 21208
DEED REF: 13050/350
PLAT REF: N/A

GENERAL NOTES

1. THERE ARE NO KNOWN PRIOR ZONING CASES OR COMMERCIAL PERMITS FOR THE PROPERTY.
2. THERE ARE NO EXISTING OR PROPOSED SIGNS.
3. THE SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
4. THERE ARE NO STREAMS OR STORM WATER MANAGEMENT SYSTEMS ON OR WITHIN 50 FEET OF THE PROPERTY.

NOTE: THERE IS NO 100 YEAR FLOODPLAIN WHICH AFFECTS THE SUBJECT SITE.

Pet Ex. #1

STATE OF MARYLAND
THOMAS A. DWORAK
No. 9178
REGISTERED PROFESSIONAL ENGINEER

PLAN TO ACCOMPANY SPECIAL HEARING AND ZONING VARIANCE

Drafting: HM / TLB		
Check: TAC	1/30/03	ADDRESS COMMENTS FROM MEETING BETWEEN TAG/HUCH AND VENABLE, BALTIJER & HOWARD LLP
Design		
Check	DATE:	REVISIONS

DEVELOPMENT ENGINEERING CONSULTANTS, INC.
SITE ENGINEERS & SURVEYORS
6603 YORK ROAD 410-377-2600 BALTIMORE, MARYLAND 21212

OWNER:
AUTO PROPERTIES, LLC
23 WALKER AVENUE
BALTIMORE, MARYLAND 21208-4004

PARCEL OF LAND ON THE N.E. CORNER OF EAST AVE. & EAST AVE. RELOC.
ELECTION DISTRICT NO. 11 — BALTIMORE COUNTY, MD

SHEET	OF	DATE	SCALE	CONTRACT NUMBER
1	1	1/15/2003 REV. 1/30/03	1"=30'	00-117

THEREFORE, IT IS ORDERED, this 2nd day of June, 2005 by this Deputy Zoning Commissioner, that the Special Hearing relief, to allow business parking in a residential zone to include the storage of new unlicensed passenger vehicles, be and is hereby GRANTED, as modified by the conditions and restrictions imposed at the end of this Order.

IT IS FURTHER ORDERED, that the Variance relief, to allow a 35 ft. buffer and setback in lieu of the required 80 ft. buffer and 75 ft. setback, be and is hereby GRANTED, subject also to the following conditions and restrictions:

1. The Petitioner shall be permitted to utilize the subject property for the storage of unlicensed new car inventory. However, the Petitioner shall leave undisturbed that portion of the property situated adjacent to the intersection of East Avenue and East Avenue Relocated. That is the first 85 ft. of the subject lot, as measured from the road right-of-way of East Avenue, shall remain in its open, natural and grassy condition. This was a suggestion made by one of the citizens in attendance and agreed to by Mr. Fader on behalf of the owner of the property. The Petitioner may but shall not be required to convey this portion of the property to the community as a small park, of the community is willing to accept such a conveyance. If not, then that rectangular portion of the lot, the dimensions of which are approximately 85 ft. x 150 ft., shall remain open and meticulously maintained by Auto Properties, LLC.

2. There shall be no curb cut or access from the proposed inventory storage lot directly onto East Avenue Relocated. The Petitioner shall eliminate that driveway access from their site plan. All access to the vehicles which may be stored on this lot shall occur from the contiguous property currently owned by Auto Properties, LLC, the Petitioner herein. There shall be no new access points to East Avenue Relocated, other than those which currently exist today.

3. The Petitioner shall continue to maintain a 25 ft. buffer area as shown on their site plan adjacent to the residential property located at 3018 East Avenue. That buffer area, as well as the boundaries of this parking lot adjacent to both the Relocated and East Avenue, shall be appropriately screened as within the discretion of Avery Harden, Landscape Architect for Baltimore County. By furtherance thereof, the Petitioner shall be required to submit a landscaping and lighting plan to Mr. Harden for his full review and approval. In addition, Mr. Harden shall review not only the lighting proposed for this new parking lot, but also shall review the manner in which the automobile dealership is illuminated. Mr. Harden shall pay particular attention to the effect of this lighting upon the property owned by Mildred Schaffer, whose property is located at 3017 East Avenue. The Petitioner shall be required to adjust their lighting so as to mitigate the effects that said lighting has upon the Schaffer residential property and any other residences so affected.

4. Mr. Harden shall also review the fencing and natural vegetation, and the manner in which the Petitioner's property abuts that property owned by Mildred Schaffer, at 3017 East Avenue. Mr. Harden shall use his discretion and expertise in landscape buffering to make any adjustments or improvements to the manner in which Ms. Schaffer's property is screened by that which exists in the field today.

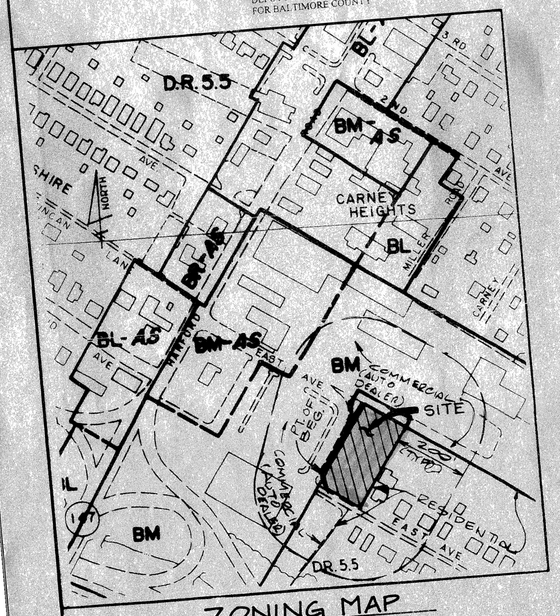
5. All trash and debris that is associated in any way with the automobile dealerships operating at this location, including the auto paint and body shop, shall be stored in appropriate trash receptacles and disposed of on a regular basis so as to prevent any trash and debris from blowing about the Petitioner's property or any adjacent properties.

6. The Petitioner shall be absolutely prohibited from loading or unloading automobiles from car carriers in the roadbed of East Avenue Relocated or East Avenue. All loading and unloading of vehicles must occur on the auto dealership property and not in the public road right-of-way.

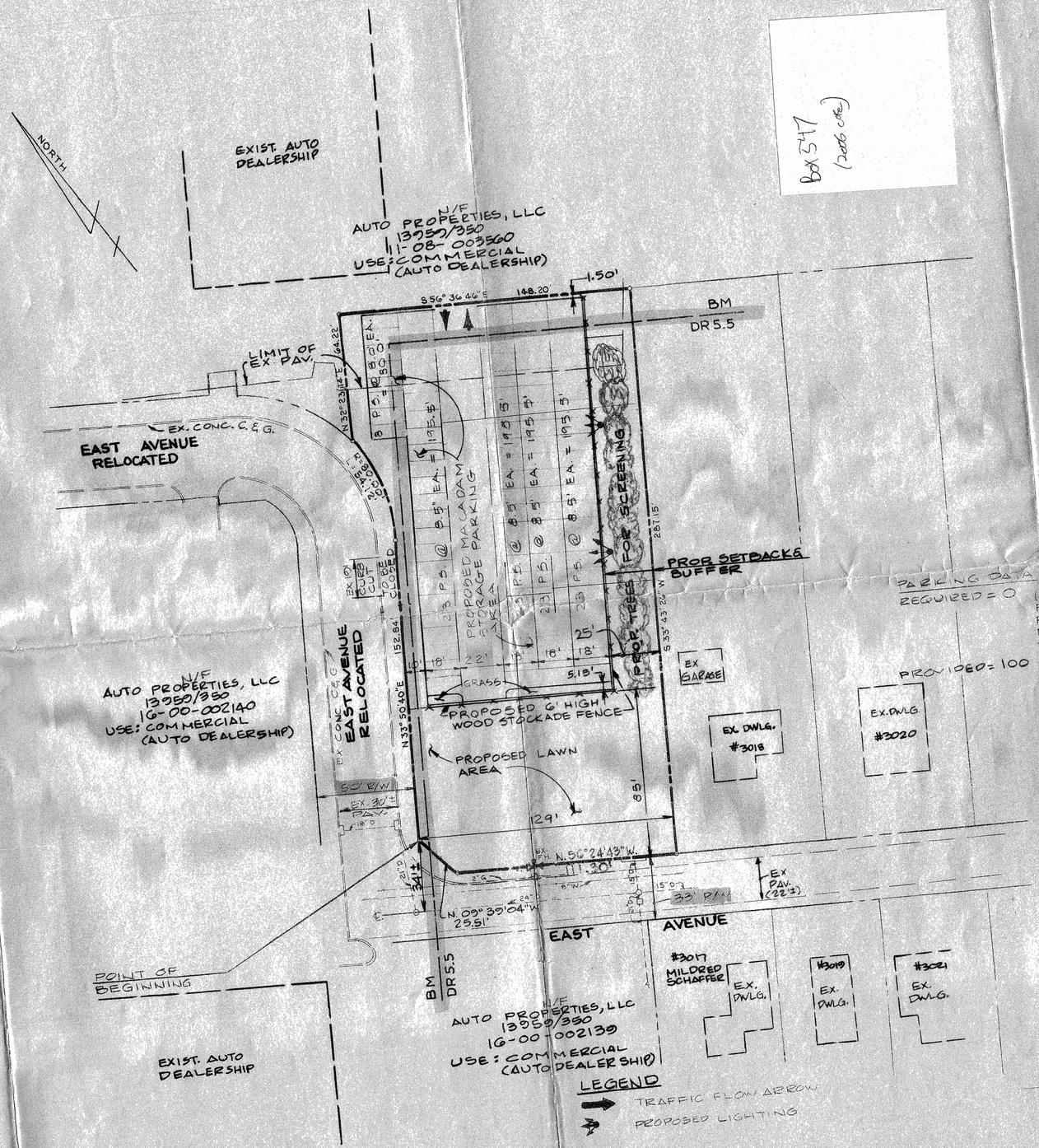
7. The Petitioner shall be required to submit a new site plan for review by the appropriate agencies of Baltimore County indicating a redesign of the property upon which this commercial parking shall occur consistent with the terms and conditions of this Order.

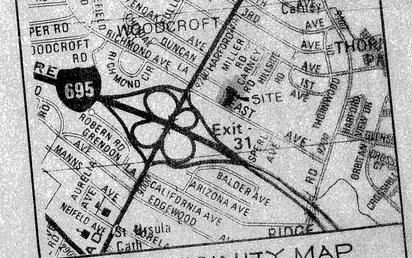
IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY



ZONING MAP
SCALE: 1" = 200'
(MAP NE9E)





VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT #: 11
COUNCILMANIC DISTRICT #: 6
1" = 200' SCALE MAP #: NE 9-E

ZONING: BM, DR 5.5
LOT SIZE: 38,250 SF = 0.878± AC.

	PUBLIC	PRIVATE
SEWER:	☒	☐
WATER:	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☐	☒

PRIOR ZONING HEARINGS: NONE
PREVIOUS COMMERCIAL PERMIT: NONE

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #

PROPERTY/OWNER INFORMATION

TAX ACCOUNT NO.: 11-08-003563
OWNER: AUTO PROPERTIES LLC
23 WALKER AVENUE
BALTIMORE, MD. 21208
DEED REF: 13959/350
PLAT REF: N/A

GENERAL NOTES:

1. EXCEPT FOR CASE NO. 03-360-SPHA, THERE ARE NO KNOWN PRIOR ZONING CASES FOR THE PROPERTY.
2. THERE ARE NO KNOWN COMMERCIAL PERMITS FOR THE PROPERTY.
3. THERE ARE NO EXISTING OR PROPOSED SIGNS.
4. THE SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
5. THERE ARE NO STREAMS OR STORMWATER MANAGEMENT SYSTEMS ON OR WITHIN 50 FEET OF THE PROPERTY.
6. THERE IS NO 100 YEAR FLOODPLAIN WHICH AFFECTS THE SUBJECT SITE.

CASE NO. 06-109-SPH

STATE OF MARYLAND
TIMOTHY A. CHURCH
No. 21312
REGISTERED PROFESSIONAL ENGINEER

SCHEME "A"

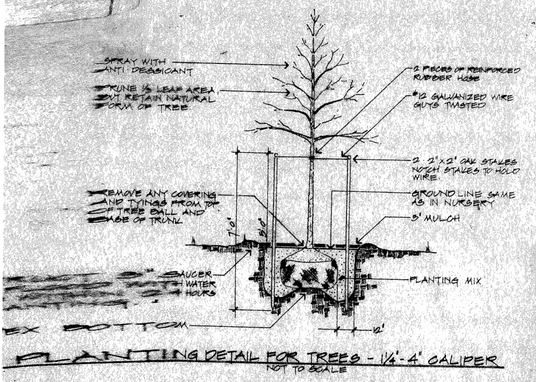
SITE PLAN
CORNER OF EAST AVE. & EAST AVE. RELOC.
ELECTION DISTRICT NO. 11
BALTIMORE COUNTY, MD

SHEET	DATE	CONTRACT NUMBER
1 OF 1	1-21-2005	00-1
	SCALE 1" = 30'	

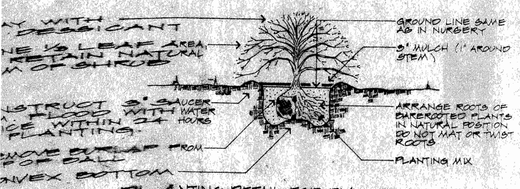
OWNER:
AUTO PROPERTIES, LLC
23 WALKER AVENUE
BALTIMORE, MARYLAND 21208-4004

DEVELOPMENT ENGINEERING CONSULTANTS, INC.
ENGINEERS & SURVEYORS

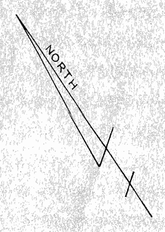
PLAT TO ACCOMPANY PETITION FOR ZONING: ☒ VARIANCE, ☒ SPECIAL HEARING



PLANTING DETAIL FOR TREES - 1½"-4" CALIPER
NOT TO SCALE

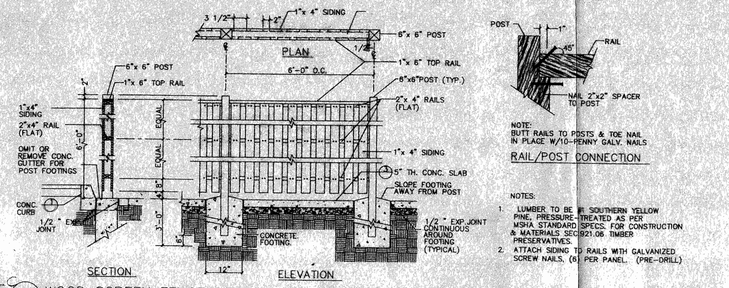


PLANTING DETAIL FOR EVERGREEN AND DECIDUOUS SHRUBS
NOT TO SCALE

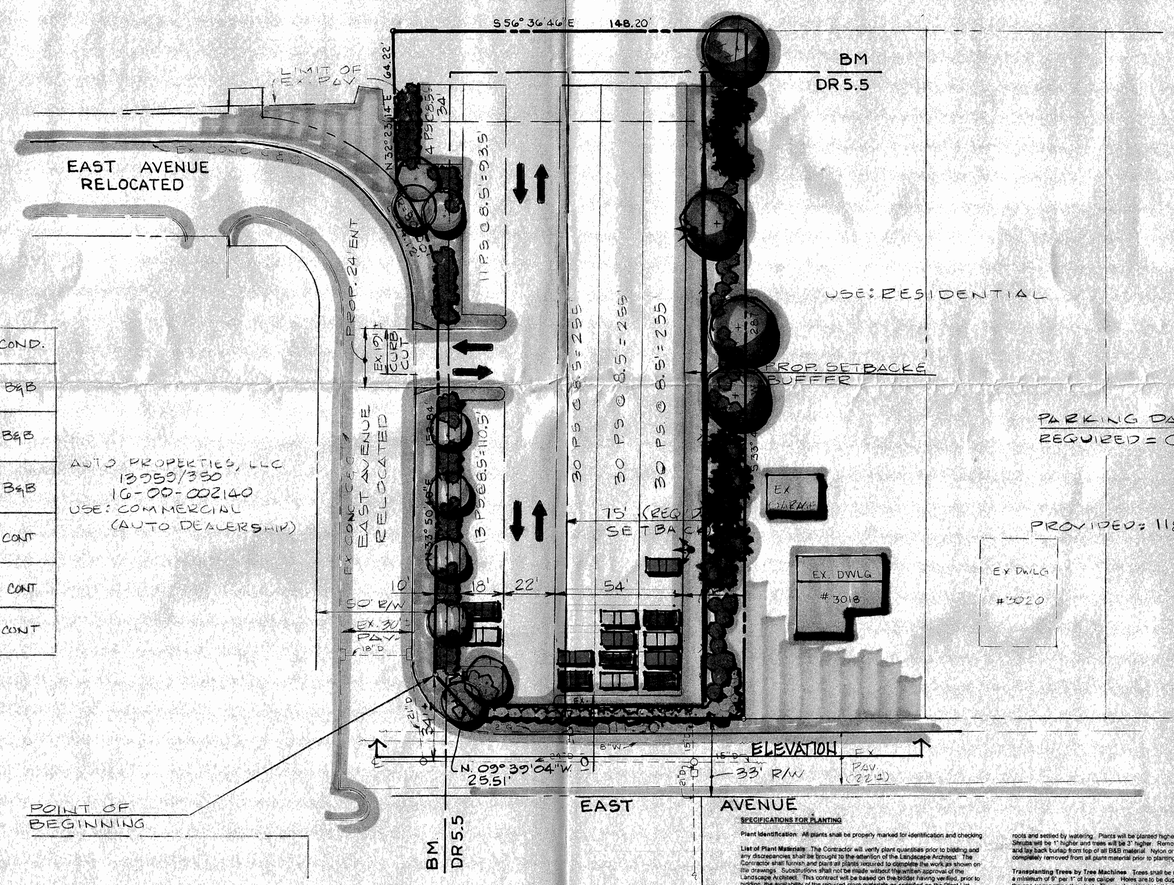


EXIST AUTO DEALERSHIP

AUTO PROPERTIES, LLC
13050/350
16-00-002560
USE: COMMERCIAL
(AUTO DEALERSHIP)



8 WOOD SCREEN FENCE DETAILS
NOT TO SCALE



AUTO PROPERTIES, LLC
13050/350
16-00-002140
USE: COMMERCIAL
(AUTO DEALERSHIP)

LEGEND
TRAFFIC FLOW ARROW
PROPOSED LIGHTING

PLANT LIST

KEY	QTY	BOTANICAL NAME / COMMON NAME	SIZE	COND.
	4	ACER RUBRUM 'OCTOBER GLORY' OCTOBER GLORY RED MAPLE	2½-3" CAL	B&B
	9	PRUNUS SERRULATA 'KWANZAN' KWANZAN CHERRY	2½-3' CAL	B&B
	8	PINUS STROBUS EASTERN WHITE PINE	6-7' HT	B&B
	36	VIBURNUM X RHYTIDOPHYLLOIDES 'ALLEGHANY' LEATHERLEAF VIBURNUM	30-36" HT	CONT
	36	FORSYTHIA SPECTABILIS 'LYNWOOD GOLD' FORSYTHIA	24-30" HT	CONT
	80	ABELIA GRANDIFLORA 'EDWARD GOUCHER' EDWARD GOUCHER ABELIA	24-36" HT	CONT

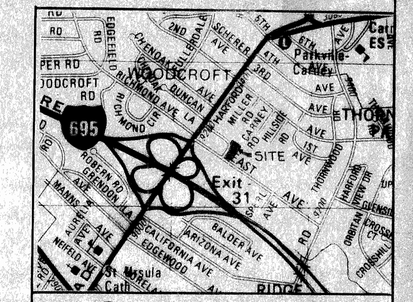
PLANTING CALCULATIONS

PLANTING REQUIRED:

340 LF ADJACENT TO PUBLIC ROAD @ 1 PU/15 LF = 23 PU'S
280 LF ADJACENT TO RESIDENTIAL @ 1 PU/15 LF = 19 PU'S
TOTAL REQUIRED = 42 PU'S

PLANTING PROVIDED

4 MAJOR DECIDUOUS TREES	@ 1:1	= 4 PU'S
9 MINOR DECIDUOUS TREES	@ 2:1	= 4.5 PU'S
8 EVERGREEN TREES	@ 2:1	= 4 PU'S
152 SHRUBS	@ 5:1	= 30 PU'S
TOTAL PROVIDED		42.5 PU'S



VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT #: 11
COUNCILMANIC DISTRICT #: 6
1" = 200' SCALE MAP #. NE 9-E

ZONING: BM, DR 5.5
LOT SIZE: 38,250 SF = 0.8781 AC

	PUBLIC	PRIVATE
SEWER:	☒	☐
WATER:	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☐	☒

PRIOR ZONING HEARINGS: NONE
PREVIOUS COMMERCIAL PERMIT: NONE

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #

PROPERTY/OWNER INFORMATION

TAX ACCOUNT NO.: 11-08-003503
OWNER: AUTO PROPERTIES LLC
23 WALKER AVENUE
BALTIMORE, MD. 21208
DEED REF: 13050/350
PLAT REF: N/A

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
Development Plans Review

OWNER'S SIGNATURE AND CERTIFICATION FORM

I certify that I have reviewed this Final Landscape Plan that I am aware of the regulations presented in the Baltimore County Landscape Manual and I agree to comply with these regulations and all applicable policy, guidelines, and ordinances. I agree to certify the implementation of this approved Final Landscape Plan upon completion of the landscape installation not later than one (1) year from the date of approval of this plan to the Department of Permits and Development Management Development Plans Review, County Office Building, Room 211, Towson, MD 21204

Owner's signature — Date

Owner's Printed Name — Tele #

(Print) Mailing address - city - state - zip

PADM # — BUILDING PERMIT #

SPECIFICATIONS FOR PLANTING

Plant Identification: All plants shall be properly marked for identification and checking.

List of Plant Materials: The Contractor will verify plant quantities prior to bidding and any discrepancies shall be brought to the attention of the Landscape Architect. The Contractor shall furnish and plant all plants required to complete the work as shown on this drawing. Substitutions shall not be made without the written approval of the Landscape Architect. This consent will be based on the bidder having verified, prior to bidding, the availability of the required plant materials as specified on the Plant List.

Plant Quantity: All shrubs shall be dense, heavy to the ground, and well grown, showing evidence of having been sheared regularly, and sound, free of plant diseases or insect eggs, and shall have a healthy, normal root system. Plants shall be nursery grown. Plants shall not be pollinated prior to delivery. The shape of the plant shall in general conform to its natural growth proportions unless otherwise specified. All plants including container grown shall conform to American Standard for Nursery Stock (ANSI z60.1, latest edition), and shall have a well-shaped, heavy branch structure for the species. Evergreen trees are to have an internode no greater than 24" and shall be uniformly well-sheared. All plant sizes shall average at least the middle of the range given in the plant list.

Plant Spacing: Plant spacing is to scale on the plan or as shown on the plant list.

Soil Mix: Soil mix will be 2/3 existing soil and 1/3 leaf mold or equal organic material, thoroughly mixed and homogenized.

Ball Size: The ball size shall conform to the American Association of Nurserymen's publication entitled American Standard for Nursery Stock, ANSI z60.1, latest edition.

Excavation: Holes for all plants shall be 18" larger in diameter than size of ball or container and shall have vertical sides. Hedges shall be planted in a trench 12" wider than ball diameter. Beds for mass planting shall be entirely rototilled to a depth of 8" and shall be 15" beyond the average outside edge of plant balls. A 2" layer of organic material (i.e. leaf mold) will be incorporated into plant beds by tilling again.

Planting: Backfilling shall be done with soil mix, reasonably free of stones, subsoil, clay lumps, stumps, roots, weeds, bermuda grass, litter, toxic substances, or any other material which may be harmful to plant growth or hinder grading, planting, or maintenance operations. Should any unforeseen or unsuitable planting conditions arise, such as faulty soil drainage or chemical residues, they should be called to the attention of the Landscape Architect and Owner for adjustments before planting. The plant shall be set plumb and straight and shall be staked at the time of planting. Backfill shall be well worked about the roots and settled by watering. Plants will be planted higher than surrounding grade. Shrubs will be 1" higher and trees will be 3" higher. Remove rope from around tree trunks and top burlap from top of all B&B material. Nylon or vinyl rope and/or burlap will be completely removed from all plant material prior to planting.

Transplanting Trees by Tree Machines: Trees shall be moved by machines that provide a minimum of 3" per 1" of tree caliper. Holes are to be dug by the same size machine as the one transporting the plant. The plant material shall be transplanted in approximately the same growing condition as it is presently growing, in terms of soil type and moisture content. Fertilize and guy as described in these plans and specifications.

Cultivation: All trenches and shrub beds shall be cultivated, edged and mulched to a depth of 3" with shredded bark. The area around isolated plants shall be mulched to at least 6" greater diameter than that of the hole. Plant beds adjacent to buildings shall be mulched to the building wall.

Maintenance: The Contractor shall be responsible during the contract and up to the time of acceptance for keeping the planting and work incidental thereto in good condition, by replanting, plant replacement, watering, weeding, cultivating, pruning and watering, reseeding and cleaning up and by performing all other necessary operations of care for promotion of good plant growth, so that all work is in satisfactory condition at time of acceptance, at no additional cost to the Owner.

Fertilizer: Fertilizer shall be a slow release type contained in polyethylene perforated bags with micropore holes for controlled feeding, such as Easy Grow as manufactured by Specialty Fertilizer, Inc., Box 358, Buffalo, New York 14091, or approved equal. The bags shall contain 1 ounce of soluble fertilizer analysis 10-10-10 per cm in bag three (3) years and shall be applied during planting as recommended by the manufacturer. If fertilizer packets are not used, the Contractor shall apply granular fertilizer to the soil mix with 10-6-4 analysis, 50% organic, at the following rates: Trees @ 2.3 lbs. per caliper inch, Shrub Beds @ 3-5 lbs per 100 sq. ft., and Groundcover Beds @ 2-3 lbs per 100 sq. ft.

Groundcover: All areas of groundcover shall be rototilled to a depth of 8". Apply 2" of organic material and rototill until thoroughly mixed. Apply fertilizer as stated above.

Guarantee and Replacement: All material shall be unconditionally guaranteed for one (1) year. The Contractor is responsible for watering but not for losses or damage caused by mechanical injury or vandalism.

LANDSCAPE PLAN

HUMAN & ROHDE, INC.
Landscape Architects
512 Virginia Avenue
Towson, Maryland 21286
(410) 825-3885

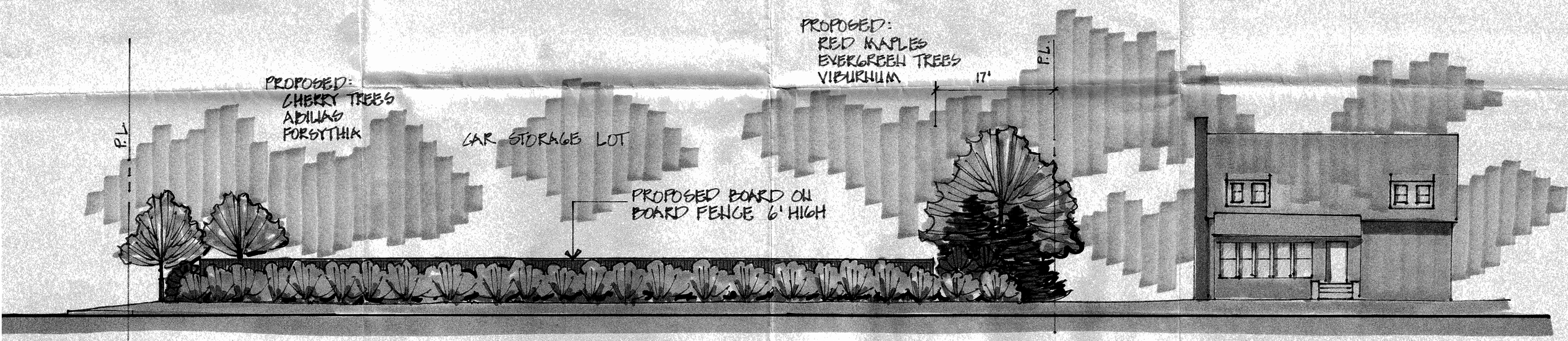
#3

THOMAS R. CHUDOW — STATE OF MARYLAND — No. 3455 — REGISTERED LANDSCAPE ARCHITECT

REVISIONS	DEVELOPMENT ENGINEERING CONSULTANTS, INC. SITE ENGINEERS & SURVEYORS 6603 YORK ROAD 410-377-2600 BALTIMORE, MARYLAND 21212	OWNER: AUTO PROPERTIES, LLC 23 WALKER AVENUE BALTIMORE, MARYLAND 21208-4004	PARCEL OF LAND ON THE N.E. CORNER OF EAST AVE. & EAST AVE. RELOC. ELECTION DISTRICT NO. 11 BALTIMORE COUNTY, MD	SHEET 1 OF 1	DATE 4-15-03 SCALE 1"=30'	CONTRACT NUMBER 00-117

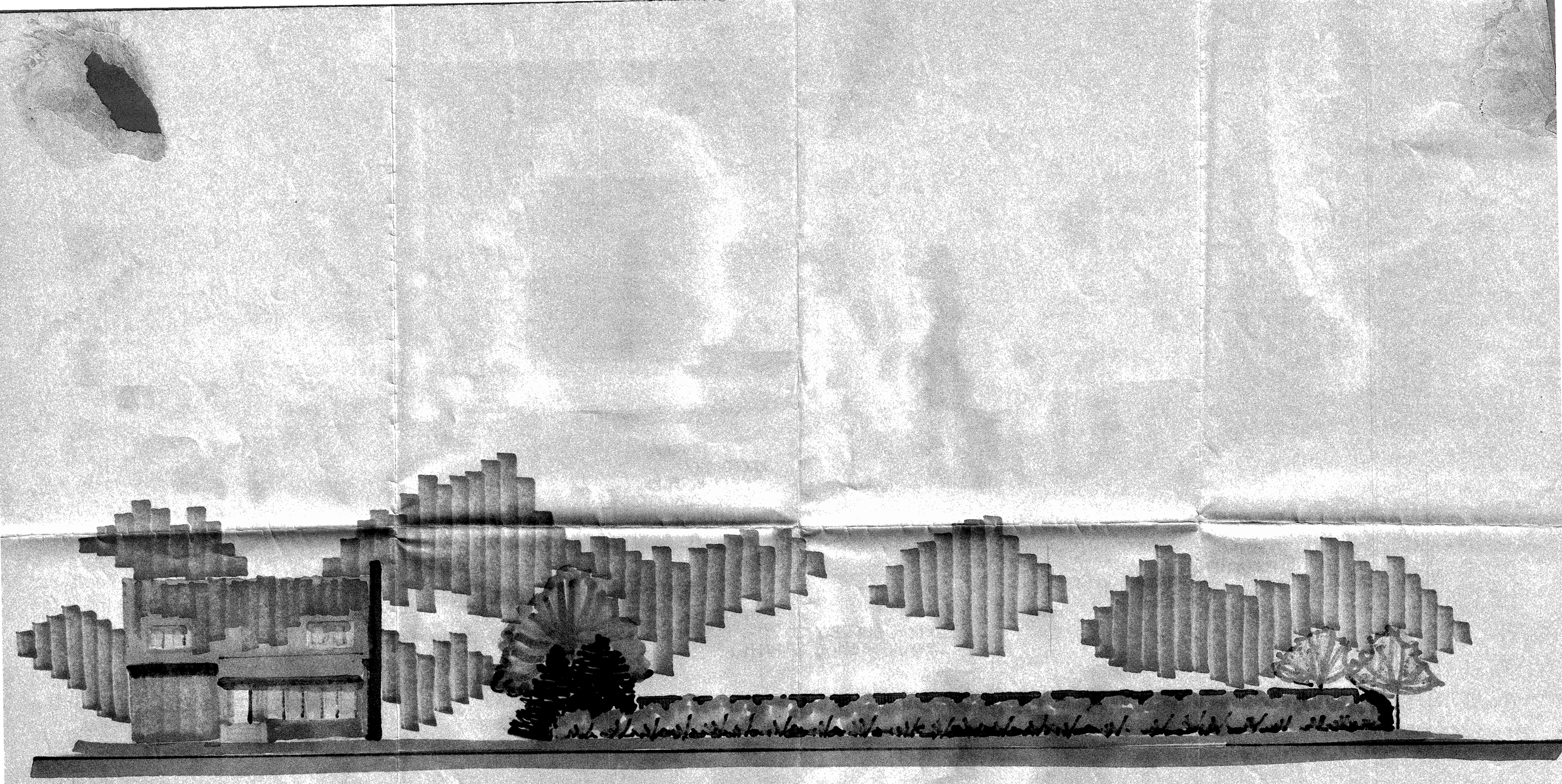
Baltimore County GIS Services Unit Date of Photography: March 1995 Scale: 1 inch = 200 feet

Baltimore County Tile: 071b3

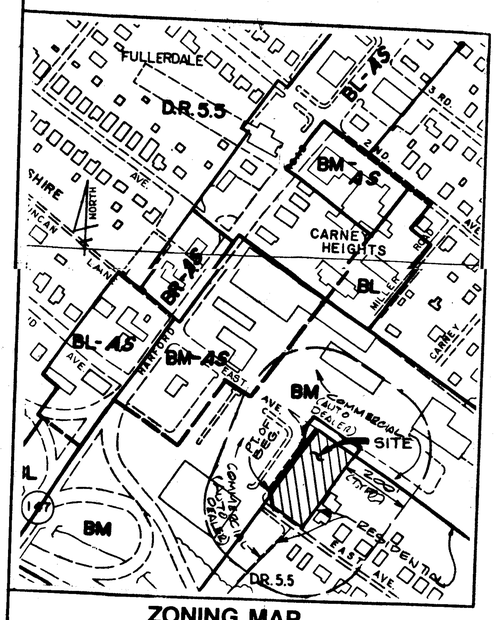


ELEVATION

SCALE: 1/8" = 1'-0"

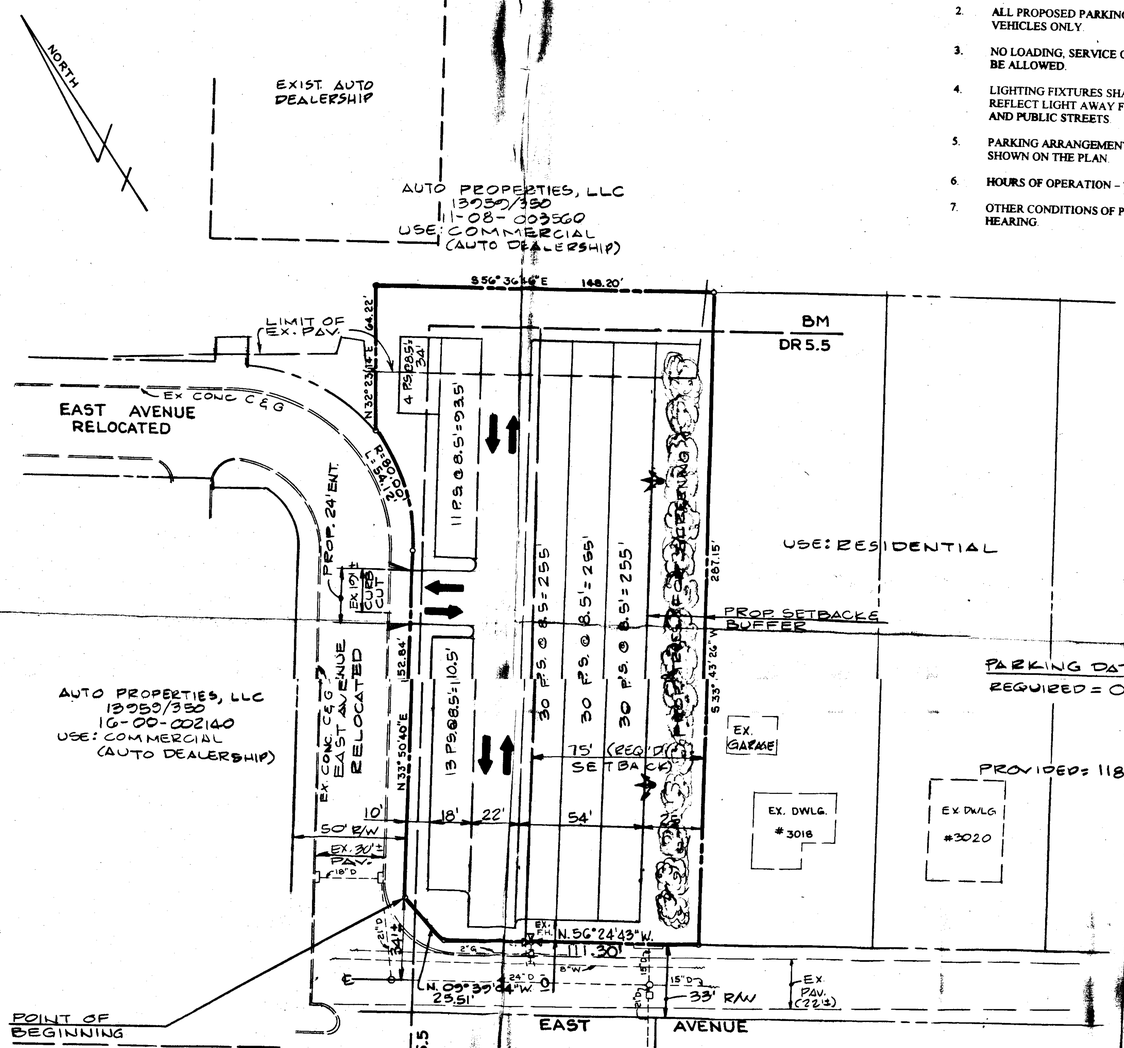


PLAT TO ACCOMPANY PETITION FOR ZONING: ☒ VARIANCE, ☒ SPECIAL HEARING



ZONING MAP

SCALE: 1" = 200'
(MAP NE9E)



LEGEND

TRAFFIC FLOW ARROW

PROPOSED LIGHTING

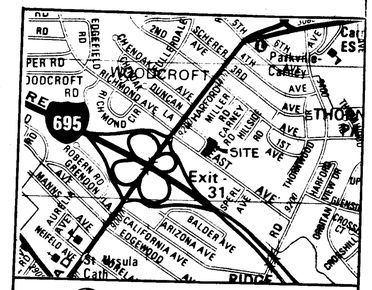
CONDITIONS FOR PARKING:

1. PARKING FOR USE BY MILE ONE ADJACENT TO THE SITE TO THE SOUTHWEST.
2. ALL PROPOSED PARKING SPACES TO BE USED FOR PASSENGER VEHICLES ONLY.
3. NO LOADING, SERVICE OR ANY USE OTHER THAN PARKING WILL BE ALLOWED.
4. LIGHTING FIXTURES SHALL BE LOCATED AND ARRANGED AS TO REFLECT LIGHT AWAY FROM ADJACENT RESIDENTIAL SITES AND PUBLIC STREETS.
5. PARKING ARRANGEMENT AND VEHICULAR ACCESS SHALL BE AS SHOWN ON THE PLAN.
6. HOURS OF OPERATION – 7:30 A.M. TO 9:00 P.M.
7. OTHER CONDITIONS OF PARKING, IF ANY, TO BE DETERMINED AT HEARING.

PARKING DATA

REQUIRED = 0

(NO BUILDING PLANNED FOR SITE, AND REQUIRED PARKING FOR ADJACENT BUSINESSES MET ON THE SITES OF THE BUSINESSES.



NORTH

VICINITY MAP

SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT #: 11

COUNCILMANIC DISTRICT #: 6

1" = 200' SCALE MAP # : NE 9-E

ZONING : BM; DR 5.5

LOT SIZE: 38,250 SF = 0.8781 AC

	PUBLIC	PRIVATE
SEWER:	☒	☐
WATER:	☒	☐

CHESAPEAKE BAY CRITICAL AREA: YES ☐ NO ☒

PRIOR ZONING HEARINGS: NONE

PREVIOUS COMMERCIAL PERMIT: NONE

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #
DT	360	03-360-SPHA

PROPERTY/OWNER INFORMATION

TAX ACCOUNT NO.: 11-08-003563
OWNER: AUTO PROPERTIES LLC
23 WALKER AVENUE
BALTIMORE, MD, 21208
DEED REF: 13059/350
PLAT REF: N/A

GENERAL NOTES:

1. THERE ARE NO KNOWN PRIOR ZONING CASES OR COMMERCIAL PERMITS FOR THE PROPERTY.
2. THERE ARE NO EXISTING OR PROPOSED SIGNS.
3. THE SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
4. THERE ARE NO STREAMS OR STORM WATER MANAGEMENT SYSTEMS ON OR WITHIN 50 FEET OF THE PROPERTY.

NOTE: THERE IS NO 100 YEAR FLOODPLAIN WHICH AFFECTS THE SUBJECT SITE.

PLAN TO ACCOMPANY SPECIAL HEARING AND ZONING VARIANCE

Drafting	JHN	11.8
Check	TAC	
Design		
Check		
DATE:	1/30/03	ADDRESS COMMENTS FROM MEETING BETWEEN TAGHIOFF AND VENABLE BALTJER & HOWARD LLP
REVISIONS		

DEVELOPMENT ENGINEERING CONSULTANTS, INC.
SITE ENGINEERS & SURVEYORS
6603 YORK ROAD 410-377-2600 BALTIMORE, MARYLAND 21212

OWNER:
AUTO PROPERTIES, LLC
23 WALKER AVENUE
BALTIMORE, MARYLAND 21208-4004

PARCEL OF LAND ON THE N.E. CORNER OF EAST AVE. & EAST AVE. RELOC.
ELECTION DISTRICT NO. 11
BALTIMORE COUNTY, MD

SHEET	DATE	CONTRACT NUMBER
1 OF 1	1/15/2003 REV. 1/30/03	00-117

SCALE 1" = 30'