RE: PETITION FOR SPECIAL HEARING 10905 Falls Road; E/side Falls Road, 800' N c/line Greenspring Valley Road 8th Election & 3th Councilmanic Districts Legal Owner(s): Carroll Long Contract Purchaser(s) Automotive Emporium, Inc., by JoAnne Galasso, President

- **BEFORE THE**
- * ZONING COMMISSIONER
- * FOR
- * BALTIMORE COUNTY
- * 06-097-SPH

DEFENDANT'S RESPONSE IN OPPOSITION TO BALTIMORE COUNTY'S MOTION TO DISMISS

The Petitioner, through undersigned counsel, in opposition to the Motion to Dismiss filed by Baltimore County, states as follows:

- 1. That the Petitioner denies that there are any illegal activities occurring at 10905-11 Falls Road, in violation of the Baltimore County Zoning Regulations, the November 7, 2002 and January 7, 2003 Orders of the Deputy Zoning Commissioner, the Final Orders of the Code Enforcement Hearing Officer, or the July 8, 2005 Consent Order entered by Judge Cadigan.
- 2. The Petitioners have filed a request for a special hearing to amend the aforementioned Orders of the Deputy Zoning Commissioners to include the repair of passenger vehicles, which orders presently provide for the repair of specialty vehicles at that aforedescribed location on Falls Road.
- 3. The Petition is not barred under the doctrine of issue preclusion or collateral estoppel because the Deputy Zoning Commissioners Orders and Code Enforcement Hearing Officer Orders are administrative declarations and are not valid and final judgments. See, e.g., Cicla v. Disability Review Board for Prince George's County, 288 Md. 254, 263-64, 418 A.2d 205 (1980); Gaywood Community

- Association v. Metropolitan Trnasit Authority, 246 Md. 93, 100, 227 A.2d 735 (1967).
- 4. The Petition is not barred under the doctrine of res judicata because the Petitioner was not a party before the Deputy Zoning Commissioner or the Code Enforcement Hearing Officer. In order for the doctrine to apply, a judgment on the merits must have been previously entered to act as a bar to a second suit involving the same parties. As stated above, the prior Orders were issued pursuant to administrative authority, not judicial authority.

 Batson v. Shiflett, 325 Md. 684, 699 (1992). The Petitioner requesting a special hearing to amend a prior ruling. As such, the doctrine of res judicata is wholly inapplicable.
- 5. The right to seek a change in zoning due to newly discovered information, errors, or changing circumstances, is fully permitted under the zoning regulations so long as the Petitioner acts within the prior decisions of the Code Enforcement Hearing Officer and the Deputy Zoning Commissioner Orders.
- 6. The County has not met its burden of proving by a preponderance of the evidence that the Petitioner is operating unlawfully or that the Petition is barred under collateral estoppel or *res judicata*. Therefore, the Zoning Commissioner must deny the County's Motion as a matter of law.

WHEREFORE, for the reasons as stated above, the Petitioner respectfully prays that the Zoning Commissioner will enter an Order DENYING the Defendant's Motion.

Respectfully submitted,

By:

Michael A. Jeter, Esq.

Law Office of Michael A. Jeter 2122 Maryland Avenue Baltimore, Maryland 21218 (410) 812-9498

Attorneys for the Petitioner

MICHXELA. JETER

CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on this 10 day of 2005, one copy of the foregoing Response in Opposition to the Motion to Dismiss was served via U.S. mail delivery, postage prepaid on: James J. Nolan, Jr., Esq., Assistant County Attorney, Baltimore County Office of Law, 400 Washington Avenue, Towson, Maryland 21204, attorney for Baltimore County, Maryland.

3

RE: PETITION FOR SPECIAL HEARING 10905 Falls Road; E/side Falls Road, 800' N c/line Greenspring Valley Road 8th Election & 3th Councilmanic Districts Legal Owner(s): Carroll Long Contract Purchaser(s) Automotive Emporium, Inc., by JoAnne Galasso, President

- * BEFORE THE
- * ZONING COMMISSIONER
- * FOR
- * BALTIMORE COUNTY
- * 06-097-SPH

* * * * * * * *

ORDER

Upon consideration of the Pettioner's Response in Opposition to Baltimore

County's Motion to Dismiss, and the County's reply thereto, if any, and being satisfied there
is good cause, it is by the Zoning Commissioner for Baltimore County,

ORDERED that Baltimore County's Motion, be, and the same is hereby DENIED, and it is further

ORDERED that the Clerk shall promptly notify all parties and the attorneys of record.

IT IS SO ORDERED on this _	day of	, 2005.

ZONING COMMISSIONER

RE: PETITION FOR SPECIAL HEARING 10905 Falls Road; E/side Falls Road, 800' N c/line Greenspring Valley Road 8th Election & 3td Councilmanic Districts Legal Owner(s): Carroll Long Contract Purchaser(s) Automotive Emporium, Inc., by JoAnne Galasso, President

- * BEFORE THE
- * ZONING COMMISSIONER
- * FOR
- * BALTIMORE COUNTY
- * 06-097-SPH

REQUEST FOR HEARING

The Petitioner, by the undersigned attorney, Michael A. Jeter, Esq., respectfully requests a hearing on Baltimore County's motion and the Petitioner's response in opposition thereto.

Respectfully submitted,

By:

Michael A. Jeter, Esq.

2122 Maryland Avenue Baltimore, Maryland 21218 (410) 812-9498

Attorney for the Petitioner

MICHAEL A. JETER

Attorney at Law 2122 Maryland Avenue Baltimore, MD 21218

Tele: (410) 812-9498

Fax: (410) 752-0146

October 10, 2005

Mr. Timothy M. Kotroco, Director Department of Permits & Development Management County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

> Re: Petition for Special Hearing

> > Case No.: 06-097-SPH

Dear Director Kotroco:

Please file the enclosed pleading on behalf of the Petitioner in the above referenced case. Kindly date-stamp the extra copy and return the same to my attention in the enclosed, selfaddressed stamped envelope.

Feel free to contact the undersigned if you have any questions. Thank you for your assistance and prompt response.

Best personal regards.

Sincerely

Enclosures

Cc: J. Nolan, Esq.

RECEIVED

TO File

RE: PETITION FOR SPECIAL HEARING
10905 Falls Road; E/side Falls Road, 800' N
c/line Greenspring Valley Road
8th Election & 3rd Councilmanic Districts
Legal Owner(s): Carroll Long
Contract Purchaser(s): Automotive Emporium,
Inc. by JoAnne Galasso, President
*

Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

06-097-SPH

SEP 2 1 2005

BALTIMORE COUNTY'S MOTION TO DISMISS

Baltimore County, Maryland, by undersigned counsel, respectfully moves the Zoning Commissioner to dismiss the above Petition for Special Hearing. The grounds of the motion are as follows:

- 1. Steve and JoAnne Galasso, acting individually and through various corporate entities, have been illegally operating a passenger vehicle service garage at 10905-11 Falls Road in violation of Baltimore County Zoning Regulations; the November 7, 2002 and January 7, 2005 Orders of the Deputy Zoning Commissioner (Exhibit 1); Final Orders of the Code Enforcement Hearing Officer (Exhibits 2-7); and an Injunction entered by the Circuit Court for Baltimore County (Exhibit 8). This illegal operation has continued with the full knowledge, consent and permission of the legal owner of the property.
- 2. In an apparent attempt to cause confusion in other proceedings and to create an appealable Order which will provide the basis for further delays in these proceedings, the Galasso's have filed a Petition for Special Hearing to Amend the Decision and Order in Case No. 02-419-SPH to include the repair of everyday passenger vehicles.

- 3. This issue was already determined by the Deputy Zoning Commissioner in his November 7, 2002 and January 7, 2003 Orders. Those Orders became final when Galasso withdrew an appeal to the Board of Appeals.
- 4. Automotive Emporium, Inc. also agreed in the Consent Judgment dated July 8, 2005 to be enjoined from "operating a service garage or a body shop for the repair of passenger vehicles." (Exhibit 8).
- 5. Based upon the Consent Judgment and Final Orders of the Deputy Zoning Commissioner, Automotive Emporium, Inc. is barred by the doctrines of issue preclusion and judicial estoppel from relitigating the issue of the operation of a service garage for passenger vehicles at the subject location.
- 6. The Galasso's and their various corporate entities also should be barred from seeking a change in the zoning status in light of their continuing and flagrant disregard for the law.
- 7. Attached hereto as Exhibit 9 is a September 7, 2005 Memorandum from Arnold F. "Pat" Keller, III, Director of Planning, recommending that the Petition be dismissed.

WHEREFORE, Baltimore County, Maryland respectfully requests that the Petition for Special Hearing be dismissed forthwith.

Respectfully submitted,

JAY L. LINER
County Attorney

IAMES J. NOLAN, JR. Assistant County Attorney 400 Washington Avenue Towson, MD 21204

410-887-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September 2005, Baltimore

County's Motion to Dismiss was sent via First Class U.S. Mail, postage prepaid, to:

Michael A. Jeter, Esquire P.O. Box 297 Randallstown, Maryland 21133 Attorney for Petitioner

Peter Max Zimmerman, Esquire Carole S. Demilio, Esquire Old Courthouse – Room 47 400 Washington Avenue Towson, Maryland 21204

Carroll E. Long 1619 Alston Road Towson, Maryland 21204

James J. Nolan, Jr.



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

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

perjury, that I/we are the legal owner(s) of the property which

for the property located at	10905	Falls	Road	
which is	presently 2	zoned	R.C.5	

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

Lee attached

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.

			is the subject of thi	s Peution.		
Contract Purchaser/Less	<u>:ee:</u>		<u>Legal Owner(s</u>	<u>):</u>		
AUTOMOTIVE EN	nporium	TNC.		L E. Lo	NG	
La ane Dala	\$10 P	resident	Name - Type or Print	A 5	Luc	
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Address		Telephone No.	Name - Type or Print			
LUTHERVILLE, M	D	21093				
City	State	Zip Code	Signature			
Attorney For Petitioner:			1619 AL	STON RO	AD	
il			Address			Telephone No.
MICHAEL JE	TER, t	=5Q.	BALTIMO	RE M	۵	21204
Name - Type or Print		<u> </u>	City		State	Zip Code
	<u> </u>	WEL-E-W. L	Representative	to be Contac	:ted:	
Signature MICHAEL A.	JETER	₹ <i>€ 5</i> Q.				
P.O. Box 297	4	10 812-9498	Name			
Address		Telephone No.	Address			Telephone No.
RANDALLSTOWN	MD	2 1133				
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REV 9/15/98		Review	ved by	Date _	<u> </u>	7 9

to amend the decision and order in case #02-419-SPH to include the repair of everyday passenger vehicles.

Patton Consultants Ltd. Engineering & Site Planning

ZONING DESCRIPTION

Beginning at a point on the east side of Falls Road (State Route 25) which is 40 feet wide at the distance of 800 feet more or less north of the centerline of the nearest improved intersecting street, Greenspring Valley Road, which is 60 feet wide. Thence the following courses and distance.

North 03° 12' 00" West -66.74' North 03° 12' 00" West - 61.33' 2. 3. South 80° 36' 00" East - 68.00' North 24° 55' 00" East -4. 176.00' South 79° 49' 00" East -5. 118.77 South 81° 16' 20" East - 133.25' 6. South 30°06'05" West - 258.13' 7. South 44° 36' 30" West - 70.23' 8. North 59° 19' 40" West - 53.63' 9. North 86° 25' 00" West -10. 151.58'

To the place of beginning as recorded in deed liber15541, folio 638. Also known as 10905 - 10911 Falls Road and located in the 3rd Election District.



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ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (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.

Item Num	ber or Case Number: 06-097-5PH	,
Petitioner	: Automotive Emporium, Inc.	
Address o	or Location: 10905 Falls Road, Luthenville, MD	21093
Name: Address:	FORWARD ADVERTISING BILL TO: Automotive Enporum, Inc. 10905 Falls Road Luthenville, MO 21093	

Revised 2/20/98 - SCJ

Department of Permittend Development Managerent

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



Baltimore County

James T. Smith, Jr., County Executive Timothy M Kotroco, Director

April 10, 2006

Mr. Carroll E. Long
1619 Alston Road
Baltimore, Maryland 21204
And
Steve and JoAnne Galasso
10905-11 Falls Road
Lutherville, Maryland 21093

Re: Petition for SPH 06-097-SPH

at 10905 - 11 Falls Road Automotive Emporium Inc.
Location: N/east side Falls Road between Greenspring
Valley Road and Seminary Avenue
District 8 Councilmatic 3, Violations 02-0020, 05-0457, 05-08457

Dear Messer's Long and Galasso:

This letter is written as a response to your calls to this office last week, to inquire the status of the above referenced Special Hearing petition. I have inquired with the Director and Code Enforcement and as you are no doubt aware, the enforcement office has 3 open violation cases on this property, and the petition cannot be processed for the following reasons:

- 1. The agreement and Consent-Judgment in the Circuit Court dated. 7/8/05.
- 2. Follow-up inspections of the property, have not been allowed and,
- 3. Section 33-4-114 (c) BCC which prevents Baltimore County from processing plans when there are open violations on the property.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391 or Jim Thompson at 410-887-8099..

()

Sincerely

W. Carl Richards
Supervisor

Zoning Review

WCR/rjc c: files



Visit the County's Website at www.baltimorecountyonline.info

RECEIVED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

SEP 1 3 2005

ZONING COMMISSIONER

TO: Timothy M. Kotroco, Director

Department of Permits and Development Management DATE: September 8, 2005

FROM: Arnold !

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

SUBJECT: 10905 Falls Road

INFORMATION:

Item Number: 6-097

Petitioner: Automotive Emporium, Inc./ ALA Long Property

Zoning: RC 5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:

The Office of Planning recommends the subject petition be dismissed with prejudice and receive no further action for the following reasons. This matter was adjudicated in Case. No 02-419sph by the Deputy Zoning Commissioner who ordered on 11/7/02 that the property enjoyed a non-conforming use for repair of classic cars and trucks only. The order clearly denied the special hearing requesting painting and repair of passenger automobiles. A motion to reconsider was granted on 1/7/03 to allow the Long family and Valley Services Company to repair and paint antique and classic automobiles in addition to the requirements of the prior order. That order stated clearly "This expansion on my prior approval shall in no way be interpreted to permit the repair and painting of the average automobile by anyone on the property." The order was appealed to the County Board of Appeals and then dismissed on 3/11/04.

In addition to the aforementioned the applicant shall add the following notes to the zoning history on plan:

- 2004 Comprehensive Zoning Map Issue 2- 058 Rezoning requested from RC 5 to BM, RC5 zoning was retained.
- 2. Code Enforcement actions, civil penalties of \$25,000 and \$35,000 assessed.
- 3. Case No. 05-0457, 05-8457 are open code enforcement cases.

4. Consent judgment signed by Circuit Court Judge Cadigan on July 8, 2005. It stipulated that any officer, director, shareholder, agent, employee, independent contractor or assignee of Automotive Emporium, Inc, t/a Valley Services Company or t/a Lutherville Collision & Truck Center is enjoined from operating a service garage or a body shop for the repair of passenger vehicles, repairing, painting or performing mechanical work on passenger automobile vehicles and using 10905 or 10911 Falls Road as a drop of or transfer point for passenger automobile vehicles to be repaired or painted elsewhere. Automotive Emporium was ordered to erect a sign at or near the driveway of 10905 Falls Road that they may not leave their vehicles at that location.

For further information concerning the matters stated here in, please contact Diana Itter at 410-887-3480.

Curios Hurrows

Prepared by:

Division Chief:

AFK/LL: CM

4. Consent judgment signed by Circuit Court Judge Cadigan on July 8, 2005. It stipulated that any officer, director, shareholder, agent, employee, independent contractor or assignee of Automotive Emporium, Inc, t/a Valley Services Company or t/a Lutherville Collision & Truck Center is enjoined from operating a service garage or a body shop for the repair of passenger vehicles, repairing, painting or performing mechanical work on passenger automobile vehicles and using 10905 or 10911 Falls Road as a drop of or transfer point for passenger automobile vehicles to be repaired or painted elsewhere. Automotive Emporium was ordered to erect a sign at or near the driveway of 10905 Falls Road that they may not leave their vehicles at that location.

For further information concerning the matters stated here in, please contact Diana Itter at 410-887-3480.

Prepared by:

Division Chief:

AFK/LL: CM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: September 8, 2005

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

10905 Falls Road

INFORMATION:

Item Number: ひてひフィ

Petitioner:

Automotive Emporium, Inc./ ALA Long Property

Zoning:

RC 5

Requested Action: Special Hearing

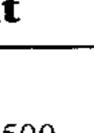
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In addition to the aforementioned the applicant shall add the following notes to the zoning history on plan:

- 1. 2004 Comprehensive Zoning Map Issue 2-058 Rezoning requested from RC 5 to BM, RC5 zoning was retained.
- 2. Code Enforcement actions, civil penalties of \$25,000 and \$35,000 assessed.
- 3. Case No. 05-0457, 05-8457 are open code enforcement cases.

Fire Department



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



Baltimore County

James T. Smith, Jr., County Executive John J. Hohman, Chief

Department of Permits&Development Management Room 111 County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204 (Mail Stop#1105) August 26, 2005

ATTENTION: Kristen Matthews

Distribution Meeting of August 29,2005

Item No.: 091-094,096 102&104

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

1. The fire marshal's office has no comments at this time.

Lt. Jimmie Mezick Fire Marshal's Office 410-887-4880 MS-1102F

cc: File



Visit the County's Website at www.baltimorecountyonline.info



Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary Neil J. Pedersen, Administrator

"Mary and Department of Transportation

Date: August 31, 2005

Ms. Kristen Matthews
Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
Towson, Maryland 21204

RE: Baltimore County
Item No. 097 (BPR)
10905 Falls RD

Dear Ms. Matthews:

This office has reviewed the referenced Item and has no objection to approval of the Special Hearing. However we will require the owner to obtain an access permit through our office and as a minimum the following roadway improvements may be required:

- Standard 8" curb, gutter and sidewalk from property corner to property corner.
- The proposed entrance shall be 25' wide.
- Provide a typical section showing the proposed improvements.
- A hydraulic analysis may be required.

Please have their representative contact this office regarding the roadway improvements conditioned to the permit.

Should any additional information be required please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief

Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits & Development

DATE: September 2, 2005

Management

FROM:

Dennis A. Kennedy, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For September 6, 2005

Item Nos. 091, 094, 095, 096, 097, 098, 099, 100, 101, 103, and 104

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

DAK:CEN:clw cc: File

ZAC-NO COMMENTS-09022005.doc

RE: PETITION FOR SPECIAL HEARING * BEFORE THE

10905 Falls Road; E/side Falls Road, 800' N

c/line Greenspring Valley Road * ZONING COMMISSIONER

8th Election & 3rd Councilmanic Districts

Legal Owner(s): Carroll E. Long * FOR

Contract Purchaser(s): Automotive Emporium,

Inc by JoAnne Galasso, President * BALTIMORE COUNTY

Petitioner(s)

* 06-097-SPH

* * * * * * * * * *

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

People's Counsel for Baltimore County

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

<u>CERTIFICATE OF SERVICE</u>

I HEREBY CERTIFY that on this 26 day of August, 2005, a copy of the foregoing Entry of Appearance was mailed to Michael Jeter, Esquire, P.O. Box 297, Randallstown, MD 21133, Attorney for Petitioner(s).

RECEIVED

AUG 2 6 2005

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Per.....

August 30, 2005 Memo to the File from Code Enforcement 10905 Falls Road, 21093

The site plan prepared by PATTON ENGINEERING for this property has numerous deficiencies.

- 1) The original site plan was found to be deficient prior (see below) to the last amended hearing order dated January 7, 2003.
- 2) The Residential House 2816SF has not been used commercially for many years. Mr. William Long has used it as his residence and still occupies 50% of the house that is habitable. Note: the house had a water pipe burst and has been uninhabitable because it is riddled with mold.
- 3) The grass buffer in front of the area listed as the Existing Shop Repair 1008SF office has been covered with macadam. It was sited by building inspection in 2003 to be returned back to its original configuration. As a result of the correction notice sod was placed over the macadam. Now the sod has disintegrated and customers are parking in the unapproved area. Additionally, the macadam is killing the large magnolia tree buffer.
- 4) The building indicated as Existing Shop 320 SF is now and has always been used as a residential garage to support the residential house.
- 5) Not shown on site plan is the dirt driveway to the residential garage. The site plan also shows a tree located in the driveway that was not there on the 2002 aerial photo zoning maps.
- 6) The area shown as Existing Shop Repair 1008SF Office is mostly vacant as it was once used as a paint room and storage for the wheel-wright. The southern part of the building is currently used as an office for the body shop approximately 500SF.
- 7) The adjacent residence to the south, known as 10903 Falls Rd, shares an access easement with the subject property which is not shown on the site plan.
- 8) **Proposed sliding gate** shown along southern property line would not be permitted because of the shared easement.
- 9) Current gate to enclosed screened lot not shown on site plan.
- 10) The 35' high cypress tree line buffer has been removed and replaced with 8' trees.
- 11) The screen fence line along the north western portion of the parking lot is incorrectly positioned. It comes off the residential garage approximately 20LF to the east and then goes northeast approximately 60LF to the northern wall. This is a net loss of 9 parking spaces.
- 12) The screen fence located on the eastern side of the property is located in a position that is different from what is shown on the site plan. The fence comes off the middle of the rear portion of the service garage building perpendicular to the building approximately 30LF then goes northeasterly approximately 115LF to meet up with to northern portion of the fence.

13) The area north of the service garage shown as concrete pad and parking is actually a raised concrete pad and only 4 spaces are used for parking. Note: this is a net loss of 13 parking spaces.

Lode Josephon

EXHIBIT 1

11/7/02 FINDINGS OF FACT AND CONCLUSIONS OF LAW OF DEPUTY ZONING COMMISSIONER &

1/7/03 ORDER ON MOTION FOR RECONSIDERATION

IN RÈ: PETITION FOR SPECIAL HEARING

E/S Falls Road, 930' S

centerline of Seminary Avenue

8th Election District

3rd Councilmanic District

(10905-10911 Falls Road)

William E. & Carroll E. Long, Legal Owners

and Lutherville Collision &

Truck Center, Lessee

Petitioners

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 02-419-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owners of the subject property, William E. Long and Carroll E. Long, and the lessee of the site, Lutherville Collision & Truck Center The special hearing request involves property located at 10905-10911 Falls Road in the Lutherville area of Baltimore County. The special hearing request is to approve the continuation of a non-conforming use pursuant to Section 104 of the Baltimore County Zoning Regulations (B.C.Z.R.); to determine, in accordance with Section 405.A of the B.C.Z.R., the screening of the premises required by Section 405.A.1; to determine that the property is not considered residential and, therefore, Section 428 of the B.C.Z.R. does not apply; to determine that the property is not considered residential and, therefore, Section 431 of the B.C.Z.R. is not applicable; and for such other items relating to the non-conforming use as may be presented at the hearing.

Appearing at the hearing on behalf of the special hearing request were William, Carroll and June Long, appearing on behalf of the owners of the property, JoAnne and Steve Galasso, appearing on behalf of the lessee of the site, and J. Carroll Holzer, attorney at law, representing the Petitioners. Appearing in opposition to the Petitioners' request were several residents of the surrounding community, some of whom were represented by Robert D. Sellers, attorney at law. Mr. Jack Dillon, Executive Director of the Valleys Planning Council, also attended the hearing.

hearing request, is located on the east side of Falls Road, midway between the intersections of Greenspring Valley Road and Seminary Avenue with Falls Road. The subject property is improved with a number of buildings, all of which are represented on Petitioners' Exhibits 1A and 1B, the site plans filed to accompany the special hearing request. The property also contains parking areas whereupon employee and customer vehicles are currently parked. At issue in this case is the present use of the subject property by Lutherville Collision & Truck Center. The property owner, by and through J. Carroll Holzer, their attorney, asserts that the use of the subject property by Lutherville Contrary, the citizens who attended the hearing and Mr. Robert Sellers, their attorney, argue that the property enjoys no such non-conforming use and that the use presently occurring on the subject property is a drastic enlargement or extension of what has occurred on the property in the past.

The testimony and evidence offered by the Petitioners demonstrated that the subject property has been in continuous ownership by the Long family since 1849 until the present time. The property was always used in some type of commercial fashion since 1849, when John Long, Jr., along with business associate, Levi Justice, opened a wheelwright and blacksmith business on the subject property. In fact, the family business was advertised in the 1877 edition of The Atlas of Baltimore County, Maryland as "a manufacturer of heavy farm and express wagons, repairing of all kinds done at short notice at lowest rates". The family business made the transition from horse-drawn vehicles to motorized vehicles as the internal combustion engine developed. The business, which operated from the property, transformed itself from a manufacturer of horse-drawn wagons to the manufacture and construction of large truck bodies.

Apparently, the early automobile makers developed and sold passenger automobiles in ready to use condition. However, larger trucks were manufactured only as cab and chassis, and sometimes manufactured without the cab itself. The Long family, at that time, specialized in the construction of wood frames and truck bodies which were built upon these blank chassis and cabs that were manufactured by the large auto and truck manufacturers.

At the time of the end of WW II, Mr. Carroll Long (the third generation of Long's to operate the family business), returned from service from WW II. At that time, the family business continued to specialize in the construction, manufacture, painting, and customizing of large truck bodies, which at that time had evolved to steel and aluminum over wood frames. The Long family developed a fine reputation as one of the best customizers of large tractor-trailer type of trucks, fire engines and fire equipment, government and military vehicles, and other similar large and big box trucks. Over the past few decades, the family has continued with the painting, service, and repair of these specialized vehicles, although in recent times the amount of vehicles serviced on the property has reduced significantly. The name of the business has also evolved over the years and the operation is known today as "Valleys Services Company".

It is also important to note the dates that certain buildings and structures were erected on the subject property. The Petitioners have submitted into evidence building permits dated December 13, 1946 and July 8, 1957. The 1946 permit approved the construction of a 36' x 46' x 13' building, set back approximately 150 feet from Falls Road. The 1957 permit allowed for an addition to the previously approved building. These buildings have been used by the Long family in connection with their painting, repair, construction and manufacturing of trucks and truck bodies.

Naturally, the property surrounding the buildings located on the site has been used for the parking and storage of vehicles awaiting service by the Long family. The testimony offered at

the hearing also demonstrated the areas whereupon these vehicles were stored, both before and after service was performed on them. The Long's operated their family business from the subject site for more than a century and a half without any problems or incidents with Baltimore County or their surrounding neighbors.

The purpose of the filing of the special hearing before me results from Mr. Steve Galasso, owner of the Lutherville Collision & Truck Center commencing the operation of his business from the subject property on or about September, 2001. Mr. Galasso owns and operates a very successful automobile collision, paint, and repair facility on Liberty Road. That enterprise continues to operate today. Mr. Galasso was interested in opening a second automobile, paint and repair facility at the property owned by the Long family. Mr. Galasso has been operating his business from the subject property for the past year. No new buildings have been constructed on the property in order to accommodate this new business. Mr. Galasso operates out of the existing service and paint shop, from which the Long's have operated their business for the past many decades. Testimony did reveal that Mr. Galasso installed a newer and more modern ventilation system on the paint shop to better exhaust paint fumes, which result from the painting of automobiles. In addition, Mr. Galasso has installed some privacy fencing around the area where the Long's routinely stored and kept vehicles awaiting service. Furthermore, a new sign has been erected on the property identifying the business on site as the Lutherville Collision & Truck Center. The position of the Petitioners is that Mr. Galasso's business is an intensification of the longstanding non-conforming use, which has existed on the property for over 150 years. They, therefore, ask that the special hearing be granted to allow Mr. Galasso to continue to operate the business known as "Lutherville Collision & Truck Center" from the subject site.

As stated previously, many residents of the surrounding community appeared and testified in opposition to the Petitioners' request. These residents indicated that they never had

any problem and did not take issue with the method and manner by which the Long's operated their business from the subject site. The Long's business was fairly subdued, involving only the occasional painting, repair, and modification of specialty vehicles. Most of the residents living around the Petitioner's property were not even aware that Mr. Long continued to do business on site. However, according to the testimony offered at the hearing, this all changed in September of 2001 when Mr. Galasso's business moved onto the property.

The testimony of the surrounding neighbors demonstrated that the noise and paint fumes emanating from the subject property, resulting from Mr. Galasso's business, have become unbearable. These neighbors also witnessed dumpsters which routinely overflow with trash as a result of the high volume of paint and repair work occurring on the site. The neighbors have also complained over the manner in which cars are parked on the property. Many residents testified that customers of the Lutherville Collision & Truck Center, along with employees, park their automobiles in the front yard of what use to be the old residence on the property in the grassy area along Falls Road. These cars are parked in a haphazard fashion, resulting in an eyesore to motorists who pass by on Falls Road. It also gives the appearance that the property is over commercialized and that the amount of business taken in by this Petitioner exceeds the capacity of the property given that there is not a sufficient amount of parking available to accommodate the many vehicles on site.

Neighbors also complained regarding the disruption of traffic flow along Falls Road at the entrance to the Petitioners' property. Falls Road at this location narrows to a two-lane highway and carries a tremendous volume of traffic, particularly during the peak rush hours. Damaged and disabled vehicles are delivered to the Petitioners' property by way of large rollback tow trucks, which at times come to a complete stop on Falls Road and back into the Petitioners' site. This, in the opinion of the surrounding residents, is disruptive and dangerous to

the flow of traffic in this area. According to the citizens, this type of activity was never noticed by the surrounding residents during the time the Long's operated their business on the property.

Some residents complained that the Petitioners' business operates into the late hours of the evening, which is disruptive to their quiet enjoyment of their properties. This too was not experienced when the Long's operated their business. In addition, the protestants argue that Mr. Galasso operates his business on areas of the property that were not historically used by the Long's and which are not properly part of the non-conforming portion of the business operated by the Long family.

It is clear, based upon the testimony and evidence offered at the hearing, that the subject property does in fact enjoy a legal non-conforming use for the business which has historically been owned and operated by the Long family. That is, the property owners may continue to operate the Valley Services Company from the subject site. That use has existed on the property since prior to 1945 and has continued uninterruptedly up until the present date. That nonconforming use comprises the painting and modification of large trucks and specialty vehicles such as ambulances, fire suppression equipment, large government and military vehicles, tractor cabs and other such similar vehicles. The business operated by the Long family was not the object of the Protestants' testimony. Furthermore, I find that the Long's business may continue to operate in the larger service building containing 4,842 sq. ft., as identified on the site plan. There was some question as to the time when this building was constructed and where a prior commercial zoning line may have existed. However, it was clear, based on the testimony and evidence presented, that this particular area of the Petitioners' property whereupon this building is situated was historically and traditionally used in furtherance of the Long's business. Therefore, the entire service building containing 4,842 sq. ft., along with the driveway and parking areas in front of this building may continue to be used by the Valleys Services Company as outlined above.

The larger question in the case is whether Mr. Galasso may continue to operate the Lutherville Collision & Truck Center from the subject property under the non-conforming use established by the Long family. The Court of Special Appeals, in the case of McKemy v. Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978), established four factors which are to be considered in determining whether a particular activity is within the scope of a non-conforming use.

The first factor to consider is to what extent does the current use of the property reflect the nature and purpose of the original non-conforming use. In my judgment, based upon the testimony and evidence offered at the hearing, the current use of the property by Mr. Galasso does not reflect the nature and purpose of the original business use of the property by the Long family. The Long family's business was that of painting, repair and modification of large trucks and specialty vehicles. For the most part, it evolved into a very specialized business with a limited customer base. Furthermore, the Long's business serviced large vehicles on an infrequent basis. The business operated today by Mr. Galasso on the property is a high volume business servicing passenger automobiles and light trucks owned by the general public. Vehicles are parked about the property in a scattered and haphazard fashion. Cars are jockeyed about the property by employees and customers who are awaiting repair to their vehicles. Parking is occurring in areas of the property not previously used in that manner. On the other hand, the business operated by the Long family was orderly and very structured. The old photographs submitted into evidence and the testimony revealed that the Long's were very methodical in the operation of their business. Accordingly, the extent of the current use on the property does not reflect the nature and purpose or the manner in which the property was historically used.

The second factor to consider is whether the current use is merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature and kind. As stated previously, the use of the property today by Mr. Galasso constitutes a use different in character and nature than the use conducted by the Long family. The standard automobile and collision repair facility which is being operated today by Mr. Galasso is similar to many other types of facilities in Baltimore County and is different in character and nature than the specialized business operated by the Long family. Stated another way, the types of vehicles routinely worked upon by the Long's, such as fire engines and ambulances, military vehicles and large tractor trailers, are not the types of vehicles one would commonly find awaiting service at your typical automobile collision and repair facility. The Long's operated a facility which was highly specialized and only applied to a small segment of the automotive manufacturing community. Accordingly, the use conducted by Mr. Galasso's company is in fact different in character, nature, and kind than the historical use of the property. Lutherville Collision & Truck Center has failed to satisfy this second requirement.

The next factor to be considered is whether the current use has a substantially different effect upon the neighborhood. In my judgment, based upon the testimony and evidence offered at the hearing, the use by Mr. Galasso certainly has a substantially different effect on the surrounding neighborhood. Several examples of this were brought out at the hearing. The use of the property today by Mr. Galasso has a different visual effect upon the surrounding neighborhood. That is, the testimony revealed the overcrowding of the property with automobiles awaiting repair. There are also automobiles parked in a haphazard fashion on the grassy lawn of the subject property just off Falls Road. This visual effect is very different than what was traditionally associated with the Long's use of the property. Several citizens testified that there was little visual impact by virtue of the Long's use of the property. Several citizens

indicated that they were unaware that the Long's operated a truck repair facility from the subject site. However, since Mr. Galasso's business has occupied the property, the visual impact has been tremendous. Secondly, the protestants stated that the effects of noise and paint odors have increased drastically since the Lutherville Collision & Truck Center moved to the site. Again, several residents testified that the noise associated with Mr. Galasso's use of the property is far and above that which was historically associated with the Long family. The same was true regarding the odors associated with the automobile painting that is occurring on the property. This was not attributable to the Long's use of the property. Finally, the citizens testified that the impact on traffic along Falls Road, as a result of Mr. Galasso's use of the property, is very different than that associated with the Long's use of the property. Accordingly, based on the testimony offered at the hearing, I find that the current use by Lutherville Collision & Truck Center does have a substantially different effect upon the neighborhood than the traditional use of the property by the Long family.

The final factor to consider is whether the current use of the property is a drastic enlargement or extension of the original non-conforming use. The testimony offered at the hearing demonstrated that there has been a tremendous increase in activity on the subject property as a result of Mr. Galasso's business locating thereon. The number of employees has increased, the amount of vehicles coming and going to the subject site has increased, and the number of vehicles, both awaiting repair and those belonging to employees, have cluttered the property. Portions of the property are being used today which were not used previously. The paint fumes being disbursed into the air by Mr. Galasso's business have had an effect on adjacent property owners over and above that which was formerly associated with the Long's use of the property. Accordingly, I find that the current use is a drastic enlargement or extension of the

original non-conforming use and is not to be considered an intensification of the traditional and historic use of the property by the Long family.

After considering the testimony and evidence offered at the hearing, in light of the four-prong test as stated in McKemy, I find that the use of the subject property by Mr. Galasso and the Lutherville Collision & Truck Center is beyond the scope of the non-conforming use as established by the Long family on the subject site. Accordingly, it is not appropriate for the Lutherville Collision & Truck Center to continue to operate its business from the subject property. The business known as the "Valley Services Company", which has been operated by the Long family since 1849, is permitted to continue to operate from the subject site. However, Mr. Galasso's current use of the property is not to be considered an intensification of that historical non-conforming use and, therefore, must cease and desist immediately.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this The day of November, 2002, that the Petitioners' Request for Special Hearing to approve the use of the subject property by the Lutherville Collision & Truck Center for the painting and repair of automobiles in the fashion demonstrated at the hearing before me, be and is hereby DENIED.

IT IS FURTHER ORDERED, that the remaining questions posed by the special hearing request filed by the Petitioners as they relate to the business known as Lutherville Collision & Truck Center, be and they are hereby DENIED.

IT IS FURTHER ORDERED, that the business known as the "Valley Services Company", which has been owned and operated by the Long family since 1849 until the present time, shall be permitted to continue to operate from the site as it has for the past 150 years. This is truly a non-conforming use as established by the testimony and evidence presented at the hearing. Therefore, the denial of the special hearing request as it pertains to the Lutherville

Collision & Truck Center shall not affect the ability of the Long family to continue to operate their business from this property as they have in the past.

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

TIMOTHY M. KOTROCO

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

TMK:raj

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62.020

IN RE: PETITION FOR SPECIAL HEARING

E/S Falls Road, 930' S

centerline of Seminary Avenue

8th Election District

Petitioners

3rd Councilmanic District

(10905-10911 Falls Road)

William E. & Carroll E. Long, Legal Owners and Lutherville Collision & Truck Center, Lessee

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 02-419-SPH

ORDER ON MOTION FOR RECONSIDERATION

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WHEREAS, this matter came before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owners of the subject property, William E. Long and Carroll E. Long, and also the Lutherville Collision & Truck Center, the tenant of the site. The purpose of the special hearing was to approve a service garage use on the subject property as a nonconforming use. That particular request was granted in part by my Order dated November 7, 2002.

Thereafter, on November 27, 2002, Mr. Carroll Holzer filed on behalf of his clients a motion for reconsideration requesting that the owners of the property, William E. Long and Carroll E. Long, be permitted to repair and paint automobiles in conjunction with the approval granted to them to repair, paint and customize trucks and specialty vehicles. Submitted along with the motion for reconsideration were photographs of automobiles that were repaired on the property by the Long's in the past. Also submitted were two affidavits, one of which was signed by William E. Long and the other by Carroll E. Long.

After the submittal of the motion for reconsideration, Mr. Robert Sellers, attorney for the protestants in the case, filed a response which was received in this office on December 27, 2002.

It should be noted that an extension of time was granted to Mr. Sellers regarding the response filed by his office.

After considering the motion for reconsideration and the response filed by Mr. Sellers, I find it is appropriate to modify my Order dated November 7, 2002 in an extremely limited fashion. The testimony presented at the hearing and the photographs submitted therein did demonstrate that the owners of the property, William and Carroll Long, on a very limited basis, did perform painting and customizing work to antique and classic vehicles. The restoration of an antique or classic vehicle shall be permitted to continue to occur on the property by the Valley Services Company. This shall not in any way be interpreted to permit the repair and painting of the average passenger vehicle as was taking place on the property by the Lutherville Collision & Truck Center.

Therefore, I believe it is appropriate to expand upon my original approval that was granted to the Long family, to allow them, in addition to the painting and modification of large fucks and specialty vehicles such as ambulances, fire suppression equipment, large government and military vehicles, tractor cabs and other such similar vehicles, to include the painting and repair of classic and antique automobiles only. This expansion on my previous approval shall in no way be interpreted to permit the repair and painting of the average automobile by anyone on the property.

IT IS FURTHER ORDERED, that all other findings made in my previous order shall remain in full force and effect.

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

TIMOTHY M. KOTROCO

DEPUTY ZONING COMMISSIONER

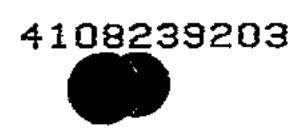
FOR BALTIMORE COUNTY

TMK:raj

EXHIBIT 2

FINAL ORDER OF CODE ENFORCEMENT AS TO WILLIAM E. LONG





Baltimore County, Maryland Department of Permits and Development Management 111 West Chesapeake Avenue Towson, Maryland 21204

In the Matter of

Civil Citation No.02-0020D

William E Long 10911 Falls Road Lutherville, MD 21093

10905-10911 Falls Road

Respondent

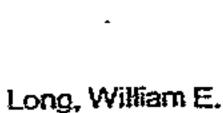
FINDINGS OF FACT AND CONCLUSION OF LAW FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on October 22, 2004, for a hearing on a citation for violations under the Baltimore County Zoning Regulations § 1A04.1, 102.1, 500.7, 500.8 amended to include Baltimore County Code § 32-3-602(a)(2) for non-compliance with the Zoning Order dated November 7, 2002 and amended January 7, 2003, Case #02-419 SPH and working on vehicles that are not antique and/or classic, trucks or specialty vehicles such as fire equipment on residential property zoned RC 5 located at 10905-10911 Falls Road.

On July 6, 2004, pursuant to §3-6-205, Baltimore County Code, a code enforcement citation was issued. The citation was legally served on the Respondents.

The citation proposed a civil penalty of \$67,600.00 (sixty seven thousand six hundred dollars) to be assessed. A code enforcement hearing date was scheduled for October 22, 2004.

The Respondent failed to request a code enforcement hearing and/or failed to appear after requesting a hearing. Baltimore County Code, § 3-6-205(d) provides that in case of failure to request a code enforcement hearing or if the violator (Respondent) fails to appear after requesting a hearing then the citation and the civil penalty, shall be the Final Order of the Code Official not subject to appeal.



#02-0020D

Page 2

Testimony and evidence presented shows the property to be in violation of the Order of the Deputy Zoning Commissioner for Case #02-419 SPH. The Respondent has allowed the use of the property to be significantly changed beyond the scope of the non-conforming use as established previously by the Long family. The Deputy Zoning Commissioner's Order clearly ordered that the painting and repair of automobiles must cease immediately. The amended order states in more precise terms that the repair and painting of the average passenger vehicle cannot be done by anyone on the property. Testimony and evidence clearly shows that the repair and painting of ordinary, regular and average passenger cars are in fact being performed on the subject property and are continuing in defiance and direct contravention of the Order to cease and desist immediately by the Deputy Zoning Commissioner on the 7th day of November 2002 and reaffirmed in the amended Order on the 7th day of January 2003.

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violations have been corrected. If the violation continues to exist the inspector shall issue additional citation for dates not covered by instant citation or from August 26, 2004 up to and including the date of next scheduled hearing.

The Respondent shall pay the civil penalty within 30 days of the date of this Order. If the civil penalty is not paid, the amount of the civil penalty shall be placed as a lien upon the real property to be paid in the same manner as taxes.

IT IS ORDERED by the Code Enforcement Hearing Officer, this 28th day of October 2004, that a civil penalty be imposed in the amount of \$33,800.00 (thirty three thousand eight hundred dollars).

Sianod:

Raymond S. Wisnom, Jr.

Code Enforcement Hearing Officer

EXHIBIT 3

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FINAL ORDER OF CODE ENFORCEMENT AS TO STEVE GALASSO

Department of Permits and Development Management 111 West Chesapeake Avenue Towson, Maryland 21204 Baltimore County, Maryland

In the Matter of

Civil Citation No.02-0020C

Steve Galasso, T/A
Lutherville Collision and Truck Center

10905-11 Falls Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on October 4, 2004 for a hearing on a citation for violations under the Baltimore County Zoning Regulations § 1A04.1, 500.6, 500.7, 409.8.A.2, for failing to comply with the Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner, wherein it was ordered to cease and desist immediately the painting and repair of automobiles by Lutherville Collision and Truck Center; and failure to cease parking in restricted area on residential property zoned RC 5 located at 10905 Falls Road, 21093.

On July 6, 2004, pursuant to § 3-6-205, Baltimore County Code, a code enforcement citation was issued by Len Wasilewski, Code Enforcement Officer. The citation was legally served on the Respondent.

The citation proposed a civil penalty of \$67,000.00 (sixty seven thousand dollars) to be assessed. A code enforcement hearing date was scheduled for August 25, 2004 rescheduled to October 4, 2004.

James J. Nolan, Esquire presented the case for Baltimore County.

Arnold Jablon, Esquire and David Karceski, Esquire represented the Respondent.

Gary Freund, Code Enforcement Officer also testified.

The County is allowed and may seek, remedy via instant Administrative Hearing, file, and pursue charges in the District Court of Maryland and the Circuit Court of Maryland. The cases may be conducted separate or simultaneously. The fact that a Motion for Temporary Restraining Order has been filed in the Circuit Court of Maryland does not estop this hearing from taking place. The County may pursue multiple remedies.

Mr. Jablon objected to the hearing based upon the fact that a correction notice was not issued prior to the citation pursuant to Baltimore County Code. In most cases, I would likely agree on this point, however in this case we have an order to cease and desist immediately the painting and repair of automobiles via the Finding of Fact and Conclusion of Law issued by the then Deputy Zoning Commissioner. In my minds eye, the Order clearly states what thou shall not do and the manner of correction required therefore the order carries equal or more weight than a correction notice. Baltimore County Code § 32-3-602 in part states a person is subject to the civil penalty...if the use of property by a person is alleged to be in violation of: (1) The Baltimore County Zoning Regulations, policies, rules or regulations interpreting the zoning regulations; or (2) Orders of the Zoning Commissioner or Board of Appeals. Baltimore County Zoning Regulations § 500.6 in part states the Zoning Commissioner has the power to conduct hearings regarding non-compliance with any zoning regulations or the proper interpretation thereof, and shall pass his Order thereon...it is my finding a correction notice in instant case is unnecessary, that the Order of the Deputy Zoning Commissioner in fact superceded the requirement to issue a correction notice.

The rules of evidence or perceived failure to follow the rules of evidence became an issue for the defense. This Hearing Officer may use the rules of evidence as a guide, however is not technically bound by the rules of evidence. Evidence such as testimony and pictures taken before the charging document dates were allowed as background information.

Robert L. Williams, 10901 Falls Road testified to living next door to subject property since 1982. Mr. Williams originally rented the 10901 property until 1997 when he purchased the property. Mr. Williams stated that "hardly any activity" took place at 10905 Falls Road from 1982 up to 2001. In 2001, the Longs rented the property to Mr. Galasso. Mr. Williams stated that soon thereafter, cars began to arrive at the property parking in the driveway and tow trucks delivering cars three or four times per day. Tow trucks would "bottle up traffic" as traffic would have to be stopped to allow the tow trucks to enter the premises backing in to unload according to Mr. Williams. Mr. Williams stated that private vehicles, passenger vehicles were dropped off three or four times per day from March 10, 2004 through August 2004 during normal 7-4 work hours. Additional cars were dropped off after hours and that hours of operation would typically begin at 6:30 a.m. and many times extend to 11 or 12 at night. Mr. Williams said that paint fumes could be detected everyday and traffic accidents occurred regularly at or near the entrance of the subject premises. Mr. Williams stated that he could see the cars being worked on, as the doors were open on many occasions. Mr. Williams stated that he saw passenger cars delivered on a daily basis and several days thereafter would see cars leave the premises "fixed."

Lesley Tunney formerly of 10927 Falls Road stated she lived nearby for eight years. She testified that all was well from 1996 when they built at 10927 Fall Road until the year 2001. She stated many cars began to appear. The cars she saw were usually damaged and work on cars intensified. Ms. Tunney stated a fence was erected soon thereafter however she could see "cars and junk" from her upstairs windows. She stated that she could see the addition of ventilation shafts and smelled furnes.

Ms. Gill Shelhosse has lived nearby for 15 years. Ms. Shelhosse took photographs marked County Exhibit 27A, 27B and 27C showing parking issues, delivery truck and congestion of the exit and entrance. Ms. Shelhosse stated that the intensification of car repair work has been tremendous.

Mr. Paul Miller of 11203 Falls Road and member of the Board of Directors of the Falls Road Community Association testified to "lots of cars in the driveway and front yard of the subject property". He stated that at some point the front yard was black topped. Mr. Miller stated that at some point sod was placed over the blacktopped former front yard. Mr. Miller stated the property experiences continued operations and is clearly a repair shop for regular passenger cars.

Mr. Miller stated the operation regularly blocks traffic and sent email messages to Permits and Development Management Director, Timothy Kotroco complaining of the blocking of traffic. Mr. Miller said that the business advertises in local papers as Lutherville Collision and Truck Center with expert technicians specializing in Foreign and Domestic Vehicle Repair.

The hearing was continued to October 22, 2004 at 9:00 a.m. John H. Zink, Esquire, co-counsel for Mr. Galasso objected to the imposition of a civil penalty. Again I refer to Baltimore County Code § 32-3-602 clearly states when a person is subject to a civil penalty and in this case failure to comply with the Deputy Zoning Commissioner's Order and amended Order thereto is justification for the imposition of a civil penalty in the matter if the person is found to be in violation of the Order and/or in violation of Baltimore County Zoning Regulations, policies, rules or regulations interpreting the Zoning Regulations or Orders of the Zoning Commissioner or Board of Appeals; furthermore § 32-3-602(b) requires the Department of Permits and Development Management and its representatives shall enforce the Baltimore County Zoning Regulations policies, rules or regulations interpreting the regulations. Baltimore County Code § 32-3-602(c) sets the penalty. It certainly appears to follow a natural progression to the instant Administrative Hearing and possible imposition of a civil penalty.

Baltimore County Code § 32-3-603 requires a citation to a person alleged to be in violation of the Baltimore County Zoning Regulation, and among other requirements, information on the form or citation of the defendants right to stand trial for the civil zoning violations and instructions for making the election. On the reverse side of the citation, as well as the face, instructions are set forth for the pending quasi-judicial hearing. The Administrative Hearing process was conceived to relieve the overburdened District Court system of cases civil in nature and specifically Code Enforcement issues. It was acknowledged that certain cases would require adjudication by the District Court however, only a small percentage of the case load would proceed to that point. In this case, the plaintiffs have been provided with a clear explanation of the property use violation. Baltimore County has in place a "quasi-judicial" hearing procedure at which, with or without the assistance of counsel, require the County to shoulder the burden of proof and the establishment of the truth of the allegations. During this hearing the alleged violator has the right to present witnesses, introduce evidence and cross-examine adverse witnesses.

This "quasi-judicial" hearing process also allows the alleged violator the right to judicial review of this administrative action. United States V. Ward, 448 U.S. 242(1980) establishes that the Supreme Court has long recognized the role of civil penalties as sanctions intended to protect the health and welfare of a community. I find that the expectation of some higher form or level of due process, i.e., District Court jurisdiction in lieu of instant Administrative Hearing without merit and therefore rejected.

Mr. Galasso stated his home address as 8509 Thornton Road. Mr. Galasso stated that the business was a service garage for the repair of specialty vehicles, trucks, cranes and horse trailers. He stated that Lutherville Collision and Truck Center was a trade name only. That the owner of the business was Automotive Emporium Inc. Mr. Galasso stated that he believed the Longs operated an auto repair business and so he thought he would be able to operate from that location as well. Mr. Galasso stated that at the time the appeal to Mr. Kotroco's Order was withdrawn, he was servicing regular automobiles.

Subsequent to the motion to withdraw the appeal, Mr. Galasso contacted a plethora of Real Estate brokers trying to locate a property with proper zoning. He eventually settled on a property in Hereford, however extensive repairs were necessary and occupancy is not expected for 8 to 10 weeks. In the meantime, Mr. Galasso stated that 50 to 60% of the passenger vehicles were moved to Ellen Road in Randallstown. Mr. Galasso stated that customers are used to bringing vehicles to the Falls Road location. He then transports the cars to Ellen Road in effect using the Falls Road location as a distribution center. He stated the Falls Road location was open Monday through Friday, however actual repair to passenger cars take place only two days per week. He also stated that all repairs are done inside the building. Mr. Galasso stated that compliance with the Order would mean shutting down the business. Testimony also brought out the fact that separate cases were filed in Circuit Court to shut the business down. An injunction filed on March 15, 2004 was denied by Judge Byrnes as the court found no evidence of irreparable harm to the community. The County requested a temporary Restraining Order; which Judge Kahl denied.

Testimony also showed the contentious relationship between Mr. Galasso and Mr. Robert Williams.

Upon cross, Mr. Galasso admitted that Lutherville Collision and Truck Center was not registered as a trade name for Automotive Emporium Inc.

Mr. Galasso acknowledged the sign showing Lutherville Collision and Truck Center with Body Shop Office in rear with arrow as shown in several County Exhibits were actually in place at one time, however are now removed. Mr. Galasso stated he was "clearly convinced that the property was grandfathered as a service garage". He stated that Baltimore County forced a petition for Special Hearing. Mr. Galasso acknowledged that "cease and desist" immediately meant to stop. However, he continued to operate after the March 10, 2004, withdraw of the appeal. Mr. Galasso stated that since September 2004, he has given up certain contracts and has only done work as per the Order. From March 10, 2004 through August 2004, Mr. Galasso maintains he has reduced business by 40% and has downsized continually since withdrawing this appeal.

I find Steve Galasso to be properly identified as a defendant in instant case as it has been established through testimony and exhibits entered into evidence that Mr. Galasso, trading as Lutherville Collision and Truck Center enjoys a continuing relationship to the property as occupant and tenant meeting criteria set forth in Baltimore County Code § 32-3-601(1)(2). The Code Enforcement file contains more than several references to Steve Galasso as owner of Lutherville Collision and Truck Center. Letters from Steve Galasso to Falls Road Community Association and to the Honorable Bryan McIntire each are signed by Steven Galasso and are on letterhead touting Lutherville Collision and Truck Center, 10905 Falls Road. In addition, Mr. Galasso requested a petition for Special Hearing as Steven Galasso, owner of Lutherville Collision and Truck Center. Mr. Galasso may now wish to hide behind the name of Automotive Emporium Inc., but alas is too late in declaring foul in this regard, however has now at his convenience supplied the name of the true entity for additional enforcement action almost certain to unfold on short order.

The original code enforcement officer investigating this case from the date of initial complaint was not available for this hearing due to a serious medical condition. However, upon review of Respondent's Exhibit #5, the Code Enforcement Case file #02-0020C, a correction notice was in fact issued by Mr. Leonard Wasilewski on January 9, 2002.

The notice was issued to William Long, declaring the occupant, Lutherville Collision and Truck Center, care of Steve Galasso to be in violation of the Baltimore County Zoning Regulations and given orders to cease the operation of a service garage without a hearing for a non-conforming use...therefore even though I believe instant case has merit without a violation notice, a violation notice was issued therefore Article 3, Title of the Baltimore County Code does apply.

The correction notice of January 9, 2002 and the citation cite zoning regulations violated, most specifically 1A04.1 wherein uses permitted as a matter of right and by special exception do not contain service garage use as a possible use under either column. Therefore, if the use is not listed then that use is not allowed. Service garage uses are not allowed in RC5 zones. Mr. Jablon argues that specific authorization is absent from the code enforcement regulations to enforce Zoning Commissioner's Order therefore not enforceable by the Code Enforcement Officer. However, cites the lack of prohibitive language pursuant to service garage use in the RC 5 zone regulations to somehow suggest that service garage activities are not specifically prohibited is inconsistent with policies in a previous life. In 1997, the Baltimore County Council passed a Code Enforcement Law to establish a procedure for the enforcement of...(the) Livability Code, or any regulation or standard administered by the Department of Permits and Development Management. The procedure provides for an Administrative Hearing.

Mr. Galasso was the only witness to describe some type of downsizing or less intense car repair activity for the site. Testimony by Mr. Miller and others does not corroborate Mr. Galasso's statements regarding downsizing.

I find the Respondent to be in violation of Baltimore County Zoning Regulations § 1A04 and specifically 1A04.2.A and B. for the continued operation of a service garage in a RC 5 zone. The Respondent is also in violation of Baltimore County Zoning Regulations § 102.1 wherein subject premises or land shall not be used except in conformity with the zoning regulations.

I find the Respondent in violation of failing to comply with the Deputy Zoning Commissioner's Order of November 7, 2002 and amended Order of January 7, 2003.

I find the cited parking issue a condition of the illegal use and therefore is included in the violation finding pursuant to Baltimore County Zoning Regulations § 1A04 and not cause for a separate offense as it occurs in the furtherance of the illegal service garage activity therefore inclusive.

In as much as a correction notice was issued in the matter, possible additional penalty dates may now be appropriate. However, I will assess a penalty for the time and dates of the citation or March 10, 2004 through August 28, 2004 excluding weekends as it has been determined by evidence and testimony presented, show the delivery and repair of ordinary passenger motor vehicles was in fact taking place at 10905-10911 Falls Road during the dates cited and is continuing. The Respondent shall be assessed for 126 days of continuing violations excluding weekends.

It should be noted that testimony established service garage activities on weekends as well as during the week however the Hearing Officer has determined by reasonable presumption that service garage activities did not take place every weekend or even most weekends.

The Respondent is in violation of Baltimore County Zoning Regulations and the Deputy Zoning Commissioner's Order however the violation is singular in nature meaning the continued illegal use of the premises constitutes a violation with possible civil penalty of \$200.00 per day. Multiple sections have been applied but all relate to the same violation, the use of the property.

IT IS ORDERED by the Code Enforcement Hearing Officer for the Respondent to cease and desist immediately all service garage activities, as it relates to the service and repair of automobiles, and any ancillary or accessory uses thereto.

IT IS ORDERED by the Code Enforcement Hearing Officer, this 3rd day of November 2004, that a civil penalty be imposed in the amount of \$25,200.00 (twenty five thousand two hundred dollars). The civil penalty shall be paid within 30 days of this Order.

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violation has been corrected. The Respondent is subject to additional citations and civil penalties for continuing violations of the Baltimore County Zoning Regulations. The inspector may request the Office of Law to file a petition of Code Enforcement in the District Court of Maryland.

Signed:

Raymond S. Wisnom, Jr.

Code Enforcement Hearing Officer

The violator is advised that pursuant to §1-7(g)(1), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §1-7(g)(2) requires the filing of a petition setting forth the grounds for appeal and a filing fee of \$150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

EXHIBIT 4 AMENDED FINAL ORDER MAY 4, 2005 WILLIAM E. LONG

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Civil Citation No.05-0457A

William E. Long 10911 Falls Road Lutherville, MD 21093

10905 through 10911 Falls Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW AMENDED FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on April 29, 2005, for a hearing on a citation for violations under the Baltimore County Zoning Regulations § 1A04.1, 1A04.2A.B, 102.1, 409.8.A.2; 500.6, 500.7; Zoning Commissioner's Policy Manual § 500.9; Baltimore County Code § 32-3-102, 3-6-401, 3-6-402 for failure to comply with Deputy Zoning Commissioner's Order dated January 7, 2003, SPH 02-419, and failure to comply with Hearing Officer's Order dated November 3, 2004, failure to cease repair and painting of vehicles restricted by Deputy Zoning Commissioner, failure to cease parking on a non-approved area without durable and dustless surface on residential property zoned RC 5 located at 10905-11 Falls Road, 21093.

On January 25, 2005, pursuant to §3-6-205, Baltimore County Code, a code enforcement citation was issued by Leonard Wasilewski, Code Enforcement Officer. The citation was legally served on the Respondent.

The citation proposed a civil penalty of \$86,400.00 (eighty six thousand four hundred dollars) to be assessed. A Code Enforcement Hearing date was scheduled for April 29,2005.

William E. Long, Respondent appeared for the hearing and testified. Len Wasilewski, Code Enforcement Officer also testified. Long, Wm. E. #05-0457A Page 2

Testimony and evidence shows that the property continues to be in violation of the Deputy Zoning Commissioner's Order rendered in Case #02-419-SPH. Mr. William E. Long testified during this recorded proceeding to continuing to repair and paint ordinary passenger vehicles as a condition of continuing to be a viable enterprise. He went on to say that the painting and modification of specialty vehicles such as ambulances, fire trucks, military vehicles, tractor cabs, classic and antique vehicles has diminished to a point that the business cannot be sustained without resorting to performing repairs and painting of ordinary passenger vehicles and light trucks. Mr. Long stated that today's fire engines and over the road tractors cannot fit in his building as the size of such apparatus has increased. Mr. Long stated that he was the owner of Valley Services, Inc. and that it was a sole proprietorship held company.

Mr. Long stated that he is greatly disturbed by the actions of the County and cannot understand why he is not allowed to continue business as usual. Mr. Long stated there are no provisions for the evolution of business taken into consideration when decisions are made regarding the use of the property.

Mr. Long testified that he worked with Mr. Galasso on several vehicles. Each vehicle he worked on was described as a specialty vehicle with problems he was able to repair. Mr. Long did not testify to working on ordinary vehicles. However, he did acknowledge that ordinary passenger vehicles are worked on as stated earlier because the business cannot survive unless ordinary passenger vehicle repair business takes place.

Mr. Wasilewski entered exhibits into evidence and testified to seeing multiple ordinary passenger vehicles in various states of repair on the premises. He also has seen and submitted photographs of cars parked on an area that was once grass, then macadam and returned to grass via placing sod over the macadam. Of course the sod has deteriorated to mud over macadam.

The fact remains a Special Hearing was held and the then Deputy Zoning Commissioner did not grant approval for the repair and painting of ordinary passenger vehicles.

Long, Wm. E. #05-0457A Page 3

There was no appeal to the Order taken as a request to appeal the decision was withdrawn. Therefore the conditions of operation stand and cannot be changed or altered by this Hearing Officer. Mr. Long as the owner of the property will be subject to citation after citation and ever increasing civil penalties so long as he allows his tenant to continue to violate the Order of the Deputy Zoning Commissioner.

I find the Respondent to be in violation of the Order by Mr. Kotroco and in violation of parking cars in an area that has not been approved by Zoning via an approved amended site plan and the violations are continuing. There is an existing outstanding civil penalty placed as a lien upon the real property. This case and the owners and tenants stubborn defiance of the Deputy Zoning Commissioner's Order will cause an additional substantial civil penalty. The Respondent has been ordered to cease and desist the repair and painting of ordinary passenger vehicles and light trucks and is hereby ordered to cease and desist the repair and painting of ordinary passenger vehicles and light trucks once more.

IT IS ORDERED by the Code Enforcement Hearing Officer, this 4th day of May 2005, that a civil penalty be imposed in the amount of \$50.000.00 (fifty thousand dollars)

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violation has been corrected. Additional citations shall be issued as required so long as violations continue to exist upon the premises.

Sianed:

Raymond S. Wisnom, Jr.

Códe Enforcement Hearing Officer

The violator is advised that pursuant to §3-6-301(a), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §3-6-302(a)(b)(c)(d) requires the filing of a petition setting forth the grounds for appeal and a filing fee of \$150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

FINAL ORDER MAY 25, 2005 STEPHEN GALASSO

Baltimore County, Maryland
Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

In the Matter of

Civil Citation No.05-0457B

Stephen Galasso, Owner/Occupant/Lessee/T/A Lutherville Collision and Truck Center 8509 Thornton Road Lutherville, MD 21093

10905-10911 Falls Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on May 20, 2005, for a hearing on a citation for violations under the Baltimore County Zoning Regulations § 1A04.1; 1A04.2 A & B; 102.1; 409.8. A. 2; 500.6; 500.7; Zoning Commissioner's Policy Manual § 500.9; Baltimore County Code § 3-6-401, 402; 302-3-102; for failure to comply with Zoning Order as amended January 7, 2003, Case #02-429SPH; failure to comply with Final Order dated November 3, 2004; failure to cease repair of vehicles restricted by Deputy Zoning Commissioner's Order as amended; failure to cease parking in area not approved as per site plan and failure to provide dustless and durable surface on residential property zoned RC 5 located at 10905-10911 Falls Road, 21093.

On March 2, 2005, pursuant to §3-6-205, Baltimore County Code, a code enforcement citation was issued. The citation was legally served on the Respondent.

The citation proposed a civil penalty of \$58,400.00 (fifty eight thousand four hundred dollars) to be assessed. A code enforcement hearing date was scheduled for May 20, 2005.

Galasso, Stephen #05-0457B Page 2

On May 3, 2005, a letter was delivered to this Hearing Officer from Arnold Jablon, Esquire. This letter stated that neither Mr. Arnold Jablon nor John H. Zink, Esquire, represent Mr. Stephen Galasso of Lutherville Collision and Truck Center, Valley Services Inc., or Automotive Emporium, Inc. The letter went on to state "the above parties have retained new counsel". On May 19, 2005 at 11:24 a.m. Michael Jeter sent via fax, an Order of Judge Diane O. Leasure requiring his appearance in a Howard County matter. This fax was received less than 24 hours before the scheduled Hearing of May 20, 2005 and did not enter Mr. Jeter's appearance nor did it request a postponement, merely provided information of the Howard County matter. If the fax from Mr. Jeter is to be presumed to be an entrance of his appearance in subject matter and at the same time assumed to be a request for a postponement, the request is hereby denied as both were not filed in a timely manner given the fact that Mr. Galasso retained new counsel on May 3, 2005 according to Mr. Jablon. In addition, Mr. Galasso, nor any counsel to Mr. Galasso, Lutherville Collision and Truck Center, Valley Services Inc. or Automotive Emporium, Inc. have requested a Hearing on the matter therefore the following applies:

The Respondent failed to request a code enforcement hearing and/or failed to appear after requesting a hearing. Baltimore County Code, § 3-6-205(d) provides that in case of failure to request a code enforcement hearing or if the violator (Respondent) fails to appear after requesting a hearing then the citation and the civil penalty, shall be the Final Order of the Code Official not subject to appeal.

IT IS ORDERED by the Code Enforcement Hearing Officer, this 25th day of May 2005 that a civil penalty be imposed in the amount of \$58,400.00 (fifty eight thousand four hundred dollars).

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violations have been corrected.

Signed:

Raymond S. Wisnom,

Code Enforcement Hearing Officer

RSW/jaf

FINAL ORDER MAY 25, 2005 AUTOMOTIVE EMPORIUM, INC.

Baltimore County, Maryland
Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

In the Matter of

Civil Citation No.05-0457C

Automotive Emporium, Inc. Joanne Galasso, Resident Agent 8509 Thornton Road Lutherville, MD 21093

10905-10911 Falls Road

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on May 20, 2005, for a hearing on a citation for violations under the Baltimore County Zoning Regulations § 1A04.1; 1A04.2 A & B; 102.1; 409.8. A. 2; 500.6; 500.7; Zoning Commissioner's Policy Manual § 500.9; Baltimore County Code § 3-6-401, 402; 302-3-102; for failure to comply with Zoning Order as amended January 7, 2003, Case #02-429SPH; failure to comply with Final Order dated November 3, 2004; failure to cease repair of vehicles restricted by Deputy Zoning Commissioner's Order as amended; failure to cease parking in area not approved as per site plan and failure to provide dustless and durable surface on residential property zoned RC 5 located at 10905-10911 Falls Road, 21093.

On March 2, 2005, pursuant to §3-6-205, Baltimore County Code, a code enforcement citation was issued. The citation was legally served on the Respondent.

The citation proposed a civil penalty of \$58,400.00 (fifty eight thousand four hundred dollars) to be assessed. A code enforcement hearing date was scheduled for May 20, 2005.

Galasso, Stephen #05-0457C Page 2

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On May 3, 2005, a letter was delivered to this Hearing Officer from Arnold Jablon, Esquire. This letter stated that neither Mr. Arnold Jablon nor John H. Zink, Esquire, represent Mr. Stephen Galasso of Lutherville Collision and Truck Center, Valley Services Inc., or Automotive Emporium, Inc. The letter went on to state "the above parties have retained new counsel". On May 19, 2005 at 11:24 a.m. Michael Jeter sent via fax, an Order of Judge Diane O. Leasure requiring his appearance in a Howard County matter. This fax was received less than 24 hours before the scheduled Hearing of May 20, 2005 and did not enter Mr. Jeter's appearance nor did it request a postponement, merely provided information of the Howard County matter. If the fax from Mr. Jeter is to be presumed to be an entrance of his appearance in subject matter and at the same time assumed to be a request for a postponement, the request is hereby denied as both were not filed in a timely manner given the fact that Mr. Galasso retained new counsel on May 3, 2005 according to Mr. Jablon. In addition, Mr. Galasso, nor any counsel to Mr. Galasso, Lutherville Collision and Truck Center, Valley Services Inc. or Automotive Emporium, Inc. have requested a Hearing on the matter therefore the following applies:

The Respondent failed to request a code enforcement hearing and/or failed to appear after requesting a hearing. Baltimore County Code, § 3-6-205(d) provides that in case of failure to request a code enforcement hearing or if the violator (Respondent) fails to appear after requesting a hearing then the citation and the civil penalty, shall be the Final Order of the Code Official not subject to appeal.

IT IS ORDERED by the Code Enforcement Hearing Officer, this 25th day of May 2005 that a civil penalty be imposed in the amount of \$58,400.00 (fifty eight thousand four hundred dollars).

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violations have been corrected.

Signed:

Raymond S. Wisnom, Jr.

Code Enforcement Hearing Officer

PLAINTIFFS' EXHIBIT 7 FINAL ORDER MAY 25, 2005 VALLEY SERVICES, INC.

Baltimore County, Maryland Department of Permits and Development Management 111 West Chesapeake Avenue Towson, Maryland 21204

In the Matter of

Civil Citation No.05-0457D

10905-10911 Falls Road

Valley Services, Inc.
Joanne Galasso, Resident Agent
8509 Thornton Road
Lutherville, MD 21093

Respondent

FINDINGS OF FACT AND CONCLUSION OF LAW FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on May 20, 2005, for a hearing on a citation for violations under the Baltimore County Zoning Regulations § 1A04.1; 1A04.2 A & B; 102.1; 409.8. A. 2; 500.6; 500.7; Zoning Commissioner's Policy Manual § 500.9; Baltimore County Code § 3-6-401, 402; 302-3-102; for failure to comply with Zoning Order as amended January 7, 2003, Case #02-429SPH; failure to comply with Final Order dated November 3, 2004; failure to cease repair of vehicles restricted by Deputy Zoning Commissioner's Order as amended; failure to cease parking in area not approved as per site plan and failure to provide dustless and durable surface on residential property zoned RC 5 located at 10905-10911 Falls Road, 21093.

On March 2, 2005, pursuant to §3-6-205, Baltimore County Code, a code enforcement citation was issued. The citation was legally served on the Respondent.

The citation proposed a civil penalty of \$58,400.00 (fifty eight thousand four hundred dollars) to be assessed. A code enforcement hearing date was scheduled for May 20, 2005,

Galasso, Stephen #05-0457D Page 2

On May 3, 2005, a letter was delivered to this Hearing Officer from Arnold Jablon, Esquire. This letter stated that neither Mr. Arnold Jablon nor John H. Zink, Esquire, represent Mr. Stephen Galasso of Lutherville Collision and Truck Center, Valley Services Inc., or Automotive Emporium, Inc. The letter went on to state "the above parties have retained new counsel". On May 19, 2005 at 11:24 a.m. Michael Jeter sent via fax, an Order of Judge Diane O. Leasure requiring his appearance in a Howard County matter. This fax was received less than 24 hours before the scheduled Hearing of May 20, 2005 and did not enter Mr. Jeter's appearance nor did it request a postponement, merely provided information of the Howard County matter. If the fax from Mr. Jeter is to be presumed to be an entrance of his appearance in subject matter and at the same time assumed to be a request for a postponement, the request is hereby denied as both were not filed in a timely manner given the fact that Mr. Galasso retained new counsel on May 3, 2005 according to Mr. Jablon. In addition, Mr. Galasso, nor any counsel to Mr. Galasso, Lutherville Collision and Truck Center, Valley Services Inc. or Automotive Emporium, Inc. have requested a Hearing on the matter therefore the following applies:

The Respondent failed to request a code enforcement hearing and/or failed to appear after requesting a hearing. Baltimore County Code, § 3-6-205(d) provides that in case of failure to request a code enforcement hearing or if the violator (Respondent) fails to appear after requesting a hearing then the citation and the civil penalty, shall be the Final Order of the Code Official not subject to appeal.

IT IS ORDERED by the Code Enforcement Hearing Officer, this 25th day of May 2005 that a civil penalty be imposed in the amount of \$58,400.00 (fifty eight thousand four hundred dollars).

IT IS FURTHER ORDERED that the inspector inspect the property to determine whether the violations have been corrected.

Sianed:

Raymond S. Wisnom, Jr.

Code Enforcement Hearing Officer

EXHIBIT <u>8</u> JULY 8, 2005 CONSENT JUDGMENT

TIMOTHY M. KOTROCO IN THE * **CIRCUIT COURT** and BALTIMORE COUNTY, MARYLAND OF MARYLAND **Plaintiffs** × FOR \star **BALTIMORE COUNTY** VS. STEVE GALASSO * Case No. 03-C-04-6137 t/a Lutherville Collision & Truck Center \star and AUTOMOTIVE EMPORIUM, INC. t/a Valley Services Company ×

CONSENT JUDGMENT

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Defendants

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This action came on for trial on the merits before the Court on July 7, 2005. Prior to taking testimony, the parties, by their respective counsel, advised the Court that they had agreed to the terms of a Consent Judgment. Accordingly, it is:

ORDERED, that any officer, director, stockholder, agent, employee, independent contractor, or assignee of Automotive Emporium, Inc. t/a Valley Services Company or t/a Lutherville Collision & Truck Center be and they are hereby enjoined from engaging in any of the following activities at 10905 or 10911 Falls Road, Lutherville, Maryland 21093: (1) operating a service garage or a body shop for the repair of passenger vehicles; (2) repairing, painting, or performing mechanical work on passenger vehicles; and (3)

FILED JUL 1 5 2005

X

Cl. Nolan, Jeter

using 10905 or 10911 Falls Road as a drop off or transfer point for passenger vehicles to be repaired or painted elsewhere; and it is further

ORDERED, that Automotive Emporium, Inc. erect a sign at or near the driveway of 10905 Falls Road informing customers that they may not leave their vehicles at that location; and it is further

ORDERED, that the Plaintiffs' Motion to Dismiss this action against Defendants William E. Long and Carroll E. Long without prejudice is hereby granted.

Robert E. Cadigan, Judge

Date: Duy 8, You

Consented to on behalf of their respective clients by:

James I. Nolan Jr.

Attorney for Plaintiffs

Attorney for Defendants,

Steve Galasso and Automotive Emporium, Inc.

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EXHIBIT 9

SEPTEMBER 7, 2005 MEMO FROM THE OFFICE OF PLANNING

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy Kotroco, Director

DATE: September 7, 2005

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT: 10905 Falls Road

INFORMATION:

Item Number:

06-097

Petitioner:

Automotive Emporium, Inc./ALA Long Property

Property Size:

1.7 acres

Zoning:

RC5

Requested Action:

Special Hearing

Hearing Date:

The property in question has an extensive zoning history, which should be added to the notes on the plan under zoning history as follows:

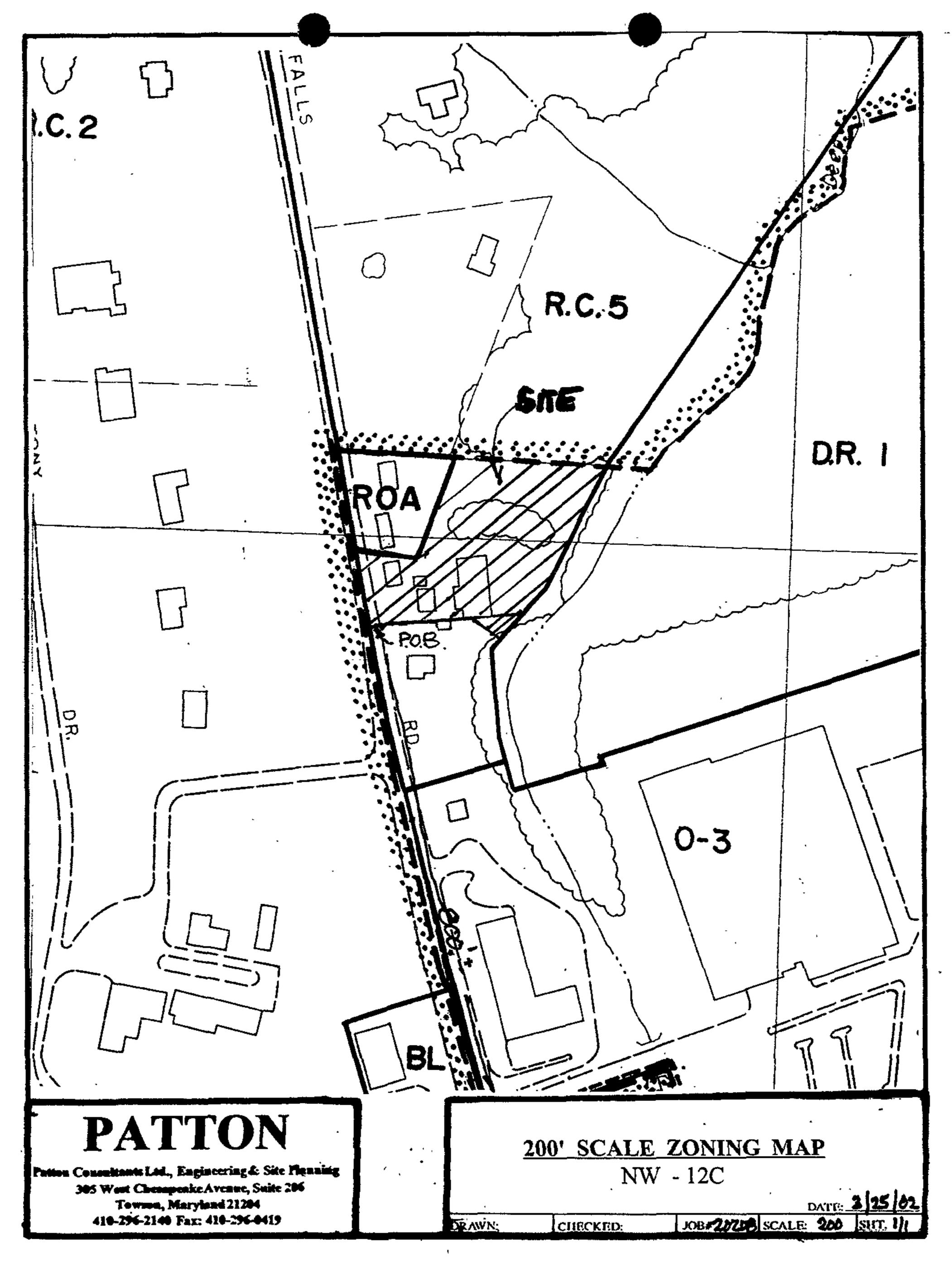
- 1. 2004 Comprehensive Zoning Map Issue 2- 058 Rezoning requested from RC 5 to BM, RC5 zoning was retained
- 2. Code Enforcement actions, civil penalties of \$25,000 and \$35,000 assessed.
- 3. Case No. 05-0457, 05-8457 are open code enforcement cases.
- 4. Consent judgment signed by Circuit Court Judge Cadigan on July 8, 2005. It stipulated that any officer, director, shareholder, agent, employee, independent contractor or assignee of Automotive Emporium, Inc, t/a Valley Services Company or t/a Lutherville Collision & Truck Center is enjoined from operating a service garage or a body shop for the repair of passenger vehicles, repairing, painting or performing mechanical work on passenger automobile vehicles and using 10905 or 10911 Falls Road as a drop of or transfer point for passenger automobile vehicles to be repaired or painted elsewhere. Automotive Emporium was ordered to erect a sign at or near the driveway of 10905 Falls Road that they may not leave their vehicles that that location.

SUMMARY OF RECOMMENDATIONS:

This matter was adjudicated in Case. No 02-419sph by the Deputy Zoning Commissioner who ordered on November 7, 2002 that the property enjoyed a non-conforming use for repair of classic cars and trucks only. The order clearly denied the special hearing requesting painting and repair of passenger automobiles. A motion to reconsider was granted on 1/7/03 to allow the Long family and Valley Services Company to repair and paint antique and

classic automobiles in addition to the requirements of the prior order. That order stated clearly "This expansion on my prior approval shall in no way be interpreted to permit the repair and painting of the average automobile by anyone on the property." The order was appealed to the County Board of Appeals and then dismissed on 3/11/04. It is the opinion of the Office of Planning that the Deputy Zoning Commissioner's order is final and stills stands. No further action is required at this time. The instant petition should be dismissed with prejudice.

Prepared By: _		<u></u> —			- · · · · · · · · · · · · · · · · · · ·	· -·····
Section Chief:	<u></u>		· · · · · · · · · · · · · · · · · · ·			
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Contractions for allowed

Treations 1224114(C)

3. Section 224114(C)

§ 32-4-113. DELINQUENT ACCOUNTS.

- proposed development, the applicant shall pay all delinquent accounts of the applicant. Payment required before processing. Before the county may process plans or permits for a
- disputes the county's claim and posts collateral to satisfy the claim pending resolution of the dispute. **(b)** Exception. The provisions of subsection (a) of this section do not apply if the applicant

(1988 Code, § 26-179) (Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-114. COMPLIANCE WITH OTHER LAWS AND REGULATIONS.

- development shall comply with this title and all other applicable laws or regulations of the county. (a) Compliance with other county laws required. Except as otherwise provided in this title, all
- (b) Laws not superseded by this title; exception. Other laws or regulations of the county that affect development are not superseded by this title unless specifically stated in this title.
- permits for a violation of the zoning or development regulations of the county. county upon which there exists, at the time of the application or during the pro <u>(c)</u> County prohibited from processing if violations exist. The county may not process plans or a proposed development if the applicant owns or has an interest in property located in the cessing of the application,

(1988 Code, § 26-180) (Bill No. 18, 1990, § 2; Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-115. ENFORCEMENT AND REMEDIES.

- (a) In general. A permit may not be issued without compliance with this title.
- (b) Remedies. The county may bring an action:
- (1) For specific performance of a provision of this title; or
- transferor. $\overline{\mathcal{O}}$ To set aside a conveyance made in violation of this title at the cost and expense of the

(1988 Code, § 26-175) (Bill No. 79-01, § 2, 7-1-2004)

§ 32-4-116. PUBLIC BUILDINGS.

(a) "Dublic building" defined In this section "nublic building" means building or a portion of a

