1/23/08

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

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

ORDER

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

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

ORDERED that the Use Permit granted for off street parking in Case No. 68-177-RX on March 14, 1968, is no longer valid because:

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

FILED FEB 8 2008

OR

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

MICKEY J. NORMAN, JUDGE
CIRCUIT COURT FOR BALTIMORE COUNTY

Copy to:

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

CLERK: PLEASE DOCKET AND MAIL TO THE PARTIES.

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

Assignment Date: 10/15/07

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

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

SCHEDULING ORDER

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

Honorable John Grason Turnbull II
Judge

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

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

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

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

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

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

cc: Arnold Jablon Esq 210 Allegheny Ave Towson MD 21204

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

4/6/07

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

* * * * * * * * * * *

OPINION

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

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

Background

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

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

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

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

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

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

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

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

Case No. 06-109-SPH

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

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

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

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

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

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

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

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

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

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

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

Section 409.8 states as follows:

B. Business or Industrial Parking in Residential Zones.

1. Upon application, the Zoning Commissioner may issue

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

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

Case No.: 03-360-SPHA

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

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

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

ORDER

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

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

ORDERED that the special hearing relief requested in Case No. 03-~~630~~ 360-SPHA, to allow business parking in a residential zone to include the storage of new unlicensed passenger vehicles, be and is hereby **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Lawrence M. Stahl

Wendell H. Grier

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: AUTO PROPERTIES, LLC.
N/E CORNER EAST AVE & EAST AVE.-RELOCATED
CASE NO.: 06-109-SPH
and CASE NO.: 03-360-SPHA

COPY

DATE: January 23, 2007

BOARD/PANEL Lawrence S. Wescott, Chairman
Lawrence M. Stahl
Wendell Grier

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate the following:

06-109-SPH

SPH - To confirm that the use permit for off-street parking granted in 68-177RX in 1968 was still valid and that the subject property may be utilized pursuant to that use permit.

03-360-SPH

SPH - To approve business parking a residential zone, to include storage of unlicensed passenger vehicles; and

VAR – To allow 25' buffer and a 25' setback in lieu of the required 50' buffer and 75' setback.

Zoning Commissioner's Order, under date of Nov. 09, 2005, in which special hearing relief was requested and granted.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- This matter came before the Board as a *de novo* case.
- The community was established some time ago and Auto Properties, LLC was built around it.
- The Board discussed whether or not parking of inventory should be permitted in a predominately D.R.5 zone. See 409.8.B.1 of the BCZR
- The initial use permit, back in 1968, was granted under 409 of the BCZR and have since been amended.
- Petitioner did not comply with the Hearing Officer's request except for a few days here and there.
- It was felt that even though the special exception was granted it had been abandoned by the Petitioner.
- The lot has not had vehicles parking there for three or four years.

- Sec. 232.2 of the B.C.Z.R. also covers the lots separated from a main building without an attendant.
- At the time the special hearing was granted the law did not contain the language it contains now. The law has been changed since the time of it initial granting, and it must comply with any current applicable laws.
- Basically, parking has been used for customers and employees.
- People's Counsel memo was discussed (see page 15) which outlined requirements that were never followed through on.
- Mr. Dillon stated in his testimony that they never fulfilled the requirements previously set forth and therefore the permit was essentially invalid. (See page 16 of People's Counsel's memo)
- It did not appear that the use permit was ever really used, nor could it be considered valid because of their noncompliance.
- A letter was submitted to the County Council requesting a change in the zoning and they decided to leave the zoning as is.
- People's Counsel referred to Mayor & City Council v. Shapiro 187 Md. 623 (1947).
- There was no need to discuss the RTA regarding the forest buffer area(s).

DECISION BY BOARD MEMBERS: The Board felt that the parking of vehicles was not in compliance with Sec. 409 of the B.C.Z.R.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *DENY* Petitioner's request for special hearing and there was no need to discuss the RTA variance request.

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

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

RE: PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION SE/S East Avenue 146' E of Harford Road - 11th District Harford Warehouse Corporation, Petitioner NO. 68-177-RX	:	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY

::: ::: :::

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

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

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

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

For the aforegoing reasons, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 17 day of March, 1968, that the herein described property or area known as Parcel 1 should be and the same is hereby reclassified from an RA zone to a BM zone and a use permit for off-street parking in a residential zone on Parcel 2 should be and the same is hereby granted, subject to the requirements of Section 409 of the Baltimore County Zoning Regulations; all subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning. The Special Exception requested for Parcel 1 should be and the same is DENIED.

Edward D. Harden

Deputy Zoning Commissioner

ORDER RECEIVED
DATE 3/19/68
BY Jc Nara clk

8/10/07

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

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

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BALTIMORE COUNTY

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c. The 1968 use permit does not, in any event, conform to current law relating to residential transition area setbacks and more demanding

offstreet parking standards for business parking in residential zones. Because incomplete and ineffective, and in any event never properly used, the 1968 use permit became invalid. Even if it had been properly used for a period of time, it became nonconforming in 1970 and terminated as a result of discontinuity. Under all these circumstances, there were no vested rights even to the original HWC use..... 29

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8/10/07

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

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S MEMORANDUM

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

The Role of People's Counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 409.8 states as follows:

B. Business or Industrial Parking in Residential Zones.

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

* * * * *

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

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

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

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

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

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

Questions presented

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

Case No. 03-360-SPHA

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

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

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

Case No. 06-109-SPH

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

Note on relevant legislation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"The third stream of cases involves the issue of vested rights, per se. By a per se vested rights case we mean one invoking 'that doctrine, which has a constitutional foundation [and which] rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations.' Prince George's County v. Equitable Trust Co. 44 Md. App. 272, 278 (1979).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

CERTIFICATE OF SERVICE

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

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

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

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

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

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

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

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

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

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

traditional doctrine, petitioners have no vested rights."

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

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

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

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

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

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

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

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

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

7/11/07

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

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

* * * * *

MEMORANDUM OF LAW

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

INTRODUCTION

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

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

STATEMENT OF FACTS

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

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

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

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

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

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

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

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

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

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

/S/
Deputy Zoning Commissioner

Petitioner's Exhibit 2.

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

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

QUESTIONS PRESENTED

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

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

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

STANDARD OF REVIEW

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

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

ARGUMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. at 357

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

Id. at 358

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

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

Id. at 695-696

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

Id. at 699

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

Id. at 69-700

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

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

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

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

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

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

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

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

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

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

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

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

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

Id, 248, 249.

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

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

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

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

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

3. The 1968 Use Permit is grandfathered.

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

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

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

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

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

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

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

The BCZR defines a "nonconforming use" as follows:

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

§101, BCZR.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

above, is permitted under §409.8 in reviewing that application, the Zoning Commissioner (in conjunction with PDM) is necessarily reviewing and determining the minimum number of spaces required for that car dealership.

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

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

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

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

CONCLUSION

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

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

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

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

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

Therefore, the Board's decision must be reversed.

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

CERTIFICATE OF SERVICE

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

Arnold Jablon

6/28/07

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

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

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

In the Matter of Auto Properties L L C

Notice

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

Suzanne Mensh
Clerk of the Circuit Court, per _____

Date issued: 06/28/07

TO: ARNOLD JABLON
Venable LLP
210 Allegheny Ave
Towson, MD 21204

6/28/07

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

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

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

In the Matter of Auto Properties L L C

Notice

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

Suzanne Mensh
Clerk of the Circuit Court per

Box 547

Date issued: 06/28/07

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

6/18/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **03-C-07-4972**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *
NE/CORNER EAST AVE. & EAST AVE.
Case No.: 03-360-SPH *and* 06-109-SPH *

11th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT

Box 547

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

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

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

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

03-360-SPHA

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

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

06-109-SPH

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

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

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

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

PETITIONER'S EXHIBITS

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

APPELLANT'S EXHIBITS

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

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

	35B.Circuit Court for Baltimore. Co. 12/4//2001 – The Honorable J. Cahill. 36A. 12/21/2004 - Case No. 04-052-SPHA. 36B. Circuit Court for Baltimore Co. Opinion/Order of 4/21/05 from The Honorable Judge Cavanaugh. 36C. Remand of 9/19/2005. 37. County Board of Appeals decision of 6/22/2005 in case no. 05-176-SPHXA.
Jun 22, 2006	Notice of Assignment – Day #2 - Hearing.scheduled for Nov. 2, 2006.
Nov. 2, 2006	Hearing before the Board – Day #2.
Nov. 8, 2006	Notice of Assignment – Day #3 – Hearing scheduled for Nov. 14, 2006.
Nov. 14, 2006	Hearing before the Board – Day #3.
Nov. 29, 2006	Notice of Deliberation – Deliberation set for Jan. 23, 2007.
Dec. 18, 2006	Petitioner's Post-Hearing Memorandum filed by Arnold Jablon, Esq. and David Karceski, Esq.
Dec. 19, 2006	People's Counsel for Baltimore County's Memorandum.
Jan. 23, 2007	Board publicly deliberated.
Apr. 6, 2007	Board issued its Opinion/Order. The Board Ordered that the Petition for Special Hearing filed in Case No.: 06-109-SPH, seeking approval that the use permit granted for off street parking in Case No.: 68-177-RX on March 14, 1968 is valid and that the subject property may be utilized pursuant to the use permit and in accordance with the Petitioner's request, was DENIED; and it was further Ordered that the special hearing relief requested in Case No.: 03-360-SPHA, to allow business parking in a residential zone to include the storage of new unlicensed passenger vehicles, was DENIED.
May 14, 2007	Notification from the Circuit Court that a Petition for Judicial Review was filed on May 2, 2007.
May 14, 2007	Certificate of Notice filed by the Board of Appeals.
June 4, 2007	Response to Petition for Judicial Review.

June 7, 2007	Transcript of Proceedings filed.
June 18, 2007	Record of Proceedings filed in the Circuit Court for Baltimore County.

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

Respectfully submitted,

Linda B. Fliegel

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

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

6/4/07

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

RECEIVED
JUN - 4 2007
BALTIMORE COUNTY
BOARD OF APPEALS

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

RESPONSE TO PETITION FOR JUDICIAL REVIEW

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

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

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

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

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

DARYL CORONA
3106 East Avenue
Baltimore, Maryland 21234

JACKIE MEGEE
3112 East Avenue
Baltimore, Maryland 21234

CERTIFICATE OF SERVICE

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

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

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

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

County Board of Appeals of Baltimore County

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

May 15, 2007

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

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

Dear Mr. Zimmerman:

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

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

Enc.

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

Printed with Soybean Ink on Recycled Paper

5/14/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **03-C-07-4972**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF:
AUTO PROPERTIES, LLC *
23 WALKER AVENUE
BALTIMORE, MD 21208 *
NE/CORNER EAST AVE. & EAST AVE.
Case No.: 03-360-SPH *and* 06-109-SPH *

11th ELECTION DISTRICT *
6th COUNCILMANIC DISTRICT

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

CERTIFICATE OF NOTICE

Madam Clerk:

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

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

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

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

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

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

MS. JACKIE MEGEE
3112 EAST AVENUE
PARKVILLE, MD 21234

MR. ANTHONY MARCHANTI
3021 EAST AVENUE
PARKVILLE, MD 21234

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

MS. RUTH BAISDEN
7706 OAK AVENUE
BALTIMORE, MD 21234

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

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

Linda B. Fliegel

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

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

Linda B. Fliegel

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

County Board of Appeals of Baltimore County

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

May 14, 2007

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

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

Dear Mr. Jablon:

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

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

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

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

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

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

Printed with Soybean Ink on Recycled Paper

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

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

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

*

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

~~C-07-4967~~
*
C-07-4972
*

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

* * * * * * * * *

PETITION FOR JUDICIAL REVIEW

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

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

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

RECEIVED
MAY 14 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Pla

cc: Jablon, Balto Co Bd of Appeals.

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

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

Attorney for Petitioner

Certification of Service

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

Arnold Jablon

5/2/07

VENABLE LLP

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

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

www.venable.com

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

1-May-07

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

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

Dear Clerk:

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

Sincerely,

Arnold Jablon

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

County Board of Appeals of Baltimore County

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

April 6, 2007

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

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

Dear Mr. Zimmerman:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

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

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on Recycled Paper

12/19/06

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

RECEIVED
DEC 19 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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

People's Counsel for Baltimore County's Memorandum

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

> "The third stream of cases involves the issue of vested rights, per se. By a per se vested rights case we mean one invoking 'that doctrine, which has a constitutional foundation [and which] rests upon the legal theory that when a property owner obtains a lawful building permit, commences to build in good faith, and completes substantial construction on the property, his right to complete and use that structure cannot be affected by any subsequent change of the applicable building or zoning regulations.' Prince George's County v. Equitable Trust Co., 44 Md. App. 272, 278, 408 A.2d 737, 741 (1979).
>
> The first case in this Court squarely raising that doctrine is Richmond Corp. v. Board of County Comm'rs for Prince George's County, 254 Md. 244, 255 A.2d 398 (1969). There the developer owned commercially zoned land abutting residentially zoned land. The developer had expended large sums of money in acquisition of the property and in preparing plans, leases and specifications for a shopping center on the commercially zoned tract that would utilize the residentially zoned tract for parking. Before there was any construction on the ground, the zoning ordinance was amended to require a special exception for parking on residentially zoned property as auxiliary to a commercial use. In rejecting a contention that the developer had vested rights under the earlier zoning, we borrowed from the law of nonconforming uses the concept of public knowledge in the neighborhood of the use, saying:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

CERTIFICATE OF SERVICE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

1992 Edition

Baltimore County
Zoning Commissioner's Policy Manual

Zoning Administration & Development Management

BALTIMORE COUNTY MARYLAND

amended May 13, 1992

adopted May 21, 1991

Administrative Supplement to the Baltimore County Zoning Regulations

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

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

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

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

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

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

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

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

Arnold Jablon, Director
Zoning Administration &
Development Management

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

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

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

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

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

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

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

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

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

(d) See the following cases: 88-508SPHX
88-388SPH
88-349SPH
88-335SPH
88-253SPH

12/18/06

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

RECEIVED
DEC 18 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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

PETITIONER'S POST-HEARING MEMORANDUM

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

INTRODUCTION

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

FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

STANDARD OF REVIEW

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The BCZR defines "nonconforming use" as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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the business use at issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Ultimately, Mr. Martin opined:

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

(*Id.* (emphasis supplied)).

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

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

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

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

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

The Board of Appeals may grant a request for a Variance "where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the Variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship." BCZR § 307.1.[10]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully Submitted,

Arnold Jablon/cam

Arnold Jablon
David H. Karceski
Venable LLP
210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6200
Attorneys for Petitioner

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CERTIFICATE OF SERVICE

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

Arnold Jablon/cm

ARNOLD JABLON

10/01/05

IN RE: **PETITION FOR SPECIAL HEARING** NE/Corner East Avenue and East Avenue Relocated **(0.8781-Acre Parcel)** 11th Election District 6th Council District Auto Properties, LLC Petitioners	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-109-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Steven B. Fader, Managing Member of Auto Properties, LLC, t/a Mile One-Heritage, property owner, through their attorney, Arnold Jablon, Esquire. The Petitioners request a special hearing to confirm that the use permit for off-street parking on the subject property located in a residential zone, which was granted in Case No. 68-177RX on March 14, 1968, is valid and that the subject property may be utilized, pursuant to the use permit. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1, and the site plan submitted in prior zoning Case No. 03-360-SPHA and marked as Petitioner's Exhibit 2.

Appearing at the requisite public hearing in support of the request were Dennis Turnbaugh, Dealership Manager and a representative of Mile-One-Heritage, property owners; Thomas Church, the Professional Engineer who prepared the site plan(s) for this property, and Arnold Jablon, Esquire, attorney for the Petitioners. The use proposed was contested. The opponents are generally adjacent property owners and residents of the neighborhood and include Jackie Megee, Anthony O. Marchanti, and John and Alice Baker. A letter was also received from Michael and Debra Malinowski requesting a denial of the Petition. In addition, Meg O'Hare and Ruth Baisden appeared on behalf of the Carney Improvement Association and Greater Parkville Community Council in opposition to the proposal. Additionally, Peter Max Zimmerman, Esquire,

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on behalf of the Office of People's Counsel for Baltimore County, entered his appearance and participated in the proceedings by preparing and filing written correspondence and a legal memorandum opposing the request. Essentially, People's Counsel contends that the Petitioner has acquired no vested rights for use of the subject property as proposed, and that even if vested rights were acquired, the use of the property is no longer nonconforming in that it has not been continuously used by the Petitioners to park motor vehicles for storage. Finally, People's Counsel contends that this new hearing is required to consider the continued validity of the 1968 use permit, pursuant to a portion of the Zoning Commissioner's Policy Manual governing "old, unused permits."

There was a great deal of confusion on behalf of the Protestants concerning the nature and scope of this hearing. As indicated above, my decision will, of necessity, revolve around the interpretation of legal issues and the zoning regulations. While Petitioners now come before me seeking a reversal of Mr. Kotroco's decision in Case No. 03-360-SPHA, or at the very least, to modify the relief granted in that case by applying further restrictions and conditions to the Petitioners' dealership operations. In this regard, many of the Protestants advised that the subject property is located at the main entrance to their community, and of association efforts to raise the standards and improve the quality of the neighborhood, which to their dismay, have been thwarted by the Petitioners' operation.

As is often the case in matters presenting difficult legal issues, the facts are relatively simple and largely not in dispute. As noted above, Auto Properties, LLC owns the unimproved parcel located at the intersection of East Avenue Relocated and East Avenue in Carney, referred to hereinafter as the "Parking Parcel." This rectangular shaped parcel is approximately 148 feet wide and 287 feet deep, and contains a gross area of 38,250 sq.ft., or 0.8781 acres, more or less, predominantly zoned D.R.5.5, with a small sliver of B.M. along the north and western boundaries. The property is surrounded on three sides by the Heritage Honda and Chrysler Plymouth Automobile Dealerships, which are located across East Avenue from the subject site, on the parcel hereinafter referred to as the "Dealership Parcel."

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As the history of this case will show, the subject property could not be used for business parking without prior zoning approval. In this regard, the Petitioners filed for special hearing and variance relief under prior Case No. 03-360-SPHA, in which then Deputy Zoning Commissioner Timothy M. Kotroco approved a use permit for business parking of automobiles on the subject "Parking Parcel." That matter is currently on appeal before the County Board of Appeals; however, subsequent to Deputy Commissioner Kotroco's approval and while before the Board, a previous approval of a use permit for parking for business purposes on the subject property was found. In this regard, testimony and evidence offered disclosed that in 1968, the then owners of the subject property, Harford Warehouse Corporation, filed a Petition for Zoning Reclassification and/or Special Exception relief under Case No. 68-177RX. In that matter, the Petitioners requested approval of a reclassification of the existing zoning of R-A and R-6 to BR on the "Dealership Parcel" and BM on the "Parking Parcel." In addition, special exception relief was requested to use the "Dealership Parcel" as an outdoor motor vehicle sales area and the "Parking Parcel" was proposed for "vehicle parking."

After hearing the case, Deputy Commissioner Hardesty reached a compromise whereby he granted the rezoning for the Dealership Parcel and, with respect to the Parking Parcel, he granted a "use permit" ("the 1968 permit") to allow for the requested business parking on the still residentially-zoned lot (R-6). Because of the poor quality of the copies obtained from the case file of Case No. 68-177-RX, the Order is restated below:

> *The Petitioner has requested a reclassification of his property consisting of two parcels, from an RA and R-6 zone to a BR and BM zone. BR is requested for Parcel 1 consisting of 1.27 acres and BM zoning is requested for Parcel 2 which contains 0.88 of an acre. A Special Exception to use Parcel 1 for an outdoor motor vehicle sales area is also requested.*
>
> *There is no question that the Petitioner is entitled to relief. His property is bordered on the North by BL land, on which is a gasoline service station; on the East across East Avenue by BR and BM zones land, on which are a used car lot and warehouses; on the West by BL land, on which is a large bakery distribution center. It is obvious to the Deputy Zoning Commissioner the present zoning on the subject property is in error.*

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

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

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

/S/Edward D. Hardesty
Deputy Zoning Commissioner

The Parcel 2 referred to above in the 1968 case is the same parcel that was the subject of Deputy Commissioner Kotroco's decision in 2003 and again before me today.

People's Counsel makes three arguments, which hinge upon the assumption that a "use permit" for business parking in a residential zone is the same as a Special Exception (as outlined in Section 502 of the BCZR), and therefore, is subject to the same rules and regulations as Special Exceptions generally. Specifically, People's Counsel argues: (1) "the 1968 use permit does not confer vested rights on Heritage Honda;" (2) "even if the use permit [vested], the use became nonconforming upon enactment of the residential transition area standards and modified use permit standards, [which] terminated upon its later discontinuation for a year or more;" and (3) "the proposed use permit is subject to a new hearing under the BCZR and the Policy Manual in any event." I find People's Counsel's assumption and subsequent arguments are incorrect and are not supported by either the BCZR or Maryland case law interpreting those regulations.

The logic and case law applied by People's Counsel simply is not persuasive as it does not support the notion that a "use permit" is a "special exception" or that the enactment of County

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Council Bill 100 creating residential transition areas (RTA) is a use regulation which rendered the 1968 use permit as nonconforming and susceptible to termination thru its discontinued use for many years. The basis for my determination that the use permit granted in 1968 is "grandfathered" and protected from the applications of both Council Bill No. 100 (1970) and the subsequent parking control provisions of Section 409.8.B of the B.C.Z.R. (1988) are summarized as follows:

1) In terms of vesting, the principle case relied upon by People's Counsel, which is attached as Exhibit 4 to their memorandum, has been overruled. Indeed, the court in *Cromwell v. Ward,* 102 Md. App. 691 (1994) recognized that *Mayor & City Council of Baltimore v. Shapiro,* 187 Md. 623 (1947) had been disapproved of and overruled by *Nutter v. City of Baltimore,* 230 Md. 6 (1962). Thus, People's Counsel is incorrect, at page 3 of his memorandum, in arguing that "*Shapiro* is still good law."

2) Perhaps more importantly, the issue of vesting in this matter may be a red herring. To begin with, the Court of Appeals has recognized that "there is no different rule of vested rights for special exceptions <u>and the like</u>. *Powell v. Calvert Co,* 368 Md. 400, 409 (2002) (emphasis added). It also seems undisputed that Petitioner did not actually conduct the storage operations allowed under the 1968 use permit, and thus (in the parlance of vesting) it has not proceeded under the permit to exercise it on the land involved. *Marzullo v. Kahl,* 366 Md. 158, 192-93 (2001). Thus, under traditional doctrine, petitioners have no vested rights.

3) However, it does not appear as if the applicable zoning has changed to prohibit the use allowed in the permit, and thus Petitioners would not need to invoke the doctrine of vested rights. All that has changed in the intervening 37 years is the enactment of the RTA standards in 1970, but these regulations do not appear to prohibit the parking and storage of vehicles as sought by Petitioners.

4) The Sixth Circuit decided a case which is instructive in this scenario. *Four Seasons Apt. v. City of Mayfield Hgts,* 775 F.2d 150 (6th Cir. 1985). In *Four Seasons,* the apartment developer sued the city when the mayor rescinded a building permit (issued in 1974) which had not been used for over three years. In the interim, the applicable building codes had changed. *Id.* at 151. The court noted that neither state/municipal ordinances or judicial decisions "define the duration" of the building permit. *Id.* at 152. In ruling that petitioner's constitutional rights were <u>not</u> denied by the revocation of the permit, the court noted that "obviousl[ly]

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By

unused permits do not remain in effect indefinitely." *Id.* The court held that the "property interest" in the permit "was so diluted after three years of nonuse that the permit was subject to renegotiation and reapproval. While this holding would seem to support People's Counsel's argument, it is equally persuasive to argue that (unlike *Four Seasons*) the County has not sought to rescind or renegotiate the use permit, and thus it remains valid.

5) The next argument raised by People's Counsel concerns the fact that Petitioners have allegedly not used the parking parcel, and given that such discontinuation of use has existed for a year or more, the formally lawful use has now become nonconforming under Section 101 of the BCZR. The pertinent issue in determining whether this argument has merit is whether or not the residential transition areas (RTA's) are properly classified as "use regulations," such that the nonconforming use doctrine would be applicable. It would appear as if petitioner has the better of this argument, given that the text of the ordinance provides that "the purpose of an RTA is to assure that similar housing types are built adjacent to one another or that adequate buffers and screening are provided between dissimilar housing types." Section 1B01.1.B.1.a.2 of the BCZR. It would thus appear as if the RTA is not a use regulation; rather, it is more in the nature of a regulation effecting aesthetics and other environmental issues in a zone of residential uses. For what it is worth, it would appear as if People's Counsel is not fully convinced of the merits of this argument, inasmuch as he half-heartedly argues that the RTA legislation "is substantially a use regulation." *See,* People's Counsel Memorandum, p. 5.

6) It would also appear as if People's Counsel is arguing that the use permit granted in 1968 is invalid given that the parcel was not utilized for storing/parking automobiles, and thus lapsed under Section 502.3 of the BCZR. Of course, Section 502.3 governs special exceptions, and it is true that such a special exception will lapse if not used within two years. However, the Deputy Zoning Commissioner, by Order dated March 14, 1968, expressly ruled that he was granting a "use permit" rather than a special exception and Maryland case law also supports the distinction between these two facets of zoning law. Indeed, People's Counsel cites *Marek v. County Board of Appeals,* 218 Md. 351 (1958) at page 8 of its memorandum, and recognizes that the court expressly "held a use permit was not a special exception" for purposes of the BCZR. In addition, Section 502.3 of the BCZR expressly requires the Zoning Commissioner or County Board of Appeals to "fix" within the special exception the time for its utilization which cannot exceed five years. This was not done in the 1968 permit, which bolsters the conclusion that a "use permit," not a "special exception," was granted.

ORDER RECEIVED FOR FILING
Date 11/9/06
By

Based on Counsel's arguments and evidence presented, an examination of legal authority, and the words contained in the regulations, I find that the Petitioners are entitled to claim validity to the use permit and relief granted under Case No. 68-177RX. The zoning has not changed; the underlying use of the subject property for parking in a residential zone for business or industrial purposes was permitted in 1968 and is still permitted in 2005. While the nomenclature changed in 1970 from the "R" zones to the "D.R." zones, the uses permitted in these residential zones have not.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 9th day of November 2005 that the Petition for Special Hearing seeking approval that the use permit granted for off-street parking under Case No. 68-177RX on March 14, 1968, is valid and that the subject property may be utilized, pursuant to that use permit, in accordance with Petitioner's Exhibits 1 and 2, be and the same is hereby GRANTED.

1) The Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

ORDER RECEIVED FOR FILING
Date 11/9/05
By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

November 9, 2005

WILLIAM J. WISEMAN III
Zoning Commissioner

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

RE: **PETITION FOR SPECIAL HEARING**
NE/Corner East Avenue and East Avenue Relocated
(0.8781-Acre Parcel)
11th Election District – 6th Council District
Auto Properties, LLC - Petitioners
Case No. 06-109-SPH

Dear Mr. Jablon:

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

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

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: Mr. Dennis Turnbaugh, Mileone-Heritage
3001 East Avenue, Baltimore, Md. 21234
Mr. Thomas Church, Development Engineering, 6603 York Road, Baltimore, Md. 21212
Ms. Jackie Megee, 3112 East Avenue, Parkville, Md. 21234
Mr. Anthony Marchanti, 3021 East Avenue, Parkville, Md. 21234
Mr. & Mrs. John B. Baker, Jr., 2307 Ellen Avenue, Baltimore, Md. 21234
Ms. Ruth Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Ms. Meg O'Hare, 3012 Summit Avenue, Carney, Md. 21234
Peter Max Zimmerman, Esquire, Office of People's Counsel; Case File

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at NE corner of East Ave and East Ave relocated

which is presently zoned DR 5.5 and BM

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

To confirm that the use permit for off-street parking in a residential zone granted in Case No. 68-177RX, dated March 14, 1968, is valid for the property on which the use permit was approved,and that the subject property may be utilized pursuant to the use permit.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Arnold Jablon
Name - Type or Print

Signature

Venable, LLP
Company

~~210 Allegheny Ave~~ ~~410-494-6298~~
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Auto Properties, LLC
Name - Type or Print

Signature

Steven B. Eader, Managing Member
Name - Type or Print

Signature

23 Walker Ave 410-415-0501
Address Telephone No.

Baltimore, Maryland 21208
City State Zip Code

Representative to be Contacted:

Arnold Jablon
Name

210 Allegheny Ave 410-494-6298
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Case No. 06-~~109~~ 109 SPH

REV 9/15/98

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2HRS

UNAVAILABLE FOR HEARING

Reviewed By NA Date 8/23/05

Drop off
filed JLL

DEVELOPMENT ENGINEERING CONSULTANTS, INC.

Site Engineers & Surveyors

6603 York Road
Baltimore, Maryland 21212
(410) 377-2600
(410) 377-2625 Fax

109

ZONING DESCRIPTION
FOR
PARCEL OF LAND
ON THE NORTHEAST CORNER OF
EAST AVENUE AND EAST AVENUE RELOCATED

BEGINNING at a point on the east side of East Avenue Relocated, which is 50 feet wide, at the distance of 34 feet ± north of the centerline of the nearest improved street East Avenue which is 33 feet wide, thence the following courses and distances: 1) North 33 degrees 50 minutes 40 seconds East 152.84 feet, 2) 55.21 feet along the arc of a tangent curve to the left having a radius of 80.00 feet, 3) North 32 degrees 23 minutes 14 seconds East 64.22 feet, 4) South 56 degrees 36 minutes 46 seconds East 148.20 feet, 5) South 33 degrees 43 minutes 26 seconds West 287.15 feet, 6) North 56 degrees 24 minutes 43 seconds West 111.30 feet, 7) North 09 degrees 39 minutes 04 seconds West 25.51 feet, to the place of beginning, as recorded in Deed Liber 13959, Folio 350.

Containing 38,250 sqare feet or 0.878 acres of land, more or less and situated in the 11th Election District.

00-117

January 10, 2003

STATE OF MARYLAND
WILLIAM MICHAEL RAY
No. 516
REGISTERED
PROPERTY LINE SURVEYOR

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #06-109-SPH
N/E corner of East Avenue and East Avenue relocated
11th Election District — 6th Councilmanic District
Legal Owner(s): Auto Properties, LLC,
Steven Fader, Managing Member

Special Hearing: to confirm that the use permit for off-street parking in a residential zone granted in Case No. 68-177-RX, dated March 14, 1968, which is valid for the property on which the use permit was approved, and that the subject property may be utilized pursuant to the use permit.

Hearing: Wednesday, October 12, 2005 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

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

JT 9/732 September 27 68581

CERTIFICATE OF PUBLICATION

9/29/, 2005

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/27/, 2005.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-109-SPH

Petitioner/Developer: AUTO PROPERTIES
STEVEN FADER

Date of Hearing/Closing: OCT 12, 2005

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

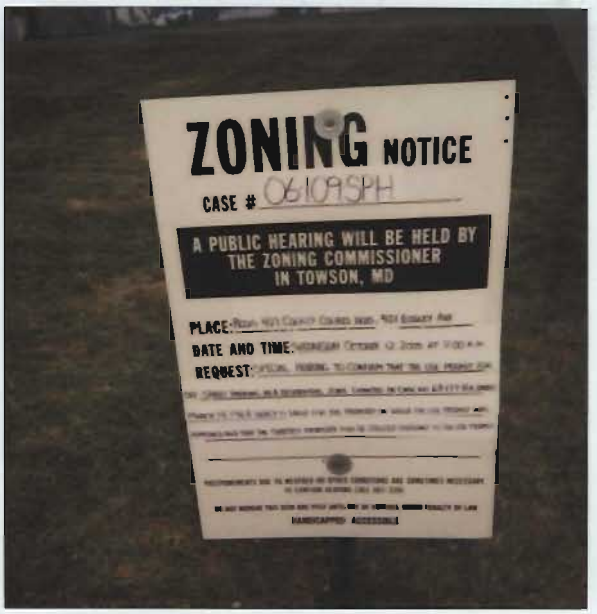
ATTN: Kristen Matthews {(410) 887-3394}

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: N/E CORNER OF EAST AVE. AND EAST AVE RELOCATED

The sign(s) were posted on 9-25-05
(Month, Day, Year)

Sincerely,



EAST AVE

Robert Black 9-27-05
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

Department of Permits and Development Management

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

Baltimore County

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

September 9, 2005

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-109-SPH
N/E corner of East Avenue and East Avenue relocated
11th Election District – 6th Councilmanic District
Legal Owners: Auto Properties, LLC, Steven Fader, Managing Member

Special Hearing to confirm that the use permit for off-street parking in a residential zone granted in Case No. 68-177-RX, dated March 14, 1968, which is valid for the property on which the use permit was approved, and that the subject property may be utilized pursuant to the use permit.

Hearing: Wednesday, October 12, 2005 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Arnold Jablon, Venable, 210 Allegheny Avenue, Towson 21204
Steven Fader, 23 Walker Avenue, Baltimore 21208

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 27, 2005.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

LESLIE D. GRADET
CLERK

Court of Special Appeals

Robert C. Murphy Courts of Appeal Building
Annapolis, Md. 21401-1699

(410) 260-1450
WASHINGTON AREA 1-888-200-7444

RECEIVED
DEC 12 2005
ROBERT J. GREENLEAF
CHIEF DEPUTY
PEOPLE'S COUNSEL

No. 01348, September Term, 2005

Dorothy Surina et al.
vs.
Long Green Valley Association, Inc.
et al.

IMPORTANT
This is how the case must be titled on all briefs.

The Record in the captioned appeal was received and docketed on 11/29/2005.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before 01/09/2006. (Rule 8-502(a)(1)).

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after filing of appellant's brief (Rule 8-502(a)(2)).

This appeal has been set for argument before this Court one of the following days:
May 01, 02, 03, 04, 05, 08, 09, 10, 2006.

IF, DUE TO A CURRENTLY SCHEDULED COURT APPEARANCE OR OTHER EXTRAORDINARY CAUSE, YOU WILL BE UNABLE TO APPEAR ON ONE OR MORE OF THESE DATES, YOU MUST INFORM THE CLERK WITHIN TEN DAYS AFTER THE DATE OF THIS NOTICE. OTHERWISE, THE DATE SELECTED FOR ARGUMENT WILL NOT BE CHANGED.

Stipulations for extensions of time within which to file briefs will only be accepted if the appellee's brief will be filed at least 30 days, and any reply brief, at least 10 days, before the scheduled argument or submission on brief (Rule 8-502(b)).

NOTICE: Law firm name and address must be printed on brief and record extract.

December 08, 2005

Maryland Relay Service
1-800-735-2258
TT/VOICE

APPEAL SIGN POSTING REQUEST

CASE NO. 06-109-SPH

NE/CORNER EAST AVENUE AND
EAST AVENUE - RELOCATED

11th ELECTION DISTRICT APPEALED: 11/18/05

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

*****COMPLETE AND RETURN BELOW INFORMATION******

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 06-109-SPH

LEGAL OWNER: AUTO PROPERTIES, LLC

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

NE/CORNER EAST AVE. & EAST AVE. - RELOCATED

The sign was posted on 2/2, 2006.

By: _____
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

County Board of Appeals of Baltimore County

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

pp'd po 6/21/06 - reg. of p.c.

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 1, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-109-SPH

IN THE MATTER OF: AUTO PROPERTIES, LLC – Petitioner
NE/cor East Avenue and East Avenue Relocated
11th Election District; 6th Councilmanic District

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

ASSIGNED FOR: **THURSDAY, MAY 4, 2006 at 10:00 a.m.**

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

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

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco
Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering

Jackie Megee
Anthony Marchanti
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

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

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

March 9, 2006

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

RECEIVED
MAR 0 9 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Re: Auto Properties, LLC
Case No.: 06-109-SPH

Dear Ms. Bianco:

I am writing to request a postponement of the hearing set for May 4, 2006 at 10:00 a.m with regard to this matter. We are currently awaiting the Notice of Oral Argument from the Court of Special Appeals in the matter of Dorothy Surina v. Long Green Valley Association, Inc., et al. Case No. 01348, September Term 2005. We were informed on December 12, 2005 to hold the dates of May 1 – May 10, 2006 for this argument. I have attached a copy of the Notice sent from the Court of Special Appeals.

We are ready and willing to cooperate with you and counsel for the Petitioner with respect to an alternate date convenient to all parties. Thank you in advance for your anticipated consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel

PMZ\rmw

cc: Arnold Jablon, Esquire

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue March 13, 2006

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-109-SPH **IN THE MATTER OF: AUTO PROPERTIES, LLC – Petitioner**
NE/cor East Avenue and East Avenue Relocated
11th Election District; 6th Councilmanic District

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

and

CASE #: 03-360-SPHA **IN THE MATTER OF: AUTO PROPERTIES, LLC**
-Legal Owner /Petitioner NE/cor East Avenue

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance
Variance were GRANTED with restrictions.

Case No. 06-109-SPH, which had been assigned for hearing on 5/04/06, has been **POSTPONED** at the request of People's Counsel due to conflict with Court of Special Appeals calendar and assigned to the next open date on the Board's schedule; and, upon review of the Board's Continued Docket, has been reassigned with Case No. 03-360-SPHA, continued by notice dated 7/25/05; and has been

REASSIGNED FOR: **WEDNESDAY, JUNE 21, 2006 at 10:00 a.m.**

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

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

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco, Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Jackie Megee
Anthony Marchanti
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

Mildred Schaffer
Tom Edwards

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue June 22, 2006

NOTICE OF ASSIGNMENT /Day #2

CASE #: 06-109-SPH **IN THE MATTER OF: AUTO PROPERTIES, LLC – Petitioner**
NE/cor East Avenue and East Avenue Relocated
11th Election District; 6th Councilmanic District

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

and

CASE #: 03-360-SPHA **IN THE MATTER OF: AUTO PROPERTIES, LLC**
-Legal Owner /Petitioner NE/cor East Avenue

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance
Variance were GRANTED with restrictions.

Day #2 from 6/21/06

ASSIGNED FOR: **THURSDAY, NOVEMBER 2, 2006 at 10:00 a.m.**

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

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

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco, Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Daryl Corona
Jackie Megee
Mildred Schaffer
Anthony Marchanti
Tom Edwards
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

November 8, 2006

NOTICE OF ASSIGNMENT /Day #3

CASE #: 06-109-SPH **IN THE MATTER OF: AUTO PROPERTIES, LLC – Petitioner**
NE/cor East Avenue and East Avenue Relocated
11th Election District; 6th Councilmanic District

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

and

CASE #: 03-360-SPHA **IN THE MATTER OF: AUTO PROPERTIES, LLC**
-Legal Owner /Petitioner NE/cor East Avenue

6/02/03 – D.Z.C.'s Order in which Petitions for Special Hearing and Variance
Variance were GRANTED with restrictions.

Day #3 from 11/02/06 as agreed

ASSIGNED FOR: **TUESDAY, NOVEMBER 14, 2006 at 10:00 a.m.**

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

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

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

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

Kathleen C. Bianco, Administrator

---

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Daryl Corona
Jackie Megee
Mildred Schaffer
Anthony Marchanti
Tom Edwards
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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County Board of Appeals of Baltimore County

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

November 29, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF: **AUTO PROPERTIES, LLC – Petitioner**
Case No. 06-109-SPH and Case No. 03-360-SPHA

Having heard this matter on 6/21/06; 11/02/06; and 11/14/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **TUESDAY, JANUARY 23, 2006 at 9:00 a.m.**

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

NOTE: Closing briefs are due on Tuesday, December 19, 2006
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Appellant : Office of People's Counsel

Counsel for Petitioner : Arnold Jablon, Esquire
Petitioner : Dennis Rumbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Steve Fader

Daryl Corona
Jackie Megee
Mildred Schaffer
Anthony Marchanti
Tom Edwards
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Copy to: 3-2-4

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Department of Permits and Development Management

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

Baltimore County

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

October 3, 2005

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

Dear Mr. Jablon:

RE: Case Number: 06-109-SPH

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 23, 2005.

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Auto Properties, LLC. Steven B. Fader 23 Walker Avenue Baltimore 21208

Printed on Recycled Paper

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

September 1, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: **September 12**, 2005

Item# **6-105-a,6-108-A,6-109-SPH,6-111-A,6-112-A,6-113-A,6-114-SPH,6-115-A**

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.

The Fire Marshal's Office has no comments at this time.

Lieutenant J.D.Mezick
Fire Marshal's Office
(O)410-887-4881 (C)443-829-2946
MS-1102F

cc: File

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

State Highway Administration
Driven to Excel
Maryland Department of Transportation

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

Date: 8-30-05

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

RE: Baltimore County
Item No. 109 JLL

Dear. Ms. Matthews:

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

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

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: September 6, 2005

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For September 12, 2005
Item No. 109

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

The minimum right-of-way for all public roads in Baltimore County is 40-feet. Show a future 40-foot-wide right-of-way centered on the existing 33-foot right-of-way.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 109-09062005.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: September 23, 2005

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

SUBJECT: NE corner of East Avenue

INFORMATION:

Item Number: 6-109

Petitioner: Auto Properties, LLC

Zoning: BM and DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:
The Office of Planning has reviewed the subject petition and determined that the current use as a parking/storage lot is not desirable from a land use standpoint. However the petitioner's request calls for a legal opinion from the Zoning Commissioner, considering the aforementioned the Office of Planning has no further comments to offer on the subject matter.

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

Prepared by: Curtis Murray

Division Chief: Lynn Lanham

AFK/LL: CM

W:\DEVREV\ZAC\6-109.doc

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

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

BW 10/12

September 21, 2005

William J. Wiseman, Zoning Commissioner
John V. Murphy, Deputy Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

RECEIVED
SEP 21 2005
ZONING COMMISSIONER

Re: Auto Properties, LLC
NE Corner East Avenue and East Avenue Relocated
Hearing Date: October 12, 2005 at 11 a.m.
Case No. 06-109-SPH

Dear Messrs. Wiseman and Murphy,

This case relates to a case pending before the County Board of Appeals (CBA) concerning the same property. 03-360-SPH. The pending case involves a request for a use permit for commercial parking in a residential zone and residential transition area variances. The Zoning Commissioner there approved the petitions conditionally in the enclosed opinion and order dated June 2, 2003. This office then filed a timely appeal.

The CBA deferred the hearing while Petitioner attempted to have the property rezoned to business zoning during the 2004 comprehensive zoning process. The County Council declined to reclassify the residentially zoned property.

When the case eventually came up for hearing on January 25, 2005, Petitioner's counsel informed the CBA that he had just discovered an old use permit approved in Case No. 68-177-RX. Counsel suggested that this use permit might already allow the use which Petitioner now wishes to make for commercial parking for the recently developed Honda dealership nearby and asked for a postponement to review the matter further. The CBA postponed the case, with the anticipation of resetting the hearing at a future date.

In anticipation of further review at the County Board of Appeals, People's Counsel researched the matter thoroughly and found that the old case, entitled Harford Warehouse Corporation, does not provide Petitioner any entitlement to the use now requested. The results of this research were incorporated in a memorandum filed on February 16, 2005 with the CBA. A copy is enclosed.

Petitioner did not respond to this memorandum. Rather, Petitioner decided to start over at the Zoning Commissioner level and ask for a special hearing to determine the impact of the 1968 case.

The position of this office is as stated in the enclosed memorandum filed previously with the County Board of Appeals. For the reasons given, the 1968 case no longer has any validity or effectiveness.

First of all, there are no vested rights. The proposal is subject to review for compliance with residential transition area standards and with modified parking standards under Bill 26-88.

Secondly, even if the use had vested, it became nonconforming upon enactment of the RTA and modified parking standards. Because of the apparent discontinuity of the use for many years, any nonconforming use terminated.

Thirdly, the proposed use permit is subject to a new hearing under the Baltimore County Zoning Regulations and the Zoning Commissioner's Policy Manual in any event. The proposed use is materially different from the use approved in 1968.

In sum, the 1968 case does not confer any rights on Petitioner which protect or advance its current proposal to extend commercial parking into this residential zone and residential transition area.

Please note that various neighborhood citizens have appeared at the CBA in Case 03-360-SPH. We are sending a copy of this letter to Petitioner's counsel and also to Meg O'Hare, of the Carney Improvement Association, and Ruth Baisden, of the Greater Parkville Community Council, along with Jackie McGee, Daryl Corona and Anthony Marchanti. We trust that they will communicate with the interested citizens on East Avenue.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio/rmw

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw
Enclosures
cc: Arnold Jablon, Esquire,
Ruth Baisden
Meg O'Hare
Jackie McGee
Daryl Corona
Anthony Marchanti

RE: PETITION FOR SPECIAL HEARING NE Corner East Avenue & East Ave (relocated) 11th Election & 6th Councilmanic Districts Legal Owner(s): Auto Properties, LLC by Steven B. Fadar, Managing Member Petitioner(s)	* * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-109-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
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2005, a copy of the foregoing Entry of Appearance was mailed to Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioner(s).

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

RECEIVED
AUG 30 2005
Per.....

Department of Permits and Development Management

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

Baltimore County

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

December 20, 2005

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

RE: Case : 06-109-SPH, (0.8781-Acre Parcel – East Avenue)

Dear Mr. Jablon:

Please be advised that an appeal of the above-referenced case was filed in this office on November 18, 2005 by the Office of People's Counsel. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

RECEIVED
DEC 21 2005
BALTIMORE COUNTY
BOARD OF APPEALS

TK:raj

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Mr. Dennis Turnbaugh, Mileone-Heritage, 3001 East Avenue, Baltimore, MD 21234
Mr. Thomas Church, Development Engineering, 6603 York Road, Baltimore, MD 21234
Ms. Jackie Megee, 3112 East Avenue, Parkville, MD 21234
Mr. Anthony Marchanti, 3021 East Avenue, Parkville, MD 21234
Mr. & Mrs. John B. Baker, Jr., 2307 Ellen Avenue, Baltimore, MD 21234
Ms. Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234
Ms. Meg O'Hare, 3012 Summit Avenue, Carney, MD 21234

Baltimore County, Maryland

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

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

November 18, 2005

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

RECEIVED
NOV 18 2005
Per.....

Hand-delivered

Re: PETITION FOR SPECIAL HEARING
NE Corner East Avenue and East Avenue Relocated
(0.8781 Acres Parcel)
11th Election District; 6th Council District
Auto Properties, LLC- Petitioners
Case No.: 06-109-SPH

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated November 9, 2005 by the Baltimore County Zoning Commissioner in the above-entitled case

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

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204
Meg O'Hare, 3012 Summit Avenue, Parkville, MD 21234
Ruth Baisden, 7706 Oak Avenue, Parkville, MD 21234
County Board of Appeals

APPEAL

Petition for Special Hearing
NE/Corner East Avenue and East Avenue Relocated
(0.8781-Acre Parcel)
11th Election District, 6th Councilmanic District
Auto Properties, LLC - Petitioners

Case No.: 06-109-SPH

✓ Petition for Special Hearing (August 23, 2005)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (September 9, 2005)

✓ Certification of Publication (September 27, 2005)

✓ Certificate of Posting (September 25, 2005) by Robert Black

✓ Entry of Appearance by People's Counsel (August 30, 2005)

✓ Petitioner(s) Sign-In Sheet

Protestant(s) Sign-In Sheet

✓ Citizen(s) Sign-In Sheet

RECEIVED
DEC 21 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Zoning Advisory Committee Comments

Petitioners' Exhibits

1. ✓ Site Plan – Prepared for subject hearing
2. ✓ Site Plan – Prepared following the Order Case No. 03-360-SPHA outlining conditions of that Order
3. ✓ Photograph Corner of East Avenue & East Avenue Relocated
4. ✓ 1955 Zoning Map – Note word "Parking" written on subject property by unknown
5. ✓ 1968 – 68-177-RX Petition/Order/Site Plan
6. ✓ Regulations relevant – Sections 409.4, 409.8 - Density Residential Zones to ease comparison of law
7. ✓ Affidavits – from 1970 re: Parking Use

Protestants' Exhibits:

1. ✓ Carney Improvement Assoc. Authorization of Representation – M. O'Hare
2. ✓ Greater Parkville Community Council – Resolution in Opposition – Ruth Baisden, President
3. ✓ Photographic Views of Area in Question
4. ✓ Marchanti – Photo Illustration of Continued Violations despite conditions contained in #03-360-SPHA
5. ✓ Photographs of Jackie Megee, resident in neighborhood for 46 tears (since 1959)

Miscellaneous (Not Marked as Exhibit)

1. ✓ Letter to Zoning Commissioner's Office from Office of People's Counsel (9/21/05)
2. ✓ 1 Letter from the Deborah & Michael Malinowski (10/11/05)
3. ✓ 1 Letter from Melissa Malinowski (10/11/05)
4. ✓ 3 sets of case law - Westlaw

✓ Zoning Commissioner's Order (11/09/05 Granted)

✓ Notice of Appeal received on November 18, 2005 by Office of People's Counsel

Case No. 06-109-SPH

In the Matter of: Auto Properties, LLC - Petitioners

SPH – To confirm that the use permit for off-street parking granted in 68-177RX in 1968 is valid and that the subject property may be utilized pursuant to that use permit.

11/09/2005 – Z.C.'s Order in which requested special hearing relief was GRANTED.

3/01/06 -Notice of Assignment sent to following; assigned for hearing on Thursday, May 4, 2006 at 10 a.m.:

Office of People's Counsel
Arnold Jablon, Esquire
Dennis Turnbaugh /Mileone-Heritage
Thomas Church /Development Engineering
Jackie Megee
Anthony Marchanti
Mr. and Mrs. John B. Baker, Jr.
Ruth Baisden /Greater Parkville Community Council
Meg O'Hare / Carney Improvement Association
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

3/09/06 – Request for postponement filed by P. Zimmerman; requesting postponement due to conflict with CSA calendar.

3/13/06 – Notice of PP and Reassignment sent to parties; in addition, Case No. 03-360-SPHA, which was continued by the Board on 7/25/05, has been added to the notice in this matter; both cases now assigned for Wednesday, June 21, 2006 at 10:00 a.m.

6/21/06 – Board convened for hearing (Wescott, Stahl, Grier); concluded day #1; to be assigned for second day of hearing.

6/22/06 – Notice of Assignment /Day #2 assigned for Thursday, November 2, 2006 at 10:00 a.m. FYI copy to 3-2-4.

11/02/06 – Concluded day #2; need additional date for day #3. Agreed with counsel and the Board that, since 11/14/06 was coming open on the Board's schedule, this matter could be assigned for that date. Notice to be sent.

11/08/06 – Notice of Assignment, Day #3 sent to parties; assigned for Tuesday, November 14, 2006 at 10:00 a.m. as agreed; FYI copy sent to 3-2-4. Copy to counsel via FAX this date.

11/14/06 – Completed hearing; memos due 12/19/06; deliberation on 1/23/07. Notice to be sent. 3-2-4.

11/29/06 – Notice of Deliberation sent to parties; assigned for Tuesday, January 23, 2007 at 9:00 a.m. FYI copy to 3-2-4.

12/18/06 – Memo filed by Arnold Jablon, Esquire, and David Karceski, Esquire /VENABLE on behalf of Petitioner. (Also references related Case No. 03-360-SPHA.

12/19/06 – People's Counsel for Baltimore County's Memorandum filed this date (also references related Case No. 03-360-SPHA).

DARYL CORONA Attended day #1
3106 EAST AVENUE
BALTIMORE MD 21234

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Mr. Dennis Turnbaugh, Mileone-Heritage, 3001 East Avenue, Baltimore, MD 21234
Mr. Thomas Church, Development Engineering, 6603 York Road, Baltimore, MD 21234
Ms. Jackie Megee, 3112 East Avenue, Parkville, MD 21234
Mr. Anthony Marchanti, 3021 East Avenue, Parkville, MD 21234
Mr. & Mrs. John B. Baker, Jr., 2307 Ellen Avenue, Baltimore, MD 21234
Ms. Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234
Ms. Meg O'Hare, 3012 Summit Avenue, Carney, MD 21234

date sent: December 20, 2005, raj

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: AUTO PROPERTIES, LLC.
N/E CORNER EAST AVE & EAST AVE.-RELOCATED
CASE NO.: 06-109-SPH
and CASE NO.: 03-360-SPHA

DATE: January 23, 2007

BOARD/PANEL Lawrence S. Wescott, Chairman
Lawrence M. Stahl
Wendell Grier

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate the following:

06-109-SPH

SPH - To confirm that the use permit for off-street parking granted in 68-177RX in 1968 was still valid and that the subject property may be utilized pursuant to that use permit.

03-360-SPH

SPH - To approve business parking a residential zone, to include storage of unlicensed passenger vehicles; and

VAR – To allow 25' buffer and a 25' setback in lieu of the required 50' buffer and 75' setback.

Zoning Commissioner's Order, under date of Nov. 09, 2005, in which special hearing relief was requested and granted.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- This matter came before the Board as a *de novo* case.
- The community was established some time ago and Auto Properties, LLC was built around it.
- The Board discussed whether or not parking of inventory should be permitted in a predominately D.R.5 zone. See 409.8.B.1 of the BCZR
- The initial use permit, back in 1968, was granted under 409 of the BCZR and have since been amended.
- Petitioner did not comply with the Hearing Officer's request except for a few days here and there.
- It was felt that even though the special exception was granted it had been abandoned by the Petitioner.
- The lot has not had vehicles parking there for three or four years.

- Sec. 232.2 of the B.C.Z.R. also covers the lots separated from a main building without an attendant.
- At the time the special hearing was granted the law did not contain the language it contains now. The law has been changed since the time of it initial granting, and it must comply with any current applicable laws.
- Basically, parking has been used for customers and employees.
- People's Counsel memo was discussed (see page 15) which outlined requirements that were never followed through on.
- Mr. Dillon stated in his testimony that they never fulfilled the requirements previously set forth and therefore the permit was essentially invalid. (See page 16 of People's Counsel's memo)
- It did not appear that the use permit was ever really used, nor could it be considered valid because of their noncompliance.
- A letter was submitted to the County Council requesting a change in the zoning and they decided to leave the zoning as is.
- People's Counsel referred to Mayor & City Council v. Shapiro 187 Md. 623 (1947).
- There was no need to discuss the RTA regarding the forest buffer area(s).

DECISION BY BOARD MEMBERS: The Board felt that the parking of vehicles was not in compliance with Sec. 409 of the B.C.Z.R.

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *DENY* Petitioner's request for special hearing and there was no need to discuss the RTA variance request.

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

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

To: Zoning Commissioner, Baltimore County
(PLEASE NOTE THIS HEARING IS SCHEDULED TOMORROW, 10/12/05)
Fax Number: 410-887-3468

From: Michael & Deborah Malinowski

Date: October 11, 2005

Re: Case Number: 06-109-SPH
Northeast corner of East Avenue and East Avenue (relocated)

* * * * * * * * * * **Hearing Date: 10/12/05, 11:00 am-12:00 pm** * * * * * * * * * * *

Dear Mr. Commissioner:

We've lived on East Avenue since 1978 and did not have any issues when the dealership was owned by Doug Griffith. All of the issues have arisen since Heritage has taken over ownership. They are trying to make a mega-dealership -- even if it means the residential homeowners suffer. Any closer proximity of the dealership to our homes will definitely decrease the values of our properties. Our poor neighbors near the dealership are already dealing with Heritage's bright lights at night-- it's like daylight.

We are very concerned that Heritage is again going to try to park cars (or do who-knows-what) on this piece of property that has been a buffer between their commercial business on Harford Road and the residential atmosphere of East Avenue. In the past Heritage has failed to abide by restrictions to not park on the buffer around the new car parking lot (on the grass and stones). We have no reason to believe there won't be continued misuse of this property if they are granted permission for off-street parking. We are also concerned about the placement of the zoning hearing sign on the property. It was placed at the very corner of the property – not facing either side of the property so that you would notice it as you were driving up or down East Avenue. It has been placed so that you are making a sharp turn before you are even able to see the sign (if you even notice it) – wonder why that would be.

Certainly, we, as long-standing property owners have the right to have our homes retain their value and remain as residential as possible. We've been here much longer than Heritage and we think that should we worth something. We, therefore, respectfully request that you deny this request.

Thank you for your consideration.

Sincerely,

Michael Malinowski
Deborah L Malinowski

Michael & Deborah Malinowski
3127 East Avenue
Baltimore, Maryland 21234

To: Zoning Commissioner, Baltimore County
(PLEASE NOTE THIS HEARING IS SCHEDULED TOMORROW, 10/12/05)
Fax Number: 410-887-3468

From: Melissa Malinowski

Date: October 11, 2005

Re: Case Number: 06-109-SPH
Northeast corner of East Avenue and East Avenue (relocated)

* * * * * * * * * * * **Hearing Date: 10/12/05, 11:00 am-12:00 pm** * * * * * * * * * * *

Dear Mr. Commissioner:

I have lived on East Avenue for a little over 27 years. The businesses located along the Harford Road corridor remained a friendly, but distant neighbor until the Heritage Group acquired the car dealership and the lot in question. The Heritage Group's operation has adversely affected our once peaceful community. From their disposal of trash in our streets and waterways to daily test rides through our neighborhood, Heritage has invaded our residential environment and our homes. This lot is the only buffer that remains between us and our "big-business" neighbor. Allowing the Heritage Group to utilize this lot would be detrimental in many ways.

Undoubtedly, a move such as this would decrease property values along East Avenue. For most, a home is the largest investment of their lives. It doesn't seem fair to jeopardize the livelihood of many for the profit line of one company. Heritage has proven to be a selfish and inconsiderate neighbor. They unload, load, and park cars along the already narrow turns of East Avenue. This practice totally disregards the numerous requests from residents, the community association, and county government not to do so. I am very concerned that Heritage will continue to misuse this property if they are granted permission for off-street parking.

It would be awful to see our neighborhood ruined by the careless actions of the Heritage Group. As a long time resident of East Avenue I respectfully ask that you deny the Heritage Group's request.

Thank you for your consideration.

Sincerely,

Melissa J. Malinowski

Melissa Malinowski
3130 East Avenue
Baltimore, Maryland 21234

PLEASE PRINT CLEARLY

CASE NAME ~~06~~ AUTO PROPERTIES
CASE NUMBER 06-109 SPM
DATE 10/12/05

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
ARNOLD JABLON	210 ALLEGHENY AVE	TOWSON 21204	
TOM CHURCH	6603 York Rd	Balto 21212	
Dennis Turnbaugh	3001 East Avenue	Baltimore, MD 21234	dturnbaugh@mileone.com

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
* Meg O'Hare	3012 Summit Ave	Carney MD 21234	moots711@msn.com
Jackie Megee	3112 East Avenue	Parkville, Md 21234	megeecare@MSN.COM
Anthony O. Marchanti	3021 EAST AVE	Carney Md 21234-3104	
Alice M. Baker	2304 Ellen Ave	21234	alicecylver@yah[illegible]
John B. Baker Jr.	"	"	"
* Ruth Bausch	7706 Oak Ave	21234	ruthbausle@yahoo.com

C

Court of Appeals of Maryland.
Charles B. MAREK et al.
v.
BALTIMORE COUNTY BOARD OF APPEALS et al.
No. 26.

Dec. 19, 1958.

Proceeding to review action of county board of zoning appeals in granting offstreet parking permit to beach owners who operated their beach as a non-conforming use in a residential zone. The Circuit Court, Baltimore County, John E. Raine, Jr., J., entered order affirming action of board and protestants appealed. The Court of Appeals, W. Henry Laird, Jr., J. (Specially Assigned), held that evidence that beach was used by as many as 2,000 people on Sundays, that beach was used by church as source of recreation and that the placing of 'no-parking' signs along road approaching beach to relieve traffic congestion caused hardship to owners and to users of beach, justified granting of use permit and action of board was not arbitrary, illegal, invalid or capricious.

Affirmed.

West Headnotes

|1| Zoning and Planning ⚷547
414k547 Most Cited Cases
(Formerly 104k211/2)

|1| Zoning and Planning ⚷192
414k192 Most Cited Cases
(Formerly 104k211/2)
Where beach owners' petition for permission to use beach, operated as a nonconforming use in residential zone, for off-street parking had been denied pursuant to county zoning regulation and zoning regulation was thereafter amended so as to bring beach within scope of new regulation, beach owners' subsequent petition for off-street parking permit, brought within 18 months from final order denying original petition, was not a request for a special exception within purview of regulation prohibiting entertainment of a new petition for special exception within 18 months from date of final order disposing of prior petition.

|2| Zoning and Planning ⚷484
414k484 Most Cited Cases
(Formerly 104k211/2)

|2| Zoning and Planning ⚷353.1
414k353.1 Most Cited Cases
(Formerly 414k353, 104k211/2)
Where off-street parking is not mentioned as a special exception to zoning regulations, power to determine what situations shall be considered in such category is legislative function of the county council and not an administrative function of the county zoning commissioner.

|3| Zoning and Planning ⚷484
414k484 Most Cited Cases
(Formerly 104k211/2)

|3| Zoning and Planning ⚷353.1
414k353.1 Most Cited Cases
(Formerly 414k353, 104k211/2)
Function of county zoning commissioner is limited to determination of whether a special exception listed in ordinance is appropriate in any particular case.

|4| Administrative Law and Procedure ⚷760
15Ak760 Most Cited Cases

|4| Administrative Law and Procedure ⚷763
15Ak763 Most Cited Cases
Court of Appeals may not substitute its judgment for that of an administrative board, but it may set aside action of such board if such action is

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C

Court of Special Appeals of Maryland.
John HOFMEISTER et al.,
v.
The FRANK REALTY COMPANY.
No. 152.

May 11, 1977.

Owner of catering establishment located in business zone applied for special use permit pursuant to Baltimore county zoning regulations to use land in residential zone for off-street parking. The county zoning commissioner granted the permit and protestants appealed. The county board of appeals upheld the grant and appeal was taken. The Circuit Court, Baltimore County, John Grason Turnbull, J., upheld the decision of the county board of appeals and protestants appealed. The Court of Special Appeals, Moylan, J., held that granting of use permit for off-street parking was grant of a special exception within the delegated authority of zoning commissioner.

Affirmed.

West Headnotes

|1| Zoning and Planning ⚷233
414k233 Most Cited Cases
Ultimate arbiter of intended meaning of county zoning law is the local legislative user of the contested words.

|2| Statutes ⚷210
361k210 Most Cited Cases

|2| Statutes ⚷211
361k211 Most Cited Cases
Legislative intent may be discerned by examining a statute's title or preamble as well as its terms.

|3| Statutes ⚷219(1)
361k219(1) Most Cited Cases
Administrative interpretations contemporaneous with passage of a statute are strong evidence on question of its best construction.

|4| Zoning and Planning ⚷280
414k280 Most Cited Cases
The granting of a "use permit" for off-street parking in a residential zone is a variety of "special exception" within contemplation of a Baltimore County ordinance delegating to the county zoning commissioner the power to issue special exceptions. Code 1957, art. 25A, § 5(U); Acts 1941, c. 247.
****274 *692** William F. C. Marlow, Jr., Towson, with whom was F. Vernon Boozer, Towson, on the brief, for appellants.

E. Stephen Derby, Baltimore, with whom were Piper & Marbury, Baltimore, and Nolan, Plumhoff & Williams, Towson, on the brief, for appellee.

Argued before GILBERT, C. J., and MOYLAN and LOWE, JJ.

MOYLAN, Judge.

"If the imprecise use of language plagues the law generally, it falls upon the head of the zoning law with peculiar vengeance." The root problem giving rise to the present appeal was the failure of the lawmaking authorities of Baltimore County to distinguish cleanly between the Genus 'Special exceptions' and the Species 'Special Exceptions.' The phrase was used in one critical context, at least, with a broad, generic meaning; the same phrase was used on other occasions with a more limited and specific meaning; the lawmaking authority never pinpointed which meaning it had in mind on a particular occasion nor did it even seem aware of the potential semantic problem lurking within its linguistic imprecision.

Although the problem before us for resolution is

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C

Court of Appeals of Maryland.
Irving JACOBS et al.
v.
COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY and Smith Avenue Shopping Center, Inc.
No. 249.

April 1, 1964.

Zoning case. The Circuit Court for Baltimore County, James J. Lindsay, J., affirmed decision of county board of appeals, and an appeal was taken. The Court of Appeals, Prescott, J., held that zoning regulation, authorizing issuance of permit for use of land in residential zone for parking area, was not limited in its application to existing commercial operations, and permit could be granted for off-street parking for proposed neighborhood shopping center which had not yet been constructed.

Order affirmed, with costs.

West Headnotes

[1] Zoning and Planning ⚷418
414k418 Most Cited Cases
Action of board, in upholding permit for use of residential property for off-street parking for proposed neighborhood shopping center, could not be said to be arbitrary or capricious, in legal sense, where evidence rendered action of board, at least, fairly debatable.

[2] Zoning and Planning ⚷418
414k418 Most Cited Cases
Zoning regulation, authorizing issuance of permit for use of land in residential zone for parking area, was not limited in its application to existing commercial operations, and permit could be granted for off-street parking for proposed neighborhood shopping center which had not yet been constructed.

[3] Zoning and Planning ⚷30
414k30 Most Cited Cases

[3] Zoning and Planning ⚷154
414k154 Most Cited Cases
Zoning is not static, and zoning authorities, either in adopting comprehensive zoning plan or in granting reclassification, may take into consideration needs of reasonably foreseeable future.

[4] Zoning and Planning ⚷418
414k418 Most Cited Cases
Purpose of regulation, authorizing issuance of permit for use of land in residential zone for parking area, was to provide for "unusual conditions", but such conditions existed where property zoned for business use was completely surrounded by residentially zoned property and had no access to major arterial highway and grant of permit to use property zoned "residential" for off-street parking for proposed neighborhood shopping center would fill public need.

[5] Zoning and Planning ⚷423
414k423 Most Cited Cases
It was not necessary to fix hours of illumination or permitted hours of use of property zoned "residential" for off-street parking for proposed neighborhood shopping center where circumstances presented did not require that such hours be specified or regulated.

[6] Zoning and Planning ⚷438
414k438 Most Cited Cases
Provision, that ingress and egress to parking area in property zoned "residential" for which use permit was granted, should be subject to approval of county planning board did not constitute abdication of powers of county board of appeals to county planning board but mere compliance with regulation requirement for planning board approval of plan

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BALTIMORE COUNTY

ZONING REGULATIONS

Adopted

March 30, 1955

in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County, (1955 Edition), with subsequent amendments through December, 1963.

First edition 1955

Second edition 1964

Memo Ex. No. 1

BALTIMORE COUNTY

ZONING REGULATIONS

Adopted

March 30, 1955

in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County, (1955 Edition), with subsequent amendments through December, 1963.

First edition 1955

Second edition 1964

Memo Ex. No. 2

C

MAREK v. BALTIMORE COUNTY BOARD OF APPEALSMd. 1958

Court of Appeals of Maryland.

Charles B. MAREK et al.

v.

BALTIMORE COUNTY BOARD OF APPEALS et al.

No. 26.

Dec. 19, 1958.

Proceeding to review action of county board of zoning appeals in granting offstreet parking permit to beach owners who operated their beach as a non-conforming use in a residential zone. The Circuit Court, Baltimore County, John E. Raine, Jr., J., entered order affirming action of board and protestants appealed. The Court of Appeals, W. Henry Laird, Jr., J. (Specially Assigned), held that evidence that beach was used by as many as 2,000 people on Sundays, that beach was used by church as source of recreation and that the placing of 'no-parking' signs along road approaching beach to relieve traffic congestion caused hardship to owners and to users of beach, justified granting of use permit and action of board was not arbitrary, illegal, invalid or capricious.

Affirmed.

West Headnotes

[1] **Zoning and Planning 414 547**

414 Zoning and Planning
414IX Variances or Exceptions
414IX(B) Proceedings and Determination
414k547 k. Rehearing or Reconsideration; New Application. Most Cited Cases
(Formerly 104k211/2)

Zoning and Planning 414 192

414 Zoning and Planning
414III Modification or Amendment
414III(B) Manner of Modifying or Amending
414k192 k. Petition or Application. Most Cited Cases
(Formerly 104k211/2)

Where beach owners' petition for permission to use beach, operated as a nonconforming use in residential zone, for off-street parking had been denied pursuant to county zoning regulation and zoning regulation was thereafter amended so as to bring beach within scope of new regulation, beach owners' subsequent petition for off-street parking permit, brought within 18 months from final order denying original petition, was not a request for a special exception within purview of regulation prohibiting entertainment of a new petition for special exception within 18 months from date of final order disposing of prior petition.

[2] **Zoning and Planning 414 484**

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k484 k. Power to Grant in General. Most Cited Cases
(Formerly 104k211/2)

Zoning and Planning 414 353.1

414 Zoning and Planning
414VII Administration in General
414k353 Powers, Duties, and Liabilities
414k353.1 k. In General. Most Cited Cases
(Formerly 414k353, 104k211/2)

Where off-street parking is not mentioned as a special exception to zoning regulations, power to determine what situations shall be considered in such category is legislative function of the county council and not an administrative function of the county zoning commissioner.

[3] **Zoning and Planning 414 484**

414 Zoning and Planning
414IX Variances or Exceptions
414IX(A) In General
414k484 k. Power to Grant in General. Most Cited Cases
(Formerly 104k211/2)

Zoning and Planning 414 353.1

414 Zoning and Planning
414VII Administration in General
414k353 Powers, Duties, and Liabilities
414k353.1 k. In General. Most Cited Cases
(Formerly 414k353, 104k211/2)

Function of county zoning commissioner is limited to determination of whether a special exception listed in

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C
Hofmeister v. Frank Realty Co.,Md.App. 1977.
Court of Special Appeals of Maryland.
John HOFMEISTER et al.,
v.
The FRANK REALTY COMPANY.
No. 152.

May 11, 1977.

Owner of catering establishment located in business zone applied for special use permit pursuant to Baltimore county zoning regulations to use land in residential zone for off-street parking. The county zoning commissioner granted the permit and protestants appealed. The county board of appeals upheld the grant and appeal was taken. The Circuit Court, Baltimore County, John Grason Turnbull, J., upheld the decision of the county board of appeals and protestants appealed. The Court of Special Appeals, Moylan, J., held that granting of use permit for off-street parking was grant of a special exception within the delegated authority of zoning commissioner.

Affirmed.
West Headnotes
[1] **Zoning and Planning 414 ⚷233**

414 Zoning and Planning
414V Construction, Operation and Effect
414V(A) In General
414k233 k. Meaning of Language. Most Cited Cases
Ultimate arbiter of intended meaning of county zoning law is the local legislative user of the contested words.

[2] **Statutes 361 ⚷210**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k210 k. Preamble and Recitals. Most Cited Cases

Statutes 361 ⚷211

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k211 k. Title, Headings, and Marginal Notes. Most Cited Cases
Legislative intent may be discerned by examining a statute's title or preamble as well as its terms.

[3] **Statutes 361 ⚷219(1)**

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases
Administrative interpretations contemporaneous with passage of a statute are strong evidence on question of its best construction.

[4] **Zoning and Planning 414 ⚷280**

414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k278 Particular Terms and Uses
414k280 k. Automobile Service, Garages, and Parking Lots. Most Cited Cases
The granting of a "use permit" for off-street parking in a residential zone is a variety of "special exception" within contemplation of a Baltimore County ordinance delegating to the county zoning commissioner the power to issue special exceptions. Code 1957, art. 25A, § 5(U); Acts 1941, c. 247.

****274 *692** William F. C. Marlow, Jr., Towson, with whom was F. Vernon Boozer, Towson, on the brief, for appellants.
E. Stephen Derby, Baltimore, with whom were Piper & Marbury, Baltimore, and Nolan, Plumhoff & Williams, Towson, on the brief, for appellee.

Argued before GILBERT, C. J., and MOYLAN and LOWE, JJ.
MOYLAN, Judge.
If the imprecise use of language plagues the law generally, it falls upon the head of the zoning law

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restriction, a restrictive covenant or a binding contractual agreement, including a lease. Any plans approved are conditioned upon and subject to periodic review by the Director to ensure that adequate parking arrangements continue to exist. **[Bill No. 144-1997]**

409.8 Design standards.

A. Requirements for parking facilities in all zones. All off-street parking facilities shall be subject to the following requirements:

1. Design, screening and landscaping. Design, screening and landscaping shall be provided in accordance with the Landscape Manual and all other manuals adopted pursuant to § 32-4-404 of the Baltimore County Code. **[Bill No. 137-2004]**

2. Surface. A durable and dustless surface shall be provided and shall be properly drained so as not to create any undesirable conditions.

3. Lighting. Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.

4. Distance to street line. No parking space in a surface parking facility for a nonresidential use shall be closer than 10 feet to the right-of-way line of a public street, excluding vehicle overhang, except that in the C.T. District of Towson such setback is not required if the parking facility is screened from the street in accordance with the Landscape Manual.

5. Dead ends. All dead-end aisles shall be designed to provide sufficient backup area for the end parking spaces.

6. All parking spaces must be striped. Striping shall be maintained so as to remain visible.

B. Business or industrial parking in residential zones.

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

a. On the property in question, notice of the application for the use permit shall be conspicuously posted for a period of 15 days following the filing of the application.

b. Within the fifteen-day posting period, any interested person may file a formal request for a public hearing with the Zoning Commissioner in accordance with Section 500.7.

c. If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, may grant a use permit for parking in a residential zone if the proposed use meets all the requirements of Section 409.8.B.2. The use permit may be issued with

Memo Ex. No. 5

501.6 Appeals from the Zoning Commissioner shall be heard by the board of zoning appeals de novo. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence.

501.7 The decision and order of the board of zoning appeals may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner, or may modify the order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to zoning regulations and restrictions.

501.8 The charges and fees for procedures before the Zoning Commissioner to be paid by petitioner and before the board of appeals by the appellant or petitioner, shall be as follows. **[Bill Nos. 64-1960; 57-1982; 36-1984]**

A. Cost of procedure before Zoning Commissioner,.

(1) Petition for special exception: $100.

(2) Petition for special hearing pertaining to a one-family residence: $35.

(3) Petition for variance pertaining to a one-family residence: $35.

(4) All other petitions for variance or special hearing: $100.

(5) Maximum charge for petitions filed together: $250.

B. Cost of proceedings before the County Board of Appeals.

(1) Appeals from granting or refusing to grant a special exception: $100.

(2) Petition for reclassification: $100.

(3) All other hearings or appeals: $75.

C. The fees established herein may be changed by the County Administrative Officer from time to time and shall be in addition to advertising and posting expenses as established by the County Administrative Officer. In addition, the County Administrative Officer shall waive any or all of the fees or expenses established herein for the filing of a petition for special exception or variance when such petition is filed by a Baltimore County volunteer fire, ambulance or rescue company.

Section 502
Special Exceptions
[BCZR 1955]

(See Section 270, Schedule of Special Exceptions.)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential,

ARTICLE 1B

DENSITY RESIDENTIAL (D.R.) ZONES
[Bill No. 100-1970]

Section 1B00
Legislative Statement of Findings; Policy With Respect to D.R. Zones in General

1B00.1 Declaration of findings. The Baltimore County Council finds:

A. That residential zoning regulations heretofore in effect have not been conducive to the creation of housing diversity in Baltimore County subdivisions;

B. That minimum standards for individual lots, having been derived from maximum overall density standards, have resulted in an excessive spreading of residential development over subdivision tracts; such spreading of development has led to removal or undesirable transformation of natural vegetation and other features more properly left in their natural or previous states, and has led to visual monotony;

C. That zoning reclassifications based on lot sizes and types of housing have, in some situations, prevented the construction of the maximum numbers of housing units intended to be permitted on development tracts, especially in cases of severe topographical variation, or have induced "cramped" layout or other undesirable subdivision design characteristics as accommodation of maximum density is achieved;

D. That evolving markets for types of housing units not permitted in lower-density zones have created pressures leading to frequent rezoning, ultimately resulting in vastly greater population levels than have been planned for, tending to nullify planning efforts and to overload and overcrowd public facilities;

E. That, as a result of such rezoning, residential zoning classifications at the various density levels have not been applied to a satisfactory degree in proper relation or with sufficient regard to: location or size of commercial or industrial areas or uses; utilities, motorways, schools or other public facilities; timeliness of development; conservation and allocation of land resources; and other factors which should be considered in planning for the development of the county on the basis of a comprehensive rationale;

F. That, in light of the above findings, it is in the interest of the general welfare that new zoning classifications, formulated so as to avoid such effects in future residential development, be established as hereinafter provided;

G. That the ability to distribute density across different zone boundaries, as provided for in Bill 100-1970, has resulted in density patterns often unintended by the county during the comprehensive zoning map process; and **[Bill No. 2-1992]**

C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.

304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.

304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305
Replacement of Destroyed or Damaged Dwellings
[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306
Minor Public Utility Structures
[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

A. Repeater, booster or transformer stations;

B. Bus shelters, Class A or B; or

C. Small community dial offices.

Section 307
Variances
[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

Memo Ex. No. 8

(1) May not be considered a purchase; and

(2) Is subject to approval by the County Council. The procedure for notice of the exchange and for Council approval shall be in accordance with the provisions of § 3-9-104(c) of the Code.
(1988 Code, § 26-220) (Bill No. 48-99, § 1, 7-12-1999; Bill No. 79-01, § 2, 7-1-2004; Bill No. 121-05, § 1, 1-7-2006)

SUBTITLE 4. GENERAL DESIGN STANDARDS AND REQUIREMENTS

§ 32-4-401. COMPLIANCE.

(a) *Intent.* The general design standards and requirements set forth in this subtitle are intended to provide criteria for the preparation and review of proposed development.

(b) *Compliance with standards required.* Subject to the provisions of §§ 32-4-105 and 32-4-107 of this title, all development shall:

(1) Meet the standards and requirements contained in this subtitle;

(2) Conform to the policy and intent of this title.

(c) *Additional standards and requirements.* Additional standards and requirements that are not inconsistent with this subtitle may be adopted in accordance with the provisions of § 32-4-404 of this title.

(d) *Development in the Chesapeake Bay Critical Area.* Proposed development in the critical area shall also comply with the standards and requirements specified in the Code.
(1988 Code, § 26-261) (Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

§ 32-4-402. COMPATIBILITY.

(a) *"Neighborhood" defined.* In this section, "neighborhood" means the existing buildings and land uses adjacent to and extending from the proposed development to:

(1) A definable boundary such as a primary collector street or arterial street;

(2) An area with a significant change in character or land use; or

(3) A major natural feature.

(b) *Exception.* This section does not apply to a research park.

(c) *Recommendations by Director of Planning.* The Director of Planning shall make compatibility recommendations to the Hearing Officer for:

Memo Ex. No. 9

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

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

PEOPLE'S COUNSEL'S MEMORANDUM AND REQUEST FOR HEARING

People's Counsel for Baltimore County files this memorandum:

Introduction

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

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

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

6/2

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
NE/Corner East Avenue and East Avenue Relocated	*	DEPUTY ZONING COMMISSIONER
11th Election District	*	OF BALTIMORE COUNTY
6th Councilmanic District (NE/C or East Ave. & East Ave. Relocated)	*	CASE NO. 02-360-SPHA 03-360-SPHA
Auto Properties, LLC *Petitioner*	*	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

Exhibits

IN THE MATTER OF:	*	BEFORE THE
AUTO PROPERTIES, LLC -	*	COUNTY BOARD OF APPEALS
Petitioner	*	OF
NE/cor East Avenue and East	*	BALTIMORE COUNTY
relocated	*	Case No. 06-109-SH
and	*	
AUTO PROPERTIES, LLC -	*	Case No. 03-360-SPHA
Legal Owner/Petitioner	*	
NE/cor East Avenue	*	June 21, 2006

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., June 21, 2006.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	*	BEFORE THE
AUTO PROPERTIES, LLC -	*	COUNTY BOARD OF APPEALS
Petitioner	*	OF
NE/cor East Avenue and East	*	BALTIMORE COUNTY
Avenue relocated	*	Case No. 06-109-SH
and	*	
AUTO PROPERTIES, LLC -	*	Case No. 03-360-SPHA
Legal Owner/Petitioner	*	
NE/cor East Avenue	*	November 2, 2006

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., November 2, 2006.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN THE MATTER OF:	*	BEFORE THE
AUTO PROPERTIES, LLC -	*	COUNTY BOARD OF APPEALS
Petitioner	*	OF
NE/cor East Avenue and East	*	BALTIMORE COUNTY
Avenue relocated	*	Case No. 06-109-SPH
and	*	
AUTO PROPERTIES, LLC -	*	Case No. 03-360-SPHA
Legal Owner/Petitioner	*	
NE/cor East Avenue	*	November 14, 2006

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., November 14, 2006.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE NE/S Reisterstown Road, corner NW/S Kenmar Avenue 3rd Election District 2nd Councilmanic District (9701 Reisterstown Road)	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 03-406-SPHA
Investment Properties, LLC *Petitioners*	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, Investment Properties, LLC. The special hearing request is to permit business parking in a residential zone, including the storage of new unlicensed passenger vehicles and to permit stored vehicles to not have direct access to a drive aisle. In addition, variance relief is requested to allow a parking area with an RTA buffer and setback of 20 ft. in lieu of the required 50 ft. buffer and 75 ft. set back and to allow a new vehicle dealership freestanding sign with a face area of 64 ft. in lieu of the permitted 50 ft.

Appearing at the hearing on behalf of the special hearing and variance requests were Ed and Ina Dreiband, appearing on behalf of the owner of the property, Brian Ditto, Thomas J. Hoff, the landscape architect who prepared the site plan of the property, and Anthony J. DiPaula, attorney at law, representing the Petitioner. Appearing as interested citizens in the matter were nearby property owners, John Folkerts, Ned Worthington and John Hurnady. Jack Dillon appeared on behalf of the Valleys Planning Council.

Testimony and evidence indicated that the property, which is the subject of this special hearing and variance request, consists of 3.98 acres, more or less, split-zoned BM and D.R.3.5. The subject property is located at 9701 Reisterstown Road in Owings Mills. The property is proposed to be developed by Northwest Honda as a new and used retail sales service and parts

6/2/03

PETITIONER'S EXHIBIT 1

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

#68-177R

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

I, or we, Harford Warehouse Corp. legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R. A. and B. 6 zone to an B. R. and B. M. zone; for the following reasons:

MAP 4-C NORTH EASTER DREL BR BM

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

(2) Change in conditions.

PETITIONER'S EXHIBIT 2

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Used Motor Vehicle Sales

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

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

ORDER RECEIVED FOR FILING
DATE 3/1/68 - Advertising Exp
BY

HARFORD WAREHOUSE CORPORATION

Contract purchaser — Legal Owner

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

Petitioner's Attorney — Protestant's Attorney

Richard C. Murray
Address 22 W. Pennsylvania Avenue
Towson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 2nd day of January, 1968, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 6th day of February, 1968 at 2:00 o'clock P. M.

JAN 2 '68 AM

Zoning Commissioner of Baltimore County.

(over)

#3807
2 M.

2. Districts are as follows:

A.S. District	Automotive Services[1]
C.R. District	Commercial, Rural
C.C.C. District	Commercial, Community Core
C.T. District	Commercial, Town-Center Core
I.M. District	Industrial, Major

C. No zone shall be superimposed upon any other zone, but a district may be superimposed upon another district.

100.2 The official Zoning Map of Baltimore County, hereby adopted as part of these regulations, is the existing map in the office of the Zoning Commissioner of Baltimore County on which are designated the zones and zone boundaries adopted on January 2, 1945,[2] together with all amendments thereto and the changes in zone designations set forth in Section 100.3 herein.

100.3 The zones as created in Section 100.1 change the present zone designations as follows:

A or B Residence to R.6 Zone

C Residence to R.A. Zone

D Residence to R.G. Zone

E Commercial to B.L. Zone

F Light Industrial to M.L. Zone

G Heavy Industrial to M.H. Zone

100.3A The residential zones and zoning classifications as previously changed in Section 100.3 are further changed; the R.40, R.20, R.10, R.6, R.G. and R.A. Zones and zoning classifications established before the effective date of this section by the official Zoning Map and amendments thereto and by Section 100.1 as previously enacted are also changed; and all of them are redesignated on the effective date of this subsection[3] as set forth below. Any requirement, stipulation or designation with respect to said classifications in any law, ordinance, regulation, private agreement or official Zoning Map shall be applied to or construed as the corresponding D.R. zoning classification,

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1 Editor's Note: The former C.N.S., C.S.A., C.S.-1 and C.S.-2 Districts were consolidated into the A.S. District by Bill No. 172-1993, effective 1-27-1994. See Section 259.2.B.

2 Editor's Note: A copy of the 1945 Zoning Regulations is included in Appendix K of this edition.

3 Editor's Note: Regarding the effective date of this subsection, it was added by Bill No. 100-1970, which states (Section 20) that "any amendments herein...shall be effective only upon the adoption by the County Council of any new Zoning Maps on or before March 31, 1971." The subsequent Zoning Maps were passed by the County Council on March 24, 1971. However, the bill also states (Section 21) that "this act shall take effect forty-five days after its enactment." The bill was enacted on August 5, 1970, and the forty-fifth day thereafter was September 19, 1970.

PETITIONER'S EXHIBIT 3

IN RE: **PETITION FOR SPECIAL HEARING** NE/Corner East Avenue and East Avenue Relocated **(0.8781-Acre Parcel)** 11th Election District 6th Council District Auto Properties, LLC Petitioners	* * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-109-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by Steven B. Fader, Managing Member of Auto Properties, LLC, t/a Mile One-Heritage, property owner, through their attorney, Arnold Jablon, Esquire. The Petitioners request a special hearing to confirm that the use permit for off-street parking on the subject property located in a residential zone, which was granted in Case No. 68-177RX on March 14, 1968, is valid and that the subject property may be utilized, pursuant to the use permit. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence and marked as Petitioner's Exhibit 1, and the site plan submitted in prior zoning Case No. 03-360-SPHA and marked as Petitioner's Exhibit 2.

Appearing at the requisite public hearing in support of the request were Dennis Turnbaugh, Dealership Manager and a representative of Mile-One-Heritage, property owners; Thomas Church, the Professional Engineer who prepared the site plan(s) for this property, and Arnold Jablon, Esquire, attorney for the Petitioners. The use proposed was contested. The opponents are generally adjacent property owners and residents of the neighborhood and include Jackie Megee, Anthony O. Marchanti, and John and Alice Baker. A letter was also received from Michael and Debra Malinowski requesting a denial of the Petition. In addition, Meg O'Hare and Ruth Baisden appeared on behalf of the Carney Improvement Association and Greater Parkville Community Council in opposition to the proposal. Additionally, Peter Max Zimmerman, Esquire,

PETITIONER'S EXHIBIT 4

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

* * * * * * * * * * *

OPINION

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

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

Background

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

PETITIONER'S EXHIBIT 5

restriction, a restrictive covenant or a binding contractual agreement, including a lease. Any plans approved are conditioned upon and subject to periodic review by the Director to ensure that adequate parking arrangements continue to exist. **[Bill No. 144-1997]**

409.8 Design standards.

A. Requirements for parking facilities in all zones. All off-street parking facilities shall be subject to the following requirements:

1. Design, screening and landscaping. Design, screening and landscaping shall be provided in accordance with the Landscape Manual and all other manuals adopted pursuant to § 32-4-404 of the Baltimore County Code. **[Bill No. 137-2004]**

2. Surface. A durable and dustless surface shall be provided and shall be properly drained so as not to create any undesirable conditions.

3. Lighting. Any fixture used to illuminate any parking facility shall be so arranged as to reflect the light away from residential lots and public streets. Light standards shall be protected from vehicular traffic by curbing or landscaping.

4. Distance to street line. No parking space in a surface parking facility for a nonresidential use shall be closer than 10 feet to the right-of-way line of a public street, excluding vehicle overhang, except that in the C.T. District of Towson such setback is not required if the parking facility is screened from the street in accordance with the Landscape Manual.

5. Dead ends. All dead-end aisles shall be designed to provide sufficient backup area for the end parking spaces.

6. All parking spaces must be striped. Striping shall be maintained so as to remain visible.

B. Business or industrial parking in residential zones.

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

a. On the property in question, notice of the application for the use permit shall be conspicuously posted for a period of 15 days following the filing of the application.

b. Within the fifteen-day posting period, any interested person may file a formal request for a public hearing with the Zoning Commissioner in accordance with Section 500.7.

c. If a formal request for a public hearing is not filed, the Zoning Commissioner, without a public hearing, may grant a use permit for parking in a residential zone if the proposed use meets all the requirements of Section 409.8.B.2. The use permit may be issued with

PETITIONER'S EXHIBIT 6

501.6 Appeals from the Zoning Commissioner shall be heard by the board of zoning appeals de novo. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence.

501.7 The decision and order of the board of zoning appeals may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner, or may modify the order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to zoning regulations and restrictions.

501.8 The charges and fees for procedures before the Zoning Commissioner to be paid by petitioner and before the board of appeals by the appellant or petitioner, shall be as follows. **[Bill Nos. 64-1960; 57-1982; 36-1984]**

A. Cost of procedure before Zoning Commissioner,.

(1) Petition for special exception: $100.

(2) Petition for special hearing pertaining to a one-family residence: $35.

(3) Petition for variance pertaining to a one-family residence: $35.

(4) All other petitions for variance or special hearing: $100.

(5) Maximum charge for petitions filed together: $250.

B. Cost of proceedings before the County Board of Appeals.

(1) Appeals from granting or refusing to grant a special exception: $100.

(2) Petition for reclassification: $100.

(3) All other hearings or appeals: $75.

C. The fees established herein may be changed by the County Administrative Officer from time to time and shall be in addition to advertising and posting expenses as established by the County Administrative Officer. In addition, the County Administrative Officer shall waive any or all of the fees or expenses established herein for the filing of a petition for special exception or variance when such petition is filed by a Baltimore County volunteer fire, ambulance or rescue company.

Section 502
Special Exceptions
[BCZR 1955]

(See Section 270, Schedule of Special Exceptions.)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential,

PETITIONER'S EXHIBIT 7

Sec. 409.4

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO S. Eric DiNenna, Zoning Commissioner — Date March 7, 1978

FROM Office of Law

SUBJECT Opinion - Applicability of Interim Development Control Act (Bill No. 12-77) to Issuance of "Use Permits" for off-street parking in residential zones as regulated by Section 409.4 of the Baltimore County Zoning Regulations

This office previously declined to render an opinion in response to your request due to the pendency of the administrative review in Case No. 77-255-SH which case prompted the request. We have again received a request from you dated January 25, 1978 to respond to your request for an opinion in that the resolution of this issue is necessary to properly address other such applications for use permits.

The Interim Development Control Act which took effect on April 16, 1977 provides in its title that the provisions of the Act amending Title 22 of the County Code are intended to regulate building permits, special permits authorized by Section 430.1B3 referred to in the Act as special permits, special exceptions, etc. Your inquiry in essence asks whether "Use Permits" authorized by Section 409.4 are either special permits or special exceptions subject to the requirements of the I. D. C. A.

The language of the I. D. C. A. unmistakably specifies the Special Permit to be regulated for the interim period. Special Permits subjected to the requirements of the Act are limited to those permits authorized under 430.1B3 of the regulations which regulate unit developments and do not encompass use permits covered by Section 409.4.

You are familiar with the decision of the Court of Special Appeals in the case of John Hoffmeister, et al v. The Frank Realty Company, 35 Md. App. 691 (1977) wherein the Court was asked to rule upon the authority of the Zoning Commissioner to grant "Use Permits" for off-street parking in residential zones. Judge Moylan on behalf of the Court very carefully reviewed the legislative history supporting the Zoning Commissioner's authority to issue such permits and concluded that while the delegation, under the language of current legislation is not specific, the delegation is unmistakable as a part of the authority delegated to the Zoning Commissioner to grant special exceptions. The Court in deciding that the Zoning Commissioner has the authority to issue "use permits", likewise, carefully describes, most pointedly, the distinction between "special exceptions" authorized by Article 5 of the regulations and the "use permit" for parking authorized by Section 409.4.

PETITIONER'S EXHIBIT 8

BALTIMORE COUNTY

ZONING REGULATIONS

Adopted

March 30, 1955

in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County, (1955 Edition), with subsequent amendments through December, 1963.

First edition 1955

Second edition 1964

PETITIONER'S EXHIBIT 10

500.10 Any person or persons, jointly or severally, or any taxpayer or any official, department, board or bureau of Baltimore County feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals. Notice of such appeal shall be filed, in writing, with the Zoning Commissioner within ten days from the date of any final order appealed from. Such appeals shall be heard and disposed of by the County Board of Appeals as hereinafter provided.[12]

500.11 Upon such appeal, the Zoning Commissioner shall present to the County Board of Appeals all pertinent papers in connection therewith.[13] Notice of such appeal, and the date of hearing or continuance thereof, shall be given to the attorneys for the respective parties, if any, or to such person, or persons, as may be designated at the original hearing to receive such notice.

500.12 If a zoning reclassification or special exception petition has been denied, the Zoning Commissioner may not accept for filing any other zoning reclassification or special exception petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or Deputy Zoning Commissioner, by the Board of Appeals, or by a court of competent jurisdiction considering the petition on appeal. **[Bill Nos. 144-1959; 25-1978]**

500.13 He shall keep accurate records of all proceedings pending before him and before the County Board of Appeals, and such records shall be open to public inspection in his office. He shall keep an accurate account of all money received by the zoning department[14] and shall turn the same over to the Chief Clerk and Auditor of the County Commissioners.[15]

500.14 Within the Chesapeake Bay Critical Area. **[Bill Nos. 32-1988; 9-1996]**

No decision may be rendered by the Zoning Commissioner on any petition for special exception, variance or special hearing unless the Zoning Commissioner has received from the Director of the Department of Environmental Protection and Resource Management, or his designated representative, written recommendations describing how the proposed request would:

A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;

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12 **Editor's Note: See also Section 26-132 of the Baltimore County Code, 1988 Edition, as revised, as found in Appendix D of this volume, and Section 26-117 of the Baltimore County Code with respect to conflicts between these Zoning Regulations and Title 26 of the Code.**

13 **Editor's Note: See also Appendix D, Excerpts from Title 26 of the Baltimore County Code.**

14 **Editor's Note: The Zoning Department (of the Department of Public Works), as such, ceased to exist on January 29, 1957, when Articles I – X of the Baltimore County Charter became operative. Under Section 524 of the Charter and Section 26-3 of the Baltimore County Code, 1988 Edition, as revised, responsibility for "administering the zoning code" lies with the Department of Permits and Development Management.**

15 **Editor's Note: Under Section 1107 of the Baltimore County Charter, the County Council and County Executive have succeeded "to all powers heretofore vested in the county commissioners by the constitution and laws of this state."**

PETITIONER'S EXHIBIT 9

RATHKOPF'S

The Law of Zoning and Planning

by Arden H. Rathkopf
and Daren A. Rathkopf

Edward H. Ziegler, Jr.,
Principal Author for Revision,
Professor of Law, University of Denver

Contributing Authors

Jonathan M. Davidson
Alexandra D. Dawson
Joseph F. DiMento
Christopher J. Duerksen
James Geoffrey Durham
Robert L. Glicksman
Gail Gudder
R. Jeffrey Lyman
Edith M. Netter
A. Dan Tarlock
Alan C. Weinstein
James H. Wickersham
Kenneth H. Young

Volume 3

THOMSON
WEST

PETITIONER'S EXHIBIT 11

B. Notwithstanding the provisions of Section 409.5.A., for any nonresidential development, all parking spaces provided which exceed the requirements of Section 409.6 may be small car spaces at the discretion of the developer.

409.6 Required number of parking spaces.

A. General requirements. The standards set forth below shall apply in all zones unless otherwise noted. Where the required number of off-street parking spaces is not set forth for a particular type of use, the Director of the Department of Permits and Development Management shall determine the basis of the number of spaces to be provided. When the number of spaces calculated in accordance

(Cont'd on page 4-31)

PETITIONER'S EXHIBIT 12

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

The following uses only are permitted (Section 233.3):

233.1. Uses permitted in B.L. Zone.

233.2[5] Animal boarding place, Class A **[Bill No. 85-1967[6]]**[7]
Boatyard **[Bill Nos. 64-1963; 85-1967]**
Bowling alleys
Carpentry, electrical, plumbing, heating, sheet metal, electroplating and painting shops
Catering hall **[Bill No. 110-1993]**
Clothes cleaning and dyeing where not more than two units with combined capacity of not more than 50 pounds are employed
Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area and boat rental **[Bill Nos. 64-1963; 85-1967]**
Commercial recreation enterprises, including dance halls, skating rinks and others which, in the judgment of the Zoning Commissioner, are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades
Community building, swimming pool or other structural or land use devoted to civic, social, recreational and educational activities **[Bill Nos. 64-1963; 85-1967; 26-1988]**
Funeral establishment **[Bill No. 43-1970]**
Garage, service
Golf course, country club or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line **[Bill Nos. 64-1963; 85-1967]**
Hotel
Machinery sales store
Marina **[Bill Nos. 64-1963; 85-1967]**
New automobile sales facility and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operation on the highways may not be stored outdoors. **[Bill No. 71-2001]**
Nightclub[8]

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

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

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

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

PETITIONER'S EXHIBIT 13

7

EAST Ave looking West June 30, 2005

CBA App. Exh. 136

6 EAST Ave looking EAST 6-30-05

CBA App. Exh. 13F

5 East Ave looking east 6-30-05

CBA App. Exh. 13E

4 Hse next to lot on East Ave 2-30-05

App Exh. 13D

3 East Ave @ 90° Turn 6·30·05

App. Exh. BC

1 View of Lake 6-30-08

PBA App. 13A

2 EAST Ave 6-30-05

App Exh 13B

8 View of lot looking S/E along East Ave 6-30-05

App.
CBA Exh 15A

9 N outside edge of Lot 6-30-06

CBA App. Exh 15B

10 View looking N/E from East Ave 6-30-05

CBA Exh. 15C

" View looking N/W from East Ave 6-30-05

CBA App. Exh. 15B

13 View South from Carney Rd 6-30-06

CBA App. Exh. 15F

Case No.: 06-109 SPH

Exhibit Sheet

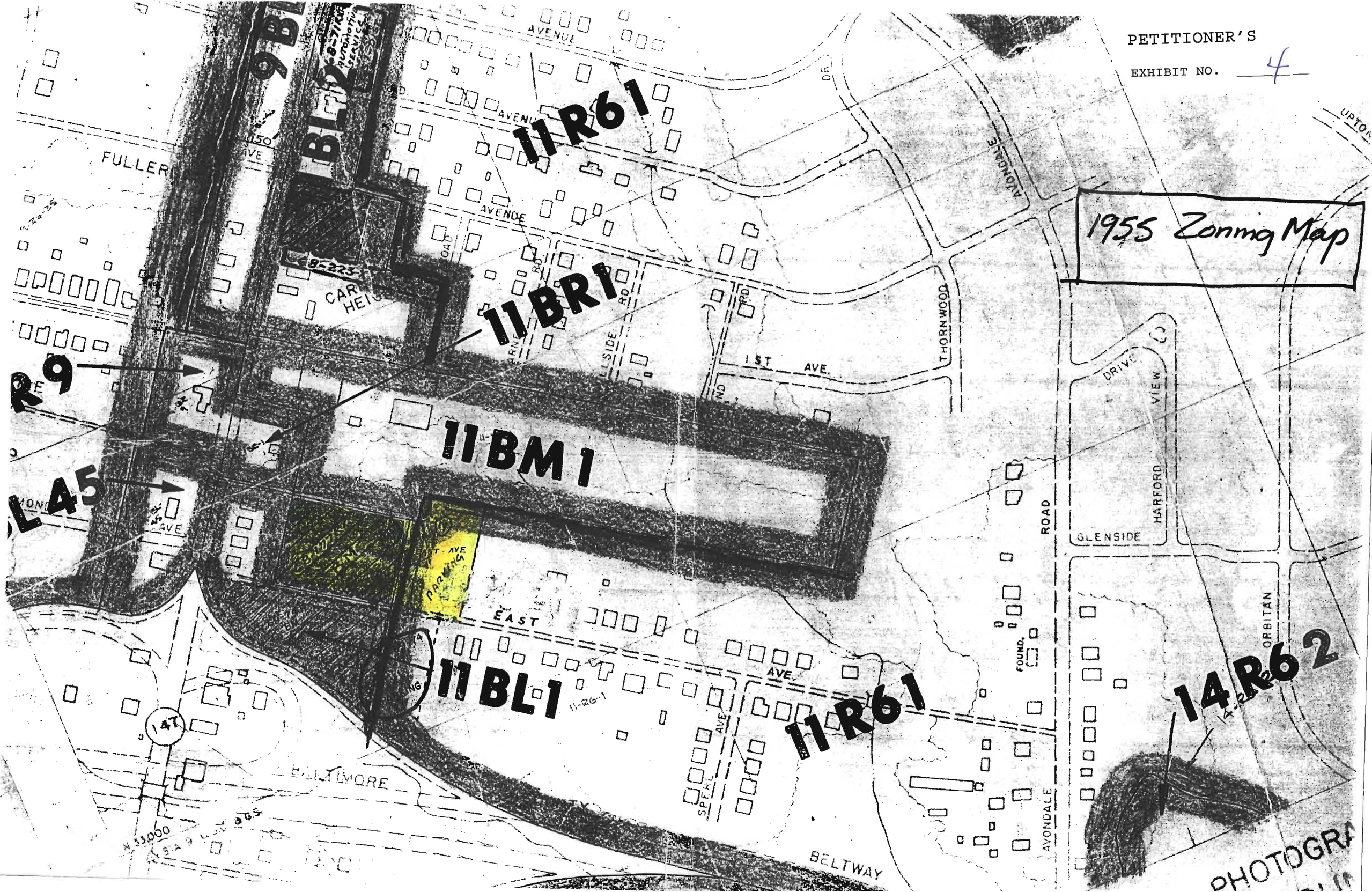
	Petitioner/Developer	Protestant
No. 1	SITE PLAN - Prepared for subject hearing in "BLANK" resembling a Location Plat	Carney Improvement Assoc. Authorization of Representation M. O'HARE
No. 2	SITE Plan - Prepared following the ORDER case NO. 03-360 SPHA OUTLINING CONDITIONS OF THAT ORDER	Greater Parkville Community Council Resolution IN OPPOSITION Ruth Baisden, President
No. 3	PHOTOGRAPH CORNER OF EAST AVE & EAST AVE. RELOCATED	Photographic views of area in Question
No. 4	1955 ZONING MAP - NOTE WORD "PARKING" written on subject Property by unknown.	Marchanti - Photo illustration of Continued Violations despite Conditions Contained in 03-360 SPHA
No. 5	1968 - 68-177RX PETITION/ORDER/SITE PLAN	PHOTO'S OF JACKIE MEGEE resident in neighborhood for 46 years (SINCE 1959)
No. 6	Regulations - 409.4 (Relevant) 409.8 Density Residential Zone TO EASE COMPARISON OF LAW	
No. 7	Affidavits - from 1970 re Parking use	
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

PETITIONER'S

EXHIBIT NO. 3

PETITIONER'S

EXHIBIT NO. 4



PETITIONER'S

EXHIBIT NO. 5

PETITION FOR ZONING RE-CL
AND/OR SPECIAL EXCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Harford Warehouse Corporation, legal owner 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 (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R.A. and R.O. zone to an B.R. and B.M. zone, for the following reasons:

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

(2) Change in conditions.

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Automobile Sales

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

HARFORD WAREHOUSE CORPORATION

Contract purchaser — Legal Owner

Address — Address P. O. Box 8615, Baltimore 21234

Petitioner's Attorney — Protestant's Attorney

Richard C. Murray

Address 22 W. Pennsylvania Avenue
Towson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 26th day of January, 196 8, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building, in Towson, Baltimore County, on the 5th day of February, 196 8, at 10:00 o'clock

Zoning Commissioner of Baltimore County

68-177-RX

PETITIONER'S

EXHIBIT NO. 6

d. In D.R.10.5 and D.R.16 Zones: group houses and multifamily buildings. **[Bill No. 85-1997]**[1]

2. Trailers (Section 415).

3. Churches, other buildings for religious worship or other religious institutions.

4. Aboveground electrical-power, telephone, telegraph lines, except aboveground electrical power lines having a capacity of 35 kilovolts or more; pole-mounted transformers or transformer banks.

5. Other cables; conduits; gas, water or sewer mains; or storm-drain systems, all underground.

6. Excavations, uncontrolled (as defined in Section 101).

7. Farms, produce stand in association with a farm, or limited-acreage wholesale flower farms (see Section 404). **[Bill No. 41-1992]**

8. Garages, community.

9. Hospitals. **[Bill No. 37-1988]**

10. Local open space tracts or other common amenity open space.

11. Privately sponsored day care and nursery programs, as an ancillary use, within housing for the elderly projects,as defined in Section 101 of these regulations. **[Bill No. 47-1982]**

12. Class A group child care centers and Class B group child care centers providing for up to 40 children, if not located in a residential transition area, subject to the requirements of Section 424, and family child care homes, group child care centers and nursery schools. **[Bill No. 200-1990]**

13. Research institutes or laboratories in existence at the time of the adoption of Bill No. 122-1984, subject to the zoning regulations in effect at the time of the approval by Baltimore County of the institute or laboratory. **[Bill No. 122-1984]**

14. Schools, except business or trade schools or such schools as are permitted by special exception (Subsection C, below), but including schools for agricultural training. **[Bill Nos. 63-1980; 47-1982; 47-1985]**

15. Signs, nonaccessory, to the extent permitted under Section 413.

16. Antennas used by CATV systems operated by companies franchised under Article 25 of the Baltimore County Code, if situated on property owned by the county, state or federal government or by a governmental agency. **[Bill Nos. 220-1981; 137-2004]**

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[1] **Editor's Note: Former Section 1B01.1.A.1.e which followed, regarding elderly housing and assisted-living facilities, was repealed by Bill No. 19-2004.**

Section 409—OFFSTREET PARKING AND LOADING
(see Section 409.5)

409.1—Parking and Loading Spaces—There shall be provided, at the time of application for a building permit for the erection or enlargement of any building for which offstreet parking and/or loading space is hereinafter required, other than a dwelling, a plan showing such parking and loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings.

409.2—Parking space—Each offstreet parking space shall be not less than 8½ feet wide by 18 feet long, and there shall be not less than 300 square feet per space in the case of lot or garage parking where there is no attendant, and not less than 250 square feet where there is an attendant, such square foot figures to include access aisles. It is the intent of these regulations that adequate offstreet parking spaces be provided for all buildings, and that the requirements hereinafter set forth are and shall be taken as absolute minimums, to be exceeded wherever feasible.

a. Parking space for dwellings, including apartment houses—In all Zones, except as hereinafter modified, there shall be provided at least one garage or accessible and useable offstreet parking space for each dwelling unit. In all zones, in the case of a lodging, rooming or boarding house, fraternity or sorority house or dormitory, there shall be one offstreet parking space for each 5 guests or members residing on the premises, but not less than 2 parking spaces in any case. In the case of a hotel or apartment hotel, there shall be one such parking space for each guest room or suite. In the case of a motel, there shall be at least one parking space for each rental unit. Parking space as required above shall be provided on the same lot with the building which it serves or within 300 feet thereof (see Section 217.6).

PETITIONER'S

EXHIBIT NO. 6

AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury as follows: That the information herein given is within the personal knowledge of the Affiant and the Affiant is competent to testify thereto.

Stephen Tracey Stephen Tracy
Affiant (handwritten signature)

Stephen Tracy
Affiant (printed name)

1811 Parkwood DR
address (printed) Forest hill MD 21050

410-557-8554
telephone number

4/28/1959
Date of Birth:

BASED UPON YOUR PERSONAL KNOWLEDGE, PLEASE ANSWER THE FOLLOWING:

1. I verify by this affidavit and/or testify in court, if necessary, that I have personal knowledge about the property located at the corner of East Ave and East Ave Extended, which is situated near the intersection of Harford Road and I-695 in Carney. I can attest that this property had been utilized by Dough Griffith Chrysler/Plymouth Dealership for the storage and parking of vehicle inventory from at the very least the mid 1970's. The period of time that I can verify the use of this property is early 1970's to present.

2. I further verify and testify, if necessary, that the Doug Griffith dealership would store and park vehicles on this property until such time as they were taken over to the dealership location where they would be offered for sale to the general public.

3. I gained this personal information as a result of my growing up in the area. I grew up in a house directly opposite the other end of East Ave. I remember Griffith having Chryslers and Plymouths parked on the lot in the early 1970's. I was about 12 or 13 at the time but I have a clear memory of the storage of vehicles on this property.

STATE OF MARYLAND:

I HEREBY CERTIFY this 11 day of Feb, 2005, before me, a Notary public of the State of Maryland, in and for Baltimore City/County, personally appeared James Abbott, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the maters and facts herein above set forth are true and correct to the best of his/her knowledge and belief.

As witness my hand and Notarial Seal.

Cyrus [illegible] 4-16-06
Notary Public

My commission expires.

PETITIONER'S

EXHIBIT NO. 7

Case No.: 06-109 SPH

Exhibit Sheet

	Petitioner/Developer	Protestant
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No. 11		
No. 12		

THE CARNEY IMPROVEMENT ASSOCIATION

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently the duly elected President of the Carney Improvement Association.

ATTEST:

Meg O'Hare

Meg O'Hare
Carney Improvement Association

Marilyn K. Ryan
Recording Secretary

John P. Ryan
Treasurer

John M. Beeney
Sargeant-at-Arms

August 4, 2004

PROTESTANT'S
EXHIBIT NO. 1

GREATER PARKVILLE COMMUNITY COUNCIL

Resolution

It is Resolved: on this date of January 6, 2005, by a unanimous vote of Greater Parkville Community Council (GPCC) Board of Directors to oppose Heritage Honda's petition for special exception to permit parking on residential property along East Avenue and any variances from Baltimore County Zoning Regulations.

It has been found that the granting of this petition will ultimately cause an adverse effect and detrimental impact on surrounding residential neighborhood due to: the size of the property, its location to residential homes along East Avenue, potential impacts caused by the use of the property, and requested relief from the zoning policies, laws, and regulations that protect residential property values within a Baltimore County designated Community Conservation Area.

This property is the gateway into a residential neighborhood and is currently acting as a visual buffer between residential homes and the adjacent BM zoning, which current land-use is an auto dealership. It has been also been found that BM zoning is incompatible with residential zoning due to the potential impacts received from the permitted uses under the BM zoning.

Therefore, GPCC recommends that the petitioned property be preserved as an open space buffer area in order to be consistent with the spirit and intent of Baltimore County Zoning Regulations, County policies on Community Conservation as identified in Master Plan 2010 and GPCC Zoning Findings and Recommended Land-use Policies for the Parkville, Carney, and Cub Hill area.

In addition, the preservation of the open space buffer area will help Baltimore County meet States regulations of preserving open space. Currently the Greater Parkville area is deficit 350 acres of open space with very little opportunity to proved open space and parks in this built-out area.

As witness this day of January 6, 2005

ASSET:

Bob Carpenter, Secretary

Greater Parkville Community Council

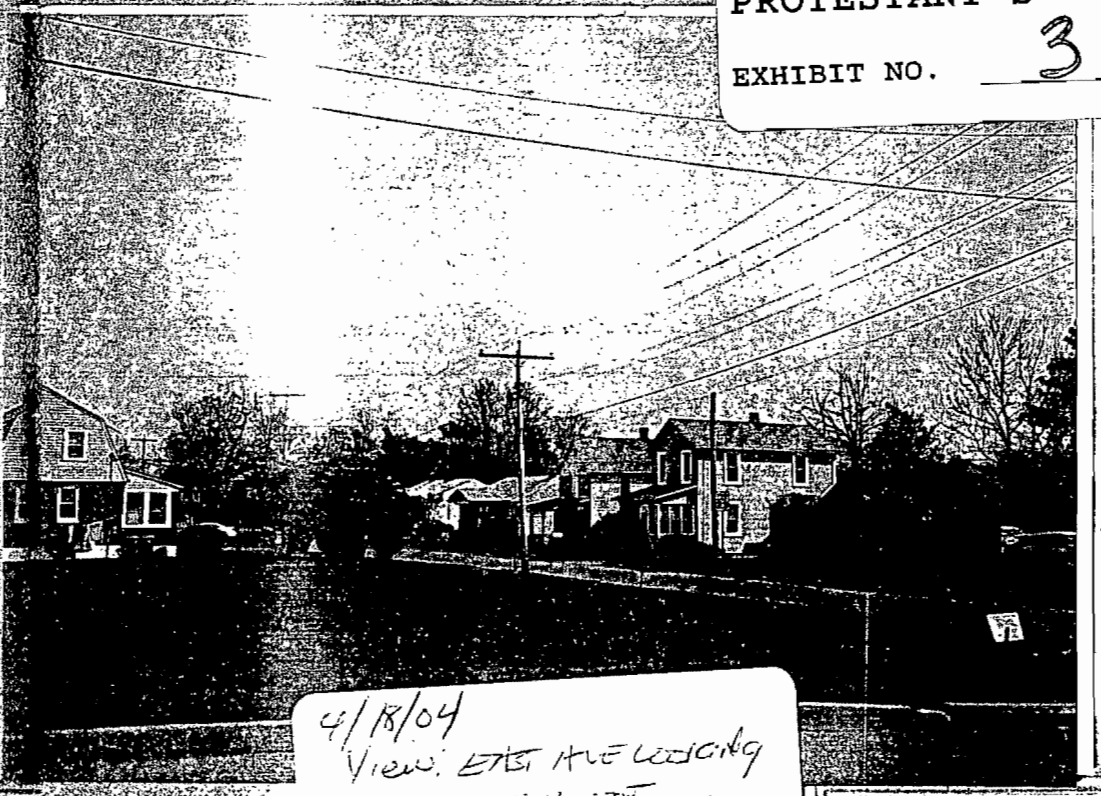
Ruth Baisden, President

PROTESTANT'S

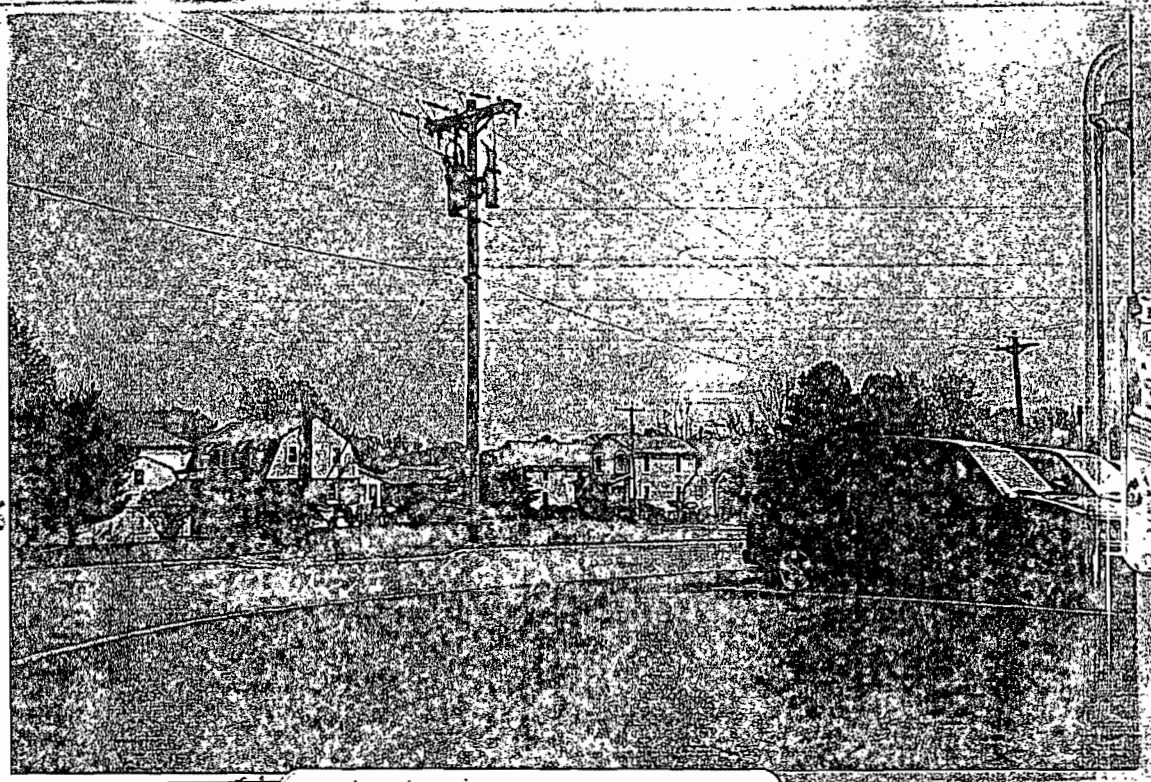
EXHIBIT NO. 2

4/18/04
VIEW: EAST AVE LOOKING
NORTH EAST AT SUBJECT
PROPERTY. (open area)

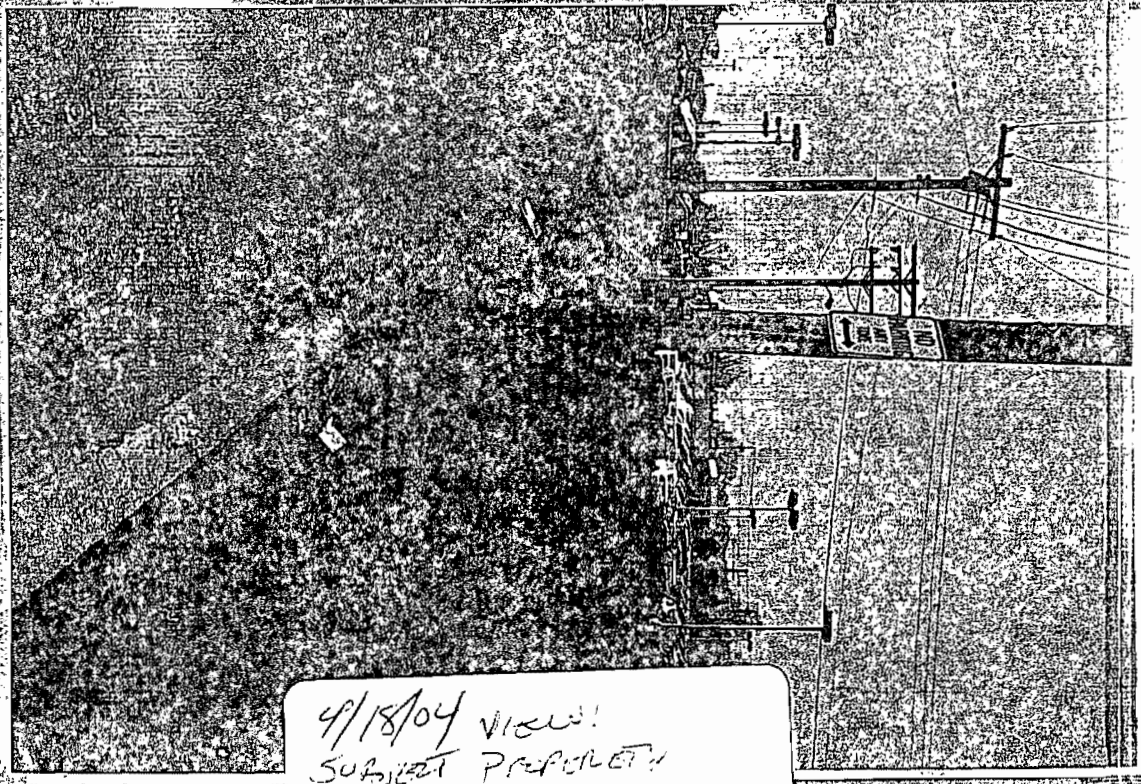
PROTESTANT'S
EXHIBIT NO. 3



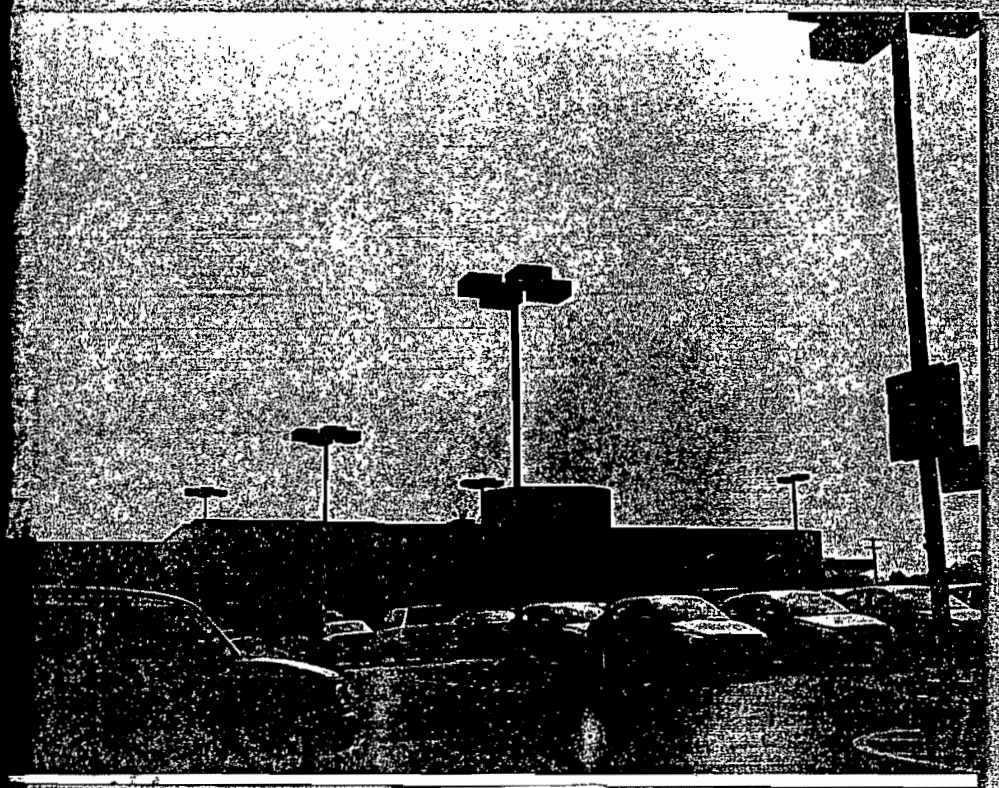
4/18/04
VIEW. EAST AVE LOOKING
EAST AT SUBJECT
PROPERTY (open space)



4/18/04
VIEW, HONDA DEALERSHIP
EAST ALE AND SUBJECT
PROPERTY

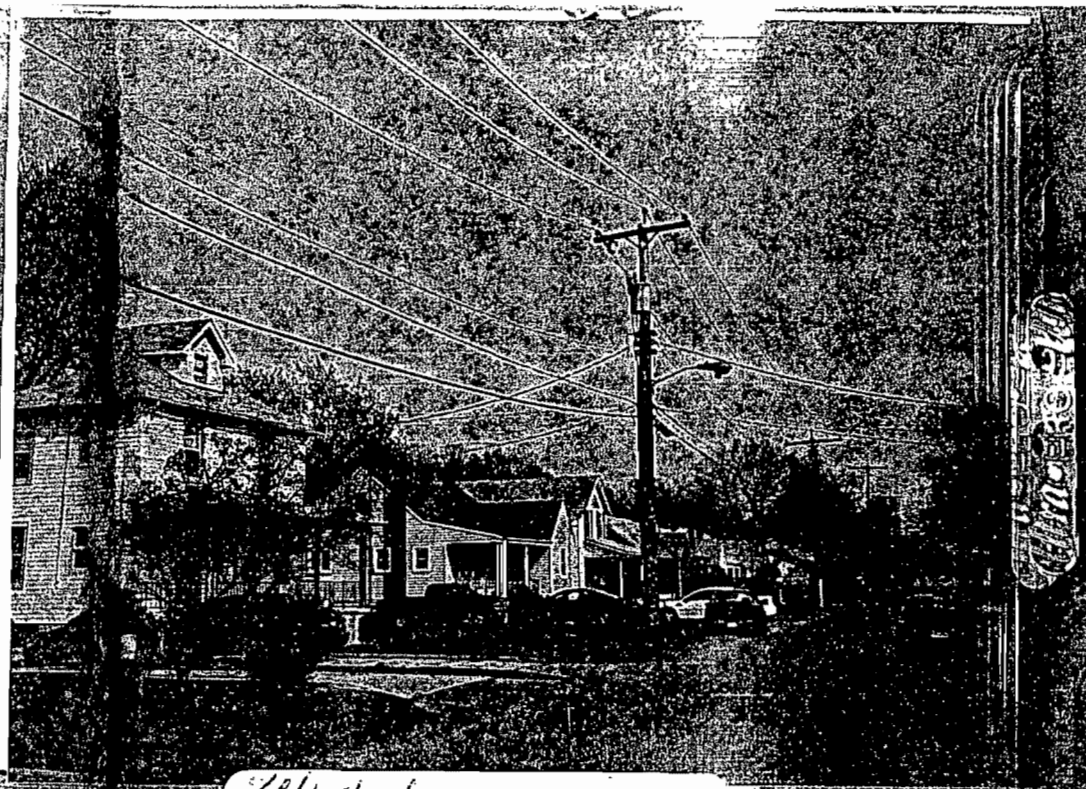


4/18/04 VIEW!
SUBJECT PROPERTY
@ EAST ALE

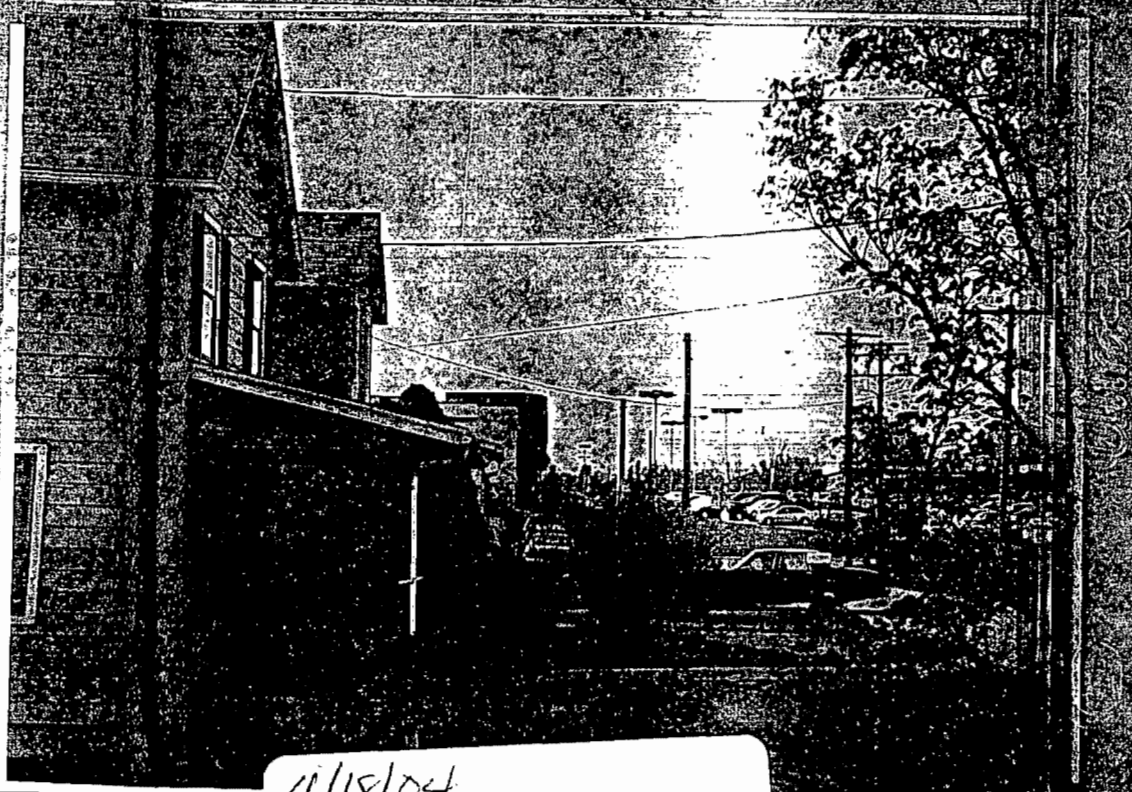


4/18/04 View
EAST ALE looking South
AT HONDA DEALER

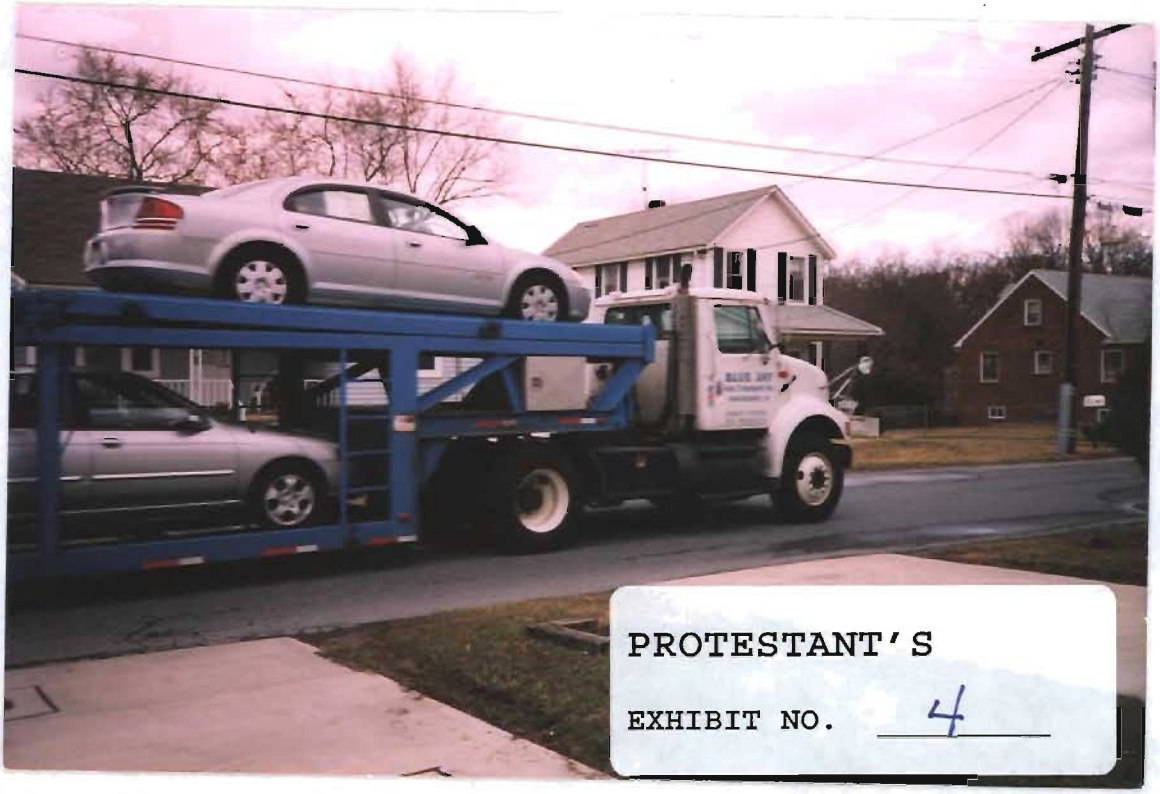
4/18/04 View
EAST ALE looking



4/18/04
EAST AVE LOOKING
EAST TOWARDS RESIDENTIAL
COMMUNITY.



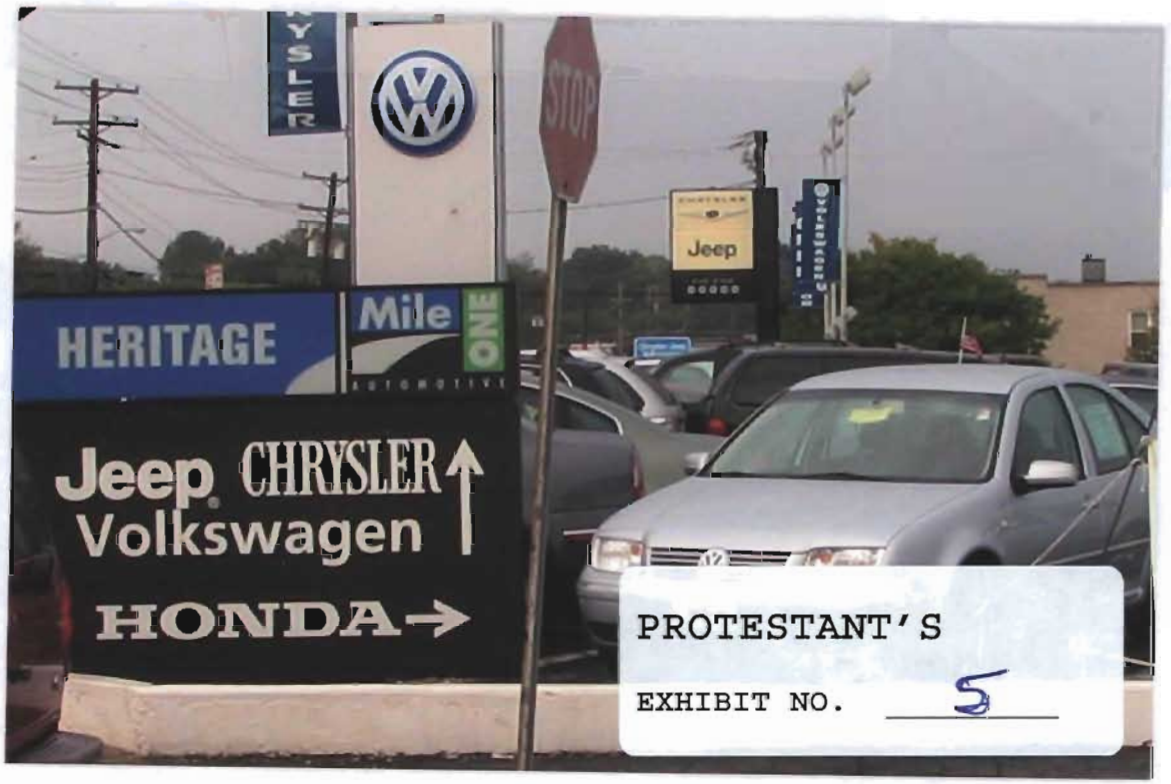
4/18/04
EAST AVE RESIDENTIAL
COMMUNITY LOOKING
WEST TOWARDS DEALERSHIP



PROTESTANT'S

EXHIBIT NO. 4

Parts & Service


STOP
HERITAGE
Mile ONE
AUTOMOTIVE
Jeep
Jeep CHRYSLER
Volkswagen
HONDA→
PROTESTANT'S
EXHIBIT NO. 5

AVPROPERTIES, LLC

06-109SPH
03-360-SPHA

Petitioner

#1 Site Plan dated 1-21-05

#2 ~~Area Site Plan~~ Aerial Photo of site & area - March 1995

#3 Zoning Map - Aerial Photo - 2002

#4 1955 Zoning Map of site area

#5 Reclassification Decision - 1968 incl. plat

#6 Photos A-K

#7 24 Jan 05 letter from M. Schaffer to Bd of Appeals

#8 SAME plus handwritten note

#9 14 Jun 06 letter from Newman to Bd. of Appeals

#10 24 Jan 05 letter from Edwards to Board of Appeals + handwritten notes

#11 A-G Affidavits of ~~Aff~~ Employees.

#12 C.V. DAVID MARTIN

#13 Russell case - 02-235-SPH not appeal

#14 Cats of App.

PET EXH 1

THEREFORE, IT IS ORDERED, this 2nd day of June, 2003, by this Deputy Zoning Commissioner, that the Special Hearing relief, to allow business parking in a residential zone, to include the storage of new unlicensed passenger vehicles, be and is hereby GRANTED, as modified by the conditions and restrictions imposed at the end of this Order.

IT IS FURTHER ORDERED, that the Variance relief, to allow a 28 ft. buffer and setback in lieu of the required 50 ft. buffer and 75 ft. setback, be and is hereby GRANTED, subject also to the following conditions and restrictions:

1. The Petitioner shall be permitted to utilize the subject property for the storage of unlicensed new car inventory. However, the Petitioner shall leave undisturbed that portion of the property situated adjacent to the intersection of East Avenue and East Avenue Relocated. That is, the first 85 ft. of the subject lot, as measured from the road right-of-way of East Avenue, shall remain in its open, natural and grassy condition. This was a suggestion made by one of the citizens in attendance and agreed to by Mr. Fader on behalf of the owner of the property. The Petitioner may but shall not be required to convey this portion of the property to the community as a small park if the community is willing to accept such a conveyance. If not, then that rectangular portion of the lot, the dimensions of which are approximately 85 ft. x 150 ft., shall remain open and meticulously maintained by Auto Properties, LLC.

2. There shall be no curb cut or access from the proposed inventory storage lot directly onto East Avenue Relocated. The Petitioner shall eliminate that driveway access from their site plan. All access to the vehicles which may be stored on this lot shall occur from the contiguous property currently owned by Auto Properties, LLC, the Petitioner herein. There shall be no new access points to East Avenue Relocated, other than those which currently exist today.

3. The Petitioner shall continue to maintain a 25 ft. buffer area as shown on their site plan adjacent to the residential property located at 3018 East Avenue. That buffer area, as well as the boundaries of this parking lot adjacent to East Avenue Relocated and East Avenue, shall be appropriately screened as within the discretion of Avery Harden, Landscape Architect for Baltimore County. In furtherance thereof, the Petitioner shall be required to submit a landscaping and lighting plan to Mr. Harden for his full review and approval. In addition, Mr. Harden shall review not only the lighting proposed for this new parking lot, but also shall review the manner in which the automobile dealership is illuminated. Mr. Harden shall pay particular attention to the effect of this lighting upon the property owned by Mildred Schaffer, whose property is located at 3017 East Avenue. The Petitioner shall be required to adjust their lighting so as to mitigate the effects that said lighting has upon the Schaffer residential property and any other residences so affected.

4. Mr. Harden shall also review the fencing and natural vegetation, and the manner in which the Petitioner's property abuts that property owned by Mildred Schaffer at 3017 East Avenue. Mr. Harden shall use his discretion and expertise in landscape buffering to make any adjustments or improvements to the manner in which Ms. Schaffer's property is screened by that which exists in the field today.

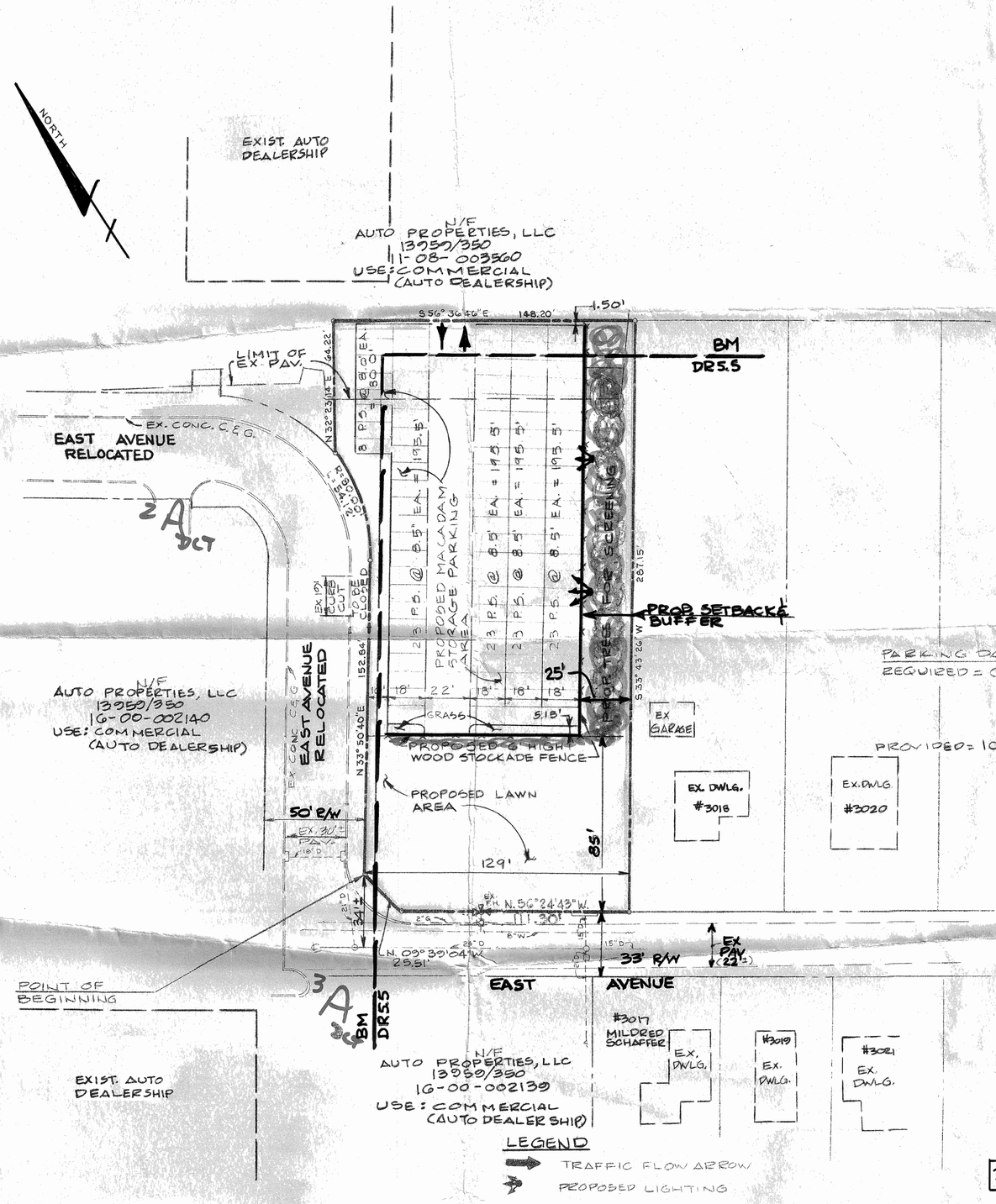
5. All trash and debris that is associated in any way with the automobile dealerships operating at this location, including the auto paint and body shop, shall be stored in appropriate trash receptacles and disposed of on a regular basis so as to prevent any trash and debris from blowing about the Petitioner's property or any adjacent properties.

6. The Petitioner shall be absolutely prohibited from loading or unloading automobiles from car carriers in the roadbed of East Avenue Relocated or East Avenue. All loading and unloading of vehicles must occur on the auto dealership property and not in the public road right-of-way.

7. The Petitioner shall be required to submit a new site plan for review by the appropriate agencies of Baltimore County indicating a redesign of the property upon which this commercial parking shall occur consistent with the terms and conditions of this Order.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.

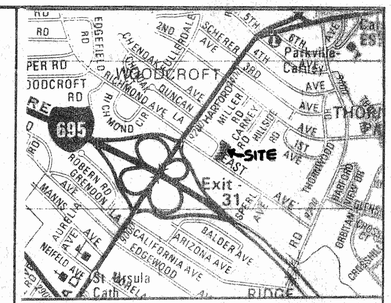
Timothy M. Kotroco
TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY



PARKING DATA
REQUIRED = 0
(NO BUILDING PLANNED FOR SITE, AND REQUIRED PARKING FOR ADJACENT BUSINESSES MET ON THE SITES OF THE BUSINESSES)
PROVIDED = 100

LEGEND
TRAFFIC FLOW ARROW
PROPOSED LIGHTING

P.S. = 92 PROPOSED



NORTH
VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT #: 11
COUNCILMANIC DISTRICT #: 6
1" = 200' SCALE MAP #: NE 9-E
ZONING: BM, DR5.5
LOT SIZE: 38,250 SF = 0.878 AC

	PUBLIC	PRIVATE
SEWER:	X	
WATER:	X	

	YES	NO
CHESAPEAKE BAY CRITICAL AREA		X

PRIOR ZONING HEARINGS: NONE
PREVIOUS COMMERCIAL PERMIT: NONE

ZONING OFFICE USE ONLY

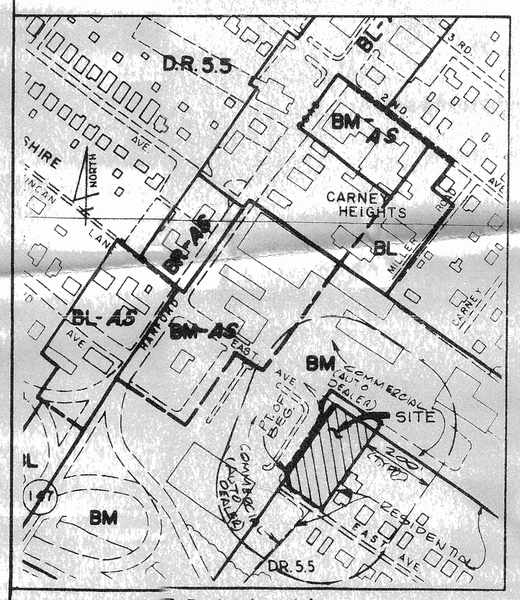
REVIEWED BY	ITEM #	CASE #

PROPERTY/OWNER INFORMATION

TAX ACCOUNT NO.: 11-08-003563
OWNER: AUTO PROPERTIES LLC
23 WALKER AVENUE
BALTIMORE, MD. 21208
DEED REF: 13950/350
PLAT REF: N/A

GENERAL NOTES:

1. EXCEPT FOR CASE NO. 03-360-SPHA, THERE ARE NO KNOWN PRIOR ZONING CASES FOR THE PROPERTY.
2. THERE ARE NO KNOWN COMMERCIAL PERMITS FOR THE PROPERTY.
3. THERE ARE NO EXISTING OR PROPOSED SIGNS.
4. THE SITE IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
5. THERE ARE NO STREAMS OR STORMWATER MANAGEMENT SYSTEMS ON OR WITHIN 50 FEET OF THE PROPERTY.
6. THERE IS NO 100 YEAR FLOODPLAIN WHICH AFFECTS THE SUBJECT SITE.



ZONING MAP
SCALE: 1" = 200'
(MAP NE9E)

SCHEME "A"

Drafting	R.V.D./J.W.G.	
Check	T.A.C.	
Design		
Check		

DATE | REVISIONS

DEVELOPMENT ENGINEERING CONSULTANTS, INC.
SITE ENGINEERS & SURVEYORS
6603 YORK ROAD BALTIMORE, MARYLAND 21212

OWNER:
AUTO PROPERTIES, LLC
23 WALKER AVENUE
BALTIMORE, MARYLAND 21208-4004

SITE PLAN
CORNER OF EAST AVE. & EAST AVE. RELOC.
ELECTION DISTRICT NO. 11 BALTIMORE COUNTY, MD

SHEET	DATE	CONTRACT NUMBER
1 OF 1	1-21-2005	00-117
	SCALE 1" = 30'	

PRT EXH 2

① .88
② .86
③ 1.30
④ .75
⑤ 1.30
5.11

Baltimore County GIS Services Unit Date of Photography: March 1995 Scale: 1 inch = 200 feet

Baltimore County Tile: 071b3

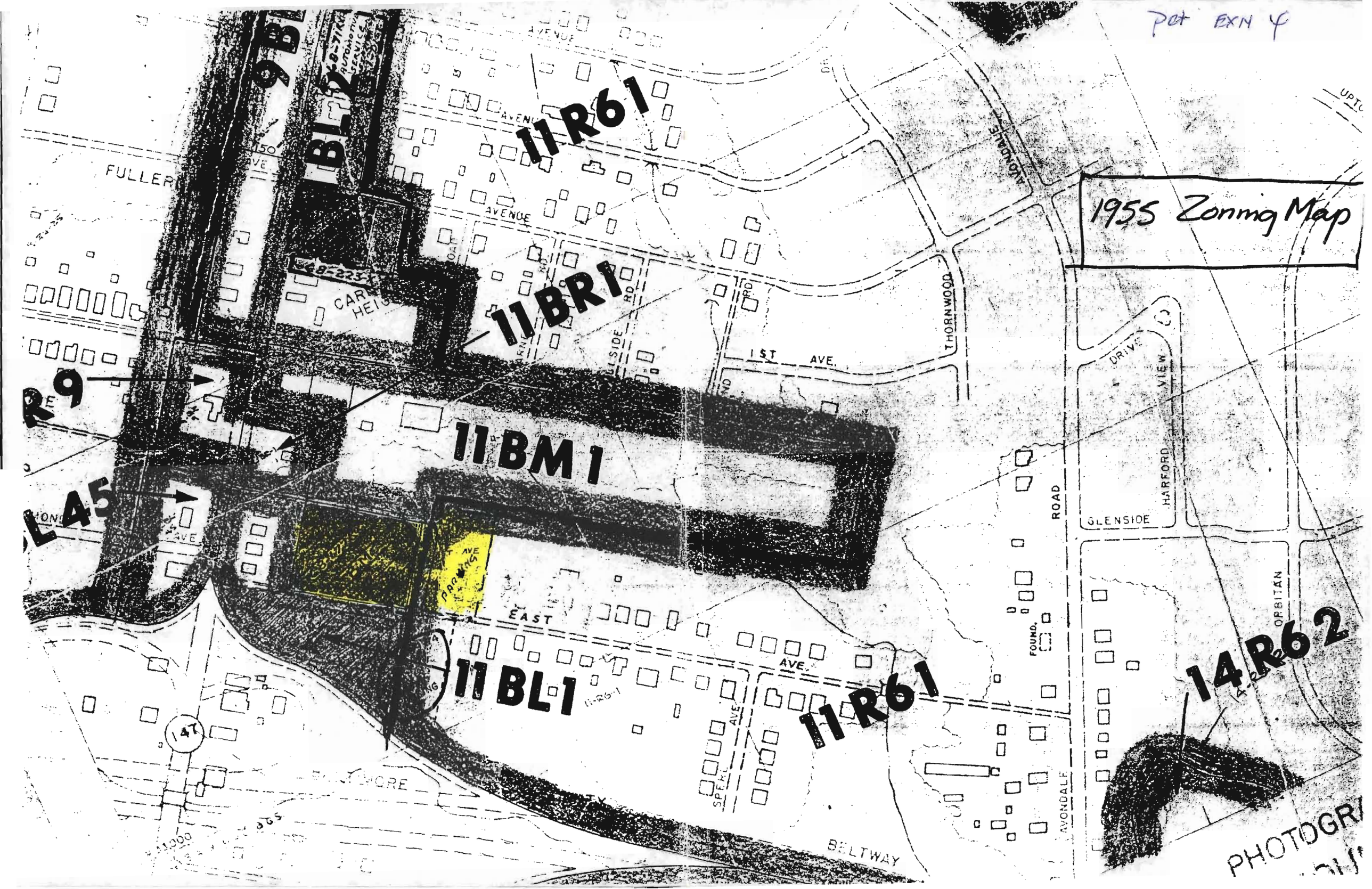
PET EXH 3

SCALE: 1" = 50'

PHOTO 2002

Pet EXN 4

1955 Zoning Map



CBA Petit Ex #5

68-177-R

BM

RE: PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION
SE/S East Avenue 146' E of Harford Road - 11th District
Harford Warehouse Corporation, Petitioner
NO. 68-177-RX

: BEFORE THE
: DEPUTY ZONING
: COMMISSIONER
: OF
: BALTIMORE COUNTY

::: ::: :::

The Petitioner has requested a reclassification of his property consisting of two parcels, from an RA and R-6 zone to a BR and BM zone. BR is requested for Parcel 1 consisting of 1.27 acres and BM zoning is requested for Parcel 2 which contains 0.88 of an acre. A Special Exception to use Parcel 1 for an outdoor motor vehicle sales area is also requested.

There is no question that the Petitioner is entitled to relief. His property is bordered on the North by BL land, on which is a gasoline service station; on the East across East Avenue by BR and BM zoned land, on which are a used car lot and warehouses; on the West by BL land on which is a large bakery distribution center. It is obvious to the Deputy Zoning Commissioner the present zoning on the subject property is in error.

After discussing the pros and cons of the case at the hearing, it was decided by all involved that relief should be granted but not in accordance with the original request.

After considering all evidence and arguments by Counsel, the Deputy Zoning Commissioner feels that the best solution would be to rezone Parcel 1 to BM and to grant a use permit for off-street parking in a residential zone on Parcel 2. In adopting this procedure, it is not necessary to discuss the merit of a Special Exception for an outdoor motor vehicle sales area on Parcel 1 since the same would not be necessary.

For the aforegoing reasons, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 14 day of March, 1968, that the herein described property or area known as Parcel 1 should be and the same is hereby reclassified from an RA zone to a BM zone and a use permit for off-street parking in a residential zone on Parcel 2 should be and the same is hereby granted, subject to the requirements of Section 409 of the Baltimore County Zoning Regulations; all subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning. The Special Exception requested for Parcel 1 should be and the same is DENIED.

Edward D. Harden
Deputy Zoning Commissioner

ORDER FILING

DATE 3/14/68

BY J. C. Kanna Clk
ADMINISTRATIVE ASSISTANT

6-14-06

CBA PET EXH 6 (A)

6-14-06

CBA Petit #6 (B)

6-16-06

CBA Petit Ex 6 ©

6-18-06

CBA Petit Ex #6 (D)

CBA Pitt Bay #5 (B)

6-14-06

CBA Petit Ex #6 (F)

6-14-06

CBA Pilot Grant #6 (6)

6-14-06

CBA Petit #6 (A)

6-18-06

CBA Petition #6 (1)

6-18-06

CBA Petit Ex #6

1

6-14-06

CDA Pold Eyes

(K)

CBA petit Ex #7

Pet EXH 7

Mildred Schaffer
3017 East Ave.
Baltimore, Maryland 21234

Board of Appeals
Baltimore County
400 Washington Ave.
Towson, Maryland 21204

24 January 2005

To Board of Appeals:

I am familiar with the request made by Heritage Automotive for the parking of vehicles at the corner of East Avenue Relocated and East Avenue.

I support the request if:

1. Open space from East Avenue back for approximately 85' (approximately 85' by 130') will not be used for parking;
2. Open space will be maintained by Heritage;
3. Access is through the dealership lot to the north;
4. No access from East Avenue;
5. Landscaping to buffer the adjacent residential property;
6. Lighting on the property shall be of the minimal amount necessary for security and safety;
7. No buildings shall be constructed on the property.

Sincerely,

Mildred Schaffer

Mildred Schaffer

CBA PET EXH 8

Mildred Schaffer
3017 East Ave.
Baltimore, Maryland 21234

Board of Appeals
Baltimore County
400 Washington Ave.
Towson, Maryland 21204

24 January 2005

To Board of Appeals:

I am familiar with the request made by Heritage Automotive for the parking of vehicles at the corner of East Avenue Relocated and East Avenue.

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3. Access is through the dealership lot to the north;
4. No access from East Avenue;
5. Landscaping to buffer the adjacent residential property;
6. Lighting on the property shall be of the minimal amount necessary for security and safety;
7. No buildings shall be constructed on the property.

Sincerely,

Mildred Schaffer

Mildred Schaffer

6/15/06 5:10 PM spoke to Mrs. Schaffer.
- asked if she is still not opposed to the parking lot under the conditions we laid out previously
- Mrs Schaffer said she is OK with it under the conditions we talked about before

CBA pet EXH 9

Mark Newman
3022 East Avenue
Baltimore, MD 21234

June 14, 2006

Board of Appeals
Baltimore County
400 Washington Ave.
Towson, MD 21204

To Board of Appeals:

I am familiar with the request made by Heritage Automotive for the parking of vehicles at the corner of East Avenue Relocated and East Avenue.

I support the request if:

1. Open space from East Avenue back for approximately 85' (approximately 85' by 130') will not be used for parking;
2. Open space will be maintained by Heritage;
3. Access is through the dealership lot to the north;
4. No access from East Avenue;
5. Landscaping to buffer the adjacent residential property;
6. Lighting on the property shall be of the minimal amount necessary for security and safety;
7. No buildings shall be constructed on the property.

Sincerely,

Mark Newman

CBA PET EXH 10

Thomas Edwards
3032 East Ave.
Baltimore, Maryland 21234

Board of Appeals
Baltimore County
400 Washington Ave.
Towson, Maryland 21204

24 January 2005

To Board of Appeals:

I am familiar with the request made by Heritage Automotive for the parking of vehicles at the corner of East Avenue Relocated and East Avenue.

I support the request if:

1. Open space from East Avenue back for approximately 85' (approximately 85' by 130') will not be used for parking;
2. Open space will be maintained by Heritage;
3. Access is through the dealership lot to the north;
4. No access from East Avenue;
5. Landscaping to buffer the adjacent residential property;
6. Lighting on the property shall be of the minimal amount necessary for security and safety;
7. No buildings shall be constructed on the property.

Sincerely,

Thomas Edwards

Thomas Edwards

6/15/06 1:50PM spoke to Tom Edwards 443-690-6451
- asked if he still is not opposed to the lot
- Tom said as long as we do what we said we would do as outlined on what he signed that he was fine with us going forward

CBA Petitions CBA 11 (A)

AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury as follows: That the information herein given is within the personal knowledge of the Affiant and the Affiant is competent to testify thereto.

Stephen Tracey Stephen Tracey
Affiant (handwritten signature)

Stephen Tracey
Affiant (printed name)

1811 Parkwood DR
address (printed) Forest hill MD 21050

410-557-8554
telephone number

4/28/1959
Date of Birth:

BASED UPON YOUR PERSONAL KNOWLEDGE, PLEASE ANSWER THE FOLLOWING:

1. I verify by this affidavit and/or testify in court, if necessary, that I have personal knowledge about the property located at the corner of East Ave and East Ave Extended, which is situated near the intersection of Harford Road and I-695 in Carney. I can attest that this property had been utilized by Dough Griffith Chrysler/Plymouth Dealership for the storage and parking of vehicle inventory from at the very least the mid 1970's. The period of time that I can verify the use of this property is early 1970's to present.

2. I further verify and testify, if necessary, that the Doug Griffith dealership would store and park vehicles on this property until such time as they were taken over to the dealership location where they would be offered for sale to the general public.

3. I gained this personal information as a result of my growing up in the area. I grew up in a house directly opposite the other end of East Ave. I remember Griffith having Chryslers and Plymouths parked on the lot in the early 1970's. I was about 12 or 13 at the time but I have a clear memory of the storage of vehicles on this property.

STATE OF MARYLAND:

I HEREBY CERTIFY this 11 day of Feb, 2005, before me, a Notary public of the State of Maryland, in and for Baltimore City/County, personally appeared James Abbott, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the maters and facts herein above set forth are true and correct to the best of his/her knowledge and belief.

As witness my hand and Notarial Seal.

Cyrus Zion 4-16-06
Notary Public

My commission expires.

PETITIONER'S
EXHIBIT NO. 11(a)

MARTIN & PHILLIPS

DESIGN ASSOCIATES, INC.
LAND PLANNING, CIVIL ENGINEERING, LANDSCAPE ARCHITECTURE, DEVELOPMENT CONSULTING, ZONING
222 BOSLEY AVENUE, SUITE B1, TOWSON, MARYLAND 21204

CURRICULA VITAE

DAVID L. MARTIN, L.A.

Martin & Phillips Design Associates, Inc., Principal
Director of Land Planning / Landscape Architecture

Professional Registration: Landscape Architect
Maryland - No. 776
Pennsylvania - No. 573-E

Education:
The Pennsylvania State University
Bachelor of Science Landscape Architecture - 1971

Professional Affiliations:
American Society of Landscape Architects, Member
Urban Land Institute, Member

Professional practice includes 35 years of land planning, landscape architecture, comprehensive zoning, PUD master planning, site planning, and expert witness testimony regarding land use and zoning issues. Mr. Martin has been practicing in the Greater Baltimore Metropolitan region since 1987 and has been qualified as an expert in land planning, site planning, and zoning cases in Anne Arundel County, Baltimore County, Howard County, Harford County, Cecil County, Bel Air, Aberdeen, Havre de Grace, Perryville, Port Deposit and Federal District Court of Baltimore.

Prior to his relocation to Maryland, Mr. Martin practiced landscape architecture and land planning in Pennsylvania, Florida, Massachusetts, Alabama, The Commonwealth of the Bahamas and Jamaica.

As President of Martin & Phillips Design Associates, Inc. Mr. Martin supervises community planning, site development, subdivision development plans, and master planning efforts, He also offers zoning, testimony and interpretation on land planning issues before zoning commissioners, boards of appeals, planning commissions, and elected bodies. Mr. Martin facilitates community input meetings, and presents Development Plans in Baltimore County and oversees the preparation of special exception and variance plan requests. He also directs the design of parks, amenity features and landscape plans associated with residential, commercial and institutional projects.

Significant projects include Developments of Regional Impact (DRI) in the State of Florida including; Palm Coast, Florida - 10,000 acre master plan, Beverly Hills, Florida - 6,500 acre master plan, and Doral Park, Florida - 2000 acre master plan. Significant local projects include: Hollywoods, Monmouth Meadows, Greenbriar, Bainbridge Development, Forge Landing, Owings Mills Commerce Center, The Avenue at Whitemarsh, New England Motor Freight Trucking Facility, Cedar Land Farms P.U.D., Westwicke, Beaverbrook, Biddison Property, Bridle Ridge, Green Spring Station, Home Depot of Owings Mills, Bel Air and Timonium, Ashland Market Place, Powell Property, and Baker Property.

Mr. Martin has prepared numerous comprehensive-zoning petitions in Baltimore County during the 1992, 1996, 2000 & 2004 CZMP processes and has a thorough understanding of the principles of Euclidean zoning and their application throughout the Baltimore Metro region. He also served on an ad-hoc committee that authored the Service Employment (SE) Zone of Baltimore County and the Public Affairs Committee for NAIOP. He has extensive experience dealing with all of the Baltimore Regional Area County's development regulations.

TELEPHONE: 410.321.8444. TOLL FREE: 866.395.8595
FAX: 410.321.1175

Pet Ex 12

BOA PRT EXH 13

IN RE: PETITION FOR SPECIAL HEARING
S/S Powers Lane at Dlong Road,
240' W of the c/l Nuwood Drive
(2217 Powers Lane)
1st Election District
1st Council District

Russel Motor Cars, Inc.
Petitioners

* BEFORE THE
* ZONING COMMISSIONER
* ~~OF BALTIMORE COUNTY~~
* Case No. 02-235-SPH
*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Hearing filed by the owners of the subject property, Russel Motor Cars, Inc., by F. Steven Russel, President, through Leslie M. Pittler, Esquire. The Petitioners request a special hearing to approve business parking in a residential zone, pursuant to Section 409.8.B of the Baltimore County Zoning Regulations (B.C.Z.R.), to include storage of unlicensed passenger motor vehicles and to permit stored vehicles to not have direct access to a drive aisle. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 2.

Appearing at the requisite public hearing in support of the request were Jim Branson and Mike Diskin, on behalf of Russel Motor Cars, Inc., property owners, Kenneth Colbert, Professional Engineer who prepared the site plan for this property, and Leslie M. Pittler, Esquire, attorney for the Petitioners. Boston F. Anderson, Jr., a nearby neighbor, appeared as an interested citizen. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is an irregular shaped parcel located on the south side of Powers Lane at its intersection with Dlong Road, not far from Nuwood Road in Catonsville. The property contains a gross area of 2.3691 acres, more or less, split zoned D.R.16 (1.3055 acres) and B.R. (1.0636 acres), and is presently vacant. Although the property abuts Dlong Road and there are residences (Westerly Apartments) across from the site, the property is located immediately adjacent to a number of commercial uses. Immediately to the west

ORDER RECEIVED FOR FILING
Date 2/25/02
By

BOA PRK 18XM 14

RE: PETITION FOR SPECIAL HEARING 2217 Powers Lane, S/S Dlong Ln, 650' W of Nuwood Rd 1st Election District, 1st Councilmanic Legal Owner: Russell Motor Cars, Inc. Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY Case No. 02-235-SPH

* * * * * * * * * * * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. **All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.**

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Old Courthouse, Room 47
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of January, 2002 a copy of the foregoing Entry of Appearance was mailed to Leslie M. Pittler, Esq., 29 W. Susquehanna Avenue, Suite 610, Towson, MD 21204, attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN

(1) AUTOPROPERTIES LLC
Appellant

06-1094 Ph
03-360 SP/VA
~~Verified~~
Verified
11-14-06

Ex #1 SIGN IN SHEET

Ex #2 1971 Compr. Zoning Map + 1966 Map
Showing change to DR 5.5

A-1971
B-1971
C-1966

Ex #3 Tax & Ass Real Prop Data sheets & MAPS

Ex #4 Website excerpts of Honda

#5 Bill 28-06 3-20-06

#6 Attendance Sheet - 11-2-06

~~#7 BCZR excerpts (1955)~~

#7 BCZR (1963) BM reg & Sec. 409

#8 200 Scale aerial map ~~2005~~ done 4-2005

#9 Photos A - H

#10 Dillon CV

#11 2004 Compr. Zoning Map
11-A Overlay acetate

#1/2 A-D aerial photos (B&W) 1972-82

#3 A-G Photos of Comm - June 2005

#14 1995 photo enlargement Plat

#15 A-F Photos of site 6-30-05

#16 A-D Havana Development 6-30-05

#17 Excerpt from 2010 Master Plan

#18 BCZR §409 Off Street Parking

#19 DIVISION proposed 2 lot subdivision

#20 Affid & Rule 8 Res of Carney Improvement Association

#21 Affid & Resolution under Rule 8 for Greater Parkville Comm Council

#22 4-20-2004 Greater Parkville Comm Council 2004 Zoning Findings & Recommendations

#23 A-E photos

#24 7 photos collectively

#25 6 photos collectively

#26 6 photos " (5 photos)

#27 Application by Auto properties for 2004 zoning Reviews + documents & letters attached

#28 Aug 31, 2004 Final log of issues 2004 zoning process

#29 Bill 26-88 Petition to Cancel Bill

#30 Council Notes bill 26-88

(2) Appellants

Autographs
Exhibits

#31 1970 Bill of B.O.

#32 Excerpts from CRT provisions
1B01

#33 Section 233 BCZR
BHA Major

#34 BCC 32-4-104

#35 (A) Co Bd of App 97-573 SpHO
Aug 1998

~~#36 Cir Ct Cop~~

#35 (B) Cir Ct Balto Co. 12-4-2001
v. Cahill

#36A 12-21-2004 Coll case 4-052-SpHA

#36B Cir Ct. Balto 4-21-05
E - remand Dec. 9-19-2005 of CSA

#37 CBA 05-176-SpHXA 6-22-2005
Decision

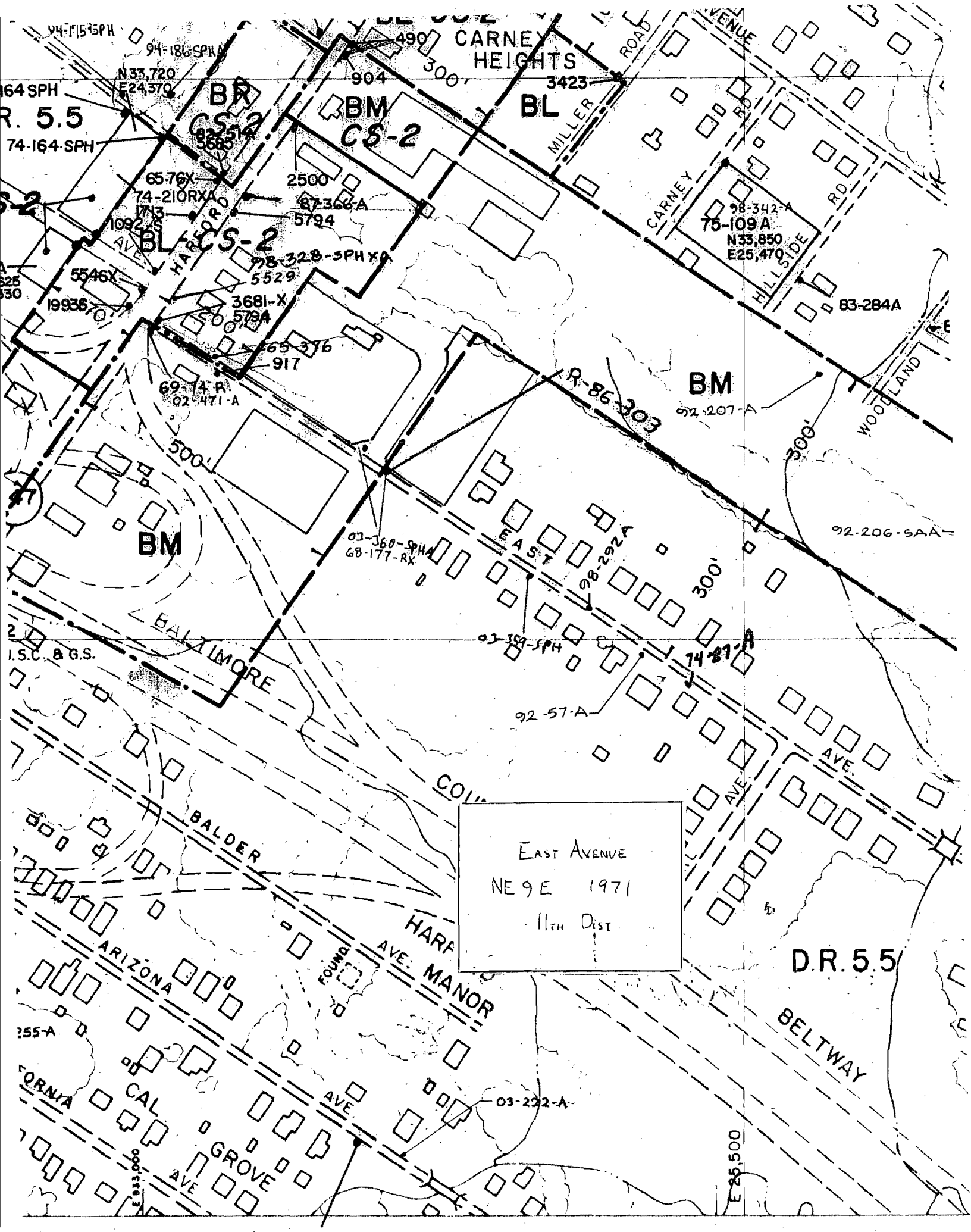
CBA Appt. Ex #1

People's Counsel Sign-In Sheet

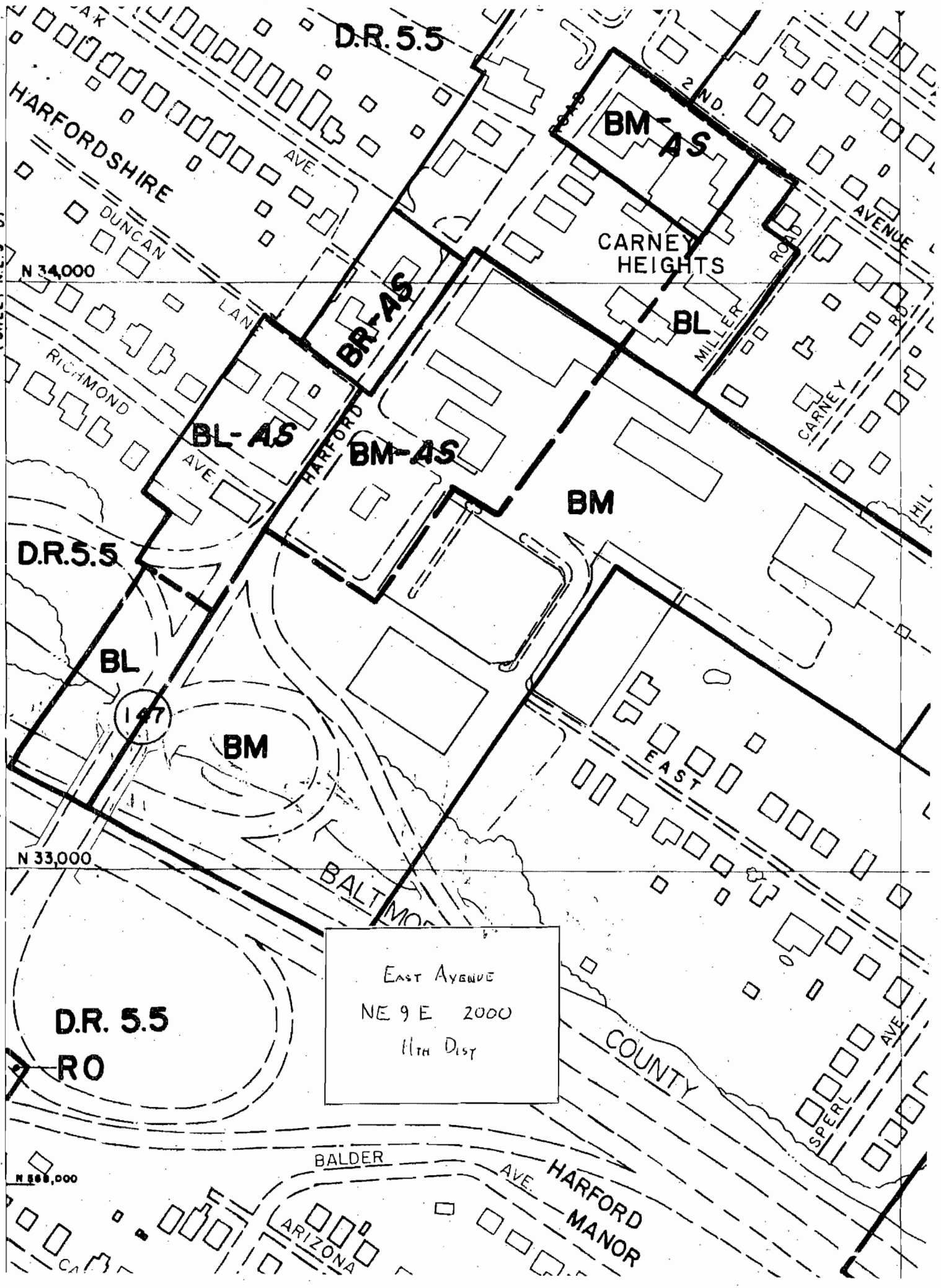
Case Name: Auto Properties
Case No.: 03-360-SPHA/06-109-SPH
Date: June 21, 2006

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	Ruth Baisden	7706 Oak Ave 21234	410 668-2580	ruth6baisden@yahoo.com		oppose
✓	DARYL CORONA				Greater Parkville Com. Council	
✓	" "	3106 EAST AVE	4103824000	DARYLC@AT.NET	EAST AVE RESIDENTS	HERITAGE
✓	Meg O'Hare	3012 Summit Ave	3824090			
			410-668-583	carneyca@msn.com	Carney Improvement Assn	OPPOSE


CARNEY HEIGHTS
BR
CS-2
BM
CS-2
BL
BL
CS-2
BM
BM
D.R.5.5
94-186-SPHA
N33,720
E24,370
74-164-SPH
65-76X
74-210RXA
98-328-SPHXA
5546X
19936
3681-X
5794
65-376
917
69-74 R
92-471-A
R-86-303
92-207-A
98-342-A
75-109 A
N33,850
E25,470
83-284A
92-206-SAA
03-360-SPHA
68-177-RX
98-292A
03-359-SPH
14-81-A
92-57-A
03-222-A
MILLER
CARNEY
HILLSIDE
WOODLAND
HARFORD
BALTIMORE
EAST
BALDER
ARIZONA
HARF
MANOR
CAL
GROVE
BELTWAY
AVE.
ROAD
RD.
500'
300'
E 25,500
E 23,000
I.S.C. & G.S.
East Avenue
NE 9 E 1971
11th Dist

CBA Appellant #2 A 1971 DR 5.5

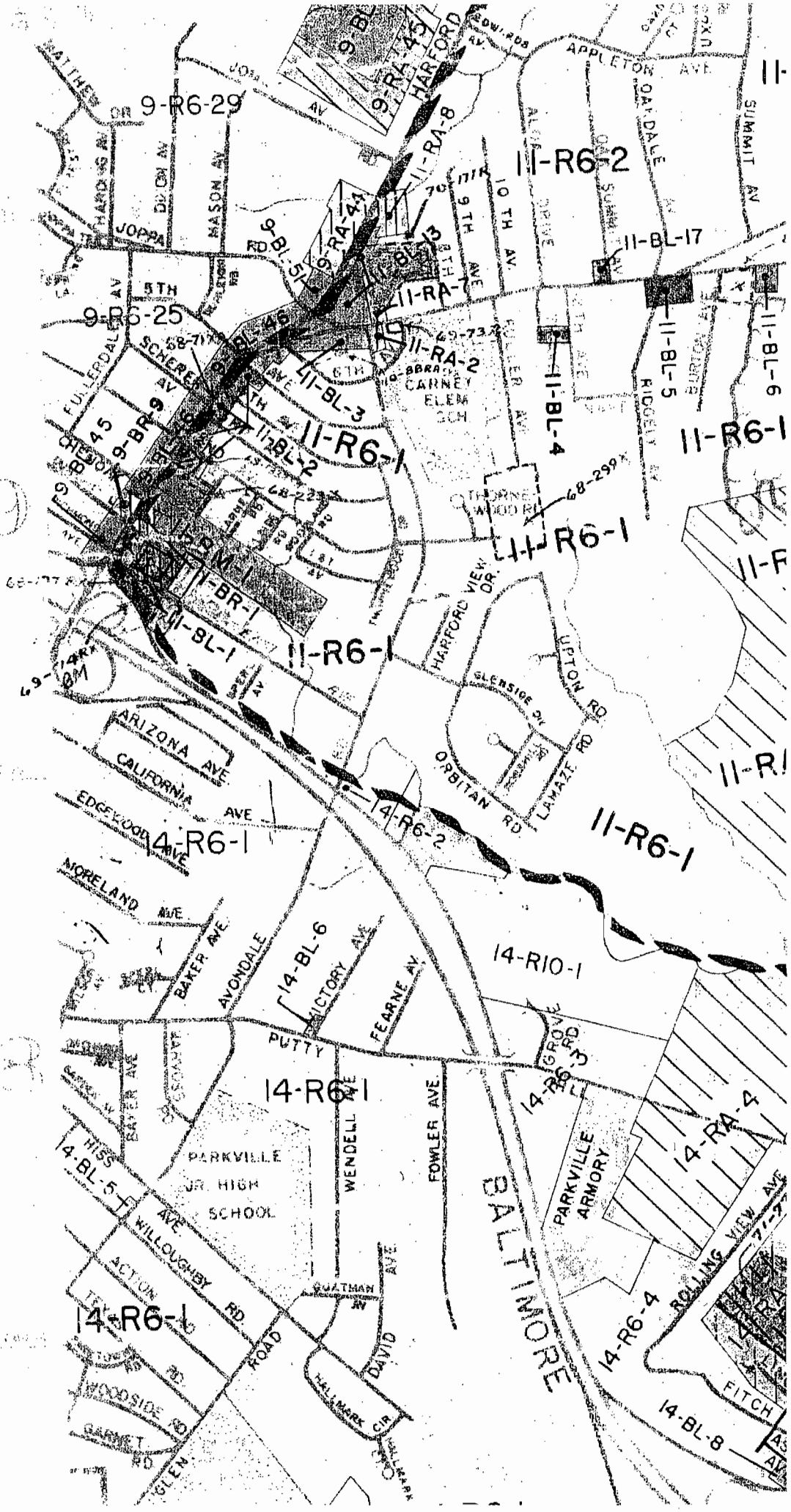

D.R. 5.5
HARFORDSHIRE
AVE.
DUNCAN
LANE
RICHMOND
AVE.
HARFORD
BR-AS
BL-AS
BM-AS
BM-AS
BM-AS
CARNEY HEIGHTS
BL
MILLER
ROAD
2ND.
AVENUE
CARNEY
ROAD
BM
D.R.5.5
BL
1 47
BM
EAST
N 34,000
N 33,000
BALTIMORE
COUNTY
D.R. 5.5
RO
BALDER
AVE.
HARFORD
MANOR
ARIZONA
SPERL
AVE.
(SHEET N.E. 9-D)
East Avenue
NE 9 E 2000
11th Dist

CBA Appellate #2 B 1971 DR55

East Avenue

4C

1966



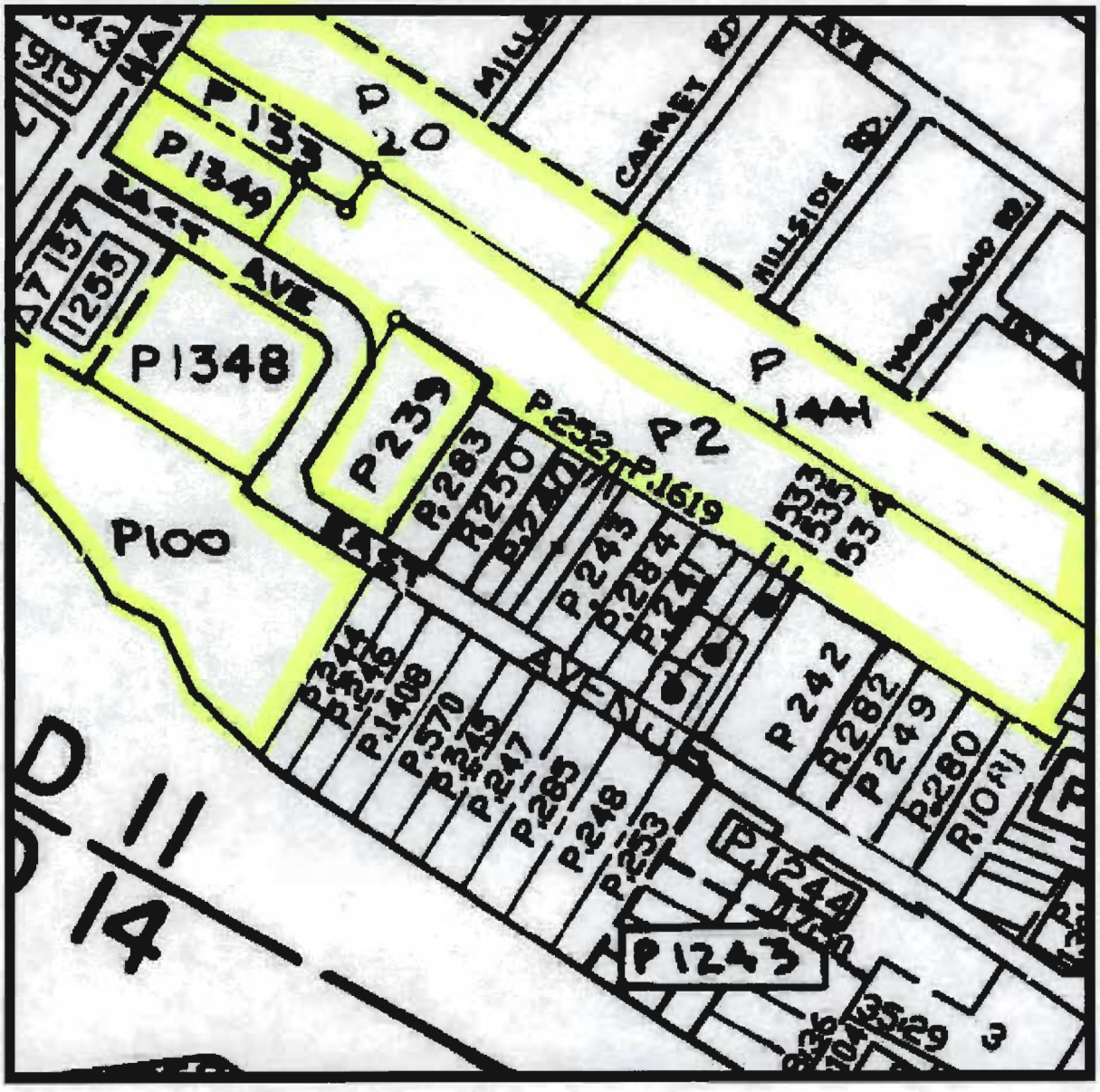
CBA Appellant #2 C 1966
R-6 ZONING

CBA Appt. Ex #3

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

District - 11 **Account Number** - 2300004453



Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

CBA Appt Ex #4

Heritage Honda
9213 Harford Road
Baltimore, MD 21234
Phone: 877-210-6337
Fax: 410-663-7180

HONDA

Count on Heritage for your Honda Automotive needs. Whether it's for a New Honda, Certified Used Honda, Honda Parts or Honda Service, Heritage Honda in Baltimore Maryland has it. Visit us at Exit 31-B and I-695

Map | Hours

Used Car Specials

2003 Honda Civic	$15,655
2004 Honda Accord	$23,420
2001 Honda Prelude	$18,885
2003 Honda Civic	$17,180
2002 Honda Civic	$15,888

Weekly Auto Deals

2006 Honda Odyssey LX

Now $22,899

More Information

Weekly Auto Deals

2006 Hond

Now $1

More Info

LIVE CHAT

CLICK HERE
Get Pre-Approved In Seconds!

Value Your Trade
Black Book Online
Click Here to Begin

vic! You Should See What The Raves Are About!...Are You Ready For Spring?...Check (

CBA Opt. Ex #5

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2006, Legislative Day No. 6

Bill No. 28-06

All Councilmembers

By the County Council, March 20, 2006

A BILL
ENTITLED

AN ACT concerning

Basic Services Maps

FOR the purpose of repealing the Basic Services Sewerage Map, the Basic Services Water Supply Map and the Basic Services Transportation Map; and adopting a new Basic Services Sewerage Map, a new Basic Services Water Supply Map and a new Basic Services Transportation Map.

By repealing and reenacting, with amendments

Subsection 4A02.3.A.1.,2. and 3.
Baltimore County Zoning Regulations, as amended

BY repealing

2005 Basic Services Sewerage Map
2005 Basic Services Water Supply Map
2005 Basic Services Transportation Map, all as adopted by Bill No. 35-05

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

CBA
11-2-06
Appt #6

People's Counsel Sign-In Sheet

Case Name: Auto Properties
Case No.: 06-109-SPH & 03-360-SPHA
Date: Nov. 2, 2006

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check to testify	Name	Address	Phone #	Email	Group you represent	Basis of your concerns
✓	Jackie Megee	3112 East Ave 21234	410-665-9255	megeecarr@comcast.net	Carney-East Ave	Trust
✓	DARYL CORONA	3106 EAST AVE 21234	4106656124	DARYLC@ATT.NET	" "	HERITAGE ENCROACHMENT
✓	Tony MARCHANTI	3021 EAST AVE 21234	410-661-1406		CARNEY EAST AVE	" " " "
✓	Ruth Baisden	7706 Oak Ave	410-668-2580		Greater Parkville Community Council	

CBA
11-2-06
Appt #6

CBA
Appeals Bk
#7

BALTIMORE COUNTY

ZONING REGULATIONS

Adopted

March 30, 1955

in accordance with Title 30, Section 532(c) of the Code of Public Local Laws of Baltimore County, (1955 Edition), with subsequent amendments through December, 1963.

First edition 1955
Second edition 1964

CBA Appellants 8

Produced by Baltimore County GIS Services Unit
Date: June 20, 2006
Date of Imagery: April 2005

1 inch equals 200 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

N
W E
S

Pet
Ex #9

Pet Ex #9

Pet Ex #9

CBA
Appt Q#10

Jack Dillon & Associates, LLC

410-337-5455 Fax 410-337-5476 410-221-0060

jackdillon@dmv.com

Baltimore County
207 Courtland Avenue
Towson, Maryland 21204

Dorchester County
922 Parson Drive
P.O. Box 64
Madison, Maryland 21648

Resume of Jack Dillon
Principal of Jack Dillon & Associates, LLC

EDUCATION

B.S. in Business Management
University of Baltimore, Baltimore, MD (1969)
Graduate Summer Program in Urban Planning
Georgia Institute of Technology, Atlanta, GA (1969)
Para Legal Program University of Maryland
University of Maryland University College (1978)
Video & Television Production
Dundalk Community College (1984-1986)
Attended Graduate Program in Landscape Architecture
Morgan State University, Baltimore, MD (1992-1994)

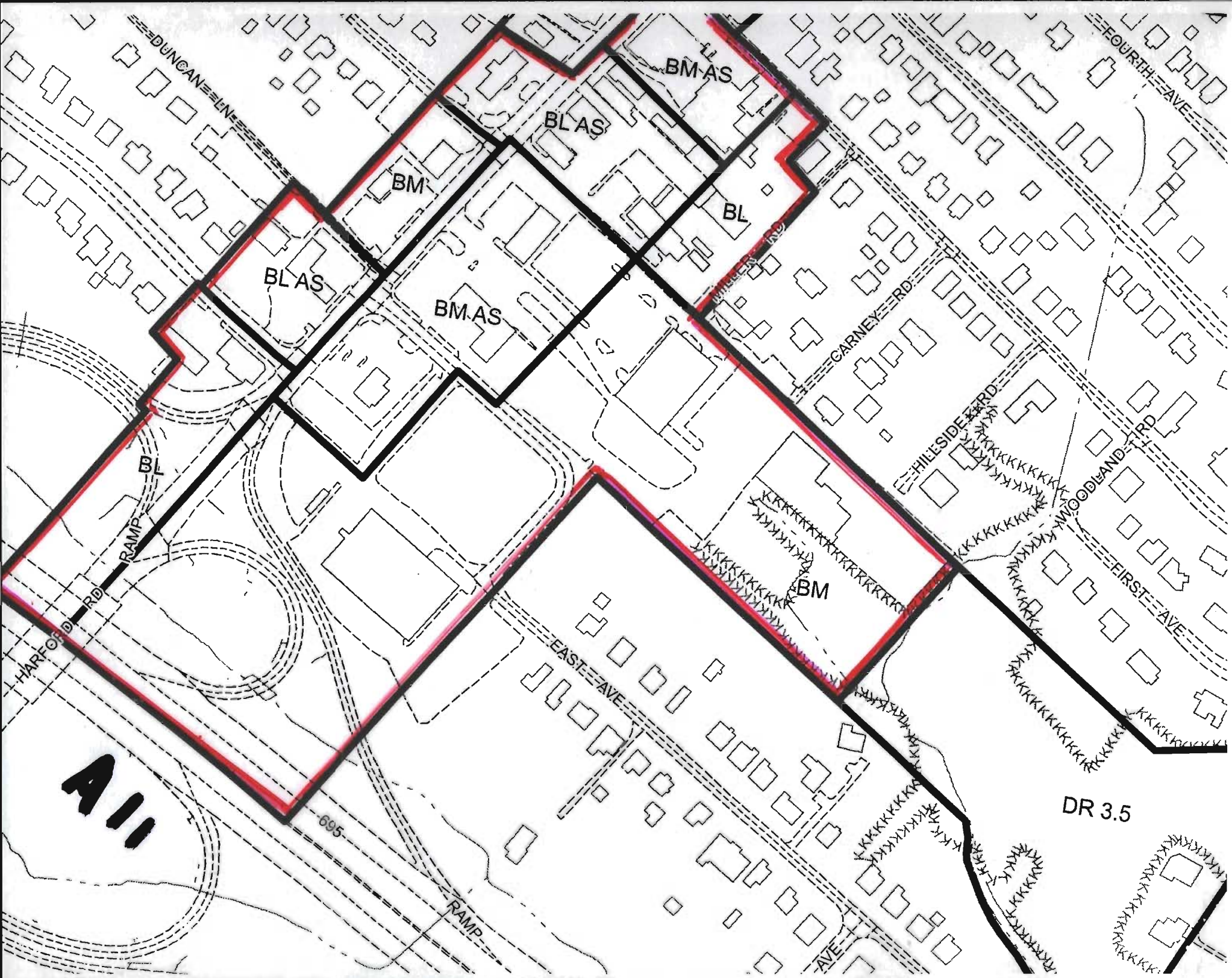
PROFESSIONAL AFFILIATION

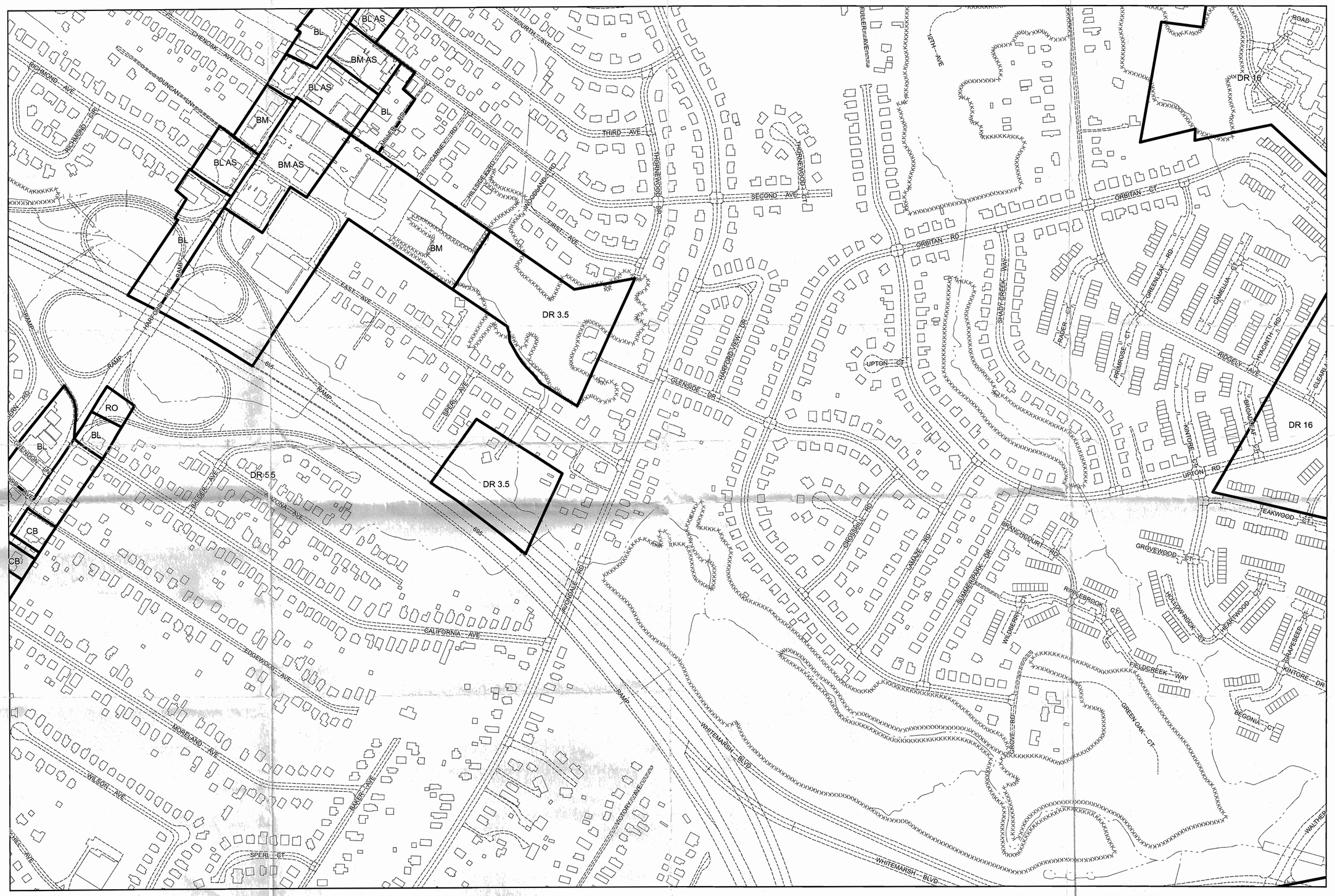
American Planning Association

EMPLOYMENT

Mr. Dillon was employed by Baltimore County from 1962 to 1996. He was assigned to a special research project at Johns Hopkins University from 1962 thru 1965 and then two years at the jointly staffed Baltimore City and Baltimore County Analyzer Office at the Ashburton Filtration Plant. He then worked in the Office of Planning and Zoning, eight years in the Zoning Office and the remaining twenty one years in the Planning Office until his retirement in 1996.

In 1997 he accepted the position of Executive Director of The Valleys Planning Council, a private non-profit planning and land preservation organization. He retired from that position in September 2004 when he formed his planning consulting firm.


DUNCAN LN
FOURTH AVE
BM AS
BL AS
BM
BL
BL AS
BM AS
CARNEY RD
HILLSIDE RD
WOODLAND RD
FIRST AVE
BL
RAMP
HARFORD RD
BM
EAST AVE
695
RAMP
AVE
DR 3.5
A11



Plan Sheet: *071B3*

Note: 2 of the Baltimore County, 2003 Code establishes Section 32-3-20 database. This map represents the actions of the the zoning geo County Council on August 31, 2004 (Bills 82-04, 83-04, Baltimore Coun 04, 87-04, 88-04, and 89-04) effective September 84-04, 85-04, 86 3, 2004.

Legend

Zoning
Buildings
Streams
Roads
Vegetation

Baltimore County
Office of Planning and Zoning
Official Zoning Map

070C2	071A2	071B2	071C2	072A2
070C3	071A3	071B3	071C3	072A3
080C1	081A1	081B1	081C1	082A1

Scale

1" = 200'

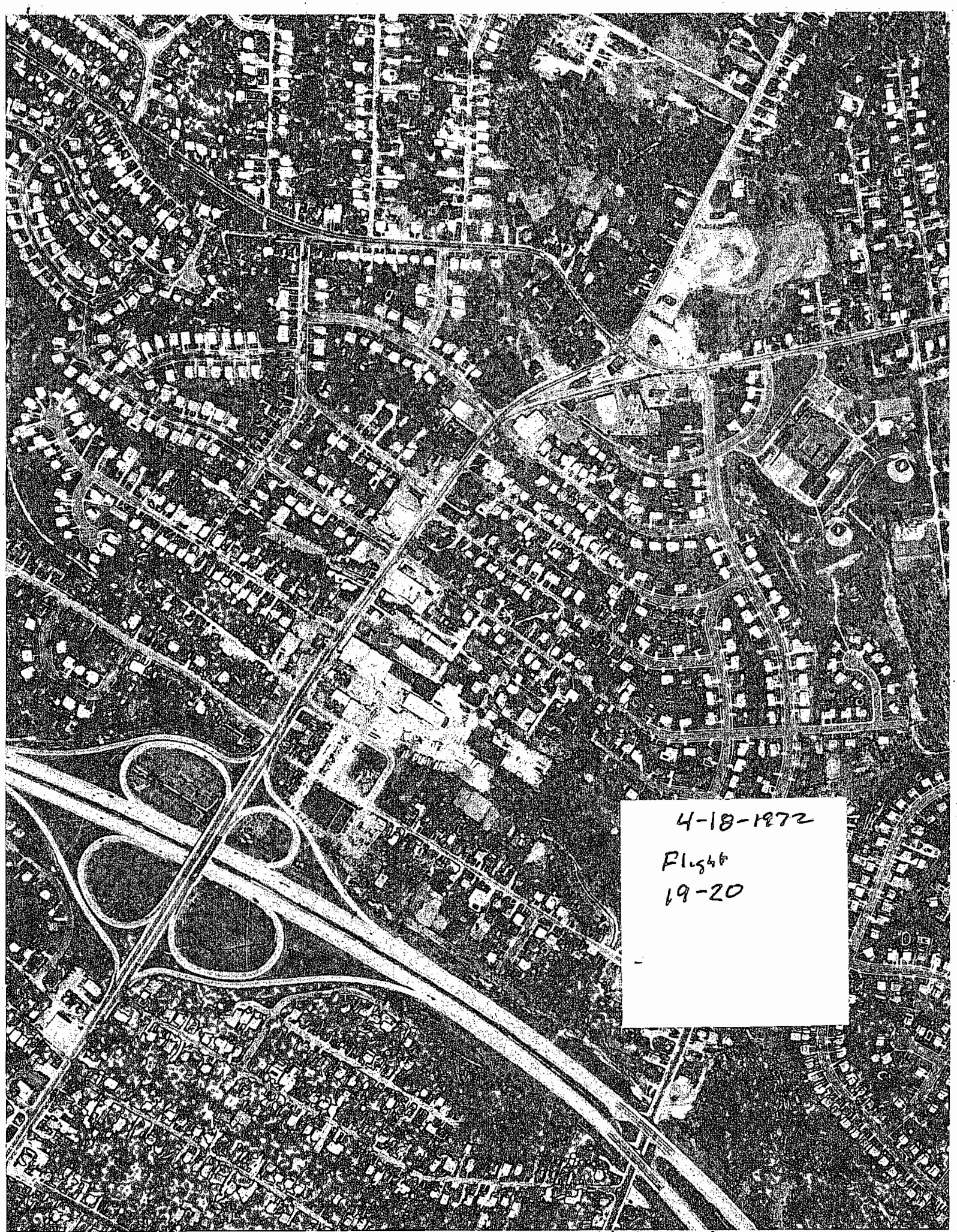
0 100 200 400 Feet

1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

CBA Dpt 08 #11

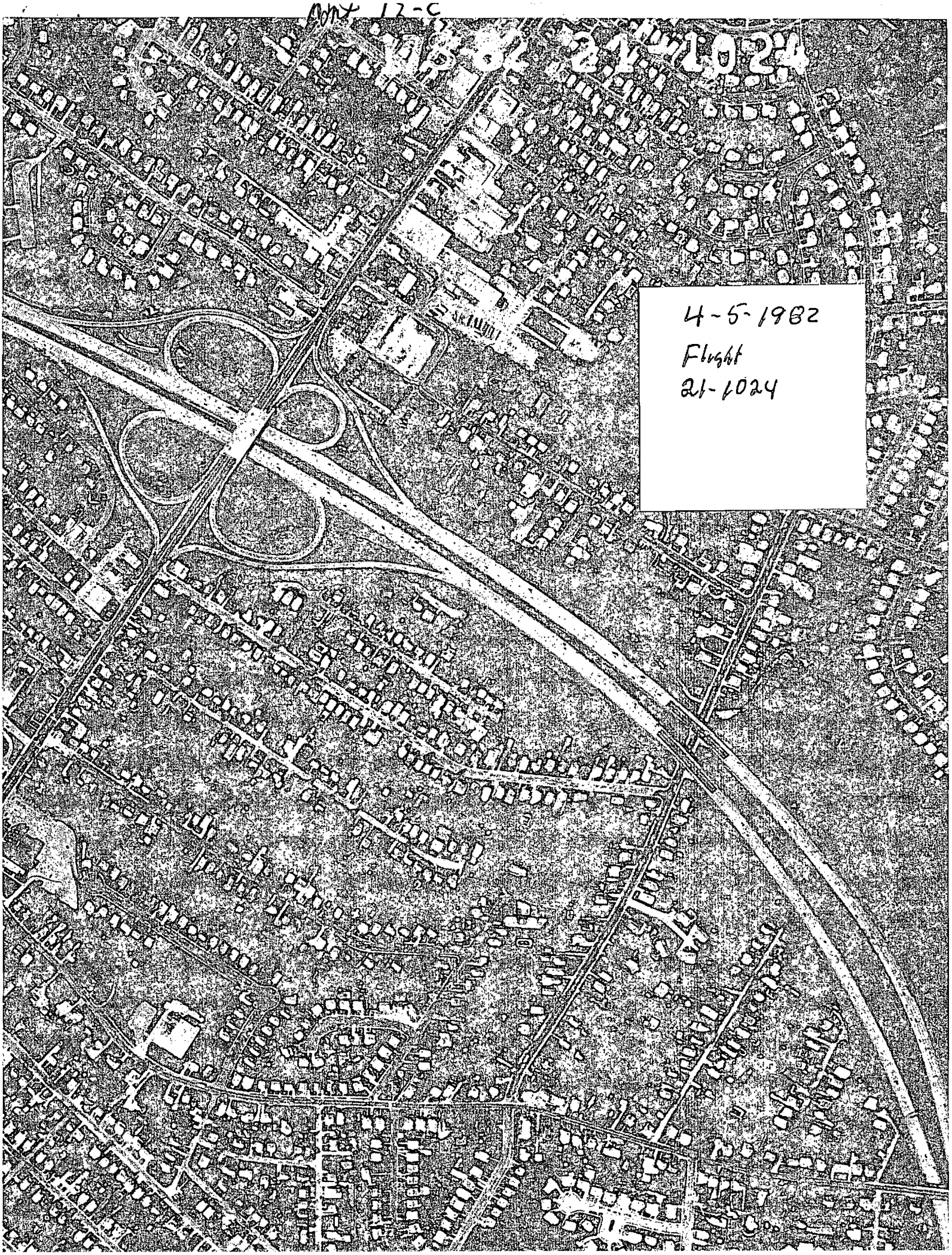
03-360



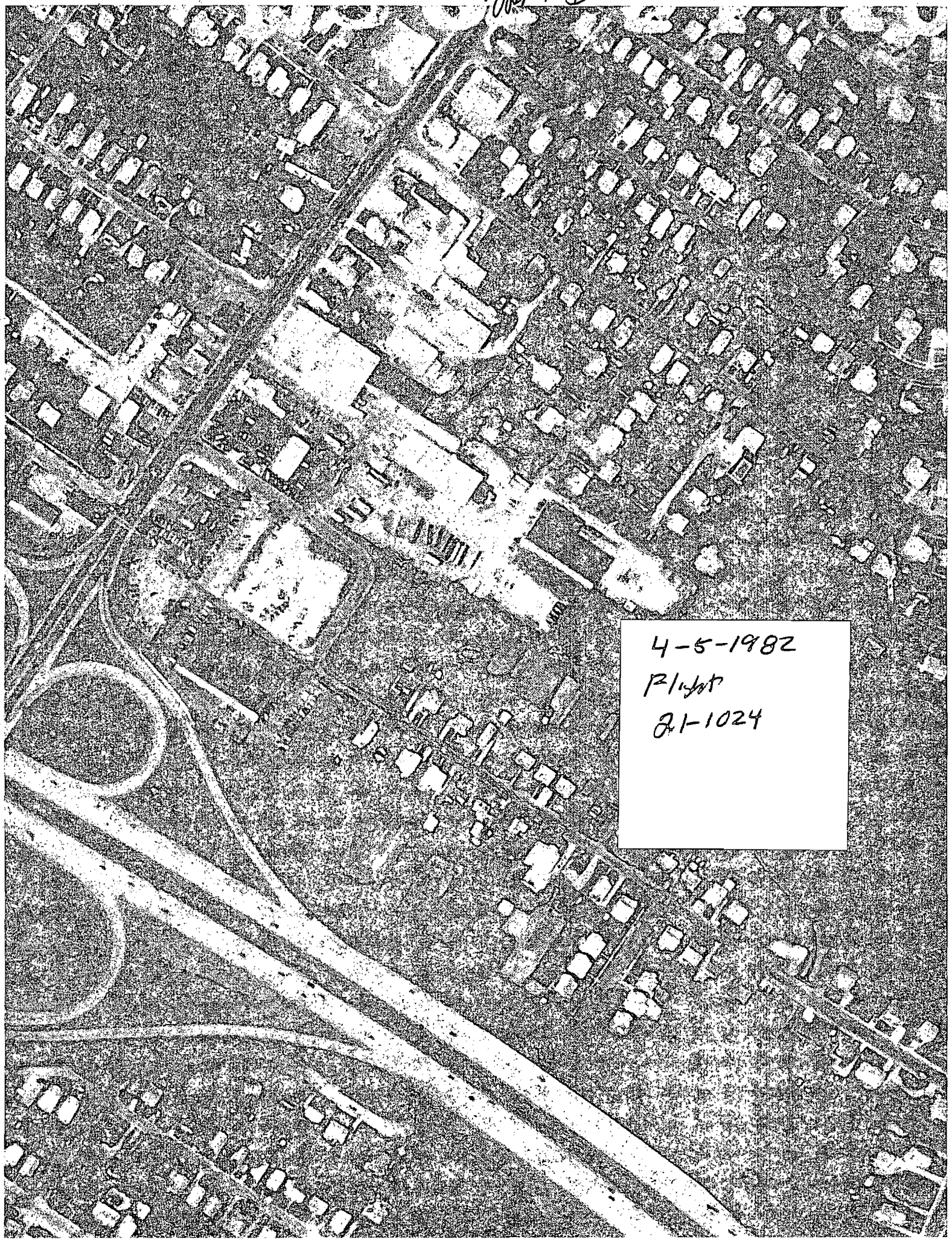
Appt 6/12A

Appt. 6A 12B

Att 12-C



Appt 12D



Baltimore County GIS Services Unit Date of Photography: March 1995 Scale: 1 inch = 200 feet

Baltimore County Tile: 071b3

Appt Ex #14

15 Heritage Honda view from "lot" 6-30-05

RBA App. 16B

1C Parking South side of East Ave 6-30-06

CBA App Exh 16 C

17 PARKING South side of EAST Ave 6-30-05

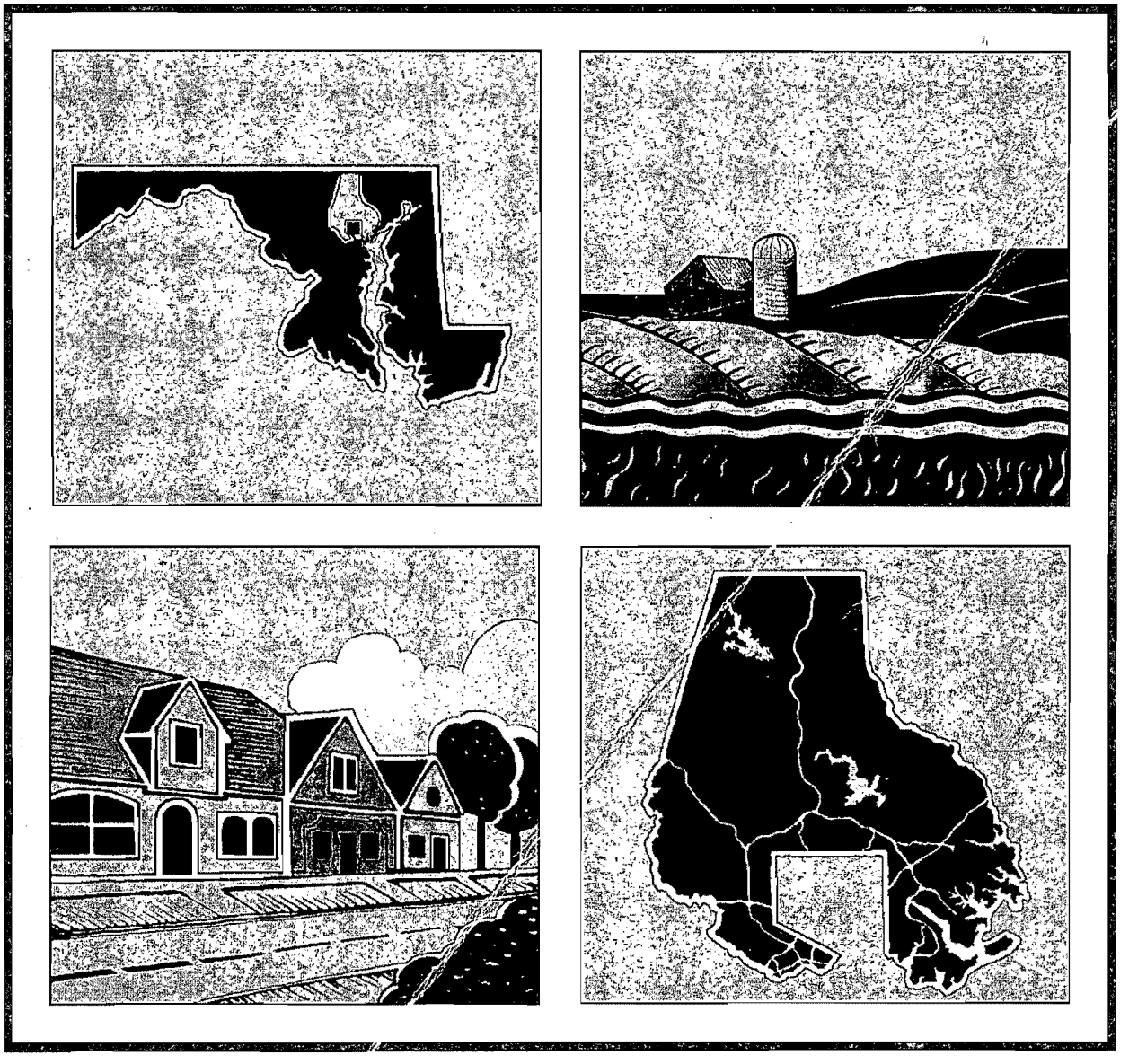
PCBA App. Exh 16 D

14 Looking West on East Ave 6-30-05

CBREA Exh 16A
App.

MASTERPLAN 2010

BALTIMORE COUNTY, MARYLAND



As Adopted by Baltimore County Council

February 22, 2000

Appl Ex #17

App & #18

Section 409
Off-Street Parking and Loading
[Bill Nos. 26-1988; 36-1988]

409.1 Applicability.

A. All structures built and all uses established hereafter shall provide accessory off-street parking and loading in accordance with the following regulations. When an existing structure or use is enlarged, accessory off-street parking and loading shall be provided in accordance with the following regulations for the area or capacity of such enlargement.

B. Those projects which have County Review Group (CRG) approval prior to the effective date of these regulations may modify their plans to satisfy these regulations or may proceed under the regulations in effect at the time of said approval.

C. Those projects for which a building permit has been submitted but not approved may modify their plans to satisfy these regulations or proceed under the regulations in effect at the time of said submittal.

409.2 Plan. At the time of application for a building permit for the erection or enlargement of any building for which off-street parking or loading spaces are required, a plan shall be provided at an appropriate level of detail showing such parking or loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings.

409.3 Parking space dimensions. Minimum off-street parking space dimensions shall be as follows:

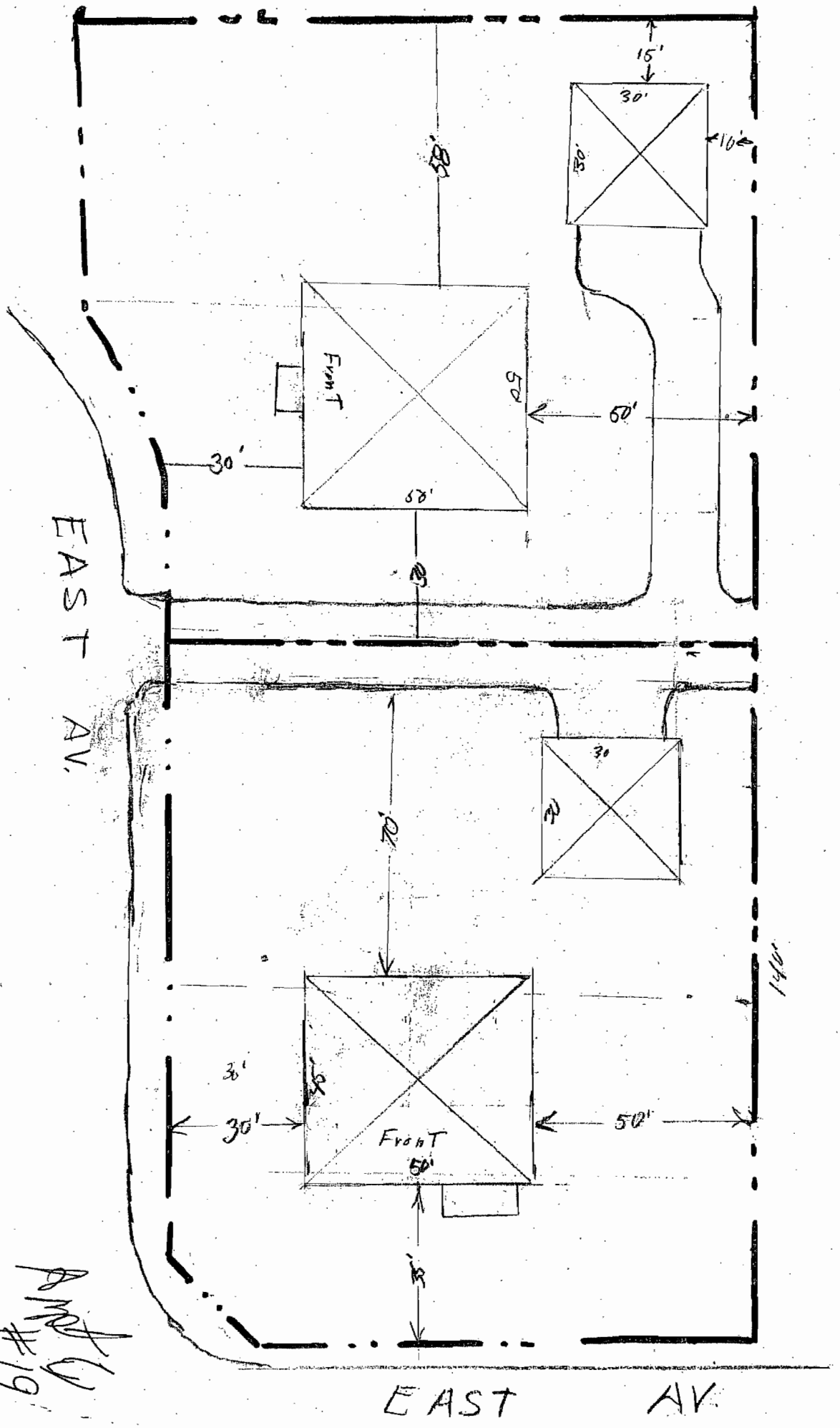
	Angled Parking (feet)	**Parallel Parking (feet)**
Standard space	8½ x 18	7½ x 21
Small car space	7½ x 16	7½ x 18

Small car spaces shall be designated as such and clearly marked to indicate the intended use.

409.4 Access to parking spaces. Vehicular travelways in off-street parking facilities where the parking spaces are located in parking bays or parking lanes shall be divided into driveways, with no direct access to parking spaces, and aisles, providing direct access to adjoining parking spaces.

A. Driveways shall be at least 12 feet in width for one-way movements and at least 20 feet in width for two-way movements.

B. All parking spaces shall adjoin and have direct access to an aisle, except in the following cases:


15'
30'
10'
30'
1" = 30'
Scale
Front
60'
60'
30'
60'
EAST AV.
30
20'
140'
30'
30'
50'
Front
50'
EAST AV.

Amt 6
#19

BOA Appt Ex #20

AFFIDAVIT

THE CARNEY IMPROVEMENT ASSOCIATION

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently the duly elected President of the Carney Improvement Association.

ATTEST:

Mary Margaret (Meg) O'Hare

Mary Margaret (Meg) O'Hare
Carney Improvement Association

Joanne Krause
Recording Secretary

Sergeant-at-Arms

John P. Ryan
Treasurer

June 20, 2006

GREATER PARKVILLE COMMUNITY COUNCIL

BOA Exh #21

Resolution

It is Resolved on this date of January 6, 2005, by an unanimous vote of Greater Parkville Community Council (GPCC) Board of Directors and an unanimous vote by the GPCC membership at the November 9, 2006, general meeting: to oppose Heritage Honda's petition for a use-permit that will allow parking (for employees and/or inventory parking) on residential property along East Avenue and requested variances from the required Residential Transition Area (RTA).

Background:
The surrounding neighborhood is predominately residential single family homes. This area is designated as a Community Conservation Area (CCA) by the Baltimore County Master Plan. The intent of CCA policies and of Baltimore County zoning regulations is to protect residential property values. The subject property is also the gateway into this residential neighborhood and is currently acting as a visual buffer between the residential homes and the adjacent BM zoning, which current land-use is an auto dealership.

Findings:
It has been found that BM zoning is incompatible with residential zoning due to the potential impacts received from the permitted uses under the BM zoning. The granting of this petition will cause an encroachment of the auto dealership (employee and/or inventory parking) on residential property and ultimately cause a detrimental impact to the character of the surrounding neighborhood. Potential adverse impacts include: the size and encroachment of commercial use, commercial lighting that shines on residential property and in homes, lack of an adequate buffer area, increase traffic and test driving vehicles, loading and unloading vehicles, noise, trash, stormwater runoff, etc.

Recommendation:
The GPCC recommends that the use of the property remain strictly residential and be preserved as an open space buffer area in order to be consistent with the spirit and intent of Baltimore County Zoning Regulations, County policies on Community Conservation as identified in Master Plan 2010 and GPCC Zoning Findings and Recommended Land-use Policies for the Parkville, Carney, and Cub Hill area. In addition, the preservation of the open space buffer area will help Baltimore County meet States regulations of preserving open space. Currently the Greater Parkville area is deficit 460 acres of open space with very little opportunity to proved open space and parks in this built-out area.

As witness this day of November 13, 2006

ASSET: Greater Parkville Community Council

11/14/06

EDWARD KRUHER

Alice M. Barker 11/14/06
ALICE BARKER

11/14/06
FAITH BARKER

11/14
ERNEST BARKER

BOA Appt Ex #22

GREATER PARKVILLE COMMUNITY COUNCIL

2004 Comprehensive Zoning Findings and Recommendations 6th District

April 20, 2004

GPCC

Pet
Ex #23

Pet Ex #23

Pet Ex
24

Pet Ex #24

Pet Ex # 24

Pet
Ex # 25

Pet Ex #25

Pet Ex # 26

Pet Ex # 26

2004 COMPREHENSIVE ZONING MAP PROCESS APPLICATION

This form and the required materials must be presented in person

Baltimore County Office of Planning
401 Bosley Avenue, Suite 406
Towson Maryland 21204

Ph: 410-887-3480
www.baltimorecountyonline.info

OFFICE USE ONLY		
Issue No. 6032	Fee (nonrefundable) 625.00	Planner Planning
Council District 6	Received on 01/14/03	Time Required for Filing
	Receipt No. 28756	

APPLICANT INFORMATION

Steven B. Fader 1. Name	Auto Properties, LLC 2. Organization (if applicable)
23 Walker Avenue 3. Mailing Address	Baltimore, Maryland 21208 City, State, Zip Code
(410) 602-6177 4. Day Time Phone	5. E Mail Address
Robert A. Hoffman 6. Attorney or Representative ** (see note below)	Venable LLP Firm Name (if applicable)
(410) 494-6200 Business Phone	rahoffman@venable.com Business E Mail Address

PROPERTY INFORMATION

Auto Properties, LLC 7. Property Owner's Name	3001 East Avenue 8. Property Street Address
.88 ac.+ 9. Total Acreage of Property	500 feet from intersection of Harford Road and East Avenue 10. Distance to nearest street/intersection (give name)
1 1 1 1 0 8 0 0 3 5 6 0 11. Property Tax Number (12 Digits)	71/239 12. Tax Map Number / Parcel Number
Property Tax Number (attach additional parcels' information)	Tax Map Number / Parcel Number (attach additional)
13. Adjacent Property Tax Number(s) * * (Attach additional sheets as needed)	See Attached Adjacent Property Tax Map Number/Parcel Number

RECLASSIFICATION INFORMATION

.88 ac.+ 14. Total Acreage of land requested for rezoning	1988 Issue No. 6-123 86-303R 15. Zoning history (issue/case no., year, type)
DR 5.5 16. Existing zoning (acres per zone)	BM 17. Requested zoning (acres per zone)
Vacant 18. Existing use of parcel	Business Parking 19. Proposed use of parcel

THE INFORMATION SHOWN ON THIS FORM IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

I UNDERSTAND THAT UPON SUBMISSION OF THIS REQUEST, IT CAN NOT BE WITHDRAWN FOR ANY REASON.

(SIGNATURE) Date

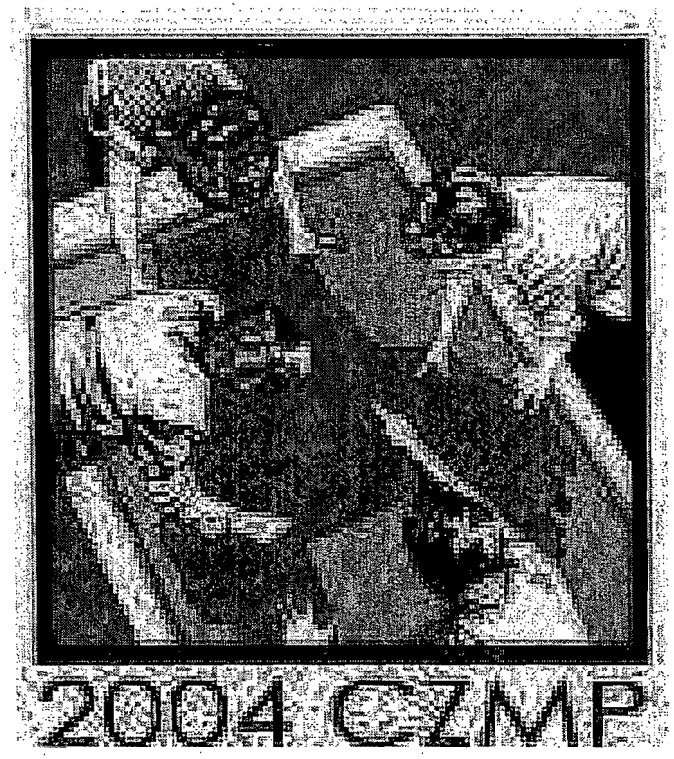
OWNER ACKNOWLEDGEMENT: Are you the owner of the property? No X Yes___ If you are the owner, review and sign below.

1. **I hereby grant permission to Baltimore County for any required inspections of my property in regard to this subject-zoning request.**
2. **I hereby acknowledge that if any rezoning occurs, a change in the property tax assessment and /or transfer taxes may result for which the property owner would be responsible. Further, I understand that if this zoning request is granted, it does not guarantee the issuance of plan approval or building permit. At the time of development processing, all county, state, and federal requirements in effect at that time must be satisfied.**
3. **I hereby acknowledge that the County Council may apply any zoning classification on the subject property upon adoption of the comprehensive zoning maps.**

Owner's Name (Please Print)	Signature	Date
Owner's Name (Please Print)	Signature	Date

** If your representation can be considered a lobbying effort, you may be required to register with the Baltimore County Council or the Baltimore County Ethics Commission (Section 28-161(9)b, Baltimore County Code)

CBA
Appt Ex
#28



Baltimore County
2004 Comprehensive Zoning Map Process
Final Log of Issues
Adopted August 31, 2004

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1988, LEGISLATIVE DAY NO. 5

BILL NO. 26-88

MR. WILLIAM R. EVANS, COUNCILMAN

BY THE COUNTY COUNCIL, MARCH 7, 1988

A BILL ENTITLED

AN ACT concerning

Parking

FOR the purpose of generally revising the Baltimore County Zoning Regulations in order to adopt new provisions governing all off-street parking and loading of vehicles in Baltimore County.

BY repealing

Sections 200.4.B., 201.4, 232A.5, 232B.6, 235A.5, 235B.6, 238A.5, 238B.6, 402.3.b., 406.2, 406A.4, 407.2.c., and 409

Baltimore County Zoning Regulations, as amended

BY adding

Section 409 - Off-Street Parking and Loading

Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Sections 101, 1B01.1.B.1.a.2., 1B02.2.A., 1B02.2.B., 230.13, 233.2, 256.1, 410.3.B.7, 410.A.3.B.6, and 424.1.B.

Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report from the Planning Board concerning the subject legislation and has held a public hearing thereon, now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND that Sections 200.4.B., 201.4, 232A.5, 232B.6, 235A.5, 235B.6, 238A.5, 238B.6, 402.3.b., 406.2, 406A.4, 407.2.c., and 409 of the Baltimore County Zoning Regulations, as amended, be and they are hereby repealed.

SECTION 2. AND BE IT FURTHER ENACTED, that Section 409 be and it is hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Bill 25-88 - Community Development Department - Energy Conservation Demonstration Project - This $30,000 appropriation is financed by a grant from the State of Maryland Oil Overcharge Restitution Fund. This Energy Conservation Demonstration Project runs through October 30, 1988. The Project goal is to improve and upgrade energy conservation at three volunteer fire stations: Hyde Park, Lansdowne, and Middleborough.

The conservation measures include additional insulation, caulking, weatherstripping, and replacing old thermostats.

After completion of the work, the County must hold three educational seminars in the community on residential and fire station energy conservation. In addition, the three stations must be available for tours by other interested stations.

a) Under a State contract, Baltimore Jobs in Energy, Inc., conducted energy audits at the three stations, and developed a list of energy conservation improvements.

Bill 26-88 - Mr. Evans - Offstreet Parking and Loading - Zoning Regulations -

Bill 26-88 generally recommends the adoption of new provisions to the Baltimore County Zoning Regulations governing all offstreet parking matters in the County and is a product of a Planning Board report.

The bill amends all existing sections of the Zoning Regulations dealing with parking of vehicles and enacts a new Section 409 in lieu thereof. New Section 409 is prospective in its application, so that projects which have CRG approval prior to the date on which Bill No. 26-88 becomes effective have an option to proceed under new Section 409 or to proceed under the regulations in effect at the time of CRG approval.

The bill requires that at the time of application for a building permit for which offstreet parking or loading spaces are required, a plan be provided showing parking and loading spaces and access thereto.

The bill requires minimum parking space dimensions for both angled and parallel parking, requires a certain number of small car spaces and requires a certain system of access to all parking spaces.

- continued -

Appellant CBA Ex 31

County Council of Baltimore County Maryland

Legislative Session 1970, Legislative Day No. 11

BILL NO. 100

Introduced by Mr. Bartenfelder, Councilman
(Request of County Executive)

By the County Council, July 6, 1970.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for establishment of zoning classifications, conversion and redesignation of "Residence" zoning classifications; to provide for the deletion and addition of terms and definitions; to provide for the application of light manufacturing zoning regulations to areas covered by previously submitted subdivision plans; to establish Rural and Rural-Suburban zoning classifications, "Density" Residential (D.R.) zoning classifications and Elevator-Apartment-Residence Zoning Classifications; to amend the special regulations for Community-Core Commercial (C.C.C.) Districts; to revise the use regulations in Light Manufacturing (M.L.) Zones; to revise the regulations governing automotive service stations in permitted parking garages; to establish regulations for Unit Developments and the classifications and authorizations thereof; to provide for the continuing validity of special exceptions granted for elevator apartment buildings or office buildings under R.A. Zoning Classifications; to provide that the Planning Board may adopt and implement certain policies and procedures in furtherance of the Zoning Regulations; by repealing and re-enacting with amendments Subparagraph 100. 1. A. 2; by adding new Subsection 100.3A; by deleting and adding certain definitions to Section 101, entitled "Definitions"; by amending Subsection 103.1; by adding new Articles 1A and 1B; by repealing designation and title, "Article 2-Zones and Districts: Use, Height and Area Regulations" and the subtitle, "R.40 Zone-Residence, One-Family" and enacting in lieu thereof a new designation and title as follows:

CBA Ex #32

17. Transit facilities. **[Bill No. 91-1990]**

18. Accessory uses or buildings other than those permitted only by special exception, including, but not limited to:

    a. Accessory radio or television receiving antennas.

    b. Wireless transmitting and receiving structures, provided that any such structure: is a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission; if it is an independent structure, shall be subject to the same requirements as are applied to buildings under Section 400; if it is a rigid-structure antenna, shall be no higher than 50 feet above grade level and with no supporting structure thereof closer than 10 feet to any property line; and does not extend closer to the street on which the lot fronts than the front building line.[2]

    c. Home occupations, as defined in Section 101.[3]

    d. Parking spaces, including accessory garage spaces.

    e. Offices for the conduct of business incidental to the rental, operation, service or maintenance of apartment buildings.

    f. Signs, subject to Section 450. **[Bill No. 89-1997]**

    g. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400). **[Bill No. 71-1987]**

19. Commercial film production, subject to Section 435. **[Bill No. 57-1990]**

B. Dwelling-type and other supplementary use restrictions based on existing subdivision and development characteristics. **[Bill No. 124-1981]**

1. Residential transition areas and uses permitted therein. **[Bill No. 2-1992]**

    a. Definitions and purpose. **[Bill No. 2-1992]**

        (1) The residential transition area (RTA) is a one-hundred-foot area, including any public road or public right-of-way, extending from a D.R. zoned tract boundary into the site to be developed.

---

2 **Editor's Note: Former Item c, which followed this item and permitted automotive-service stations, was repealed by Bill No. 172-1993.**

3 **Editor's Note: Former Item e, which followed this item and permitted offices of certain professional persons as an accessory use to their residences, was repealed by Bill No. 105-1972, effective 8-26-1982.**

CRA Appt. Ex # 33

Section 233
Business, Major (B.M.) Zone Use Regulations
[BCZR 1955]

The following uses only are permitted (Section 233.3):

233.1. Uses permitted in B.L. Zone.

233.2[5] Animal boarding place, Class A **[Bill No. 85-1967[6]]**[7]
Boatyard **[Bill Nos. 64-1963; 85-1967]**
Bowling alleys
Carpentry, electrical, plumbing, heating, sheet metal, electroplating and painting shops
Catering hall **[Bill No. 110-1993]**
Clothes cleaning and dyeing where not more than two units with combined capacity of not more than 50 pounds are employed
Commercial beach, with provision of adequate parking area, and permitting dressing facilities, snack bar, picnic area and boat rental **[Bill Nos. 64-1963; 85-1967]**
Commercial recreation enterprises, including dance halls, skating rinks and others which, in the judgment of the Zoning Commissioner, are similar, but excluding merry-go-rounds and freak shows, shooting galleries and penny arcades
Community building, swimming pool or other structural or land use devoted to civic, social, recreational and educational activities **[Bill Nos. 64-1963; 85-1967; 26-1988]**
Funeral establishment **[Bill No. 43-1970]**
Garage, service
Golf course, country club or other outdoor recreation clubs; also quasi-public camp, including day camps, but no such uses shall be located on less than five acres, and no building, parking lot or out-of-water marine craft storage thereon shall be located within 60 feet of any residential property line **[Bill Nos. 64-1963; 85-1967]**
Hotel
Machinery sales store
Marina **[Bill Nos. 64-1963; 85-1967]**
New automobile sales facility and adjoining outdoor sales area, provided that dismantled or junked cars unfit for operation on the highways may not be stored outdoors. **[Bill No. 71-2001]**
Nightclub[8]

---

[5] **Editor's Note: All of the provisions of this subsection that are not followed by bracketed historical references were reenacted without substantive amendment by Bill No. 85-1967. The entries indicated in this section as originally having been added by Bill No. 64-1963 were, according to a literal reading of that bill, to have been added to "[Section]...232.2, title 'B.M. zone'...". However, Section 232.2 regulates side yards, not uses, and is part of the regulations of the B.L. zoning classification, not the B.M. classification.**

[6] **Editor's Note: This bill also repealed "Animal hospital," which originally followed.**

[7] **Editor's Note: "Billiard and pool rooms," which followed this item, was repealed by Bill No. 61-1967.**

[8] **Editor's Note: "Pawnshop," which originally followed, was repealed by Bill No. 112-1995.**

CBA Appt Ex #34

BALTIMORE COUNTY CODE

VOLUME II

2006 S-7 Supplement contains
Local legislation current through Bill No. 31-06

AMERICAN LEGAL PUBLISHING CORPORATION

432 Walnut Street Cincinnati, Ohio 45202-3909 (800) 445-5588

CBA Ord Ex #35 A

IN THE MATTER OF THE THE APPLICATION OF COLONIAL STOLER PARTNERSHIP - PETITIONER FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NW/S KINGSLEY ROAD, 650' NE OF C/L REISTERSTOWN ROAD (22 KINGSLEY ROAD) 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 97-513-SPHA

* * * * * * * * *

O P I N I O N

This case comes to the Board of Appeals for Baltimore County based on a decision of the Zoning Commissioner in which a Petition for Special Hearing was denied; and a Petition for Variance was also denied. Public hearings were conducted by the Board on April 24, 1998 and May 8, 1998. At the conclusion of the second day of public hearings, the Board requested that both counsel submit written Briefs simultaneously to the Board which were due on May 29, 1998. A public deliberation was held on June 24, 1998 beginning at 9:30 a.m. Marvin I. Singer, Esquire, represented the Petitioner /Appellant. J. Carroll Holzer, Esquire, represented the Protestants.

The Appellant /Petitioner had several witnesses testifying on his behalf. Mr. Edwin S. Howe III, a consultant with the firm of K.C.W., Inc., a civil engineering firm, stated his qualifications as a professional engineer, having graduated from the Georgia Institute of Technology in 1988. He was certified as a registered Civil Engineer by the State of Maryland in 1993, with his experience in land development being stated and also his familiarity with the zoning regulations of Baltimore County. He also had received a Master's Degree from Johns Hopkins University. He was accepted by counsel as an expert in the field of civil

Apt B # 35 B

RE: PETITION OF COLONIAL STOLER PARTNERSHIP	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECCISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 03-C-98-008852
IN THE MATTER OF THE APPLICATION OF COLONIAL STOLER PARTNERSHIP FOR A SPECIAL HEARING AND VARIANCE on property Located on the NW/S Kingsley Road 650'NE of the c/l Reisterstown Road (22 KINGSLEY ROAD) 4TH Election District, 3rd Councilmanic District	*	

* * * * * * * * * * * *

ORDER

Having reviewed the Petitioner's Motion to Remand Case and People's Counsel's Answer to the Motion, which is adopted by counsel for the Protestants, it is this 4th day of December, 2001,

ORDERED that the Motion to Remand is DENIED.

Date: December 4, 2001 Robert E. Cahill Jr.
Judge

Copies sent to:

Marvin I. Singer, Esq.

J. Carroll Holzer, Esq.

Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.

CBA Appt Ex #36A

IN THE MATTER OF THE APPLICATION OF SEMINARY GALLERIA, LLC - LEGAL OWNER /PETITIONER FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NE/S OF YORK ROAD, CORBER SE/S OF SEMINARY AVENUE (1447 YORK ROAD)	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	Case No. 04-052-SPHA

* * * * * * * * *

OPINION

This case comes to the Board based upon an appeal from a decision of the Deputy Zoning Commissioner of Baltimore County issued on October 2, 2003. The case came to the Deputy Zoning Commissioner as Petition for Variance and Petition for Special Hearing for the property located at 1447 York Road in the Lutherville area of Baltimore County. Special hearing relief was requested in accordance with the *Baltimore County Zoning Regulations* (BCZR) §409.8B, to allow commercial parking adjacent to existing commercial parking on the same lot in a residential zone. The Petitioners also requested approval of a modified parking and landscape plan. In addition, the Petitioners requested variance relief from §409.8.A of the BCZR to permit parking spaces to be located within 10 feet of the right-of-way of a public street.

The Board held a public hearing on this matter on July 1, 2004 which was subsequently followed by a public deliberation on August 31, 2004. Present at the public hearing was Howard L. Alderman, Jr., Esquire, representing Theresa Rosier /Seminary Galleria c/o Hill Management (hereinafter "Petitioners"). Also present was Michael P. Tanczyn, Esquire, representing the Dulaney Valley Improvement Association (hereinafter "Protestants"). Appearing for the People's Counsel for Baltimore County was Deputy People's Counsel, Carole S. Demilio (hereinafter "People's Counsel").

In his opening statement, Mr. Alderman indicated that the Deputy Zoning Commissioner applied the law incorrectly and generated his own facts and assumptions. In his opening statement, Mr. Tanzyn reminded the Board that in 1985 it had denied a similar request, and he remarked that the Petitioners had

CBA Appt Ex 36B

IN THE MATTER OF SEMINARY GALLERIA, LLC 1447 York Road	*	IN THE CIRCUIT COURT
SEMINARY GALLERIA, LLC Owner/Petitioner/Appellant	*	FOR
	*	BALTIMORE COUNTY
DULANEY VALLEY IMPROVEMENT ASSOCIATION, Protestant/Appellee	*	
	*	
PEOPLE'S COUNSEL FOR BALTIMORE COUNTY Protestant/Appellee	*	CASE NO.: 03-C-04-11000
	*	

* * * * * * * * * * * *

-OPINION-
APPEAL FROM THE
BALTIMORE COUNTY BOARD OF APPEALS

Questions Presented for Appeal

Did the Baltimore County Board of Appeals commit error when it denied Petitioner's requests for approval of a modified commercial parking plan in a split residential/business zone? Specifically, did the Board of Appeals adequately set forth its conclusions and findings of fact in the decision to affirm the findings of the Deputy Zoning Commissioner, and did the Board of Appeals properly consider the weight of the evidence regarding the issuance of a use permit?

Summary

The record contains substantial evidence to support the findings of the Board of Appeals, and the decisions drawn from the facts and inferences in the record could be

FILED APR 26 2005

CBA Appt Ex 36C

IN THE MATTER OF THE APPLICATION OF SEMINARY GALLERIA, LLC -- LEGAL OWNER/PETITIONER FOR SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NE/S OF YORK ROAD, CORNER SE/S OF SEMINARY AVENUE (1447 YORK ROAD)	*	ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY
8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT (Case No. 04-052-SPHA)	*	Civil Action No. 03-C-04-11000

* * * * * * * * * * *

SUPPLEMENTAL OPINION OF THE BOARD OF APPEALS
ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

This matter has been remanded to the Board by the Circuit Court for Baltimore County. In its decision, the Court stated that "the case is hereby Remanded to the Baltimore County Board of Appeals for a more definite analysis, to include complete Findings of Fact and Conclusions of Law, as to the sole issue of denying Petitioners/Appellants requests for Petition for Special Hearing regarding the issuance of a use permit for the additionally constructed parking spaces."

A short summary of the facts in this matter is warranted and was fairly set forth by the Court in its decision. The Petitioner, Seminary Galleria, owns a business park at 1447 York Road in Baltimore County. The property is a split-zoned parcel of land, with a majority of the area in a business local (B.L.) and the northeastern tract in density residential (D.R.). Currently, the Petitioner uses portions in the B.L. and D.R. zones for business parking.

The current structure of the complex was approved by the County Review Group (CRG) development process in 1983, and parking requirements were met. According to *Baltimore*

CBA Appt Ex # 37

IN THE MATTER OF THE APPLICATION OF SYLVAN CORNBLATT – LEGAL OWNER; ENTERPRISE LEASING CO. -PETITIONERS FOR SPECIAL HEARING, SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE NE/S REISTERSTOWN RD 58' NW OF C/L OF HARDEN AVENUE (9619 REISTERSTOWN ROAD) 3RD ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 05-176-SPHXA

* * * * * * * * *

OPINION

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner (DZC) in which he granted Petitions for Special Hearing, Special Exception and Variance for property owned by Sylvan L. Cornblatt. The property which is the subject of this request is located at 9619 Reisterstown Road in Baltimore County. It is zoned B.L. and D.R. 3.5. The Petitioners are requesting a variance from § 1B01.1.B.1 of the *Baltimore County Zoning Regulations* (BCZR) to permit a residential transition area (RTA) setback and buffer of as little as 13 feet in lieu of the required 50-foot buffer and 75-foot setback respectively. In addition, special exception is requested pursuant to § 230.13 of the BCZR to permit an automotive service garage (in reality, a rental car facility) in a B.L. zone. Finally, Petitioner is requesting a special hearing to permit business parking in a residential zone in accordance with § 409.8.B of the BCZR subject to compliance with § 409.7.B.2, and to permit parking for the proposed service garage (rental vehicles in operating condition only) in the parking permitted in the residential zone.

Petitioners were represented by Matthew H. Azrael, Esquire, and Appellant, Office of People's Counsel, by Peter Max Zimmerman. A hearing was held on March 23, 2005. Public deliberation was held on May 12, 2005.

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

November 18, 2005

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

RECEIVED
NOV 18 2005
Per.....

Hand-delivered

Re: PETITION FOR SPECIAL HEARING
NE Corner East Avenue and East Avenue Relocated
(0.8781 Acres Parcel)
11th Election District; 6th Council District
Auto Properties, LLC- Petitioners
Case No.: 06-109-SPH

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated November 9, 2005 by the Baltimore County Zoning Commissioner in the above-entitled case

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Arnold Jablon, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204
Meg O'Hare, 3012 Summit Avenue, Parkville, MD 21234
Ruth Baisden, 7706 Oak Avenue, Parkville, MD 21234
County Board of Appeals

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at NE corner of East Ave and East Ave relocated

which is presently zoned DR 5.5 and BM

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve.

To confirm that the use permit for off-street parking in a residential zone granted in Case No. 68-177RX, dated March 14, 1968, is valid for the property on which the use permit was approved, and that the subject property may be utilized pursuant to the use permit.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Hearing, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Arnold Jablon
Name - Type or Print

Signature

Venable, LLP
Company

210 Allegheny Ave 410-494-6298
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Auto Properties, LLC
Name - Type or Print

Signature

Steven B. Fader, Managing Member
Name - Type or Print

Signature

23 Walker Ave 410-415-0501
Address Telephone No.

Baltimore, Maryland 21208
City State Zip Code

Representative to be Contacted:

Arnold Jablon
Name

210 Allegheny Ave 410-494-6298
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 2 HRS

UNAVAILABLE FOR HEARING —

Reviewed By NA Date 8/23/05

Dmp off

ORDER RECEIVED FOR FILING
Date 11/2/05
By

Case No. 06-109-SPH

REV 9/15/98

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

November 9, 2005

WILLIAM J. WISEMAN III
Zoning Commissioner

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, Maryland 21204

RE: **PETITION FOR SPECIAL HEARING**
NE/Corner East Avenue and East Avenue Relocated
(0.8781-Acre Parcel)
11th Election District – 6th Council District
Auto Properties, LLC - Petitioners
Case No. 06-109-SPH

Dear Mr. Jablon:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: Mr. Dennis Turnbaugh, Mileone-Heritage
3001 East Avenue, Baltimore, Md. 21234
Mr. Thomas Church, Development Engineering, 6603 York Road, Baltimore, Md. 21212
Ms. Jackie Megee, 3112 East Avenue, Parkville, Md. 21234
Mr. Anthony Marchanti, 3021 East Avenue, Parkville, Md. 21234
Mr. & Mrs. John B. Baker, Jr., 2307 Ellen Avenue, Baltimore, Md. 21234
Ms. Ruth Baisden, 7706 Oak Avenue, Baltimore, Md. 21234
Ms. Meg O'Hare, 3012 Summit Avenue, Carney, Md. 21234
Peter Max Zimmerman, Esquire, Office of People's Counsel; Case File

DEVELOPMENT ENGINEERING CONSULTANTS, INC.

Site Engineers & Surveyors

6603 York Road
Baltimore, Maryland 21212
(410) 377-2600
(410) 377-2625 Fax

109

ZONING DESCRIPTION
FOR
PARCEL OF LAND
ON THE NORTHEAST CORNER OF
EAST AVENUE AND EAST AVENUE RELOCATED

BEGINNING at a point on the east side of East Avenue Relocated, which is 50 feet wide, at the distance of 34 feet ± north of the centerline of the nearest improved street East Avenue which is 33 feet wide, thence the following courses and distances: 1) North 33 degrees 50 minutes 40 seconds East 152.84 feet, 2) 55.21 feet along the arc of a tangent curve to the left having a radius of 80.00 feet, 3) North 32 degrees 23 minutes 14 seconds East 64.22 feet, 4) South 56 degrees 36 minutes 46 seconds East 148.20 feet, 5) South 33 degrees 43 minutes 26 seconds West 287.15 feet, 6) North 56 degrees 24 minutes 43 seconds West 111.30 feet, 7) North 09 degrees 39 minutes 04 seconds West 25.51 feet, to the place of beginning, as recorded in Deed Liber 13959, Folio 350.

Containing 38,250 sqare feet or 0.878 acres of land, more or less and situated in the 11th Election District.

00-117

January 10, 2003

STATE OF MARYLAND
WILLIAM MICHAEL RAY
No. 516
REGISTERED
PROPERTY LINE SURVEYOR

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 06 109 SPH

Petitioner: Auto Properties LLC

Address or Location: NONE NE Corner of East Ave. & East Ave. (Relocated)

PLEASE FORWARD ADVERTISING BILL TO:

Name: Venable, Baetzer & Howard

Address: 210 Allegheny Ave (21204) BALTO MD.

Telephone Number: 410 494 6298

Revised 2/20/98 - SCJ

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

109

No. 448144

DATE 8/23/05 ACCOUNT 001 006 6150

AMOUNT $ 325.00

RECEIVED FROM: Venable LLP

FOR: Comm SPH
East avenue

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

Department of Permits a Development Management

Director's Office
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204
Tel: 410-887-3353 • Fax: 410-887-5708

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

September 9, 2005

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-109-SPH
N/E corner of East Avenue and East Avenue relocated
11th Election District – 6th Councilmanic District
Legal Owners: Auto Properties, LLC, Steven Fader, Managing Member

Special Hearing to confirm that the use permit for off-street parking in a residential zone granted in Case No. 68-177-RX, dated March 14, 1968, which is valid for the property on which the use permit was approved, and that the subject property may be utilized pursuant to the use permit.

Hearing: Wednesday, October 12, 2005 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Arnold Jablon, Venable, 210 Allegheny Avenue, Towson 21204
Steven Fader, 23 Walker Avenue, Baltimore 21208

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 27, 2005.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 27, 2005 Issue - Jeffersonian

Please forward billing to:
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

410-494-6298

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-109-SPH
N/E corner of East Avenue and East Avenue relocated
11th Election District – 6th Councilmanic District
Legal Owners: Auto Properties, LLC, Steven Fader, Managing Member

Special Hearing to confirm that the use permit for off-street parking in a residential zone granted in Case No. 68-177-RX, dated March 14, 1968, which is valid for the property on which the use permit was approved, and that the subject property may be utilized pursuant to the use permit.

Hearing: Wednesday, October 12, 2005 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

6/2

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
NE/Corner East Avenue and East Avenue Relocated	*	DEPUTY ZONING COMMISSIONER
11th Election District	*	OF BALTIMORE COUNTY
6th Councilmanic District (NE/C or East Ave. & East Ave. Relocated)	*	CASE NO. 02-360-SPHA
Auto Properties, LLC *Petitioner*	*	

* * * * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, Auto Properties, LLC. The variance request involves property located at the intersection of East Avenue and East Avenue Relocated, which area is situated near the intersection of Harford Road and I-695 in Carney. The special hearing request is to approve business parking in a residential zone, to include the storage of unlicensed passenger vehicles. In addition, variance relief is requested to allow a 25 ft. buffer and a 25 ft. setback in lieu of the required 50 ft. buffer and 75 ft. buffer.

Appearing at the hearing on behalf of the special hearing and variance requests were Steve Fader, the managing member of Auto Properties, LLC, Dennis Turnbaugh, appearing on behalf of the auto dealership which operates at this location, Tom Church, the professional engineer who prepared the site plan of the property, and Robert Hoffman, attorney at law, representing the Petitioner. Appearing in opposition to the Petitioner's request were many residents of the surrounding community, particularly Mildred Schaffer, an adjacent property owner, as well as Anthony Marchani, Jackie Megee and Tom Edwards, and many other citizens whose names appear on the Citizens Sign-In Sheet.

Testimony and evidence indicated that the property, which is the subject of this special hearing and variance request, consists of 0.8781 acres, more or less, split-zoned BM and D.R.5.5. The subject property is located at the intersection of East Avenue Relocated and East Avenue in Carney. As the site plan indicates, these two roadways meet at a 90° angle. The subject property is an unimproved lot containing a width of 148 ft. and a depth of 287 ft. The subject lot is surrounded on three sides by the Heritage Honda Automobile Dealership and a Chrysler Plymouth Automobile Dealership. The owner of the property, Auto Properties, LLC, is interested in utilizing the unimproved vacant lot for the purpose of storing new car inventory thereon.

Testimony further revealed that Auto Properties, LLC recently relocated a Honda Dealership to this property. Substantial and major improvements have been made to the buildings and parking areas which were previously utilized as a Doug Griffith Chrysler Plymouth Dealership. The relationship between new car dealers and the manufacturers of the vehicles they sell have changed in recent times. The manufacturers require that their franchisees keep and maintain a certain amount of inventory on hand for sale to the general public. This has caused not only this particular new car dealer, but others around Baltimore County, to seek out and obtain additional storage area for their new car inventory. This is what has occurred at this location and is the purpose behind the filing of the special hearing and variance herein.

As stated previously, many residents of the surrounding neighborhood appeared in opposition to the Petitioner's request. The cumulative testimony of the residents was that they are opposed to any further expansion of the Heritage Dealership. These neighbors are upset with the renovations and expansions that have occurred up to the date of this hearing. For example, many of the residents in attendance object to the increase and amount of lighting that is

associated with the automobile dealerships located along Harford Road. The citizens object to the manner in which the light spills into their residential community. They, therefore, asked that the owner of the property investigate this matter and make appropriate corrections to alleviate this adverse condition.

The citizens in attendance also objected to the manner in which new cars are delivered to the subject property. Several residents testified that on many occasions the car carriers which deliver inventory to this property park their tractor trailers on East Avenue Relocated and proceed to unload their cargo. Doing this blocks a full lane of travel and impedes the view of motorists utilizing this roadway. This problem was discussed with the general manager of the dealership who advised that an alternative method of delivering vehicles will be implemented so that this objectionable condition does not continue.

The residents also complained about the amount of trash and debris which has accumulated in the area of the body and fender shop which is located on the Petitioner' property. Photographs were submitted evidencing the trash and debris that existed on the property, even as of the date of the hearing before me. Furthermore, within one hour of the public hearing before me, I personally visited the area of the property identified by the citizens where the trash has accumulated. Indeed, the photographs were accurate and the condition of the Petitioner's property at that location was deplorable. However, to the credit of the manager of the dealership, several employees were cleaning up the trash and debris which had accumulated in that area of the property. These employees were also picking up trash that had blown onto neighboring properties. This is particularly troublesome given the existence of a stream in that area of the property.

It was apparent that most of the trash and debris that had accumulated in this area of the property was generated by the dumpsters within which this trash was suppose to be stored. These dumpsters are often filled to capacity. This overflow of trash causes the paper products to blow out of the dumpsters and into this corner of the Petitioner's property. Some of the trash had blown over the Petitioner's security fence and into the stream valley. Representatives of the dealership agreed to service the dumpsters on a more frequent basis or agreed to add an additional dumpster so as to eliminate this overflow problem.

While these problems did not specifically apply to the vacant lot, which is the subject of this special hearing request, it did give these neighbors great apprehension regarding the further expansion of this automobile dealership. These neighbors believe that the further expansion of the dealership will further compound the problems that their neighborhood has experienced with the growth of this automobile dealership at this location.

Additional concerns were raised by the residents which specifically addressed the use of this lot for the storage of new car inventory. The neighbors object to an additional access point onto East Avenue Relocated from this storage lot. They believe that the manner in which East Avenue Relocated is designed, that is, with two 90° turns in close proximity to one another, poses an unsafe traffic condition. Adding an additional vehicular access point on one of those 90° turns, as proposed by this Petitioner, would only exacerbate that unsafe condition. The neighbors were also concerned that installing fencing and screening on the southern portion of the unimproved lot in the area of the second 90° turn would impede the vision of motorists attempting to negotiate that sharp turn in the road. Therefore, they are opposed to the utilization of the unimproved lot in the fashion suggested by this property owner.

1. The Petitioner shall be permitted to utilize the subject property for the storage of unlicensed new car inventory. However, the Petitioner shall leave undisturbed that portion of the property situated adjacent to the intersection of East Avenue and East Avenue Relocated. That is, the first 85 ft. of the subject lot, as measured from the road right-of-way of East Avenue, shall remain in its open, natural and grassy condition. This was a suggestion made by one of the citizens in attendance and agreed to by Mr. Fader on behalf of the owner of the property. The Petitioner may, but shall not be required to convey this portion of the property to the community as a small park, if the community is willing to accept such a conveyance. If not, then that rectangular portion of the lot, the dimensions of which are approximately 85 ft. x 130 ft., shall remain open and meticulously maintained by Auto Properties, LLC.

2. There shall be no curb cut or access from the proposed inventory storage lot directly onto East Avenue Relocated. The Petitioner shall eliminate that driveway access from their site plan. All access to the vehicles which may be stored on this lot shall occur from the contiguous property currently owned by Auto Properties, LLC, the Petitioner herein. There shall be no new access points to East Avenue Relocated, other than those which currently exist today.

3. The Petitioner shall continue to maintain a 25 ft. buffer area as shown on their site plan adjacent to the residential property located at 3018 East Avenue. That buffer area, as well as the boundaries of this parking lot adjacent to East Avenue Relocated and East Avenue, shall be appropriately screened as within the discretion of Avery Harden, Landscape Architect for Baltimore County. In furtherance thereof, the Petitioner shall be required to submit a landscaping and lighting plan to Mr. Harden for his full review and approval. In addition, Mr. Harden shall review not only the lighting proposed for this new parking lot, but also shall review the manner in which the automobile dealership is illuminated. Mr. Harden shall pay particular attention to the effect of this lighting upon the property owned by Mildred Schaffer, whose property is located at 3017 East Avenue. The Petitioner shall be required to adjust their lighting so as to mitigate the effects that said lighting has upon the Schaffer residential property and any other residences so affected.

4. Mr. Harden shall also review the fencing and natural vegetation, and the manner in which the Petitioner's property abuts that property owned by Mildred Schaffer at 3017 East Avenue. Mr. Harden shall use his discretion and expertise in landscape buffering to make any adjustments or improvements to the manner in which Ms. Schaffer's property is screened by that which exists in the field today.

5. All trash and debris that is associated in any way with the automobile dealerships operating at this location, including the auto paint and body shop, shall be stored in appropriate trash receptacles and disposed of on a regular basis so as to prevent any trash and debris from blowing about the Petitioner's property or any adjacent properties.

6. The Petitioner shall be absolutely prohibited from loading or unloading automobiles from car carriers in the roadbed of East Avenue Relocated or East Avenue. All loading and unloading of vehicles must occur on the auto dealership property and not in the public road right-of-way.

7. The Petitioner shall be required to submit a new site plan for review by the appropriate agencies of Baltimore County indicating a redesign of the property upon which this commercial parking shall occur consistent with the terms and conditions of this Order

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

BW 10/12

September 21, 2005

William J.Wiseman, Zoning Commissioner
John V. Murphy, Deputy Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

RECEIVED

SEP 21 2005

ZONING COMMISSIONER

Re: Auto Properties, LLC
NE Corner East Avenue and East Avenue Relocated
Hearing Date: October 12, 2005 at 11 a.m.
Case No. 06-109-SPH

Dear Messrs. Wiseman and Murphy,

This case relates to a case pending before the County Board of Appeals (CBA) concerning the same property. 03-360-SPH. The pending case involves a request for a use permit for commercial parking in a residential zone and residential transition area variances. The Zoning Commissioner there approved the petitions conditionally in the enclosed opinion and order dated June 2, 2003. This office then filed a timely appeal.

The CBA deferred the hearing while Petitioner attempted to have the property rezoned to business zoning during the 2004 comprehensive zoning process. The County Council declined to reclassify the residentially zoned property.

When the case eventually came up for hearing on January 25, 2005, Petitioner's counsel informed the CBA that he had just discovered an old use permit approved in Case No. 68-177-RX. Counsel suggested that this use permit might already allow the use which Petitioner now wishes to make for commercial parking for the recently developed Honda dealership nearby and asked for a postponement to review the matter further. The CBA postponed the case, with the anticipation of resetting the hearing at a future date.

In anticipation of further review at the County Board of Appeals, People's Counsel researched the matter thoroughly and found that the old case, entitled Harford Warehouse Corporation, does not provide Petitioner any entitlement to the use now requested. The results of this research were incorporated in a memorandum filed on February 16, 2005 with the CBA. A copy is enclosed.

Petitioner did not respond to this memorandum. Rather, Petitioner decided to start over at the Zoning Commissioner level and ask for a special hearing to determine the impact of the 1968 case.

The position of this office is as stated in the enclosed memorandum filed previously with the County Board of Appeals. For the reasons given, the 1968 case no longer has any validity or effectiveness.

First of all, there are no vested rights. The proposal is subject to review for compliance with residential transition area standards and with modified parking standards under Bill 26-88.

Secondly, even if the use had vested, it became nonconforming upon enactment of the RTA and modified parking standards. Because of the apparent discontinuity of the use for many years, any nonconforming use terminated.

Thirdly, the proposed use permit is subject to a new hearing under the Baltimore County Zoning Regulations and the Zoning Commissioner's Policy Manual in any event. The proposed use is materially different from the use approved in 1968.

In sum, the 1968 case does not confer any rights on Petitioner which protect or advance its current proposal to extend commercial parking into this residential zone and residential transition area.

Please note that various neighborhood citizens have appeared at the CBA in Case 03-360-SPH. We are sending a copy of this letter to Petitioner's counsel and also to Meg O'Hare, of the Carney Improvement Association, and Ruth Baisden, of the Greater Parkville Community Council, along with Jackie McGee, Daryl Corona and Anthony Marchanti. We trust that they will communicate with the interested citizens on East Avenue.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio/rmw

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw
Enclosures
cc: Arnold Jablon, Esquire,
Ruth Baisden
Meg O'Hare
Jackie McGee
Daryl Corona
Anthony Marchanti

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

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

September 1, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: **September 12**, 2005

Item# **6-105-a, 6-108-A, 6-109-SPH, 6-111-A, 6-112-A, 6-113-A, 6-114-SPH, 6-115-A**

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.

The Fire Marshal's Office has no comments at this time.

Lieutenant J.D.Mezick
Fire Marshal's Office
(O)410-887-4881 (C)443-829-2946
MS-1102F

cc: File

Printed on Recycled Paper

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*

State Highway Administration
Driven to Excel
Maryland Department of Transportation

Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 8·30·05

Ms. Kristen Matthews
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 109 JLL

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits & Development Management

DATE: September 6, 2005

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For September 12, 2005
Item No. 109

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

The minimum right-of-way for all public roads in Baltimore County is 40-feet. Show a future 40-foot-wide right-of-way centered on the existing 33-foot right-of-way.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 109-09062005.doc

RECEIVED

SEP 26 2005

ZONING COMMISSIONER

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: September 23, 2005

FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: NE corner of East Avenue

INFORMATION:

Item Number: 6-109

Petitioner: Auto Properties, LLC

Zoning: BM and DR 5.5

Requested Action: Special Hearing

SUMMARY OF RECOMMENDATIONS:
The Office of Planning has reviewed the subject petition and determined that the current use as a parking/storage lot is not desirable from a land use standpoint. However the petitioner's request calls for a legal opinion from the Zoning Commissioner, considering the aforementioned the Office of Planning has no further comments to offer on the subject matter.

For further information concerning the matters stated here in, please contact David Pinning at 410-887-3480.

Prepared by: Curtis Murray

Division Chief: Lynn Lanham

AFK/LL: CM

W:\DEVREV\ZAC\6-109.doc

APPEAL

Petition for Special Hearing
NE/Corner East Avenue and East Avenue Relocated
(0.8781-Acre Parcel)
11th Election District, 6th Councilmanic District
Auto Properties, LLC - Petitioners

Case No.: 06-109-SPH

Petition for Special Hearing (August 23, 2005)

Zoning Description of Property

Notice of Zoning Hearing (September 9, 2005)

Certification of Publication (September 27, 2005)

Certificate of Posting (September 25, 2005) by Robert Black

Entry of Appearance by People's Counsel (August 30, 2005)

Petitioner(s) Sign-In Sheet

Protestant(s) Sign-In Sheet

Citizen(s) Sign-In Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits

1. Site Plan – Prepared for subject hearing
2. Site Plan – Prepared following the Order Case No. 03-360-SPHA outlining conditions of that Order
3. Photograph Corner of East Avenue & East Avenue Relocated
4. 1955 Zoning Map – Note word "Parking" written on subject property by unknown
5. 1968 – 68-177-RX Petition/Order/Site Plan
6. Regulations relevant – Sections 409.4, 409.8 - Density Residential Zones to ease comparison of law
7. Affidavits – from 1970 re: Parking Use

Protestants' Exhibits:

1. Carney Improvement Assoc. Authorization of Representation – M. O'Hare
2. Greater Parkville Community Council – Resolution in Opposition – Ruth Baisden, President
3. Photographic Views of Area in Question
4. Marchanti – Photo Illustration of Continued Violations despite conditions contained in #03-360-SPHA
5. Photographs of Jackie Megee, resident in neighborhood for 46 tears (since 1959)

Miscellaneous (Not Marked as Exhibit)

1. Letter to Zoning Commissioner's Office from Office of People's Counsel (9/21/05)
2. 1 Letter from the Deborah & Michael Malinowski (10/11/05)
3. 1 Letter from Melissa Malinowski (10/11/05)
4. 3 sets of case law - Westlaw

Zoning Commissioner's Order (11/09/05 Granted)

Notice of Appeal received on November 18, 2005 by Office of People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Mr. Dennis Turnbaugh, Mileone-Heritage, 3001 East Avenue, Baltimore, MD 21234
Mr. Thomas Church, Development Engineering, 6603 York Road, Baltimore, MD 21234
Ms. Jackie Megee, 3112 East Avenue, Parkville, MD 21234
Mr. Anthony Marchanti, 3021 East Avenue, Parkville, MD 21234
Mr. & Mrs. John B. Baker, Jr., 2307 Ellen Avenue, Baltimore, MD 21234
Ms. Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234
Ms. Meg O'Hare, 3012 Summit Avenue, Carney, MD 21234

date sent: December 20, 2005, raj

Zoning Office
Department of Permits and Development Management
111 West Chesapeake Ave
Towson, Maryland 21204

Zoning Office:

Please be advised that we, the undersigned, have authorized Arnold Jablon, Esq., Venable, LLP, 210 Allegheny Ave., Towson, Maryland 21204, to be our attorney-in-fact and attorney-at-law and on our behalf file the attached petitions for zoning relief. We hereby understand that the relief requested is for property we own and we hereby and herewith acknowledge our express permission for said petitions to be filed on our behalf. The petition(s) filed are for property located at ____NE corner of East Ave and East Ave Relocated____, property we own.

Further, the undersigned is the contract purchaser of said property, and hereby and herewith authorize Mr. Jablon to be my attorney-in-fact and attorney-at-law and represent us in this matter.

Auto Properties, LLC (owner)

By: _____ 7/28/05 (Date)
Steven B. Fader, Managing Member

23 Walker Ave, Baltimore, Maryland 21208
address

06-109-SPH

KEEP IN FILE
06-109-SPH

FREQUENT FLYER ATTORNEYS
DROP OFF ZONING PETITIONS
POLICY PROCEDURES

The following zoning policy is related to the filing of zoning petitions and is aimed at expediting the petition filing process with this office:

1. The Director of the Office of Permits and Development Management (PDM) allows zoning attorneys who frequently file for zoning hearings and who are capable of filing petitions that comply with **all** technical aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of an appointment for review by zoning personnel.

2. Any attorney using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. In the event that the petition has not been filed correctly, there is the possibility that another hearing will be required. or the zoning commissioner may deny the petition due to errors or incompleteness. All petitions filed in this manner will receive a cursory review and if necessary they will be commented on by zoning personnel prior to the hearing. A corrective memo by zoning review may be placed in the hearing file to be considered by the Hearing Officer.

3. When a petition has been dropped off by the attorney, it will only be reviewed for very basic necessary input, logging, and distribution information.

3/22/05
JLL/rjc

To: Zoning Commissioner, Baltimore County
(PLEASE NOTE THIS HEARING IS SCHEDULED TOMORROW, 10/12/05)
Fax Number: 410-887-3468

From: Michael & Deborah Malinowski

Date: October 11, 2005

Re: Case Number: 06-109-SPH
Northeast corner of East Avenue and East Avenue (relocated)

* * * * * * * * * * * **Hearing Date: 10/12/05, 11:00 am-12:00 pm** * * * * * * * * * * *

Dear Mr. Commissioner:

We've lived on East Avenue since 1978 and did not have any issues when the dealership was owned by Doug Griffith. All of the issues have arisen since Heritage has taken over ownership. They are trying to make a mega-dealership -- even if it means the residential homeowners suffer. Any closer proximity of the dealership to our homes will definitely decrease the values of our properties. Our poor neighbors near the dealership are already dealing with Heritage's bright lights at night-- it's like daylight.

We are very concerned that Heritage is again going to try to park cars (or do who-knows-what) on this piece of property that has been a buffer between their commercial business on Harford Road and the residential atmosphere of East Avenue. In the past Heritage has failed to abide by restrictions to not park on the buffer around the new car parking lot (on the grass and stones). We have no reason to believe there won't be continued misuse of this property if they are granted permission for off-street parking. We are also concerned about the placement of the zoning hearing sign on the property. It was placed at the very corner of the property – not facing either side of the property so that you would notice it as you were driving up or down East Avenue. It has been placed so that you are making a sharp turn before you are even able to see the sign (if you even notice it) – wonder why that would be.

Certainly, we, as long-standing property owners have the right to have our homes retain their value and remain as residential as possible. We've been here much longer than Heritage and we think that should we worth something. We, therefore, respectfully request that you deny this request.

Thank you for your consideration.

Sincerely,

Michael Malinowski
Deborah L Malinowski

Michael & Deborah Malinowski
3127 East Avenue
Baltimore, Maryland 21234

To: Zoning Commissioner, Baltimore County
(PLEASE NOTE THIS HEARING IS SCHEDULED TOMORROW, 10/12/05)
Fax Number: 410-887-3468

From: Melissa Malinowski

Date: October 11, 2005

Re: Case Number: 06-109-SPH
Northeast corner of East Avenue and East Avenue (relocated)

* * * * * * * * * * * ***Hearing Date: 10/12/05, 11:00 am-12:00 pm*** * * * * * * * * * * *

Dear Mr. Commissioner:

I have lived on East Avenue for a little over 27 years. The businesses located along the Harford Road corridor remained a friendly, but distant neighbor until the Heritage Group acquired the car dealership and the lot in question. The Heritage Group's operation has adversely affected our once peaceful community. From their disposal of trash in our streets and waterways to daily test rides through our neighborhood, Heritage has invaded our residential environment and our homes. This lot is the only buffer that remains between us and our "big-business" neighbor. Allowing the Heritage Group to utilize this lot would be detrimental in many ways.

Undoubtedly, a move such as this would decrease property values along East Avenue. For most, a home is the largest investment of their lives. It doesn't seem fair to jeopardize the livelihood of many for the profit line of one company. Heritage has proven to be a selfish and inconsiderate neighbor. They unload, load, and park cars along the already narrow turns of East Avenue. This practice totally disregards the numerous requests from residents, the community association, and county government not to do so. I am very concerned that Heritage will continue to misuse this property if they are granted permission for off-street parking.

It would be awful to see our neighborhood ruined by the careless actions of the Heritage Group. As a long time resident of East Avenue I respectfully ask that you deny the Heritage Group's request.

Thank you for your consideration.

Sincerely,

Melissa J. Malinowski

Melissa Malinowski
3130 East Avenue
Baltimore, Maryland 21234

Case No.: 06-109 SPH

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	SITE PLAN - Prepared for subject hearing in "BLANK" resembling a location Plat	Carney Improvement Assoc. Authorization of Representation N. O'HARE
No. 2	SITE Plan - Prepared following the ORDER case NO. 03-360 SPHA OUTLINING CONDITIONS OF THAT ORDER	Greater Parkville Community Council Resolution IN OPPOSITION Ruth Baisden, President
No. 3	PHOTOGRAPH CORNER OF EAST AVE & EAST AVE. RELOCATED	Photographic VIEWS of area in QUESTION
No. 4	1955 ZONING MAP - NOTE WORD "PARKING" written on subject Property by unknown.	Marchanti - Photo illustration of Continued Violations despite Conditions Contained in 03-360 SPHA
No. 5	1968 - 68-177RX PETITION/ORDER/ SITE PLAN	PHOTO'S OF JACKIE MEGEE resident in neighborhood for 46 years (SINCE 1959)
No. 6	Regulations - 409.4 (Relevant) 409.8 Density Residential Zone TO EASE COMPARISON OF LAW	
No. 7	Affidavits - from 1970 re Parking use	
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

C

Court of Appeals of Maryland.
Charles B. MAREK et al.
v.
BALTIMORE COUNTY BOARD OF APPEALS et al.
No. 26.

Dec. 19, 1958.

Proceeding to review action of county board of zoning appeals in granting offstreet parking permit to beach owners who operated their beach as a non-conforming use in a residential zone. The Circuit Court, Baltimore County, John E. Raine, Jr., J., entered order affirming action of board and protestants appealed. The Court of Appeals, W. Henry Laird, Jr., J. (Specially Assigned), held that evidence that beach was used by as many as 2,000 people on Sundays, that beach was used by church as source of recreation and that the placing of 'no-parking' signs along road approaching beach to relieve traffic congestion caused hardship to owners and to users of beach, justified granting of use permit and action of board was not arbitrary, illegal, invalid or capricious.

Affirmed.

West Headnotes

[1] Zoning and Planning ⚷547
414k547 Most Cited Cases
(Formerly 104k211/2)

[1] Zoning and Planning ⚷192
414k192 Most Cited Cases
(Formerly 104k211/2)
Where beach owners' petition for permission to use beach, operated as a nonconforming use in residential zone, for off-street parking had been denied pursuant to county zoning regulation and zoning regulation was thereafter amended so as to bring beach within scope of new regulation, beach owners' subsequent petition for off-street parking permit, brought within 18 months from final order denying original petition, was not a request for a special exception within purview of regulation prohibiting entertainment of a new petition for special exception within 18 months from date of final order disposing of prior petition.

[2] Zoning and Planning ⚷484
414k484 Most Cited Cases
(Formerly 104k211/2)

[2] Zoning and Planning ⚷353.1
414k353.1 Most Cited Cases
(Formerly 414k353, 104k211/2)
Where off-street parking is not mentioned as a special exception to zoning regulations, power to determine what situations shall be considered in such category is legislative function of the county council and not an administrative function of the county zoning commissioner.

[3] Zoning and Planning ⚷484
414k484 Most Cited Cases
(Formerly 104k211/2)

[3] Zoning and Planning ⚷353.1
414k353.1 Most Cited Cases
(Formerly 414k353, 104k211/2)
Function of county zoning commissioner is limited to determination of whether a special exception listed in ordinance is appropriate in any particular case.

[4] Administrative Law and Procedure ⚷760
15Ak760 Most Cited Cases

[4] Administrative Law and Procedure ⚷763
15Ak763 Most Cited Cases
Court of Appeals may not substitute its judgment for that of an administrative board, but it may set aside action of such board if such action is

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discriminatory, arbitrary or illegal.

[5] Zoning and Planning ⚷435
414k435 Most Cited Cases
(Formerly 104k211/2)

[5] Zoning and Planning ⚷645
414k645 Most Cited Cases
(Formerly 104k211/2)
In proceeding to review action of county board of zoning appeals in granting off-street parking permit to beach owners who operated their beach as a nonconforming use in a residential zone, evidence that beach was used by as many as 2,000 people on Sundays, that beach was used by church as source of recreation and that the placing of "no-parking" signs along road approaching beach to relieve traffic congestion caused hardship to owners and to users of beach, justified granting of use permit and action of board was not arbitrary, illegal, invalid or capricious.

[6] Zoning and Planning ⚷273.1
414k273.1 Most Cited Cases
(Formerly 414k273, 104k211/2)

[6] Zoning and Planning ⚷418
414k418 Most Cited Cases
(Formerly 104k211/2)
Purpose of county zoning regulation permitting use of land in residential zone for parking purposes provided that parking space adjoined or was across an alley or street from the business or industry involved was to provide for unusual conditions that appear which justify the lifting or easing of general restrictions in order to permit the use of land, if the public will be benefited, in a manner contrary to the general restrictions.

[7] Zoning and Planning ⚷381
414k381 Most Cited Cases
(Formerly 104k211/2)

[7] Zoning and Planning ⚷378.1
414k378.1 Most Cited Cases
(Formerly 414k378, 104k211/2)
If general public good appears to be clearly attained by the granting of a nonconforming use permit, county zoning commissioner must grant it, but if not, then commissioner must refuse it, but commissioner may not be arbitrary or capricious in the exercise of his judgment.

[8] Zoning and Planning ⚷748
414k748 Most Cited Cases
(Formerly 104k211/2)

[8] Zoning and Planning ⚷625
414k625 Most Cited Cases
(Formerly 104k211/2)
In proceeding to review action of county board of zoning appeals in granting off-street parking permit to beach owners who operated their beach as a nonconforming use in a residential zone, where testimony which was offered by protestants had not been offered before board though witness through whom proffer was made did testify before board and substantial part of testimony was admitted, refusal to admit balance was not prejudicial error.
***354 **876** Fletcher Krause, Baltimore (Leonard A. Vadala, Baltimore, on the brief), for appellants.

W. Lee Thomas, Baltimore (Kenneth C. Proctor, Proctor, Royston & Mueller, Towson, on the brief), for appellees.

Before BRUNE, C. J., and HENDERSON, PRESCOTT, HORNEY, and W. LAIRD HENRY, Jr., (Specially assigned) JJ.

W. LAIRD HENRY, Jr., Judge (Specially Assigned).

This is an appeal from an order of the Circuit Court for Baltimore County affirming the action of the Board of Zoning Appeals of Baltimore County (the Board) granting a use permit for off-street parking at a public beach being operated as a non-conforming use in an R. 6, or Residential, one and two family zone.

W. Ralph Peddy and Rollin Peddy, his wife (the Peddys *or* the proponents), in 1948 became the owners of a tract of land containing about 2 acres known as and called 'Miami Beach' fronting approximately 300 feet on Chesapeake Bay and

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with a depth of approximately 300 feet. This land is situated in the 15th Election District of Baltimore County, near the community of Bowley's Quarters and has for many years prior to its purchase by the Peddys been operated commercially as a public bathing beach and they have continued that operation. In 1945, when the initial zoning in Baltimore County became operative, this property was classified as an R.6 Residential Zone and its continued operation has been conducted as a non-conforming use.

In June 1956 the Peddys applied to the Deputy Zoning Commissioner of Baltimore County for permission to use the area, which is the subject of this appeal, for off-street parking facilities under the provisions of Section 409.4a of the Zoning Ordinance as it was then worded and received such permission from the Commissioner. Upon appeal to the Board by Charles B. Marek, and others (the protestants), in ***355** the area and after a hearing by that Board, the decision of the Commissioner was reversed and the permission for the off-street parking privilege was withdrawn.

At the time of the hearing by the Board (now known as the Baltimore County Board of Appeals) it must have thought that Section 409.4 of the Zoning Regulations provided that 'land in any residential zone may be used for parking areas * * * provided that:

> 'a. The land so used immediately adjoins or is directly across an alley or street from the business or industrial zone for which such off-street parking space is required * * *.'

The opinion of the Board was rendered December 13, 1956, and must have been based on the provision of § 409.4a, supra, because in its opinion, denying the permit sought, the Board said in part:

> ****877** 'We think the regulations should be held to mean exactly what they say i. e. land in a residential zone may be used for parking when adjoining a 'business or industrial zone."
>
> 'The petitioners' beach property is not in a business or industrial zone, but in a residence zone and we conclude that the Use Permit granted by the Zoning Commissioner was in error and should be revoked and refused.'

Actually at the time of this action, and apparently without the knowledge of the Board, the said sub-section 'a' had, on November 21, 1956, been amended to read as follows:

> 'a. The land so used must adjoin or be across an alley or street from the business or industry involved.'

The effect of this amendment was to change the requirement that the land to be used be adjoining or across the street or alley from a business or industrial zone, which the land in question here is and was not, to the requirement that it adjoin or be across a street or alley from the business or industry ***356** involved, which the land in this case was and is, thus bringing the land in question within the scope of the regulations.

In the next sequence of events the Peddys again, that is, on May 17, 1957, filed a petition with the Zoning Commissioner for an off-street parking permit on the same land, covering an area of approximately the same size as the original tract. After a hearing, the Commissioner on June 19, 1957, denied the permit. Upon an appeal and subsequent hearing before the Board, the permit was granted on July 23, 1957. This was followed by an appeal to the Circuit Court for Baltimore County, which court, on January 21, 1958, affirmed the decision of the Board.

In addition to the two applications by the Peddys above mentioned, they did further, on January 31, 1957, file a petition with the Zoning Commissioner for a reclassification of their property from R.6 (residential) to B.L. (business local). On May 9, 1957, the Board affirmed an order of the Zoning Commissioner denying the re-classification and an appeal was taken to the Circuit Court for Baltimore County, which is still pending.

Four questions are raised by the protestants.

First, it is argued that the petition which is now before us for a permit for off-street parking, is in legal effect a petition for a special exception

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brought within 18 months from the date of the final order in the case just above mentioned which was a petition for re-classification of the same property and under the provisions of Section 500.12 of the Baltimore County Zoning Regulations, should be dismissed. Tyrie v. Baltimore County, 1957, 215 Md. 135, 137 A.2d 156.

Section 500.12, supra, provides as follows:

> 'No new petition for reclassification or Special Exception shall be entertained by the Zoning Commissioner in any cases which has been considered and acted upon by him until the expiration of 18 months from the date of his final Order thereon. Where an appeal is taken from any decision of the Zoning Commissioner to the Board of Zoning Appeals, the ***357** Zoning Commissioner shall not entertain any new petitions for reclassification or Special Exception until the expiration of 18 months from the date of the final order of said Board of Zoning Appeals.'

[1] This then brings us to the question as to whether or not the petition filed in this case is a petition for a special exception from the use that can be made of land lying in a zone classified as R.6 Residential. We must conclude that this petition is not a request for a special exception. It is quite true that the zoning ordinance does provide that under certain circumstances ****878** and for certain purposes which are enumerated at length a different use may be made of the land than that which the zoning ordinance contemplates. Section 270 sets out this Schedule of Special Exceptions in detail and Sections 502 and 502.1 set forth the principles and conditions which shall govern the Zoning Commissioner and the Board.

[2][3] Off-street parking is not mentioned among the many things which may be the subject of a special exception and the power to determine what situations shall be considered in that category is a legislative function, resting in this instance with the County Council of Baltimore County, and is not an administrative function of the Zoning Commissioner. The function of the Zoning Commissioner is limited to a determination under the existing factual situation if a special exception, one among those listed in the ordinance, is appropriate in any particular case.

In this case the application was made and the use for off-street parking was granted under the provisions of Section 409.4, supra,----

> 'Business or Industrial Parking in Residence Zones--Upon application the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking areas subject to the following conditions. If granted, such use permit shall be conditioned as follows, in lieu of the provisions of Section 409.2(c).'

There follow eight conditions which must be observed as a condition precedent to the granting of the permissive use, the ***358** first of which is sub-section 'a' amended, as above noted.

There is nothing in this provision to suggest a special exception to the use permissible in the zoning area for the land in question but it is a provision for off-street parking on land in the restricted zone in aid of better use of land which it adjoins and which in this case is a non-conforming use. It does not and can not and is not intended to increase, expand or in any way enlarge the size or area of the non-conforming use though its effect may be to intensify that use by making it possible for more people to comfortably enjoy the bathing facilities which that use affords.

There is testimony that in the summer months when the bathing facilities provided by the beach of the proponents is largely used, and especially on weekends or Sundays during those months, traffic was so congested when parking was allowed on the roads approaching the beach, that it became a hazard making it nearly impossible even in an emergency for traffic to flow either in or out of the area. In order to correct this situation, 'no parking' signs were placed along the roads.

There is testimony that the beach is used by as many as 2000 people on Sundays from the rapidly growing neighborhood: that one church in particular uses it and the Pastor of that church testified that in searching the area, it proved to be the best available

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and most satisfactory beach for his church's interest. He further testified that it was well managed, was safe for children, had no concessions to increase the expense and furnished an important source of recreation.

It seems obvious that the Board must have concluded, as we conclude, that the placing of 'no parking' signs along the roads approaching the beach, while proper to relieve traffic congestion, did cause a hardship to not only the owners and operators of the bathing beach, but also was a hardship to the great number of people who used it for normal and healthy summer recreation.

The Board, in granting the permit, said in part as follows:

> 'The petitioner in this case seeks a use permit with a variance concerning same for off-street parking ***359** at a public beach operated as a nonconforming use in an 'R.6 zone.' Many problems of ****879** public health, traffic congestion and expansion of the business under non-conforming privileges were considered carefully by the Board and the decision to grant the use permit and variance was made to most sensibly meet conditions, therefore, the petition is granted with the following restrictions and is further defined by Section 409.4 as amended November 21, 1956.'

Then follow the restrictions for the use permit.

[4][5] This Court may not substitute its judgment for that of an Administrative Board, but it may set aside the action of such a Board if such action is discriminatory, arbitrary or illegal. In this case we think the testimony fully justifies the decision of the Board.

What has been said will dispose also of the 3rd question raised by the protestants as to whether the action of the Board in allowing the off-street parking permit was arbitrary, illegal, invalid and capricious.

The second question posed by the protestants is whether the provisions of Section 409.4, supra, constitute a valid, lawful and constitutional delegation of the police power.

[6][7] In their brief, as well as in the argument, the protestants stress the use of the word 'may' in the first paragraph of Section 409.4, supra, and argue that its use makes the issuance of a permit or not discretionary. But, if this were so, as was said by this Court in the case of State v. Knowles, 1900, 90 Md. 646, 655, 45 A. 877, 878, 49 L.R.A. 695, 'the result will be to nullify the law; and this result cannot be tolerated if it can be avoided by any fair and reasonable construction of the whole section.' Clearly it is the purpose of this section to provide for unusual conditions that may appear in a certain case, as in this one, which justify the lifting or easing of general restrictions in order to permit the use of land, if the public will be benefited, in a manner contrary to the general restrictions. The Zoning Commissioner may not be arbitrary in his action. If the general public good appears to be clearly attained by the ***360** granting of the permit, then he must grant it. If not, then he must refuse it. But as has been said, he may not be arbitrary or capricious in the exercise of his judgment.

In the case of Heath v. Mayor and City Council of Baltimore, 1946, 187 Md. 296, 49 A.2d 799, the protestants attacked a decision of the Board which had approved a use permit. This Court reversed stating the Board had not taken into consideration the necessary standards. The ordinance itself was not attacked, but this Court said on page 303 of 187 Md., on page 803 of 49 A.2d:

> 'On this appeal there is no need to discuss the constitutional validity of paragraph 14 except to say that an ordinance which delegates a part of the police power to a zoning board may be valid, even though it confers upon the board a certain discretion in the exercise of that power, provided that its discretion is sufficiently limited by rules and standards to protect the people against any arbitrary or unreasonable exercise of power.'

It may be noted that in the above case in paragraph 14, the word 'may' is used as in this case.

In the case of Tighe v. Osborne, 1926, 150 Md.

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452, at page 463, 133 A. 465, at page 469, 46 A.L.R. 80, in determining whether the standards prescribed for the issuance of use permits in Baltimore City were adequate after holding that the applicable standards were sufficient to sustain the validity of the delegation of power, this Court said:

'The field has become so vast, and the things to be considered so enlarged in number, and so interrelated with one another, that it has been found practically impossible to provide in laws and ordinances specific rules and standards **880 by which every conceivable situation can be measured and determined. The result has been that we have turned more and more to the plan of providing in our laws and ordinances general rules and standards, and leaving to administrative boards and agencies the task of acquiring information, working out the details, and applying *361 these rules and standards to specific cases. This is not considered a delegation of legislative authority, though it probably does represent an expansion of administrative power. We think the ordinance now under consideration is one of this class, and that the rules and standards which it provides for the regulation of the zoning commissioner furnish a sufficient limitation upon the discretion it vests in him.'

This Court also said in the case of Pressman v. Barnes, 1956, 209 Md. 544, at page 555, 121 A.2d 816, at page 822:

'The modern tendency of the courts is toward greater liberality in permitting grants of discretion to administrative officials in order to facilitate the administration of the laws as the complexity of governmental and economic conditions increases.'

Again this Court said in the case of Eckes v. Board of Zoning Appeals, 1956, 209 Md. 432, at page 437, 121 A.2d 249, at page 251:

'It is settled by a long line of cases in this State that, where a legislative body under the powers granted by the Legislature has enacted a zoning ordinance, the review by the court is restricted and narrow in scope. Such an ordinance is presumed to be valid in the exercise of the police power. A successful attack must affirmatively and clearly show that the ordinance is arbitrary, capricious, discriminatory, or illegal.'

To the same effect are cases from other jurisdictions: Root v. City of Erie Zoning Board of Appeals, 1955, 180 Pa.Super. 38, 118 A.2d 297; Bishop v. Board of Zoning Appeals, 1947, 133 Conn. 614, 53 A.2d 659; Phillips v. Town of Belleville, 1947, 135 N.J.L. 271, 52 A.2d 441.

There are eight standards set forth in Section 409.4, supra, and we think that they are sufficient to constitute a valid, lawful and constitutional delegation of the police power.

[8] This brings us to the last question raised which concerns the action of the lower court in not admitting the proffer of *362 testimony offered by the protestants. This testimony was not offered before the Board though the witness through whom the proffer was made did testify before that Board. A substantial part of this additional testimony was admitted and we do not think the lower court committed any prejudicial error in refusing to admit the balance. The order will be affirmed.

Order affirmed, costs to be paid by the appellants.

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C

Court of Appeals of Maryland.
Irving JACOBS et al.
v.
COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY and Smith Avenue Shopping Center, Inc.
No. 249.

April 1, 1964.

Zoning case. The Circuit Court for Baltimore County, James J. Lindsay, J., affirmed decision of county board of appeals, and an appeal was taken. The Court of Appeals, Prescott, J., held that zoning regulation, authorizing issuance of permit for use of land in residential zone for parking area, was not limited in its application to existing commercial operations, and permit could be granted for off-street parking for proposed neighborhood shopping center which had not yet been constructed.

Order affirmed, with costs.

West Headnotes

|1| Zoning and Planning ⚷418
414k418 Most Cited Cases
Action of board, in upholding permit for use of residential property for off-street parking for proposed neighborhood shopping center, could not be said to be arbitrary or capricious, in legal sense, where evidence rendered action of board, at least, fairly debatable.

|2| Zoning and Planning ⚷418
414k418 Most Cited Cases
Zoning regulation, authorizing issuance of permit for use of land in residential zone for parking area, was not limited in its application to existing commercial operations, and permit could be granted for off-street parking for proposed neighborhood shopping center which had not yet been constructed.

|3| Zoning and Planning ⚷30
414k30 Most Cited Cases

|3| Zoning and Planning ⚷154
414k154 Most Cited Cases
Zoning is not static, and zoning authorities, either in adopting comprehensive zoning plan or in granting reclassification, may take into consideration needs of reasonably foreseeable future.

|4| Zoning and Planning ⚷418
414k418 Most Cited Cases
Purpose of regulation, authorizing issuance of permit for use of land in residential zone for parking area, was to provide for "unusual conditions", but such conditions existed where property zoned for business use was completely surrounded by residentially zoned property and had no access to major arterial highway and grant of permit to use property zoned "residential" for off-street parking for proposed neighborhood shopping center would fill public need.

|5| Zoning and Planning ⚷423
414k423 Most Cited Cases
It was not necessary to fix hours of illumination or permitted hours of use of property zoned "residential" for off-street parking for proposed neighborhood shopping center where circumstances presented did not require that such hours be specified or regulated.

|6| Zoning and Planning ⚷438
414k438 Most Cited Cases
Provision, that ingress and egress to parking area in property zoned "residential" for which use permit was granted, should be subject to approval of county planning board did not constitute abdication of powers of county board of appeals to county planning board but mere compliance with regulation requirement for planning board approval of plan

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already approved by appeals board.
***245 **901** W. Lee Harrison, Towson (Smith & Harrison and Richard C. Murray, Towson, on the brief), for appellants.

Robert L. Sullivan, Jr., and Allan J. Malester, Baltimore (Sklar & Sullivan, Baltimore, on the brief), for appellees.

Before HENDERSON, HAMMOND, PRESCOTT, HORNEY and SYBERT, JJ.

PRESCOTT, Judge.

In this zoning case, neighboring residents appeal from an order of the Circuit Court for Baltimore County, which affirmed the decision of the County Board of Appeals (Board), which, in turn, had sustained the action of the Zoning Commissioner, in granting a permit, pursuant to Section 409.4 of the Zoning Regulations, to use property zoned 'residential' for off-street parking for a proposed neighborhood shopping center.

Two questions are presented by the appellants: (1) Did the Board err in granting permission to use 8 1/2 acres of residential property for parking in a shopping center yet to be constructed?; and (2) Did the Board improperly 'abdicate' its powers in favor of the County Planning Board?

The subject 'B-L' (Business Local) property is located several hundred feet south of Smith Avenue, (a 20-foot wide highway), opposite its intersection with Laurelwood Avenue, and represents a portion of what was formerly known as the Curtiss-Wright Airport. The property, as defined by the Land Use Map of 1957, was (and is) surrounded by 'R-6' residential land with no access to major arteries. The 'B-L' area was the former site of the airport hangars. After the discontinuance of the airport, the hangars were used by Bendix for industrial uses, and its utilization of same predated the residential development on the north side of Smith Avenue.

The community to be served by the proposed shopping center was described by Mr. Klein, a witness for the applicant, as being bound on the north by Midfield Road, approximately one half mile north of the subject property; on the east by Bonnie ***246** View Country Club, about one mile to the east; on the south by Cross Country Boulevard, approximately three-quarters of a mile distant; on the west by Seven Mile Lane, a distance of about one mile. There are approximately 3,500 families in the community and it was estimated that there would be, within five years, by reason of the Pickwick residential development on adjacent county property and an apartment house development on the Baltimore City portion of the former Curtiss-Wright Airport property, a total of 6,000 families living within the community, as described above.

The petition was ably and carefully presented to the Board. Moving pictures were shown depicting various aspects of the community, such as the dwellings therein, and school children crossing streets, etc. A consulting engineer disclosed that the proposed plan of the shopping center had been adopted after consideration of many different possibilities. The contemplated use embraced a food market, drug store, variety store and 'a complement of smaller-type-stores,' consisting altogether of some ten to fifteen stores. It was shown that Smith Avenue in front of the subject property would be widened to the width of 58 feet, at the complete expense of the applicant.

The principal access to the shopping center will be by a 'monumental' entrance and by a supplemental entrance and exit from Smith Avenue at the east and west side of the center. Additional access was shown from certain proposed interior roads (at the time of the hearing, plats depicting said roads were on file with the County Department of Public Works).

****902** The Board stated, *inter alia*, that there was no 'traffic problem inherent or arising from the use sought,' and that the 'petitioner [had] presented a fine over-all general development plan for the subject site which would not adversely affect any aspect of the public health and welfare, but would serve a need that now exists.' It granted the Use Permit subject to the following restrictions: (1) a

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60 foot setback from Smith Avenue to provide a lawn area; (2) construction of a stone or masonry wall around a portion of the property; (3) that the shields and diffusion of the shopping center parking lights be permanently focused on the parking area; and (4) that ingress and egress to the parking area be subject to the approval of the County Planning Board.

***247** I

It would subserve no useful purpose to set forth the facts in greater detail. Able and experienced counsel for the appellants do not make the main thrust of their argument a claim that there was no substantial evidence to support the action of the Board under ordinary circumstances. They argue that under the construction given by this Court of Section 409.4 [FN1] of the Zoning Regulations in Marek v. Baltimore County Board of Appeals, 218 Md. 351, 146 A.2d 875, Section 409.4 can only be brought into play by the Board in 'unusual or unique' situations, not present in the instant case.

FN1. Section 409.4, in part, reads as follows: '--Business or Industrial Parking in Residence Zones--Upon application the Zoning Commissioner may issue a use permit for the use of land in a residential zone for parking areas subject to the following conditions. If granted, such use permit shall be conditioned as follows * * *.' There follow eight conditions numbered a through h. The conditions pertinent herein will be set forth later as needed.

[1] Before considering this argument, we will state there was substantial credible testimony to the effect that the granting of the Use Permit would fill a public need; that the public would be benefited thereby; and that all of the 'conditions' named in Section 409.4 would be met. There was also testimony to the contrary, which included testimony that there were already several shopping centers located about a mile from the subject property. We hold that the evidence adduced by the applicant rendered the action of the Board, at least, fairly debatable; hence such action cannot be said to be arbitrary or capricious in a legal sense.

[2][3] We return to the main thrust of appellants' argument, which seems to be two pronged. First, they contend that a proper construction of Section 409.4 limits its application to *existing commercial operations*, and, since there is no present, existing commercial operation in the case at bar but only one anticipated in the *future*, the Board misinterpreted said section in granting the Use Permit, which, in effect, would raise some three acres of B-L zoning to eleven and one-half acres. There is nothing in Section 409.4 which limits its application to existing commercial operations. And it is universally recognized, in those ***248** jurisdictions where zoning has been established, that zoning is not static, and the zoning authorities, either in adopting a comprehensive zoning plan or in granting a reclassification, may take into consideration needs of the reasonably foreseeable future.

The phase of appellants' argument is, we think, answered by the case of Town of Somerset v. County Council, 229 Md. 42, 181 A.2d 671. There, land had been zoned residential since 1928 (apparently the first zoning in the State). It had a frontage of 1,000 feet on an arterial highway with a depth of 250 feet. It was leased to a department store company, which proposed to build an attractive store thereon, provided proper rezoning classification could be obtained. Application was made, and granted, for a reclassification of a portion of the land with a frontage of 250 feet by a depth of 200 feet, upon which the store was to be built, from its residential classification to C-2 ****903** (general commercial), with the balance of the property remaining residential, subject to a special exception (we held in Marek, supra, that the Use Permits granted under Section 409.4 did not constitute 'special exceptions') to allow off-street parking. We upheld this action of the County Council of Montgomery County, noting that the technique of granting a special exception for the off-street parking permitted the imposition of conditions upon the use of the land for the protection of surrounding property owners.

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Should we adopt the construction of Section 409.4 here suggested by the appellants, a most unusual, peculiar, and undesirable result would be reached, as is illustrated by the facts herein. No matter how great the public need for a larger building might be, if a Use Permit for off-street parking were required to be predicated upon an *existing* commercial *operation*, the applicant herein could not obtain any building permit (in the absence of reclassification), without reserving the required amount of parking space on his land zoned B-L, which obviously would result in only a portion of the land being utilized for the building. And if the smaller building were erected with the proper parking space reserved for a building of that size there would exist no need for an additional parking area. Patently, this would weaken the effectiveness of zoning in one ***249** of its fundamental purposes: to accomplish what is good for, and beneficial to, the general public.

We hold that Section 409.4 is not limited in its application to existing commercial operations.

[4] Much of what has been said above applies to appellants' second argument under this heading. They say that we stated in Marek, supra, that the purpose of Section 409.4 was to provide for 'unusual conditions,' which would justify the lifting or easing of general restrictions if 'the general public good' would thereby be attained, and contend that there were no unusual factors in this case and that no public good was attained thereby. We reaffirm our decision in Marek. We used the words 'unusual conditions' to denote conditions that were not common nor ordinary, but not that they had to be extremely rare or unique. The property of applicant zoned B-L is completely surrounded by residentially zoned property and it has no access to a major arterial highway. The Board (supported by substantial evidence) found that the 'need [for an additional shopping center] [arose] with an almost explosive impact,' and that 'these changes [in communities] occur with a rapidity that in some cases staggers the imagination.' We noted above that the Board found that the granting of the permit would fill a public need and the public would be benefited thereby. These facts readily bring the case at bar witnin the scope of our decision in Marek, supra.

II

[5][6] Under this heading, appellants assert that condition d of Section 409.4 required the Board to fix the 'hours of illumination,' condition h required the Board to fix 'the permitted hours of use [of the area],' which the Board failed to do, and, in addition, the Board abdicated its powers when it inserted in its order the provision 'ingress and egress to the parking area to be *subject to the approval* [italics ours] of the County Planning Board.'

These contentions may be answered without elaborate discussion. Condition d provides that 'lighting shall be regulated as to location, direction, hours of illumination, * * * *as required* [emphasis ours].' The evidence before the Board disclosed that no light rays would be focused toward the residences, and ***250** the Board's order included this as one of its conditions upon which the use was permitted. With this condition present, the Board evidently came to the conclusion that, under the circumstances of this case, the hours of illumination were not 'required' to be 'regulated.' Condition g states: 'A satisfactory plan ****904** showing parking arrangement and vehicular access must be provided. Said plan *shall also be approved by the Office of Planning* [italics again ours].' Petitioner's evidence at the hearing before the Board, as we indicated above, showed in detail the planned arrangement for vehicular access to the property. We construe the language used in the Board's order relative to Planning approval to be no more than a compliance with condition g, above quoted, requiring Planning Board approval of the plan already approved by the Board. Condition h provides: 'Method and area operation, * * * and permitted hours of use shall be specified, and regulated as required.' Here, again, we think the failure of the Board to designate the 'permitted hours of use' meant merely that the circumstances here presented did not, in the opinion of the Board, require that such hours be specified or regulated.

Order affirmed, with costs.

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234 Md. 242, 198 A.2d 900

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C

Court of Special Appeals of Maryland.
John HOFMEISTER et al.,
v.
The FRANK REALTY COMPANY.
No. 152.

May 11, 1977.

Owner of catering establishment located in business zone applied for special use permit pursuant to Baltimore county zoning regulations to use land in residential zone for off-street parking. The county zoning commissioner granted the permit and protestants appealed. The county board of appeals upheld the grant and appeal was taken. The Circuit Court, Baltimore County, John Grason Turnbull, J., upheld the decision of the county board of appeals and protestants appealed. The Court of Special Appeals, Moylan, J., held that granting of use permit for off-street parking was grant of a special exception within the delegated authority of zoning commissioner.

Affirmed.

West Headnotes

[1] Zoning and Planning ⚷233
414k233 Most Cited Cases
Ultimate arbiter of intended meaning of county zoning law is the local legislative user of the contested words.

[2] Statutes ⚷210
361k210 Most Cited Cases

[2] Statutes ⚷211
361k211 Most Cited Cases
Legislative intent may be discerned by examining a statute's title or preamble as well as its terms.

[3] Statutes ⚷219(1)
361k219(1) Most Cited Cases
Administrative interpretations contemporaneous with passage of a statute are strong evidence on question of its best construction.

[4] Zoning and Planning ⚷280
414k280 Most Cited Cases
The granting of a "use permit" for off-street parking in a residential zone is a variety of "special exception" within contemplation of a Baltimore County ordinance delegating to the county zoning commissioner the power to issue special exceptions. Code 1957, art. 25A, § 5(U); Acts 1941, c. 247.
****274 *692** William F. C. Marlow, Jr., Towson, with whom was F. Vernon Boozer, Towson, on the brief, for appellants.

E. Stephen Derby, Baltimore, with whom were Piper & Marbury, Baltimore, and Nolan, Plumhoff & Williams, Towson, on the brief, for appellee.

Argued before GILBERT, C. J., and MOYLAN and LOWE, JJ.

MOYLAN, Judge.

[1] If the imprecise use of language plagues the law generally, it falls upon the head of the zoning law with peculiar vengeance. The root problem giving rise to the present appeal was the failure of the lawmaking authorities of Baltimore County to distinguish cleanly between the Genus 'Special exceptions' and the Species 'Special Exceptions.' The phrase was used in one critical context, at least, with a broad, generic meaning; the same phrase was used on other occasions with a more limited and specific meaning: the lawmaking authority never pinpointed which meaning it had in mind on a particular occasion nor did it even seem aware of the potential semantic problem lurking within its linguistic imprecision.

Although the problem before us for resolution is

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exclusively one of law, the factual background must be set. The appellee, Frank Realty Company (Frank), owns Overlea ***693** Hall, which is a catering establishment in Baltimore County. It is located on Belair Road, a major thoroughfare in a business district. Overlea Hall does not have its own parking lot, but it is situated next to a Union Trust Bank, which does. The customers of Overlea Hall park either on the bank lot or on the surrounding streets. In 1970, 1972 and 1973, Frank acquired three properties, adjacent to and in the rear of Overlea Hall, forming one integrated tract and having frontage on two side streets. On the tract, Frank desired to build a parking lot for 84 vehicles.

Pursuant to the Baltimore County Zoning Regulations (1975 Ed.) (BCZR), Overlea Hall was zoned Business Local (BL) in a Commercial Community Core (CCC) District. Catering is a use permitted in such a zone. The land on which the parking lot was to be built, however, was zoned Residential.[FN1] Off-street parking is not a use permitted as of right in a residential zone, but is a permitted use if a Special Use Permit is applied for and issued pursuant to s 409.4 of the BCZR.

FN1. The more exact residential zoning classification does not appear in the record.

Over the protestations of the appellants, who are residents of the affected area, the Baltimore County Zoning Commissioner on June 4, 1974, granted Frank a Special Use Permit for off-street parking in a residential zone.[FN2] Appellants, joined by the Baltimore County Deputy People's Counsel,[FN3] appealed to the County Board of Appeals, ****275** who, on ***694** July 29, 1975, upheld the grant.[FN4] The County Board of Appeals found that the requirements of s 409.4 and of s 502.1[FN5] of the BCZR had been satisfied and held that the Zoning Commissioner had the power to issue Special Use Permits. From that ruling, an appeal was taken to the Baltimore County Circuit Court. In that court, Judge John Grason Turnbull upheld the decision of the County Board of Appeals. That decision of Judge Turnbull has now been appealed to us.[FN6]

FN2. The permit was issued subject to the following conditions:
1. Compact screening, a minimum of six (6) feet in height, be constructed around the entire subject property, excluding entrances and exits, and that portion of the subject property which is immediately adjacent to the Overlea Hall catering establishment.
2. Any lighting that is constructed on the subject property is to be a maximum of six (6) feet in height.
3. Only ingress be afforded from the entrance on Overlea Avenue.

FN3. The People's Counsel is appointed by the Baltimore County Executive and is charged with representing the public interest before the Zoning Commissioner, the County Board of Appeals, or the courts in any matter involving the Baltimore County Zoning Regulations. Baltimore County Charter s 524.1(b); Baltimore County Code (1968 ed., 1975-75 Cum.Supp.).

FN4. An appeal to the County Board of Appeals is authorized in Md.Anno.Code, Art. 25A s 5(u) (1975 Cum.Supp.) and s 501.2 of the BCZR.

FN5. To be more fully discussed hereinafter.

FN6. Appeals to the Circuit Court and then to the Court of Special Appeals are authorized by Md.Anno.Code, Art. 25A s 5(u) and s 501.4 of the BCZR. See Levy v. Seven Slade, Inc., 234 Md. 145, 149, 198 A.2d 267, 269 (1964).

The appellants do not contend that the action of the County Board of Appeals was 'arbitrary and capricious' or lacked factual support. The sufficiency of the evidence on the merits of whether Frank had satisfied the pertinent requirements was not seriously disputed. The key issue presented by the appellants is that of whether the Zoning Commissioner and the County Board of Appeals

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possessed the delegated authority to grant such Use Permits at all. In question is the general authority and not the merits of this individual exercise of authority.

Before addressing its merits, we will state the argument as posed by the appellants. They contend that a 'Special Permit' (or Use Permit) and a 'Special Exception' are distinct legal phenomena. In this regard, they find arguable support in the words of the Court of Appeals, in Marek v. Board of Appeals, 218 Md. 351, 357, 146 A.2d 875, to the effect that a request for an off-street parking permit 'is not a request for a Special Exception.' They further contend that prior to 1960, the Baltimore County Commissioners and their successors, the Baltimore County Council, explicitly delegated to the Zoning Commissioner of Baltimore County the power to issue both 'Special Permits' and 'Special Exceptions.' The final premise in the argument is that a major change was made in this grant of authority by Bill ***695** No. 80, enacted by the County Council in 1960. That bill explicitly repealed s 34-11 of the Baltimore County Code (1958 Ed.) which had delegated certain powers (including the power to issue Special Permits) to the Zoning Commissioner, and replaced it with s 22-23 which provided in pertinent part:

> 'Authority of zoning commissioner to provide for special exceptions and variances.
> Subject to the appropriate principles, standards, rules, conditions and safeguards as set forth in the zoning regulations, the zoning commissioner may . . . make special exceptions to the zoning regulations in harmony with their general purpose and intent . . .'

The appellants argue strenuously that 'No mention was made of any other authority being vested in the Zoning Commissioner . . .' and 'More important is the fact that the term and authority to issue a 'special permit' was deleted altogether.' It is their position that in the repealing and reenacting of the grant of authority to the Zoning Commissioner that occurred in 1960, the Zoning Commissioner was stripped of all power to issue Special Use Permits.

The problem is clear-cut. The grant of authority, by its terms, authorizes 'Special Exceptions' but not 'Use Permits.' Thus, if a 'Use Permit' is a variety of 'Special Exception' within the contemplation of s 22-23, then the authority to issue such a 'Use Permit' has been delegated to the Zoning Commissioner and the present decision will be affirmed. If, on the other hand, a 'Use Permit' does not fit under the umbrella of 'Special Exception,' the authority to issue such 'Use Permit' has not been delegated to the Zoning Commissioner and the decision must be reversed. The appellee urges that a 'Use Permit' is a 'Special Exception'; the appellants urge that it is not.

We conclude that the question is not so simple and clearcut. A 'Use Permit' both ***276** is and is not a 'Special ***696** Exception,' depending upon which meaning of 'Special Exception' the legislative authors of the phrase had in mind upon the particular occasion when they used it. A 'Use Permit' is within the generic meaning of 'Special Exception'; it may not be within the specific meaning of 'Special Exception.' The question, therefore, becomes that of whether the Baltimore County Council, when it delegated to the Zoning Commissioner the power to make 'Special Exceptions,' intended to use the phrase in its broad and generic sense or in its narrower and more specific sense.

Having stated the issue, we seek the path to its resolution through the legislative and linguistic tangle of the Baltimore County zoning experience. We begin with a broad principle of zoning law not parochial to Baltimore County but universal to the zoning cosmos. Within each zone created, there are primary and designated uses available as a matter of right with no permission needing to be sought from any zoning authority. There are other uses proscribed by law and, therefore, beyond the pale, absent a zoning reclassification. Between the two poles is a borderland wherein certain uses are not prohibited by law but neither are they absolutely permitted as a matter of unconditioned right. Generally speaking, they are privileges which must be sought from and authorized by some administrative agency (a zoning commissioner, a zoning board, etc.), which possesses the authority to condition the grant of permission, influenced by a

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number of relevant social considerations. The uses of the property in issue are permitted uses, generally compatible with the zone but not at every or any location therein or without certain restrictions or conditions being imposed. This determination of compatibility and this imposing of conditions is vested in an appropriate administrative authority. In describing this broad phenomenon, the vocabulary has been far from uniform but the law has recognized that the same principle is afoot even when the labels may vary.

82 Am.Jur.2d, Zoning and Planning, XIII. C. 'Special Permits or Exceptions,' s 281 'Generally; terminology,' ***697** speaks of both the general phenomenon and its fluctuating vocabulary at 827-828:

> '. . . A 'special permit' or 'special exception' designates a species of administrative permission which allows a property owner to put his property to a use which the regulations expressly permit under conditions specified in the zoning regulations themselves. Some zoning laws or ordinances use the term 'conditional use permit,' 'special exception permit,' or 'special use permit' to refer to this type of administrative permission. In one jurisdiction, the term 'waiver use approval' has been used. But regardless of which of the foregoing terms is used, the nature of the administrative permission and of the use permitted is, viewed broadly and substantively, the same, since each involves a use which is permitted rather than proscribed by the zoning regulations. In the words of the Supreme Court of Connecticut, 'the terms 'special exception' and 'special permit' hold the same legal impact and can be used interchangeably.'
>
> The function of a special permit is to bring some flexibility to the rigid restrictions of a zoning ordinance while at the same time controlling troublesome or somewhat incompatible uses by establishing, in advance, standards which admit the use only under certain conditions or circumstances.'

3 Anderson, American Law of Zoning, s 15.01, speaks to the same effect, at 84:

> 'The 'special exception,' the 'special permit,' and the use permitted subject to administrative approval, are qualitatively the same. Each involves a use which is permitted rather than proscribed by the zoning regulations. Each is allowed only upon approval of a board of adjustment or other administrative body. . . . And in each case, the ***698** board is guided and its power limited by hearing requirements and standards.'

2 Rathkopf, The Law of Zoning and Planning, Ch. 54, s 1, n. 1, uses both the terms ****277** 'special exception use' and 'special exception permit' but claims that both are misnomers. He suggests that a more accurate description would be 'conditional use permit' because '. . . no 'exception' is made to the provisions of the ordinance in permitting such use; the permit granted is for a use specifically provided for in the ordinance in the case in which conditions, legislatively prescribed, are also found.'

[1] Although frustratingly the vocabulary varies from county to county and although the ultimate arbiter of intended meaning is the local legislative user of the contested words, the Court of Appeals in Rockville Fuel & Feed Co. v. Board of Appeals, 257 Md. 183, 187-188, 262 A.2d 499, recognized generally that 'conditional use' and 'special exception' are synonymous terms. In a 1954 decision arising out of Baltimore County, Oursler v. Board of Zoning Appeals of Baltimore County, 204 Md. 397, 104 A.2d 568, the Court of Appeals did use the terms 'permit' and 'exception' interchangeably. Although, to be sure, dealing with zoning regulations and, therefore, with vocabulary emanating from Prince George's County rather than from Baltimore County, the Court of Appeals in Cadem v. Nanna, 243 Md. 536, 543, 221 A.2d 703, 707, defined the phrase 'Special Exception' in terms of the Broad and general phenomenon herein being discussed:

> 'The words 'special exception' are well known in zoning law. They refer to a grant by the zoning administrative body pursuant to the existing provisions of the zoning law and subject to certain guides and standards, of a special use permitted under the provisions of the existing zoning law.'

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See also Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261. Cadem v. Nanna cited as authority the ***699** New Jersey decision of Tullo v. Township of Millburn, 54 N.J.Super. 483, 149 A.2d 620, 624-625, which explained:

> 'The term ('special exception') might well be said to be a misnomer. 'Special uses' or 'special use permits' would be more accurate. The theory is that certain uses, considered by the local legislative body to be essential or desirable for the welfare of the community and its citizenry or substantial segments of it, are entirely appropriate and not essentially incompatible with the basic uses in any zone . . ., but not at every or any location therein or without restrictions or conditions being imposed . . .. If the board finds compliance with the standard or requisites set forth in the ordinance, the right to the exception exists, subject to such specific safeguarding conditions as the agency may impose . . ..'

Thus, the broad phenomenon does have, here as elsewhere, many labels. Whether the label employed on a particular occasion happens to be 'special permit,' 'conditional use,' 'special use,' 'use permit,' or 'special exception,' the type of relief described is the same. This broad phenomenon is what we shall refer to as the genus. Generally speaking, the name 'Special Exceptions' refers to this genus.

What remains to be seen is how the name 'Special Exceptions' came to take on a more limited and specific meaning in the zoning experience of Baltimore County. As we shall see, however, that additional and narrower meaning was not in lieu of, but rather in addition to, the broader and more general meaning, which continued to enjoy a separate vitality of its own.

The process of evolution or differentiation, linguistically as well as biologically, is easy to understand. The genus initially was a simple and undifferentiated life form (or zoning phenomenon). Over the years, however, certain specific instances of the more general phenomenon were recognized as having some unique identifying characteristics, ***700** some unique problems and some unique guidelines of their own. As these ascertainable instances of the more general phenomenon were singled out for separate handling, they came to be identified as distinct species within the broader genus. This was particularly true of that instance of 'Special Exceptions' which came to be known as the 'Use Permit' for off-street parking in a residential zone.

****278** Zoning regulations were first adopted by the County Commissioners of Baltimore County on January 2, 1945, pursuant to a special enabling act, adopted by the Maryland Legislature in the Acts of 1941, Ch. 247. The County Commissioners were authorized to appoint a Zoning Commissioner and a Board of Zoning Appeals to hear and determine issues raised pursuant to the regulations. Among his other powers, the Zoning Commissioner was empowered to make Special Exceptions and to issue Special Permits within appropriate guidelines. The Code of Public Local Laws of Baltimore County (1948), Title 23, s 367 established s XIII of the Zoning Regulations, entitled 'Powers Relative to Special Exceptions and Special Permits.'

That s XIII of the Zoning Regulations and Restrictions for Baltimore County (Doing Ed., 1948), indicated the still-loose interchangeability of the terms 'special exception' and 'special permit,' on the one hand, but also began the process of differentiation between them, on the other hand. Although the term 'special exception' is contained in the title, the text of the section nowhere employs it but uses only the term 'special permit.' Indeed, s XIII' s preamble provides that '. . . such uses may be permitted only upon a special permit granted by the zoning commissioner, subject to appeal . . .' it appears that the Special Permit authorized the Special Use, the total effect of which could be described as a Special Exception. In terms of the beginning of differentiation, subsection A treats generally the special permits that shall be required for a list of designated uses in a residential zone. It does not include off-street parking. It is rather in a separate section, subsection C, that off-street parking receives its separate treatment: 'In any residential ***701** zone a special permit shall be

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required for use of land for automobile parking, subject to the following regulations.'

The process of differentiation went further in 1955 when the Baltimore County Commissioners excised from the old s XIII the provisions dealing with off-street parking in a residential zone and housed them in s 409.4 of the Baltimore County Zoning Regulations. Several other conditional uses or 'Special Exceptions,' which also had taken on distinct identities and involved distinct guidelines and regulations, were also lodged in Art. 4 of the BCZR which was entitled 'Special Regulations.' The remainder of the 'Special Exceptions,' which were not singled out for special handling, were treated in s 502, called 'Special Exceptions.' (It would have been preferable, of course, if s 502 had been entitled 'Other Special Exceptions.')[FN7] The differentiation proceeded further when s 500, listing the powers of the Zoning Commissioner, listed his power to issue a use permit (such as for off-street parking) in subsection 500.4, but then listed his power to deal with 'Special Exceptions' under s 502 in a separate subsection, 500.2. We may thus perceive, as other conditional uses begin to take on separate identities and branch off from the main stem, the emergence of a distinct species 'Special Exceptions,' including in its ranks the remainder of the conditional uses which have not taken on distinct identities. The species 'Special Exceptions' is now a part of the genus 'Special Exceptions.' Therein is the heart of the problem. The same name now refers 1) to the whole and 2) to a part of the whole.

FN7. We do not agree that s 502 need be complied with in order to obtain a use permit for off-street parking which is governed exclusively by s 409.4.

Notwithstanding this differentiation between the species, we think it preeminently clear that the singling out of certain conditional uses for special treatment in Art. 4 of the BCZR did not in any fashion denigrate from their credentials as members in continued good standing of the genus 'Special Exceptions.' Art. 4, in its Statement of ***702** Purpose, makes the reason for the distinct treatment quite clear:

'Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than ****279** would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations.' (Emphasis supplied)

Indeed, various of the special conditional uses singled out for individual treatment in Art. 4 explicitly retain their membership in the genus 'Special Exceptions.' A mere representative list includes s 402.3 (The conversion of a residence 'for tearoom or restaurant use' is 'a Special Exception.'); s 402B ('An antique shop may be permitted as a Special Exception.'); s 402C ('A residential art salon may be permitted as a Special Exception.'); s 405.2 ('Locations in which automotive-service stations are permitted as of right and by special exception.').

Baltimore County adopted a charter form of government as of December 6, 1956. The Baltimore County Code, 1958 Ed., granted power to the Zoning Commissioner by s 34-11. It referred explicitly to both 'special exceptions' and 'special permits.' It explicitly confirmed the authority of the Zoning Commissioner to continue to do those things which had been 'required by s XIII of the Zoning Regulations of Baltimore County, as adopted January 2, 1945, and as amended November 15, 1946.'

The distinction between the Use Permit for off-street parking in a residential zone under s 409.4, on the one hand, and the 'special exception,' on the other hand-the distinction on which the appellants largely build their present argument-was first made by the Court of Appeals in Marek v. Baltimore County Board of Appeals, 218 Md. 351, 146 A.2d 875, in 1958. There, a requested permit for off-street parking was initially denied for what turned out to be an erroneous reason. The request was promptly ***703** resubmitted and was granted by the Board of Zoning Appeals and the grant was affirmed by the Circuit Court for Baltimore County. The protestants there claimed that under the provisions of s 500.12 of the BCZR, a request for a

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Special Exception, once denied, could not be entertained again until the expiration of 18 months. In the course of holding that s 500.12 was not a bar to the granting of the Use Permit for off-street parking, the Court of Appeals found, of necessity, that such a Use Permit was not a 'Special Exception.' The Court reasoned, at 218 Md. 357, 146 A.2d 877:

'This then brings us to the question as to whether or not the petition filed in this case is a petition for a special exception from the use that can be made of land lying in a zone classified as R. 6 Residential. We must conclude that this petition is not a request for a special exception. It is quite true that the zoning ordinance does provide that under certain circumstances and for certain purposes which are enumerated at length a different use may be made of the land than that which the zoning ordinance contemplates. Section 270 sets out this Schedule of Special Exceptions in detail and Sections 502 and 502.1 set forth the principles and conditions which shall govern the Zoning Commissioner and the Board.

Off-street parking is not mentioned among the many things which may be the subject of a special exception and the power to determine what situations shall be considered in that category is a legislative function, resting in this instance with the County Council of Baltimore County, and is not an administrative function of the Zoning Commissioner. The function of the Zoning Commissioner is limited to a determination under the existing factual situation if a special exception, one among those listed in the ordinance, is appropriate in any particular case.' (Emphasis supplied)

***704** There was now established, at least in terms of surface appearance, a seemingly unbridgeable dichotomy between a 'Special Use Permit' for off-street parking in a residential zone under s 409.4 of the BCZR and a 'Special Exception' under ss 500.12 and 502 of the BCZR. This was to become the appellants' minor premise: A 'Use Permit' is not a 'Special Exception.' The major premise was established two years later with the passage by the Baltimore County Council of Bill No. 80, limiting for ****280** presently pertinent purposes the power of the Zoning Commissioner to the granting of 'Special Exceptions.' The predicate was now laid for the appellants' present syllogism, which is:

The delegated authority is to grant all 'Special Exceptions.' (Sect. 22-23 BCZR)
A is all B.
To grant a 'Use Permit' is not to grant a 'Special Exception.' (Marek)
C is not B.
Therefore, to grant a 'Use Permit' is not the delegated authority.
C is not A.

The validity of the syllogism appears irrefutable. Nonetheless, we reject it as invalid. In terms of formal logic, it fails because there is no universal middle term (although there appears to be). The reason is that, although the words are the same, the term 'Special Exception' does not mean the same thing in the major premise that it means in the minor premise. The term 'B' has shifted its meaning in the course of the syllogism.

It is clear to us that the Court of Appeals in Marek was distinguishing the Species 'Special Use Permit for Off-Street Parking' (governed by the rules of s 409.4) from the Species 'Special Exceptions' (meaning the remainder of the special exceptions which are controlled by the rules of ss 502 and 500.12, establishing the 18-month limitation for repetitioning purposes). The Court was by no means indicating that the Species 'Special Use Permit for ***705** Off-Street Parking' was no longer a part of the Genus 'Special Exceptions' (encompassing all conditional uses no matter what their labels, what their separate identities and what their special regulatory provisions might be). Indeed, no such problem was before it and it had no occasion even to consider the question. The distinction was only between two species within the same genus and not between a species and its parent genus. Indeed, we think the Court of Appeals was still giving the term its specific meaning when in Jacobs v. County Board of Appeals for Baltimore County, 234 Md. 242, 198 A.2d 900, it said in 1964, at 234 Md. 248, 198 A.2d at 903:

'(W)e held in Marek, supra, that the Use Permits granted under Section 409.4 did not constitute

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'special exceptions' . . .'

Quite clearly, the Court of Appeals did not mean to exempt the granting of Use Permits for off-street parking from the delegated powers of the Zoning Commissioner and County Board of Appeals, for in the Jacobs case itself, the Court affirmed the actions of the Zoning Commissioner and the County Board of Appeals in granting just such a Use Permit for off-street parking. That was four years after the Baltimore County Council had rearticulated the delegation of power, granting only, for presently pertinent purposes, the power to make 'Special Exceptions.' In Bloede v. MacNabb, 231 Md. 452, 190 A.2d 780, the Court of Appeals had also dealt with the granting of a 'Use Permit' for off-street parking in a residential area by the Baltimore County Board of Appeals. It there said explicitly, at 231 Md. 454, 190 A.2d at 781:

'Section 409.4a of the Baltimore County zoning regulations authorizes the zoning commissioner to issue a permit for the use of land in a residential zone for a parking area . . ..'

Because as used in ss 502 and 500.12 and by the Court of Appeals in Marek and Jacobs, the term 'Special Exceptions' ***706** is given only its narrower and more specific meaning, the premises for the appellants' syllogism become:

A is all B.

C is not some-B.

From those premises, it cannot be established validly whether 'C' (the granting of a 'Use Permit' for off-street parking) is or is not 'A' (within the power designated to the Zoning Commissioner).

To have established this much is to refute the logic of the appellants, but not yet to establish the counter-logic of the appellee.

For that purpose, we must look to the meaning of the term 'B' as employed in the major premise, which is to say we must look to the meaning of the phrase 'Special Exceptions' as used by the Baltimore County Council in repealing and reenacting the ****281** grant of authority to the Zoning Commissioner and the County Board of Appeals in 1960.

[2] It is clear to us that County Council Bill No. 80 of 1960 was intended not to rewrite the substance of the Baltimore County zoning law but only to consolidate, reorganize and edit the planning and zoning provisions that as of that time, after some 15 years of growth, were scattered throughout the Baltimore County Code. Indeed, s 4 of Bill No. 80 itself provided that its short title would be 'The 1960 Planning and Zoning Reorganization Bill.' (Emphasis supplied) Every indication is that the County Council fully intended the Zoning Commissioner and the County Board of Appeals to continue to enjoy and to exercise the same authority that had theretofore been theirs under the predecessor grant of authority. Bill No. 80 created Title 23 of the Baltimore County Code entitled 'Planning, Zoning and Subdivision Control' and specifically provided in s 23-25 thereof:

'The zoning regulations adopted by Baltimore County on March 30, 1955, as amended on the effective date of this Act, are hereby declared to be in full force and effect provided, however, that in ***707** the case of any conflict between such regulations and the provisions of this Act, these provisions shall control.'

Above and beyond the short title, the title of Bill No. 80 confirms the intent of the County Council 'to reorganize and consolidate the functions of planning, zoning and subdivision control in Baltimore County and to define the duties, powers, responsibilities, qualifications and manner of appointment . . .' of various zoning officials including the Zoning Commissioner. There is no indication in the title or the preamble that the Council sought to repeal any of the authority of the Zoning Commissioner to grant Use Permits for off-street parking. It is well established that legislative intent may be discerned by examining a statute's title or preamble as well as its terms. Board of County Commissioners v. Colgan, 274 Md. 193, 200-201, 334 A.2d 89; Mass Transit Adm. v. Balto. Co. Rev. Authority, 267 Md. 687, 695-696, 298 A.2d 413; Shipley v. State, 201 Md. 96, 103, 93 A.2d 67.

[3] It is asserted by the appellee and conceded by the appellants that the settled usage in Baltimore County, even post-1960, is for the Zoning Commissioner to grant 'Use Permits' for off-street

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parking in residential zones (or, as the case may be, to refuse the grant but in any event, to consider the question). Both Jacobs v. County Board of Appeals, supra, and Bloede v. MacNabb, supra, are evidence of this practice. Administrative interpretations contemporaneous with the passage of a statute have been considered strong evidence on the question of its best construction. Smith v. Higinbothom, 187 Md. 115, 48 A.2d 754. We think it preeminently clear that the Baltimore County Council did not intend to erode the power of the Zoning Commissioner to continue to do those things which he had been doing since the advent of zoning regulations in that county. 'When a word in a statute is not clear, the courts will seek the legislative intent in the language of the statute by considering the object to be accomplished and adopt the meaning which will harmonize therewith in carrying out the purpose of the statute.' ***708** Walker v. Montgomery County Council, 244 Md. 98, 102, 223 A.2d 181; Height v. State, 225 Md. 251, 170 A.2d 212; Powell v. State, 179 Md. 399, 401, 18 A.2d 587.

We find further evidence of both the original legislative intent and the continued and settled usage in the county from the fact that, again post-1960, subsequent editions of the BCZR in 1963, in 1969 and in 1975 have continued to include s 409.4 which explicitly authorizes the Zoning Commissioner to grant 'Use Permits' for off-street parking in residential zones. Pertinent here are the words of Smith v. Higinbothom, supra, at 187 Md. 132-133, at 48 A.2d 763:

> '. . . where the language of a statute is susceptible of two constructions, a long-continued and unvarying construction applied by administrative officials is strong persuasive influence in determining the judicial construction of the statute, ****282** and it should not be disregarded except for the strongest and most urgent reasons.'

See also Rogan v. B. & O. R.R. Co., 188 Md. 44, 53, 52 A.2d 261; American-Steward Distillery v. Stewart Distilling Co., 168 Md. 212, 177 A.2d 473.

We are persuaded overwhelmingly that in the enabling act of 1960, the Baltimore County Council intended to give the phrase 'Special Exceptions' its broad and generic meaning. It used it broadly even as the Court of Appeals had defined it in Heath v. Mayor and City Council, 187 Md. 296, 303, 49 A.2d 799, 803, as:

> '. . . a dispensation permissible where the Board of Zoning Appeals finds existing those facts and circumstances specified in the ordinance as sufficient to warrant a deviation from the general rule.'

In just such a sense did Judge Davidson define the term for this Court in Anderson v. Sawyer, 23 Md.App. 612, 617, 329 A.2d 716, 720:

> 'The conditional use or special exception is a part of the comprehensive zoning plan sharing the ***709** presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.' (Emphasis supplied)

[4] It is beyond cavil that the granting of a 'Use Permit' for off-street parking in a residential zone under the provisions of s 409.4 falls within this broad definition of 'Special Exception.' The Species 'Use Permit' is indisputably a member of the Genus 'Special Exception.' It is also indisputably clear that the Baltimore County Council in 1960 used the term 'Special Exception' in its broad and generic sense. With this new minor premise, the ultimate syllogism becomes:

> The delegated authority is to grant all 'Special Exceptions.' (Sect. 22-23 BCZR)
> A is all B.
> To grant a 'Use Permit' is to grant a 'Special Exception.'
> C is some-B.
> Therefore, to grant a 'Use Permit' is the delegated authority.

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C is A.
Q. E. D.

This conclusion is irrefutably valid. The action of the Baltimore County Circuit Court affirming the decision of the *710 County Board of Appeals affirming the decision of the Zoning Commissioner will, therefore, be and is hereby affirmed.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANTS. .

35 Md.App. 691, 373 A.2d 273

END OF DOCUMENT

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PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

#68-177-R

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

I, or we, Harford Warehouse Corp. legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R. A. and R. 6 zone to an B. R. and B. M. zone; for the following reasons:

MAP 4-C NORTH EASTERN AREA ER EM

(1) Error in the adoption of the zoning map.

(2) Change in conditions.

68-177-RX

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for Used Motor Vehicle Sales

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

ORDER RECEIVED FOR FILING
DATE 3/1/68 - Johnson Esq
BY

HARFORD WAREHOUSE CORPORATION
BY: [signature]
Legal Owner

Contract purchaser

Address P. O. Box 8615, Baltimore 21234

Address

[signature]
Petitioner's Attorney

Protestant's Attorney

Richard C. Murray
22 W. Pennsylvania Avenue
Address Towson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 2nd day of January, 1968, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 5th day of February, 1968, at 2:00 o'clock P.M.

JAN 2 '68 AM

[signature]
Zoning Commissioner of Baltimore County.

(over)

RE: PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION
SE/S East Avenue 146' E of Harford Road - 11th District
Harford Warehouse Corporation, Petitioner
NO. 68-177-RX

: BEFORE THE
: DEPUTY ZONING
: COMMISSIONER
: OF
: BALTIMORE COUNTY

::: ::: :::

The Petitioner has requested a reclassification of his property consisting of two parcels, from an RA and R-6 zone to a BR and BM zone. BR is requested for Parcel 1 consisting of 1.27 acres and BM zoning is requested for Parcel 2 which contains 0.88 of an acre. A Special Exception to use Parcel 1 for an outdoor motor vehicle sales area is also requested.

There is no question that the Petitioner is entitled to relief. His property is bordered on the North by BL land, on which is a gasoline service station; on the East across East Avenue by BR and BM zoned land, on which are a used car lot and warehouses; on the West by BL land on which is a large bakery distribution center. It is obvious to the Deputy Zoning Commissioner the present zoning on the subject property is in error.

After discussing the pros and cons of the case at the hearing, it was decided by all involved that relief should be granted but not in accordance with the original request.

After considering all evidence and arguments by Counsel, the Deputy Zoning Commissioner feels that the best solution would be to rezone Parcel 1 to BM and to grant a use permit for off-street parking in a residential zone on Parcel 2. In adopting this procedure, it is not necessary to discuss the merit of a Special Exception for an outdoor motor vehicle sales area on Parcel 1 since the same would not be necessary.

For the aforegoing reasons, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 14 day of March, 1968, that the herein described property or area known as Parcel 1 should be and the same is hereby reclassified from an RA zone to a BM zone and a use permit for off-street parking in a residential zone on Parcel 2 should be and the same is hereby granted, subject to the requirements of Section 409 of the Baltimore County Zoning Regulations; all subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning. The Special Exception requested for Parcel 1 should be and the same is DENIED.

Edward D. Hardin
Deputy Zoning Commissioner

68-177-RX

BM

FILING

Date 3/14/68

BY JC Marsa clk

RE: PETITION FOR SPECIAL HEARING AND VARIANCE	*	BEFORE THE
NE corner East Avenue & East Avenue Relocated; Eside East Avenue; 34ft to Ctrline East Avenue	*	COUNTY BOARD
11th Election District, 6th Councilmanic District	*	OF APPEALS
Legal Owner(s): Steve B. Fader, Managing Member Auto Properties, LLC	*	FOR
Petitioners	*	BALTIMORE COUNTY
	*	Case No. 03-360-SPHA

* * * * * * * * * * * *

PEOPLE'S COUNSEL'S MEMORANDUM AND REQUEST FOR HEARING

People's Counsel for Baltimore County files this memorandum:

Introduction

The County Board of Appeals should hold a hearing to review the impact of the 1968 zoning decision submitted by Petitioner Auto on January 25, 2004. In Harford Warehouse Corporation Case 68-177-RX, Exh. 1, the Zoning Commissioner (ZC) on March 14, 1968 approved a use permit for parking in an R.6 residential zone, accessory to a service garage, pursuant to then BCZR 409.4 (1955). Exh. 2. The residentially zoned property there (Parcel 2) appears to be the same property at issue here.

The discovery of this decision led to Petitioner's request for postponement, which the CBA granted without objection. Upon careful review, and for reasons explained below, People's Counsel submits that the 1968 decision is not effective to approve the use proposed by Petitioner.

The next hearing should resolve this issue and then move on to the merits of the present requested use permit for commercial parking in a residential zone and variances from the residential transition area standards.

Questions Presented as to the 1968 Decision

1. Did the 1968 use permit confer any vested rights prior to the enactment of residential transition area standards (Bill, 100. 1970) and modified use permit standards (Bill 26, 1988)?

2. In any event, if the use permit were followed by actual use, did it nevertheless become nonconforming upon the enactment of the residential transition area standards and modified use permit standards, and, if so, did it terminate under BCZR 104.1 for discontinuity in the 1970s and 1980s?

3. Furthermore, would the new petition for parking in conjunction with a large car dealership be different in impact from parking approved or used in 1968 in conjunction with a service garage? Would this constitute a material change in the use so as to require a new use permit?

Argument

I. The 1968 Use Permit Does Not Confer Vested Rights on Heritage Honda; Its Proposal Is Subject to Review for Compliance with Residential Transition Area Standards and with the modified parking standards under Bill 26-88.

The ZC approved the HWC use permit on March 14, 1968. We assume this was a final decision. There is no evidence as to the commencement of the use or the utilization of the permit. In the absence of such use, a property owner does not acquire vested rights against the impact of subsequent legislation relevant to the use of the property.

On August 5, 1970, the County Council passed Bill 100. This included a comprehensive revision of the 1955 BCZR residential zoning law. Among other things, it established the structure and controls for "density" residential zones. Along with the

creation of the D.R. zones, it established for the first time use restrictions for "residential transition areas." Bill 100, Section 5, Pages 19-22 includes the pertinent standards. Exh. 3

The 1968 decision reflects the property was then zoned R.6. It is now zoned D.R. 5.5. It was likely rezoned to D.R. 5.5 in the 1971 comprehensive map process. The zoning history should confirm this. Under these circumstances, the Bill 100 RTA standards would have come into play, and a variance would have been necessary at that time. While the RTA standards have been amended from time to time, the different versions would all require variances for this property to be used for business parking.

Later, the 1988 Council enacted a comprehensive revision of the BCZR 409 parking controls. It expanded and strengthened the controls and standards for approval of business parking in residential zones. In this connection, BCZR 409.8.B replaced BCZR 409.4 and, most prominently, added the special exception standard.

A use permit alone, even with preliminary site work, is not sufficient for a property owner to acquire vested rights in the absence of actual and substantial use prior to the enactment either of new standards which control, restrict, or prohibit it. Mayor & City Council v. Shapiro 187 Md. 623 (1947) is most pertinent as it held that a permit for a used car lot did not vest any rights in the absence of actual and substantial use apparent to the public. Exh. 4.

The path of the case law on vested rights is consistent on this point, and Shapiro is still good law. Yorkdale Corp. v. Powell 237 Md. 121 (1964); Mandel v. Bd. Of Co. Comm'rs 238 Md. 208 (1965); Ross v. Montgomery County 252 Md. 497 (1969); Richmond Corp. v. Board of County Comm'rs 254 Md. 244 (1969); Dal Maso v. Board

of Co.Comm'rs 264 Md. 691 (1971); O'Donnell v. Bassler 289 Md. 501 (1981); Prince George's County v. Sunrise Dev. 330 Md. 297 (1993); Sycamore Realty v. People's Counsel 344 Md. 57 (1996); Prince George's County v. Collington Corp. Center 358 Md.196 (2000); Marzullo v. Kahl 366 Md. 158 (2001). The most recent decision came down in Powell v. Calvert County 368 Md. 400 (2002).

Thus, absent vested rights, even a proposal for the precise use approved in 1968 would be subject again to review to determine whether RTA variances would be appropriate and whether the use meets the strengthened BCZR 409.8.B.

II. Even if the use permit were followed by actual use sufficient to vest, the use became nonconforming upon enactment of the residential transition area standards and modified use permit standards. Any such nonconforming use appears to have terminated upon its later discontinuation for a year or more.

It appears to be undisputed that this corner property has been vacant for many years. HWC is long gone. Several citizens who oppose the present petition have lived on East Avenue for a long time. Anthony Marchanti has lived there since about 1975 and Daryl Corona since about 1985. Our understanding is that they will testify that the site has been vacant for as long as they can remember.

An auto dealer named Doug Griffith had a dealership on some of the commercially zoned property to the north and west. There was a rezoning case on a part of that property in the 1980s. See People's Counsel v. Mockard 73 Md. App. 340 (1987). But he did not use the subject property. Auto Properties (the Heritage auto group) acquired various parcels from Barbara Griffith in 1999 and has gradually expanded. It operates a number of dealerships. The latest addition appears to be the Honda dealership

on the south side of East Avenue. The present case amounts to a further expansion for parking, mainly for that dealership.

Shapiro also notes that if vested rights do accrue, the use ordinarily becomes nonconforming upon the subsequent passage of legislation which restricts the use. This is elementary. The law relevant to nonconforming uses then comes into play. Baltimore County defines nonconforming uses under BCZR 101:

> "**Non-conforming use:** A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically names use described by the adjective "nonconforming" is a nonconforming use."

The Bill 100 RTA legislation, originally and as amended, is substantially a use regulation in that it controls the uses in the RTA. It also is a type of special regulation. The same can be said for the BCZR 409 control on business parking in residential zones. It is a use and a special regulation.

BCZR 104 regulates both the continuation and termination of nonconforming uses. The key provision is BCZR 104.1, which states:

> "104.1 A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

The subject of discontinuity of nonconforming uses has come up in several recent cases, such as Ramsay/Savader, 2108 Alma Avenue, Case No. 04-250-SPH. There, the CBA recognized the objective test for determination of discontinuity.

It is to be remembered that one of the fundamental purposes of zoning is to eliminate nonconforming uses. To this end, the law must be construed strictly where

there is a question of continuation. Judge Rita Davidson made this plain in an extensive and learned discussion in Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1982). She identified a key issue as the reconciliation of this purpose with the need to accommodate existing vested rights. She wrote:

> "Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *The Arundel Corp. v. Board of Zoning Appeals of Howard County,* 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); *Stieff v. Collins,* 237 Md. 601, 604, 207 A.2d 489, 491 (1965); *Colati v. Jirout,* 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); *Beyer v. Mayor of Baltimore,* 182 Md. 444, 446, 34 A.2d 765, 766 (1943); *See Kastendike v. Baltimore Ass'n for Retarded Children, Inc.,* 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).
>
> Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. *Feldstein v. La Vale Zoning Board,* 246 Md. 204, 211, 227 A.2d 731, 734 (1967); *Phillips v. Zoning Comm'r of Howard County,* 225 Md. 102, 109, 169 A.2d 410, 413 (1961); *Board of Zoning Appeals of Baltimore County v. Gue,* 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. *Mayor of Baltimore v. Byrd,* 191 Md. 632, 638, 62 A.2d 588, 591 (1948); *Colati,* 186 Md. at 658-59, 47 A.2d at 616; *Knox v. Mayor of Baltimore,* 180 Md. 88, 96, 23 A.2d 15, 18 (1941); *see City of Hagerstown v. Wood,* 257 Md. 558, 563, 263 A.2d 532, 534 (1970); *Hewitt v. County Comm'rs of Baltimore County,* 220 Md. 48, 59, 151 A.2d 144, 150 (1959)."

Baltimore County zoning law follows the prevailing pattern of nonconforming use law. In this respect, the law here is reminiscent of the law described in Canada Tavern, Inc. v. Town of Glen Echo 260 Md. 206 (1970), where Judge McWilliams wrote:

> "We think the Council, having in mind a larger purpose, intended to align itself with those local governments which have found it desirable to delete the factor of intent in respect of the abandonment, discontinuation, or cessation of nonconforming uses rather than continuing to run the gamut of its judicial determination in a succession of infinitely variable situations."

Canada's Tavern held that expiration of the statutory period of discontinuity terminates the use. There, the lessee restaurateur closed when the liquor license was not renewed. It took time for the owner to get a new lessee to reopen. By then, the statutory period had run. The owner nevertheless applied for and got a certificate of occupancy from the Department of Inspections and Licenses, also approved by the County Attorney. Upon objection by the town, the Board of Appeals affirmed the departmental approval of the certificate, opining that the owner had diligently attempted to find a tenant to continue restaurant operation. The Circuit Court reversed, finding that the intent was irrelevant. The Court of Appeals affirmed the reversal, resulting in the denial of the certificate. Judge McWilliams emphasized the language of the statute is clear and objective.

So, if Harford Warehouse Corporation ever acquired any vested rights in the use of the property for business parking in a residential zone, the use became nonconforming upon the passage of Bill 100, 1970. The evidence appears to be undisputed that the property was vacant for many years in the 1970s, 1980s, and 1990s, up until the present. Clearly, any nonconforming use has terminated. The proposed new use by Auto Properties is subject, therefore, to review as a new proposal for a use permit under BCZR 409.8B and for variances to the RTA standards under BCZR 1B01.1B and 307.1.

III. The Proposed Use Permit Is Subject to a New Hearing Under the BCZR and the Policy Manual in any Event

Even if HWC had acquired vested rights and its use had continued as a nonconforming use to the present day, Auto Properties would still be subject to a new use

permit and variance review because the proposed use is materially different from the use approved in 1968 for HWC.

The use permit here was approved under BCZR 409.4 (1955). Several cases involved use permits under this prior law. Marek v. County Board of Appeals 218 Md. 351 (1958) held a use permit was not a special exception for the purpose of the BCZR 500.12 prohibition on filing a new petition on the same property within 18 months after a final order. BCZR 500.12. On the other hand, in Hofmeister v. Frank Realty Co. 35 Md. App. 691 (1977), the Court held that use permits were types of "special exceptions" within the delegated authority of the Zoning Commissioner to grant "special exceptions and variances." After discussing in depth the vocabulary of zoning, Judge Moylan explained that the name "special exceptions" refers to a genus which includes "special permit," "conditional use," "special use," "use permit", or "special exception." 35 Md. App. at 699. Citing Marek, he distinguished the specific Article 4 special exceptions, including use permits, from the species special exceptions under BCZR 502. 35 Md. App. at 704. But both of these decisions predated the 1988 addition of BCZR 502.1 standards.

In addition to other requirements, BCZR 409.8B.1.e.4 now includes:

> "Any additional requirements as deemed necessary by the Zoning Commissioner in order to ensure that the parking facility will not be detrimental to the health, safety or general welfare of the surrounding community and as are deemed necessary to satisfy the objectives of Section 502.1of these regulations."

Its source, as noted, is Bill 26-88, which included a comprehensive revision of BCZR 409. BCZR 409.8B replaced BCZR 409.4 (1955), a more abbreviated prior section on use permits which did not incorporate a BCZR 502.1 standard.

In 1992, the Baltimore County Zoning Office adopted a Zoning Policy Manual pursuant to the authority of then County Code Sec. 26-135, codified now as Sec. 32-3-105. That manual includes a detailed provision 409.8.B.2.g.(2) governing "OLD UNUSED PERMITS." Exh. 5. In general, the viability of a proposed use in the wake of an old unused permit must be reviewed based on the circumstances of each case. The factors to be considered include the existence or continuation of the original use and any material change in the principal use. The review "... on a case by case basis shall determine whether they comply with the spirit and intent of the originally approved use permit." The manual confirms:

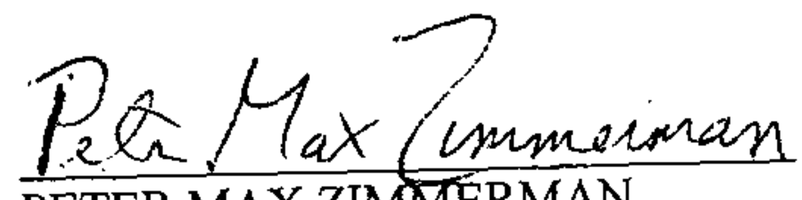
> "The Zoning Commissioner retains the right under Section 500.6 BCZR to interpret whether the spirit and intent of these regulation are being adhered to on a case by case basis ..."

The Auto Properties proposal is substantially different from the proposal approved in 1968, especially with regard to the principal use. In addition, Bill 26-88 established a new set of standards for use permits, including the BCZR 502.1 standards not required under BCZR 409.4. This is yet another reason why the Auto Properties proposal, coming 37 years later, should be reviewed as a new proposal.

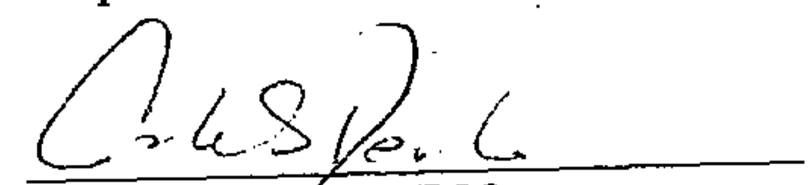
Conclusion

For these reasons, the County Board of Appeals should hold an evidentiary hearing to review any questions presented concerning the effect of the 1968 Zoning Commissioner decision. Ultimately, the CBA should hold that it does not confer any rights on Auto Properties to protect or advance its current proposal.

The CBA should then hold a *de novo* hearing on the merits of the Auto Properties petitions for special hearing for a use permit and for RTA variances. People's Counsel reserves the right to present all relevant factual and legal claims and defenses with respect to these petitions.



PETER MAX ZIMMERMAN
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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16 day of February, 2005, a copy of the foregoing People's Counsel for Baltimore County's Memorandum and Request for Hearing was mailed to Ruth Baisden, President, Greater Parkville Community Council, 7706 Oak Avenue, Parkville, MD 21234 and to Arnold Jablon, Esquire, and Robert A Hoffman, Esquire, Venable, LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioners.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham
President

Robert B. Hamill
Augustine J. Muller
County Commissioners of Baltimore County

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

Exhibit 2

2

PREFACE

The first Zoning Regulations to be adopted in Baltimore County went into effect in 1945. These Regulations served well enough until the tremendous growth of the County beginning about 1950 made it obvious that these Regulations were not sufficiently comprehensive to give adequate protection to the public in the large Metropolitan area which rapidly began to take shape throughout the entire suburban area of the County.

Shortly after the Election of 1950 a County administration requested the then Planning Commissioner to undertake studies looking toward the adoption of complete new and more comprehensive zoning regulations. These studies, under the direction and supervision of Mr. Malcolm H. Dill, then Planning Commissioner, in cooperation with Mr. Augustine J. Muller, the then Zoning Commissioner, later succeeded as Zoning Commissioner by Mr. Wilsie H. Adams, continued over a period of several years. The services of Mr. Flavell Shurtleff, a zoning consultant of recognized national standing were obtained and he participated in many conferences and discussions leading up to the adoption of the new Regulations.

Many varied interests were also brought into consultation including numerous architects, engineers, builders, developers and real estate brokers, all of whom contributed substantially to the Regulations as finally adopted and who are entitled to the thanks of the public for their contribution to this important undertaking. The Director of Planning and the Zoning Commissioner studied many zoning regulations from other jurisdictions and incorporated in these Regulations ideas gleaned from these sources.

After a Preliminary draft of the Regulations had been completed numerous further meetings and discussions were had with various architects, builders and developers in which Mr. Malcolm H. Dill, as Director of Planning, Mr. Wilsie H. Adams, as Zoning Commissioner, Mr. Augustine J. Muller, as a member of the Board of County Commissioners, and former Zoning

Commissioner, and Mr. George M. Berry, Deputy County Solicitor, participated.

As a result of these many conferences a final draft of the new Regulations was prepared and finally adopted by the County Commissioners on March 30, 1955. We have now had more than two years of experience with these new Regulations. Some amendments have been found necessary and undoubtedly further amendments will be found desirable from time to time. On the whole, however, we believe that these Regulations have provided the people of Baltimore County with a sound basis for the protection of property values and the general welfare of the public.

Realizing that future amendments are a certainty and in order to afford an easy and economical method of keeping these Regulations up-to-date, the loose-leaf form was adopted. Recognizing the importance of keeping the public informed of current amendments and revisions these Regulations will be sold on a subscription basis, with the initial cost to include loose-leaf re-prints of any amendments or revisions during the subscription period. The subscription period begins with the date of publication and terminates five years thereafter at which time the service will be made available on some different basis at a nominal cost.

The County authorities wish to extend their sincere thanks to the many persons who gave so generously of their time and effort in making these Regulations as effective and useful as we believe they are.

BALTIMORE COUNTY ZONING REGULATIONS

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Section 409—OFFSTREET PARKING AND LOADING
(see Section 409.5)

409.1—Parking and Loading Spaces—There shall be provided, at the time of application for a building permit for the erection or enlargement of any building for which offstreet parking and/or loading space is hereinafter required, other than a dwelling, a plan showing such parking and loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings.

409.2 — Parking space — Each offstreet parking space shall be not less than 8½ feet wide by 18 feet long, and there shall be not less than 300 square feet per space in the case of lot or garage parking where there is no attendant, and not less than 250 square feet where there is an attendant, such square foot figures to include access aisles. It is the intent of these regulations that adequate offstreet parking spaces be provided for all buildings, and that the requirements hereinafter set forth are and shall be taken as absolute minimums, to be exceeded wherever feasible.

a. Parking space for dwellings, including apartment houses—In all Zones, except as hereinafter modified, there shall be provided at least one garage or accessible and useable offstreet parking space for each dwelling unit. In all zones, in the case of a lodging, rooming or boarding house, fraternity or sorority house or dormitory, there shall be one offstreet parking space for each 5 guests or members residing on the premises, but not less than 2 parking spaces in any case. In the case of a hotel or apartment hotel, there shall be one such parking space for each guest room or suite. In the case of a motel, there shall be at least one parking space for each rental unit. Parking space as required above shall be provided on the same lot with the building which it serves or within 300 feet thereof (see Section 217.6).

b. Parking space for buildings other than dwellings—In all zones, permanently maintained offstreet parking spaces shall be provided as follows:

USE	PARKING SPACE
(1) High school, college, or university auditorium; theatre, church, general auditorium, stadium or similar place of assembly	1 for each 6 seats
(2) Hospital, Class A	1 for each 4 beds
Hospital, Class B and convalescent home	1 for each 10 beds
(3) Dance hall, night club or restaurant	1 for each 50 square feet of total floor area
Bowling alley	3 for individual alley
(4) Medical or dental offices and clinics	1 for each 300 square feet of total floor area
(5) Other institutional, office, and non-retail commercial buildings (excluding garage structures) having a total floor area of more than 5,000 square feet	1 for each 300 square feet of total ground floor area and 1 for each 500 square feet of total area of upper floors
(6) Buildings devoted to retail trade	1 for each 200 square feet of total floor area
(7) Industry, wholesale or warehouse type of commercial use	1 for each 3 employees in the numerically largest shift, except that the Zoning Commissioner may reduce the number of spaces required where employment condtions are such as to make the above requirements clearly excessive

Parking space as required above shall be either on the same lot with the principal use to which it is accessory or within 500 feet of the building it is intended to serve.

c. Requirements for all parking spaces or parking lots—All offstreet parking facilities

shall be either contained within buildings or subject to the following requirements:

(1) Screening—Offstreet parking facilities for more than five vehicles shall be screened by a wall, fence, or compact planting when adjoining or facing the side or rear lot line of residential or institutional premises or when they are across the street from such premises. Screening shall be at least 4 feet high. Planting shall not encroach on adjoining property. Screening shall not be so placed or maintained as to provide a traffic hazard through obstruction of visibility.

(2) Surface—Any parking or storage space for more than 5 vehicles shall provide a durable and dustless surface, and shall be properly drained.

(3) Lighting—Any fixture used to illuminate any offstreet parking area shall be so arranged as to reflect the light away from residential lots.

(4) No parking space shall be closer than eight feet to a street property line.

409.3—Loading Space—On the same premises with every building or part thereof, hereafter erected, having a total floor area of at least 10,000 square feet, occupied for manufacturing, storage, warehouse, goods display, retail store, wholesale store, market, hotel, elevator apartment building, hospital, mortuary, laundry, dry cleaning, or other uses which similarly involve deliveries or shipment of materials or merchandise by truck, there shall be provided and maintained at least one offstreet loading space plus one additional such loading space for each 50,000 square feet of total floor area so used in excess of 10,000 square feet. Each offstreet loading space shall be not less than 10 feet wide, 25 feet long, and 14 feet high. Where buildings are so located on the lot that loading facilities are provided within the premises so that no part of a loading or unloading vehicle projects into or across any publicly-used street, alley, or sidewalk, the Zoning Commissioner may reduce the number of loading spaces required under this paragraph.

409.4—Business or Industrial Parking in Residence Zones—Upon application the Zoning Commissioner may

issue a use permit for the use of land in a residential zone for parking areas subject to the following conditions. If granted, such use permit shall be conditioned as follows, in lieu of the provisions in Section 409.2(c).

a. The land so used must adjoin or be across an alley or street from the business or industry involved.
b. Only passenger vehicles, excluding buses, may use the parking area.
c. No loading, service, or any use other than parking shall be permitted.
d. Lighting shall be regulated as to location, direction, hours of illumination, glare, and intensity, as required.
e. Screening by a wall, fence, planting and/or otherwise shall be required as deemed advisable by the Office of Planning.
f. A paved surface, properly drained, shall be required.
g. A satisfactory plan showing parking arrangement and vehicular access must be provided. Said plan shall also be approved by the Office of Planning.
h. Method and area of operation, provision for maintenance and permitted hours of use shall be specified, and regulated as required.

409.5 — Exception — Where the requirements for parking space or loading space in Section 409 would create an undue hardship the Zoning Commissioner may approve a modified plan upon petition and after a public hearing.

Section 410—OPEN DUMPS

For requirements see Baltimore County Health Department regulations.

Section 411—PUBLIC UTILITY USES

For public utility uses permitted only by Special Exceptions in addition to the provisions of Section 502, the following regulations shall apply:

411.1—The use must be needed for the proper rendition of the public utility's service and the location

thereof shall not seriously impair the use of neighboring property.

411.2—In any residential zone in the Metropolitan District of Baltimore County, public utility buildings and structures, to the extent practicable, shall have an exterior appearance harmonious with the general character of the neighborhood, including architectural treatment, landscaping, screen planting and/or fencing, and plans therefor shall be approved by the Zoning Commissioner.

411.3—Electric light and power transmission lines carrying more than 35,000 volts shall be governed by the following principles, standards, rules, conditions and safeguards (in addition to the aforegoing):

a. For the purposes of the control of the location and construction of such electric light and power transmission lines, there is hereby created an additional zone which shall conform to the present or future boundaries of the Metropolitan District of Baltimore County and be known as the Metropolitan Zone. Within the said Metropolitan Zone, but excluding Manufacturing Zones therein, the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, shall have the power to require that such electric light and power transmission lines or portions thereof be located underground in cables or conduits.

In the exercise of such power, the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, shall consider and be guided by the following factors and standards:

(1) The crossing of much traveled highways or streets;

(2) The proximity of the line to any school, church, theatre, club, museum, fair ground, race track or other place where persons may congregate;

(3) The probability of extensive flying over the area and its general nearness to any airport;

County Council of Baltimore County Maryland

Legislative Session 1970, Legislative Day No. 11

BILL NO. 100

Introduced by Mr. Bartenfelder, Councilman

(Request of County Executive)

By the County Council, July 6, 1970.

A BILL

Entitled

AN ACT to amend the Baltimore County Zoning Regulations to provide certain new regulations and to revise certain existing regulations for establishment of zoning classifications, conversion and redesignation of "Residence" zoning classifications; to provide for the deletion and addition of terms and definitions; to provide for the application of light manufacturing zoning regulations to areas covered by previously submitted subdivision plans; to establish Rural and Rural-Suburban zoning classifications, "Density" Residential (D.R.) zoning classifications and Elevator-Apartment-Residence Zoning Classifications; to amend the special regulations for Community-Core Commercial (C.C.C.) Districts; to revise the use regulations in Light Manufacturing (M.L.) Zones; to revise the regulations governing automotive service stations in permitted parking garages; to establish regulations for Unit Developments and the classifications and authorizations thereof; to provide for the continuing validity of special exceptions granted for elevator apartment buildings or office buildings under R.A. Zoning Classifications; to provide that the Planning Board may adopt and implement certain policies and procedures in furtherance of the Zoning Regulations; by repealing and re-enacting with amendments Subparagraph 100. 1. A. 2; by adding new Subsection 100.3A; by deleting and adding certain definitions to Section 101, entitled "Definitions"; by amending Subsection 103.1; by adding new Articles 1A and 1B; by repealing designation and title, "Article 2-Zones and Districts: Use, Height and Area Regulations" and the subtitle, "R.40 Zone-Residence, One-Family" and enacting in lieu thereof a new designation and title as follows:

Exhibit 3

"ARTICLE 2 — ELEVATOR — APARTMENT RESIDENCE ZONES, BUSINESS AND MANUFACTURING ZONES, AND DISTRICTS"; by repealing Sections 200 to 217 (inclusive) and enacting in lieu thereof new Sections 200, 201 and 202; by repealing and re-enacting Subsection 232.5; by redesignating existing Section 232A as Section 232B; by redesignating existing Subsections 232A.1 to 232A.6 (inclusive) as 232B.1 to 232B.6 (inclusive); by adding new Section 232A; by redesignating existing Section 235A as Section 235B; by redesignating existing Subsections 235A.1 to 235A.6 (inclusive) as 235B.1 to 235B.6 (inclusive); by adding new Section 235A; by adding new Section 238A; by redesignating existing Section 238A as Section 238B; by redesignating existing subsections 238A.1 to 238A.5 (inclusive) as 238B.1 to 238B.5 (inclusive); by deleting Section 253 and enacting in lieu thereof, new Section 253; by repealing and re-enacting with amendments Subparagraph 405.2.A.4 and Paragraph d of Subsection 409.2; by adding new Section 430; by adding new Subsection 502.4 and by adding new Section 504; all being provisions of said Baltimore County Zoning Regulations, 1955, as amended.

WHEREAS, the amendments to the zoning regulations which are contained in this Bill, having been formulated in accordance with the procedure specified in sections 22-20 and 22-21 of the Baltimore County Code, 1968, the said several public hearings required by said sections having been held after the required public notice; now, therefore

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland,* That subsection 100.1.A.2 be and it is hereby repealed and re-enacted with amendments as follows:

2. Zones are as follows: R.D.P. Zones—Rural: Deferred-Planing; R.S.C. Zones—Rural-Suburban: Conservation; D.R. 1 Zones—Density Residential, 1.0 Dwelling Units per Acre; D.R. 2 Zones—Density Residential, 2.0 Dwelling Units Per Acre; D.R. 3.5 Zones—Density Residential, 3.5 Dwelling Units Per Acre; D.R. 5.5 Zones—Density Residential, 5.5 Dwelling Units Per Acre; D.R. 10.5 Zones—Density Residential, 10.5 Dwelling Units Per Acre; D.R. 16 Zones—Density Residential, 16.0 Density Units Per Acre; R.A.E. 1 Zones—Residential, 40.0 Density Units Per Acre; R.A.E. 2 Zones—Residential, 80.0 Density Units Per Acre; B.L. Zones—Business, Local; B.M. Zones—Business, Major; B.R. Zones—Business, Roadside; M.R. Zones—Manufacturing, Restricted; M.L.R. Zones—Manufacturing, Light Restricted; M.L. Zones—Manufacturing, Light; M.H. Zones—Manufacturing, Heavy.

SECTION 2. *And be it further enacted,* That Article 1 be and it is hereby amended by adding sub-section 100.3A, said new sub-section to read as follows:

B. Dwelling-Type and other Supplementary Use Restrictions Based on Existing Subdivisions and Development Characteristics.

1. Residential Transition Areas and Uses Permitted Therein.

a. Definitions. For the purposes of this article:

1. A residential transition area is any D.R. 1, D.R. 2, D.R. 3.5, D.R. 5.5, or D.R. 10.5 zone or part thereof which lies (a) within 300 feet of any point on a dwelling other than an apartment building, or (b) within 250 feet of any point lying within a vacant lot of record which is itself wholly or partially classified as D.R. and which is two acres or less in area.

2. A residential transition use in any one of the uses listed as such in the following table and hereby classified as set forth therein:

Collective Designation	*Residential Transition Uses*
Group I uses	One-family detached dwellings Local open space tracts or other common amenity open space Uses and buildings accessory to the uses listed above
Group II uses	One-family semi-detached dwellings Two-family detached dwellings Uses and buildings accessory to the uses listed above Group I uses
Group III uses	Group houses Group-house apartments Uses and buildings accessory to the uses listed above Group II uses
Group IV uses	Dwellings, as set forth in Item "1" of Paragraph A Local open space tracts or other common amenity open space Uses and buildings accessory to the uses listed above

b. Restrictions in Residential Transition Areas. In any residential transition area situated as described in the following table, only residential transition uses shall be permitted, and only as indicated:

Zone of Residential Transition Area	Portion of Development Tract Lying Within Residential Transition Areas Situated as Described Herein	Type of Existing Adjacent Dwelling; or Size of Adjacent Vacant Lot of Record	Zone Within Which Adjacent Dwelling or Lot is Situated	Residential Transition Uses Permitted
D.R. 1 D.R. 2 D.R. 3.5 D.R. 5.5	Any Portion	Existing one-family detached dwelling; or vacant lot of record 7,500 square feet or more in area, but not more than two acres in area	D.R. 1 D.R. 2 D.R. 3.5 D.R. 5.5	Group I uses
			D.R. 10.5 D.R. 16	Group II uses
	Any Portion	Existing one-family semi-detached dwelling or detached two-family dwelling; or vacant lot of record 3,800 square feet or more in area, but less than 7,500 square feet in area	Any D.R. Zone	Group II uses
	Any Portion	Existing one-family group house; or vacant lot of record less than 3,800 square feet in area	Any D.R. Zone	Group III uses

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Zone of Residential Transition Area	Portion of Development Tract Lying Within Residential Transition Areas Situated As Described Herein	Type of Existing Adjacent Dwelling; or Size of Adjacent Vacant Lot of Record	Zone Within Which Adjacent Dwelling or Lot is Situated	Residential Transition Uses Permitted
D.R. 10.5	Less than ½	Existing one-family detached dwelling; or vacant lot of record 7,500 square feet or more in area, but not more than two acres in area	Any D.R. Zone	Group II uses
	½ or more			Group III uses
	Any Portion	Existing one-family semi-detached dwelling or detached two-family dwelling; or vacant lot of record 3,800 square feet or more in area, but less than 7,500 square feet in area	D.R. 1 D.R. 2 D.R. 3.5 D.R. 5.5	Group III uses
	Less than ½		D.R. 10.5	Group III uses
	½ or more		D.R. 16	Group IV uses
	Less than ½	Existing one-family group house; or vacant lot of record less than 3,800 square feet in area	Any D.R. Zone	Group III uses
	½ or more			Group IV uses

c. The provisions of Sub-subparagraphs a and b of this subparagraph shall not apply to existing developments as described in Subparagraph A.1 of Subsection 1B02.3, nor to subdivision tracts for which tentatively approved plans remain in effect as described in Subparagraph A.2 of said subsection.

d. The use and development of land which is classified as D.R. 16 shall not be subject to the provisions of Sub-subparagraphs

a and b of this subparagraph if such land was classified as R.A. immediately prior to this article's taking effect (see Section 504).

2. Use Regulations in Existing Developments. In existing developments as described in Subparagraph A.1 of Subsection 1B02.3, uses shall be limited to those now lawfully established or to those indicated in the subdivision plans on file with the Office of Planning and Zoning, except as may otherwise be permitted under provisions adopted pursuant to the authority of Section 504.

3. Use Regulations for Existing Subdivision Tracts. On subdivision tracts for which tentatively approved plans remain in effect as described in Subparagraph A.2 of Subsection 1B02.3, the uses permitted shall be those indicated in the plan or, where the use is not indicated and if not inconsistent with the plan, the uses shall be those permitted under zoning regulations in effect at the time the tentative approval was granted.

C. Uses Permitted by Special Exception. The following uses, only, are permitted by special exception in all D.R. Zones:

1. Boarding or rooming houses
2. Boat yards, including marinas
3. Camps, public or quasi-public, including day camps
4. Conservatories for music or other arts
5. Convalescent homes
6. Community buildings, swimming pools, commercial beaches, golf course, country clubs, or other, similar civic, social, recreational, or educational uses
7. Excavations, controlled (see Section 403)
8. Funeral establishments
9. Helistops
10. Poultry killing, commercial, as an accessory use on farms, only
11. Private colleges (not including business or trade schools), nursery or dancing schools, dormitories, or fraternity or sorority houses
12. Public-utility uses other than those permitted as of right, but excluding steam power plants, service centers, and storage yards
13. Public-utility service centers
14. Public-utility storage yards
15. Radio studios
16. Television studios
17. Tourist homes
18. Veterinarians' offices
19. Volunteer-fire-company stations
20. Wireless transmitting and receiving structures, as principal uses or structures, provided that any exterior transmitting

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TION OF THIS ACT ARE ENACTED INDEPENDENTLY AND ARE, THEREFORE, SEVERABLE; IF ANY PART IS DECLARED INVALID BY A COURT OF COMPETENT JURISDICTION, THE REST OF THIS ACT REMAINS VALID.

SECTION 20. *AND BE IT FURTHER ENACTED,* THAT ANY AMENDMENTS HEREIN, OR ANY NEW ZONING CLASSIFICATIONS PROVIDED FOR IN THIS BILL SHALL NOT BE PROMULGATED AS TO ANY EXISTING ZONING MAPS, BUT SHALL BE EFFECTIVE ONLY UPON THE ADOPTION BY THE COUNTY COUNCIL OF ANY NEW ZONING MAPS ON OR BEFORE MARCH 31, 1971.

SECTION 21. *AND BE IT FURTHER ENACTED,* THAT THIS ACT SHALL TAKE EFFECT FORTY-FIVE DAYS AFTER ITS ENACTMENT.

READ AND PASSED this 3rd day of August, 1970.

By Order:

Herbert Hohenberger, Secretary

PRESENTED to the County Executive, for his approval this 4th day of August, 1970.

Herbert Hohenberger, Secretary

APPROVED AND ENACTED: August 5, 1970.

Dale Anderson,

County Executive

I HEREBY CERTIFY THAT BILL NO. 100 IS TRUE AND CORRECT AND WILL TAKE EFFECT ON SEPTEMBER 19, 1970.

Harry J. Bartenfelder,

Chairman, County Council

to erect a filling station was treated differently from applications for other uses, thus emphasizing the caution to be exercised in the consideration of an application for a filling station.

[4] Upon a consideration of evidence contained in this record, there is evidence from which a reasonable conclusion can be drawn that the number of filling stations in the area of the site of the proposed filling station has reached a saturation point. The Board could well hold if a filling station is erected upon the proposed site, that it will constitute a menace to the safety and security of the residents in that locality. We have repeatedly held that if the evidence before the Board substantially supported its conclusion that its finding would not be disturbed even though this court did not agree with its conclusion. Mayor & City Council v. Biermann, supra, and cases cited; Heath v. Mayor & City Council, Md. 49 A.2d 799; Mahoney v. Byers, Md. 48 A.2d 600.

[5] If, because appellant asserts that his constitutional rights are denied without due process, he is entitled to the independent judgment of the court on the law and the facts so far as his constitutional rights are concerned, what we have already said, and what was said in the Pocomoke City, Kramer and Biermann cases, supra, is sufficient to show that appellant has failed to show any impairment of his constitutional rights or to overcome the strong presumption that denial of a permit for a filling station, whether by legislative or administrative action, is within the police power.

[6, 7] It was argued that the Zoning Board did not make a finding of fact of what its members saw when they visited the site of this proposed filling station. However this may be, what the members of the Board saw at that time must have been depicted by the evidence adduced before them. The conditions with which the Board had to deal were vividly described in the record. It is contended that negative testimony does not disprove positive evidence, and that the respective certifications of the City officials are uncontradicted. But the condition surrounding the site of this proposed filling station does not harmonize with the conclusion that the security and safety of the people in that vicinity would not be menaced. In Heaps v. Cobb, Md., 45 A.2d 73, there was no evidence in the case to support the finding of the Board of Trustees, but in this case there is evidence to support the finding of the Board of Zoning Appeals. It is true that the reason set out in the resolution of the Zoning Board for refusing to grant this permit is not based on the reason pointed out in this opinion. Without deciding the question of whether the reason given by the Board is correct or not, it is none the less true that if its conclusion was correct it will not be set aside, even if the reason given therefor is wrong.

Judge Sayler, who heard this case in the Baltimore City Court, was "unable to hold that the decision of the Board of Zoning Appeals was discriminatory, unreasonable, arbitrary or not founded upon substantial facts". In this view we are in accord.

Judgment of June 12, 1946, and Order of June 17, 1946, affirming the decision of the Board of Zoning Appeals, dated April 20, 1946, affirmed, with costs.

MAYOR AND CITY COUNCIL OF BALTIMORE v. SHAPIRO et al.

No. 60.

Court of Appeals of Maryland.

Feb. 12, 1947.

1. Municipal corporations ⟹621

The fact that private persons, who were denied right to intervene in Baltimore City court for purpose of appeal from order reversing action of Board of Zoning Appeals of Baltimore City and declaring that permit issued by board for dismantling of used automobiles in vacant lot was valid, agreed to reimburse city for costs if city would appeal to Supreme Court, did not require dismissal of city's appeal where city had a legitimate interest in the out-

Exhibit 4

come of the litigation and so h[illegible] discretion whether to exercise right of appeal. Code 1939, art. 66B, § 7.

2. Municipal corporations ⚷621

On appeal to Baltimore City court from action of Board of Zoning Appeals of Baltimore City declaring that permit to use vacant lot for dismantling of used automobiles had not been exercised and should be revoked, refusing to permit landowners to introduce additional testimony was not error, where testimony taken before board completely developed use made of premises by owners, since some latitude must be allowed trial judge in passing on a proffer in a particular case. Code 1939, art. 66B, § 7.

3. Municipal corporations ⚷621

The Board of Zoning Appeals of Baltimore City is the body to which decision on zoning questions is principally committed, and it is incumbent on a party to produce evidence before the board before seeking a review of the board's action. Code 1939, art. 66B, § 7.

4. Municipal corporations ⚷621

If vacant lot was being used for dismantling of used automobiles at time of amendment of city's zoning ordinance making the dismantling a nonconforming use in a second commercial district, amendment did not affect dismantling on the lot.

5. Municipal corporations ⚷621

In proceeding before Board of Zoning Appeals of Baltimore to determine whether owners of vacant lot had a valid right to dismantle used automobiles on lot as a nonconforming existing use, in a second commercial district, testimony of residents in neighborhood that they saw no automobiles dismantled on lot was negative evidence and not entitled to much weight, but it showed that activity failed to meet test of being "known in the neighborhood".

6. Municipal corporations ⚷621

Evidence that the activity of owner seeking to establish a used automobile sales lot on a vacant lot in a second commercial district was merely preliminary or casual to such use, and that there was neither the existence of a plan, nor the purchase of property and the expend[illegible] of money for grading was insufficient to establish an existing use exempt from amendment of a city ordinance forbidding the dismantling of used automobiles in such a district, notwithstanding the dismantling of cars on two occasions.

7. Constitutional law ⚷101
Estoppel ⚷62(3)

The mere issuance of a permit to conduct a business as a nonconforming use where the permittee has not commenced to work or incurred substantial expense on the faith of it did not create a vested right or estop the municipal authorities from revoking it.

8. Municipal corporations ⚷621

After the adoption of an amendment to a zoning ordinance so as to exclude a particular type of business from a district, the issuance of a new permit for a nonconforming use would be void.

Appeal from the Baltimore City Court; J. Abner Sayler, Judge.

Proceeding on an appeal to the Baltimore City Court by Joseph W. Shapiro, trading as Gittings Auto Service, and Jacob S. Shapiro, against the Mayor and City Council of Baltimore, to review the action of the Board of Zoning Appeals of Baltimore City in revoking a permit to use vacant lot for dismantling automobiles. From an order of the Baltimore City court reversing the action of the Board of Zoning Appeals and declaring that permit was valid and subsisting, the Mayor and City Council of Baltimore appeal, and Joseph W. Shapiro, trading as Gittings Auto Service, and Jacob S. Shapiro, move to dismiss the appeal.

Motion to dismiss the appeal denied and trial court's order reversed, and order of Board of Zoning Appeals affirmed.

Before MARBURY, C. J., and DELAPLAINE, GRASON, HENDERSON, and MARKELL, JJ.

Simon E. Sobeloff, City Sol., and Max R. Israelson, Asst. City Sol., both of Baltimore, for appellants.

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Harry Singerman and Hilary W. Gans, both of Baltimore, for appellees.

HENDERSON, Judge.

The appeal in this case is from an order of the Baltimore City Court reversing the action of the Board of Zoning Appeals of Baltimore City and declaring that a permit issued by the Board to the appellees on July 2, 1941, for the sale of used cars, used parts and the dismantling of used cars at 2401-2475 Frederick Ave., is "valid and subsisting." The appellees have filed a motion to dismiss the appeal, which presents the first question for consideration. The ground of the motion is that "it appears from the record that the Mayor and City Council is not prosecuting this appeal in its own behalf as representative of the people of Baltimore City, but has simply consented to permit the appeal to be prosecuted in its name for the benefit of and at the expense of certain private parties."

It is stipulated that the Mayor and City Council, through the City Solicitor, filed an answer to the petition for appeal filed in the Baltimore City Court, but that none of the numerous protestants or petitioners before the Board intervened in the proceeding at that time. After the decision of the Court was announced, the attorney for some of the protestants applied for permission to intervene, but the Court refused permission on the ground that the request came too late. It is also stipulated that the City Solicitor was requested, by resolution of the City Council, to appeal the Court's decision in this case, and did so, with the written approval of the Mayor, acting under sections 82 and 86 of the Baltimore City Charter (1938 Ed.). It appears from the record, however, that he advised the council that, although "the private parties who wish the City to appeal have offered to bear the expense of such proceedings," he thought the policy of his office should be "not to appeal unless the record in a particular case presents a substantial question of law or practice, or the City's interests are otherwise directly affected", or unless a case "involves an important question of interpretation of the law or a point of practice likely to recur."

The enabling Act, Code, Art. 66B, § 7, provides that "any person or persons jointly or severally aggrieved by any decision of the Board of Zoning Appeals, or any taxpayer, or any officer, department, board or bureau of the municipality, may present to a court of record a petition" for appeal. There is a provision for further appeal to this Court. Paragraph 35 of the Zoning Ordinance repeats this language and designates the Baltimore City Court as the court of record. Paragraph 35(A) provides that "it shall be the duty of the Board of Zoning Appeals to notify the City Solicitor promptly of the filing of every petition of appeal." Obviously, the notice is to enable the City Solicitor to defend the Board's action, if he so desires.

[1] In the case of Board of Zoning Appeals v. McKinney, 174 Md. 551, 199 A. 540, 543, 117 A.L.R. 207, this court held that the Board itself had no standing to appeal, since it was merely "an administrative agency of the city of Baltimore exercising quasi judicial and legislative functions" and had "no interest, personal or official, in the matters which came before it other than to decide them according to law and the proved fact." But the City's right to appeal was clearly recognized, and there was no suggestion that this Court should inquire into the City's motives. Whether a particular case should be appealed in the first instance, or to this Court, must rest in the sound discretion of the City authorities. In the case at bar the City has raised questions of construction and procedure that transcend the limits of the particular controversy, and we cannot say that these questions are unimportant, or that the City has no legitimate interest in the subject matter or outcome of the litigation, even if such inquiry were open under the unqualified provisions of the statute. Nor do we regard the fact that private persons, denied the right to intervene for the purpose of appeal, have agreed to reimburse the City for costs, as controlling. The motion to dismiss must be overruled.

The record discloses that the appellee Jacob S. Shapiro and Rose Shapiro, his wife, purchased the property known as

2401-2475 Frederick Ave. on April 28, 1941, intending to establish at that location a branch of the partnership known as Gittings Auto Service, composed of Jacob S. Shapiro and Joseph W. Shapiro, his son, to be operated by the appellee, Joseph W. Shapiro. The property is irregular in shape and comprises about 14½ acres. It is unimproved, except for four buildings fronting on Frederick Ave., and at the time of the purchase the unimproved portion contained a large number of deep holes or pits and was used as a dumping ground. It was, and is, located in a Second Commercial Use District.

On June 18, 1941, Jacob Shapiro made application to the Buildings Engineer, on behalf of the partnership, for a permit to use the "vacant lot for the sale of used cars, used parts, and for the dismantling of used cars." The Buildings Engineer noted that such a use would be "permitted unless a 'junk use' is involved; if a 'junk use' is intended it would be permitted if a use of the same classification now exists on the premises." Evidently he thought a "junk use" was involved, for he disapproved the application "under paragraph 6" of the Zoning Ordinance. The "junk use" referred to is found in paragraph 6(35): "junk (scrap paper, metals, bottles, rags, rubber) yard or shop for purchase, sale, handling, baling or storage of these." On appeal, the Board of Zoning Appeals found that "the old Wilkens Hair Factory * * * was an established industry for many years at this location," and that "since the hair-drying process has ceased, the *buildings* have continued to be used for industrial purposes. The Board approves the application." (Italics supplied.) It was not shown that the vacant portion of the lot, for which the permit was sought, had ever been used for any purposes except those of a dumping ground. On the following day, July 2, 1941, the permit was issued.

On December 12, 1941, the Zoning Ordinance was amended by adding subparagraph (84) to paragraph 6, so as to exclude from a Second Commercial Use District any "automobile dismantling, salvaging or wrecking yard, and yard for the dismantling and salvaging of automobile parts."

On March 19, 1946, the Zoning Enforcement Officer, with the express approval of the Buildings Engineer, notified Jacob S. Shapiro that "since the privilege granted [under the permit of July 2nd, 1941] has not been exercised, you are advised that the privilege and all rights granted are null and void." In taking this action he relied upon paragraph 39 of the Ordinance, which provides: "Whenever an application for a permit is approved under the provisions of this Ordinance, either by the Buildings Engineer or the Board of Zoning Appeals, * * * the permit shall be obtained and the privilege granted thereunder shall be exercised by the grantee therein named within twelve months from the date of the final action which made the permit valid, and if not exercised by the grantee therein named within that time, the privilege and all rights granted shall become null and void and of no effect * * *." He also relied upon paragraphs 31 and 37 of the Ordinance for his authority to revoke the permit and enforce conformity.

On appeal to the Board of Zoning Appeals, a public hearing was held on April 16, 1946. Jacob Shapiro testified that the four buildings on the front of the lot were occupied by Overnight Transportation Co., Auto Parts Co., Ives, a manufacturer of brush handles, Enoch Transportation Co., and Commercial Central Sales; that the rest of the lot was still vacant and unimproved, although he had filled in some of the holes, and had plans for another building to be occupied by Gittings Auto Service, construction of which had been prevented by the war. He testified that "we started dismantling in 1941, in September and October", but discontinued this because of the war and because his son went into the Service on July 21, 1942 (he was not discharged until April 16, 1946) and there was a labor shortage. He stated that he had "recently" fenced in the property to prevent dumping of garbage on the lot. He denied any intention to permanently abandon the use of the lot for dismantling cars. He produced trader's licenses for the years 1941-1945, inclusive, in the name of Gittings Auto Service, Joseph W. Shapiro, proprietor, for the location 2401-2475 Frederick Ave. The first of these was dated

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November 4, 1941. In each, the average stock in trade was valued at $1,000. He did not testify that anything was ever sold at the location; on the contrary, he testified that the business was still conducted, as it had been prior to 1941, at the principal office of the firm on Washington Boulevard and Sulphur Spring Road.

John Philip Grace, the manager of the firm, testified that two cars were dismantled on the lot on July 23d, 1941, and three cars on August 5th, 1941. "We towed the cars there and they sat there a while, I don't know why, but we went over later and dismantled; we hauled the parts to Washington Boulevard and the [remaining] parts to United Metal. * * * We didn't dismantle right away, they sat there, children got in them and broke the glass and stole tires. I sent Mr. Nowakowski there and said 'Dismantle the cars until we get this straightened out.'" He further testified that they did not dismantle any other cars on the lot until October 5th, 1945, when one was dismantled, and three more subsequently; that the reason they stopped in 1941 was that they "couldn't possibly run the two places" because of the war.

Joseph F. Nowakowski testified that he towed some cars to the lot in July, 1941, and dismantled them, taking the "good" parts to the firm's place of business, and the scrap "to the United." James A. Shorter, another employee, testified he towed four cars to the lot in October, 1941; "they sat there a week and my boss said, 'take them up to Washington Boulevard' and I did that a week after. * * * they had not been touched."

Corinto Matucci testified that he was in the used car business at 2539 Frederick Ave., and that he dismantled cars for Mr. Shapiro every year from 1941 to 1945 "in back of 2539 Frederick Ave. * * * the property I sold to Mr. Shapiro." The relevancy of this testimony is not apparent.

The evidence presented by the protestants, through seven witnesses resident in the neighborhood, was to the effect that they never saw a car dismantled on the premises at any time from 1940 to date, although they observed the lot daily. One of the witnesses testified: "it was just a private lot, filling in, and no place to put a car." A petition of protest was also filed bearing some 1800 signatures.

Upon this evidence the Board passed a resolution that "the preponderance of evidence shows that the permit has not been exercised" and sustained the action of the Buildings Engineer in revoking the permit.

On appeal to the Baltimore City Court, it is stipulated that counsel for the permittees stated that "he was prepared to offer some additional testimony regarding the use of the property, the amount of work done by the Shapiros on the tract of land preparing it for use as an automobile dismantling yard, the amount of money expended therefor, and the use to which the property had been put." The Court declined to hear additional testimony, and decided the case on the record made before the Board. On June 17, 1946, the Court filed an opinion in which it found that the permittees exercised the privilege granted in 1941, and that there was no abandonment, and reversed the Board's action. The City appealed here.

[2, 3] We find no reversible error in the Court's ruling upon the proffer of additional testimony. The testimony taken before the Board fully and completely developed the use made of the premises by the appellees, and contradictory testimony would not be entitled to much credence. Additional testimony on this point, or as to the amount of grading, and the cost thereof, could hardly affect the result. Even if we assume, for the purposes of this case, that the Court, on review, has not only the right but the duty to hear additional evidence if "it shall appear to the court that testimony is necessary for the proper disposition of the matter" (Code, Art. 66B, § 7), some latitude must be allowed to the trial Judge in passing upon a proffer in a particular case. The Board is the body to which decision is "principally committed," and it is incumbent upon a party to produce evidence before that body before seeking a review of the Board's action. Compare Hathcock v. Loftin, 179 Md. 676, 22 A.2d 479.

In the case at bar the question at issue before the Board, and before the court on appeal, related to the exercise of the permit

within the time prescribed by paragraph 39 of the Ordinance, i. e. within twelve months from the date of issuance, July 2, 1941. Upon the record, we think this was not the true issue. We find no evidence that the vacant portion of the lot, as distinguished from the buildings, was ever used for industrial purposes, conforming or non-conforming, prior to July, 1941. It was simply a dumping ground, scarcely usable at all in its then condition. On the other hand, unless the proposed use was a "junk" use under paragraph 6 (35) (and the Board made no finding on this point), no permit was necessary. The amendment of December, 1941, for the first time made a "dismantling" use non-conforming and, by implication, recognized that a use of that character was conforming under the ordinance as it stood prior to the amendment.

[4] The real question, therefore, would appear to be whether such a use was "existing" at the time of the amendment. If it was, then the amendment did not affect it. Paragraph 11 of the Ordinance provides that "nothing contained in this ordinance shall be construed to prevent the continuance of any use which now legally exists." Moylan, Inc., v. Board of School Com'rs, 180 Md. 316, 24 A.2d 297. However, there is no evidence to show that any use was made of the lot between August 5, 1941, and August 5, 1945, so that it is perhaps immaterial whether the issue is treated as concerning the exercise of the permit, or the existence of the use, in 1941. In either event the answer must depend upon analysis of the evidence presented. If a non-conforming use had been established, as of December 1941, then we would have to consider the further question as to whether it was subsequently abandoned. But the primary question is whether the business of the appellees was established or existing at the location in question in 1941.

In Roach v. Board of Zoning Appeals, 175 Md. 1, 199 A. 812, the question was whether Lipsitz, a former owner, had operated a planing mill on the property prior to the Zoning Ordinance. If so, then it was conceded that an ice factory might be authorized, as falling in the same classification. But if the operation was that of a lumber yard, then a change to a lower classification was not permissible. This Court said (175 Md. at page 5, 199 A. at page 814): "on the whole evidence the City Court could find that Lipsitz had conducted a planing mill * * *. With legally sufficient evidence that Lipsitz was operating a planing mill and no substantial evidence to the contrary, the presumption, therefore, is in favor of the correctness of the decision of the City Court." The Court's order affirming the Board was sustained.

In Chayt v. Board of Zoning Appeals, 177 Md. 426, 434, 9 A.2d 747, 750, the question was whether adjacent, vacant land, held for expansion of the non-conforming business and included in a comprehensive plan for expansion sketched out before 1931, could be regarded as in use. It was held that the use was not existing. "'As understood in the ordinance, "existing use" should mean the utilization of the premises so that they may be known in the neighborhood as being employed for a given purpose; i. e. the conduct of a business. Ordinarily an existing use for business combines two factors: (a) Construction or adaptability of a building or room for the purpose, and (b) employment of the building or room or land within the purpose.'" This passage was quoted from Appeal of Haller Baking Co., 295 Pa. 257, 261, 145 A. 77, 79. In that case it was held that use of a large stable, in existence when an ordinance was passed prohibiting "major" stables (for more than five horses), was not affected, although at the time the prohibition took effect the stable was in actual use for the stabling of only two horses. The decision turned, however, on the fact that the prior use as a "major" stable, for which the property was specially adapted, was conceded, and the Court held that the more limited use was temporary and did not constitute an abandonment. The Haller case was cited by this Court in Landay v. Board of Zoning Appeals, 173 Md. 460, 469, 196 A. 293, 297, 14 A.L.R. 984, for the proposition that "cessation or discontinuance of a non-conforming use without the substitution of another use, or without evidence of an in-

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tention to abandon the nonconforming use, will not prevent its resumption." Compare Beyer v. Mayor and City Council of Baltimore, 182 Md. 444, 34 A.2d 765.

In Knox v. Mayor and City Council of Baltimore, 180 Md. 88, 23 A.2d 15, despite testimony that a vacant lot had been used for the storage of building materials and trucks, to establish a non-conforming use, this Court affirmed the finding of the trial court and Board that the only use consisted of dumping cinders, old bricks and mortar, to fill in the lot, and held that a business use was not established.

[5-8] The evidence presented in the case at bar shows an intention on the part of the appellees in 1941 to establish, on a vacant lot, a branch for the sale of used cars, parts and dismantling of used cars. They contemplated the erection of a building, but this did not advance beyond the planning stage. No improvements were made, except filling in some of the holes. No sales or purchases were made there, hence the obtention of a Trader's license in November is without significance as to actual use. On two days in 1941, five cars were towed to the lot, and dismantled a few weeks later. The parts and scrap were removed. In October, four cars were towed to the lot, and then towed to the firm's place of business. As against this evidence, residents testified that no cars were ever dismantled on the lot. While this negative evidence is not entitled to much weight (Heath v. Mayor and City Council of Baltimore, Md., 49 A.2d 799, 803), it shows that the activity failed to meet the test of being "known in the neighborhood." Accepting the evidence produced by the appellees at its face value, the activity appears to have been merely preliminary or casual. Neither the existence of a plan (Chayt v. Board of Zoning Appeals, supra) nor the purchase of property and the expenditure of money for grading (Knox v. Mayor and City Council of Baltimore, supra; Board of Com'rs of Anne Arundel County v. Snyder, Md., 46 A.2d 689, 692) are sufficient to show that the business was established or existing. The mere issuance of a permit, where the permittee has not commenced the work or *incurred substantial expense on the faith* of it, does not create a vested right, or estop the municipal authorities from revoking it. Board of Com'rs of Anne Arundel County v. Snyder, supra; Geneva Inv. Co. v. St. Louis, 8 Cir., 87 F.2d 83, certiorari denied 301 U.S. 692, 57 S.Ct. 795, 81 L.Ed. 1348; Brett v. Building Commissioner of Brookline, 250 Mass. 73, 145 N.E. 269; and see Note, 138 A.L.R. 500, and cases there cited. After the adoption of the amendment, the issuance of a new permit, for a nonconforming use, would be nugatory and void. Lipsitz v. Parr, 164 Md. 222, 164 A. 743.

We hold that dismantling cars on two occasions, on a vacant lot wholly unadapted for the conduct of a business, does not establish an existing use within the meaning of the Ordinance, and that the finding of the Board was supported by substantial evidence. Heath v. Mayor and City Council of Baltimore, supra; compare Heaps v. Cobb, Md., 45 A.2d 73, 76.

In view of our conclusion that the use was not established or existing in 1941, it is unnecessary to consider the question as to whether it was subsequently abandoned. The order of the trial court is reversed, and the order of the Board of Zoning Appeals is affirmed.

Motion to dismiss appeal denied; order reversed, with costs.

1992 Edition

Baltimore County Zoning Commissioner's Policy Manual

Zoning Administration & Development Management

BALTIMORE COUNTY MARYLAND

amended May 13, 1992

adopted May 21, 1991

Exhibit 5

Administrative Supplement to the Baltimore County Zoning Regulations

5

IN RE: Zoning Commissioner's Policy Manual (ZCPM)

PURSUANT TO: Sections 2-416 thru 422 and 26-135 of the Baltimore County Code

WHEREAS, on August 13, 1990, Baltimore County Council Bill No. 88-90 became effective establishing a Code of Baltimore County Regulations and the method for adoption and amendment of same; and

WHEREAS, on March 26, 1992, the Zoning Commissioner's Policy Manual (ZCPM) amendments received the approval of the County Attorney; and

WHEREAS, a public hearing was scheduled, and advertised in two newspapers of general circulation, and copies of the amendments to the Zoning Commissioner's Policy Manual (ZCPM) were made available for review; and

WHEREAS, on May 13, 1992, the Director of the Office of Zoning Administration and Development Management held a Public Hearing on the Zoning Commissioner's Policy Manual (ZCPM); and

WHEREAS, there being no adverse testimony submitted either written or verbal; and

NOW THEREFORE, IT IS ORDERED by the Director of the Office of Zoning Administration and Development Management, this 13th day of May, 1992, that the Zoning Commissioner's Policy Manual as Amended, be and is hereby **ADOPTED** and shall be incorporated into the Code of Baltimore County Regulations.

Arnold Jablon, Director
Zoning Administration &
Development Management

409.B.B.2.g BUSINESS & INDUSTRIAL PARKING IN A RESIDENTIAL ZONE - REQUIREMENTS

(1) NEW PERMITS:
Because of the ambiguity between Sections 409.B.B.1.e and 409.12.B B.C.Z.R., any conflict will be handled during the course of the public hearing. Only hardship requests for business or industrial parking in a residential zone will absolutely require a public hearing because no discretion is allowed under Section 409.12.B. B.C.Z.R.

(2) OLD UNUSED PERMITS:
Any use permit which has not been utilized within two years of its date of issue or final order of the Zoning Commissioner after a public hearing; shall be reviewed on a case by case basis to determine whether they substantially comply with the spirit and intent of the originally approved use permit.

Use permits for parking in residential zones have not and are not issued under the authority of Section 502 B.C.Z.R. and do not have an automatic termination date; such as in special exceptions under Section 502.3 where construction must have begun within two years. Use permits for parking in residential zones issued pursuant to Section 409.4 (1955 B.C.Z.R.) and until the adoption of Bill Nos. 26-88 and 36-88 does not necessarily mean that these permits continue forever if not utilized. Because these are still Special Exceptions in the legal sense of the terminology (see Section A400 Z.C.P.M., Page 4-1).

(a) Eligibility: The right to use property in the residential zones for business or industrial parking is contingent upon the applicant providing satisfactory documentation that a Use Permit was granted by the Zoning Commissioner. The determination of the existence or continuation of that use permit may be subject to a special hearing before the Zoning Commissioner.

(b) Conditions: If the eligibility criteria above is met, the applicant may be allowed to construct or expand the parking area subject to either of the following:

i. INTENSIFICATION OF EXISTING USE:
1) The use already exists and what is proposed is merely an intensification of that principal use; and
2) The area of development must be substantially the same as that proposed in the original permit.

ii. CHANGE OF PRINCIPAL USE:
1) The new use serviced by the proposed parking area must be substantially the same as the use for which the original permit was issued; and
2) The parking area must be the same or smaller than that proposed in the original permit or must be more in keeping with present regulations or the character of the neighborhood.

(c) Interpretation: The Zoning Commissioner retains the right under Section 500.6 B.C.Z.R. to interpret whether the spirit and intent of these regulations are being adhered to on a case by case basis; i.e., a permit issued originally for office parking is substantially different than parking for a 24-hour gas and go, and a change may be judged by the Zoning Commissioner as not within the spirit and intent of the original approval.

(d) See the following cases: 88-508SPHX
88-388SPH
88-349SPH
88-335SPH
88-253SPH

THE CARNEY IMPROVEMENT ASSOCIATION

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I am currently the duly elected President of the Carney Improvement Association.

ATTEST:

Meg O'Hare

Meg O'Hare
Carney Improvement Association

Marilyn K. Ryan
Recording Secretary

John P. Ryan
Treasurer

John M. Boeing
Sargeant-at-Arms

August 4, 2004

PROTESTANT'S

EXHIBIT NO. 1

THE CARNEY IMPROVEMENT ASSOCIATION

Resolution

RESOLVED: That at the general meeting of The Carney Improvement Association (CIA) held on March 17, 2004, it was decided by the Association that the responsibility for review and action on all zoning and development related matters be the responsibility of the Board of Directors consisting of the following members:

Meg O'Hare	President
Romi Shah	Vice President
John Ryan	Treasurer
Marilyn Ryan	Corresponding Secretary
Joanne Krause	Recording Secretary
Pat Rooney	Sergeant-at-Arms
Mary Sue Rooney	Newsletter Editor
Shirley Briggeman	Director
Joyce Trageser	Director
Chip Trageser	Director
Ruth Baisden	Director

As witness this 17th day of March 2004.

ATTEST: **The Carney Improvement Association**

Marilyn K. Ryan
Recording Secretary

Meg O'Hare
President

John P. Ryan
Board Witness

GREATER PARKVILLE COMMUNITY COUNCIL

Resolution

It is Resolved: on this date of January 6, 2005, by a unanimous vote of Greater Parkville Community Council (GPCC) Board of Directors to oppose Heritage Honda's petition for special exception to permit parking on residential property along East Avenue and any variances from Baltimore County Zoning Regulations.

It has been found that the granting of this petition will ultimately cause an adverse effect and detrimental impact on surrounding residential neighborhood due to: the size of the property, its location to residential homes along East Avenue, potential impacts caused by the use of the property, and requested relief from the zoning policies, laws, and regulations that protect residential property values within a Baltimore County designated Community Conservation Area.

This property is the gateway into a residential neighborhood and is currently acting as a visual buffer between residential homes and the adjacent BM zoning, which current land-use is an auto dealership. It has been also been found that BM zoning is incompatible with residential zoning due to the potential impacts received from the permitted uses under the BM zoning.

Therefore, GPCC recommends that the petitioned property be preserved as an open space buffer area in order to be consistent with the spirit and intent of Baltimore County Zoning Regulations, County policies on Community Conservation as identified in Master Plan 2010 and GPCC Zoning Findings and Recommended Land-use Policies for the Parkville, Carney, and Cub Hill area.

In addition, the preservation of the open space buffer area will help Baltimore County meet States regulations of preserving open space. Currently the Greater Parkville area is deficit 350 acres of open space with very little opportunity to proved open space and parks in this built-out area.

As witness this day of January 6, 2005

ASSET:

Bob Carpenter, Secretary

Greater Parkville Community Council

Ruth Baisden, President

PROTESTANT'S

EXHIBIT NO. 2

AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury as follows: That the information herein given is within the personal knowledge of the Affiant and the Affiant is competent to testify thereto.

Robert Burgess Robert Burgess ROBERT BURGESS
Affiant (handwritten signature) Affiant (printed name)

2614 PALMYRA DR. 410-676-1596
address (printed) telephone number

11-16-43
Date of Birth:

BASED UPON YOUR PERSONAL KNOWLEDGE, PLEASE ANSWER THE FOLLOWING:

1. I verify by this affidavit and/or testify in court, if necessary, that I have personal knowledge about the property located at the corner of East Ave and East Ave Extended, which is situated near the intersection of Harford Road and I-695 in Carney. I can attest that this property had been utilized by Dough Griffith Chrysler/Plymouth Dealership for the storage and parking of vehicle inventory from at the very least the mid 1970's. The period of time that I can verify the use of this property is mid-1970's to present

2. I further verify and testify, if necessary, that the Doug Griffith dealership would store and park vehicles on this property until such time as they were taken over to the dealership location where they would be offered for sale to the general public. Vehicles stored at this property would not be shown or offered for sale to the public, but the lot would be used only for storage of vehicles.

3. I gained this personal information as a result of my employment by Doug Griffith Chrysler/Plymouth and my continued employment with Mile One. I have been employed by these auto dealerships, which surround the subject property, continuously and without interruption since January 13, 1971 when I was hired by Doug Griffith. As a result, I am intimately familiar with the subject property. This property is located at the corner of East Ave and East Ave. Extended. I definitely remember that this property was used for the storage of inventoried vehicles by Doug Griffith, the predecessor to Mile One. While I cannot attest to a specific date when Doug Griffith first used this property for vehicle storage, my remembrance is to at the very least the mid-1970's.

STATE OF MARYLAND:

I HEREBY CERTIFY this 9 day of Feb, 2005, before me, a Notary public of the State of Maryland, in and for Baltimore City/County, personally appeared James Abbott, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the maters and facts herein above set forth are true and correct to the best of his/her knowledge and belief.

As witness my hand and Notarial Seal.

Chris Zahn 4-16-06
Notary Public

My commission expires.

AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury as follows: That the information herein given is within the personal knowledge of the Affiant and the Affiant is competent to testify thereto.

Terry Leipold
Affiant (handwritten signature)

Terry Leipold
Affiant (printed name)

4218 HAMILTON AVE
address (printed)

410-488-0948
telephone number

12-17-49
Date of Birth:

BASED UPON YOUR PERSONAL KNOWLEDGE, PLEASE ANSWER THE FOLLOWING:

1. I verify by this affidavit and/or testify in court, if necessary, that I have personal knowledge about the property located at the corner of East Ave and East Ave Extended, which is situated near the intersection of Harford Road and I-695 in Carney. I can attest that this property had been utilized by Dough Griffith Chrysler/Plymouth Dealership for the storage and parking of vehicle inventory from at the very least the mid 1970's. The period of time that I can verify the use of this property is mid-1970's to present

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3. I gained this personal information as a result of my employment by Doug Griffith Chrysler/Plymouth and my continued employment with Mile One. I have been employed by these auto dealerships, which surround the subject property, continuously and without interruption since March 1, 1972 when I was hired by Doug Griffith. As a result, I am intimately familiar with the subject property. This property is located at the corner of East Ave and East Ave. Extended. I definitely remember that this property was used for the storage of inventoried vehicles by Doug Griffith, the predecessor to Mile One. While I cannot attest to a specific date when Doug Griffith first used this property for vehicle storage, my remembrance is to at the very least the mid-1970's.

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I HEREBY CERTIFY this 9 day of Feb, 2005, before me, a Notary public of the State of Maryland, in and for Baltimore City/County, personally appeared James Abbott, the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the maters and facts herein above set forth are true and correct to the best of his/her knowledge and belief.

As witness my hand and Notarial Seal.

Chris John 4-16-06
Notary Public

My commission expires.

Greater Parkville Community Council

Approved by the Board of Directors – January 3, 2001
Approved by the General Membership – January 10, 2001

RESOLUTION

The Greater Parkville Community Council (GPCC) is an umbrella organization consisting of community associations, civic groups, and residents living in the Parkville, Carney, and Cub Hill area of Baltimore County. A goal and purpose of the GPCC is to preserve and improve the quality of life in our residential neighborhoods so that our community remains a desirable place to live, shop, and raise a family. As such, the GPCC has been charged by the community to review proposed land-use changes and make recommendations based on the good of the community.

RESOLVED: that the position of the GPCC as adopted by the Board of Directors and general membership is as follows:

- The purpose of zoning regulations and land-use planning is to protect property values and quality of life of the surrounding property owners and community. We are a Baltimore County Community Conservation Area in which these minimum standards are critical to keeping our community viable and shall be upheld. The GPCC does not support any variances, special exceptions, use permits, or deviations from county code regulations, unless specifically voted acceptable.

- The Parkville, Carney, Cub Hill area is severely deficient of open space by the State of Maryland and Baltimore County regulation standards. Therefore, GPCC does not support any waivers of open space regulations, or any modifications of landscape buffers or RTA buffers.

- The Board of Directors and/or Zoning Committee will review proposed development plans to ensure that proposed developments do not have an adverse impact to surrounding and nearby residents or the character of the neighborhood.

As part of GPCC review and position, the community concerns that need to be addressed will involve (but not limited to) the following:

- There shall be no visual impacts from the proposed development.
- The proposed development shall have landscape and fence design that provides privacy and screening to surrounding residential properties. Maintenance requirements of buffer areas shall be stated in zoning order and development/site plan.
- A lighting plan shall be submitted and approved by the county prior to approval of a development /site plan. Light from the development shall not reflect on to residential property or surrounding roads.
- All signage shall be conducive to the surrounding residential community. New businesses shall use a joint sign, instead of separate signs for each business. This will eliminate excess sign clutter.

- All rooftop equipment shall be screened so that this equipment is not visible from the ground floor window level of adjacent residents.
- The proposed streets shall be connected with the existing neighborhood road network wherever possible and the sidewalks are located to support the functional patterns of the neighborhood.
- The arrangement and orientation of proposed buildings and development/site improvements are patterned in a similar manner to those in the neighborhood.
- The scale, height, proportions, massing and detailing of the buildings shall be in proportion to those existing in the existing neighborhood.
- Any proposed business use shall architecturally blend in with the surrounding residential community. Architectural elements shall be submitted and review by the Office of Planning and the GPCC designated representatives prior to approval of site plan and permits.
- The building and parking lot layouts reinforce existing building and streetscape patterns and assure that placement of buildings and parking lots have no adverse impact on the neighborhood.
- Commercial and employee parking shall not be allowed on residentially zoned property or over flow on to residential streets.
- Where development will add more than 30 vehicles trips a day, a traffic impact study shall be required prior to the approval of development.
- Ensure that storm water drainage does not impact surrounding property owners, and nearby streams. No storm water management waivers shall be granted
- Excess noise shall be controlled and hours of truck deliveries shall be limited and not use residential streets or accept deliveries at night.
- Trash dumpsters shall not be near residential property. Maintenance requirements for picking up trash and emptying dumpsters shall be stated in zoning order and development/site plan.

As witness this day of January 10, 2001.

ATTEST:

Greater Parkville Community Council

Secretary

President

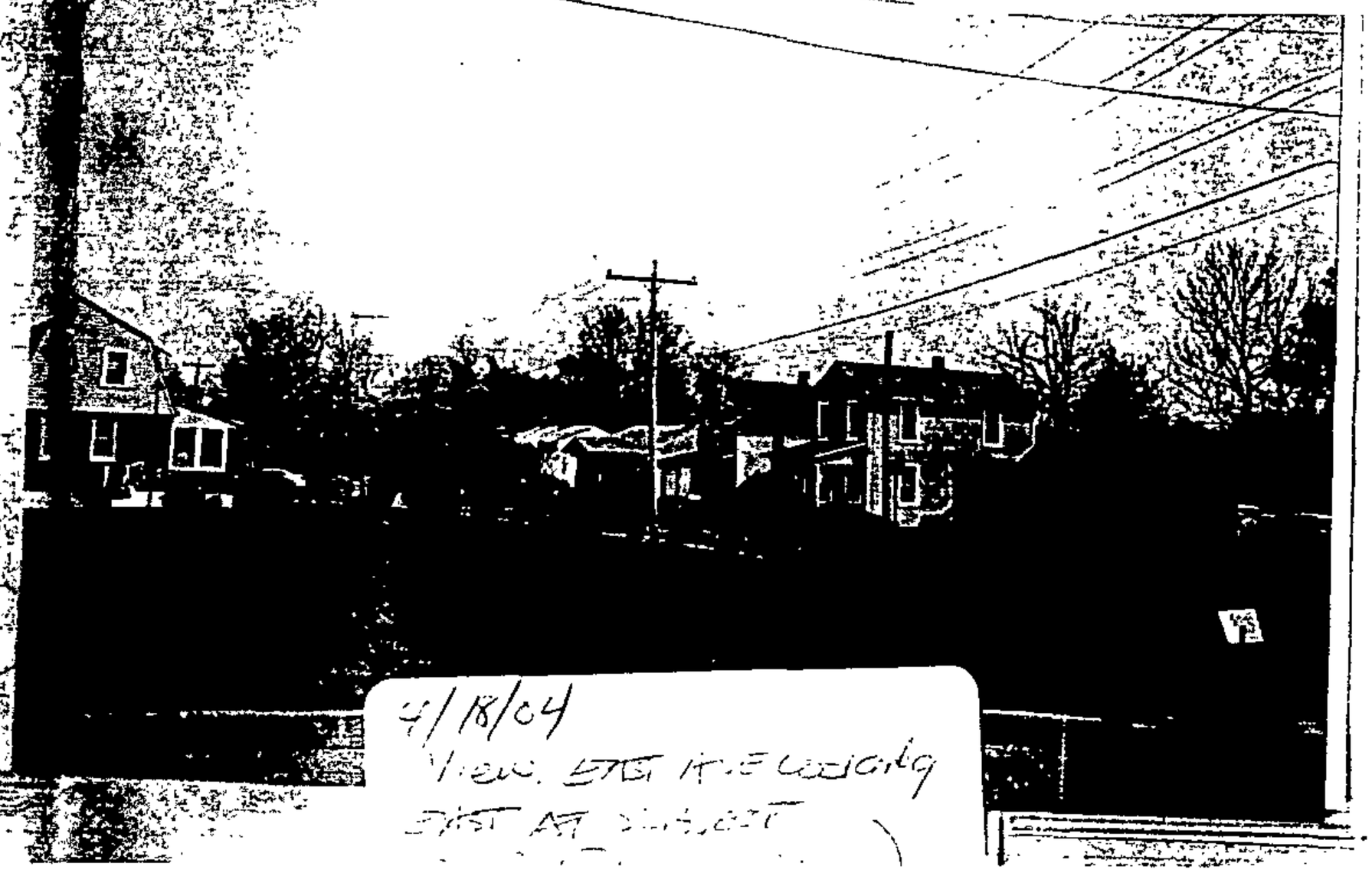
Board Witness

Board Witness

4/18/04
VIEW: EAST AVE LOOKING
NORTH EAST AT SUBJECT
PROPERTY. (open area)

PROTESTANT'S

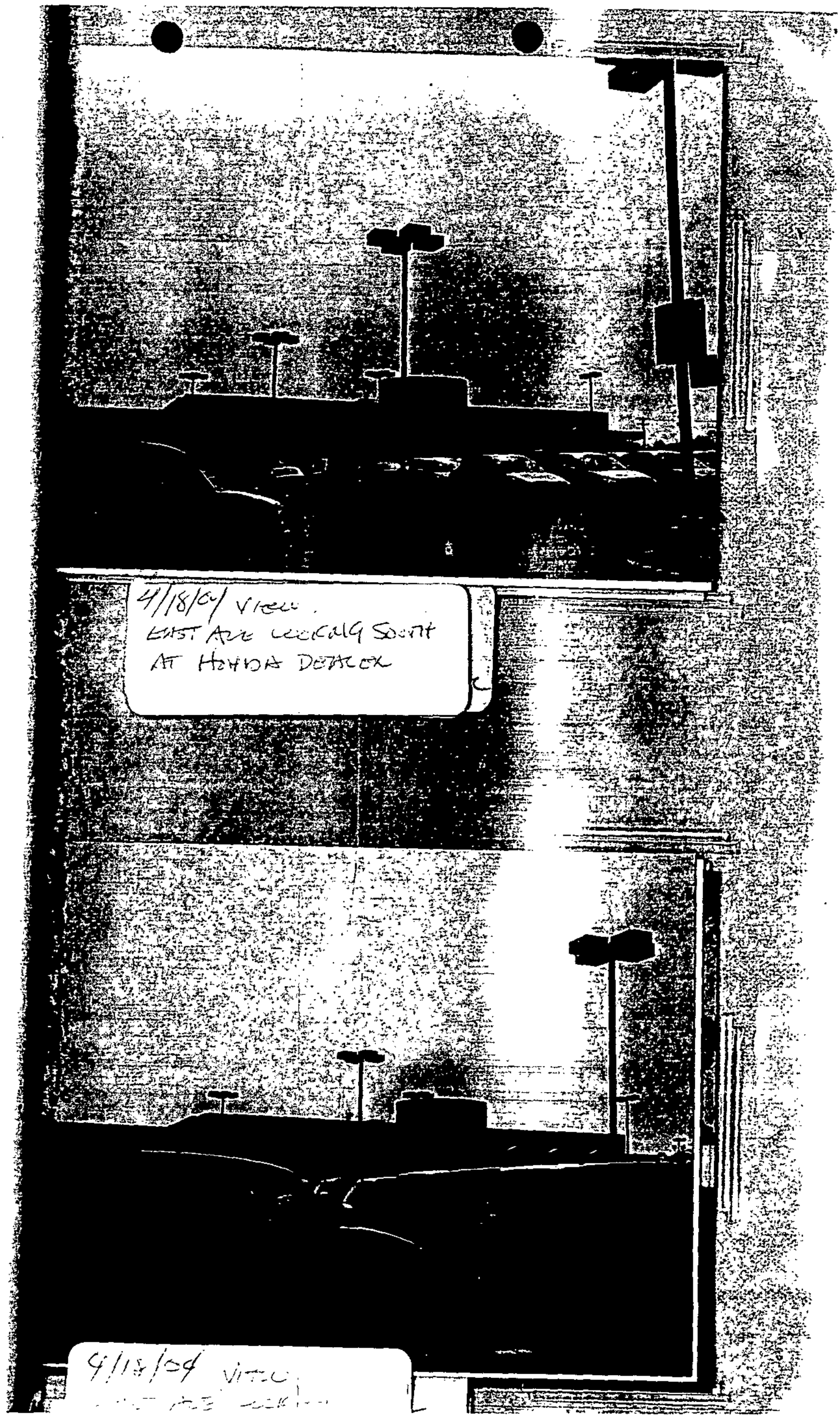
EXHIBIT NO. 3



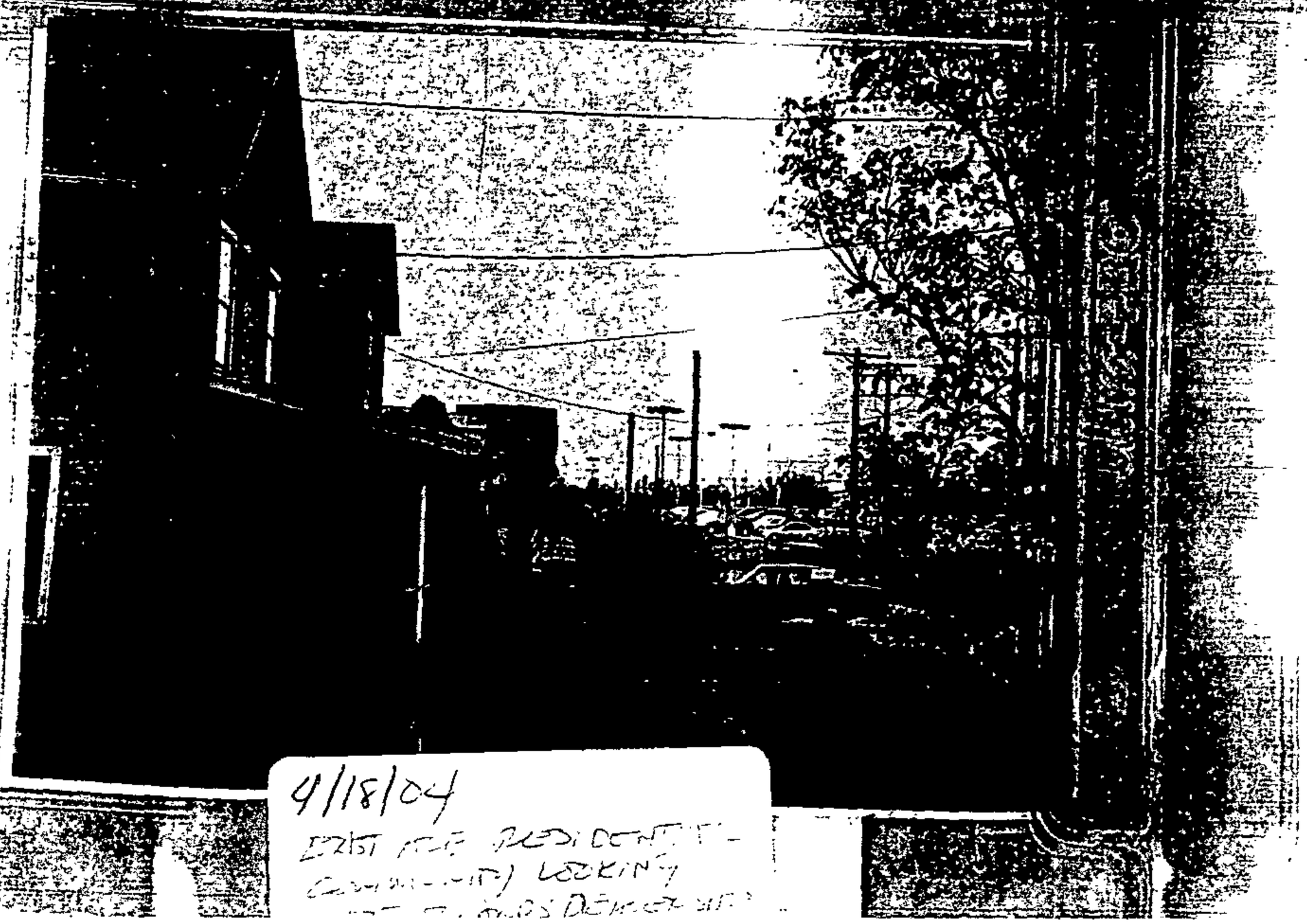
4/18/04
VIEW: EAST AVE LOOKING
EAST AT SUBJECT

4/18/04
VIEW, HONDA DEALER
EAST SIDE AND S
PROPERTY

4/18/04 VIEW
SUBJECT PROPERTY


4/18/04 VIEW
EAST ALL LOOKING SOUTH
AT HONDA DEALER
9/18/04 VIEW

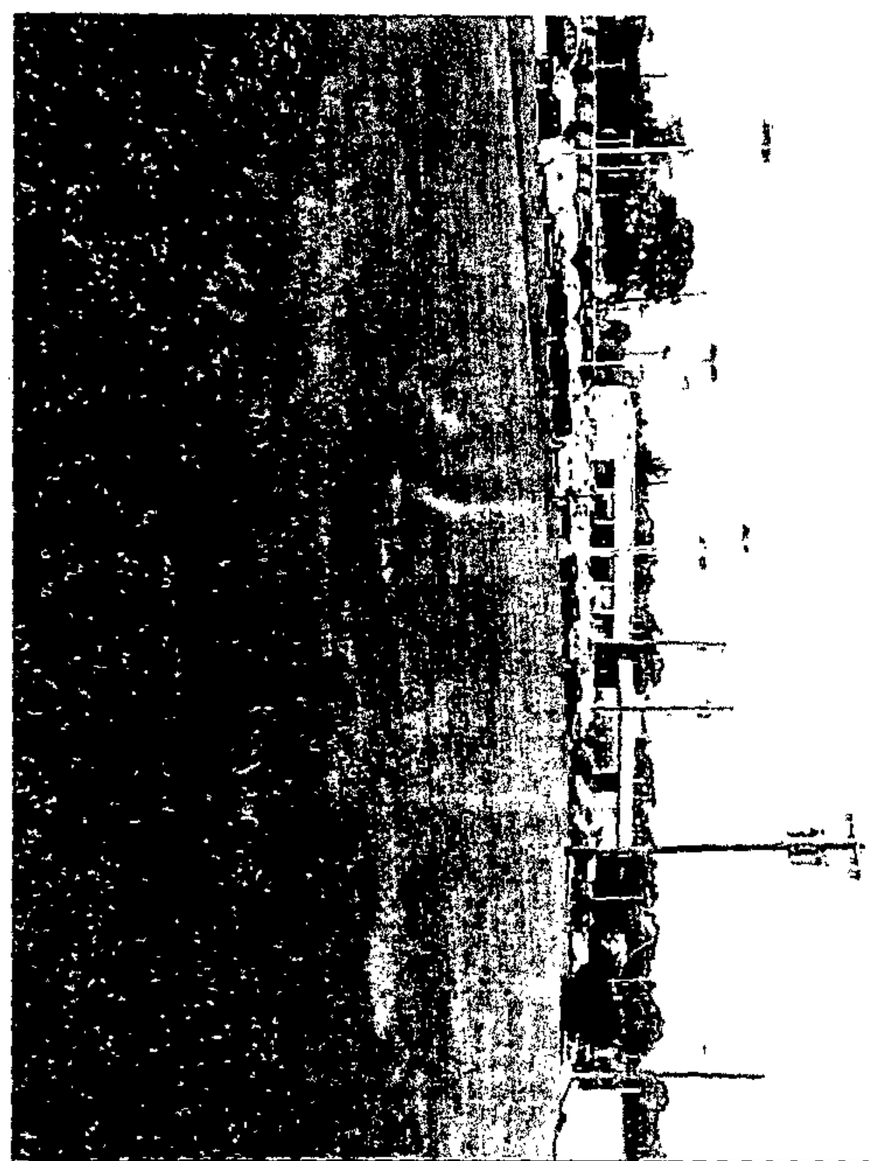
4/18/04
EAST AVE LOOKING
EAST TOWARDS RESIDENT-
COMMUNITY.

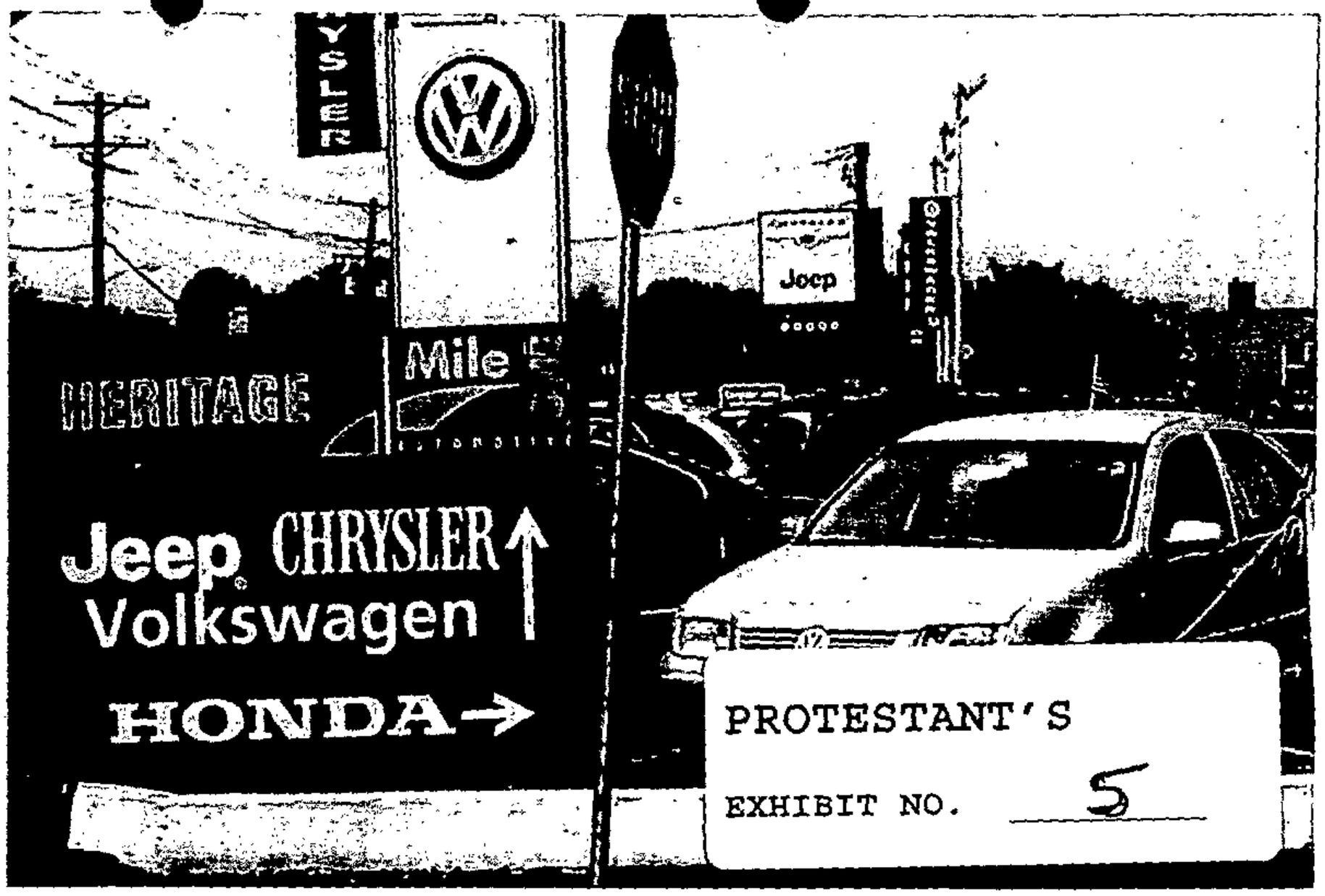


4/18/04
EAST AVE RESIDENT-
COMMUNITY LOOKING
[illegible] DEMOLITION

PROTESTANT'S

EXHIBIT NO. 4





PROTESTANT'S

EXHIBIT NO. 5

Section 409—OFFSTREET PARKING AND LOADING
(see Section 409.5)

409.1—Parking and Loading Spaces—There shall be provided, at the time of application for a building permit for the erection or enlargement of any building for which offstreet parking and/or loading space is hereinafter required, other than a dwelling, a plan showing such parking and loading spaces, including the means of access and interior circulation both from the standpoint of the project itself and in relation to its surroundings.

409.2—Parking space—Each offstreet parking space shall be not less than 8½ feet wide by 18 feet long, and there shall be not less than 300 square feet per space in the case of lot or garage parking where there is no attendant, and not less than 250 square feet where there is an attendant, such square foot figures to include access aisles. It is the intent of these regulations that adequate offstreet parking spaces be provided for all buildings, and that the requirements hereinafter set forth are and shall be taken as absolute minimums, to be exceeded wherever feasible.

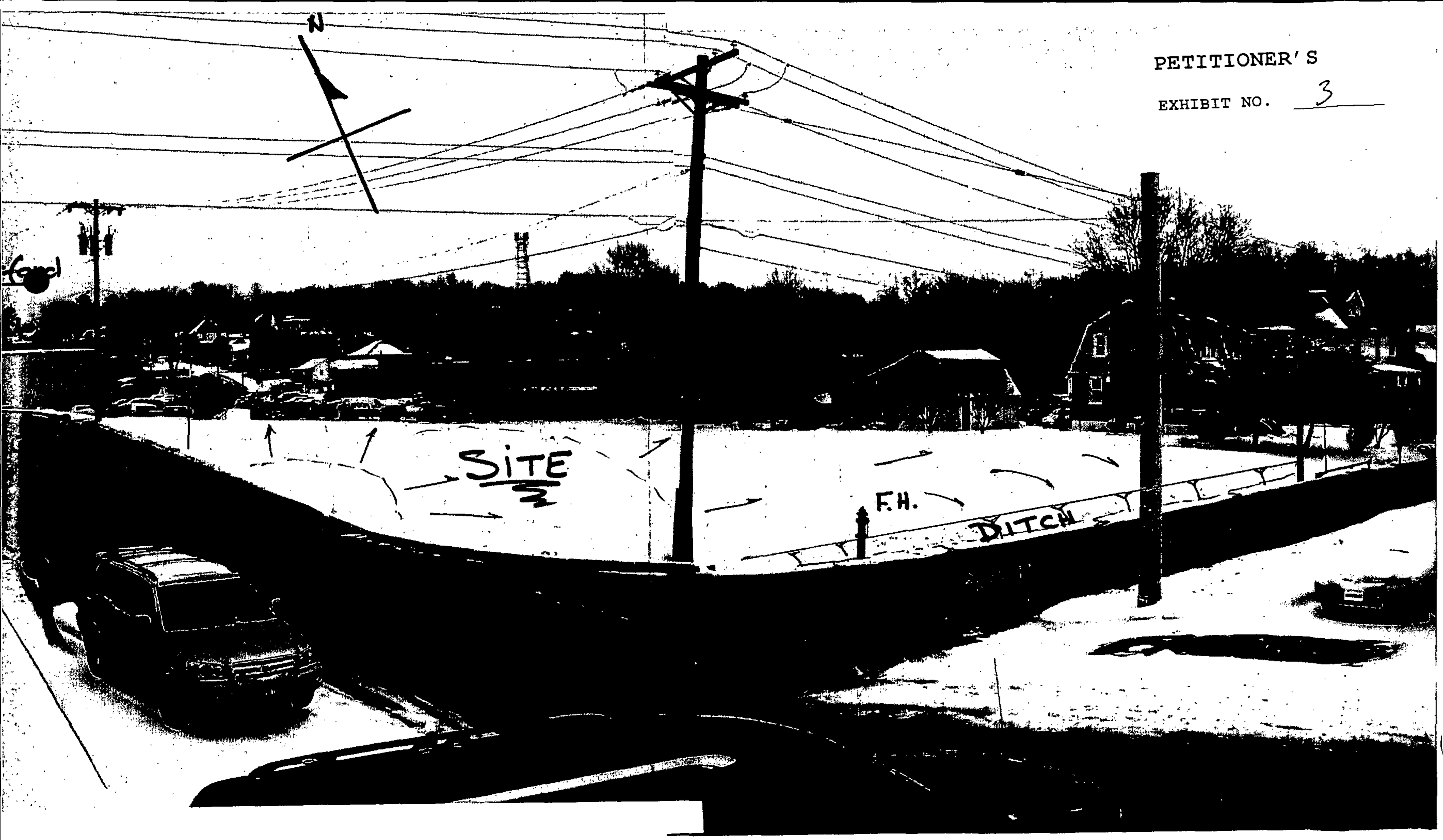
a. Parking space for dwellings, including apartment houses—In all Zones, except as hereinafter modified, there shall be provided at least one garage or accessible and useable offstreet parking space for each dwelling unit. In all zones, in the case of a lodging, rooming or boarding house, fraternity or sorority house or dormitory, there shall be one offstreet parking space for each 5 guests or members residing on the premises, but not less than 2 parking spaces in any case. In the case of a hotel or apartment hotel, there shall be one such parking space for each guest room or suite. In the case of a motel, there shall be at least one parking space for each rental unit. Parking space as required above shall be provided on the same lot with the building which it serves or within 300 feet thereof (see Section 217.6).

PETITIONER'S

EXHIBIT NO. 6

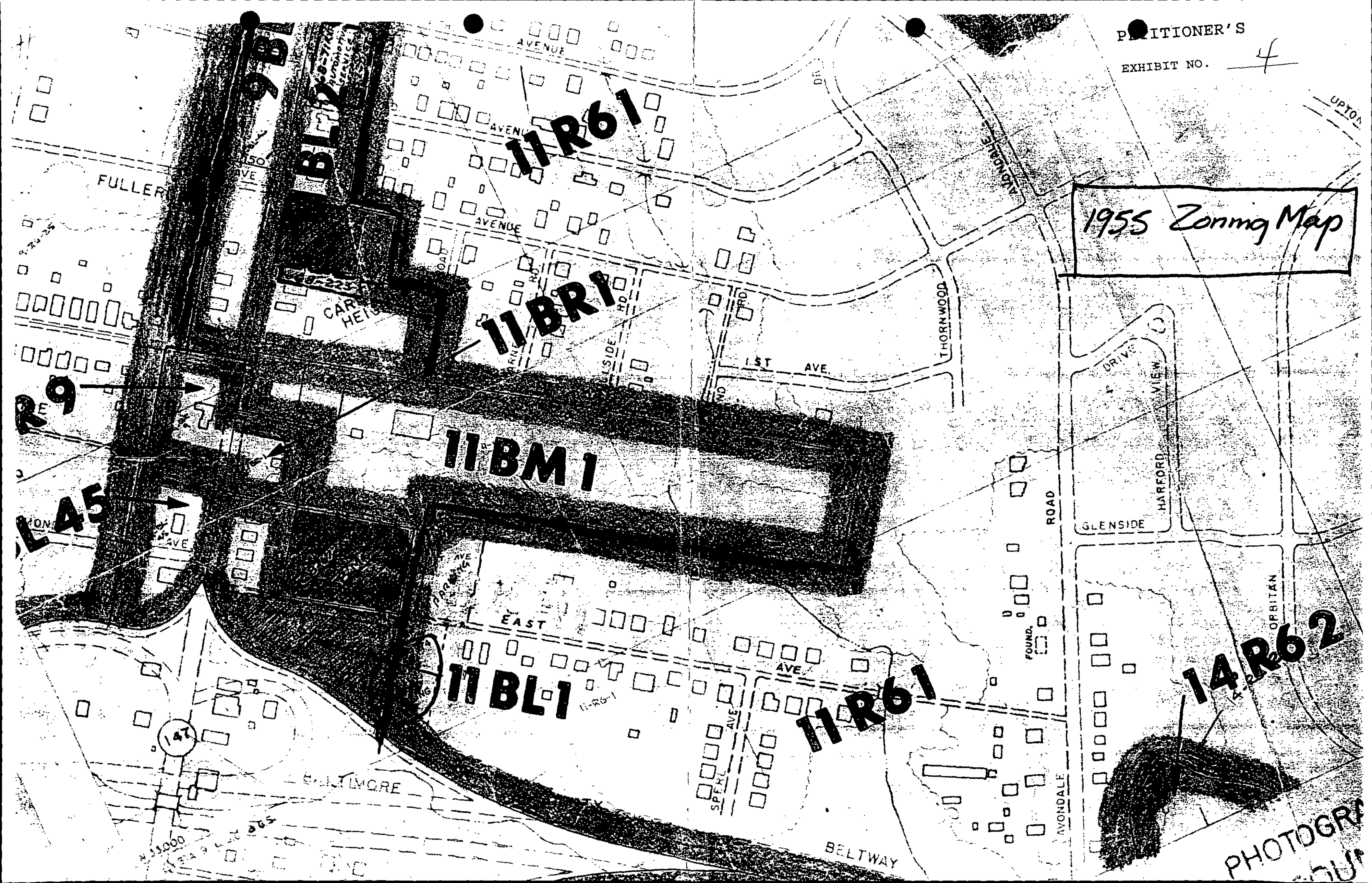
PETITIONER'S

EXHIBIT NO. 3



PETITIONER'S

EXHIBIT NO. 4



PETITIONER'S

EXHIBIT NO. 5

PETITION FOR ZONING RE-CL
AND/OR SPECIAL EXCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

[illegible] more [illegible] County and which is described by the description and plat attached hereto and made a part hereof, [illegible] hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an [illegible] and R. [illegible] zone to an [illegible] B. R. and B. M. [illegible] zone for the following reasons:

(1) Error in the adoption of the zoning map.

(2) Change in conditions.

See attached description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for [illegible]

Property is to be posted and advertised as prescribed by Zoning Regulations.

I or we, agree to pay expenses of above re-classification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

ORDERED By The Zoning Commissioner, this [illegible] day of [illegible], 19[illegible], that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building, in Towson, Baltimore County, on the [illegible] 5th day of February 19[illegible] at [illegible]

Zoning Commissioner of Baltimore County

HARFORD WAREHOUSE CORPORATION

BY: [illegible]

Contract purchaser — Legal Owner

Address — Address P. O. Box 8615, Baltimore 21234

Petitioner's Attorney — Protestant's Attorney

Richard C. Murray

Address 22 W. Pennsylvania Avenue
Towson, Maryland 21204

FILING

DATE 1/8/75

BY

RE: PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION
SE/S East Avenue 146' S of Harford Road - 11th District
Harford Warehouse Corporation
Petitioner
No. 69-17-X

BEFORE THE
DEPUTY ZONING
COMMISSIONER
OF
BALTIMORE COUNTY

The Petitioner has requested a reclassification of his property consisting of two parcels, from an RA and R-6 zone to a BR and BM zone. BR is requested for Parcel 1 consisting of 1.27 acres and BM zoning is requested for Parcel 2 which contains 0.88 of an acre. A Special Exception to use Parcel 1 for an outdoor motor vehicle sales area is also requested.

There is no question that the Petitioner is entitled to relief. His property is bordered on the North by BL land, on which is a gasoline service station; on the East across East Avenue by BR and BM zoned land, on which are a used car lot and warehouses; on the West by BL land on which is a large bakery distribution center. It is obvious to the Deputy Zoning Commissioner the present zoning on the subject property is in error.

After discussing the pros and cons of the case at the hearing, it was decided by all involved that relief should be granted but not in accordance with the original request.

After considering all evidence and arguments by Counsel, the Deputy Zoning Commissioner feels that the best solution would be to reclassify Parcel 1 to BM and to grant a use permit for off-street parking in a residential zone on Parcel 2. In adopting this procedure, it is not necessary to discuss the merit of a Special Exception for an outdoor motor vehicle sales area on Parcel 1 since the same would not be necessary.

For the [illegible] reasons, it is ORDERED by the Deputy Zoning Commissioner of Baltimore County this 19 day of March [illegible], that the herein described property or area known as Parcel 1 should be and the same is hereby reclassified from an RA zone to a BM zone and the petition for off-street parking on a residential zone on Parcel 2 should be [illegible], and the same is hereby granted, subject to the [illegible] of the Baltimore County Zoning Regulations, subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning. The Special Exception requested for Parcel 1 should be and the same is DENIED.

ZONED BM

ZONED BM

PARKING

EAST

AVENUE

PARCEL No 2

0.86 ACRES

EXISTING ZONING

B-A

PROPOSED ZONING

BM

PROPOSED USE

VEHICLE PARKING

AREA TO BE PAVED WITH BITUMINOUS DUST FREE SURFACE

PARCEL No 1

1.27 ACRES

EXISTING ZONING

B-A

PROPOSED ZONING

BM WITH SPECIAL EXCEPTION FOR USED MOTOR VEHICLE SALES

EXISTING BUILDING TO BE REMOVED

PARKING

EAST

ZONED BL

RICKS & PALLETT DISTRIBUTION CENTER

PARKING LOT

RESIDENTIAL USE

ZONING PLAT

PETITION LOCATED

11th DISTRICT BALTIMORE

68-177RX

OFFICE COPY

MAP

A-C

NORTH POINTER

BM

PETITION FOR RECLASSIFICATION
AND SPECIAL EXCEPTION
E/S East Ave. N/E Cor. of
Hanford Road - 11th District
Hanford Warehouse Corporation
Petitioner

IN THE APPEALS OF BALTIMORE COUNTY

DISMISSAL OF APPEAL

TO THE HONORABLE MEMBERS OF SAID COMMISSION:

Please enter the Appeal to the County Board of Appeals of Baltimore County in the above entitled matter "Dismissed without prejudice".

George Barrett Johns
Smith, Botton and Smith
104 Jefferson Building
Towson, Maryland 21204
823-5200
Attorney for Protestants

RE: PETITION FOR RECLASSIFICATION
from R-A and R-6 zones to B.R.
and B.M. zones, and
SPECIAL EXCEPTION for
Used Motor Vehicle Sales
SE/S East Avenue 146' East of
Harford Road

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

Harford Warehouse Corporation,
Petitioner

No. 68-77-RX

ORDER OF DISMISSAL

Petition of Harford Warehouse Corporation for reclassification from R-A and R-6 zones to B.R. and B.M. zones, and a special exception for Used Motor Vehicle Sales on property located on the southeast side of East Avenue 146 feet east of Harford Road, in the Eleventh Election District of Baltimore County

WHEREAS, the Board of Appeals is in receipt of an Order of Dismissal of Appeal filed November 20, 1968 (a copy of which is attached hereto and made a part hereof) from the attorney representing the protestants-appellants in the above entitled matter.

WHEREAS, the said attorney for the said protestants-appellants requests that the appeal filed on behalf of said protestants-appellants be dismissed and withdrawn as of November 20, 1968.

It is hereby ORDERED this 27th day of November, 1968 that said appeal be and the same is dismissed.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

John L. Miller

Walter A. Reiter, Jr.

ENTRY OF APPEARANCE
HARFORD WAREHOUSE CORP.
SE/S of East Ave. 146' E of
Harford Rd.

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

December 20, 2005

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: Case : 06-109-SPH, (0.8781-Acre Parcel – East Avenue)

Dear Mr. Jablon:

Please be advised that an appeal of the above-referenced case was filed in this office on November 18, 2005 by the Office of People's Counsel. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco
Director

TK:raj

C: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Mr. Dennis Turnbaugh, Mileone-Heritage, 3001 East Avenue, Baltimore, MD 21234
Mr. Thomas Church, Development Engineering, 6603 York Road, Baltimore, MD 21234
Ms. Jackie Megee, 3112 East Avenue, Parkville, MD 21234
Mr. Anthony Marchanti, 3021 East Avenue, Parkville, MD 21234
Mr. & Mrs. John B. Baker, Jr., 2307 Ellen Avenue, Baltimore, MD 21234
Ms. Ruth Baisden, 7706 Oak Avenue, Baltimore, MD 21234
Ms. Meg O'Hare, 3012 Summit Avenue, Carney, MD 21234

Printed on Recycled Paper

Department of Permits and Development Management

Development Processing
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

October 3, 2005

Arnold Jablon
Venable, LLP.
210 Allegheny Avenue
Towson, Maryland 21204

Dear Mr. Jablon:

RE: Case Number: 06-109-SPH

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 23, 2005.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Auto Properties, LLC. Steven B. Fader 23 Walker Avenue Baltimore 21208

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Prot Ex 1A

Snow plowed in 3018 yard
next to propose LOT

Existing Conditions

: LOT modifications

CHARACTER OF OWNER

ATTORNEY GENERAL NOTIFIED

D

Top Next To Trash Pumpster Honda

Bottom Body Shop Erosion

1E

LACK OF NOTICATION OF ISSUES

LACK OF NOTIFICATION OF ISSUES

ILLEAGALLY PARKED CARS ON PROPERTY

1H

1J

1R

Lights

Unresolved Storm water

1M

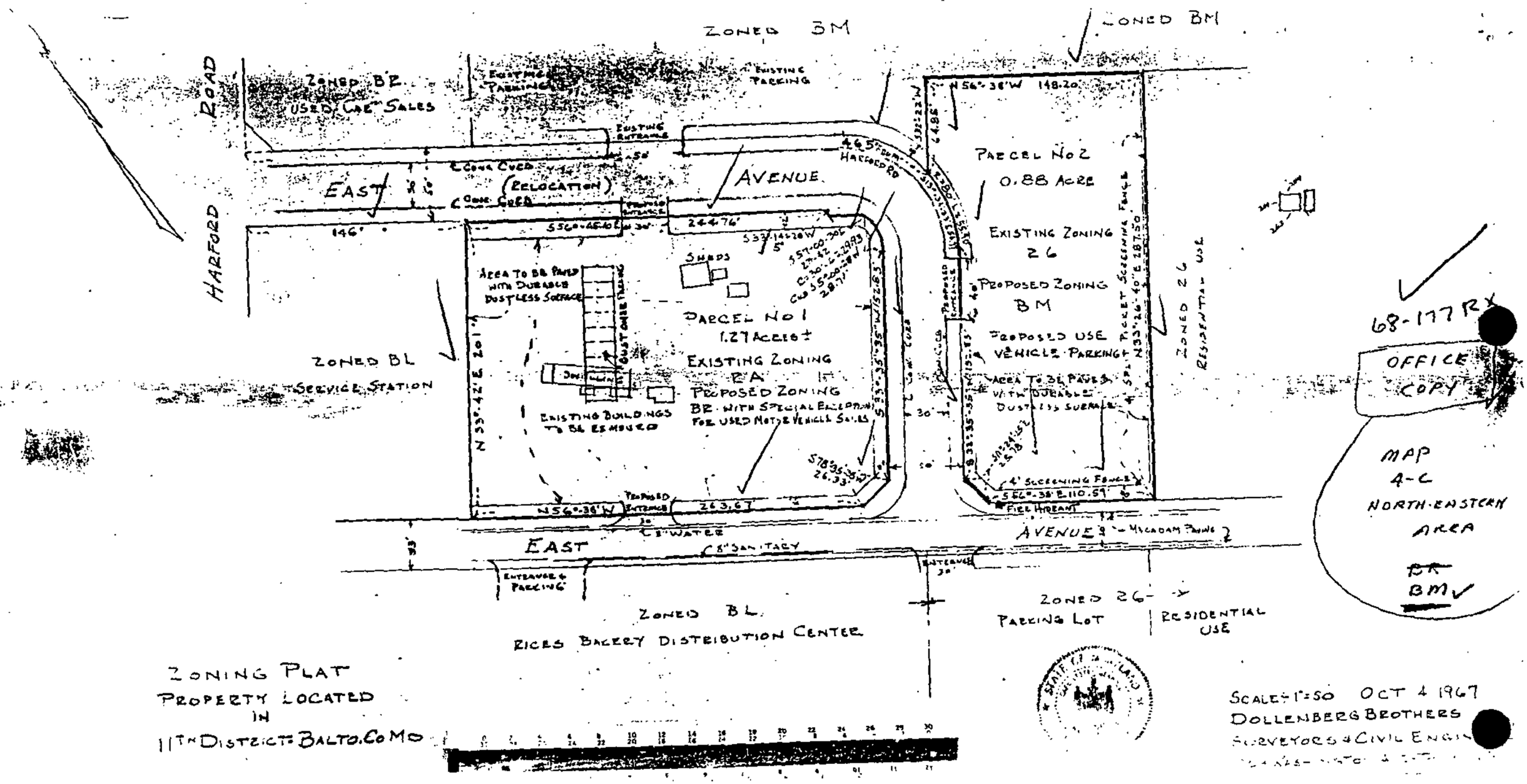
Parked cars in Buffer Area

/N

Top Body shop NexTTo creek To Stormwater

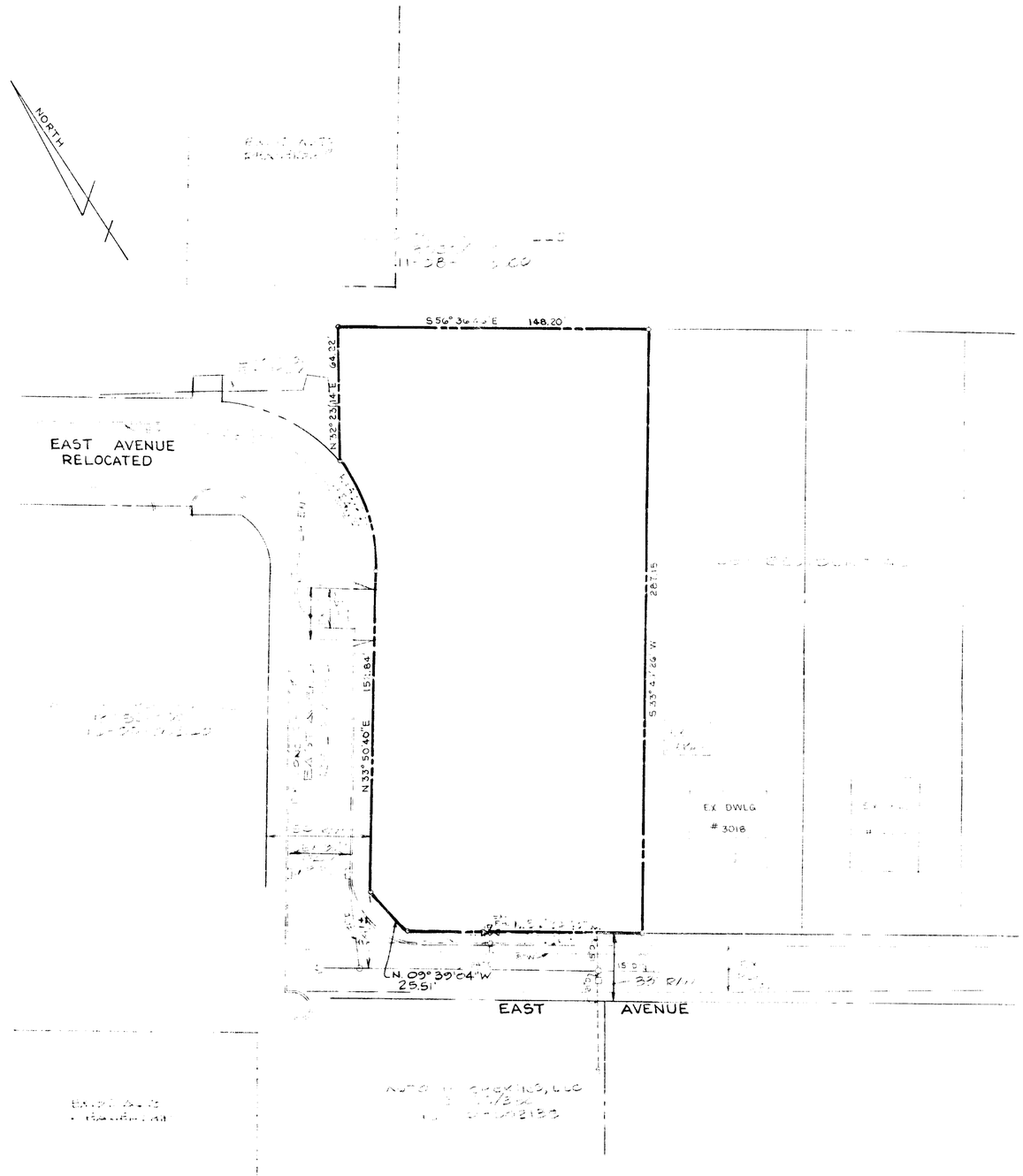
BoTTom NexTTo 3017 EAST

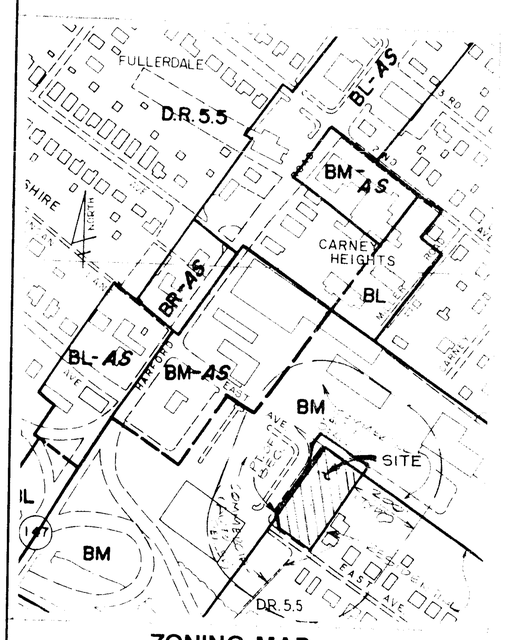
Trash From Business
Location Body Shop



ZONING PLAT
PROPERTY LOCATED
IN
11TH DISTRICT BALTO. CO MD

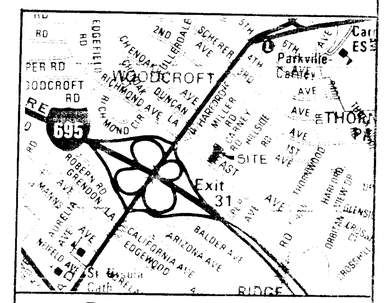
SCALE 1"=50 OCT 4 1967
DOLLENBERG BROTHERS
SURVEYORS & CIVIL ENGINEERS





ZONING MAP

SCALE: 1" = 200'
(MAP NE9E)



NORTH

VICINITY MAP

SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT #: 11

COUNCILMANIC DISTRICT #: 6

1" = 200' SCALE MAP # : NE 9-E

ZONING : BM

LOT SIZE : [illegible]

	PUBLIC	PRIVATE
SEWER :	☒	☐
WATER :	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☐	☒

ZONING OFFICE USE ONLY

REVIEWED BY:	ITEM #	CASE #
DROP OFF NA	109	

FILED JCC

Drafting		
Check		
Design		
Check	DATE	REVISIONS

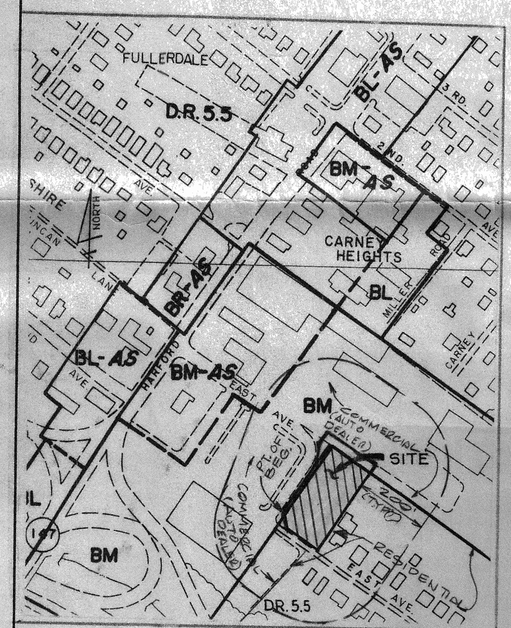
DEVELOPMENT ENGINEERING CONSULTANTS, INC.
SITE ENGINEERS & SURVEYORS
6603 YORK ROAD 410-377-2600 BALTIMORE, MARYLAND 21212

OWNER:
AUTO PROPERTIES, LLC
23 WALKER AVENUE
BALTIMORE MARYLAND 21208-4004

PARCEL OF LAND ON THE N.W. CORNER OF EAST AVE. RD. & EAST AVE. RD.
ELECTION DISTRICT NO. 11 BALTIMORE COUNTY, MD

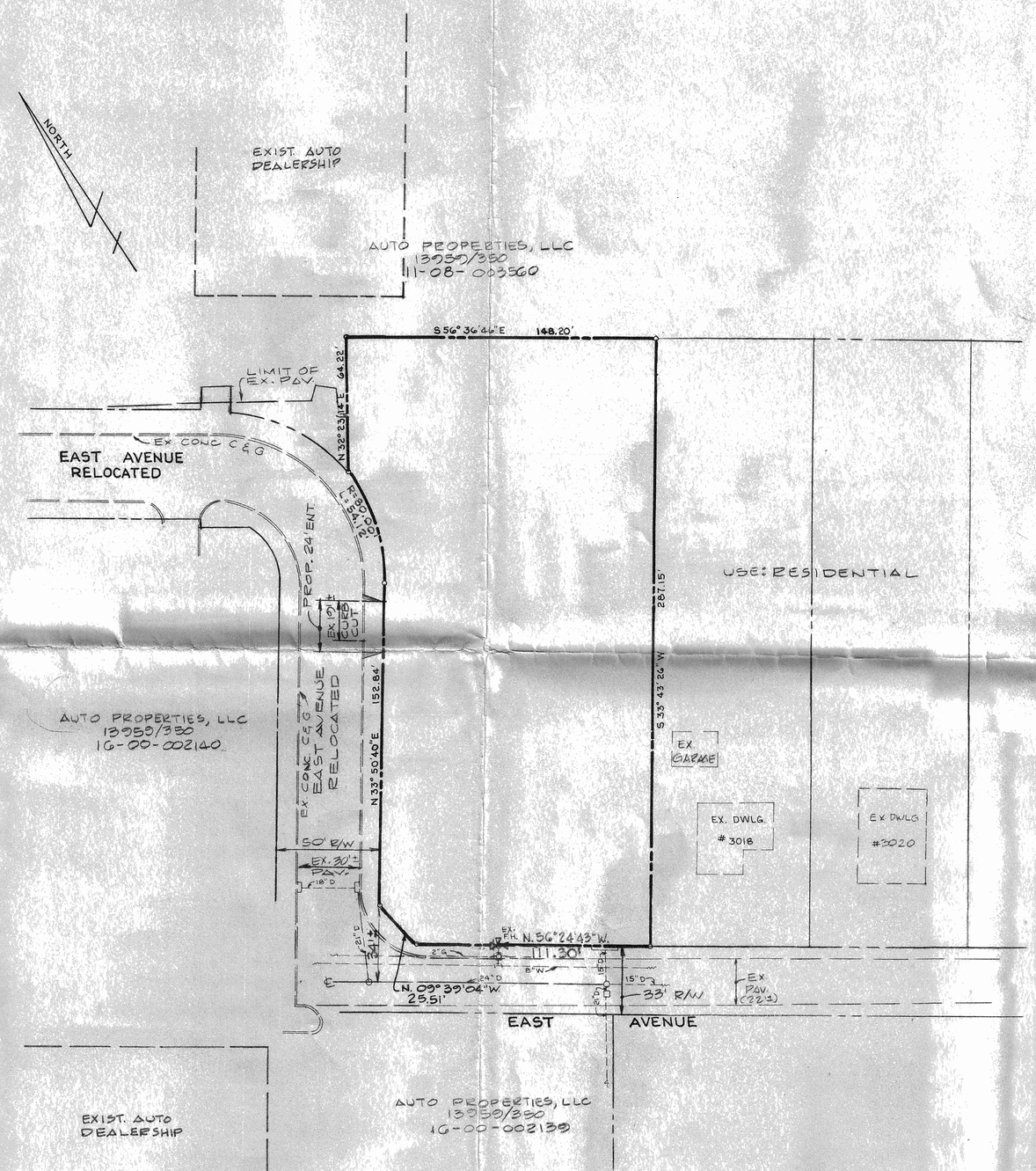
SHEET	OF	DATE	SCALE	CONTRACT NUMBER
1				00-117

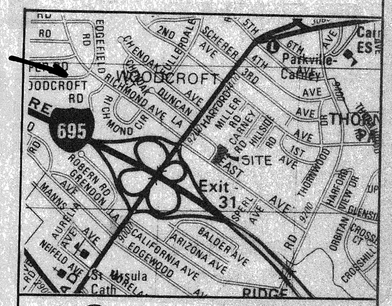
PETITIONER'S
EXHIBIT NO. 1



ZONING MAP

SCALE: 1" = 200'
(MAP NE9E)





NORTH

VICINITY MAP

SCALE: 1" = 1000'

LOCATION INFORMATION

ELECTION DISTRICT #: 11
COUNCILMANIC DISTRICT #: 6
1" = 200' SCALE MAP # : NE 9-E
ZONING : BM, DR 5.5
LOT SIZE : 38,250 SF = 0.8781 AC

	PUBLIC	PRIVATE
SEWER :	☒	☐
WATER :	☒	☐

CHESAPEAKE BAY CRITICAL AREA	YES	NO
	☐	☒

ZONING OFFICE USE ONLY

REVIEWED BY	ITEM #	CASE #

CASE NO. 06-109-SPH

STATE OF MARYLAND — THOMAS A. GRUBER — PROFESSIONAL ENGINEER

Drafting JHW/TLB
Check TAG
Design
REVISIONS

DEVELOPMENT ENGINEERING CONSULTANTS, INC.
SITE ENGINEERS & SURVEYORS
6603 YORK ROAD 410-377-2600 BALTIMORE, MARYLAND 21212

OWNER:
AUTO PROPERTIES, LLC
23 WALKER AVENUE
BALTIMORE, MARYLAND 21208-4004

PARCEL OF LAND ON THE N.E. CORNER OF EAST AVE. & EAST AVE. RELOC.
ELECTION DISTRICT NO. 11 BALTIMORE COUNTY, MD

SHEET	OF	DATE	SCALE	CONTRACT NUMBER
1	1	10-11-2005	1" = 30'	00-117