2006-0674-SPH

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March 11, 2010

Mr. Edward Kelly
CarMax Auto Superstores, Inc.
12800 Tuckahoe Creek Parkway
Richmond, VA 23238

RE: CarMax #7906
11301 Pulaski Highway
White Marsh, MD

Dear Mr. Kelly:

As you know, CarMax Auto Superstores, Inc. is developing a 25 acre parcel located at 11301 Pulaski Highway, White Marsh, Maryland as an automobile service garage facility and a private auto auction facility. CarMax obtained a Special Exception for auction use from the Baltimore County Zoning Commissioner on December 12, 2007, with an Amended Order following on January 14, 2008,(Case 06-674-SPH). Thereafter, CarMax obtained Development Plan approval (3/10/08) and Plat approval (6/5/08) from Baltimore County, all of which are conditions precedent to receiving building permits from Baltimore County. This memorandum outlines the actions taken by CarMax to diligently pursue construction under the issued permits and the circumstances under which the construction continues.

PRE-CONSTRUCTION ACTIVITIES

Upon approval of the Special Exception, CarMax retained architects to prepare construction documentation necessary for obtaining approvals of the design, permitting, and construction of the facilities. The improvements approved for the site include an employee parking lot, an automobile service building, an auction building, and a very large inventory storage lot integral to the operation of the auction facility and the service garage facility. The improvements include site utility work and substantial stormwater management facilities.

Permits (see below) were issued on June 16, 2008 and a field meeting with Baltimore County was successfully concluded shortly thereafter, allowing construction to commence on the site. The general contractor, Atlantic Builders Group (ABG), commenced construction on July 8, 2008.

PERMITTING

Baltimore County issued Building Permit No. B689997 on June 16, 2008, allowing soil and erosion control, mass grading and site utility construction on-site and other permits for stormwater management, and for construction of retaining walls. Permits for vertical construction (buildings) are pending and will be issued once the site is stabilized. As discussed below, achieving site stabilization is an ongoing process. Construction, when commenced on July 8, 2008, was being performed under the above-noted permit, which is currently effective and active.

In addition to building permits required by Baltimore County, construction of the facilities requires a Utility permit and an Access permit from the State Highway Administration (SHA). The SHA permits are required not only for construction of a deceleration lane and connection to public utilities, but are critically-required for fulfillment of the storm water management plan for the site. SHA issued Utility Permit No. B4-08-437 on July 11, 2008 to allow, among other things, construction of storm drainage in the SHA right-of-way.

CONSTRUCTION ACTIVITIES

During the initial phase of construction, it is critical to achieve a "stabilized site" through grading and erosion and sediment control measures in order to allow permitting for vertical construction (service garage and auction buildings) to proceed. To this end, it became imperative to complete all storm water management facilities to their interim configuration as soil and erosion control facilities necessary to achieve a "stabilized site". Complicating matters, on or about August 30, 2008 while performing construction work, two important items were discovered. First, it was discovered that existing BG&E gas lines in the ROW were in conflict with the design of the storm water piping required to connect the CarMax emergency overflow swale facility into the public storm sewer facility. It was also discovered that an adjacent property owner had failed to properly maintain conveyance of SHA storm drainage through his property resulting in an inability of CarMax to certify suitable outfall for its emergency overflow swale facility. Although the intended stormwater outfall was technically located "off-site", Baltimore County determined that a "stabilized site" could not be achieved until such time as the "on-site" storm water management system was connected to "suitable outfall", requiring resolution of both of these two items before permits for vertical construction could be issued.

As of April 2009, two storm water detention ponds had been completed on site: an approximately 0.5 acre pond with discharge and overflow structures in the "front" of the site and an approximately 1 acre pond with discharge and overflow structures in the "back" of the site. Furthermore, the previously existing drive-in theatre infrastructure had been completely demolished, 82,767 CY of earth (including 41,813 CY hauled-off) was relocated within or removed from the site, and another 11,000 CY of topsoil was redistributed on the site. In addition, 12 manholes, 3,184 LF of reinforced concrete pipe of various sizes, 396 LF of ductile iron pipe, and 2,939 LF of perimeter and internal chain link fencing were installed. Twenty acres of permanent grass seeding was dispersed on the site. As a direct result of these efforts to improve the site and allow permitting to continue, CarMax incurred construction (hard) costs of approximately $1.6 million.

With regard to the off-site issues involving conveyance into the public storm sewer system and the suitability of outfall, CarMax simultaneously entered into negotiations with BG&E on cost and schedule to relocate the gas lines and entered into discussions with SHA and adjacent property owners on obligations for establishment and maintenance of suitable outfall. A price for relocation of the gas lines and a suitable form of agreement for performance of the work has been agreed upon between CarMax and BG&E. Accordingly, relocation of the gas lines was to have commenced once the suitable outfall issues were resolved with SHA and the adjacent property owners.

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With regard to the suitability of the off-site outfall, CarMax was advised by SHA in May, 2009 that, in light of the circumstances now known to exist on the adjacent property owner's property, the original outfall design utilizing a conveyance to an existing outfall location on that adjacent property owner's property was not a viable alternative and that a new off-site outfall would have to be designed and constructed at CarMax's expense. CarMax evaluated several alternative schemes, obtained the concurrence of SHA and affected landowners, and has retained a consulting engineer who is developing construction documents. Performance of the offsite storm water work, at a cost of approximately $175,000, will be completed in Spring 2010 following permitting and as weather will allow. Upon completion of the off-site work, Baltimore County should consider the site "stabilized" and will issue the remaining building permits, thereby allowing construction to continue. The new design for suitable outfall does not require the relocation of the BG&E gas lines.

CONCLUSION

CarMax has been continuously performing construction work directly related to the ultimate use of the site as a private auto auction and service garage facility under continuously and currently effective building permits issued by the appropriate authorities. CarMax has invested over $1.6 Million in completed construction work, continues to maintain the site as active construction site, and continues to maintain sizable securities with Baltimore County. But for intractable offsite issues, additional permits would have been issued by Baltimore County which will allow vertical construction work to move forward.

Should you have any questions, please don't hesitate to contact me.

Sincerely,

Paul Joseph

Paul Joseph
Project Director

Cc: Dino La Fiandra (DCL, Whiteford, Taylor & Preston)
John McNamara (CarMax)

4/10/09

IN RE: PETITIONER FOR SPECIAL HEARING HEARING SE side of Pulaski Highway, 950 ft NE of Stevens Road 11th Election District 5th Councilmanic District	* BEFORE THE * BOARD OF APPEALS * FOR * BALTIMORE COUNTY
Schwaber Trust *Legal Owner and Petitioner* Carmax Auto Superstores, Inc. *Lessee*	* 06-674-SPH *

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

RULING ON MOTION FOR RECONSIDERATION AND CORRECTED ORDER OF DISMISSAL

This matter comes before this Board on appeals dated February 8, 2007 and February 9, 2007 from a decision of the Deputy Zoning Commissioner dated January 11, 2007 in which the requested special hearing, was granted with conditions.

WHEREAS, by an Amended Order, issued the 14th day of January 2008, by the Zoning Commissioner, in case number 08-121-X (a copy of which is attached hereto and made a part hereof), Carmax stated it would dismiss its Petition for Special Hearing pending before the Board filed in this matter, if the approval granted in case number 08-121-X was not appealed; and

WHEREAS, no appeal was filed in Case No.: 08-121-X.

IT IS THEREFORE ORDERED this 10th day of April, 2009 by the County Board of Appeals of Baltimore County that upon consideration of the Amended Order filed by the Zoning Commissioner on January 14, 2008 and the agreements reached in case number 08-121-X, the Petition for Special Hearing filed in Case No. 06-674-SPH be and the same is hereby **WITHDRAWN AND DISMISSED,** and that the Deputy Zoning Commissioner's Order dated January 11, 2007, including any and all relief granted therein, is rendered **null and void.**

Matter of: Carmax Auto Superstores/ 06-674-SPH

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

4/6/09

RE:	PETITION FOR SPECIAL HEARING SE/S Pulaski Highway, 970' NE Stevens Road 11th Election & 5th Councilmanic Districts Legal Owner(s): Schwaber Trust, by Sidney Weiman, Trustee Contract Purchasers: Carmax Auto Superstores, Inc by Joseph Jagdmann, Real Est. Mgr Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
		*	06-674-SPH

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BALTIMORE COUNTY
BOARD OF APPEALS

MOTION FOR RECONSIDERATION AND CORRECTION

Pursuant to Rule 10 of the County Board of Appeals (CBA) Rules of Practice and Procedure, People's Counsel for Baltimore County files this Motion for Reconsideration and Correction of the Order of Dismissal dated March 23, 2009. Instead of ordering dismissal of the People's Counsel's appeal, the Board should have ordered the dismissal of the petition, and voiding of the Deputy Zoning Commissioner's order dated January 11, 2007, for these reasons,

1. This case involves our office's appeal of Deputy Zoning Commissioner John V. Murphy's Order dated January 11, 2007. Our office was concerned, among other things, with Commissioner Murphy's finding, via special hearing, that there was no requirement for a special exception for the used car sales component of the Carmax automotive operation.

2. With the consent of petitioners, our office, and various citizens represented by G Macy Nelson, Esq., the County Board of Appeals postponed the hearing to give the parties an opportunity to review a potential resolution which would we acceptable to all parties.

3. As a result, petitioners filed a new petition with a revised site plan, including a request for special exception., in Case No. 8-121-X. Zoning Commissioner William Wiseman issued the attached Findings of Fact and Conclusions of Law approving the petition on December 12, 2007.

4. Upon a motion for reconsideration filed by this office, Commissioner Wiseman issued athe attached amended order on January 14, 2008. Among other things, the Commissioner wrote,

> "For judicial economy, Carmax will dismiss its Petition for Special Hearing pending before the Board of Appeals if its approval granted in the present case is not appealed. Such action would therefore render the validation received in Case No. 06-674-SPH moot and the

approval in this case would become the operative regulatory approval for the Special Exception Area within the property owned by the Schwaber Trust."

5. There was no appeal. Commissioner Wiseman's amended order approving the special exception subject to detailed conditions,, became final.

6. Despite this final approval, petitioners failed to dismiss the petition in the present case.

7. It came to the attention of the Board in January, 2009, that the case was still pending,. The Board notified the parties. Petitioners' counsel then notified the Board that petitioners " ... had no objection to the matter being dismissed." This clearly referred to the petition.

8. In issuing its order of March 23, 2009, the Board inadvertently dismissed our office's appeal. Clearly, the "matter" to be dismissed is the petition.

Wherefore, People's Counsel requests that the County Board of Appeals reconsider its March 23, 2009 Order, rescind it, and issue a corrective order dismissing the petition in the above case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building
105 W. Chesapeake Avenue, Suite 204
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6 day of April, 2009, a copy of this Motion was mailed to G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204 and Dino LaFiandra, Esquire, Whiteford, Taylor & Preston, LLP, One West Pennsylvania Avenue, Suite 300, Towson, MD 21204, Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

3/23/09

IN RE: PETITIONER FOR SPECIAL HEARING HEARING SE side of Pulaski Highway, 950 ft NE of Stevens Road	* BEFORE THE * BOARD OF APPEALS * FOR
11th Election District 5th Councilmanic District	* BALTIMORE COUNTY
Schwaber Trust *Legal Owner and Petitioner* Carmax Auto Superstores, Inc. *Lessee*	* 06-674-SPH *

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

ORDER OF DISMISSAL

This matter comes before this Board on appeals dated February 8, 2007 and February 9, 2007 from a decision of the Deputy Zoning Commissioner dated January 11, 2007 in which the requested special hearing, was granted with conditions.

WHEREAS, on September 4, 2007 the Board convened for a hearing as scheduled. Appearing before the Board was Mr. La Fiandra on behalf of Petitioner; Mr. Nelson on behalf of Protestants; and Mr. Zimmerman for People's Counsel. An Agreement was reached between Petitioner and Protestants /Appellants regarding uses on property.

WHEREAS, by letter dated January 20, 2009, the Board of Appeals notified the parties of record in the above-entitled matter that the Board's appeal file was open and that the written agreement was never submitted to the Board. The Board does not have a written transcript of this proceeding.

WHEREAS, on January 28, 2009, Dino LaFiandra, Esquire notified this office that the agreement was on the record and he had no objection to the matter being dismissed.

WHEREAS, the Board has not received a reply from its letter of January 20, 2009 from Mr. Nelson on behalf of Protestants or Mr. Zimmerman for People's Counsel. That more than 30 days has passed and the only reply was from Mr. LaFiandra indicating that the agreement was on the record.

IT IS THEREFORE ORDERED this 23rd day of March, 2009 by the County Board of Appeals of Baltimore County that upon consideration of the Settlement Agreement reached on the record in the above captioned proceeding on September 4, 2007, per Dino LaFiandra, Esquire, the above-referenced appeal in Case No. 06-674-SPH be and the same is hereby **DISMISSED.**

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

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 23, 2009

Dino LaFiandra, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Ste 300
Towson, MD 21204

G. Macy Nelson, Esquire
401 Washington Avenue, Ste 803
Towson, MD 21204

RE: *In the Matter of: Schwaber Trust-Legal Owner/Petitioner and Carmax Auto Superstores, Inc.-Lessee*
Case No.: 06-674-SPH

Dear Counsel:

Enclosed please find a copy of the Order of Dismissal issued this date by the Board of Appeals of Baltimore County in the above 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,

Theresa Shelton/klc

Theresa R. Shelton
Administrator

Duplicate Original Cover Letter
TRS/klc
Enclosure

c: Sidney Aberman/Schwaber Trust
Sidney Weiman, Esquire/Representative for Schwaber Trust
Joseph Jagdmann, Real Estate Manager/ Carmax Auto Superstores, Inc.
Robert Mitchell Herbert Busch Dorothy Hitten Pat Holter
Gerald Weish Robert Baranoski Bowerman-Loreley Beach Community Assoc.
Mickey Cornelius/The Traffic Group Jim Hermann/Morris & Ritchie
Scott Harvey Bill Monk Michelle d'Aoust Betsy Eisbart
Frances Sanderson Mary Jo Krausz Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning John Beverungen, County Attorney

8/30/07

IN RE: PETITION FOR SPECIAL HEARING SE side of Pulaski Highway, 950 ft NE of Stevens Road 11th Election District 5th Councilmanic District	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY
Schwaber Trust *Legal Owner and Petitioner* Carmax Auto Superstores, Inc. *Lessee*	*	CBA-06-674-SPH

* * * * * * * * * * *

MOTION TO LIMIT THE SCOPE OF APPEAL

Petitioner in the above-referenced matter, Carmax Auto Superstores Inc., (the "Petitioner"), by and through its attorneys, Dino C. La Fiandra and Whiteford, Taylor & Preston, L.L.P, moves to limit the scope of the appeal of the above captioned case. In support of its Motion to Limit the Scope of Appeal, the Petitioner states:

The Petition for Special Hearing involved two primary issues: 1) the permissibility (by right) of an auto auction in the BR zone, and 2) the permissibility (by right) of a service garage in the BR zone. For reasons discussed below, the Petitioner will seek a Special Exception for the proposed auto auction, leaving the permissibility (by right) of the service garage as the sole issue. Therefore, the Petitioner moves to limit the scope of this proceeding before the Board of Appeals to those issues related to the permissibility of the proposed service garage.

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BALTIMORE COUNTY
BOARD OF APPEALS

STATEMENT OF THE CASE

Petitioner filed a Petition for Special Hearing seeking to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to §§ 236.1 and 233.2 of the Baltimore County Zoning Regulations ("BCZR"). The Deputy Zoning Commissioner issued an order granting approval of the Petition, upon certain conditions set forth in the Order.

This is an appeal of the Deputy Zoning Commissioner's Order and Opinion ("the Order"). Appeals were filed by Robert Mitchell, Herbert Busch, Dorothy Hitten, Pat Holter, Gerald Weish, Robert Baranoski (the "Protestants") and People's Counsel for Baltimore County ("People's Counsel"). Petitioner also filed a limited appeal of the Order, relating only to certain conditions set forth therein.

The site for the proposed use is a 31.48 acre parcel zoned BR, ML, and R.C. 2 located on Pulaski Highway in Baltimore County (the "Property"). The proposed use will be conducted entirely within the BR zoned portion of the site. At the hearing before the Deputy Zoning Commissioner on August 25, 2006 and November 29, 2006, two (2) primary issues were discussed: (1) whether the proposed *auction* facility is permitted by right in the BR zoned area on the Property, and (2) whether the proposed vehicle *service* facility meets the definition of a "service garage" as set forth in the BCZR, and therefore is permitted by right in the BR zoned area on the Property. It is these same two issues which are currently before the Board on appeal.

At the hearing before the Deputy Zoning Commissioner, the Petitioner asserted that the *service* facility and the *auction* facility are permitted by right within the BR zone.

In support of its contention, the Petitioner relied upon the BCZR and the Zoning Commissioner's Policy Manual. The Protestants, in response, disagreed with the Petitioner's interpretation of the BCZR, as it relates to the permissibility of the proposed uses in the BR zone. The Protestants argued that the size and scope of the proposed vehicle *service* facility distinguishes it from the variety of *service garage* contemplated by the definition provided in the BCZR and for that reason, the proposed service facility is not permitted in the BR zone. Additionally, the Appellants argued that proposed *auction* facility is most similar to a used motor vehicle outdoor sales facility. Section 236.4 of the BCZR provides that used motor vehicle outdoor sales areas in the BR zone are only permitted by Special Exception. Therefore, the Protestants asserted the proposed *auction* facility requires a Special Exception and is not permitted by right in the BR zone.

On January 11, 2007, the Deputy Zoning Commissioner issued his Order, holding that each of the components of the proposed use fell within the BCZR definition of "service garage" and that the Petitioner could operate the *service* facility and the *auction* facility on the Property as a matter of right, subject to conditions set forth in the Order. These appeals followed.

ARGUMENT

I. Petitioner will seek a Special Exception for the Proposed Auction Facility

In their Memorandum in Opposition to Petition for Special Hearing and at the hearing before the Deputy Zoning Commissioner, the Protestants asserted that the proposed *auction* facility was not permitted by right within the BR zone. The Protestants stated that the proposed use is most accurately described as a "used outdoor motor

vehicle sales area", as it is used in BCZR § 236.4. Such a use is only permitted in the BR zone as a special exception. Therefore, the Protestants argued unsuccessfully that the proposed auction component requires a Special Exception approval. Upon information and belief, People's Counsel concurs with the position of the Protestants regarding the *auction* facility; to wit: that an automobile auction in the BR zone requires a special exception for used car sales.

Notwithstanding the Deputy Zoning Commissioner 's Order explicitly approving the proposed *auction* facility as a use which is permitted by right in the BR zone under the definition of "service garage", in order to eliminate this issue, contemporaneously with the filing of this Motion, the Petitioner will file a Petition for Special Exception limited to the *auction* facility. Petitioner does not agree that a Special Exception is necessary, but will acquiesce in the demand that it seek such an approval. For this reason, the Petitioner respectfully requests the Board to reserve consideration of the approval of the *auction* facility within the BR zone until such time as an appeal of the Special Exception arrives at the Board, if there should be one.

Thus, the scope of the hearing before the Board in the current appeal of the Special Hearing should only concern the issue of the proposed *service* facility under the definition of a "service garage" as set forth in the BCZR.

II. The Service Facility is Permitted by Right as a "Service Garage" in the BR Zone.

Notwithstanding the Petitioner's decision to file a Petition for Special Exception for the *auction* facility, the Petitioner fully intends to proceed at the hearing before the Board

on the issue concerning the permissibility of the proposed *service* facility as a "service garage" in the BR zone. As the Petitioner is no longer seeking approval in the context of this Special Hearing case for the *auction* facility, this hearing before the Board on September 4, 2007 should be limited to the permissibility (by right) of the proposed *service* facility as a "service garage" in the BR zone.

CONCLUSION

WHEREFORE, Petitioner, Carmax Auto Superstores, Inc., respectfully requests that the Board of Appeals for Baltimore County limit the scope of the appeal to the issue of the permissibility of the proposed *service* facility.

Dino C. La Fiandra
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000
Attorney for Carmax Auto Superstores, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of August, 2007, a copy of the foregoing Motion was sent by first class mail, postage prepaid, and facsimile to:

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson
410 Washington Avenue, Suite 803
Towson, Maryland 21204
Fax: 410.825.0670

Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
Room 47, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204
Fax: 410.823.4236

Dino C. La Fiandra

388860

1/11/07

IN RE: PETITION FOR SPECIAL HEARING SE side of Pulaski Highway, 950 feet NE of Stevens Road 11th Election District 5th Councilmanic District	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
Schwaber Trust *Legal Owner and Petitioner* Carmax Auto Superstores, Inc. *Lessee*	*	CASE NO. 06-674-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the property located at the southeast side of Pulaski Highway, 950 feet northeast of Stevens Road in the eastern area of the County. The Petition was filed by the Schwaber Trust, the legal property owner and Carmax Auto Superstores Inc, Lessee. Special Hearing relief is requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to Section 236.1 and Section 233.2 save and except for any acreage zoned RC 2.

The property was posted with Notice of Hearing originally scheduled for August 25, 2006 on August 10, 2006, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning Hearing for the original hearing was published in "The Jeffersonian" newspaper on August 8, 2006, to notify any interested persons of the scheduled hearing date. At the August 25, 2006 hearing the parties agreed to continue the case to a date agreeable to the parties which eventually was November 29, 2006. The property was re-posted with Notice of Hearing for the continued hearing on November 13, 2006 for 15 days prior to the hearing. In addition, a Notice of Zoning Hearing for

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the continued hearing was published in "The Jeffersonian" newspaper on August 8, 2006, to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 500.7 of the B.C.Z.R. *Special Hearings*

The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: A ZAC comment letter was received from the Office of Planning dated July 20, 2006 which contains restrictions. Copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing were Bill Monk, zoning consultant, and James V. Hermann, P.E., of Morris & Ritchie Associates, Inc., who prepared the site plan, as well as Scott Harvey, Mickey Cornelius, traffic engineer, and Joe Jagdmann from Carmax Auto Superstores, Inc. Dino La Fiandra, Esquire, represented the Petitioner, Carmax. Sidney Weiman, Esquire, represented the property owner, Schwaber Trust. The following protestants appeared at the hearing. Michelle Aoust, Betsy Eisbart, Herbert Bush, Frances Sanderson, Mary Jo Krausz, Robert Mitchell, William Holter, Jr., Robert Martin Baranoski, and Gerald Welsh. Macy Nelson, Esquire, represented the protestants. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

1-11-07

Testimony and Evidence

The Schwaber Trust owns 31.48 acres in two parcels on the south side of Pulaski Highway which is the former location of the Pulaski Movie Drive In. Parcel 230 contains 6.55 acres while parcel 27 contains 24.93 acres. The Trust proposes to lease to Carmax all of parcel 230 and most of parcel 27 for their proposed vehicle repair facility and auction sale building shown on Petitioner's exhibit 1. The leased portion which is the subject of this case and contains 24.85 acres and is zoned BR (20.82 acres), RC 2 (3.37 acres) and ML (0.66 acres).

The Petitioners propose to use the property as a vehicle service garage and vehicle auction facility. Mr. La Fiandra indicated Carmax sells used vehicles at its existing facility on Philadelphia Road but is feeling the pinch for space at this location due to its success. He indicated that use of the property as a service garage is allowed by right in a BR zone. He noted a zoning advisory opinion from the Department of Permits and Development Management to that effect in the file. The special hearing involves only the auction use of the property in conjunction with the service garage. He asserted that use of the property for auction sales is permitted by right and there is really no need for the special hearing. The Petitioner agreed to file for the hearing to satisfy the Zoning Review Office.

In support of the Petitioner's contention that auction sales are permitted as of right, Mr. La Fiandra cited the definition of service garage in Section 101 of the BCZR and the Zoning Commissioner's Policy Manual which in Section 233.2 specifies that auction sales are permitted as a principal use and Section 253.1.F which allows auction sales as accessory uses. He noted that the auction sales from this site will be limited in scale and occur periodically to a limited list of bidders. There will be no retail sales from this site. He asserted that only 5% of the site will

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be used by the auction. The remainder will be used by the service garage. He requested no conditions be imposed.

Mr. Nelson indicated in his opening statement that the business proposed for this site by the Petitioner is not compatible with the typical service garage but rather is a huge industrial use. He questioned whether or not the proposed service garage actually meets the definition of service garage in the regulations and whether auction sales should be permitted with this huge service garage. He requested conditions be imposed.

Petitioner's Case

Mr. Monk, a zoning consultant, was accepted as an expert in planning and zoning. He indicated that the area surrounding the site is zoned business and manufacturing and presented a colored depiction of the business and manufacturing zoning in the area as Petitioner's exhibit 2. He opined that this portion of Pulaski Highway is highly industrialized including a very large commercial nursery to the west, businesses to the north, and a commercially zoned mobile home park to the east. He noted that Baltimore County owns most of the property to the east (Days Cove Park) and the residential development in the RC 2 zone to the south along the Bird River. In this regard he mentioned that the subject site is approximately 80 feet above the residential community on the Bird River, and that there is and will be an extensive area of woods and wetlands between the site and the residential community. As further description of the area he presented an aerial photograph of the site and surroundings with the redline site plan drawn on it, Petitioner's exhibit 4.

Mr. Monk presented the redline site plan for the proposed uses as Petitioner's exhibit 1 all of which will occur in the BR and ML zoned portion of the leased tract. This includes all storm water management facilities. He indicated that the redline changes were the result of a

new way of handling storm water management. He indicated that the Petitioner originally proposed all storm water management facilities would be located on the south end of the site. However there is a ridge shown in Petitioner's exhibit 5 which transects the property. The large arrows show the direction of water flow. Originally the Petitioners proposed to simply allow the north portion of the property to drain toward Pulaski Highway. However they were required to manage all storm water on site. As a result the Petitioner added storm water management facilities on the north end of the property reducing to some extent facilities on the south end. While the service garage was not affected by the change, the auction building was moved 50 feet.

Returning to Petitioner's exhibit 4, Mr. Monk noted that the site plan shows a 600 foot long driveway from Pulaski Highway which he opined indicates that there is ample room on site for vehicles coming onto the site and there will be no congestion on Pulaski Highway. He pointed out the area of work in progress on the site where vehicles will be staged for both the service garage and auction uses. He noted that the area to be leased to Carmax is shown in yellow on exhibit 4 and contains approximately 25 acres. The exhibit also shows a large wooded portion of the Trust property south of the site which will remain wooded so as to buffer the proposed uses on the site from the residential community on the Bird River.

He next presented Petitioner's exhibit 6, a colored rendering of the final configuration of the site. This exhibit shows the storm water management facilities on the north and south, auction building in green and service garage in tan. He noted that all area in gray will be paved while areas shown in green will remain wooded.

Using Petitioner's exhibit 6, he noted that the nearest residence is 1232 feet to the auction building, 1130 feet to the service building, and 761 feet to the edge of paving. As shown 550

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feet of woods would remain separating the proposed uses from the nearest residence. He also presented aerial photographs of the area showing the relative separation of the site from the residences along the Bird River in Petitioner's exhibit 8.

Returning to Petitioner's exhibit 6, the colored rendering, he noted the location of the auction building in green and described it as containing 2400 square feet with two drive through doors on each end oriented east and west. Auction sales will only occur within the building which will also have a small office and bathroom. He indicated dealers will park their vehicles which they use to travel to the site on the 250 space parking lot to shown. Car carriers delivering and picking up vehicles will use this lot as well. Mr. Monk noted that 152 spaces are required by the BCZR and 255 will be provided. He opined that this would provide adequate room for all pick up/drop off and parking activities. Vehicles to be auctioned will be staged to the west of the auction building prior to entering.

Again using exhibit 6, he noted that the service garage contained 57,000 square feet or would have approximately 1¼ acres under roof. He indicated that vehicles from Carmax facilities would be delivered to the site to be reconditioned leading to resale on Carmax lots or auctioned if the vehicles did not meet Carmax standards. There will be approximately 11 acres of paved work in progress surface on which vehicle will be stored and staged for reconditioning or auction.

Finally he noted that Pulaski Highway along the site frontage is presently unimproved having simply an open shoulder and swale. Upon completion of this project the Petitioner will provide deceleration/acceleration lanes along the frontage in accord with State Highway requirements.

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Upon questioning by Mr. Nelson, Mr. Monk indicated that the total impervious surface created in this project would be 14.87 acres which includes the buildings, work in progress area and parking lot. This leaves approximately 10 acres of pervious area. He noted that perhaps 36 car carriers could be on site at one time with 8 to 10 vehicles per car carrier. He admitted that this was the largest service garage building in his experience, and that this was the first time an auction/service garage project had been proposed in the County. He was unsure of the internal workings of the service garage, or the precise number of vehicles on the work in progress area but estimated it could be several hundred. Finally he indicated that car carriers would not be allowed in the work in progress area.

On redirect he indicated that car carrier would not come within 1200 feet of the nearest residence and there are no regulations limiting impervious surfaces in the BR zone.

Mr. Jagdmann, real estate manager for Carmax, noted that Carmax has 50 facilities in the country similar to what is being proposed here. He noted that Carmax has outgrown its site on Philadelphia Road, needs to create more space there to sell vehicles and so would like to move the existing reconditioning operations now at Philadelphia Road off site. He indicated that Carmax previously auctioned vehicles at Philadelphia Road during a 5 to 6 year period but gave this up because of site constraints. He pointed out the attractive features of the subject site for the proposed uses, note that about half the vehicles purchased by Carmax are auctioned off rather than reconditioned, and that having an auction operation at a reconditioning facility is common in other locations. When auction sales were conducted at the Philadelphia Road site, perhaps 50 dealers participated and 150 vehicles were sold biweekly over 1½ hours. He noted that buyers at the auction are only licensed dealers. He also indicated that Carmax has a similar facility in Laurel in which 450 vehicles an auction day are regularly sold within 2 hours. Carmax also has

similar facilities in Harford County Maryland as well as Dulles, Fredericksburg and Richmond, Virginia.

He indicated that at the subject site, Carmax foresees 100 to 200 vehicles will be sold on any auction day depending on demand. He noted again that the primary use of the property is the reconditioning of vehicles so that auction sales are incidental to the main operations on the site. There will be no outdoor public address speakers associated with the auction, and the doors of the auction building will be closed during the auction. Dealers are to remove purchased vehicles within 48 hours of sale.

In regard to the service garage, Carmax will store vehicles on the work in progress area prior to entering the service garage. All service work will be within the building. Security will be enhanced by lighting and security cameras. He predicted that there would be no traffic congestion on Philadelphia Road as there is ample room on the parking lot to hold all dealers, carrier and employees. Regarding noise he noted that customers can start vehicles in which they are interested which produce the sound of idling cars. This can begin at 8:15 AM.

Upon questioning by Mr. Nelson, Mr. Jagdmann indicated that Carmax would not recondition vehicles and then sell them at auction. About 50% of the vehicles brought to the site will be auctioned and there will be approximately 200 cars per auction. He estimated that there will be 100 to 120 employees on site at anytime, 5 for the auction and the remainder in the service garage. Reconditioning will take place in an assembly line process similar to Carmax facility in Virginia Beach.

The site will be open 5 days a week with auctions starting at 9:30 AM.. Dealers can arrive by 7 AM. He was unaware of any air pollution study on such auctions. He admitted that

Carmax encourages buyers to test drive vehicles after purchase. He indicated vehicles could come to this site for processing other than Philadelphia Road.

Mr. Monk indicated after being recalled to testify that there were no zoning use division lines on the plan. He opined that this proposed use meets the definition of Section 101 of the BCZR of service garage in that involves a garage where motor-driven vehicles are stored, equipped, repaired, or kept for remuneration hire or sale. He also indicated that the auction sales of motor vehicles is simply one form of sale, and that unlike auto dealerships, auction sales have no retail component to them. All vehicles will be sold to the licensed dealers only. In addition he opined that the 57,000 square foot service garage building meets the definition of service garage as well. He noted that size is not an issue and is not part of the definition. Use is what matters. There is no limit on the size of the garage in the definition of service garage although other factors in fact limit the size of such garages. There is also no requirement that the use be open to the public. Carmax can be the sole user of the facility. Finally he noted that service garages and auction sales of vehicles are allowed by right in this BR zone. In support of his opinion, he noted the Zoning Commissioner's Policy Manual permitting auction sales in this zone.

He further opined that this use at this location would not negatively affect the community and in support thereof he presented Petitioner's exhibit 9, a section of the site from the nearest residence to the auction and service buildings. He noted that there is 1130 feet from the nearest residence to the service garage building and that homes are 80 feet below the base of the buildings. He pointed out as shown on the section, the homes are buffered by 550 feet of existing woods which will remain. He further indicated that there is approximately 720 feet between the closest dwelling and the parking lot which will have little activity. He opined that

the grade, and trees which are 50-60 feet in height block the sight line from the residences so that residents will not be able to see the operations on the site.

He indicated that he visited the Laurel auction and could not hear the speakers in the auction building at approximately 250 feet which is 1/5 the distance in the subject site. Laurel, which is twice the size of the subject auction, sold 467 vehicles in two hours that day. There was no traffic congestion.

From this experience, he concluded that this site can accommodate this use. There will be no congestion on Pulaski Highway because of the excellent sight distance, and 600 feet of driveway which will allow vehicles to pull off the highway when loading and unloading vehicles. He again noted the business zoning along Pulaski Highway as shown in Petitioner's exhibit 2. He observed that the County park to the east will never develop residentially, and that the RC 2 zoned property to the south will remain undeveloped. This use meets the setback requirements of BR zones property, the buildings will be less that 35 feet in height and meet the floor area ratio. He noted that service garage building is not close to the FAR limitation. He opined that the proposed use meets the criteria of Section 502.1 for a special exception, will not adverse affect the neighborhood and is consistent with the zoning regulations.

Upon further questioning by Mr. Nelson, he reviewed the basis for his opinion that the proposed use meets the definition of service garage which is the principal use. He indicated that the service building will contain 1.25 acres under roof, will employ 80 mechanics, but there is nothing in the regulations which limits the size of the operation other than bulk regulations. He further opined that the proposed use would have no greater impact than a lumber yard. On redirect he explained that the regulations do not prohibit more than one principal use on the same lot.

Protestant's Case

Mr. Baranoski, a nearby property owner in Loreley Beach, expressed his concern about the nature of the use as he previously worked for a dealer who made sure to get to such auctions early to inspect the cars for sale. He noted that hundreds of cars will be arriving at 6 AM. He also opined that 150 to 200 vehicles would be started at the same time when dealers listen to the motors and this noise will be heard by the community. He opined that Carmax would bring vehicles to the site around the clock and that oil and the like would wash off the site onto the adjoining community.

He expressed concern that about congestion on Pulaski Highway noting the Jersey barrier in the highway separating north and south bound lanes. He opined dealers will bring their car carriers to remove purchased vehicles which may back up from the parking lot to the highway. Finally he worried that purchasers will test drive vehicles on community roads as it is most logical that purchasers will turn right onto Pulaski Highway, then right into the community to circle out to Pulaski Highway at Stevens Road and return to the site.

He asked that as a condition of approval that the earliest auctions can start at noon, the RC 2 portion of the property be included in the site plan, there would be no outside loudspeakers and an expert should test the storm water runoff twice a year.

Mr. Welsh, another resident of Loreley Beach, noted that he purchased a used vehicle from Carmax, expressed concern about the frequency of the auctions and congestion on Pulaski Highway. He noted that car carriers can not safely make a left turn from the site to go south on Pulaski Highway. He indicated that traffic backs up every morning southbound on Pulaski Highway from the traffic light at Ebenezer Road and that traffic from this use will add to this problem. He also expressed concern purchasers of vehicles would make four right turns through

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the community to test drive their vehicles. He had no objection to the service garage but objected to auction sales.

Mr. Cornelius, the Petitioner's traffic engineer, indicated that he studied the proposed uses on the site from a traffic perspective, noted that someone exiting the site can see 1000 feet and opined that this is a sufficient distance for tractor trailers to exit the site. He opined that when traffic backs up from the south on Pulaski Highway, the drivers will turn right to access major roadways. He presented photographs of the highway from the site as Petitioner's exhibit 11. He noted that there is no gate proposed across the entrance from Pulaski Highway and so there should be no reason that traffic will back up from the site onto the Highway. Perhaps 15 car carriers over two days will arrive for every 100 vehicles sold which should not be a problem for congestion. He noted that Pulaski Highway is heavily traveled at present with 30,000 vehicles per day which includes 10% trucks. He opined the additional traffic from this use will have no measurable impact.

Upon questioning by Mr. Nelson, he presented the basis of his study of the traffic impact of this use noting that trip generation for a 57,000 square foot facility had to be scaled up from standard uses, compared this use to the auction in Bel Air, and noted that peak traffic occurs on this site 7 to 8 AM and 4:30 to 5:30 PM. He opined that there is no problem at all with traffic at 10 AM when dealers would be removing vehicles from the site and that afternoon auctions could be worse from a traffic perspective if dealers began removing vehicles at the PM peak hour. He also opined that there would be no problem for car carriers turning left into the site or left out of the site off peak hours.

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Mr. La Fiandra, in summary indicated that Carmax would agree to certain conditions on approval of the site. The attorneys agreed to present memoranda on the legal issues which each raised at the hearing.

Findings of Fact and Conclusions of Law

I first note that each of the Petitioner's exhibits shows a "site" in the vicinity map which I believe depicts the Trust's property (31.48 acres). However this is not the property which is the subject of this case. The Petitioner's memorandum, and the legal description in the file show the subject site contains 24.85 acres. This leaves two parcels out of the Trust's property which is subject to approval and conditions thereon. The first is 3.58 acres zoned RC 2 to the south which the Petitioner described as wooded and which separates the proposed uses from the Loreley Beach community to the south. The second parcel left out contains 3.1 acres fronting on Pulaski Highway zoned BR which lies west of the trailer park along Pulaski Highway. This trailer park contains single family dwellings as well as mobile homes.

Petitioner's exhibit 6, the colored rendering of the revised site plan, shows both the RC 2 and BR parcels as "green" indicating that they provide vegetative buffering for the adjacent communities. Mr. Monk noted several times that the RC 2 parcel would remain undeveloped. By absence of such remarks for the BR parcel and the fact that the entrance to this site is physically divided by the boundary line for the subject property, it is apparent that the Trust would like to preserve the BR parcel for future development. Perhaps Carmax will sell vehicles from this parcel in the future. This certainly is their right but it is worrisome that these parcels are somehow indicated as buffers on the exhibits but not included in the site plan.

I am concerned that the exit road from the site is not on the site plan for another reason. There was testimony from the community regarding possible safety concerns with vehicles

especially car carriers exiting the site. The Petitioner's expert gave reassurance this would not be a problem based to some extent on configuration of the exit roadway. Yet the exit roadway is not in the site plan for the special hearing. Suppose a future lessee of the BR parcel radically changes the exit roadway or narrows it for their own purpose. I am concerned that neither Carmax or the County has control over this exit roadway as the proposal now stands.

Similarly the RC 2 parcel remains out of the subject case and therefore out of any control over future development when the exhibits and testimony show that its function as a buffer is central to the Petitioner's presentation. For example the Petitioner indicates on exhibit 6 that there is 550 feet from the nearest residence to the storm water management facility and characterizes that distance as "existing wooded area". The implication and testimony seems to be that this wooded area will buffer the Loreley Beach community from the proposed uses now and in the future. Yet the RC 2 parcel is not in the site plan much less subject to forest conservation easement which would preserve this buffer for the future.

Also troubling is the repeated assertion by the Petitioner that the nearest residence is 1130 feet to the service garage building. While this may be true for the Loreley Beach community, the nearest residence in the adjacent trailer park is only 310 +/- feet away from the service garage building. Whereas the doors to the service garage and the auction buildings are perpendicular to the Loreley Beach community to the south so as to minimize noise from each, these doors face the residences east of the site along Pulaski Highway.

I infer no intentional deception from the above. The main opposition to the proposed uses arises from the Loreley Beach community and so it is important for the Petitioner to show these residents why the proposed uses would not impact that community. Nevertheless in evaluating the proposed uses I must consider the wider picture.

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Mr. Nelson argues in his memorandum that the proposed service garage is simply too big and internal operations too foreign to fit the description of service garage in the BCZR. He also argues that the process of selling vehicles on site is not an "auction" because the sale is not open to the public. Finally he asserts the format of the Petition should be a special exception rather than special hearing as a used motor vehicle outdoor sales area, separate from sales agency building. Mr. LaFiandra disagrees.

I will admit that a first impression of the words "service garage" conjures images of a neighborhood mechanic repairing vehicles in a two or three bay shop. This proposal has 80 mechanics reconditioning vehicles in an assembly line operation within a huge building nearly four football fields in length and width. In addition the parking regulations for a service garage, which multiply area of the buildings by a constant factor, do not envision the gathering of hundreds of vehicles for auction before and after sale or storing and distributing vehicles to feed assembly line reconditioning in the service garage building.

On the other hand application of "service garage" has continuously expanded in this County from the local repair facility one could first envision. The use has broadened over many years to include ambulance services, commercial bus services, rental car agencies and installation of GPS systems in vehicles to name a few.

For example parking requirements for car rental agencies were scaled to the size of the rental car agency office where several employees work resulting in perhaps half dozen parking spaces required. In reality the agency sometimes had a fleet of hundreds vehicles on site. The Council recently addressed this problem giving new regulations for these uses.

My point is that over many decades the County has interpreted "service garage" in ever expanding ways. I see this application to be one more extension of that progression. Perhaps the

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Council will consider parking for these kinds of operations akin to manufacturing uses where parking spaces are related to the largest shift of employees. In this regard auto auction sales not only have full time employees but legions of part time drivers as well.

Even though the present parking requirements are clearly not applicable for the proposed uses, the reconditioning functions going on in the service garage building meets definition of service garage in the regulations. While one can argue the use is more like a auto assembly plant, as the Petitioner points out the use is no more than storing, equipping, repairing, etc. motor vehicles. There is no limitation on size in the regulations. Clearly the regulations drafted many years ago did not envision this new business model, but the function, the use remains the same.

At this point I want to acknowledge that this Petitioner did not simply multiply the square footage of the auction building and service garage to find the number of parking spaces required for this use. They have experience as to how many spaces are really needed for such auction sales and reconditioning operations even if the zoning regulations have not caught up. They propose far more spaces than are required by the present regulations which perhaps be a model for new legislation.

I agree with the Zoning Office that the proper approach to coupling a very large service garage with auction sales is by way of special hearing. While auction sales are another form of sale of vehicles, which is a listed operation of a service garage, auction sales of this magnitude require special review. Clearly the drafters of the Zoning Commissioner's Policy Manual could not foresee hundreds of vehicles being auctioned off in conjunction with an enormous service garage. This operation involves delivery of hundreds of vehicles by car carriers, arrival on site of many dealers, testing vehicles on site and transporting them off site.

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Mr. Nelson makes an interesting argument that these kinds of sales of vehicles are akin to "used motor vehicle outdoor sales area separate from sales agency building" which require a special exception. Again the history in the County has been otherwise. I understand the above regulation arose from the not too pleasant experience of neighborhood used car dealers selling used cars from mobile homes and trailers. These require special exceptions. Service garages require special exceptions in BL zones but not in BR which is the most intense commercial zone. I find special hearing to be the proper approach.

Finally Mr. Nelson asserts that only a "public" sale of property to the highest bidder can be an auction. I disagree with deference to Webster's Dictionary. We look to Mr. Webster when there is some doubt as to meaning of a word. However I find that the word "auction" not to be restricted to sales to the public only. The primary distinction of auction sales is selling to the highest bidder in a rapid fashion. This is how I understand the auction in this case will operate.

Returning to the special hearing I find that the uses proposed will not adversely affect the community and are within the spirit and intent of the BR regulations if certain conditions are met. The Petitioner has agreed to the following conditions which would be enforceable by the County:

1. No outdoor public address systems.
2. Vehicles will not be allowed to be started for test purposes prior to 8 AM.
3. Purchasers will not be allowed to test drive vehicles using roads in the Loreley Beach community.
4. Lighting poles will be 24 feet high and will provide shields to prevent spillage onto the community.
5. Auction sales will be permitted Monday to Friday 9 AM through 5 PM.
6. There will be no obstructions such as a gate to limit access to the parking lot from Pulaski Highway.

While I find these conditions reasonable, I am concerned for the residents of the trailer park to the west as these homes are much closer to the proposed uses than the Loreley Beach

residents. I am concerned for both especially in the winter when foliage is at its minimum. Petitioner's exhibit 9 shows the proposed uses elevated 80 feet above the Loreley Beach community and likely at the same elevation as the trailer park. Noise from the site will be deafening when vehicles start in unison at 8 AM. Contrary to some testimony this will not be the sound of idling engines only but realistically will involve reviving the engine to listen for defects. In addition the operations and commotion of the site with hundreds of employees and vehicles in motion will be seen by the residents to the east and south. Neither the RC 2 nor the BR parcels left out of the site plan description are guaranteed to provide any buffering.

I conclude that the only solution to this problem is for the Petitioner to erect an 8 foot high earthen berm along the east and south boundaries within the BR zoned area of the property. The berm will be erected at the edge of the paved surface essentially at the crest of the hill shown on Petitioner's exhibit 9. Note this location is specified as the "Limit of Paved Area" on petitioner's exhibit 9. This berm will be similar to that built around auctions such as the Manheim Auction in Pennsylvania. There seems to be plenty of room for this barrier on this very large site. Once constructed it will be nearly maintenance free. This will give the adjacent residential communities protection from both the noise and commotion of the site. In addition it will give isolation to persons using the adjacent County park.

However the 3.1 acre BR parcel is not included in the subject site. If the earthen barrier is constructed along the eastern boundary of the present site plan, it would cut off the eastern portion of the exit driveway onto Pulaski Highway as mentioned. On the other hand if the barrier is built along the eastern boundary of the Trust site shown in the vicinity map it will be much closer to the homes in the trailer park and more effective. However it will be located on a

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portion of the Petitioner's property not on the site plan. As such maintenance of the berm cannot be assured.

The most straight forward solution to both problems is to amend the site plan to include the 3.1 BR parcel and build the berm along its eastern border. This gives Carmax control of the exit roadway as well. However the Petitioners have taken great pains to avoid including this parcel in the site plan presumably to avoid having to amend the site plan in a public forum when the 3.1 BR parcel is developed. Once the barrier is constructed along the boundary with the trailer park, the 3.1 BR parcel could be more easily developed.

It seems to me that the Petitioner has to move the entrance and exit roadways into the site plan even if the remaining portion of the parcel is not included. They must also build the berm along the eastern end of the Trust site perhaps by creating an easement along the eastern end of the 3.1 acre BR parcel boundary specifying responsibility for maintenance lies with the Petitioner. Finally if the berm is built along the southern paved area limit, there is no need to have the RC 2 parcel in the site plan.

Finally the Planning Office requested certain conditions of approval which I have included in the order as reasonable requests. While there were no DEPRM comments in the file, clearly storm water management of this site is required and are being addressed in the commercial development process. I will simply reinforce the need for the Petitioner to satisfy DEPRM 's direction on storm water management.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioners' request for special hearing should be granted with conditions.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 11th day of January 2007, that the Petitioners' request for Special Hearing relief filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit auctions of automobiles as part of a service garage pursuant to Petitioner's exhibit 1 is hereby GRANTED subject to the following condition all of which are enforceable by Baltimore County:

1. The Petitioners may apply for their permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition; and
2. The Petitioner shall modify the site plan to include the exit roadway onto Pulaski Highway within the site plan of this case; and
3. The Petitioner shall construct a continuous earthen berm at least 8 ft in height along the southerly and easterly edge of the paved area of the subject tract and along the easterly boundary of the 3.1 acre BR parcel with the adjacent trailer park from the western end of the proposed retaining wall to Pulaski Highway. Said berm shall be constructed to the satisfaction of the Department of Public Works; and
4. The Petitioner shall cause such documents to be recorded in the land records of Baltimore County to assure that the earthen berm will be properly maintained whether on or off site as long as the subject site is used for auction sales and / or service garage.
5. The Petitioner shall show all proposed parking area and delineate the number of spaces to the rear of the proposed one story service building on the site plan; and
6. The Petitioner shall indicate how pedestrians and vehicles will access the proposed one story service building from the proposed 238 space parking area on the site plan; and
7. The Petitioner shall show architectural elevations and details for proposed freestanding monument style sign on the site plan; and
8. The Petitioner shall remove the existing movie screen structures from the premises and shall indicate same as "TBR" on the site plan next to the screen location; and
9. The site shall be managed for storm water runoff to the satisfaction of DEPRM; and
10. There shall be no outdoor public address systems; and
11. Vehicles for sale at the auction shall not be started for test purposes prior to 8 AM; and.
12. Purchasers of vehicles at the auction shall not test drive said vehicles using roads in the Loreley Beach community including Loreley Beach Road and Stevens Road; and
13. Lighting poles will be 24 feet high and will provide shields to prevent light spillage onto the nearby communities; and
14. Auction sales will be permitted Monday to Friday from 9 AM through 5 PM; and
15. There will be no obstructions such as a gate to limit access to the parking lot from Pulaski Highway; and

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16. The Petitioner shall submit a lighting and landscape plan to the Baltimore County Landscape Architect for his review and approval which shall address such issues as the Landscape Architect shall find relevant including the planting of the earthen barrier.

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

1-11-02

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

January 11, 2007

DINO LAFIANDRA, ESQUIRE
WHITEFORD, TAYLOR & PRESTON, L.L.P.
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204

Re: Petition for Special Hearing
Case No. 06-674-SPH
Property: SE side of Pulaski Highway, 950 feet NE of Stevens Road

Dear Mr. LaFiandra:

Enclosed please find the decision rendered in the above-captioned case.

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

Very truly yours,

John V. Murphy
Deputy Zoning Commissioner
for Baltimore County

JVM:pz

Enclosure

c: Please See Attached List

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GERALD T WELSH
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12/15/06

IN RE:	*	BEFORE THE
SOUTHEAST SIDE OF PULASKI HIGHWAY	*	ZONING COMMISSIONER
	*	OF
	*	BALTIMORE COUNTY
PETITION FOR SPECIAL HEARING	*	Case No.: 06-674 SPH

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

PETITIONER'S POST HEARING MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Carmax Auto Superstores, Inc., ("Petitioner"), submits this memorandum in lieu of a closing argument. The Petitioner requested a Special Hearing under BCZR § 500.7 to approve a limited scale private auction in conjunction with a service garage permitted by right. The Zoning Commissioner conducted an evidentiary hearing on the Petition for Special Hearing (the "Petition") on November 29, 2006.

FACTS

This zoning case involves a portion of a parcel of ground owned by a trust called the "Schwaber Trust". The Schwaber Trust owns a total of 31.48 acres at this location (the "Schwaber Property"). Carmax Auto Superstores, Inc. ("Carmax") is the lessee of a portion of the Schwaber Property. The area of the property that Carmax is leasing from Schwaber is the subject of the Petition and contains 24.85 acres.[1] For the sake of simplicity, Carmax's 24.85

[1] Unfortunately, it appears that Mr. Monk incorrectly testified regarding the size of the land area which is subject to the Petition for Special Hearing. At the hearing, Mr. Monk testified that approximately 20.50 acres were within the land area which is subject to the Petition for Special Hearing, as identified on the Plan to Accompany Petition for Special Hearing. Upon reexamination, it is clear that the true size of the land area which is subject to the Petition for Special Hearing is 24.85 acres. The land area graphically shown on the Plan to Accompany Petition for Special Hearing and the Redlined Zoning Site Plan (Exhibit 1), as well as the textual zoning description submitted with the Petition for Special Hearing are all correct. It is only Mr. Monk's testimony regarding the size of the land area which was inaccurate. Petitioners regret any confusion.

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acre area, which is subject to this Petition for Special Hearing, will be referred to as the "Property".

The overall zoning breakdown of the Schwaber Property is as follows: 23.83 acres is zoned BR, 6.84 acres is zoned R.C. 2, and 0.81 acres is zoned ML. Approximately 2.46 acres of the Schwaber Property is within the Chesapeake Bay Critical Area within the Limited Development Area Overlay; however, none of the Critical Area is within the Carmax Property.

The Property is an irregularly shaped area located on the southeast side of Pulaski Highway, approximately 970 feet northeast of Stevens Road in the Fifth Councilmanic District. Although the Property is currently vacant, it was used in the past as a drive-in movie theatre. The parking field from the old theater remains, but it has become overgrown over time. Additionally, the movie screen still stands. Carmax intends to remove the screen when the site is developed.

Carmax initiated proceedings by filing a Petition for Special Hearing. Joe Jagdmann, a real estate manager at Carmax, testified at the zoning hearing that Carmax currently owns and operates a retail facility on Philadelphia Road in White Marsh, Maryland where it acquires used cars from the public, reconditions those cars, and resells them to the public. Due to its success at Philadelphia Road, Carmax is in need of more room at that facility to *sell* cars. For this reason, Carmax desires to move its *reconditioning* operations to the Property, thereby freeing up space at the Philadelphia Road facility to sell cars.

Before discussing the subject of the Petition for Special Hearing, some background information on the Property and on Carmax's intended use thereof is necessary. Carmax's primary use of the Property will be for *reconditioning* cars. This function will be relocated from the Philadelphia Road site to the Property. The reconditioning will take place in a to-be-built

57,000 square foot service building which will house numerous service bays and other equipment to service cars. The reconditioning essentially involves relatively minor mechanical and cosmetic repairs as well as cleaning the vehicles. This function will be limited to those cars which are acquired by Carmax for resale at one of its retail outlets, such as on Philadelphia Road. All of the reconditioning and repairs will be conducted inside of the service building. There will be no work performed on any cars outside of the service building. This reconditioning aspect of the use is permitted by right within the BR zone as a "service garage" and is not the subject of the Zoning Petition.

Turning to the subject of the Petition for Special Hearing, in conjunction with its reconditioning operations, Carmax intends to hold limited-scale private auctions at the Property. This function is likewise permitted by right in the BR zone as a "service garage", as discussed in greater depth below. However, as explained at the hearing, the Director of Permits and Development Management referred Carmax to a zoning hearing for the Zoning Commissioner to determine what, if any, conditions should be placed on the auction use. A one story, 2,392 square foot facility is proposed to house the auctions.

EXISTING CONDITIONS

The Property is a 24.85 acre area within the Schwaber Property located on the southeast side of Pulaski Highway, US Route 40. There is an existing access point serving the Property on Pulaski Highway. There is site distance of approximately 1,000 feet in either direction along Pulaski Highway from this access point.

Pulaski Highway, in the vicinity of the Property, is a high intensity commercial and industrial thoroughfare. At the Zoning Commissioner's hearing, Bill Monk, of Morris & Ritchie Associates, Inc., testified that the Pulaski Highway corridor in the vicinity of the Property is

within the business zones and the manufacturing zones. The business zones predominate along Pulaski Highway frontages for the first 100 to 200 feet inward from Pulaski Highway. Past these business zoned areas, the vast majority of the Pulaski Highway corridor is within the manufacturing zones. As a result, the area surrounding the Property along Pulaski Highway is developed for industrial uses. The Loreley Beach neighborhood is located directly to the rear of the Property, and is zoned RC 2.

Running through the front half of the Property is a ridge that bisects the Property from west to east. Accordingly, the Property slopes downward from the ridge to Pulaski Highway in the front and downward to the rear property line and beyond in the rear. The Property will be graded to compensate for this downward sloping. It should be noted, however, that the location of this ridge positions the Property at an elevation significantly higher than that of the neighboring residential area to the rear of the Property. *See*, Exhibit 9.

PROPOSED CONDITIONS/SITE IMPROVEMENTS

As the Petition for Special Hearing regards only the proposed *auction* use, the only proposed site improvement which relates exclusively to the Petition for Special Hearing is the proposed auction building. Carmax proposes a 2,392 square foot building to house its auction operation. The structure will be located toward the front of the Property, approximately 300 feet from Pulaski Highway. The building is designed as a drive-through facility. Cars for auction will enter the building one at a time where they will be sold to the highest bidder, and then exit the building through the exit at the far side of the building. This drive-through tunnel runs parallel to Pulaski Highway. There will be no outdoor loudspeakers.

The site will be improved with other facilities which will allow Carmax to perform its reconditioning function. As indicated previously, the primary use of the Property, which is not

the subject of this Petition for Special Hearing, will be for *reconditioning* cars. Although this function is not the subject of the Petition for Special Hearing, because it was discussed at the hearing (over Petitioner's objections), a brief description of the reconditioning facilities is provided below. Nonetheless, as Bill Monk testified, a development plan showing the reconditioning facilities is being processed administratively (as a "B" exemption), and there has been no issue raised by the zoning officials regarding the proposed reconditioning use.

Carmax will construct a 57,000 square foot service building with service bays and other mechanical equipment to house the reconditioning operation. "Reconditioning" consists mainly of relatively minor mechanical and cosmetic repairs to vehicles. The only cars that will be reconditioned are those that Carmax acquires and intends to resell at one of its retail outlets. This reconditioning facility will not be open to the public or provide general service to members of the public.

It should be noted that all of the reconditioning of the vehicles will be conducted solely inside the service building. No work will be performed outside.

Cars will be transported to and from the site on car carrier trucks. The trucks will utilize the convenient design of the 600 foot long entrance driveway and turnaround loop. The driveway is designed in such a manner that the car carrier trucks never have to reverse or operate through complicated maneuvers when delivering cars to or from the Property. The driveway wraps around the east side the parking lot and then loops around the auction facility where it rejoins itself. Cars will be loaded and unloaded in the paved area near the proposed auction building. Additionally, the location of the driveway on the west side of the Property will keep the car carriers as far away from the residential area as possible. In fact, as illustrated by

Petitioner's Exhibits 6 and 9, the drive is located approximately 1300 feet away, and 80 feet higher in elevation as compared to the nearest residence.

The site will be improved with a parking lot at the front of the Property along Pulaski Highway. Pursuant to the Baltimore County Zoning Regulations ("BCZR"), 152 spaces are required for the Property. Nonetheless, the parking lot will provide a total of 255 parking spaces. These spaces are to be used by Carmax employees and the auction participants.

To the rear of the Property will be a large "Work-In-Progress" ("WIP") area. This portion of the Property, approximately 11.03 acres, is a paved area which will be used predominately for storing cars. The WIP area will be appropriately screened. The WIP area primarily will be used to store cars which have been transported to the Property for reconditioning. The WIP area will also be used to stage cars for auction. Staging for auction involves putting the cars in the order in which they will be presented for auction and starting all of the cars approximately 45 minutes prior to auction. The auction bidders, who are all licensed used car resellers in the State of Maryland and are registered and pre-approved by Carmax as auction participants, may then have an opportunity to inspect the cars prior to the auction on the WIP lot. Although the parking lot at the front of the site provided over 100 spaces more than required by the zoning regulations, the WIP area will provide for overflow employee parking, if the need should arise.

The Property will have two stormwater management facilities. One will be located in the front of the Property along Pulaski Highway, and the other to the rear.

It should be noted that there will be no commercial activity or buildings constructed in the R.C. 2 zone of the Property.

THE PROPOSED AUCTION USE

Carmax proposes a single story 2,392 square foot facility to house the auction operations on the Property. The auctions are private; open only to used car resellers licensed by the State of Maryland. In order to bid at auction, these licensed resellers must be pre-approved and registered with Carmax to participate in the auction. The auctions are not open to the general public. There likely will be anywhere from 50 to 100 bidders at the auctions.

Prior to the auction, the bidders have the opportunity to inspect the cars. The cars for auction will be started about 45 minutes prior to the auction.

The cars that are sold at the auctions are those that Carmax decides not to sell from its retail sites. Auto carriers transport the cars for auction from the other Carmax facilities to the site. The cars are loaded onto and unloaded from the trucks outside of the auction facility. The 600 foot entrance drive provides plenty of stacking room for car carriers which remain on the Property for any period of time.

The auctions will take place on weekdays and last approximately 2 hours. Approximately 100-200 cars are sold per auction. A licensed auctioneer will conduct the auctions. Forty-five minutes prior to the auction, the cars are started in the WIP area. The WIP area will be screened appropriately pursuant to the County zoning regulations.

During the auction, the cars are driven through the auction facility one at a time where they are bid on. The auction building has openings at each end so the cars can enter and exit without turning around or reversing. Although the pre-approved resellers will be permitted to park in the lot outside of the auction building and may, of course, talk on their cellular phones outside of the building during the auction, no auctioning will take place outside of the auction facility. Additionally, there will be no loudspeakers on the outside of the facility. At the end of

the auction, cars which were sold must be removed from the site within 48 hours. These cars are either driven off the lot or loaded onto auto carriers and hauled off. Those cars awaiting transport off the Property will be stored in the WIP area.

THE PROPOSED AUCTION USE IS PERMITTED BY RIGHT

The proposed auction use meets the definition of "service garage" under the BCZR. As such, it is permitted *by right* in the BM and BR zones. The area of the Property where the auctions will occur is within the BR zone. Therefore, the proposed auction use is permitted by right as shown on the Redlined Zoning Site Plan, Exhibit 1.

The term "service garage" is defined in BCZR § 101 as a

> a garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired, or kept for remuneration, hire or sale.

The activities described in relation to the auction use qualify as a service garage under the BCZR definition. As Mr. Monk and Mr. Jadgmann testified, in the most simple terms, the proposed auction use includes the keeping of motor driven vehicles for sale. Where, as in the instant case, the words of the ordinance are so clear and unambiguous, the ordinance reflects the intention of the County Council, and it is improper to delve further into some contrived or revisionist legislative intent to defeat the plain meaning of the words used.

Furthermore, the BCZR definition of "service garage" clearly casts a wide net, well beyond traditional notions of service garages, or even the proposed auction use. For example, it has long been the policy of the Zoning Commissioner that car rental agencies are "service garages" under the BCZR definition. See, Zoning Commissioner's Policy Manual §101, p. 1-17, definition of "garage, service".[2] Likewise, truck rental agencies are "service garages". See, Zoning Commissioner's Policy Manual §101, p. 1-17, definition of "garage, service". Finally,

[2] Copy attached.

taxicab businesses are regulated as "service garages" under the BCZR. See, Zoning Commissioner's Policy Manual, § 101, "Garage, Service", p 1-17. In each case, motor driven vehicles are "kept" for "remuneration, hire or sale", and in each case the use qualifies as a "service garage" under the definition.

The Zoning Commissioner's Policy Manual also makes clear that the definition of "service garage" includes uses which are not necessary contained within a building. There was some mention of this during the hearing, and a suggestion by the Protestants that the use must occur within a garage building to qualify as a "service garage". However, the Zoning Commissioner's Policy Manual makes clear that definition includes the use "of any land or enclosed building". Therefore, outdoor activities that otherwise meet the definition of "service garage", i.e., motor driven vehicles kept for sale, qualify as a service garage under the BCZR.

Additionally, the Baltimore County Zoning Commissioner's Policy Manual specifically provides that auction sales are permitted by right in the BR zone. *See* Zoning Commissioner's Policy Manual, § 233.2.[3] Auction sales in the ML zone may be referred for a Special Hearing to determine if any conditions are warranted for the proposed use, which is why the Director of Permits and Development referred Carmax for this hearing. Policy Manual, § 253.1.F.1.a.[4] A very small portion of the Property is within the ML zone, and no real auction activity is proposed there. The auction will take place virtually exclusively in the BR zone.

It is worth noting that the proposed auction use is not "used motor vehicle sales" within the context of the BCZR. As Bill Monk testified, "used car sales" clearly connotes retail used car sales of the type which are open to the general public. "Used car sales" typically means a retail sale directly to the ultimate consumer. There is usually a substantial area devoted

[3] Copy attached.
[4] Copy attached.

exclusively to display of cars for sale. The use is often characterized with frequent visits of retail customers coming to the site on a daily basis. Obviously, the proposed auction use is different. The proposed auctions are limited to resellers; they are not open to the general public. These resellers will remove the cars to a different location and sell them to the ultimate consumer.[5] There is no area which is exclusively devoted to display, and there will be no retail customers visiting the site as part of the proposed use – ever. Used cars will not be sold to the general public from this site.

The auction component of the Carmax operation is proposed in the BR zone on the Property. The BCZR provides that service garages are permitted as a matter of right in the BM zone. *See* BCZR §§ 233.2. Section 236.1 of the BCZR provides that those uses permitted in the BM zone are permitted as a matter of right in the BR zone. It follows, then, that as the Property is zoned BR and as such a use is permitted by right in the BR zone, that such a use is permitted by right on the Property.

Where a use is permitted by right, it is inappropriate to affix any extraordinary condition on the use. Nonetheless, Carmax offered several reasonable limitations of its use of the Property for auction sales at the hearing. These proffered conditions were designed to allay the concerns of the Protestants. Further restrictions on the use would be inappropriate. The proffered conditions include:

1. Noise.
   a. No external loudspeakers on the Property.
   b. Vehicles for auction will not be started (for display purposes) before 8 a.m. on auction days.

[5] Nonetheless, even if the auction sales were determined to be "used car sales", this is a distinction without a difference. "Used motor vehicle sales" are permitted in the BR zone by special exception. BCZR § 236.4. With regard to this particular use, Bill Monk testified that the special exception criteria of BCZR § 502.1 have been met.

2. Traffic through the Community.
   a. There shall be no test-drives of vehicles through the neighborhood.
   b. Carmax shall post a written notice of this policy in the auction building.
3. Lighting.
   a. All lighting throughout the site will be on poles not to exceed 24 feet in height.
   b. Lights at the edge of the WIP lot will have shields to prevent spillage off the lot.
4. Auction.
   a. Auctions may be held on weekdays only.
   b. There shall be no more than one auction per day.
   c. Auction (exclusive of staging, idling, bidder inspection, and similar activities) may not start prior to 9 a.m. and must conclude by 5 p.m.
5. Access to customer lot.
   a. Auction participants shall be access to the customer parking lot at least as early as 6 p.m., so as to avoid queuing into Pulaski Highway.

SUITABILITY OF SITE FOR THE PROPOSED USE

The zoning on the Property permits the auction use by right. Therefore, the proposed auction use enjoys an irrebutable legislative presumption that the site is suitable for the proposed use, without qualification. However, moving past this presumption, the site is objectively suitable for the proposed auction use as well.

At the hearing, Bill Monk established that the stretch of Pulaski Highway in the vicinity of the Property is characterized as industrial, being in either the business zones or the manufacturing zones. Petitioner's Exhibit 2 at the Zoning Hearing illustrates the accuracy of this testimony. The Property is located within the business zone, as are the adjacent properties on both sides of Pulaski Highway to the west and east. This industrial corridor extends just beyond Stevens Road to the west and to Allender Road to the east. With the exception of a few business zone pockets, the entirety of the area surrounding this corridor along Pulaski Highway is in the Manufacturing zone. The manufacturing zone extends to Ebenezer Road to the southwest, between Red Lion Road and Philadelphia Road in the northwest, and beyond Allender Road/North Loreley Beach Road to the northeast.

Bill Monk testified at the Zoning Commissioner's Hearing that Carmax's use of the Property is consistent with the industrial character of this stretch of Pulaski Highway. As evidenced clearly by the predominance of business and manufacturing zoning in the vicinity of the Property, the County Council has legislatively determined not only that this Property is suitable for this use, but also that such uses should be located within areas such as this stretch of Pulaski Highway.

The layout of the Property and its relation to the surrounding area make it well suited for the proposed auction use. As stated previously, the site lies on a straight portion of Pulaski Highway, which gives drivers exiting the Property a 1,000 foot line of site in either direction, which is more than adequate for safe egress from the site, even for car carriers which may leave the site. Petitioner submitted photographs of the line of site from the access point of the Property at the Zoning Commissioner's Hearing. These photographs, marked for identification purposes as 11A and 11B, clearly illustrate the line of site, in both directions, that a car exiting the Property would experience. The uncontraverted expert testimony of Mick Cornelius established this fact.

Petitioner's Exhibits 6 and 9 illustrate the relative distances and elevations of the structures on the Property compared to the nearest residence. The closest residence is over 760 feet south from the edge of the pavement of the WIP lot at the rear of the Property. The auction facility is almost 500 feet further northwest from the edge of pavement, or approximately 1230 feet northwest from this residence. Furthermore, the auction facility, as well as much of the rest of the usable area of the site, is 80 feet higher in elevation than the nearest residence. The entrance driveway, which the car carriers will utilize, is over 1300 feet away and likewise 80 higher in elevation than the nearest residence. In the simplest terms, the Carmax buildings,

including the auction building and the reconditioning building, are nearly a quarter mile away – over three "football fields" – and up a very big hill from the nearest residence. Bill Monk testified that these distances are substantial and will virtually eliminate any adverse impact of the proposed use on the residential neighborhood to the rear of the Property.

Furthermore, there is a substantial mature forest measuring at least 480 feet in depth and 50 feet in height which will act not only as a visual screen between the Carmax facility and the nearest residence, but also as a sound buffer. Bill Monk testified that on his visit to another Carmax auction in Laurel, Maryland, the auction was inaudible only 200 or 300 feet (unobstructed) from the auction building. Here, the residences are separated by nearly 1300 feet including a substantial and mature woodland area, and 80 feet in vertical distance.

It bears note that when the County Council sought to protect the RC zones from the adverse effects of uses permitted in the BR zone (whether by right or by special exception), it did so in the context of BCZR §238C. This section of law contains special regulations (limitations) for uses in the BR zone within 750 feet of an RC zone. That section provides that if any building occurs in a BR zone within 750 feet of an RC zone, the maximum building height is 35 feet, and the maximum FAR of the whole site is 0.5. In this case, Carmax's nearest building to the nearest residence in the RC zone is over 1100 feet away. The single-story buildings proposed on the Property are well below 35 feet in height, and the proposed FAR is only 0.053 on this 25 acre Property. Even in light of the highly restrictive and protective regulation of BCZR §238C the proposed uses on the Property – reconditioning and auction – are of very minimal intensity.

In contemplating these distances and disparities in elevation it should be reiterated that all activities will be conducted indoors. The auctions themselves will be conducted inside the auction building. There will be no outdoor loudspeakers utilized on the Property. The WIP area

housing the cars awaiting auction or reconditioning will be appropriately screened. At the Zoning Commissioner's Hearing, Bill Monk testified that given the layout of the Property, its elevation, and the surrounding geography and uses of the adjacent properties, the Property is very well suited for the proposed use. The residents of the community to the rear of the site will not be able to see Carmax; they will not be able to hear Carmax; they will not even know Carmax is up there.

OPPOSITION TO PROPOSED USE

At the Hearing Officer's Hearing, the following parties appeared in opposition to the site plan: The Bowerman-Loreley Beach Community Association, Robert M. Baranoski and Gerald Welsh.[6] Although no representative of the community association testified, it appeared through counsel. They are referred to collectively herein as "Protestants."

ISSUES RAISED BY THE PROTESTANTS

The Protestants presented several issues for consideration by the Zoning Commissioner. As demonstrated below, none of these issues preclude approval of the requested relief.

A. The Reconditioning Facility is a Service Garage

The Protestants contend that because of its size and overall functionality, the Petitioner's proposed use does not fall under the BCZR's definition of a "service garage". Protestants assert that the reconditioning facility is far larger than any other service garage in Baltimore County, and for that reason, it can not be considered a "service garage" permitted in the BR zone.

Nowhere in the BCZR's definition of "service garage" is there any reference to size or area limitations, nor is there any restriction on the operations that may be performed therein. "Service garage" is a use-based definition, regardless of size. The reconditioning use and the

[6] It was very clear that the individuals that testified were more interested in suggesting conditions on the proposed use than opposing the proposed use outright.

proposed auction component, as described more fully above, clearly fall within the scope of this definition.

The reconditioning building will be 57,000 square feet in size. The Protestants assert that this "Walmart of services garages"[7] cannot possibly be permitted in the BR zone, primarily because its size compared to typical service garages, and its assertion that Baltimore County has no other service garage of such a large size. Nonetheless, the definition of service garage is clear, and there are no qualifications as to size or other quantitative measurements in the definition, let alone which would preclude the use. Mechanical and cosmetic repairs on cars qualify as a "service garage". The words of the definition, themselves, describe Carmax's intentions for this facility: "a garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale". It could not be any clearer. The reconditioning facility *is* a service garage, by the BCZR's definition.

Neither the definition of service garage nor the BCZR section enumerating the permitted uses within the BR zone make reference to size limitations of a service garage permitted by right in the BR zone. They merely provide that a service garage is one of the many uses that are permitted as a matter of right in the BR zone. *See* BCZR §§ 233.2, 236.1. Indeed, the BCZR is replete with instances where the County Council specifically limited particular uses by size, or number of units, or other quantitative measurements. For example, the "-CR" zoning district limits all uses permitted by right to 8800 square feet, regardless of the size of the lot. However, the regulations governing that district specifically note that uses in excess of 8800 square in the –CR districts may be permitted by special exception. See, BCZR § 259.3 In the instant case

[7] Like a service garage, a Walmart store is permitted by right in the BR zone without regard for the size of the store.

involving a service garage in the BR, aside from the regulations governing the floor area ratio of structures within the BR zone (with which the proposed service garage complies) there is no reference to limitations on the overall size or functionality of a service garage within the BR zone.

B. Auctions Are Permitted Under the Definition of Service Garage

The Protestants contend that the auction component is not permitted in conjunction with the service garage. As discussed previously, the proposed use falls within the definition of service garage under the BCZR. The phrase "kept...for sale" indicates that the sale of automobiles, whether at auction or otherwise, is permitted under the BCZR's definition. In addition to this consideration, the Zoning Commissioner's Policy Manual specifically provides that auctions are permitted by right within the BR zone. *See* Zoning Commissioner's Policy Manual, § 233.2.

C. Conditions

The individual Protestants who testified in this case seem more concerned about restricting the auction use through conditions imposed by the Zoning Commissioner than about defeating the use in its entirety. The Protestants identified a number of proposed conditions. Carmax is willing to accept reasonable conditions on the proposed auction use, evidenced by the fact that Carmax offered numerous reasonable conditions which it would accept and which are reiterated above. Conditions beyond those suggested by Carmax are not warranted or appropriate, particularly where, as here, the use is permitted by right.

CONCLUSION

The proposed auction component falls within the scope of the definition of a service garage under the BCZR. Service garages are permitted as a matter of right within the BR zone.

The Property is located within the BR zone. Considering these facts, it follows that the auction facility is permitted as a matter of right on the Property. There is no basis in law or fact to deny the Petition. Protestants' arguments related to the permissibility of the reconditioning facility or the auction use are without merit.

WHEREFORE, the Petitioner, Carmax Auto Superstores, Inc., respectfully requests that the Zoning Commissioner approve the proposed use as set forth in the Petition.

Dino C. La Fiandra
Whiteford, Taylor & Preston, L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204
(410) 832-2000
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December, 2006, a copy of the foregoing Memorandum was mailed, postage prepaid, to:

G. Macy Nelson, Esq.
401 Washington Avenue, Suite 803
Towson, Maryland 21204

Dino C. La Fiandra

373333

SECTION 101

GARAGE, SERVICE

1) includes the use of any land, or residential garage, for the storage or repair of motor vehicles;
2) includes the use of any land or enclosed building where motor vehicles are stored or repaired, pursuant to the operation of truck rental, car rental, or taxicab businesses.

SECTION
233.2 USES PERMITTED

- AUCTION SALES as a principal use

- BINGO as a principal use

- COMMERCIAL RECREATION USES - Recreation uses such as skateboard parks, waterslides, go-cart tracks or other similar recreation uses are considered as a commercial recreation enterprise.

  But if more than one recreation type use is anticipated at one location the use may be interpreted as an amusement park, and as such, is only permitted in the B.R. zone by special exception.

253.1.E Mixed Uses on One Property (See Section 102.2 Page 1-42.1)

253.1.F ACCESSORY STRUCTURES/USES ALLOWED - treat as a principal building because Section 400 Accessory Buildings, BCZR only deals with residential and not business and industrial zones. They therefore must meet principal building setbacks.

1A. AUCTION SALES provided that the extent and the frequency of use is regulated and remains accessory. (An on site inspection and a special hearing or notarized letter of intent may be required by the Zoning Commissioner).

1B. AUXILIARY/ACCESSORY Retail or Service Uses

9. BINGO as an occasional or accessory use is permitted in any zone:
(a) in religious school buildings or houses of worship as a charitable function.
(b) in all community building type uses such as Elks, Knights of Columbus, J.C.C., V.F.W., Moose and similar halls.
(c) see the following cases: 85-200-X
88-85-X
88-86-X

253.1.F.1 INCIDENTAL SALES shall be determined in a case by case review.

Conditions: Any building principally devoted to a warehouse use may only utilize the following percentages of total gross floor area for retail purposes:

a. Size of Building	Retail or Service Uses
150,000 gross sq.ft. or larger	30% (No variance to this
less than 150,000 gross sq.ft.	15% percentage is allowed)

b. In addition to the site plan, a scaled drawing showing the square footage and interior layout of all the tenants within the building should be submitted including the following:

i. Any area utilized for retail must be clearly separated from; and in such a manner that will restrain customers from entering the warehouse area;
ii. All such walls, partitions, barriers, etc., must meet the building code requirements;
iii. Parking requirements must be computed for each tenant and the spaces delineated;
iv. Allowable percentages of retail area cannot be accumulated or transferred across property or lease lines;
v. Items sold are limited to those being warehoused.

c. Whenever a change of occupancy permit comes in, it will be considered an amendment to the above conditions and must be reviewed as such. If there is no overall plan on file, the Zoning Commissioner reserves the right to require any or all of the above information prior to approval of the requested permit.

The determination of eligibility may be subject to a special hearing at the discretion of the Zoning Commissioner.

12/15/06

DEC 15 2005

IN RE: PETITIONS FOR SPECIAL HEARING For the Property located at SES Pulaski Highway and 970 E. Stevens Road (Carmax Auto Superstore)	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 06-674-SPH

* * * * * * * * * * *

MEMORANDUM IN OPPOSITION TO PETITION FOR SPECIAL HEARING

Citizens, by their attorney, G. Macy Nelson, file this Memorandum in Opposition to Petition for Special Hearing filed by Carmax Auto Superstores, Inc. (hereinafter "Carmax"). Citizens present several issues for review:

I. Is the proposed project a "service garage?"
II. Are the proposed sales permitted under the Baltimore County Zoning Regulations as an auction?
III. If the proposed project is a "service garage," do the sales proposed by the Applicant require a special exception?

FACTS

Background

Carmax filed a Petition for Special Hearing "to permit auction of automobiles as part of a service garage...." Carmax has proposed to construct a service garage with an automobile auction on a 25 acre parcel in the Business Roadside Zone (B.R.). Carmax would recondition used cars in the proposed 56,000 square foot service building, covering approximately 1.2 acres of land. The service building is not open to the public. The proposed plan further provides for a separate auction building in which registered car dealers could bid on vehicles during private sales events. The auction building would have two large garage doors on either end. Carmax employees would drive cars into the

building, sell them through auction, and then drive them out the other side. Carmax would recondition approximately half of the cars entering the facility and transport them to another Carmax facility for public sale. Carmax would sell the other half on-site through private auction.

The proposed project raises issues under the zoning regulations due to the size and scope of operations. Carmax is not merely proposing to build a common service garage with some associated sales. Rather, it intends to recondition large amounts of used cars in an assembly line fashion to supply regional sales at Carmax facilities. Carmax proposes to store and sell an equally large number of cars to registered dealers through on-site private auctions. The combination of these two independent and separate uses into a single project prevents easy categorization under the zoning regulations.

Applicable Law

The subject area is currently zoned Business, Roadside (B.R.) under the Baltimore County Zoning Regulations (hereinafter "BCZR"). BCZR Section 236 sets forth the uses permitted in a B.R. zone. Of note, Section 236.1 incorporates those "[u]ses permitted and as limited in the B.M. Zone." BCZR Section 233 sets forth the uses permitted in the Business, Major (B.M.) Zone. These permitted uses include "Garage, service." *See* BCZR § 233.2. "Garage, service" is defined in BCZR Section 101 as, "A garage, other than a residential garage, where motor-driven vehicles are stored, equipped for operation, repaired or kept for remuneration, hire or sale." BCZR Section 236.4 further provides for uses permitted as special exceptions in the B.R. Zone. These uses include, "Used motor vehicle outdoor sales area, separate from sales agency building." *See* BCZR § 236.4.

The Zoning Commissioner's Policy Manual (hereinafter "ZCPM") offers further interpretations of the BCZR. The ZCPM interprets Section 233.2 to allow for "Auction Sales as a principal use" in the B.M. Zone. ZCPM at 2-42. There is no further clarification regarding what may be sold at auction. BCZR Section 101 notes that "Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged." Webster's Third New International Dictionary of the English Language, Unabridged (1963), in turn, defines auction as "1: a *public* sale of property to the highest bidder." (Emphasis added).

The BCZR discusses automobiles in different contexts. Section 253.1 of the BCZR permits "Automobile assembly" as a use in the ML Zone. Similarly, Section 256.2 of the BCZR permits "Manufacture of... automobiles," as a permissible use in the MH Zone.

ARGUMENT

I. The proposed project is not a "service garage."

Carmax will "recondition" used cars and transport them from the proposed facility to other Carmax facilities for sale. The various operating and structure of vehicles will be inspected by different individuals and worn parts or imperfections will be corrected in the reconditioning process. The facility is not open to the public, but it intended as a means of rebuilding cars for sale by Carmax. This is not the type of facility envisioned when the definition of "Garage, service" was drafted.

The scale and scope of the proposed use is more analogous to an "Automobile assembly" as allowed in the ML Zone. *See* BCZR § 253.1. Of note, "Automobile assembly" is different than the "Manufacture of... automobiles," as permitted in the MH Zone. *See* BCZR § 256.2. Although, neither "Automobile assembly," or automobile manufacturing is defined in the regulations, it is clear that "Automobile assembly" is something more intensive than the definition of "Garage, service," but less intensive than the manufacturing of an automobile. In the present matter, "reconditioning" is more similar to "assembly," than it is similar to being "equipped for operation [or] repaired." The proposed use is not appropriate for the B.R. Zone, and should be limited to the M.L. Zone.

II. The proposed sales cannot be classified as an auction.

The proposed sales cannot be classified as an auction and thus, are not an appropriate means of sale under the definition of "Garage, service." The ZCPM suggests that auctions are permitted uses in the BM Zone. *See* ZCPM at 2-42. BCZR Section 233.2A in turn provides that a proposed use may combine uses permitted in the B.M. Zone. Thus, arguably an auction and a service garage could be combined in a single project. BCZR Section 101 provides, "Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged." "Auction" is not defined in the BCZR, thus it is given its "ordinary accepted definition." Webster's Third New International Dictionary of the English Language, Unabridged (1963), in turn, defines auction as "1: a *public* sale of property to the highest bidder." (Emphasis added).

If the county had sought to expand the definition of "auction" to include private sales, it could have defined the term within the regulations.

Here, the proposed use is not for a public sale, but for a private sale of automobiles to registered car dealers. This does not meet the definition of an auction under the regulations. The private sales associated with the proposed use are not the type of sales intended under the definition of "Garage, service" and they are not included as a permitted use in the B.R. Zone. If the County or Zoning Commissioner intended for an auction to include private sales, the definition would have been included in the regulations and drafted in a more expansive manner. To the contrary, the ZCPM specifically limits an auction to public sale. Carmax's request to include private auction sales in conjunction with a service garage must be denied.

III. The proposed sales require a special exception.

The proposed sales can only be approved as a special exception. Carmax proposes that it will sell half of the cars which enter this facility through auction. These cars will be stored on-site in a lot. The registered car dealers invited to take part in the auctions will be able to view these automobiles and identify the cars for which they wish to bid. The actual bidding and sales would take place in a separate, open air structure. Accordingly, the proposed use is most similar to a "[u]sed motor vehicle outdoor sales area, separate from sales agency building." Such a use can only be approved in the B.R. Zone as a special exception. Furthermore, the BCZR does not suggest that such used car sales can be implemented as an accessory use or as a use in combination with a service

garage.[1] BCZR Section 101 defines an "accessory use" as a use "which: (a) is customarily incident and subordinate to and serves a principal use...; (b) is subordinate in area, extent or purpose to the principal use...; (c) is located on the same lot as the principal use...."

Thus, if the proposed sales are allowed under the B.R. Zone, Carmax, at a minimum, should obtain a special exception after a hearing which examines the additional impacts created by such sales.

CONCLUSION

Here, Carmax has proposed to build a massive facility that both acts as a factory to recondition used cars for public sale at separate Carmax sales locations *and* to conduct private auctions for the sale of large amounts of used cars stored on its lot. Carmax has sought to include the private auction as a permissible sale under the definition of "Garage, service." Nonetheless, these uses are separate and distinct. They are not intended to be combined as accessory uses. Moreover, the sale of used automobiles in the manner proposed requires a special exception. Consequently, the request for approval of the proposed use must be denied.

---

[1] BCZR Section 101 defines an "accessory use" as a use "which: (a) is customarily incident and subordinate to and serves a principal use...; (b) is subordinate in area, extent or purpose to the principal use...; (c) is located on the same lot as the principal use...." Furthermore, section 405.6.A3 of the BCZR provides that fuel stations can add any enumerated "uses in combination with" the station provided that a special exception is obtained.

Respectfully submitted,

G. Macy Nelson
Paul N. De Santis
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166

Attorneys for Citizens

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of December, 2006, a copy of the foregoing Memorandum in Opposition to Petition for Special Hearing was mailed first-class, postage prepaid, to:

Dino C. La Fiandra
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204

G. Macy Nelson

FLOOD

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

970' NE Stevens Rd

for the property located at SES Pulaski Highway ~~2640 E Overton~~

which is presently zoned BR zone

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

Special Hearing to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to 236.1 and 233.2. save and except for any acreage zoned RC2 ~~or MH~~. DRL

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:

Carmax Auto Superstores, Inc.
Name - Type or Print

By: Joseph V. Jagdmann, RE Mgr
Signature

Joseph Jagdmann, Real Est. Manager
12800 Tuckahoe Creek Parkway 804-747-0422x4916
Address Telephone No.

Richmond, Virginia 23238
City State Zip Code

Attorney For Petitioner:

Dino C. La Fiandra, Esquire
Name - Type or Print

Dino C. La Fiandra
Signature

Whiteford, Taylor & Preston, LLP
Company

210 W. Pennsylvania Avenue 410-832-2084
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Schwaber Trust
Name - Type or Print

Sidney A. Berman
Signature

Name - Type or Print

Signature

910 Reisterstown Road
Address Telephone No.

Baltimore, Maryland 21208
City State Zip Code

Representative to be Contacted:

Dino C. La Fiandra, Esquire
Name

210 W. Pennsylvania Ave., Suite 400 410-832-2084
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 06-674-SPH

Reviewed By _____ Date _____

REV 9/15/98

FILED

1-11-07

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS

June 26, 2006

ZONING DESCRIPTION

CECELIA SCHWABER REVOCABLE TRUST, DATED DECEMBER 9, 1985 &
CECELIA SCHWABER EXEMPT TRUST U/A 12/9/85

Beginning at a point on the southeasterly right of way line of Pulaski Highway, U. S. Route 40, one hundred and fifty feet wide, which has a paving width of twenty seven feet in the east bound lane, at the distance of 982 feet northeasterly of the centerline of the nearest street, Stevens Road, which has a paving width of 28 feet, thence the following courses and distances, viz;

North 45°02'33" East 618.64 feet; South 44°32'14" East 338.72 feet; North 44°50'13" East 263.14 feet; South 06°21'02" East 1297.42 feet; South 82°59'21" West 521.97 feet; North 07°00'39" West 37.64 feet; South 82°59'21" West 365.35 feet; North 06°56'32" West 985.35 feet to the point of beginning.

Containing an area of 1,082,508 square feet or 24.8510 acres of land, more or less, and being located in the Eleventh Election District, Fifth Councilmanic District, Baltimore County, Maryland.

James E. Catron
Property Line Surveyor No. 121

6.26.06
STATE OF MARYLAND
JAMES E. CATRON
No. 121
PROPERTY LINE SURVEYOR

P:\14671.01\Survey\Description\14671 Zoning Description Rev.Doc

1220-C East Joppa Road, Suite 505, Towson, MD 21286 (410) 821-1690 Fax: (410) 821-1748 www.mraqta.com

Abingdon, MD (410) 515-9000 + Laurel, MD (410) 792-9792 + Towson, MD (410) 821-1690 + Georgetown, DE (302) 855-5734 + Wilmington, DE (302) 326-2200 + York, PA (717) 751-6073

06-674 SPH

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

06-674 SPA

No. 7262

DATE 06-27-06 ACCOUNT R-001-000-6150

AMOUNT $ 325.00

RECEIVED FROM: WHITE, TAYLOR & PILE TO LLP

FOR: CARROLL PLAZA PURCHASE (SPECIAL HEARING RECONSIDERATION)

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS DATE	ACTUAL DATE	TIME	TRN
6/29/2006	6/29/2006	10:57:35	2

REG: WS04 WALK IN WALK IN

RECEIPT#: 340115 6/29/2006 OFF:#

DEPT: 403 529 ZONING VERIFICATION

ACCT: W07267

Receipt Tot	$325.00
$325.00 CK	$.00 CA

Baltimore County, Maryland

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: # 06-674-SPH

Southeast side of Pulaski Highway, 970 feet northeast of Stevens Road.

11th Election District — 5th Councilmanic District

Legal Owner(s): Schwaber Trust

Contract Purchaser: Carmax Auto Superstores, Inc.

Special Hearing: to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to 236.1 and 233.2 save and except for any acreage zoned R.C.2.

Hearing: Wednesday, November 29, 2006 at 10:00 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 11/641 Nov. 14 116016

CERTIFICATE OF PUBLICATION

11/16/, 2006

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 11/14/,2006.

- [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.: 06-674-SPH

Petitioner/Developer: CARMAX AUTO SUPER-STORES

Date of Hearing/Closing: 11-29-06

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

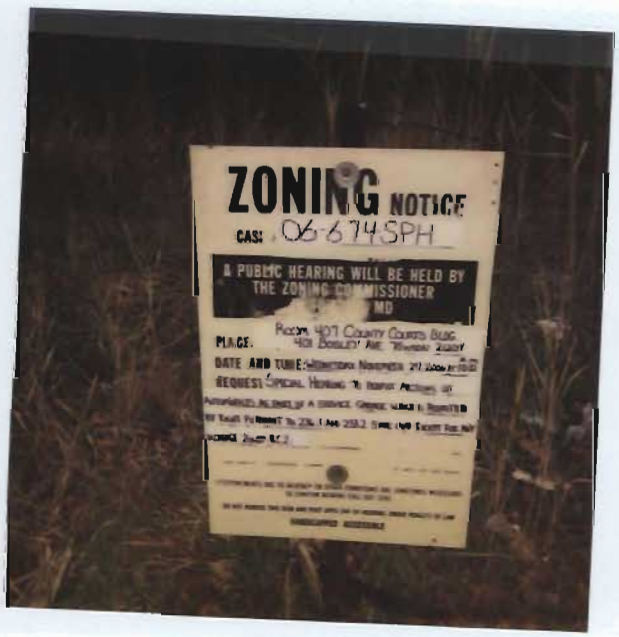
ATTN: Kristen Matthews {(410) 887-3394}

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: SE/SIDE OF PULASKI HWY, 970 FT NE OF STEVENS RD

The sign(s) were posted on 11-13-06
(Month, Day, Year)

Sincerely,



Robert Black 11-17-06
(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)

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: #06-674-SPH
Southeast side of Pulaski Highway, 970 feet northeast of Stevens Road
11th Election District - 5th Councilmanic District
Legal Owner(s): Schwaber Trust
Contract Purchaser: Carmax Auto Superstores, Inc.

Special Hearing: to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to 236.1 and 233.2 save and except for any acreage zoned R.C.2.

Hearing: Friday, August 25, 2006 at 9:00 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) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

8/087 Aug. 10 105051

CERTIFICATE OF PUBLICATION

8/10/, 2006

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 8/10/,2006.

- [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.: 06-674-SPH

Petitioner/Developer: CARMAX AUTO SUPERSTORES

Date of Hearing/Closing: AUG 25, 2006

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}

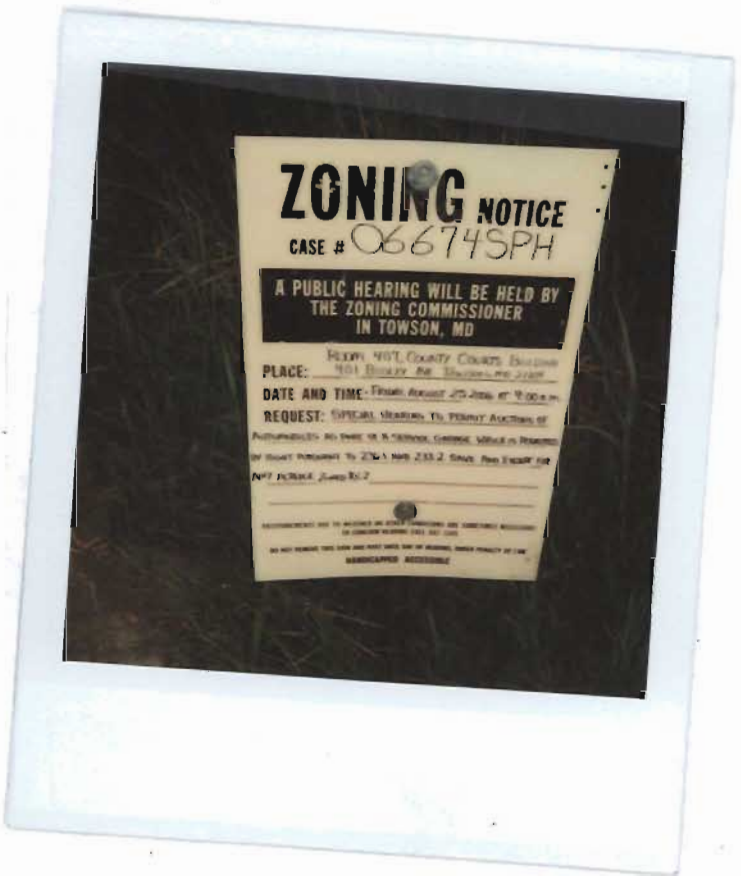
Ladies and Gentlemen:

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: _____

SOUTHEAST SIDE OF PULASKI HWY, 970 FEET NORTHEAST OF STEVENS RD

The sign(s) were posted on AUG 8, 2006
(Month, Day, Year)

Sincerely,



Robert Black 8-10-06
(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
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: 06-674-SPH

Petitioner: SCHWABER TRUST

Address or Location: SES. OF PALMER HWD 2C.WD FTG. OF OLWGTON AVE

PLEASE FORWARD ADVERTISING BILL TO:

Name: D. WYC. LAFIANDRA

Address: WHITEFORD TAYLOR & PRESTON
210 W. PENNSYLVANIA AVE
TOWSON, MD. 21204

Telephone Number: 410-832-2084

Revised 7/11/05 - SCJ

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

July 13, 2006

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: 06-674-SPH
Southeast side of Pulaski Highway, 970 feet northeast of Stevens Road
11th Election District – 5th Councilmanic District
Legal Owner: Schwaber Trust
Contract Purchaser: Carmax Auto Superstores, Inc.

Special Hearing to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to 236.1 and 233.2 save and except for any acreage zoned R.C. 2.

Hearing: Friday, August 25, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Dino LaFiandra, 210 W. Pennsylvania Avenue, Towson 21204
Schwaber Trust, Sidney Aberman, 910 Reisterstown Road, Baltimore 21208
Joseph Jagdmann, Carmax Auto Superstores, Inc., 12800 Tuckahoe Creek Pkwy, Richmond VA 23238

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, AUGUST 10, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed on Recycled Paper

TO: PATUXENT PUBLISHING COMPANY
Thursday, August 10, 2006 Issue - Jeffersonian

Please forward billing to:
Dino LaFiandra 410-832-2084
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204

NOTICE OF ZONING HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 06-674-SPH
Southeast side of Pulaski Highway, 970 feet northeast of Stevens Road
11th Election District – 5th Councilmanic District
Legal Owner: Schwaber Trust
Contract Purchaser: Carmax Auto Superstores, Inc.

Special Hearing to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to 236.1 and 233.2 save and except for any acreage zoned R.C. 2.

Hearing: Friday, August 25, 2006 at 9:00 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.

Department of Permits & 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

October 31, 2006

NEW 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: 06-674-SPH
Southeast side of Pulaski Highway, 970 feet northeast of Stevens Road
11th Election District – 5th Councilmanic District
Legal Owner: Schwaber Trust
Contract Purchaser: Carmax Auto Superstores, Inc.

Special Hearing to permit auctions of automobiles as part of a service garage which is permitted by right pursuant to 236.1 and 233.2 save and except for any acreage zoned R.C. 2.

Hearing: Wednesday, November 29, 2006 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Dino LaFiandra, 210 W. Pennsylvania Avenue, Towson 21204
Schwaber Trust, Sidney Aberman, 910 Reisterstown Road, Baltimore 21208
Joseph Jagdmann, Carmax Auto Superstores, Inc., 12800 Tuckahoe Creek Pkwy, Richmond VA 23238

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, NOVEMBER 14, 2006.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Printed on Recycled Paper

Requested: 7/5/07

APPEAL SIGN POSTING REQUEST

CASE NO. 06-674-SPH

SE/s of Pulaski Hgwy. – 970' E of Stevenson Road

11TH ELECTION DISTRICT APPEALED: 2/8/2007

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.: 06-674-SPH

LEGAL OWNER: SCHWABER TRUST; SIDNEY ABERMAN

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

SE/s of Pulaski Hgwy. – 970' E of Stevenson Road

The sign was posted on Aug 23, 2007.

By: _____
(Signature of Sign Poster)

Ken Wasilewski
(Print Name)

RECEIVED
AUG 27 2007
BALTIMORE COUNTY
BOARD OF APPEALS

County Board of Appeals of Baltimore County

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

PP'd to 9-04-07
Req'd Document
for Appellant/
Protestants

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

July 13, 2007

NOTICE OF ASSIGNMENT

CASE #: 06-674-SPH

IN THE MATTER OF: CARMAX AUTO SUPERSTORES, INC. – CP;
Schwaber Trust; Sidney Aberman -Legal Owners
SE/s Pulaski Highway, 970' E Stevens Road
11th Election District; 5th Councilmanic District

1/11/2007 – D.Z.C.'s Order in which requested special hearing was GRANTED with conditions.

ASSIGNED FOR: **THURSDAY, AUGUST 30, 2007 at 10 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: Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Petitioners : Robert Mitchell Herbert Busch Dorothy Hitten
Pat Holter Gerald Weish Robert Baranoski
Bowerman-Loreley Beach Community Association, Inc.

Michelle d'Aoust Betsy Eisbart
Frances Sanderson Mary Jo Krausz

Counsel for Appellant /Petitioner : Dino C. La Fiandra, Esquire
Appellant /Petitioner : Carmax Auto Superstores, Inc. /from conditions 2, 3, 4, 5 and 16 / Joe Jagdmann

Bill Monk /James V. Hermann / Morris & Ritchie
Scott Harvey / Mickey Cornelius /The Traffic Group
Sidney Weiman, Esquire / representing Schwaber Trust /Sidney Aberman

Appellant : Office of People's Counsel

William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

Printed with Soybean Ink on Recycled Paper

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com
gmacynelson@gmacynelson.com

TELEPHONE
(410) 296-8166, EXT. 290

FACSIMILE
(410) 825-0670

July 24, 2007

Board of Appeals for Baltimore County
Attention: Kathy Bianco
Old Courthouse, Room 49
400 Washington Avneue
Towson, Maryland 21204

RE: *Case No. 06-674-SPH*
Carmax Auto Superstores, Inc.

Dear Kathy Bianco:

Thank you for your recent notice of assignment in the above-captioned case scheduling the hearing for August 30, 2007 at 10:00 a.m. Although the parties are engaged in serious settlement discussions and I am hopeful that they will be successful, I must inform the Board that I have a conflict for August 30, 2007. I am scheduled to be in the Circuit Court for Frederick County in the matter of *Sugarloaf Properties, L.L.C. v. Larry D. Romane, et al.,* Case No. 10-C-05-001087 IJ. I have attached a copy of the trial notice for the Romane case scheduling trial for Thursday, August 30th.

If it would be helpful, I would be pleased to speak to Mr. LaFiandra and your office to work out an agreeable date.

Very truly yours,

G. Macy Nelson

GMN:kcm
Enclosure
cc: Dino LaFiandra, Esquire

RECEIVED
JUL 26 2007
BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR FREDERICK COUNTY
Sandra K. Dalton
Clerk of the Circuit Court
100 West Patrick Street
Courthouse
Frederick, MD 21701
(301)-694-1976

N O T I C E O F H E A R I N G / T R I A L

Case Number: 10-C-05-001087 IJ

Case Title: Sugarloaf Properties L L C Vs Romane, Et Al(not JRS)

To: G Macy Nelson Esq
401 Washington Avenue
Suite 803
Towson MD 21204

You are hereby notified that this case is scheduled in the:

CIRCUIT COURT FOR FREDERICK COUNTY 100 West Patrick Street Frederick, MD 21701

PROCEEDING	DATE AND TIME
Pre-Trial Conference	08/01/07 02:00PM
Civil Court Trial	08/30/07 10:00AM

PLEASE NOTE:

If you, a party represented by you, or a witness to be called on behalf of the party need an accommodation under the Americans with Disabilities Act, please contact the Court.

Assignment Clerk
Assignment Office Phone: 301-694-2563

Date Issued: 06/14/07

CC: Thomas Owen Mills Esq
N Lynn Board Esq

RECEIVED JUN 18 2007

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

August 1, 2007

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-674-SPH

IN THE MATTER OF: CARMAX AUTO SUPERSTORES, INC. – CP;
Schwaber Trust; Sidney Aberman -Legal Owners
SE/s Pulaski Highway, 970' E Stevens Road
11th Election District; 5th Councilmanic District

1/11/2007 – D.Z.C.'s Order in which requested special hearing was GRANTED with conditions.

which was assigned to be heard on 8/30/07 has been POSTPONED at the request of Counsel for Appellants /Protestants due to court schedule conflict; and has been

REASSIGNED FOR: **TUESDAY, SEPTEMBER 4, 2007 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: Counsel for Appellants /Protestants : G. Macy Nelson, Esquire
Appellants /Petitioners : Robert Mitchell Herbert Busch Dorothy Hitten
Pat Holter Gerald Weish Robert Baranoski
Bowerman-Loreley Beach Community Association, Inc.

Michelle d'Aoust Betsy Eisbart
Frances Sanderson Mary Jo Krausz

Counsel for Appellant /Petitioner : Dino C. La Fiandra, Esquire
Appellant /Petitioner : Carmax Auto Superstores, Inc. /from conditions 2, 3, 4, 5 and 16 / Joe Jagdmann

Bill Monk /James V. Hermann / Morris & Ritchie
Scott Harvey / Mickey Cornelius /The Traffic Group
Sidney Weiman, Esquire / representing Schwaber Trust /Sidney Aberman
Appellant : Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

Printed with Soybean Ink on Recycled Paper

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

August 16, 2006

Dino C. La Fiandra, Esquire
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Mr. La Fiandra:

RE: Case Number: 06-674-SPH, SES Pulaski Highway, 970' E Stevens Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 13, 2006.

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:amf

Enclosures

c: People's Counsel
Schwaber Trust Sidney Aberman 910 Reisterstown Road Baltimore 21208
Joseph Jagdmann Carmax Auto Superstores, Inc. 12800 Tuckahoe Creek Pkwy Richmond 23238

8/25

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: July 20, 2006

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

RECEIVED

AUG 0 2 2006

ZONING COMMISSIONER

SUBJECT: S/E side of Pulaski Highway

INFORMATION:

Item Number: 6-674

Petitioner: Schwaber Trust

Zoning: BR and RC 2

Requested Action: **Special Hearing**

SUMMARY OF RECOMMENDATIONS:
Surrounding land uses are compatible with the proposed auction and service facility. Therefore, the Office of Planning does not oppose the petitioner's request to permit auctions of automobiles as part of a service garage use provided the following conditions are met:

Revise the subject site plan as follows:

1. Show all proposed parking area and delineate the number of spaces to the rear of the proposed 1 story service building.
2. Indicate how pedestrians and vehicles will access the proposed 1 story service building from the proposed 238 space parking area.
3. Show architectural elevations and details for proposed freestanding monument style sign.

Additionally, the existing movie screen structures are to be removed from the premises. This shall be clearly indicated on the site plan next to the screens location as TBR.

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

Prepared by: _____

Division Chief: _____
AFK/LL: CM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To file TMK

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: February 2, 2007

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

SUBJECT: S/E side of Pulaski Highway

INFORMATION:

Item Number: 6-674 **AMENDED COMMENTS FEBRUARY 2, 2007**

Petitioner: Schwaber Trust

Zoning: BR and RC 2

Requested Action: **Special Hearing**

SUMMARY OF RECOMMENDATIONS:
Surrounding land uses are compatible with the proposed auction and service facility. Therefore, the Office of Planning does not oppose the petitioner's request to permit auctions of automobiles as part of a service garage use provided the following conditions are met:

Revise the subject site plan as follows:

1. Show architectural elevations and details for proposed freestanding monument style sign.

Additionally, the existing movie screen structures are to be removed from the premises. This shall be clearly indicated on the site plan next to the screens location as TBR.

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

Prepared by: _____

Division Chief: _____
AFK/LL: CM

W:\DEVREV\ZAC\6-674-Revised.doc

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

July 13,2006

ATTENTION: Zoning Review Planners

Distribution Meeting of: July 10,2006

Item No.: 674

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

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

Acting Lieutenant Don W. Muddiman
Fire Marshal's Office
410-887-4880
MS-1102F

Printed on Recycled Paper

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

SHA State Highway Administration — Driven to Excel

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

MARYLAND DEPARTMENT OF TRANSPORTATION

July 11, 2006

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

RE: Baltimore County
Item No. 674 (JRA)

Dear Ms. Matthews:

We have reviewed the referenced item and have no objection to approval of the Special Hearing. However, the owner/developer will be required to obtain an access permit for the required entrance improvements along MD 45.

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: July 13, 2006

FROM: Dennis A. Kennedy, Supervisor DAK
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For July 17, 2006
Item Nos. 623, 638, (674), 675, 676, 677, 678, 679, 680, 683, 684, 685, 686, 687, and 688

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-7132006.doc

BALTIMORE COUNTY, MARYLAND

Inter-Office Memorandum

DATE: August 25, 2006

TO: Kristen Matthews
Department of Permits & Development Management

FROM: Patti Zook, Legal Secretary to
John V. Murphy, Deputy Zoning Commissioner

SUBJECT: Petition for Special Hearing - Case No. 06-674-SPH

The hearing was scheduled for Friday, August 25, 2006 at 9:00 am. The attorneys, Dino LaFiandra (Petitioner) and J. Carroll Holzer (Protestants) made a joint request for continuance. Therefore, the attorneys will be contacting you to reschedule the hearing.

We are returning the file to you for safekeeping.

Thank you for your attention and cooperation in this matter.

JVM:pz

RE:	PETITION FOR SPECIAL HEARING SE/S Pulaski Highway, 970' NE Stevens Road 11th Election & 5th Councilmanic Districts Legal Owner(s): Schwaber Trust, by Sidney Weiman, Trustee Contract Purchasers: Carmax Auto Superstores, Inc by Joseph Jagdmann, Real Est. Mgr Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-674-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 and all 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 17th day of July, 2006, a copy of the foregoing Entry of Appearance was mailed to, Dino LaFiandra, Esquire, Whiteford, Taylor & Preston, LLP, 210 West Pennsylvania Avenue, Towson, MD 21204., Attorney for Petitioner(s).

RECEIVED
JUL 17 2006
Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management

April 2, 2007

RECEIVED
APR 05 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Carmax Auto Superstores, Inc.
Joseph Jagdmann, Real Estate Manager
12800 Tuckahoe Creek Parkway
Richmond, Virginia 23238

Dear Mr. Jagdmann:

RE: Case: 06-674-SPH, Southeast Pulaski Highway, 970 feet East Stevens Road

Please be advised that an appeal of the above-referenced case was filed in this office on February 9, 2007 by Dino C. La Fiandra and the Office of the Peoples' Counsel and on February 8, 2007 by G. Macy Nelson. 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

TK:

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Schwaber Trust Sidney Aberman 910 Reisterstown Road Baltimore 21208
Dino C. La Fiandra, Esquire Whiteford, Taylor & Preston, LLP 210 W. Pennsylvania Avenue Towson 21204

Law Office of G. Macy Nelson 410 Washington Avenue, Suite 803 Towson 21204
Robert Mitchell 9 Opie Road White Marsh 21162
Herbert Busch 11 Opie Road White Marsh 21162
Dorothy Hitten 5820 Stevens Road White Marsh 21162
Pat Holter 11316 N. Loreley Beach Road White Marsh 21162
Gerald Weish 11311 Beach Road White Marsh 21162
Robert Baranoski 11211 Beach Road White Marsh 21162
Bowerman-Loreley Beach Community Association, Inc P.O. Box 93 White Marsh 21162
Mickey Cornelius 9900 Franklin Square Drive, Suite H Baltimore 21236
Jim Hermann 1395 Eden Mill Road Pylesville 21132
Scott Harvey 930 N. East Street Frederick 21701
Bill Monk 1220-C E. Joppa Road, Suite 505 Towson 21286
Sidney Weiman Levin & Gann 502 Washington Avenue Towson 21204
Michelle d'Aoust 11010 Bowerman Road White Marsh 21162-1614
Betsy Eisbart 6047 Loreley Beach Road White Marsh 21162
Frances Sanderson 6029 Loreley Beach Road White Marsh 21162
Mary Jo Krausz 5905 Loreley Beach Road White Marsh 21162

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

February 9, 2007

Hand-delivered
Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR SPECIAL HEARING
SE/S Pulaski Highway, 970' NE Stevens Road
11th Election District; 5th Council District
Schwaber Trust, Legal Owner &
Carmax Auto Superstores, Inc, Lessee - Petitioners
Case No.: 06-674-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 January 11, 2007 by the Baltimore County Deputy Zoning Commissioner.

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

RECEIVED
FEB 09 2007
Per...KM....

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: Dino LaFiandra, Esquire
G. Macy Nelson, Esquire
Sidney Weiman Esquire

CASE #: 06-674-SPH **IN THE MATTER OF: CARMAX AUTO SUPERSTORES, INC. – CP;**

Schwaber Trust; Sidney Aberman -Legal Owners
SE/s Pulaski Highway, 970' E Stevens Road
11th Election District; 5th Councilmanic District

SPH – To permit auctions of automobiles as part of a service garage which is permitted by right per §§ 236.1 and 233.2, save and except for any acreage zoned RC 2.

1/11/2007 – D.Z.C.'s Order in which requested special hearing was GRANTED with conditions.

7/13/07 --Notice of Assignment sent to following; assigned for hearing on Thursday, August 30, 2007 at 10 a.m.:

G. Macy Nelson, Esquire
Robert Mitchell Herbert Busch Dorothy Hitten
Pat Holter Gerald Weish Robert Baranoski
Bowerman-Loreley Beach Community Association, Inc.
Michelle d'Aoust Betsy Eisbart
Frances Sanderson Mary Jo Krausz
Dino C. La Fiandra, Esquire
Carmax Auto Superstores, Inc. /from conditions 2, 3, 4, 5 and 16 / Joe Jagdmann
Bill Monk /James V. Hermann / Morris & Ritchie
Scott Harvey / Mickey Cornelius /The Traffic Group
Sidney Weiman, Esquire / representing Schwaber Trust /Sidney Aberman
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
John E. Beverungen, County Attorney

7/16/07 – Request for postponement filed by G. Macy Nelson, Esquire – has conflict in Circuit Court for Frederick County – civil court trial – at 10 a.m. on scheduled date of hearing.

7/26/07 – Letter of postponement filed by G. Macy Nelson, Esquire, counsel for Appellants /Protestants; schedule conflict with Circuit Court, Frederick County.

8/01/07 – Notice of PP and Reassignment sent to parties; case reassigned to Tuesday, September 4, 2007 at 10 a.m.
FYI copy to 3-6-7 – change in schedule from 8/30/07.

8/16/07 – T/C w/Mr. Nelson confirming that hearing will go forward on September 4, 2007 as scheduled as there is no conflict with his trial schedule for that date. T/C to Mr. La Fiandra stating same – left voicemail message.

Schwaber Trust; Sidney Aberman -Legal Owners
SE/s Pulaski Highway, 970' E Stevens Road
11th Election District; 5th Councilmanic District

SPH – To permit auctions of automobiles as part of a service garage which is permitted by right per §§ 236.1 and 233.2, save and except for any acreage zoned RC 2.

1/11/2007 – D.Z.C.'s Order in which requested special hearing was GRANTED with conditions.

8/30/07 – Motion to Limit the Scope of Appeal filed by Dino La Fiandra, Esquire, counsel for Petitioner. Copy of said Motion mailed to 3-6-7; will mail copies of any response(s) received to 3-6-7 upon receipt.

9/04/07 – Board convened for hearing as scheduled; Mr. La Fiandra appeared on behalf of Petitioner; Mr. Nelson on behalf of Protestants; P. Zimmerman for People's Counsel. Agreement reached between Petitioner and Protestants /Appellants re uses on property. Holding indefinitely pending full signature of agreement; will do nothing further until requested by parties.

1/20/09 – letter to Counsel re: status

1/28/09 – Mr. LaFiandra responded that the agreement was noted on the record and to dismiss if no response from other counsel.

3/10/09 – Reviewed file with Mr. Wescott, Panel Chair. Order of Dismissal to be prepared.

3/11/09 – Order of Dismissal prepared and given to Mr. Wescott for review. Prepared for signature.

3/23/09 – Order of Dismissal issued and distributed to parties and interested persons.

4/6/09 – motion for Redonsideration and Correction filed by Peter Max Zimmerman, People's Counsel with attachments.

4/9/09 – Prepared Amended Order for signature and review by Mr. Westcott.

4/10/09 – Order issued and sent to all parties.

County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 20, 2009

G. Macy Nelson, Esquire
401 Washington Ave, Suite 803
Towson, MD 21204

Dino LaFiandra, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, MD 21204

Re: In the Matter of: Schwaber Trust; Sidney Aberman-Legal Owner
Carmax Auto Superstores, Inc-Contract purchaser
Case No.: 06-674-SPH

Dear Counsel:

Please be advised that the last activity that I have noted in this file is that the Board convened for a Hearing on September 4, 2007. At that time it was indicated that you had reached an agreement as to the use of the property and that a formal agreement would be submitted to the Board to accompany the Order of Dismissal issued by the Board.

To date, we have not received a copy of any agreement and we would like to know the current status of this matter.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

(Duplicate Original)

cc. Office of People's Counsel

Kristen -
Please place
in the case
file
Thanks
Patti

BALTIMORE COU
MARYLAND

JAMES T. SMITH, JR.
County Executive

Novemb

DINO LAFIANDRA, ESQUIRE
WHITEFORD, TAYLOR & PRESTON, L.L.P.
210 W. PENNSYLVANIA AVENUE
TOWSON, MD 21204

G. MACY NELSON, ESQUIRE
401 WASHINGTON AVENUE, SUITE 803
TOWSON MD 21204

Re: Case No. 06-674-SPH
Schwaber Trust
Legal Owner and Petitioner
Carmax Auto Superstores, Inc.
Contract Purchaser

Dear Messrs. LaFinandra and Nelson:

This letter is to confirm that the continued hearing for the above-captioned matter is scheduled for Wednesday, November 29, 2006 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD. The attorneys, Dino LaFiandra (Petitioner) and J. Carroll Holzer (Protestants) made a joint request for continuance on August 25, 2006.

In the meantime, should anyone have any questions on the subject, please do not hesitate to call my office.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner

JVM:pz

c: J. Carroll Holzer, Esquire, Holzer & Lee, 508 Fairmount Avenue, Towson, MD 21286

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com
gmacynelson@gmacynelson.com

TELEPHONE
(410) 296-8166, EXT. 290

FACSIMILE
(410) 825-0670

August 23, 2006

SENT VIA FACSIMILE & REGULAR MAIL: 410-887-3468
John Murphy, Deputy Zoning Commissioner
County Courts Building, Suite 405
401 Bosley Avenue
Towson, Maryland 21204

RE: Case No. 06-674-SPH

Dear Mr. Murphy:

I am writing now to enter my appearance on behalf of certain citizens in opposition to the application in Case Number 06-674-SPH. We intend to be present on Friday, August 25, 2006.

Very truly yours,

G. Macy Nelson

GMN/ro
cc: Dino C. LaFiandra, Esquire (Sent via facsimile only 410-832-2015)
Peter Max Zimmerman, Esquire (Sent via facsimile only 410-339-3477)

RECEIVED
AUG 24 2006
ZONING COMMISSIONER

LAW OFFICE OF
G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
410 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

G. MACY NELSON
ANN MACNEILLE, COUNSEL
PAUL DE SANTIS
ELIZA SMITH

PAUL N. DE SANTIS
DIRECT EXTENSION: 113
pauldesantis@gmacynelson.com

February 8, 2007

Mr. Timothy Kotroco, Director
Baltimore County Government
Department of Permits and Development
Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
FEB 08 2007
Per.....

RE: PETITION FOR SPECIAL HEARING
Southeast Side of Pulaski Highway and 970 E. Stevens Road
(Carmax Auto Superstore)
Case Number: 06-674-SPH

Dear Mr. Kotroco:

The Law Office of G. Macy Nelson represents certain Protestants in the above-captioned case. They are identified below:

Robert Mitchell
9 Opie Road
White Marsh, MD 21162

Herbert Busch
11 Opie Road
White Marsh, MD 21162

Dorothy Hitten
5820 Stevens Road
White Marsh, MD 21162

Pat Holter
11316 N. Loreley Beach Road
White Marsh, MD 21162

Gerald Weish
11311 Beach Road
White Marsh, MD 21162

Robert Baranoski
11211 Beach Road
White Marsh, MD 21162

Bowerman-Loreley Beach Community
Association, Inc.
P.O. Box 93
White Marsh, MD 21162

Our clients appeal the decision of Deputy Zoning Commissioner John V. Murphy dated January 11, 2007, in which he concluded the proposed use was a service garage and further concluded that Carmax could operate a private automobile auction on the property subject to specified conditions.

I have enclosed a check made payable to Baltimore County, Maryland for $400.00, the filing fee associated with this appeal.

Very truly yours,

Paul N. De Santis

Enclosure

cc: Dino LaFiandra, Esq.

G. MACY NELSON
ATTORNEY AT LAW

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com
gmacynelson@gmacynelson.com

TELEPHONE
(410) 296-8166, EXT. 290

FACSIMILE
(410) 825-0670

August 14, 2007

RECEIVED
AUG 16 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Board of Appeals for Baltimore County
Attention: Kathy Bianco
Old Courthouse, Room 49
400 Washington Avneue
Towson, Maryland 21204

RE: *Case No. 06-674-SPH*
Carmax Auto Superstores, Inc.

Dear Ms. Bianco:

Thank you for your recent notice of assignment in the above-captioned case rescheduling the hearing for September 4, 2007 at 10:00 a.m. You rescheduled this case in response to my conflict on August 30, 2007. Unfortunately, I also have a conflict on September 4, 2007. I am scheduled to be in the Circuit Court for Baltimore City in the matter of *Diane Lynch vs. Robert J. Kirtz,* Case No. 24-C-06-006144. I have attached a copy of the trial notice for the *Kirtz* case scheduling trial for September 4, 2007.

Although the parties are engaged in serious settlement discussions and I am hopeful that they will be successful, I must respectfully request that the Board reschedule this hearing. If it would be helpful, I would be pleased to speak to Mr. LaFiandra and your office to work out an agreeable date.

Very truly yours,

G. Macy Nelson

GMN:kcm
Enclosure
cc: Dino LaFiandra, Esquire

T/c to Macy 12 pm 35 8/16/07
new hearing 9/04/07
this trial 9/05/07
NO pp needed;
06-674-SPH
will go forward
on 9/04 as
scheduled

CIRCUIT COURT FOR BALTIMORE CITY
Frank M. Conaway
Clerk
Courthouse East
111 North Calvert Street - Room 462
Baltimore, MD 21202-
410-333-3722 TTY for Deaf: (410)-333-4389

G Macy Nelson Esq
401 Washington Avenue
Suite 803
Towson MD 21204

NOTICE OF HEARING/TRIAL

IN RE: Diane Lynch Vs Robert J Kirtz
Case No: **24-C-06-006144 OT**
C I V I L

You are hereby NOTIFIED TO APPEAR in court for

Civil Trial

on **September 5, 2007** at the following time and place:

Time: 09:30AM
Room: 403 - Assignment Office
Place: Courthouse East
111 North Calvert Street
Baltimore MD, 21202-

Counsel must notify all necessary parties to appear at the time and place described above.

Any request for accommodation under the Americans With Disabilities Act should be directed to the Administrative Office of the Circuit Court for Baltimore City by calling (410) 396-5188, or TTY for hearing impaired: (410) 396-4930.

Request for postponements are heard daily at 1:45 p.m. in Room 231 Courthouse East, 111 North Calvert Street.

Date Issued: 04/11/07

cc:
CC: Michael L Freilich Esq

RECEIVED APR 16 2007

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

DINO C. LA FIANDRA
DIRECT NUMBER
410 832-2084
DLafiandra@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
DIRECT FAX 410 339-4031
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

April 18, 2006

VIA HAND DELIVERY
Mr. Timothy M. Kotroco, Director
Baltimore County Department of Permits and Development Management
111 W. Chesapeake Avenue, Room 105
Towson, Maryland 21204

Re: Carmax/Pulaski Drive-In Property

Dear Mr. Kotroco:

As you know, I represent Carmax, Inc. This letter will confirm the April 5, 2006 meeting at which you, Joe Jagdmann of Carmax, and I were present, as well as a follow up telephone call I had with Carl Richards, Zoning Supervisor, on April 14, 2006.

By letter dated March 27, 2006, I requested zoning verification that Carmax's proposed use of 25 ± acres in the BR zone conformed to the zoning regulations. I identified the proposed uses as vehicle reconditioning (mechanical and cosmetic repairs), vehicle storage, and acquisition and disposition of pre-owned cars. With regard to disposition of pre-owned cars, Carmax proposed to auction cars that were otherwise unsuitable to sale by Carmax from this site. I had asserted that these uses were permitted by right in the BR zone. Mr. Merrey of your office replied by letter dated March 30, that a special hearing was required to approve the proposed mix of uses in the BR zone. Copies of the March 27 and March 30 letters are attached.

Thereafter, on April 5 my client and I met with you to explain the proposed Carmax uses in greater detail. At that meeting, you advised that all the proposed uses *except auction* were permitted as a "service garage" by right in the BR zone, without further zoning approvals. You advised that automobile auctions of the type proposed may be permitted in the B.R. zone after a public hearing. Therefore, I understand that Carmax may conduct vehicle reconditioning (mechanical and cosmetic repairs) and

06-674-SPH

vehicle storage at the proposed site in the BR zone by right, without further zoning approval. I further understand that should Carmax desire to conduct auction sales at the site in the manner described in my March 27 letter to you, a special hearing will be required.

On April 14, 2006 I spoke with Mr. Richards of your office, who suggested I write this letter for your review and countersignature. Once you have had an opportunity to review this letter, please countersign it in the space indicated below to reflect your agreement with its terms. Thank you for your assistance with this matter.

Sincerely,

Dino La Fiandra

Dino C. La Fiandra

Approved and Accepted:

Timothy Kotroco

Timothy M. Kotroco, Director
Department of Permits and Development Management

#359229

OG-GTC-SP

OLD POLICY MANUAL/TITLE #		ZCPM #	PAGE
	BUSINESS AND MANUFACTURING		
BM-1	Access (Heavier Uses through lighter uses)	102.6	1-42.1
BM-1A	Amusement Devices	101	1-5
BM-2	Auction Sales	233.2	2-42
		253.1.F.1A	2-69
BM-3	Bingo	1B01.1.A.14.e	1B-4
		230.11	2-35
		233.2	2-42
		253.1.F.9	2-69
BM-4	Carnivals	400.1.e	4-1.2
BM-5	Clubs, Health Spas and Gyms, etc	230.7	2-33
		230.13	2-35
BM-6	Crematorium	230.13	2-36
BM-7	Landscaping, Tree Service, Nursery, and Farm	101	1-10
		101	1-21
BM-8	Massage Parlors	230.9	2-34
BM-9	M.H. Exclusion Uses	256.3	2-75
BM-10	Parking Rules and Diagrams	409.1	4-33
BM-10A	Parking (leased)	409.7.C	4-40E
BM-10B	Parking - Volunteer Fire Companies	409.6.A	4-40B
BM-10C	Business or Industrial Parking in D.R. Zones	409.8.B.2.g	4-40H
BM-11	Paving	409.8.A	4-40E
BM-12	Recreation Uses (skateboard, waterslides, go-carts)	233.2	2-42
BM-13	Residences in Manufacturing Zones	241.2	2-59
		302.1	3-2
BM-14	Retail Sales in M.L.	253.1.C	2-68
		253.1.F.1B	2-69
BM-14A	Grandfathering in M.L.	103.1.B	1-43
BM-15	Sales and Service in B.L.	230.9	2-33
BM-16	Satellite Dishes in Business and Manufacturing Zones	400.1.e	4-1.4
BM-17	Service Stations		
	A. Conversions to gas & go	405.3	4-9
	B. Two separate Traders License	405.4.C.1	4-15
BM-18	Tents (temporary)	400.1.e	4-1.5
BM-19	Trailers	400.1.e	4-1.5
		415.6	4-79
	D. Compact Utility Trailer Sales in B.L.		
BM-20	Towing Licenses	405.4.C.1	4-15
		408	4-27
BM-21	Truck and Car Rental, and Taxicabs	101	1-17
		230.13	2-37
BM-22	Volunteer Fire Company in B.M.	233.4	2-44
BM-23	U-Cart Concrete Sales	101	1-10
BM-24	Helistop		
BM-25	Automotive Wholesale Dealer's Office	FORM	L 4-16
BM-26	Transporting Unlicensed Vehicles	405.E.1	
BM-27	Mixed Uses on One Property	102.2	1-42
		1B02.2	1B-24
		230.10	2-35
		233.2A	2-43
		251	2-64
		253.1.E	2-69

06-674-SPH

WHITEFORD, TAYLOR & PRESTON L.L.P.

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FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

October 27, 2006

Via Hand Delivery
Ms. Kristin Mathews
Bureau of Zoning Review
111 W. Chesapeake Avenue, Room 111
Towson, Maryland 21204

Re: Carmax Facility, Pulaski Highway
Case Number 06-674-SPH

Dear Ms. Mathews:

Following up on our discussion of earlier today, please note my client's request to postpone the hearing in Case No. 06-674-SPH, which is presently scheduled before the Deputy Zoning Commission for November 6th. By agreement with Mr. Nelson, who represents several nearby interests, please schedule this hearing for November 29, 2006, which you had been holding for a possible second day for this hearing.

Should you have any questions, please contact me.

Sincerely,

Dino C. La Fiandra

DCL:lsp
cc: G. Macy Nelson, Esq.
371198

WHITEFORD, TAYLOR & PRESTON L.L.P.

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FAX 703 836-5558

December 28, 2006

Via Hand Delivery

Mr. John V. Murphy, Deputy Zoning Commissioner
401 Bosley Avenue, Room 405
Towson, MD 21204

DEC 2 [illegible]

Re: Carmax / Pulaski Highway
06-674-SPH

Dear Mr. Murphy:

Upon reviewing Mr. Nelson's brief in opposition to the Petition for Special Hearing in the above-referenced matter, I must note a material misstatement of fact in the brief. On page 5 of the brief, Mr. Nelson states that Carmax will "sell half of the cars which enter this facility through auction." There was no testimony to this effect whatsoever.

Mr. Jagdmann testified Carmax auctions half the cars that it acquires from its customers. However, Carmax acquires cars from other sources as well, which are reconditioned and resold at retail. Accordingly, auction sales will account for significantly less than half the traffic at this facility.

Sincerely,

Dino C. La Fiandra

C: G. Macy Nelson, Esquire

WHITEFORD, TAYLOR & PRESTON L.L.P.

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FAX 703 836-3558

January 9, 2007

John V. Murphy, Deputy Zoning Commissioner
Office of the Zoning Commissioner
401 Bosley Avenue, Suite 405
Towson, MD 21204

Re: Carmax Pulaski Highway; 06-674-SPH

Dear Mr. Murphy:

This letter responds to your voicemail message to me wherein you asked for clarification on the breakdown of the zoning within the Carmax portion of the Schwaber Property. The Schwaber Property contains 31.48 acres. Within the greater Schwaber Property, Carmax is the lessee of 24.85 acres, zoned as follows: BR (20.82 acres), ML (0.66 acres), RC 2 (3.37 acres).

Should you have any questions, please let me know.

Sincerely,

Dino C. La Fiandra

C: G. Macy Nelson, Esquire

375260

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FAX 703 836-3558

February 9, 2007

Via Hand Delivery
Mr. Timothy M. Kotroco, Director
Baltimore County Department of Permits and Development Management
111 W. Chesapeake Avenue, Room 105
Towson, Maryland 21204

Re: Carmax Reconditioning Facility / Pulaski Highway
Case No. 06-674-SPH
NOTICE OF APPEAL

Dear Mr. Kotroco:

The Deputy Zoning Commissioner issued his Order in the above-referenced case on January, 11, 2007. Carmax Auto Superstores, Inc. ("Carmax") notes an appeal from Conditions 2, 3, 4, 5, and 16 of the Order (contained on pages 20 and 21). Carmax, the lessee of the land at issue in the Petition for Special Hearing, was a Petitioner and participant in the hearing before the Deputy Zoning Commissioner. Carmax respectfully requests that the Board of Appeals *vacate* Conditions 2, 3, 4, 5, and 16 of the Order.

A copy of the January 11, 2007 Order is enclosed for your convenience, as well as a check for $400 for the filing fee for this appeal. Should you have any questions, please contact me.

Sincerely,

Dino La Fiandra.

Dino C. La Fiandra

Enclosures: Order, check

C: Deputy Zoning Commissioner
Board of Appeals
G. Macy Nelson, Esquire
Carmax Auto Superstores, Inc.
(All copies by U.S. Mail, without enclosures)

377166

RECEIVED
FEB 09 2007
Per....

2006-0674-SPH

ADVENTpds

project delivery solutions

March 11, 2010

Mr. Edward Kelly
CarMax Auto Superstores, Inc.
12800 Tuckahoe Creek Parkway
Richmond, VA 23238

RE: CarMax #7906
11301 Pulaski Highway
White Marsh, MD

Dear Mr. Kelly:

As you know, CarMax Auto Superstores, Inc. is developing a 25 acre parcel located at 11301 Pulaski Highway, White Marsh, Maryland as an automobile service garage facility and a private auto auction facility. CarMax obtained a Special Exception for auction use from the Baltimore County Zoning Commissioner on December 12, 2007, with an Amended Order following on January 14, 2008,(Case 06-674-SPH). Thereafter, CarMax obtained Development Plan approval (3/10/08) and Plat approval (6/5/08) from Baltimore County, all of which are conditions precedent to receiving building permits from Baltimore County. This memorandum outlines the actions taken by CarMax to diligently pursue construction under the issued permits and the circumstances under which the construction continues.

PRE-CONSTRUCTION ACTIVITIES

Upon approval of the Special Exception, CarMax retained architects to prepare construction documentation necessary for obtaining approvals of the design, permitting, and construction of the facilities. The improvements approved for the site include an employee parking lot, an automobile service building, an auction building, and a very large inventory storage lot integral to the operation of the auction facility and the service garage facility. The improvements include site utility work and substantial stormwater management facilities.

Permits (see below) were issued on June 16, 2008 and a field meeting with Baltimore County was successfully concluded shortly thereafter, allowing construction to commence on the site. The general contractor, Atlantic Builders Group (ABG), commenced construction on July 8, 2008.

PERMITTING

Baltimore County issued Building Permit No. B689997 on June 16, 2008, allowing soil and erosion control, mass grading and site utility construction on-site and other permits for stormwater management, and for construction of retaining walls. Permits for vertical construction (buildings) are pending and will be issued once the site is stabilized. As discussed below, achieving site stabilization is an ongoing process. Construction, when commenced on July 8, 2008, was being performed under the above-noted permit, which is currently effective and active.

In addition to building permits required by Baltimore County, construction of the facilities requires a Utility permit and an Access permit from the State Highway Administration (SHA). The SHA permits are required not only for construction of a deceleration lane and connection to public utilities, but are critically-required for fulfillment of the storm water management plan for the site. SHA issued Utility Permit No. B4-08-437 on July 11, 2008 to allow, among other things, construction of storm drainage in the SHA right-of-way.

CONSTRUCTION ACTIVITIES

During the initial phase of construction, it is critical to achieve a "stabilized site" through grading and erosion and sediment control measures in order to allow permitting for vertical construction (service garage and auction buildings) to proceed. To this end, it became imperative to complete all storm water management facilities to their interim configuration as soil and erosion control facilities necessary to achieve a "stabilized site". Complicating matters, on or about August 30, 2008 while performing construction work, two important items were discovered. First, it was discovered that existing BG&E gas lines in the ROW were in conflict with the design of the storm water piping required to connect the CarMax emergency overflow swale facility into the public storm sewer facility. It was also discovered that an adjacent property owner had failed to properly maintain conveyance of SHA storm drainage through his property resulting in an inability of CarMax to certify suitable outfall for its emergency overflow swale facility. Although the intended stormwater outfall was technically located "off-site", Baltimore County determined that a "stabilized site" could not be achieved until such time as the "on-site" storm water management system was connected to "suitable outfall", requiring resolution of both of these two items before permits for vertical construction could be issued.

As of April 2009, two storm water detention ponds had been completed on site: an approximately 0.5 acre pond with discharge and overflow structures in the "front" of the site and an approximately 1 acre pond with discharge and overflow structures in the "back" of the site. Furthermore, the previously existing drive-in theatre infrastructure had been completely demolished, 82,767 CY of earth (including 41,813 CY hauled-off) was relocated within or removed from the site, and another 11,000 CY of topsoil was redistributed on the site. In addition, 12 manholes, 3,184 LF of reinforced concrete pipe of various sizes, 396 LF of ductile iron pipe, and 2,939 LF of perimeter and internal chain link fencing were installed. Twenty acres of permanent grass seeding was dispersed on the site. As a direct result of these efforts to improve the site and allow permitting to continue, CarMax incurred construction (hard) costs of approximately $1.6 million.

With regard to the off-site issues involving conveyance into the public storm sewer system and the suitability of outfall, CarMax simultaneously entered into negotiations with BG&E on cost and schedule to relocate the gas lines and entered into discussions with SHA and adjacent property owners on obligations for establishment and maintenance of suitable outfall. A price for relocation of the gas lines and a suitable form of agreement for performance of the work has been agreed upon between CarMax and BG&E. Accordingly, relocation of the gas lines was to have commenced once the suitable outfall issues were resolved with SHA and the adjacent property owners.

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With regard to the suitability of the off-site outfall, CarMax was advised by SHA in May, 2009 that, in light of the circumstances now known to exist on the adjacent property owner's property, the original outfall design utilizing a conveyance to an existing outfall location on that adjacent property owner's property was not a viable alternative and that a new off-site outfall would have to be designed and constructed at CarMax's expense. CarMax evaluated several alternative schemes, obtained the concurrence of SHA and affected landowners, and has retained a consulting engineer who is developing construction documents. Performance of the offsite storm water work, at a cost of approximately $175,000, will be completed in Spring 2010 following permitting and as weather will allow. Upon completion of the off-site work, Baltimore County should consider the site "stabilized" and will issue the remaining building permits, thereby allowing construction to continue. The new design for suitable outfall does not require the relocation of the BG&E gas lines.

CONCLUSION

CarMax has been continuously performing construction work directly related to the ultimate use of the site as a private auto auction and service garage facility under continuously and currently effective building permits issued by the appropriate authorities. CarMax has invested over $1.6 Million in completed construction work, continues to maintain the site as active construction site, and continues to maintain sizable securities with Baltimore County. But for intractable offsite issues, additional permits would have been issued by Baltimore County which will allow vertical construction work to move forward.

Should you have any questions, please don't hesitate to contact me.

Sincerely,

Paul Joseph

Paul Joseph
Project Director

Cc: Dino La Fiandra (DCL, Whiteford, Taylor & Preston)
John McNamara (CarMax)

PLEASE PRINT CLEARLY

CASE NAME Carmax-Pulaski
CASE NUMBER 06-674-SPH
DATE 11/29/06

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
MICKEY CORNELIUS	9900 FRANKLIN SQ DR. STE. H	BALTIMORE MD 21236	mcornelius@trafficgroup.com
DINO LaFiandra	210 W. Penn #400	21204	dlafiandra@wtplaw.ca
Joseph Jagdmann	12800 Tuckahoe Creek Pkwy	Richmond, VA 23238	Joe_Jagdmann@carmax.com
Jim Hermann	1895 EDEN MILL ROAD	Rylesville MD 21132	Jhermann@MMAGT[redacted].com
Scott Harvey	930 N. East St.	Frederick MD 21701	sharvey@phoenixnv[redacted]
BILL MONK	1220-C E. JOPPA ROAD SUITE 505	TOWSON MD 21286	wmonk@mmagta.com
SIDNEY WEIMAN	502 WASHINGTON AVE	TOWSON MD 21204	SWEIMAN@LEVINGANN.COM

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER _____
DATE _____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
PAT HOLTER	11316 LORELEY BEACH RD	WHITE MARSH MD 21162	
DOROTHY HINMANT	5820 STEVENS RD	" " "	
WILLIAM B. CHANCE JR	11345 Pulaski Hwy #54	White Marsh MD 21162	LstChantz@Aol.com

PLEASE PRINT CLEARLY

CASE NAME Carmax
CASE NUMBER 06-674-SPH
DATE

CITIZEN'S SIGN-IN SHEET

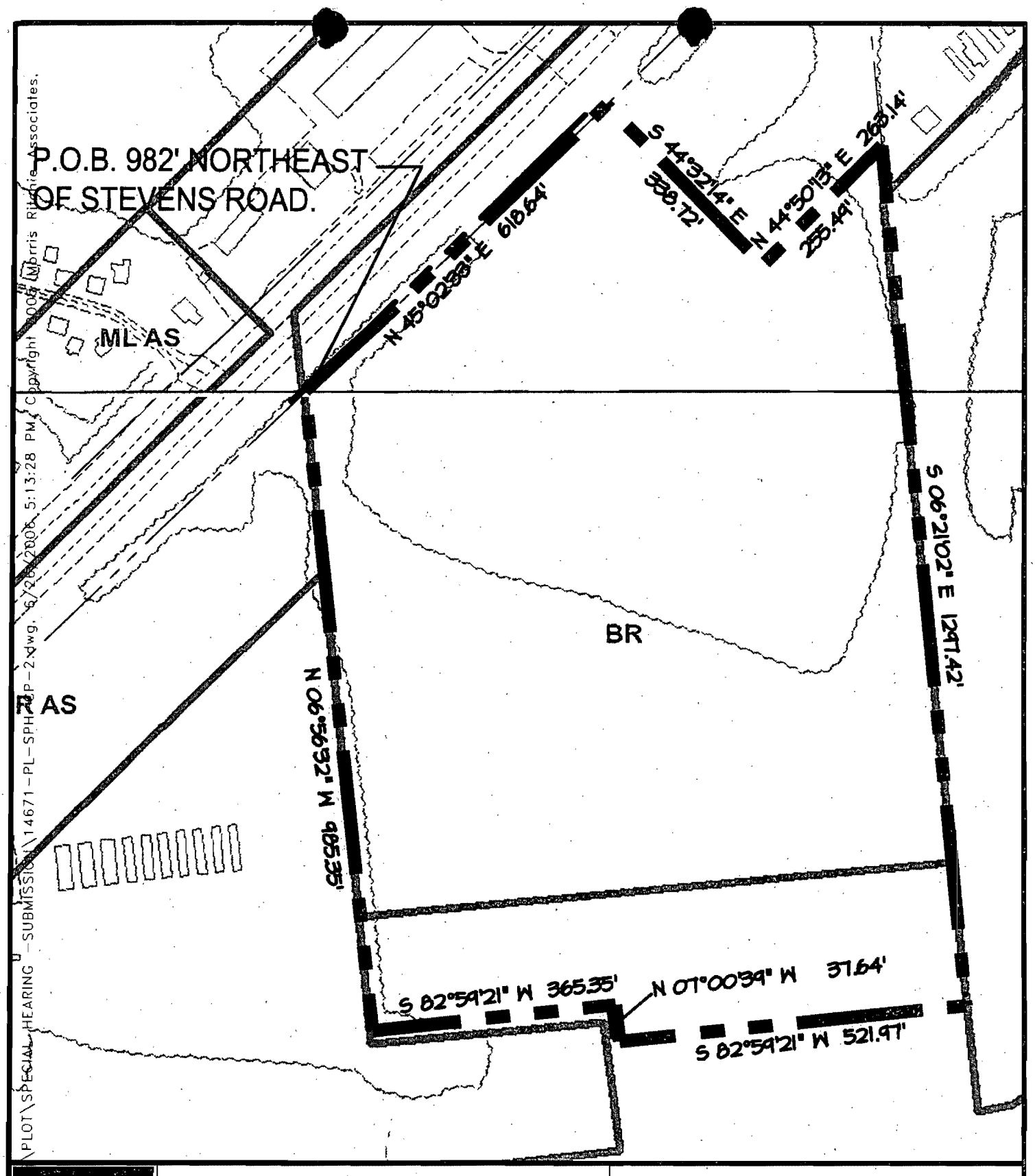
NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Michelle d'Aoust	11010 Bowerman Rd	White Marsh MD 21162-1614	madaoust@verizon.net
BETSY EISBART	6047 Loreley Beach RD.	White MARSH MD 21162	betseis@aol.com
Herbert R Bush	11 OPIE RD	Whitemarsh Md. 21162	
Frances Sanderson	6029 Loreley Beach Rd	White Marsh MD 21162	fransandersson@yahoo.com
MARY JO KRAUSZ	5905 Loreley Beach Rd	White Marsh, MD 21162	KRAUSZ2@msn.com
Robert L. Mitchell	9. OPIE Road	White MARSH MD. 21162	
WILLIAM P HOLTER dc	11316 LORELEY BEACH RD	WHITE MARSH M 21162	
*Robert M Baranowski Witness	11211 Beach Road	WHITE MARSH MD 21162	
Gerald Welsh	11311 Beach Rd	White Marsh MD 21162	JWelsh54@AOL.com

PLEASE PRINT CLEARLY

CASE NAME Carmax
CASE NUMBER 06-674-SPH
DATE 8/25/06

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Dino C. Lafiandra	210 W. Penn #400	21204	
Joe Jagdmann	12800 Tuckahoe Creek Pkwy	Richmond, VA 23238	Joe_Jagdmann@carmax.com
Bill Monk	1220 C Eastern Road	Towson 21286	wmon



MRA

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748

MRAGTA.COM

ZONING MAP

CARMAX PROPERTY

PULASKI HIGHWAY, WHITE MARSH MD
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

BALTIMORE COUNTY

SCALE: 1"=200'	DATE: 06/27/06	DRAWN BY: KC	DESIGN BY: KC	REVIEW BY: JH	JOB NO. : 14671.01

OG. 674 SP11

06-674-SPH
WITHDRAWN + DISMISSED
UPON CONSIDERATION THAT
REF: THIS 08-121-X CASE

12/12

IN RE: **PETITION FOR SPECIAL EXCEPTION** S/E Pulaski Highway, 970' NE of Stevens Road **(11301 Pulaski Highway)** 11th Election District 5th Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
Schwaber Trust, *Legal Owner* Carmax Auto Superstores, Inc., *Lessee* Petitioners	*	**Case No. 08-121-X**

* * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by Carmax Auto Superstores, Inc. (Carmax), by and through its attorneys Dino C. LaFiandra, Esquire, and Whiteford, Taylor & Preston, LLP. The Petitioner requests a Special Exception to use the subject property for a limited scale private automobile auction (Used Car Sales) in the B.R. zoned area of the site, in combination with a service garage permitted by right per the Baltimore County Zoning Regulations (B.C.Z.R.). The subject property and requested relief are more particularly described on the site plan, which was accepted into evidence and marked as Petitioners' Exhibit 1A and 1B.

Appearing at the requisite public hearing on behalf of Carmax and in support of the request were Dino C. La Fiandra, Esquire of Whiteford, Taylor & Preston, LLP; Joseph Jagdmann, Real Estate Manager for Carmax, and Bill Monk, the consulting landscape architect from Morris & Ritchie Associates, Inc., who supervised the preparation of the site plan. Also present for Carmax was Mickey Cornelius, a traffic consultant with the Traffic Group, Inc., and Scott Harvey, a noise consultant with Phoenix Noise and Vibration, Inc. The property is owned by an entity known as the Schwaber Trust (Trust). Sidney Weiman, Esquire and Mark Wagonheim were present in a representative capacity on behalf of the Trust. While there were

IN RE: **PETITION FOR SPECIAL EXCEPTION** * BEFORE THE
S/E Pulaski Highway, 970' NE of
Stevens Road * ZONING COMMISSIONER
(11301 Pulaski Highway)
11th Election District * OF
5th Council District
* BALTIMORE COUNTY
Schwaber Trust, *Legal Owner*
Carmax Auto Superstores, Inc., *Lessee* * **Case No. 08-121-X**
Petitioners

* * * * * * * * *

AMENDED ORDER

This matter again returns to this Commission by virtue of a Motion for Reconsideration filed by the Office of People's Counsel. Peter Max Zimmerman raises concerns as to the scope of conditions contained within the Order issued by me on December 12, 2007.

By way of background, Carmax Auto Superstores, Inc. received approval on January 11, 2007, following lengthy public hearings to use 24.85 acres of a 31.48 acre tract in White Marsh for limited scale private automobile auctions from then Deputy Zoning Commission John V. Murphy in Case No. 06-674-SPH. That approval was appealed to the Board of Appeals. One of the issues on appeal was whether said auction sales were permitted within the scope of a "service garage" under the definition of that term in the Baltimore County Zoning Regulations (B.C.Z.R.), or whether such auctions require approval by way of a special exception in the B.R. zone. Carmax, seeking to eliminate the issue on appeal, filed the instant Petition for Special Exception (Case No. 08-121-X). For judicial economy, Carmax will dismiss its Petition for Special Hearing pending before the Board of Appeals if its approval granted in the present case is not appealed. Such action would therefore render the validation received in Case No. 06-674-SPH moot and the approval in this case would become the operative regulatory approval for the Special Exception Area within the property owned by the Schwaber Trust. For these reasons, and out of an abundance of caution, People's Counsel asks as a housekeeping measure, that all

BW 11/7
9 AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
Amended Comments

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: 11/02/2007

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

SUBJECT: S/S of Pulaski Highway, 970 ft. NE

INFORMATION:

Item Number: 8-121

Petitioner: Schwaber Trust

Zoning: BR, ML and RC 2

Requested Action: Special Exception

RECEIVED
NOV 05 2007
BY:

SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the petitioner's request to allow a limited scale Private Auto Auction (used car sales) facility in the BR zoned area, in combination with a service garage on the subject property. This Office does not oppose that request provided the following is submitted to the office for review and approval:

Submit a sign package for review and approval prior to the issuance of any building permit.

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

Reviewed by: CJM kyf LO

Division Chief: Lyn Lanham
AFK/LL: CM

BW 11/7
9AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED
OCT 0 4 2007
BY:.....

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination DWL

DATE: October 3, 2007

SUBJECT: Zoning Item # 08-121-X
Address 11200 blk Pulaski Highway
Car Max

Zoning Advisory Committee Meeting of September 10, 2007

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

__X__ The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

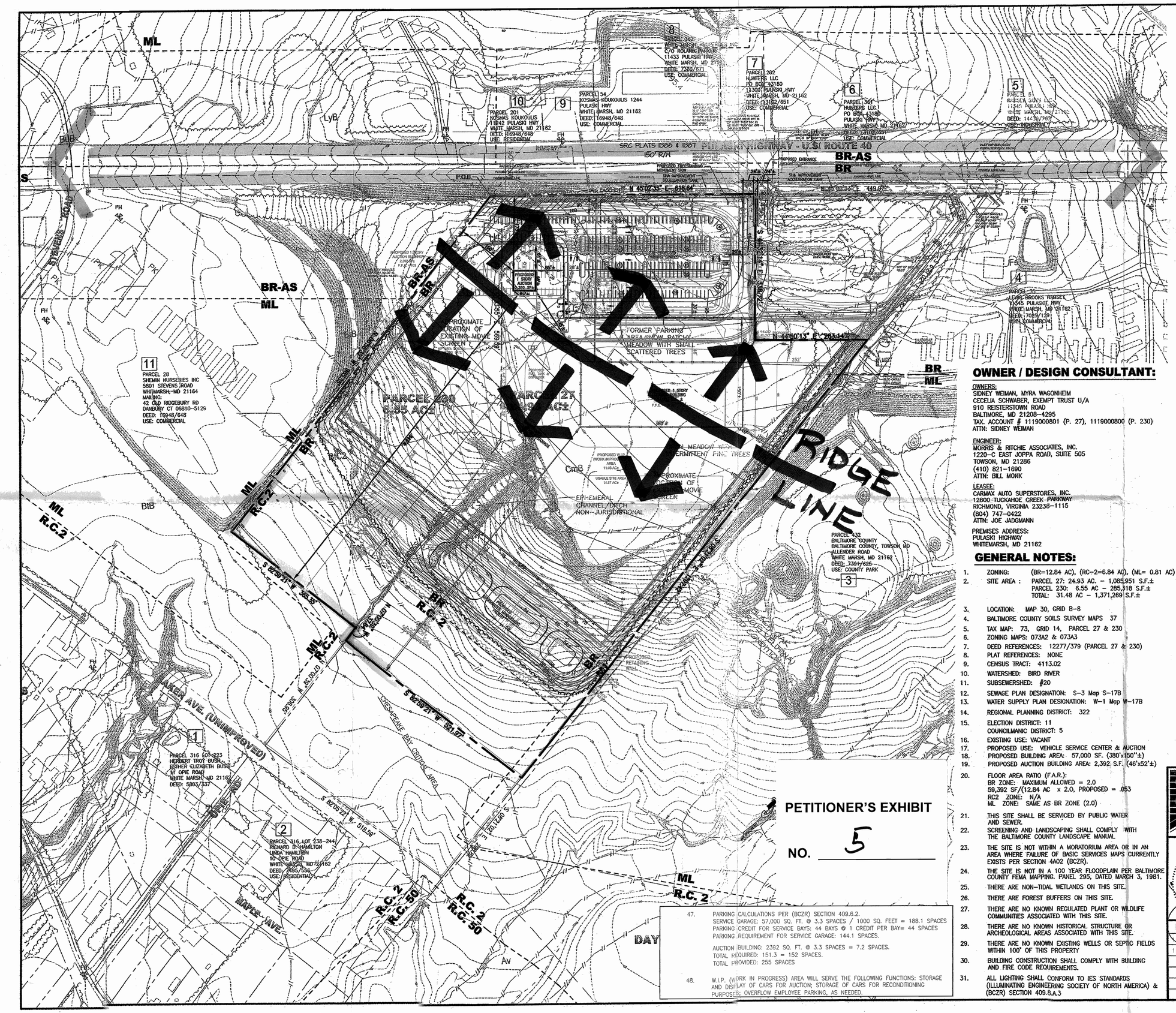
__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

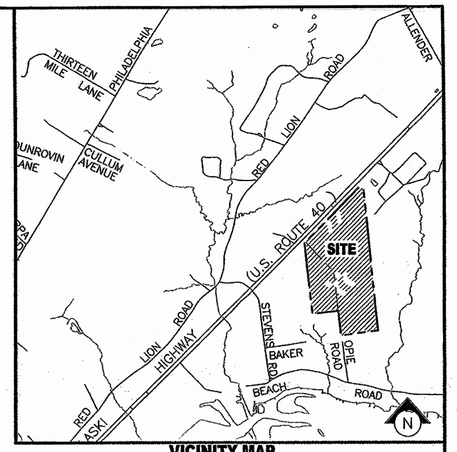
__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

__X__ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:
All conditions of the March 20, 2007 forest buffer variance and alternatives analysis as well as the approved forest conservation/forest establishment and protection plan must be met in developing this property.

Reviewer: Glenn Shaffer Date: October 1, 2007





VICINITY MAP
SCALE: 1"=1,000'

OWNER / DESIGN CONSULTANT:

OWNERS:
SIDNEY WEIMAN, MYRA WAGONHEIM
CECELIA SCHWABER, EXEMPT TRUST U/A
910 REISTERSTOWN ROAD
BALTIMORE, MD 21208-4295
TAX ACCOUNT # 1119000801 (P. 27), 1119000800 (P. 230)
ATTN: SIDNEY WEIMAN

ENGINEER:
MORRIS & RITCHIE ASSOCIATES, INC.
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MD 21286
(410) 821-1690
ATTN: BILL MONK

LESSEE:
CARMAX AUTO SUPERSTORES, INC.
12800 TUCKAHOE CREEK PARKWAY
RICHMOND, VIRGINIA 23238-1115
(804) 747-0422
ATTN: JOE JADGMANN

PREMISES ADDRESS:
PULASKI HIGHWAY
WHITEMARSH, MD 21162

GENERAL NOTES:

1. ZONING: (BR=12.84 AC), (RC-2=6.84 AC), (ML= 0.81 AC)
2. SITE AREA : PARCEL 27: 24.93 AC. ± 1,085,951 S.F.±
   PARCEL 230: 6.55 AC ± 285,318 S.F.±
   TOTAL: 31.48 AC ± 1,371,269 S.F.±
3. LOCATION: MAP 30, GRID B-8
4. BALTIMORE COUNTY SOILS SURVEY MAPS 37
5. TAX MAP: 73, GRID 14, PARCEL 27 & 230
6. ZONING MAPS: 073A2 & 073A3
7. DEED REFERENCES: 12277/379 (PARCEL 27 & 230)
8. PLAT REFERENCES: NONE
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10. WATERSHED: BIRD RIVER
11. SUBSEWERSHED: #20
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13. WATER SUPPLY PLAN DESIGNATION: W-1 Map W-17B
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15. ELECTION DISTRICT: 11
    COUNCILMANIC DISTRICT: 5
16. EXISTING USE: VACANT
17. PROPOSED USE: VEHICLE SERVICE CENTER & AUCTION
18. PROPOSED BUILDING AREA: 57,000 SF. (380'x150'±)
19. PROPOSED AUCTION BUILDING AREA: 2,392 S.F. (46'x52'±)
20. FLOOR AREA RATIO (F.A.R.):
    BR ZONE: MAXIMUM ALLOWED = 2.0
    59,392 SF/(12.84 AC x 2.0, PROPOSED = .053
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40. SETBACKS (TO PROPERTY LINES):

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SIDE	30'	102'±	30'	150'±
REAR	30'	733'±	30'	849'±
BUILDING TO BUILDING	60'	195'±	60'	195'±

41. BUILDING HEIGHT
    BR (PER BCZR SECTION 231)*
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ZONING RELIEF REQUESTED

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PETITIONER'S EXHIBIT
NO. 5

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ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748
MRAGTA.COM

STATE OF MARYLAND — JAMES W. HENRY — No. 1044 — REGISTERED LANDSCAPE ARCHITECT

PLAN TO ACCOMPANY SPECIAL HEARING APPLICATION

CARMAX PROPERTY
PULASKI HIGHWAY
WHITE MARSH, MARYLAND

11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

DATE	REVISIONS		
11/20/06	REVISED TO CORRECT PARKING CALCULATIONS & SHOW NEW SITE LAYOUT	JOB NO.:	14671
11/28/06	REVISED TO TO SHOW NEW SITE LAYOUT	SCALE:	1"=100'
		DATE:	06/27/06
		DRAWN BY:	KC
		DESIGN BY:	KC
		REVIEW BY:	JH/BM
		SHEET:	1 OF 3

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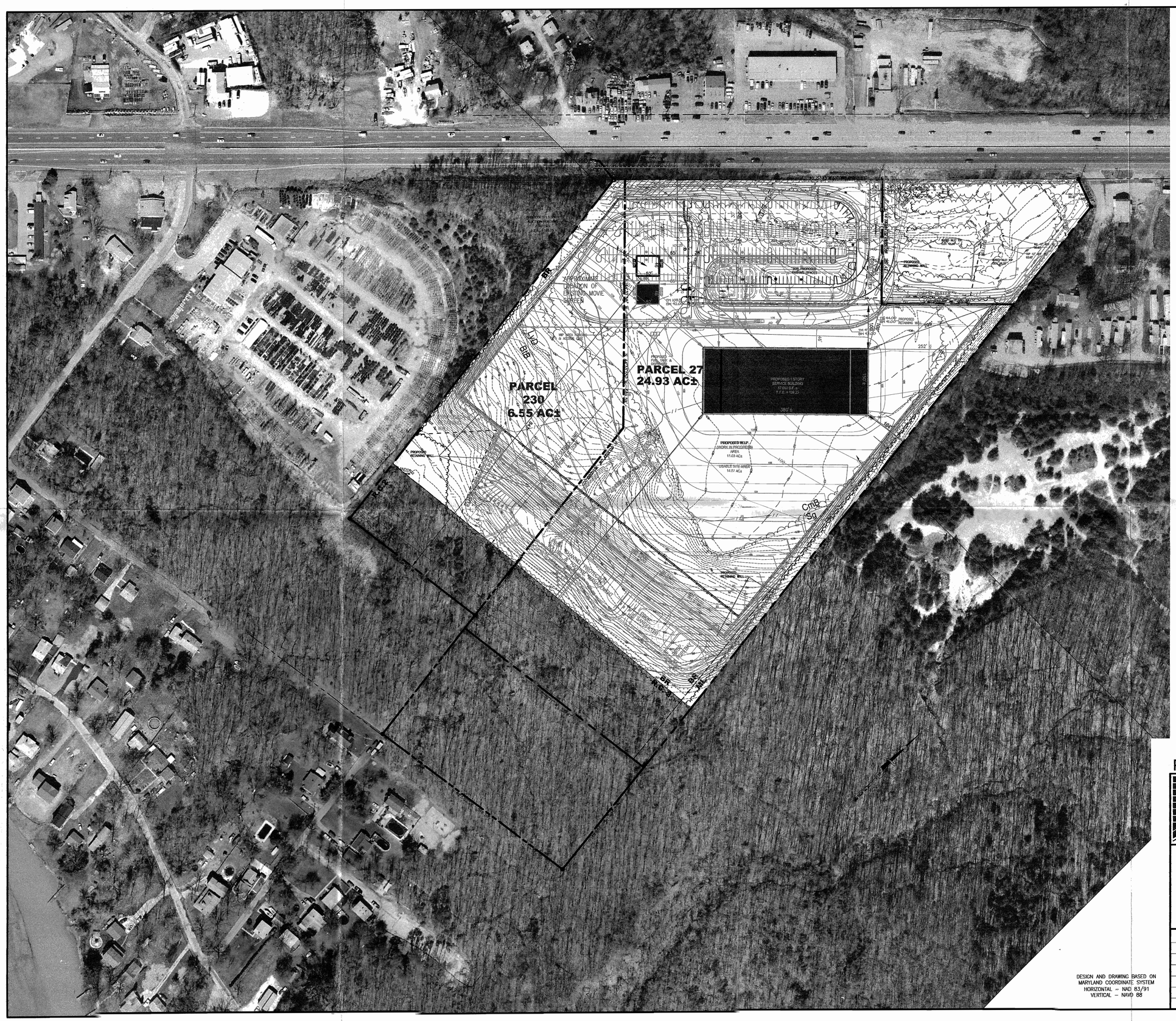

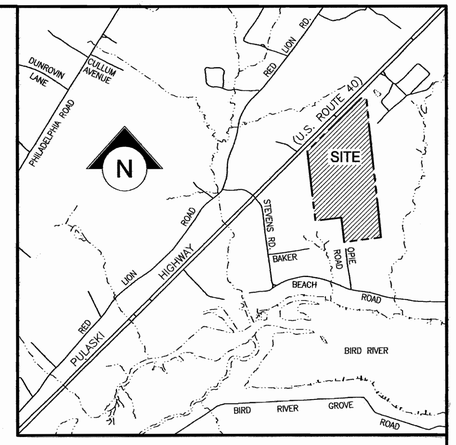

VICINITY MAP

SCALE: 1" = 1,000'

PETITIONER'S EXHIBIT

NO. 4

PDM# 11-1041

MORRIS & RITCHIE ASSOCIATES, INC.
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(410) 821-1690
FAX: (410) 821-1748

MRAGTA.COM

SPECIAL HEARING EXHIBIT
AERIAL/SITE OVERLAY

CARMAX PROPERTY

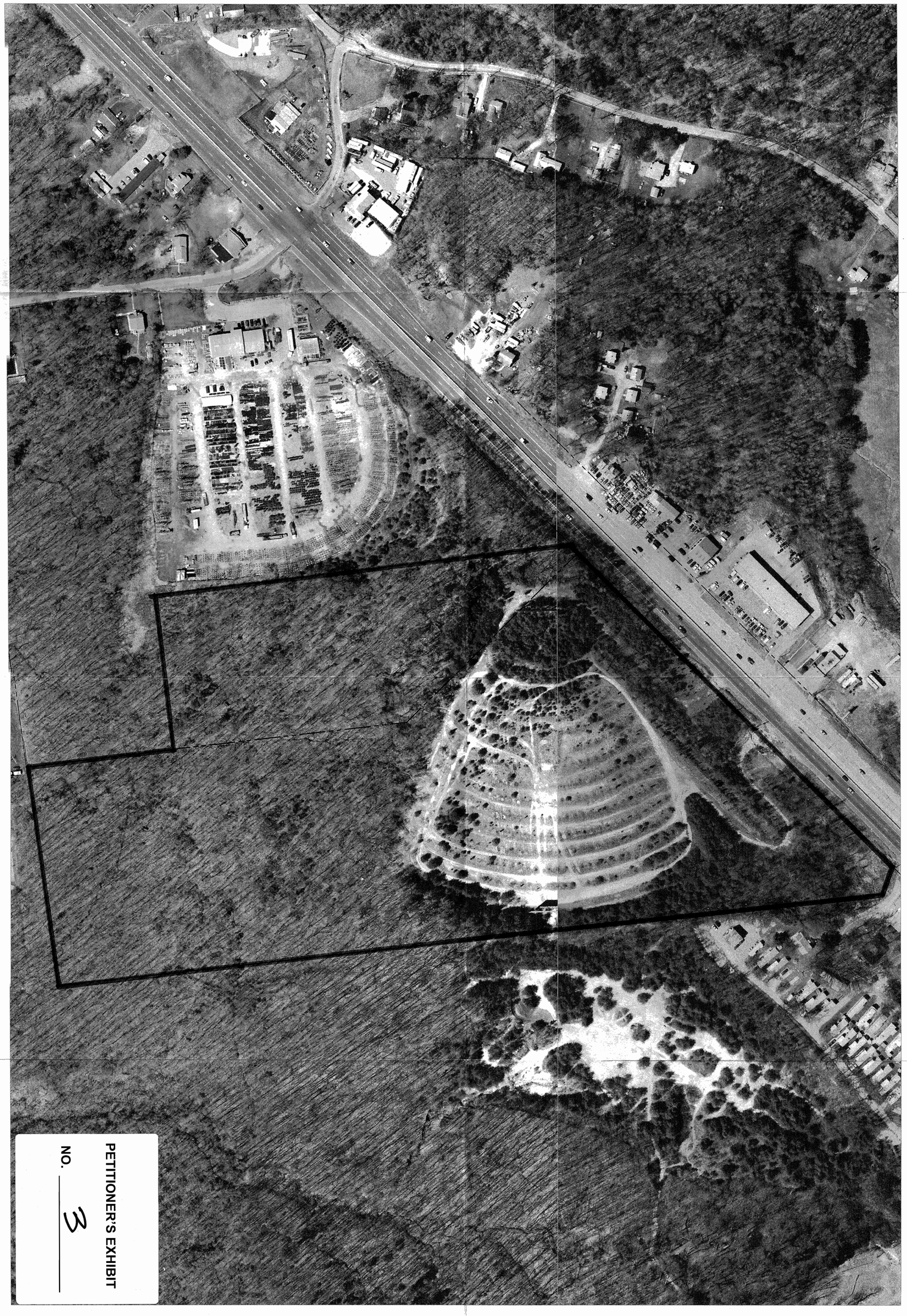
11301 PULASKI HIGHWAY
WHITE MARSH, MARYLAND

11TH ELECTION DISTRICT — 5TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

DATE	REVISIONS		
		JOB NO.:	14671.02
		SCALE:	1"=100'
		DATE:	11/28/06
		DRAWN BY:	KC
		DESIGN BY:	KC
		REVIEW BY:	JH/BM
		SHEET:	3 OF 3

DESIGN AND DRAWING BASED ON
MARYLAND COORDINATE SYSTEM
HORIZONTAL – NAD 83/91
VERTICAL – NAVD 88

P:\14671.01\PLANNING\PLOT\SPECIAL HEARING - SUBMISSION\14671-PL-SPH-COLOR PLAN-3.dwg, 11/28/2006 7:48:57 PM, Copyright 2005 Morris Ritchie Associates, Inc.



PETITIONER'S EXHIBIT
NO. 3

MORRIS & RITCHIE ASSOCIATES, INC.
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1220-C EAST JOPPA ROAD, SUITE 505
TOWSON, MARYLAND 21286
(410) 821-1690
FAX: (410) 821-1748

GIS TILE No.
GIS 073 A2 AND 073 A3

SCALE: 1" = 100'
DATE: 10-09-06
DRAWN BY:

SITE

PULASKI HWY

BIRD RIVER

DAYS COVE PARK

BAKER AVENUE

ML

ML AS

BR

BR AS

BL

RC 5

RC 2

DR 3.5

DR 5.5

MLR

MH

BM

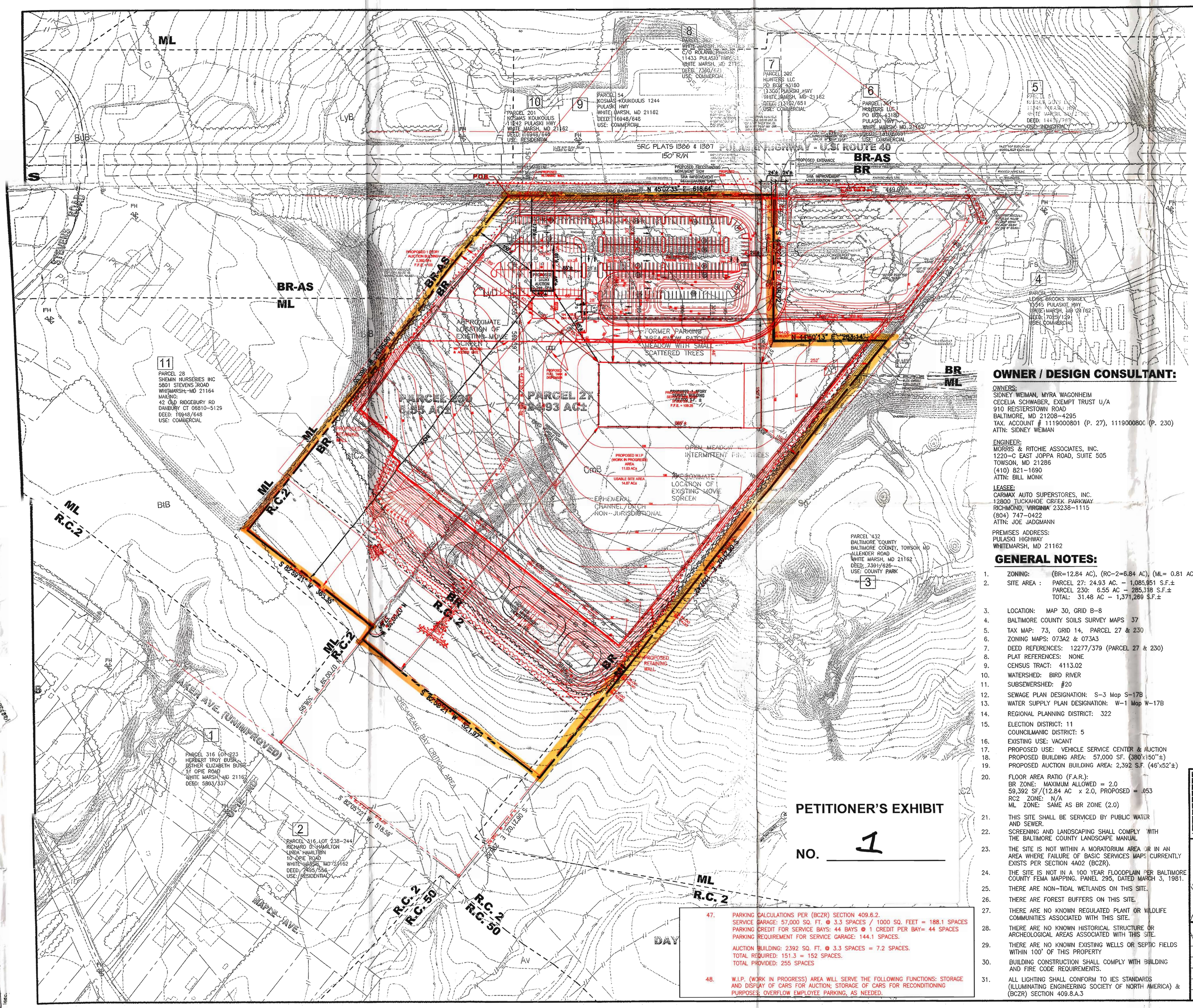
JUNKYARD

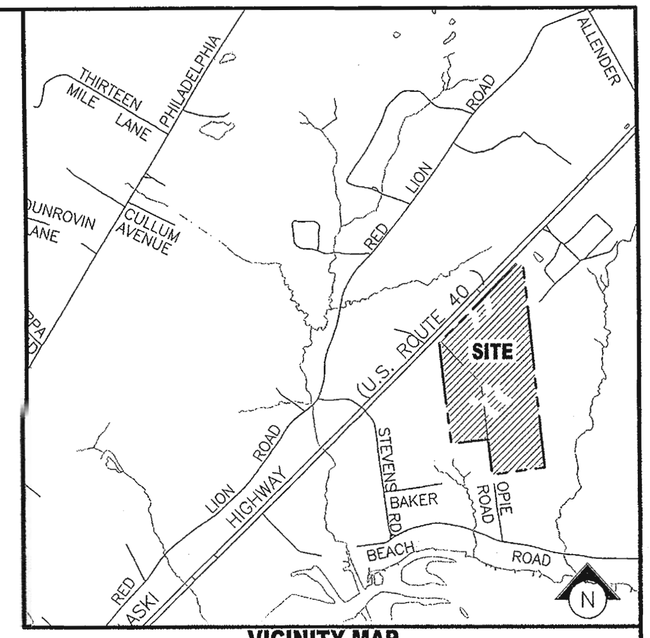
LEGEND

BIRD BUSINESS ZONES

MANUFACTURING ZONES

2





VICINITY MAP
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PETITIONER'S EXHIBIT
NO. 1

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PLAN TO ACCOMPANY SPECIAL HEARING APPLICATION

CARMAX PROPERTY
PULASKI HIGHWAY
WHITE MARSH, MARYLAND

11TH ELECTION DISTRICT — 5TH COUNCILMANIC DISTRICT
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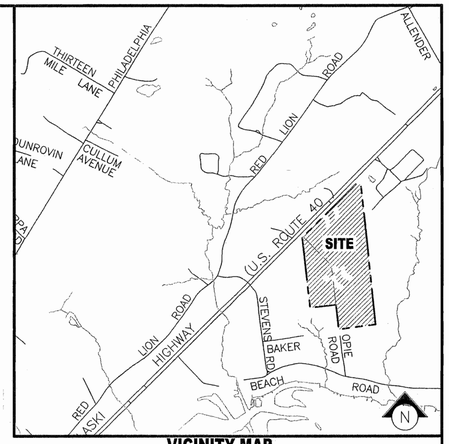

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20. FLOOR AREA RATIO (F.A.R.):
    BR ZONE: MAXIMUM ALLOWED = 2.0
    59,392 SF/(12.84 AC x 2.0, PROPOSED = .053
    RC2 ZONE: N/A
    ML ZONE: SAME AS BR ZONE (2.0)
21. THIS SITE SHALL BE SERVICED BY PUBLIC WATER AND SEWER.
22. SCREENING AND LANDSCAPING SHALL COMPLY WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL
23. THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
24. THE SITE IS NOT IN A 100 YEAR FLOODPLAIN PER BALTIMORE COUNTY FEMA MAPPING. PANEL 295, DATED MARCH 3, 1981.
25. THERE ARE NON-TIDAL WETLANDS ON THIS SITE.
26. THERE ARE FOREST BUFFERS ON THIS SITE.
27. THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
28. THERE ARE NO KNOWN HISTORICAL STRUCTURE OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
29. THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY
30. BUILDING CONSTRUCTION SHALL COMPLY WITH BUILDING AND FIRE CODE REQUIREMENTS.
31. ALL LIGHTING SHALL CONFORM TO IES STANDARDS (ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA) & (BCZR) SECTION 409.8.A.3
32. ALL PAVING SHALL BE BITUMINOUS DUST-FREE SURFACE AND PERMANENTLY STRIPED.
33. ZONING CASE HISTORY: NO PREVIOUS SPECIAL EXCEPTION VARIANCES OR SPECIAL HEARINGS FOR THIS SITE.
34. STORMWATER MANAGEMENT WILL BE PROVIDED & DESIGNED IN ACCORDANCE WITH BALTIMORE COUNTY DEPRM STANDARDS AND REGULATIONS.
35. STORMWATER QUALITY WILL BE PROVIDED & DESIGNED IN ACCORDANCE WITH BALTIMORE COUNTY DEPRM STANDARDS AND REGULATIONS.
36. NO KNOWN PREVIOUS COMMERCIAL PERMITS FOR PARCELS 27 & 230
37. THIS SITE IS LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
    2.46 ACRES± OF THE SITE ARE WITHIN THE CBCA AND LIMITED DEVELOPMENT AREA (LDA) OVERLAY.
38. THIS SITE IS LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
    19.59 ACRES± OF THE SITE IS CURRENTLY WOODED. PRELIMINARY FOREST CONSERVATION ANALYSIS INDICATES THAT 8.7 ACRES± OF FOREST MAY BE CLEARED WITHOUT THE NEED FOR REFORESTATION OR AFFORESTATION ON SITE.
39. SIGNAGE:
    PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH B.C.Z.R. SECTION 450.
40. SETBACKS (TO PROPERTY LINES):

	SERVICE BUILDING		AUCTION	
	REQUIRED	PROVIDED	REQUIRED	PROVIDED
FRONT	50'	386'±	50'	173'±
SIDE	30'	102'±	30'	150'±
REAR	30'	733'±	30'	843'±
BUILDING TO BUILDING	60'	195'±	60'	195'±

41. BUILDING HEIGHT
    BR (PER BCZR SECTION 231)*
    BR (35')**
    R.C. 2 (35')
    * ALL BUILDINGS MUST BE 750' (MINIMUM) BEYOND THE NEAREST R.C. ZONE. IF SETBACK DISTANCE IS MET, MAXIMUM BUILDING HEIGHT SHALL BE DETERMINED PER SECTION 231.
    ** IF ANY BUILDING IS CONSTRUCTED WITHIN 750' OF A R.C. ZONE THAN THE MAXIMUM BUILDING HEIGHT FOR ALL BUILDINGS ON SITE MAY NOT EXCEED 35'
42. PARKING CALCULATIONS PER (BCZR) SECTION 405.4.A.3.d.(1)
    1 PARKING SPACE PER EMPLOYEE ON LARGEST SHIFT = 120 REQUIRED
    = 238 PROVIDED
43. NO KNOWN PREVIOUS COMMERCIAL PERMITS APPLIED FOR OR GRANTED.
44. NO KNOWN ZONING HEARINGS, CRG OR WAIVERS APPLIED FOR OR GRANTED.
45. DRC HELD ON MAY 22, 2006; DRC NUMBER 052206I; DIST 11C5, LIMITED EXEMPTION 32-4-106(b)(8) GRANTED.
46. THERE ARE NO KNOWN FAILED BASIC SERVICES OR INTERSECTIONS ASSOCIATED WITH THIS SITE.

ZONING RELIEF REQUESTED

1. **"SPECIAL HEARING TO PERMIT AUCTIONS OF AUTOMOBILES AS PART OF A SERVICE GARAGE WHICH IS PERMITTED BY RIGHT." SAVE & EXCEPT PORTION OF RC-2 ZONE.**

MORRIS & RITCHIE ASSOCIATES, INC.
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STATE OF MARYLAND — VINCENT J. HERMANN — No. 1044 — REGISTERED LANDSCAPE ARCHITECT

PLAN TO ACCOMPANY SPECIAL HEARING APPLICATION

CARMAX PROPERTY
PULASKI HIGHWAY
WHITE MARSH, MARYLAND

11TH ELECTION DISTRICT — 5TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

DATE	REVISIONS		
		JOB NO.:	14671
		SCALE:	1"=100'
		DATE:	06/27/06
		DRAWN BY:	KC
		DESIGN BY:	KC
		REVIEW BY:	JH/BM
		SHEET:	1 OF 3

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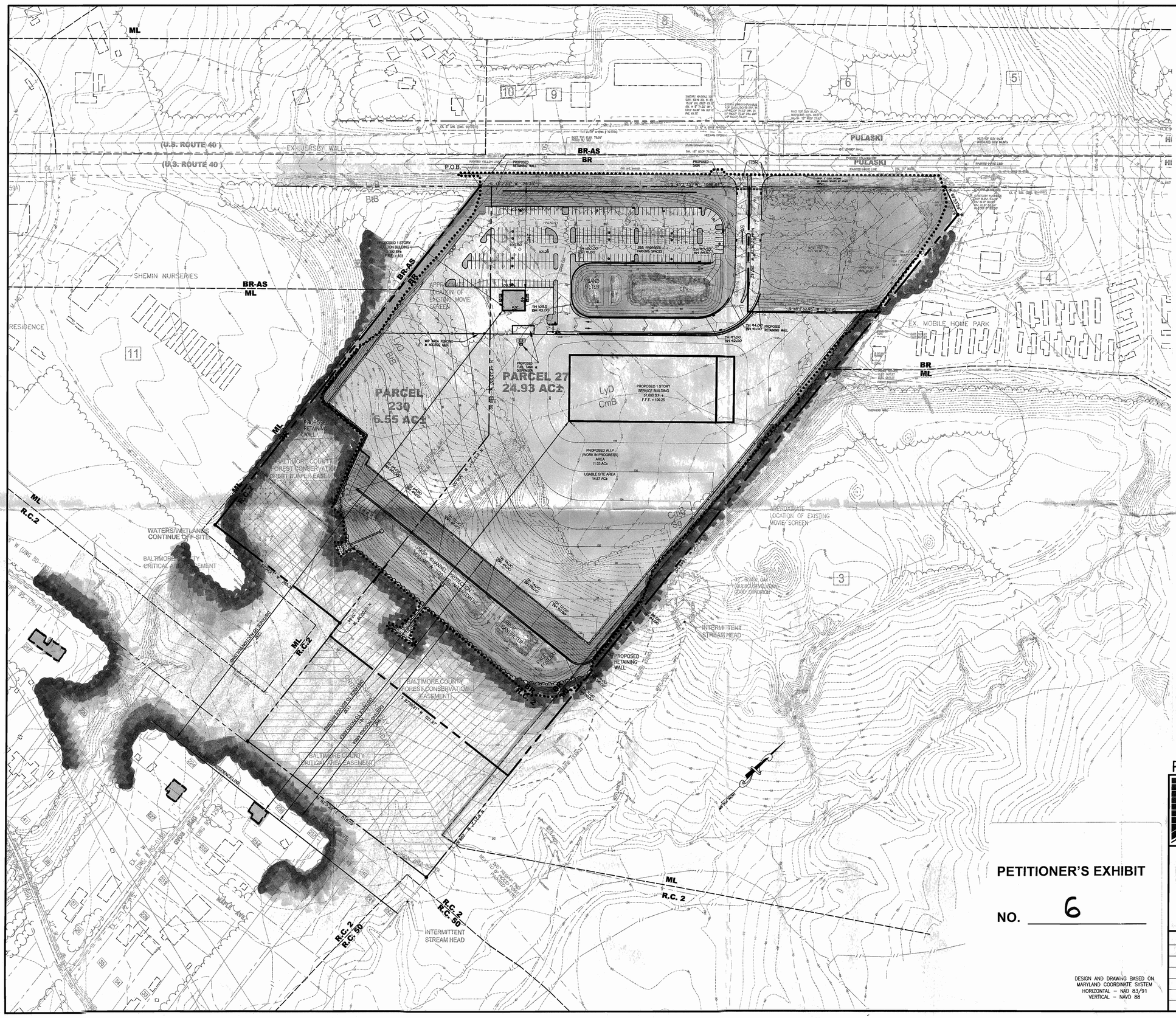
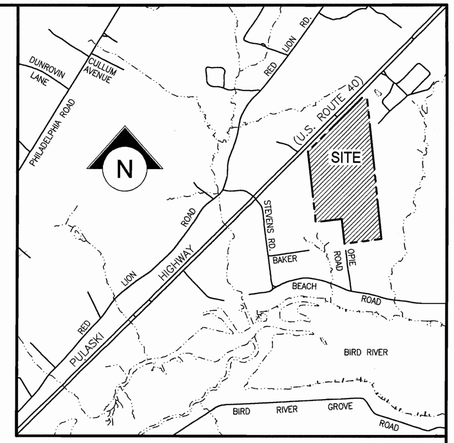
OG-6TH-SPH





VICINITY MAP

SCALE: 1" = 1,000'

LEGEND:

- RIGHT-OF-WAY
- PROPERTY LINE
- EXISTING WOOD LINE
- PROPOSED WOOD LINE
- GnB — SOILS PER BALTIMORE COUNTY SOIL SURVEY
- APPROXIMATE LIMITS OF NON-TIDAL WETLANDS
- CHESAPEAKE BAY CRITICAL AREA BOUNDARY
- CRITICAL AREA BUFFER
- 102 — EXISTING 2' CONTOUR
- 100 — EXISTING 10' CONTOUR
- ML — ZONING LINE
- EXISTING FIRE HYDRANT
- EX. 12" W — EXISTING WATER LINE
- EX. 30" SAN. — EXISTING SANITARY SEWER LINE
- EX. 18" SD. — EXISTING STORM DRAIN LINE
- OH — OH — EXISTING OVERHEAD WIRES
- PROPOSED BUILDING SETBACK
- PROPOSED BUILDING
- PROPOSED CURB
- PROPOSED BALTIMORE COUNTY FOREST BUFFER
- EXISTING BALTIMORE COUNTY FOREST BUFFER
- SLOPES >25%
- L.O.D.
- CRITICAL AREA EASEMENT
- FOREST CONSERVATION EASEMENT
- FOREST CONSERVATION/FOREST BUFFER EASEMENT
- PROPOSED FIRE HYDRANT
- PROPOSED WATER — PROPOSED WATER LINE
- PROPOSED SAN. — PROPOSED SANITARY SEWER LINE
- PROPOSED SD. — PROPOSED STORM DRAIN LINE

PDM# 11-1041

PETITIONER'S EXHIBIT

NO. 6

DESIGN AND DRAWING BASED ON MARYLAND COORDINATE SYSTEM HORIZONTAL – NAD 83/91 VERTICAL – NAVD 88

MORRIS & RITCHIE ASSOCIATES, INC.
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SPECIAL HEARING EXHIBIT
SITE LAYOUT PLAN

CARMAX PROPERTY

11301 PULASKI HIGHWAY
WHITE MARSH, MARYLAND

11TH ELECTION DISTRICT — 5TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

DATE	REVISIONS		
		JOB NO.:	14671.02
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		DATE:	11/28/06
		DRAWN BY:	KC
		DESIGN BY:	KC
		REVIEW BY:	JH/BM
		SHEET:	1 OF 3

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WILLIAM P. MONK
Principal

Project Assignment:

Expert Witness / Project Manager

Years of Experience:

MRA:	6
Other Firms:	25

Education:

Master of Urban Planning,
University of Illinois, 1975
Bachelor of Urban Planning,
University of Illinois, 1973

Professional Affiliations:

Mayor's Transition Committee for Economic Development, Mayor Martin O'Malley, City of Baltimore 1999-2000

Greater Towson Committee (formerly Towson Development Corporation)
President 1998-2000
Bd. of Directors 1994-2006

National Association of Industrial and Office Properties

Past Member:

American Planning Association, Member

National Golf Association, Member

MORRIS & RITCHIE ASSOCIATES, INC.

Qualifications:

Mr. Monk is a Principal of MRA and provides site planning, project management, government and community liaison services, and expert witness testimony for commercial, industrial, and residential projects.

His experience also includes golf course community master planning and golf course routing design.

Mr. Monk has extensive experience providing expert witness testimony. He is an approved expert witness in twelve jurisdictions throughout the mid-Atlantic region, including Prince George's County, Annapolis, Anne Arundel County, Baltimore, Baltimore County, Carroll County, Frederick County, Harford County, Howard County, and St. Charles Community in Maryland. Furthermore, he has testified in more than 400 zoning hearings over the past 25 years.

PETITIONER'S EXHIBIT

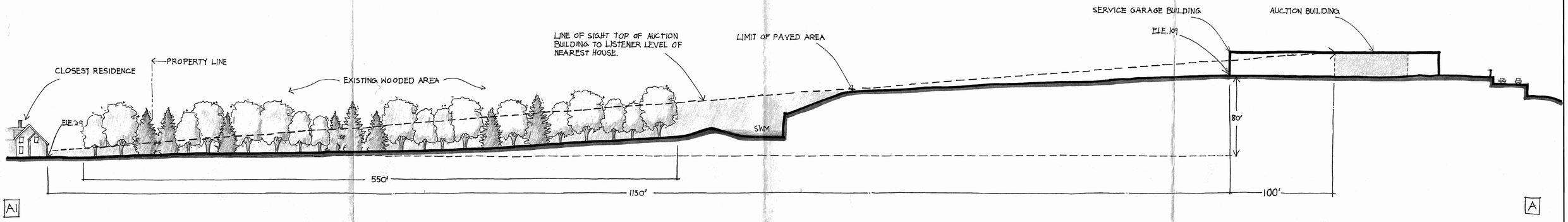
NO. 7

Pet Ex 8

8D

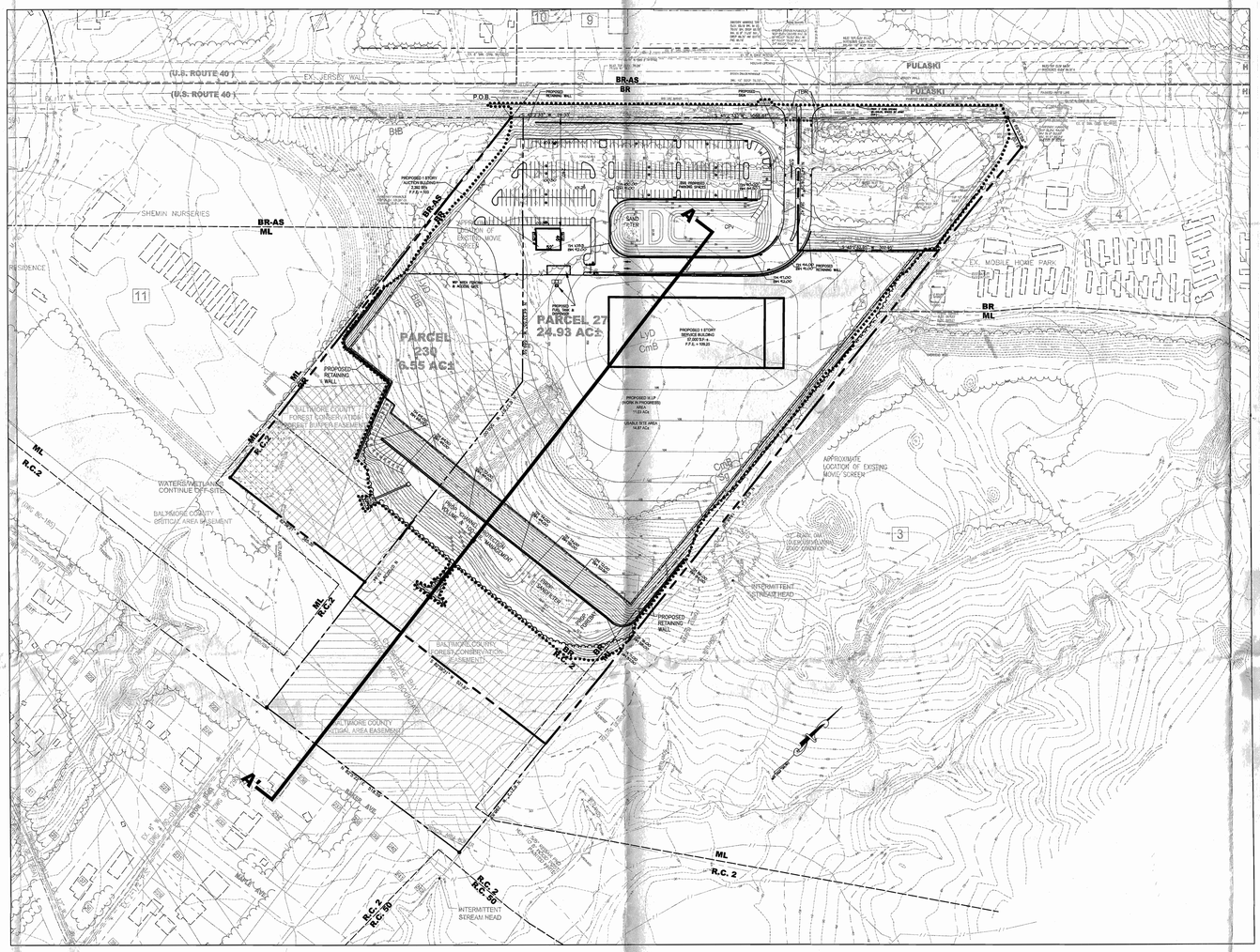
PETITIONER'S EXHIBIT

NO. 8 (A-D)
4 photos



SECTION ELEVATION

SCALE: 1"=30'



KEY MAP

SCALE: 1"=100'

DESIGN AND DRAWING BASED ON MARYLAND COORDINATE SYSTEM
HORIZONTAL = NAD 83/91
VERTICAL = NAVD 88

PETITIONER'S EXHIBIT

NO. 89

PDM# 11-1041

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SPECIAL HEARING EXHIBIT
SECTION ELEVATION

CARMAX PROPERTY
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WHITE MARSH, MARYLAND

11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

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		SHEET:	2 OF 3

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11 A

11 B