IN RE: **PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE –**	*	BEFORE THE
SE/S Belair Road, 600′ N of Fullerton Avenue **(7517 and 7519 Belair Road)**	*	ZONING COMMISSIONER
14th Election District	*	OF
6th Council District	*	BALTIMORE COUNTY
Norman H. McCarthy; Sr., et ux Petitioners	*	**Case No. 07-412-XA**

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owner(s) of the subject properties, Norman Henry McCarthy, Sr. and Kelly Lynn McCarthy, through their attorney, Francis X. Borgerding, Jr., Esquire. The Petitioners request a Special Exception to use the subject properties for a used car lot *(outdoor auto sales/auction)* pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, the Petitioners request Variance relief from the Baltimore County Landscape Manual – Condition G – Parking Lots, to permit a landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet, and a 0 foot buffer on the western property line in lieu of the required 20 feet. The subject property and requested relief are more particularly described on the amended redlined site plan[1] submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Norman McCarthy, property owner; Bruce E. Doak, a professional property line surveyor and consultant with Gerhold, Cross & Etzel, Ltd. who prepared the site plan for these adjacent properties, Delores Nash and Loreen Hatch, and Francis X. Borgerding, Jr., Esquire, attorney for Petitioners. The issues presented in this case generated significant public interest, and a large number of

[1] At the hearing before this Commission on July 17, 2007, the Petitioners' property line surveyor, in response to comments received from the Office of Planning and the Overlea-Fullerton Business and Professional Association, amended the site plan by adding four landscape islands behind the sidewalk along Belair Road, removed the words "to be razed" from the existing 2-story frame structure known as 7519 Belair Road, as well as the attendant chain link fencing surrounding this building and parking spaces fronting on Belair Road.

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individuals from the surrounding communities appeared and/or testified in opposition to the request. Due to limitations of time and space, a listing of all of those individuals cannot be set out here; however, it needs to be noted that J. Carroll Holzer, Esquire represented the neighboring property owners as well as the Linover Improvement and Overlea Community Associations. Mary Ellen Lewis testified as an officer of the East Rosemont Community Association, a Baltimore City Association, that has worked with the Harbel Community Organization, Inc., and seven other associations along the City and County corridors to improve the retail and residential area. Additionally, two witnesses employed by Baltimore County, namely Lynn Lanham, Division Chief of the Office of Planning and Patrick J. McDougall, Planner II, on behalf of the Department of Recreation and Parks, appeared and participated at the hearing.

Testimony was offered describing the subject property and proposed use under the Petition for Special Exception by Bruce Doak and Norman McCarthy. The McCarthy's own 32,750 square feet of gross area, more or less, consisting of two lots of record, zoned B.R.-A.S. (Business Roadside – Automobile Services) on the east side of Belair Road (US Route 1) in the heart of the Fullerton–Overlea commercial district located some 6,000 feet south of the Baltimore Beltway (Interstate 695). 7517 Belair Road contains approximately 15,500 square feet (100′ wide x 150′ deep) and is improved with a 2-½ story, split-rock masonry building that was the former location of Destinations Credit Union and Team Federal Credit Union. This property has been used by the Petitioners for some 6 or 7 years as offices for their car repossession and towing business referred to as Mc-N-Mc Recovery, LLC and Mc-N-Mc Transporting and Towing, LLC. On the northeast side of this property is 7519 Belair Road, a narrow, rectangular lot (50′ wide x 391′ deep) consisting of 17,250 square feet and improved with a small 2-story frame house which is currently vacant. As illustrated on the site plan, the combined site slopes from west to east and is covered with bituminous asphalt or rolled stoned pavement that allows

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for as many as 54 storage spaces for vehicles and 18 designated parking spaces[2]. The site is enclosed with a 6-foot high chain link fence providing security for automobiles that are towed/repossessed by Mc-N-Mc Recovery, LLC. As noted above, the Petitioners purchased 7519 to expand their business and propose to use this site as a used car lot for outdoor auto sales and auction that will take place every other Saturday from 8:00 AM to 3:00 PM.

Mr. McCarthy utilizes four (4) tow trucks and a rollback truck that he keeps on the property to repossess vehicles for credit unions and commercial lending institutions. He testified that the number of repossessions can vary from as low as 80 cars per month to as high as 180 per month. Vehicles brought to the site for parking violations on posted commercial sites constitute about 5% of his business and average an additional ten (10) vehicles per month. At present, these cars are kept in the enclosed fenced-in and gated area which is monitored by security cameras until they're either re-claimed by the owner or shipped to other locations, usually Bel Air and/or Anne Arundel County, to be sold at auction. He further testified that Mc-N-Mc Recovery, LLC is totally responsible for all vehicles taken into its possession and that many of the finance companies are now demanding a "one-stop shop" by adding on-site auction services rather than moving the vehicles off site for the finance companies to auction.

Mr. Doak testified that the property is unique given the long, narrow shape of the lot with little road frontage and the existing topography renders the site difficult to develop. In his opinion, based on 22 years of land use and zoning experience, he believes the request under B.C.Z.R. Section 236.4 to be appropriate. The two uses on the property, a repossession impound lot and auto auction sales, would go hand-in-hand with each other. He states that the B.R. zoning is the most intense business zone listed in the B.C.Z.R. and that the Department of Permits and Development Management has previously concluded that auto sales by auction are included under Section 236.4's allowance by special exception of "used motor vehicle outdoor sales". The word "sales" or "sale" is not defined in Section 101 of the B.C.Z.R. and, therefore,

[2] The Petitioners produced as Exhibit 6 a 5-year commercial lease obtained from adjacent property owner, Thomas E. Jenkins at 7521 Belair Road, which provides for overflow parking "2 days for auction per month" purposes.

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the definition in the Webster's Third New International Dictionary of the English Language is substituted. In this case, the applicable language includes under the fourth citation: "Public disposal to the highest bidder: Auction." As auction is considered a synonym of sale for all intents and purposes, it stands to reason that auctions are included under the "used motor vehicle outdoor sales area" language. In support of Mr. Doak's opinion, Petitioners' in their Memorandum of Law submitted in this case, aptly point out that Section 236.1 of the B.C.Z.R. indicates that in the B.R. zone "uses permitted and as limited in the B.M. zone are permitted as of right". In addition to this consideration, the Zoning Commissioner's Policy Manual specifically provides that auctions are permitted by right within the B.M. zone. *See* Zoning Commissioner's Policy Manual Section 253.1.F at Page 2-69.[3] While the argument that auction sales are permitted in a used motor vehicle sales area is indeed persuasive, the issues generated in this case are driven by the actual use. This is a special exception use and is not permitted by right. Special exception uses are regulated in the B.C.Z.R. under Section 502.1 thereof. Due to the importance of that Section, it will be recited here:

> "Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:
>
> A) be detrimental to the health, safety or general welfare of the locality involved;
>
> B) tend to create congestion in roads, streets or alleys therein;
>
> C) create a potential hazard from fire, panic or other danger;
>
> D) tend to overcrowd land and cause undue concentration of population;
>
> E) interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
>
> F) interfere with adequate light and air (Bill No. 45-1982);

[3] W. Carl Richards, Jr., Supervisor, Zoning Review Office, of the Department of Permits and Development Management, would construe the words "auction sales" contained within this section of the Policy Manual in a narrow context, i.e., meaning only auction sales of a permanent nature conducted indoors such as furniture and art auctions as opposed to auctions held outdoors and involving automobile sales.

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G) be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these zoning regulations (Bill No. 45-1982);

H) be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations; nor (Bill No. 45-1982)

I) be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 zone (Bill No. 74-2000)."

The highest courts of this State have reviewed the treatment of proposed special exception and conditional uses by various local zoning boards and commissions. The seminal case regarding special exceptions is *Shultz v. Pritts*, 291 Md. 1 432 A2d 1319 (1981). In that case, the Court noted that a special exception use is part of the comprehensive zoning plan and thus, shares the legal presumption that it is in the interest of the general welfare and therefore valid. The Court noted that a special exception use is a valid zoning mechanism that delegates to an administrative board or body a limited authority to allow certain enumerated uses which the legislature (in this case, the Baltimore County Council) has determined to be permissible, absent any facts or circumstances which negate that presumption.

The Court further noted that the applicant for a proposed special exception use does not have the burden of establishing affirmatively that the proposal would be of benefit to the community. Moreover, the test is not whether another use is more preferable or whether the property could be used for a higher or better purpose. Rather, the test to be considered by the local administrative body (Zoning Commissioner) is whether the neighboring properties in the general neighborhood would be adversely affected and whether the proposed use in this particular case is in harmony with the general purposes and intent of the underlying zoning scheme.

The Court of Appeals of Maryland further explained the special exception test in *Mossberg v. Montgomery Co.*, 329 Md. 494, 620 A2d 886 (1993). In that case, an applicant sought approval for a solid waste transfer station in Montgomery County. That use was a

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conditional/special exception use under the relevant Montgomery County ordinance. In its written opinion, the Court noted that there were certain inherent negative uses associated with any solid waste transfer station. For example, such a station would be expected to produce traffic, noise, dust, etc. Moreover, it could be presumed that such impacts would negatively affect surrounding properties. However, although such presumptions are valid, the Court emphasized that the existence of these impacts did not provide a sufficient basis for the local administrative body to deny the Petition for Special Exception. Instead, the Court reasoned *that the local body must show that those impacts are greater at the subject location than would normally be associated with such use.* That is, the criteria is not whether the proposed use carries with it adverse impacts (such adverse impacts are assumed in the first instance by designating the use a special exception rather than by right). Rather, the test is whether that impact at the subject property will produce effects above and beyond those normally inherent with such a use if located anywhere else within the same zoning district. Therefore, in considering the present application, it is not enough to simply conclude the proposed automobile auction sales will produce traffic and the need for additional parking that could adversely affect the neighborhood. It most certainly will, and such an effect is inherent in any auction sale operation. The real test is whether the traffic and need for parking produced by the proposed sales will cause an adverse impact at this location above and beyond such impact if proposed elsewhere in the B.R.-A.S. zone.

As noted above, numerous individuals appeared in opposition to the request. The primary objection voiced by most witnesses who testified related to the traffic, residential and revitalization impacts and likelihood that parking problems that already exist in the neighborhood would be exacerbated. Let it first be noted that three (3) County departments recommended disapproval. The Bureau of Development Plans Review in its Zoning Advisory Committee (ZAC) comment submitted by Dennis Kennedy, a professional engineer, objected to the grant of a Variance. The Office of Planning recommended a denial of both the requested Special Exception and Variance on the basis that the proposed auto auction sales would be

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located in the heart of the commercial district. The Overlea-Fullerton Community has been engaged in a 2-year planning process to develop a Community Plan initiated by County Council Resolution 131-05. While the Plan is not complete and currently being drafted, it identifies as its primary objection walkable neighborhood commercial revitalization. The Planning Office concluded that the proposed use of a car auction does not promote pedestrian activity and that an automobile auction is not compatible with the surrounding residential community and affects the public safety. Secondly, the Office of Planning testified that the Overlea community is working with Baltimore City and the State Highway Administration on the Community Safety Enforcement project for Belair Road, which provides landscaping from traffic and pedestrian improvements along the US 1 corridor from the City/County line north to I-695. Trees, landscaping, decorative pavement and fencing are the proposed road enhancements that will be problematic with the proposal submitted by the Petitioners. In short, the County's Planning staff does not find the proposed activity compatible or consistent with the efforts to revitalize this area and the criteria set forth in Section 502.1G of the B.C.Z.R.

Lynn Lanham testified on behalf of the Protestants that the affect of Resolution 131-05 and the expanse of the Overlea-Fullerton Community Plan relates to more than simply unimproved residentially zoned properties, but as with all Community Plans, extends to the business component of the community. I find that the supporting documentation of the current community activities support that position. Secondly, the Planning Office and its Director have been working with Baltimore City and the State Highway Administration to improve the visual nature of US 1 (Belair Road) from the City to the Baltimore Beltway. The Planning Office supported the fact that they had been coordinating with the State Highway Administration on streetscape improvements to revitalize this particular area of Belair Road to make it more pedestrian friendly and appealing for neighborhood shopping and entertainment. Lynn Lanham's testimony encompassed the broad overview as to the reasons why the Planning Office is recommending against approval of this Special Exception. While Bruce Doak and Petitioners' attorney attempted to minimize the Office of Planning's comments as being speculative and

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lacking research, therefore, conjecture, it is clear from the Office of Planning comments as well as Ms. Lanham's testimony given at the hearing that efforts on the part of the County and community leaders to revitalize this particular area along Belair Road would be frustrated and set back by approval of this Petition for Special Exception and the use requested therein.

The third County Department to register concern and most relevant was that of Pat McDougall, of the Department of Recreation and Parks, in the Planning Development Section. He testified to that Department's strong concern in regard to the parking issues. Currently, the area lacks parking spaces for the thousands of Recreation and Park users who participate in sports activities at the park located directly to the rear of the subject property. The resulting inadequacy of parking, for not only sports activities, but other recreational and senior citizen activities that take place at the Fullerton Park have left the Parks Department searching for additional parking spaces. On behalf of the Director of the Recreation and Parks, Mr. McDougall was authorized to testify as to his concern about the increased parking issues generated by the proposed general exception. Saturday, one of the parks biggest days for youth sporting activities will be occurring simultaneously with Mc-N-Mc Recovery, LLC's proposed Saturday auctions.

In this regard, the Overlea-Fullerton Recreation Council sanctioned by the Department of Recreation and Parks, in its letter of July 11, 2007 (Protestants' Exhibit 13), objected to the Variance request and Special Exception on the basis that this activity will create unneeded congestion to an area already plagued with traffic problems during sporting events. The fields suffer from limited parking and additional parking to handle recreational events is necessary. The Recreation Council felt that, if granted, the Special Exception would add to the parking problems which has not yet been resolved.

Community leaders beginning with Jeff Stintz, President of the Overlea Community Association, testified as to his opposition to the granting of the Special Exception. He testified that this proposal conflicts with the streetscape plans and the youth of the Fullerton Park on Marks Avenue. He testified that Mc-N-Mc's Recovery business creates antagonism for people

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whose vehicle has been repossessed and who are in an angry mood when coming to this site. He testified concerning the excess and unwanted traffic which would be directly related to auctions being held on Saturday mornings, which would be in conflict with the sports activities held all day long on Saturdays. Next, Carroll Pupa of the Linover Community Association testified in opposition in regard to the negative use of this site for an auction related to the effort to revitalize the Overlea-Fullerton Community. Ron Dexter testified about his experience of being towed by the Petitioners while hitting golf balls on the fields at Fullerton Park. While arguably a biased witness, he had personal knowledge regarding the conflict for parking in the area and competing interest for the community use of existing available parking. As previously stated, Mary Ellen Lewis testified as an officer of East Rosemont Community Association, which is opposed to the use. Finally, Bud Herb, President of Linover Improvement Association, testified about the combined Community and County efforts to revitalize this particular section of Belair Road. This Association is deeply concerned over a proposed use of an outdoor car sales/auction due to traffic congestion, truck traffic and the fact that the business is not pedestrian friendly and unsafe for the activities going on at the nearby Fullerton Field which include recreational, community center, senior center and Fullerton Elementary Recreation Center activities. He testified there are already too many automotive-type businesses along Belair Road, and the City and the County are looking to change the appearance of the business community from that type of activity to more retail stores with street level storefronts, restaurants and mixed-use facilities. He presented photographs showing approximately thirty-one (31) different types of automobile and automotive services from the 7500 block of Belair Road to the 5800 block of Belair Road. These photographs illustrate the lack of pedestrian friendly type of activities which currently exist and which are the subject of the efforts by his and a number of other communities in Baltimore City and Baltimore County to change the nature of Belair Road in this area.

In rebuttal, Mr. McCarthy stated his lot could accommodate thirty-five (35) to forty (40) parking spaces for persons attending the auction. When his lot was full, he would close the gates to any other perspective purchasers. He further testified that he would not allow car

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carriers to unload vehicles and that he would limit the number of customers' vehicles. Protestants, however, questioned, as usual, the manner of enforcement if these limitations are imposed as a condition. Protestants submit that if approval is granted and these conditions are attached, the Community ultimately ends up with the burden of being required to enforce the limitations imposed.

As noted in the discussion above regarding the law of special exceptions, the undersigned is required to focus upon the impacts of the proposed use and how they particularly affect the locality involved. The undersigned has reviewed the proposal in that light, and I find that the Special Exception request has failed to meet the test set out in Section 502.1.B of the B.C.Z.R. There are two (2) factors that justify this conclusion. I explain. First, in this instance an auction at this location will be detrimental to the health, safety and general welfare of the locality involved based on the evidence received. The State Highway Administration, Mayor and City Council, and Baltimore County are attempting to revitalize this section of Belair Road that is inhabited with automotive services and car dealers numbering approximately thirty-one (31) between the Beltway and south to the City line. It is clear, based on the testimony received that the Community does not need an additional auction service which will not serve the local residents. The Office of Planning believes this type of activity will be detrimental to the revitalization efforts planned for this section of Belair Road and negatively impact not only the residential community but also the existing business community. Further, it negatively impacts upon the State Highway's streetscape program which ultimately will enhance aesthetically this section of Belair Road.

Second, it affects the welfare of the Department of Recreation and Park users because of the already difficult parking demands for the activities sponsored by the Overlea-Fullerton Recreation Council. The undersigned has reviewed the proposal in that light and I find that the Special Exception request has failed to meet the test set out in Sections 502.1.B and 502.1.E of the B.C.Z.R. Clearly, the proximity of the proposed auction sales to that of the recreation fields is a factor unique to this site that will cause a disproportionate adverse impact.

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In sum, I find that the proposed use does not meet the applicable criteria set forth in Section 502.1 of the B.C.Z.R., pursuant to *Schultz and Mossberg, infra.* Specifically, there is a significant difference between a used car sales lot where vehicles are displayed to the public and to individual potential purchasers. Used car lots transact individual sales for used cars that are on display. This type of transaction does not envision large numbers of vehicles being sold, in a relatively brief period of time and large numbers of purchasers or potential buyers and a volume type of business that an auction would present. While the Petitioners have attempted to work with the Community and limit the number of potential visitors and bidders, this type of use is one that lends itself to a larger and broader expansion not easily capable of control by the Division of Code Enforcement. These impacts are particularly severe here, due to the proximity of Fullerton Park.

Based upon the testimony and evidence presented, I am persuaded to deny this request. In my judgment, the proposal fails to meet the criteria set out in Sections 502.1.B, 502.1.E and 502.1.G of the Baltimore County Zoning Regulations (B.C.Z.R.) and thus, the Petition for Special Exception must be denied.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 19th day of September 2007 that the Petition for Special Exception to permit the use of the described property for a used car lot *(outdoor auto sales/auction)* pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners' Exhibit 1, be and is hereby DENIED; and

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the Baltimore County Landscape Manual – Condition G – Parking Lots, to permit a landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet, and a 0 foot buffer on the western property line in lieu of the required 20 feet, be and is hereby DISMISSED AS MOOT.

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

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

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By

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

September 19, 2007

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, #600
Towson, Maryland 21204

RE: **PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE**
SE/S Belair Road, 600' N of Fullerton Avenue
(7517 and 7519 Belair Road)
14th Election District - 6th Council District
Norman H. McCarthy; Sr., et ux – Petitioners
Case No. 07-412-XA

Dear Mr. Borgerding:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been denied and the Petition for Variance has been dismissed as moot, in accordance with the attached Order.

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

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: People's Counsel; File
See Attached List of Addressees

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PATRICK J. McDOUGALL
RECREATION & PARKS
M.S. 52

IN THE MATTER OF: 7517 & 7519 Belair Road S/E Side Belair Road N/E Side of Fullerton Avenue	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	OF
14th Election District 6th Councilmanic District	*	BALTIMORE COUNTY
Petition for Special Exception and Petition for Variance	*	Case No.: 07-412-XA
	*	
Legal Owners: Norman & Kelly McCarthy		
	*	

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

PROTESTANTS' MEMORANDUM IN LIEU OF FINAL ORAL ARGUMENT BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

I. STATEMENT OF THE CASE

The Petitioners, ***Norman & Kelly McCarthy*** filed a Petition for Special Exception to use the subject site for a used car lot (outdoor auto sales/auction) per §236.4 of the Baltimore County Zoning Regulations. In addition, a Petition for Variance from the Baltimore County Landscape Manual – Condition G Parking Lots, to approve a landscape buffer of zero feet on the northern, eastern and southern property lines in lieu of the required ten (10) feet and zero feet on the western property line in lieu of the required twenty (20) feet. A hearing was held before the Zoning Commissioner on July 17, 2007. The Protestants', represented by ***J. Carroll Holzer***, were adjacent and adjoining property owners and numerous Community Associations.

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BY:----------

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(410) 825-6961
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II. STATEMENT OF FACTS

A. *Developer's Case*. The Developer presented Bruce Doak of Gerhold, Cross & Etzel who described Petitioner's Exhibit #1, the Site Plan submitted which purports to show the use of #7517, an existing two and one-half (2 ½) stories split rock masonry building, along with #7519, proposed auto storage area for purposes of parking cars that have been repossessed and/or towed to be auctioned at an outdoor auction. Mr. Doak testified to the current use of #7519 as an auto repossession business. At the present time, cars are enclosed in a fenced-in area, stored and then either claimed or shipped out to another location to be auctioned at a public auction. Doak testified that auction of automobiles was permitted under Baltimore County Zoning Regulations §236.4. Auctions are proposed for every other Saturday for the subject site. Doak testified the parking spaces for repossessed vehicles totaled fifty-four (54) spaces, with nineteen (19) for employees and customers.

When questioned in regard to existing storm water problems and issues on the adjacent properties and Marks Avenue and the Baltimore County Recreation and Parks fields, he denied any knowledge.

As to the variance for landscape buffers, he testified that the property is currently paved and fenced and that the variance would be appropriate.

Norman McCarthy testified that he utilizes five (5) tow trucks and that his business consists of towing and impounding vehicles, mainly vehicles repossessed by various lending institutions. He testified that cars that are repossessed are stored in a fenced, secure facility on

the site. If they are not reclaimed by the owner, they are transported to Bel Air and or Anne Arundel County for auction purposes. He purchased #7517 to expand his business in March, 2007, and determine not to use the site for office purposes but for storage of impounded vehicles and the auction proposed for outdoor sales.

He testified he would hold auctions every other Saturday from 8:00 a.m. and that he expected approximately forty (40) vehicles to be put up and advertised for bid at one time.

When questioned about the number of potential visitors and bidders, he indicated that his lot could accommodate thirty-five (35) to forty (40) people and he would close the gates to any other prospective purchasers. He further testified that he would not allow car carriers to unload vehicles, that he would limit the number of customers vehicles to twenty-five (25) to thirty (30). Protestants' question as usual, the manner of enforcement if these limitations are imposed as a condition. Protestants' submit that if these conditions are attached the Community ends up with the burden of being required to enforce the limitations imposed.

B <u>*County Comments*</u>. Three (3) County Departments recommended disapproval. The Department of Permits and Development Management – Dennis Kennedy's comment (Protestants' #2) objects to the grant of a variance requested by the Petitioner. The Planning Office comments marked as Protestants' Exhibit #1 are self-explanatory. The Planning Office recommend a denial of the requested Special Exception and Variances. The Planning Office's basis to recommend a denial included the fact that the proposed location is located in the heart of the commercial district of the Overlea-Fullerton Community. That Community has been engaged in a two-year planning process to develop a Community Plan initiated by County Council

Resolution 131-05. While the Plan is currently being drafted, it identifies walkable neighborhood commercial revitalization as a primary objective. The Planning Office concluded that the proposed use of a car auction does not promote pedestrian activity and that automobile auction is not compatible with the surrounding residential Community and affects of public safety. Secondly, the Planning Office testified that the Overlea Community is working with Baltimore City and the State Highway Administration on the U.S. 1 (Belair Road) Community Safety Enhancement project which provides traffic landscaping and pedestrian improvements along the Belair Road corridor from the City/County line north to I-695. Street trees, decorative pavement and fencing are the proposed road enhancements that would be problematic with the proposed Site Plan submitted by the Petitioner. The Planning Office also has noted the storm water management issues related to the area and properties on Marks Avenue having been previously flooded. The Planning Staff found that by removing the existing building at #7519 creates another hole in the open fabric and further erodes pedestrian safety. Even if this building is not removed, this proposed activity in the opinion of the Protestants' and Planning Staff does not fit within the efforts to revitalize this area.

Lynn Lanham testified on behalf of the Protestants' as to the affect of Resolution 131-05 and the extension of the Overlea-Fullerton Community Plan relates to more than simply unimproved residentially zoned properties, but as with all Community Plans, extends to the business component of the Community. The supporting documentation of the current Community activities supports that position. Secondly, the Planning Office and the Planning Director have been working with Baltimore City and the State Highway Administration to

improve the visual nature of U.S. 1 (Belair Road) from the City to the Baltimore Beltway. The Planning Office supported the fact that they had been coordinating with the State Highway Administration on streetscape improvements to revitalize this particular area of Belair Road to make it more pedestrian friendly and appealing for ***neighborhood*** shopping and entertainment. Lynn Lanham's testimony encompassed the broad overview as to the reasons why the Planning Office is recommending against approval of this Special Exception. While Bruce Doak attempted to minimize the Planning Office's comments as being "unfounded and lacking research," it is clear from the Planning Office comments as well as Lynn Lanham's testimony given at the hearing that efforts on the part of Baltimore County to revitalize this particular area along Belair Road would be frustrated and set back by approval of this Petition for Special Exception and the use requested therein.

The third County Department to register concern was by Pat McDougall, representative of the Department of Recreation and Parks as a Planner and Planning Development Section of Recreation and Parks. He testified to that Department's strong concern in regard to the parking issue. Currently, the area lacks parking spaces for the thousands of Recreation and Park users who participate in sports activities at the Park. The resulting inadequacy of parking, for not only sports activities, but other recreational and senior citizen activities that take place at the park have left the Parks Department searching for additional parking spaces. On behalf of the Director of Recreation and Parks, he was authorized to testify as to his concern about the increased parking issues generated by the proposed general exception. Saturday, one of the parks biggest days for sporting activities coincides with the Saturday auction.

Finally the Overlea-Fullerton Recreation Council on July 11, 2007, by letter to the Zoning Commissioner objected to the Variance Request and Special Exception on the basis that this Special Exception will create unneeded congestion to an area already plagued with traffic problems during sporting events. The fields suffer from limited parking and an additional parking to handle the recreation events is needed. The Recreation Council felt that if granted, the Special Exception would add to the parking problem which has not yet been resolved.

C. *Protestants*. ***Jeff Stintz***, as President of the Overlea Community Association testified as to his opposition to the granting of the Special Exception. He testified as to the State Highway Administration and Baltimore County streetscapes for Route 1 or Belair Road. He testified that this proposal conflicts with the streetscape plans and the use of the Fullerton Park on Marks Avenue. He testified that this type of business creates antagonism for people whose vehicle has been repossessed and who are in an angry mood coming to this site. He testified concerning the excess and unwanted traffic which would be directly related to auctions being held on Saturday mornings which would be in conflict with the sports activities held all day long on Saturdays. ***Carol Pupa*** of the Linover Community Association, testified in opposition in regard to the negative use of this site for an auction related to the effort to revitalize the Overlea-Fullerton Community. ***Ron Dexter*** testified that he was towed by the Petitioner and the improper location of signage which caused his car to be towed as well as the conflict for parking in the area already for the Community use of the park facilities. ***Mary Ellen Lewis*** testified as an Officer of East Rosemont Community Associations, which is opposed to this use. Finally, ***Bud Herb*** testified as President of Linover Improvement Association. He also testified about the

Community and County efforts to revitalize the particular section of Belair Road containing the subject site. Their Association was concerned as a use as an outdoor car sales/auction due to traffic congestion, truck traffic and the fact that the business is not pedestrian friendly and unsafe for activities going on at the nearby Fullerton field and the Recreational Facility. He testified there are already too many automotive type businesses along Belair Road and the City and the County are looking to change the appearance of the business community from that type of activity to more retail stores with street level storefronts, restaurants and mixed use facilities. He presented photographs showing approximately thirty-one (31) different types of automobile and automotive services from the 7500 block of Belair Road to the 5800 block of Belair Road. These photographs illustrate the lack of pedestrian friendly types of activities which currently exist and which are the subject of the effort by a number of communities in Baltimore City and Baltimore County to change the nature of Belair Road in this area.

III. QUESTIONS PRESENTED

1. The Protestants' submit that the Petitioner's request for a Special Exception for a used car/auction be denied on two basis. First, that the Petitioner does not meet the standards required by §502.1, and;

2. The auction use requested in the Special Exception is not permitted under the Baltimore County Zoning Regulations, and;

3. The Variance should not be granted because it runs counter to the proposed Community Plan, the efforts of the State Highway Administration in Baltimore County to provide streetscape beautification and does not meet the standards required for §307.1 of the Baltimore County Zoning Regulations.

I.

Special Exceptions in the Court of Appeals

Judge Hall Hammond, later Chief Judge for many years, explained the law of special exceptions in *Montgomery v. Merlands Club, Inc.*, 202 Md. 279 (1953). It is the seminal case. The more recent decisions are actually restatements or reformations of Judge Hammond's analysis and language. So, in *Turner v. Hammond*, 270 Md. 41 (1973), Judge McWilliams said:

> "Occasionally the bar and less often the bench lose sight of the concept that the conditional use or special exception, as it is generally called, is a part of the comprehensive zoning plan sharing the presumption that as such it is in the interest of the general welfare and, therefore, valid. *Rockville Fuel and Feed Co. v. Board of Appeals of the City of Gaithersburg*, 257 Md. 183, 187 (1970). The special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses the legislature has determined can be allowed, properly albeit prima facie, absent any fact or circumstance negating the presumption. *Rockville, supra.* In *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287 (1953), we said:
>
> > '... The duties given the Board are to judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan.'
> >
> > While the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements he does not have the burden of showing affirmatively that his proposed use accords with the general welfare. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses, is, of course, material but if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the functioning of the comprehensive plan, a denial of an application for a special exception is arbitrary, capricious and illegal. *Rockville, supra.*" 270 Md. 41.

There were many Court of Appeals special exception decisions between 1953 and 1973, all of which followed the path between *Merlands Club* and *Turner v. Hammond*.

Chief Judge Hammond's 1970 opinion, *Rockville Fuel and Feed Co. v. City of Gaithersburg*, 257 Md. 183 (1970), is also quoted often. Another case, *Redden v. Montgomery County*, 270 Md. 668 (1974), analyzed particular problems of a proposal for a facility to house the elderly and handicapped. Special exceptions never were routine nor automatic.

In 1981, the tradition carried forward *Schultz v. Pritts*, 291 Md. 1 (1981). In *Board of County Comm'rs. v. Holbrook*, 314 Md. 210 (1988). There, Judge Harry Cole quoted Judge Davidson's opinion in *Schultz* and referred to the earlier decisions.

> "In *Schultz v. Pritts, supra,* this Court determined the applicable standard for judicial review of the grant or denial of a special exception use. We observed.
>
> 'The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.'
>
> * * *
>
> 'The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. *Turner v. Hammond,* 270 Md. 41, 54-55 (1973); *Rockville Fuel and Feed Co. v. Board of Appeals of Gaithersburg*, 257 Md. 183, 187-88 (1970); *Montgomery County v. Merlands Club, Inc.,* 202 Md. 279, 287 (1953);

> *Anderson v. Sawyer*, 23 Md. App. 612, 617 (1974). These standards dictate that if requested special exception use is properly determined to have an adverse effect upon neighbors properties in the general area, it must be denied.' 291 Md. At 11-13, 432 A.2d 1319 [emphasis in original].

We then defined the specific nature of the requisite adverse impact required to warrant denial of a special exception application:

> '[A] special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts that show that the particular location would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." 291 Md. At 15 [emphasis supplied]. 314 Md. At 216, 217.

It is important to recall what led Judge Rita Davidson to writ the *Schultz* opinion. She wrote to reject the Court of Special Appeals view that a special exception use must be approved if it can be shown that its adverse effects are no worse than some use permitted by right in the zone. Her simple point was that a special exception use could be denied based on particular problems because the legislature intended stricter scrutiny than that provided for permitted uses.

Schultz did not envision routine or semi-automatic approval of special exceptions. The decision remanded the matter for a review of particular access problems. Similarly, *Holbrook* respected the Zoning Board's the administrative denial of a special exception, based just on a particular visual intrusion and detriment to the character of the neighborhood.

Recent Court of Special Appeals Applications

Since *Holbrook*, there have been a number of special exception decisions issued by the Court of Special Appeals which apply the above standards and are helpful here.

People's Counsel v. Mangione, 85 Md. App. 738 (1991) sustained this Board's denial of a convalescent home in a residential zone based on particular problems site problems above the norm for residentially zoned properties. It was off the main road and had poor access on narrow winding streets where children played. It would block out light from the west and exacerbate both drainage and erosion problems.

Mangione shows that the proposed use need not give rise to a worst case scenario, or mathematical demonstration, to warrant denial. There were many other residential zones in Baltimore County which also would pose particular and unusual problems.

***Mangione*, fn. 6, also confirms that under BCZR 502.1:**

> The size and scope of the project are thus relevant considerations. To contend otherwise... is to engage in specious and sophistic reasoning."

The Court likewise sustained a denial of a special exception for a rubble fill. *Moseman v. Prince George's County*, 99 Md. App. 258 (1994). The factors particular to the site included the presence of an existing rubble fill across the street, a narrow and winding access road, the proximity of single family homes, highly erodible soils, risks to well water, and depreciation of property values.

There was no indication that the *Moseman* site was the worst site in Prince George's County. There may have been other sites as bad or worse. There could have been proposed a larger or more hazardous landfill. But the potential for worse case or worst case scenarios did not require approval at this location.

Moreover, the cumulative impact of two rubble fills in the same area was a legitimate factor probative of particular adverse effects above the norm.

In *Hayfields v. Valleys Planning Council*, 122 Md. App. 616 at p. 649-55 (1998), the Court remanded, on environmental grounds, the Board's approval of a country club/golf course special exception. It rejected the Board's reasoning that the proposal should be approved merely because there were other properties underlain by the Cockeysville Marble aquifer which also could be vulnerable.

The Board had granted the special exception because it thought there were other locations in the zone which plausibly could suffer adverse environment effects equal to or worse than the subject site. But this is not the standard. The standard is simply whether the subject site poses problems over and above the norm for the entire zone.

In Summary

The Special Exception is in the nature of a conditional use. In *Rockville Fuel and Feed Co. v. Board of Appeals*, 257 Md. 183 (1970), Chief Judge Hall Hammond said:

> "The conditional use or special exception, as it generally is called, is a part of comprehensive planning and shares the presumption that such a plan is in the interest of the general welfare and valid. *Huff v. Board of Zoning Appeals*, 214 Md. 48, 60-62, 133 A.2d 83." 262 A.2d, at 502.

In the same vein, Judge Rita Davidson explained in *Schultz v. Pritts*, 291 Md. 1, 20-21 (1981):

"Generally, when a use district is established, the zoning regulations prescribe that certain uses are permitted as of right (permitted use), while other uses are permitted only under certain conditions (conditional or special exception use). ... In determining which uses should be designated as permitted or conditional in a given use district, a legislative body considers the variety of possible uses available, examines the impact of the uses upon the various purposes of the zoning ordinance, determines which uses are compatible with each other and can share reciprocal benefits, and decides which uses will provide for coordinated, adjusted, and harmonious development of the district. D. Hagman, Urban Planning and Land Development Control Law 105 (1971). See Art. 66B, § 4.03."

Standards

The ultimate issue is whether the use causes particular adverse effects in the neighborhood. The legislative purpose as to a specific use is relevant to the inquiry. By the word "particular," the courts differentiate significant impacts from impacts inherent in the use wherever located. Thus, a funeral home may not be disallowed merely because it is depressing, but may be disallowed because of dangerous traffic access. *Schultz v. Pritts*, 291 Md. 1 (1981); *Anderson v. Sawyer*, 23 Md. App. 612 (1974). An apartment complex may not be disallowed merely because of antipathy to increased population. *Turner v. Hammond*, 270 Md. 43 (1973). By analogy, a trucking facility similarly may not be disallowed merely because of the undesirability of trucks.

Rather, the Zoning Commissioner must examine specifically the impact at the particular location.

In *Board of County Commissioners v. Holbrook*, 314 Md. 210, 217-18 (1988), Judge Harry Cole summarized the *Schultz* test, in part, with this key point:

> "... where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied."

In *Holbrook*, a mobile home was visible to a residence 80 to 150 feet away, at there were no trees or topography to interrupt the line of sight. This contrasted with "countless locations... within the zone" which would not present such a problem of proximity and visibility. 314 Md., at 220. For this reason alone, the special exception was properly denied. *The court did not try to justify or require approval on the theory that many other locations would produce similar visibility problems. Otherwise stated, it is not necessary to have a worst case scenario and one of a kind in order to deny a special exception*. (emphasis supplied).

As Judge Glenn Harrell reminded in *Sharp v. Howard County Board of Appeals*, 98 Md. App. 57, 85 (1993),

> "The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan. Citing *Schultz*. (Emphasis in original).

Denial of the Special Exception requests for failure to comply with §502.1.

This Case

In this instance, an analysis of the Baltimore County Zoning Regulation, §502.1 appears that first this auction will be detrimental to the health, safety and general welfare of the locality involved. With the documented evidence of the State Highway Administration, the City

Government and the County Government, attempting to revitalize this section of Belair Road on which the subject site is proposed clearly establishes that the area is full of used car lots, automotive services and car dealers numbering approximately thirty-one (31) between the City line and the Beltway. It is clear that the Community does not need an additional auction service which does not serve the local residents. As the Planning Office said, this type of activity is detrimental to the welfare and the revitalization of this section of Belair Road and negatively impacts not only the residential community but the existing business community. It negatively impacts the State Highway's streetscape program which is designed to enhance aesthetically this section of Belair Road. It affects the welfare of the Department of Recreation and Park users because of the already difficult parking requirements for the recreational facility.

Secondly, it creates congestion on Belair Road and Marks Avenue and creates and exacerbates parking problems in the already existing neighborhood. Clearly, it tends to overcrowd land and certainly does interfere with adequate provisions with schools and parks. The mere fact that the Department of Recreation and Parks sent their Planner to testify about this issue creates a situation that is extraordinarily unique to normal Special Exception requests from the County.

It also tends to be inconsistent with the impermeable surface and vegetation retention, provisions of the Zoning Regulations in that there is an existing storm water problem which is acknowledged on Marks Avenue that has not been resolved created in part by these two (2) properties, thus, this proposal fails to comply with the Baltimore County Zoning Regulations §502.1.

More specifically, however, when one reviews *Schultz v. Pritts*, 291 Md. 1 (1981) as well as *Board of County Commissioners v. Holbrook*, 314 Md. 210 (1988), this request for a used car lot/auction has an adverse impact over and above those inherently associated with such a Special Exception Use irrespective of its location within the zone. To put it another way, this used car lot/auction certainly would have less impact in a similarly situated zone elsewhere for the reasons already expressed in this Memorandum's Statement of Facts and by the witnesses.

In this, a most unusual case, the Baltimore County Planning Office, the Baltimore County Department of Recreation and Parks and the Baltimore County Permits and Development Management all raised concerns in regard to this request. It is clear from the evidence that Baltimore County and Baltimore City are attempting to revitalize this section of Belair Road (U.S. Route 1). It is also clear that the State Highway Administration has a current streetscapes program which likewise is attempting to beautify and provide a different look to this section of Belair Road. The result of the Baltimore City, Baltimore County, State Highway Administration review of Belair Road in this section alone makes this site ***unique*** as required by the standards of *Schultz v. Pritts*. It is uncontested that this proposed Special Exception will have a greater impact in this location than elsewhere in the same zone.

Thus, the *Schultz v. Pritts* standard has been met by the facts in this case.

II.

Matter of Law

An auction is not permitted by the Zoning Regulations in a BR-AS Zone.

The Petitioner requests a Special Exception to permit outdoor auto sales/auction per §236.4 of the Baltimore County Zoning Regulations. That Section permits "used motor vehicle outdoor sales area separated from sales agency building."

The Protestants' submit there is a significant difference between the sale of used motor vehicles in an outdoor sales area which is separated from a sales agency building and an auto auction. In §236 of the Baltimore County Zoning Regulations, no provision for an outdoor auto auction is permitted or defined. A review was made of §101 of the Baltimore County Zoning Regulations definitions section. There is no definition for auto auction, or auction. Furthermore, there does not appear to be a definition for used car sales. "Auction" is defined in Webster's as "a sale of property to the highest bidder."

The case of *Richard Kowalski v. John Lamar, et al.,* 25 Md. App. 493 (1975) has long stood for the Zoning interpretation that if the use is not defined in the Zoning Regulations, it is not permitted. The Court, through Judge Rita Davidson stated that "in the absence of any evidence to support a finding that the uses complained of were permitted uses, being carried on as a matter of right or by way of Special Exception, the Order of the trial court affirming the Decision of the Board would be reversed."

As a matter of law, auctions are not permitted in the subject zone because they are neither permitted as a matter of right or by Special Exception.

FACTS

Factually, there is a significant difference between used car sales and a new car sales lot which has been demonstrated by the photographic exhibits of other used car lots along Belair Road in the vicinity of the subject site. There, vehicles are displayed to the public and to individual potential purchasers for sale. Used car lots then transact individual sales for the used cars that are

on display. The sales are based upon individuals buying a vehicle. The transactions involved do not envision large numbers of vehicles being sold, large numbers of purchasers or potential bidders and a volume type business that an auction would present. Bidding is not involved in an individual used car sale.

An auction of used cars on the other hand is an entirely different business and is distinct from the typical used car lot sales program. That is why there are so few areas that permit auctions of automobiles. The testimony reflects that the current operation on the subject site transports multiple vehicles to auctions in Bel Air in Harford County or in Anne Arundel County. The Protestants' introduced photographs of the significant impact on the neighborhood created by an auction in Bel Air. Police are required to direct and control traffic on U.S. 1 Belair Road. There are literally hundreds of cars of visitors; and there are many multiple bidders at an auction for multiple lots of vehicles. That activity does not fit the description of a used car sale as contained in the Baltimore County Zoning Regulation.

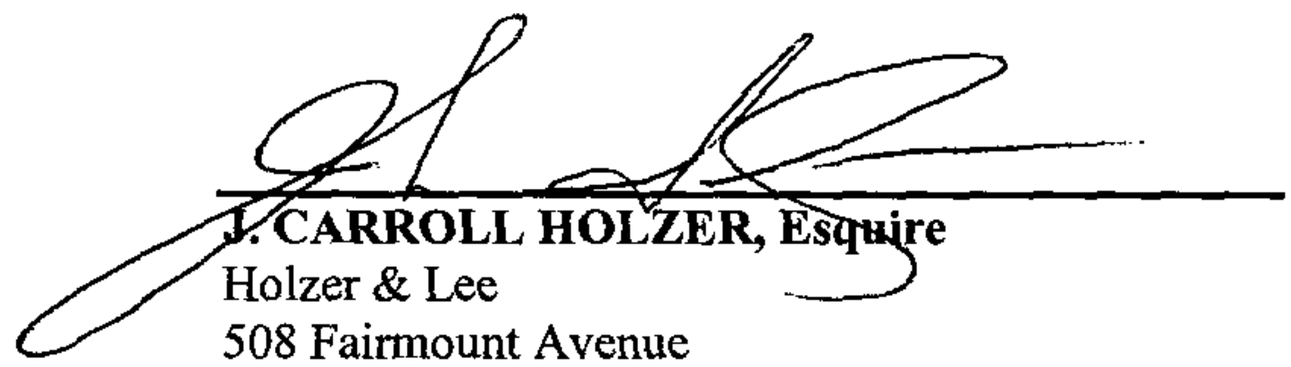
While the Petitioner here has attempted to limit the number of potential visitors and bidders and truck traffic, this type of use and activity opens the door for subsequent larger and broader scale of auctions when, in fact, this use is not permitted by Special Exception nor as a permitted use. As Webster defines auction, it is sales to the highest bidder. That certainly is a distinguishing factor from a used car lot selling an individual car to an individual purchaser.

The Protestants' are familiar with *Case No.: 06-674-SPH involving Carmax stores*. The issue involved here regarding auction of used cars related to outdoor auto sales was not addressed in the *Carmax* case. It appears that the issue specifically raised in this case was not raised therein. This case may well be a case of first impression.

For all the reasons set forth above, the Special Exception request should be denied. First, in that its impact at this location exceeds the impact if located in another part of the zone based upon the efforts of Baltimore County, the State of Maryland and the City of Baltimore in making the subject site unique in that it is located in an area of revitalization recognized by all three (3) governments.

Secondly, it should be denied based on the fact that it is not permitted by the Baltimore County Zoning Regulations.

Respectfully submitted,



J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Protestants'

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 2007, a copy of the foregoing Protestants' Memorandum in Lieu of Final Oral Argument Before the Zoning Commissioner of Baltimore County was mailed first class, postage pre-paid to the following:
Francis X. Borgerding, Jr., Esquire, Mercantile Building, Suite 600, 409 Washington Avenue, Towson, Maryland 21204.

J. CARROLL HOLZER, Esquire

C:\My Docs\Memos 2007\ Herb – Memo Lieu Final Oral Arg - 8/17/07

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 7517 and 7519 Belair Road Baltimore, MD 21236

which is presently zoned BR-AS

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for used car lot (outdoor auto sales/auction) per Section 236.4 of the B.C.Z.R.

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

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:

Norman and Kelly McCarthy
Name - Type or Print

Signature

7517 Belair Rd.
Address — Telephone No.

Baltimore, MD — 21236
City — State — Zip Code

Legal Owner(s):

Norman and Kelly McCarthy
Name - Type or Print

Norman McCarthy Kelly L. McCarthy
Signature

Destination Credit Union
Name - Type or Print

Brian J. Vitrek
Signature

7517 Belair Road
Address — Telephone No.

Baltimore, MD 21236
City — State — Zip Code

Attorney For Petitioner:

Francis X. Borgerding, Jr.
Name - Type or Print

Signature

Company

409 Washington Ave., #600 — 410-296-6820
Address — Telephone No.

Towson MD 21204
City — State — Zip Code

Representative to be Contacted:

GERHOLD, CROSS, ETZEL
Name

320 E. TOWSONTOWN BLVD
Address — Telephone No.

TOWSON MD 21286
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____
UNAVAILABLE FOR HEARING _____

Reviewed By JP/AT Date 3/19/07

Case No. 07-412-XA

REV 09/15/98

ORDER RECEIVED FOR FILING
Date 9-19-07
By

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

March 5, 2007

ZONING DESCRIPTION
MCCARTHY PROPERTY
7517 & 7519 Belair Road
Baltimore County, Maryland

All that piece or parcel of land situate, lying and being in the Fourteenth Election District, Sixth Councilmanic District of Baltimore County, Maryland and described as follows to wit:

Beginning for the same at a point on the North side of Fullerton Avenue and the East side of Belair Road, running northerly along the East side of Belair Road 600 feet, thence running,

1) North 47°05'08" East 50.04 feet,
2) South 48°45'00" East 200.00 feet,
3) South 48°45'00" East 146.30 feet,
4) South 49°30'00" West 50.30 feet,
5) North 48°45'00" West 144.17 feet,
6) South 47°05'08" West 50.00 feet,
7) South 47°05'08" West 50.00 feet,
8) North 48°45'00" West 155.00 feet,
9) North 47°05'08" East 50.00 feet,
10) North 47°05'08" East 50.00 feet, to the point of beginning.

Containing 32606 sq. ft. of land, more or less.

Note: This description only satisfies the requirements of the Office of Zoning and is not to be used for the purposes of conveyance.

3/6/07

#412

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 07-412 XA

Petitioner: NORMAN MCCARTHY

Address or Location: 7519 & 7517 BELAIR RD

380
325
705

PLEASE FORWARD ADVERTISING BILL TO

Name: NORMAN MCCARTHY

Address 7519 BELAIR RD

FALLSTON RD

FALLSTON, MD 21047

Telephone Number: 410-823-4470

#412

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: # 07-412-XA
7517 AND 7519 Belair Road
S/east side of Belair Road, 600 feet northeast of Fullerton Road
14th Election District - 6th Councilmanic District
Legal Owner(s): Norman & Kelly McCarthy, Destination Credit Union

Special Exception: to allow a car lot (outdoor auto sales/auction) per Section 236.4 of the BCZR. **Variance:** to permit landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet and 0 feet on the western property line in lieu of the required 20 feet.

Hearing: Tuesday, July 17, 2007 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.

JT 7/604 July 3 140731

CERTIFICATE OF PUBLICATION

7/5/, 2007

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 7/3/, 2007.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 24964

DATE 03/19/06 ACCOUNT 001-006-6150

AMOUNT $ 710 ——

RECEIVED FROM: Mc N Mc Recovery, LLC

FOR: 7519 Belair Rd Lot 2

07-415-SPH

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
3/20/2007	3/19/2007	14:30:57	4

MTD 16.06 MALKIN KNCH CKM
>>RECEIPT # 557206 3/19/2007 CHLN
Dept 5 52d ZONING VERIFICATION
CR NO. 024964
Recpt Tot $710.00
$710.00 CK $0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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: #07-412-XA
7517 and 7519 Belair Road
S/east side of Belair Road, 600 feet northeast of Fullerton Road
14th Election District - 6th Councilmanic District
Legal Owner(s): Norman & Kelly McCarthy, Destination Credit Union

Special Exception: to allow a car lot (outdoor auto sales/auction) per Section 236.4 of the BCZR. **Variance:** to permit landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet and 0 feet on the western property line in lieu of the required 20 feet.

Hearing: Tuesday, May 29, 2007 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.

JT 5/703 May 15 135320

CERTIFICATE OF PUBLICATION

5/17/, 2007

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 5/15/, 2007.

- [x] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE# 07-412-XA
PETITIONER/DEVELOPER:
Norman & Kelly McCarthy
DATE OF HEARING: May 29, 2007

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

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

LOCATION:
7517 & 7519 Belair Road

(see page 2 for full size photo)

POSTED ON: May 9, 2007

SIGNATURE OF SIGN POSTER

John J. Dill

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE# 07-412-XA
PETITIONER/DEVELOPER:
Norman & Kelly McCarthy
DATE OF HEARING: July 17, 2007

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

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

LOCATION:
7517 & 7519 Belair Road

(see page 2 for full size photo)

POSTED ON: June 28, 2007

SIGNATURE OF SIGN POSTER

John Dill

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

ZONING NOTICE

CASE # :07-412-XA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

PLACE: Room 407 County Courts Building
401 Bosley Avenue, Towson, MD

9:00 am Tuesday, July 17, 2007

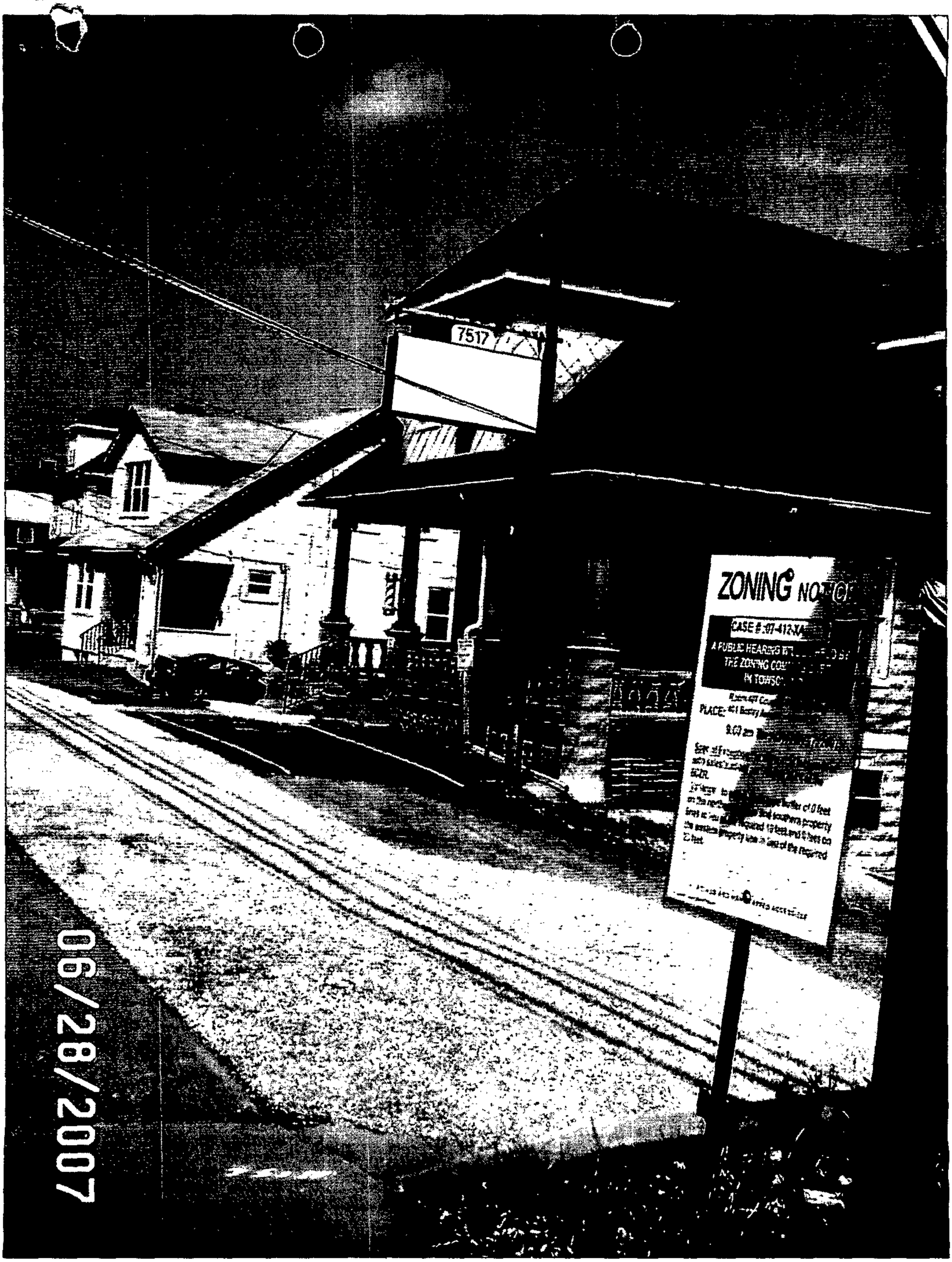
Special Exception: to allow a car lot (outdoor auto sales/auction) per Section 234.4 of the BCZR.

Variance: to permit landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet and 0 feet on the western property line in lieu of the required 20 feet.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY TO CONFIRM HEARING.
CALL 410-887-3391 THE DAY BEFORE THE SCHEDULED HEARING DATE

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW
HEARINGS ARE HANDICAPPED ACCESSIBLE

06/28/2007


7517
ZONING NOTICE
CASE #:07-412-X
A PUBLIC HEARING
THE ZONING COM
IN TOWSO
PLACE:

06/28/2007

ZONING NOTICE

CASE # 07-412-XA

A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.

Room 407 County Courts Building
PLACE: 401 Bosley Avenue, Towson, MD

11:00 am Tuesday, May 29, 2007

Special Exception: to allow a car lot (outdoor auto sales/auction) per Section 234.4 of the BCZR.

Variance: to permit landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet and 0 feet on the western property line in lieu of the required 20 feet.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY TO CONFIRM HEARING
CALL 410-887-3391 THE DAY BEFORE THE SCHEDULED HEARING

THIS SIGN MUST REMAIN UNTIL DAY OF HEARING

HEARINGS ARE HANDICAPPED ACCESSIBLE

05/09/2007

05/09/2007

Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE# 07-412-XA
PETITIONER/DEVELOPER:
Norman & Kelly McCarthy
DATE OF HEARING: May 29, 2007

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

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

LOCATION:
7517 & 7519 Belair Road

(see page 2 for full size photo)

POSTED ON: May 9, 2007

SIGNATURE OF SIGN POSTER

John J. Dill

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

June 5, 2007

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: 07-412-XA
7517 and 7519 Belair Road
S/east side of Belair Road, 600 feet northeast of Fullerton Road
14th Election District – 6th Councilmanic District
Legal Owners: Norman & Kelly McCarthy, Destination Credit Union

Special Exception to allow a car lot (outdoor auto sales/auction) per Section 236.4 of the BCZR.
Variance to permit landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet and 0 feet on the western property line in lieu of the required 20 feet.

Hearing: Tuesday, July 17, 2007 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: Francis Borgerding, 409 Washington Avenue, #600, Towson 21204
Norman & Kelly McCarthy, 7517 Belair Road, Baltimore 21236
Gerhold, Cross & Etzel, 320 E. Towsontown Blvd., Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JULY 2, 2007.**
(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.

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

July 12, 2007

Francis X. Borgerding, Jr.
409 Washington Avenue, #600
Towson, MD 21204

Dear Mr. Borgerding:

RE: Case Number: 07-412-XA, 7517 and 7519 Belair Road

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 19, 2007. This letter is not an approval, but only a **NOTIFICATION.**

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
Norman and Kelly McCarthy Destination Credit Union 7517 Belair Road Baltimore 21236
Gerhold, Cross & Etzel 320 E. Towsontown Blvd Towson 21286

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

March 28, 2007

ATTENTION: Zoning Review Planners

Distribution Meeting Of: March 26,2007

Item Number: 410 through 426 412

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

1. The Fire Marshal's Office has no comments at this time.

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C)443-829-2946
MS-1102F

cc: File

Martin O'Malley, *Governor*
Anthony Brown, *Lt. Governor*

State Highway Administration
Driven to Excel
Maryland Department of Transportation

John D. Porcari, *Secretary Designate*
Neil J. Pedersen, *Administrator*

Date: April 2, 2007

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

RE: Baltimore County
Item No. 7-412-XA
7517 & 7519 Belair Road
McCarthy Property
Special Exception
Variance

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 7-412-XA.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

Michael P. Bailey

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

PETITIONER'S
EXHIBIT NO. _____

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: July 13, 2007

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

RECEIVED
JUL 16 2007
BY:.....

SUBJECT: 7517-7519 Belair Road

INFORMATION:

Item Number: 07-412

Petitioner: Norman McCarthy, c/o Francis X. Borgerding, Jr.

Zoning: BR-AS

Requested Action: Special Exception and Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the site, subject petition and accompanying site plan. This Office offers the following comments:

The petitioner requests a Special Exception from Section 236.4 of the BCZR to use the subject property as a used car lot for outdoor auto sales and auction, and variance from the Baltimore county Landscape Manual to approve a landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet and 0 feet on the western property line in lieu of the required 20 feet.

As previously indicated, the Planning Office has reviewed the subject requests, as well as conducted a field examination of the site in addition to meeting with the applicant(s). The applicant proposes to use the subject property for a used car lot that would include an outdoor auto sales auction. The property includes two lots – 7517 Belair Road is improved with a two-story building that currently houses a barbershop and the offices for a car repossession business -(Mc and Mc Recovery). The rear of the lot is used for storage of repossessed automobiles. 7519 Belair Road is improved with a two- story dwelling that is vacant. The rear of the lot is paved and is used for storage of automobiles that are recovered by Mc and Mc Recovery.

The submitted site plan and subject requests indicate that the applicant proposes to raze 7519 Belair Road and use the front of the site for additional auto storage. It is unclear from the site plan how the rear of the site would be used. 7517 Belair Road is shown to continue to serve as the offices of Mc and Mc Recovery and the retail operation and 18 parking spaces associated with those uses.

This Office concludes with the following, the Office of Planning recommends **denial** of the requested special exception and variances for the following reasons:

- The proposed location is located in the heart of the commercial district of the Overlea-Fullerton community. This community has been engaged in a two-year planning process to develop a community plan initiated by County Council Resolution 131-05. The plan, which is currently being drafted, identifies walkable neighborhood commercial revitalization, as a primary objective. The proposed use of a car auction does not promote pedestrian activity, and has activity associated with the operation that is not compatible with the surrounding residential community or public safety due to the number of curb cuts and parking along Belair Road.

- In addition to the community planning process, the Overlea Community has also been working with the State Highway Administration on the US 1 Community Safety and Enhancement Project which provides traffic, landscaping, and pedestrian improvements along the Belair Road corridor from the city –county line north to I-695. The design phase of this project indicates a treatment of street trees, decorative pavement and fencing, and ADA compliance at the front property line of the subject properties. These improvements would be problematic with the proposed curb cuts and parking indicated on the site plan that is being proposed by the applicant.

- Because the lots slope down from Belair Road to Marks Avenue, the area has consistently suffered from storm water management issues. Properties on Marks Avenue have previously had flooding problems.

- Although the site is currently paved, paving can be removed to meet the landscape requirements.

- The removal of the existing building at 7519 creates another " hole" in the urban fabric of the street and further erodes pedestrian safety by adding paving and curb cuts.

- The site plan does not accurately depict the current uses of the site. The 2006 aerial photo shows an access from Marks Avenue and vehicles parked across the entire site.

Prepared by: _____

Division Chief: _____
AFK/LL: CM

W:\DEVREV\ZAC\7-412.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 2, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For April 2, 2007
Item No. 07-412

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

We object to the characterization on the plan of rolled stone pavement being durable and dustless, more information is required. Also, we object to granting the variance to not provide a 10-foot landscape strip along the Belair Road frontage. We believe that some green space along the frontage would soften the impact of the business and would help prevent the display of autos at the right-of-way line. The petitioner should contact Avery Harden at (410) 887-3751 for landscape treatments.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 07-412-03282007.doc

PROTESTANT'S
EXHIBIT NO. 2

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: July 13, 2007

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

RECEIVED
JUL 16 2007
BY:

SUBJECT: 7517-7519 Belair Road

INFORMATION:

Item Number: 07-412

Petitioner: Norman McCarthy, c/o Francis X. Borgerding, Jr.

Zoning: BR-AS

Requested Action: Special Exception and Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning has reviewed the site, subject petition and accompanying site plan. This Office offers the following comments:

The petitioner requests a Special Exception from Section 236.4 of the BCZR to use the subject property as a used car lot for outdoor auto sales and auction, and variance from the Baltimore county Landscape Manual to approve a landscape buffer of 0 feet on the northern, eastern and southern property lines in lieu of the required 10 feet and 0 feet on the western property line in lieu of the required 20 feet.

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PROTESTANT'S

EXHIBIT NO. 1

W:\DEVREV\ZAC\7-412.doc

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This Office concludes with the following, the Office of Planning recommends **denial** of the requested special exception and variances for the following reasons:

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- The site plan does not accurately depict the current uses of the site. The 2006 aerial photo shows an access from Marks Avenue and vehicles parked across the entire site.

Prepared by: LL / Curtis Murray

Division Chief: Lynn Lanham
AFK/LL: CM

W:\DEVREV\ZAC\7-412.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: **Bill Hughey**
Office of Planning

DATE: October 28, 2005

FROM: **Pat McDougall**
Dept. of Recreation and Parks Pat

SUBJECT: **Letter of Concurrence Request**

As indicated in the "Memorandum of Agreement Relating to the Preservation of Open Space Land in the Baltimore Region," the Department of Recreation and Parks is required to obtain the Director of Planning's approval for all prospective Program Open Space projects. The Department would like to request a Letter of Concurrence for the acquisition of the Casagrande property in Overlea-Fullerton. This is being pursued for the purpose of providing parking for adjacent recreational sites and facilities (see attached fact sheet).

Attached are a Project Fact Sheet and county street map indicating the project location. Thank you for your assistance in expediting review and procuring Pat Keller's approval signature. Please feel free to contact me at x3822 if additional information is required.

Attachments

In the Matter of: Petition for Special Exception and Variance	*	BEFORE THE
7517 and 7519 Belair Road	*	ZONING COMMISSIONER
S/east side of Belair Road, 600 feet northeast of Fullerton Road	*	FOR
14th Election District - 6th Councilmanic District	*	BALTIMORE COUNTY
Legal Owners: Norman & Kelly McCarthy, Destination Credit Union	*	CASE NO.: 07-412-XA

RECEIVED
AUG 2 1 2007
BY:.....

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

PETITIONERS' MEMORANDUM

Petitioners, Norman and Kelly McCarthy, by and through their attorney, Francis X. Borgerding, Jr., file this Memorandum in Opposition to Protestant's Motion to Dismiss, and says:

STATEMENT OF THE CASE

Petitioners, Norman and Kelly McCarthy, filed the above-captioned hearing before the Zoning Commissioner for Baltimore County requesting special exception to allow a car lot (outdoor auto sales auction) per 236.4 of the Baltimore County Zoning Regulations (hereinafter B.C.Z.R.) with a variance to permit landscape buffer of zero feet on the northern, eastern and southern property lines in lieu of the required 10 feet and zero feet on the western property line in lieu of the required 20 feet. A hearing was held before the Zoning Commissioner on July 17, 2007 at which time the Zoning Commissioner heard testimony and evidence in support of Petitioners' requested relief as well as evidence in opposition by Protestants who appeared at the hearing represented by J. Carroll Holzer, Esquire. At the commencement of the hearing J. Carroll Holzer, Esquire made a motion to dismiss Petitioners' requested relief claiming that, pursuant to the case of, Richard Kowalski v. John LaMar, et al., 25 Md. App. 493 (1975), the Petitioners requested special

exception for outdoor auto sales/auction was prohibited under the terms of the B.C.Z.R.

ARGUMENT

Enabling legislation to allow chartered counties to enact zoning and planning laws for the protection of promotion of public safety, health, morals and general welfare bestows upon a chartered county, as to those enumerated powers, the same powers in respect to local laws, as the state would otherwise have, provided the counties' enactments to not conflict with the general laws. Code 1957, Article 25A, Section 5 Belvoir Farms Homeowners Association, Inc. v. North, 355 Md. 259, 734 A.2d 227 (1999). A county enjoys no inherit power to zone or re-zone and may exercise zoning power only to the extent and manner directed by the state legislature. West Montgomery County Citizens Association v. Maryland-National Capital Park and Planning Commission, 309 Md. 183, 522 A.2d 1328 (1987). Further, the government's power to interfere with land owner's general rights by zoning regulations restricted character and use of this property is not unlimited, and such rights are within protection of Federal and State Constitutions. Walker v. Board of County Commissioners of Talbot County, 208 Md. 72, 116 A.2d 393, cert. denied 76 Supreme Court 180, 350 U.S. 902 100 L.Ed. 792 (1955).

Baltimore County, through the Baltimore County Code, has enacted the B.C.Z.R. pursuant to state enabling legislation allowing the County to pass zoning regulations for the protection of the health, safety and welfare of the citizens of Baltimore County.

The Petitioners' property is zoned business roadside herein B.R. Section 236 of the B.C.Z.R. covers business roadside zoning use regulation. Section 236.4 lists the uses permitted by special exception in a B.R. zone. Included in this section is the use of "used motor vehicle outdoor sales, separated from sales agency buildings".

It should be noted that B.R. zoning is the most intense business zone listed in the B.C.Z.R. wherein more intense business are allowed pursuant to the B.C.Z.R. than in the business local zone found at Section 230 of the B.C.Z.R. and business major zone found at Section 233 of the B.C.Z.R.

When construing a statute, the Court's preeminent goal is to discern legislative intent, and to do that the Court begins with the plain meaning of the statutory language. Williams v. State, 385 Md. 50, 867 A.2d 305 (2005).

The Office of Permits & Development Management has concluded that auto sales by auction are included under Section 236.4's allowance by special exception of "used motor vehicle outdoor sales". Webster's Third New International Dictionary defines auction as "a public sale of property to the highest bidder".

In the above-captioned case testimony has established that the essence of Petitioners' requested use is to sell used motor vehicles to the public. Under the plain wording and meaning of Section 236.4 is entirely reasonable to include an outdoor auto auction under the perimeters of used motor vehicle outdoor sales. The wording of the special exception at issue focuses on "used motor vehicle outdoor sales" it does not in anyway limit the manner under which used motor vehicle outdoor sales are conducted.

Protestants assert that the case of Kowalski v. LaMar, et al., 25 Md. App. 493 (1975) bars by its holding the Petitioners from granting Petitioners' requested relief. The Petitioners assert that Protestants reliance on Kowalski is misplaced.

Kowalski is distinguishable from the circumstances in the above-captioned case. In Kowalski opponents filed zoning violations indicating that the Petitioner was conducting a commercial fishing business as well as a boat yard in a residential zone. The property

at issue in Kowalski was zoned R.D.P. zone (rural, deferred - planning). The Court listed the uses permitted as of right and by special exception in the zone at issue in Kowalski then citing cases in other jurisdictions indicated that any use other than those being carried on by right or by special exception is prohibited. See Kowalski at 498. The Court indicated at page 499:

> "Here there is not an iota of evidence to show that the uses complained of do or can constitute any use permitted as of right other than an accessory use."

The Court went on to determine that Kowalski's uses on the property constituted neither an accessory use nor a use potentially allowed by special exception. The Court noted the definitions in Section 101 of the B.C.Z.R. of boatyard and marina, both of which were allowed by special exception under the property's zoning and in reaching its decision indicated that Petitioner's uses constituted neither.

In the case now before the Zoning Commissioner, the B.C.Z.R. does not define auto auction or auction. Petitioners believe, under the plain and ordinary meaning of Section 236.4, the Petitioners' requested use is allowed by special exception. In the case now before the Commissioner Petitioners' property is zoned B.R., the most intense commercial zone established in the B.C.Z.R. not residential as in Kowalski. Other uses allowed in the B.R. zone, pursuant to Section 236.4 includes such intense uses as airport, amusement parks, bus terminals, heliport type 1 and 2, sanitary or rubble landfills, storage of inflammable liquids and gases and truck stop.

As indicated above, the County's authority to regulate zoning uses is limited to the prohibition of uses which are harmful to the health, safety and welfare. In light of the other uses allowed in the B.R. zone it cannot be reasonably said that an auto auction is of such

detriment to the health, safety and welfare that it should be prohibited from the B.C.Z.R.'s most intense commercial zone. Rather, it is reasonable to interpret that auto auctions are allowed under Section 236.4 by special exception under used motor vehicle outdoor sales whereby the Commissioner can assess by testimony and evidence the appropriateness of the granting of any requested special exception auto auction use.

In addition, Section 236.1 of the B.C.Z.R. indicates that in the B.R. zone "uses permitted and as limited in B.M. zone are permitted as of right." Section 233.2 of the Baltimore County Zoning Commissioner's Policy Manual indicates that auction sales are a permitted use in the B.M. zone. A copy of said section is attached hereto for the Commissioner's reference. It should also be noted that the Deputy Zoning Commissioner, in case number 06-674SPH, granted special hearing relief to permit an auto auction of automobiles as an accessory use as part of a service garage in a B.R. zone.

The subject case is distinguishable from Kowalski. Rather than being zoned residential the subject property is zoned B.R., a zone which allows intense commercial uses as a matter of right and special exception. In addition, Petitioners' proposed use is reasonably allowed under the plain wording of a special exception use of "used motor vehicle outdoor sales".

CONCLUSION

In light of the above, the Protestants Motion to Dismiss should be denied and pursuant to the testimony and evidence produced at the hearing of this matter, the Petitioners' Special Exception and Variance relief should be **GRANTED**.

FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820
ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 21st day of August, 2007, a copy of the foregoing was mailed, first-class postage prepaid, to:

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Maryland 21286-5448

FRANCIS X. BORGERDING, JR.

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.

Certificate of Zoning Approval

This will certify that the property and the improvements located at: 7519 BeLAIR Rd.

Are properly zoned to permit the following USE or Business: STORAGE LOT

Subject to the following CONDITIONS:

1) Proper application for and subsequent approval of a change of occupany and/or a building permit for said USE or Business;

2) Other: _____

Zoning Designations and permitted uses are subject to change and therefore, **in the event that the subject property is not utilized for a period a year,** this certificate is void and a renewal **MUST** be requested.

4.26.01
Date

Director. Zoning Administration & Development Management

PROTESTANT'S
EXHIBIT NO. 3

certap.pub

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 07-412 XA
DATE 7/17/07

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
✓ Bruce Doak	320 E. Towsontown Blvd	Towson Md 21053 21286	
Gernold Cross & Ethel			
✓ Norm McCarthy	2037 Furnace Rd	Fallston MD 21047	
✓ Francis X. Borgerding Jr.	409 Washington Ave Suite 600	Towson Md 21204	
✓ Delores Nash	100 E. 23rd St.	Balto. Md. 21218	
✓ Loreen Hatch	7524 Marks Ave	Baltimore Md 21236	

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
✓ CARROLL PUPA	212 ELINOR AVE	BALTIMORE, MD 21236	cwpupa@msn.com
✓ CHARLES GEYER	221 ELINOR AVE.	BALTO. MD 21236	JRGEYER@VERIZON.NET
✓ RALPH "BUD" FRANK	5175 TERRACE DR.	BALTO. MD. 21236	—
✓ Madge McDaniel	4218 Thorncliff Rd	BALTO. MD 21236	MADGESANGEL@YAHOO
✓ Karen McGuire	6809 Beech Ave.	Balto MD 21206	akmcguire@verizon.net
✓ HENRY STINTZ	17 E. MAPLE AVE.	" " "	
✓ DENNIS ROBINSON	6709 EVERALL AVE	BALTO. MD. 21206	DROBINSON52@COMCAST.NET
✓ HERMAN F. LENZENWEGER	21 GLADE AVE	BALTO. MD 21236-4411	HHLENZEN@AOL
✓ BUD HERB	121 LYNDALE AVE	BALTO, MD 21236	misteeka@verizon.net
✓ JEFF Stintz	17 E. Maple Ave	Balto, MD 21206	JStintz1@verizon.net
✓ STACI BONDURA	20 Madeline Ave	Balto, MD 21206	JSTB20@msn.com
[redacted]	~~7524 Marks Ave~~	~~Baltimore MD 21236~~	[redacted]
✓ Julian Min	7520 Belair Rd	Balto, Md 21236	julianjmin@yahoo.com
✓ Tom Jenkins	7521 Belair Rd	Balt MD 21236	tojjr99@verizon.net
✓ BARRY LUCIANI	207 MARION AVE	BALT. MD 21236	BARRY.LUCIANI@VERIZON.NET
✓ Sharalyn Luciani	207 Marion Ave	Balto. MD 21236	sharalynlu@aol.com
Cheryl Keffer	Times-Herald 4501 Fullerton Ave.	Balto. MD 21236	ckeffer@timesheraldnews.com
✓ Mary Trageser	7 Leslie Ave	Balto MD 21236	marytrageser@verizon.net
✓ JOE RTHGED	7 Leslie AVE	Balto. MD. 21236	JNR71352@yahoo.com
✓ Carole Bentz	338 Elinor Ave	Balto. MD 21236	

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Michael E. Brown	4313 Edro Ave	Nottingham, MD 21236	mikeb4313@yahoo.com
JOSEPH AMBREIHN	344 ELINOR AVE	" " "	NONE
Jack Dillon	118 W. Pennsylvania Ave	Towson Md 21204	jackdillon@verizon.net
Matt Spangler	5141 Terrace Drive	Nottingham, MD 21236	
Ron Ziegler	8356 Poplar Hill	Balto. Md. 21236	
Mary Ellen Lewis	6426 Rosemont Avenue	Baltimore, MD 21206	

PROJECT FACT SHEET

Casagrande Property Acquisition

October, 2005

The proposed project consists of the acquisition of approximately 0.4-acres acres of land owned by William Casagrande on Fullerton Avenue in the Overlea-Fullerton community. This property is being pursued to provide badly needed parking for the adjacent complex of public land that is comprised of the Fullerton Park and Community Building and the Fullerton Elementary School Recreation Center. This recreational complex is heavily utilized by the programs of the Overlea-Fullerton recreation and parks council, as well as the public in general. The existing parking is woefully inadequate, resulting in illegal parking and disputes with nearby property owners. Acquisition of land for parking is the best alternative available, as there is insufficient space available on-site for expanded parking.

The political jurisdictions in which this project falls are as follows: Legislative District 8, Election District 14, Councilmanic District 6.

The acquisition cost for this property is anticipated to be approximately $300,000.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Patrick McDougall
Department of Recreation and Parks

DATE: Nov. 16, 2005

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

SUBJECT: Letter of Concurrence: Acquisition of Casagrande property

The Office of Planning has reviewed the submittals on the referenced acquisition and has determined that the acquisition would be consistent with the Baltimore County Master Plan 2010 and will help address the recreational needs of County residents.

This Office recommends approval of the project..

C: Thomas J. Peddicord, Jr. Legislative Council to the County Council
Anthony G. Marchione, Administrative Officer
Mary Harvey, Director, Community Conservation
Bob Barrett, Recreation and Parks

S:\COMPLAN\BILL\letter of concurrence--skateland doc

MARYLAND
DEPARTMENT OF
NATURAL RESOURCES

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*
C. Ronald Franks, *Secretary*

November 17, 2005

Mr. Patrick J. McDougall
Baltimore County Department of
Recreation and Parks
301 Washington Avenue
Towson, Maryland 21204

RE: Casagrande Property Acquisition

Dear Mr. McDougall:

This Department hereby grants concurrence on the above referenced project to establish a project starting date of October 28, 2005. This will provide for Program Open Space assistance for costs incurred after this date, contingent upon approval of the project by this Department, State Clearinghouse, and the Board of Public Works.

This letter only establishes the start of the project period and does not guarantee the later approval of this project nor any commitment of Program Open Space funds.

Further action on this project will be contingent upon submission of a completed Program Open Space application for assistance. The Maryland Historic Trust and the Forest, Wildlife and Heritage Division of the Maryland Department of Natural Resources have both been notified of your request. Also, please be sure to amend your Annual Program.

If you should require additional information regarding this action, please contact this office.

Sincerely,

James W. Price
Director, Program Open Space

JWP:mls

cc: MHT
FWH

FRANCIS X. BORGERDING, JR.
Attorney at Law
MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

May 8, 2007

RECEIVED
MAY - 9 2007
Per...

HAND-DELIVERED
Timothy Kotroco, Director
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake Avenue, Room 105
Towson, Maryland 21204

RE: Case No.: 07-412-XA
Property: 7517 and 7519 Belair Road
Petition for Special Exception and Variance

Dear Mr. Kotroco:

I am writing on behalf of my clients, Norman and Kelly McCarthy, to request a postponement of the above-referenced hearing now scheduled for Tuesday, May 29, 2007, at 9:00 a.m., in Room 407, County Courts Building, 401 Bosley Avenue, Towson, Maryland 21204. The reason for the requested postponement is that the surveyor who prepared the zoning plat for the above-referenced hearing, Bruce Doak, of Gerhold, Cross & Etzel, will be out of town on vacation on May 29, 2007 and his testimony is necessary for this case to proceed with regard to the above-referenced hearing. It is my understanding, after telephoning your office, that the day of June 7, 2007 is available to reschedule the above-referenced matter, which is the day that works with my clients, as well as Mr. Doak's calendar.

Thank you for your consideration of this request.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk

Office of Planning

401 Bosley Avenue, Suite 406
Towson, Maryland 21204
Tel: 410-887-3211 • Fax: 410-887-5862
E-mail: planning@co.ba.md.us

Baltimore County

James T. Smith, Jr., County Executive
Arnold F. 'Pat' Keller, III, Director

May 31, 2007

Mr. Bernard Helinski
22 Glenmore Avenue
Baltimore, MD 21206

Dear Mr. Helinksi:

The County Executive, James T. Smith, has asked the Office of Planning to respond to your letter expressing concern about the proposed use of 7517-19 Belair Road as a car auction site. First, let me assure you that no approval has been given by any county agency for this use.

The subject property is zoned BR-AS – Business Roadside/Automotive Service. It is also within the boundaries of the Overlea Fullerton Community Plan area (County Council Resolution 131-05) and the US Route 1 Streetscape Enhancement Project. This office has been working with an advisory group on development of the community plan, as well as coordinating with the State Highway Administration (SHA) on the streetscape improvements. An objective of that plan is to revitalize Belair Road to make it more pedestrian friendly and appealing for neighborhood shopping and entertainment.

The owner of the subject property has applied for a special exception to use the property as a used car lot with outdoor sales and auction area. This use is not permitted by right in the BR-AS zoning district, therefore, must go before the Zoning Commissioner for a hearing before the use can be legally established. The hearing is tentatively scheduled for June 28, 2007. You are encouraged to attend the hearing to voice your concerns, and/or contact the President of the Linover Community Association so that they have an understanding of all concerns. The contact for the Linover Association is Mr. Bud Herb, 121 Lyndale Avenue, Baltimore, Md. 21236.

This Office will be providing comments to the Zoning Commissioner for consideration at the hearing. Based on the information provided to date, we have several concerns regarding access, landscaping, stormwater management and the proposed use. Please feel free to contact Ms. Laurie Hay, 6th District Community Planner, at 410 887-3480 or lhay@baltimorecountymd.gov should you have any questions or for additional information.

Sincerely,

Arnold F. 'Pat' Keller, III
Director

c: Mr. Bud Herb, President, Linover Community Association

W:\COMPLAN\LHAY\Overlea-Fullerton Area Plan\constitunet letter> 7517 Belair Road.doc

PROTESTANT'S
EXHIBIT NO. 8

RE: PETITION FOR SPECIAL EXCEPTION AND VARIANCE 7517 & 7519 Belair Road; SE/S Belair Road, 600' NE of Fullerton Avenue 14th Election & 6th Councilmanic Districts Legal Owner(s): Norman & Kelly McCarthy Destination Credit Union Contract Purchaser(s): Norman & Kelly McCathy Petitioner(s)	* * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 07-412-XA

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

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

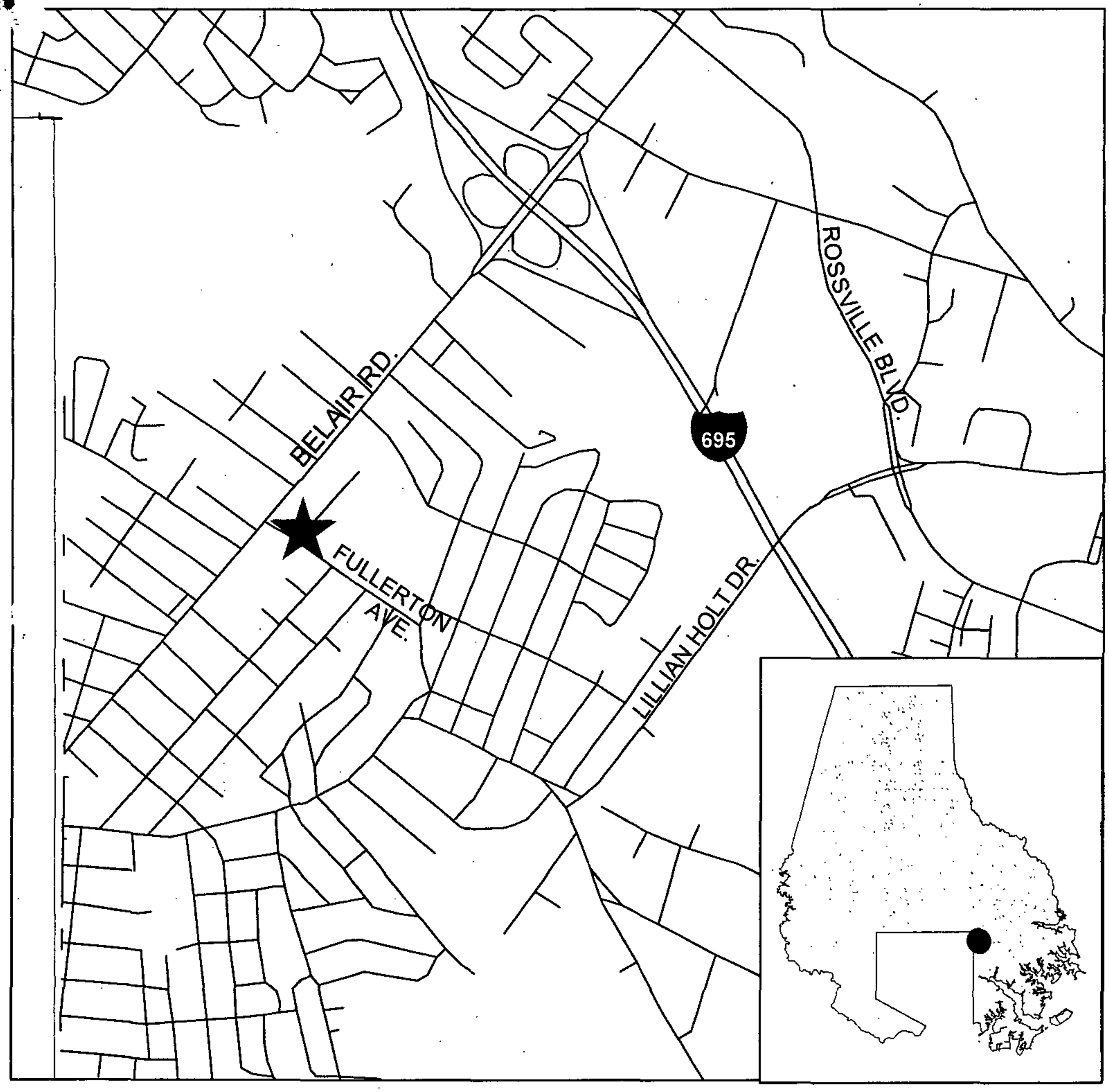
RECEIVED
APR 04 2007
Per.....

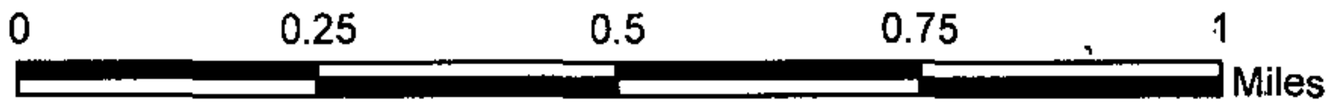
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of April, 2007, a copy of the foregoing Entry of Appearance was mailed to Gerhold, Cross & Etzel, Ltd, 320 Towsontown Blvd, Towson, MD 21286 and Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, Attorney for Petitioner(s).

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

LOCATION MAP: CASAGRANDE PROPERTY





All data from Baltimore County Geographic Information. Map created by the Baltimore County Department of Recreation and Parks, October 2005

USE PERMIT

IT IS ORDERED by the Director of the Baltimore County Department of Permits and Development Management, this 26th of April, 2001, that 7519 BELAIR ROAD (street address) should be and the same is hereby granted permission to operate a STORAGE LOT

NO INDIVIDUAL VEHICLES ~~MAY~~ SHALL ~~NOT~~ REMAIN ON SITE FOR MORE THAN 180 DAYS IN ONE CALENDAR YEAR.

Permit No.

Director

REV 06/00

Planner's Initials JCM per WCR

Department of Recreation and Parks

301 Washington Avenue
Towson, Maryland 21204
Tel: 410-887-3871 • Fax: 410-825-3305
Deaf/TDD: 410-887-5319

Baltimore County

James T. Smith, Jr., County Executive
Robert J. Barrett, Director

Mr. Bernie Wentker, Regional Administrator
Program Open Space
Maryland Department of Natural Resources
Tawes State Office Building, E-4
580 Taylor Avenue
Annapolis, Maryland 21401

October 28, 2005

Dear Mr. Wentker:

RE: Request for Concurrence- Casagrande Property Acquisition

The Baltimore County Department of Recreation and Parks would like to request a Letter of Concurrence for the acquisition of the Casagrande property in Overlea-Fullerton. This acquisition is being pursued to provide parking for adjacent recreation sites (see fact sheet). This project was not specifically listed in the County's FY'06 Annual Program, so please accept this letter as notification of our intent to modify the Annual Program.

A project location map is enclosed for your reference, and details on the project are provided on the attached fact sheet. Thanks for your help, and please feel free to contact me at (410) 887-3822 if you have any questions.

Sincerely,

Patrick J. McDougall
Planner II

Attachments

PROTESTANT'S
EXHIBIT NO. 5

You care, So be aware...
Department of RECREATION & PARKS
A Lifetime of Involvement

Baltimore County, Maryland
Capital Project Activity Allotment

Contact and Other Information

Date: **MAY 10, 2006**
Originating Agency: **RECREATION & PARKS**
Contact Name: **JOE ENSOR**
Contact Phone: **3819**
Election District: 14
Council District: 6
Allotment Number: **242-212-0601-0052**
Fund/Agency/Org/Activity
Zip Code(s): 21236
Neighborhood(s): OVERLEA-FULLERTON
Allotment Name: **CASAGRANDE PROPERTY**

☑ Original ☐ Revision

Aggregate Amount of Allotment or Revision $[redacted]

Revision Number:

Funding Information

Initial or Revised Distribution of Funding by Expenditure Object

	Current Allotment (if applicable)	This Revision (if applicable)	Initial or Revised Total
Engineering (Object 2000):			$0
Site (Object 3000):		$[redacted]	$[redacted]
Construction (Object 4000):			$0
Other (Object 5000):			$0
Total:	$0	$[redacted]	$[redacted]

Initial or Revised Funding Distributed by Source

	Current Allotment (if applicable)	This Revision (if applicable)	Initial or Revised Total
Federal:			$0
State:			$0
General Funds:		$[redacted]	$[redacted]
Bonds:			$0
Metro Bonds:			$0
Developer			$0
Other (explain below):			$0
Total:	$0	$[redacted]	$[redacted]

Purpose, location, scope, explanation and other information

TO DO APPRAISALS, TITLE SEARCH AND OTHER INCIDENTALS ASSOCIATED WITH ACQUISITION COSTS OF THE CASAGRANDE PROPERTY IN THE OVERLEA-FULLERTON AREA.

Approval Signatures

Requesting Agency

Bureau or Section Chief: [signature] Date: **5/1/0/06**

Agency Head: [signature] Date: **5/10/06**

Office of Budget & Finance

Certification that appropriations are available for the above-stated purpose(s):
(pursuant to Baltimore County Charter, Article VII, Section 715, as amended)

Budget Formulation: [signature] 5/11/06 Capital Accounting: [signature] 5/22/06

Financial Operations: [signature] Date: 5/22/06

Form Revised 04/03

PROTESTANT'S

EXHIBIT NO. 6

Baltimore County, Maryland
Capital Project Activity Allotment

Contact and Other Information

Date: DEC. 27, 2006
Originating Agency: RECREATION & PARKS
Contact Name: JOE ENSOR
Contact Phone: 3819
Election District: 14
Council District: 6
Allotment Number: 242-212-0601-0052
Fund/Agency/Org/Activity
Zip Code(s): 21236
Neighborhood(s): OVERLEA-FULLERTON
Allotment Name: CASAGRANDE PROPERTY

☐ Original ☑ Revision

Aggregate Amount of Allotment or Revision $[redacted]

Revision Number: 1

Funding Information

Initial or Revised Distribution of Funding by Expenditure Object

	Current Allotment (if applicable)	This Revision (if applicable)	Initial or Revised Total
Engineering (Object 2000):			$0
Site (Object 3000):	$[redacted]	$[redacted]	$[redacted]
Construction (Object 4000):			$0
Other (Object 5000):			$0
Total:	$[redacted]	$[redacted]	$[redacted]

Initial or Revised Funding Distributed by Source

	Current Allotment (if applicable)	This Revision (if applicable)	Initial or Revised Total
Federal:			$0
State:		$[redacted]	$[redacted]
General Funds:	$[redacted]	$0	$[redacted]
Bonds:			$0
Metro Bonds:			$0
Developer			$0
Other (explain below):			$0
Total:	$[redacted]	$[redacted]	$[redacted]

Purpose, location, scope, explanation and other information

STATE FUNDING IS PROGRAM OPEN SPACE (9224). ACQUISITION PRICE PER APPRAISALS RECEIVED FOR THE CASAGRANDE PROPERTY.

Approval Signatures

Requesting Agency

Bureau or Section Chief: Joseph W. Ensor Date: 12/27/06

Agency Head: [signature] Date: 12/27/06

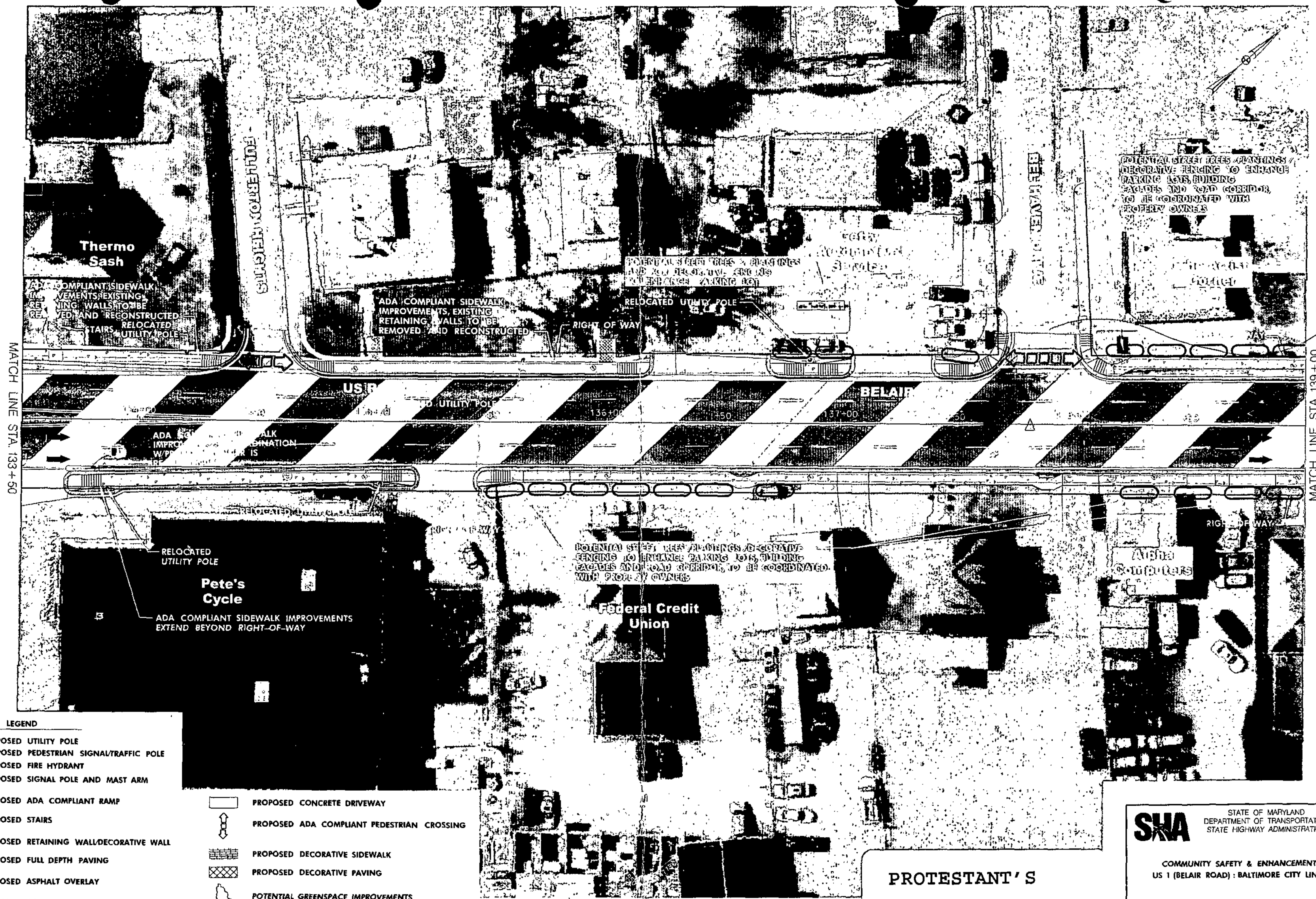
Office of Budget & Finance

Certification that appropriations are available for the above-stated purpose(s):
(pursuant to Baltimore County Charter, Article VII, Section 715, as amended)

Budget Formulation: 1/3/07 Capital Accounting: 1/5/07

Financial Operations: [signature] Date: 1/5/07

Form Revised 04/03



change to 55ft

BY: DUPEE

PROTESTANT'S

EXHIBIT NO. 7

SHA

STATE OF MARYLAND
DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

COMMUNITY SAFETY & ENHANCEMENT PROJECT
US 1 (BELAIR ROAD) : BALTIMORE CITY LINE TO I-695

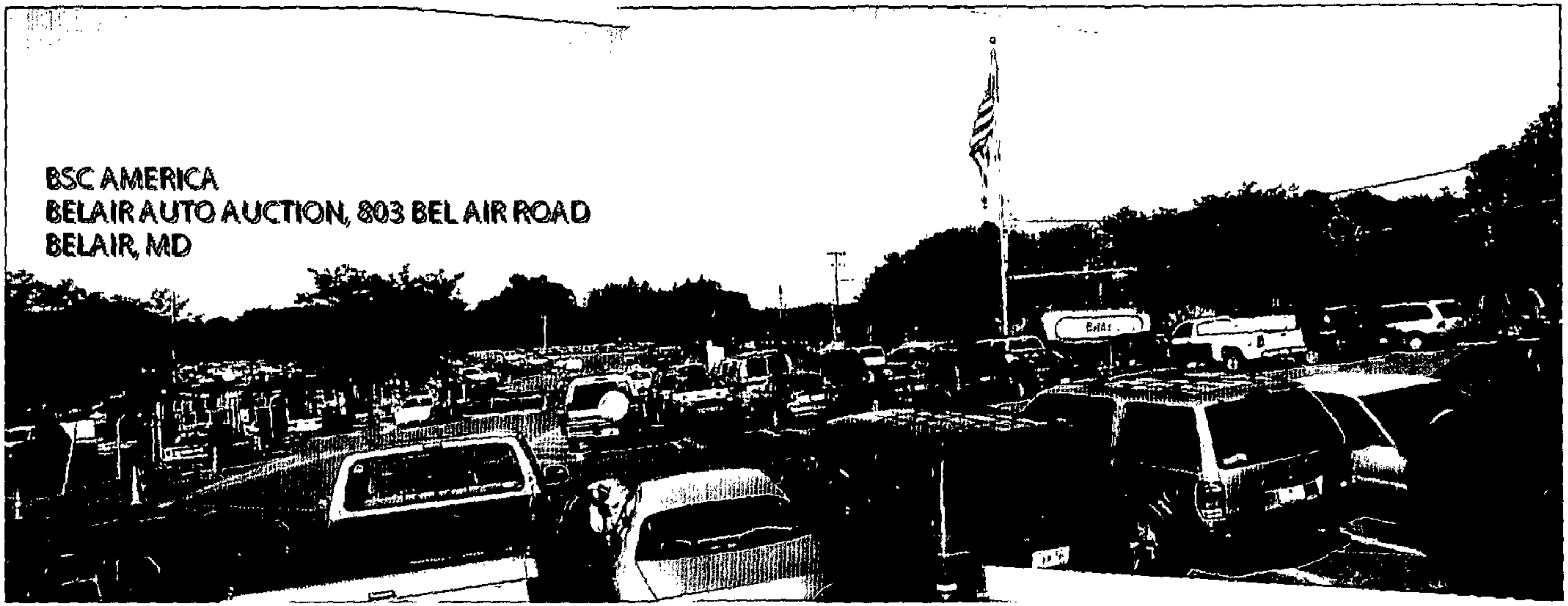
SCALE 1"=20' DATE 2/21/2007 COUNTY BALTIMORE

SHEET NO. 7 OF 11

PLOTTED: WEDNESDAY, FEBRUARY 21, 2007 AT 10:04 AM
FILE: D:\TRANSDWG\23334.05\DRAWINGS\PHC\PD07.DSL.DGN

PROTESTANT'S

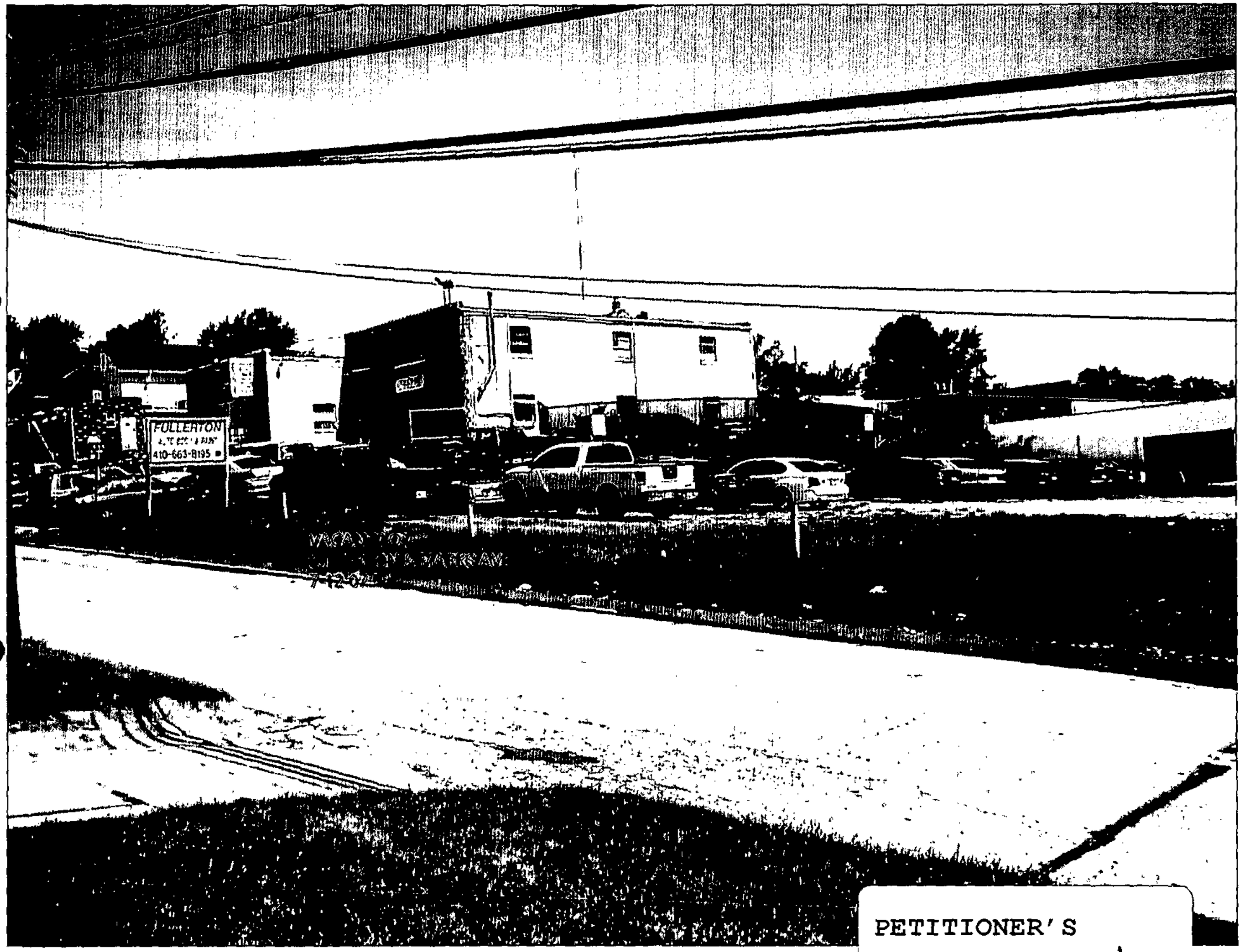
EXHIBIT NO. 9



PROTESTANT'S

EXHIBIT NO. 10

BSC AMERICA
BELAIR AUTO AUCTION, 803 BEL AIR ROAD
BELAIR, MD



7/13/07

PETITIONER'S

EXHIBIT NO. 11

OVERLEA-FULLERTON RECREATION COUNCIL
4304 Fullerton Avenue
Baltimore, Maryland 21236

Phone: 410-887-5307
Fax: 410-665-7131
Email: ofrci@bcpl.net

To: Baltimore County Zoning Board

July11, 2007

The Overlea Fullerton Recreation Council has been informed of a variance request at 7517 and 7519 Belair Road for an outdoor auto auction and sale/car lot. Our council is opposed to this variance request. The Council feels the approval of this request will bring unneeded congestion to an area, which is already plaqued with traffic problems during sporting events. Our main recreation fields are located just behind 7517 and 7519 Belair Road. These fields our constantly being used for practices, games, and tournaments, weekdays and weekends. These fields already suffer from limited parking, and as our political leaders and the Department of Recreation and Parks know, we need additional parking to handle our own recreation events. Our council strongly opposes the variance request, which if allowed, would bring additional traffic. Jeopardizing the safety and welfare of our children walking in and around the field area, and to and from their vehicles. It would also add to a parking problem for which we have yet found a solution.

The Overlea Fullerton Recreation Council respectfully requests the Zoning Board deny the proposed variance.

Mark Fritsch, President
Overlea Fullerton Recreation Council
President

cc: Kathy Klausmeier, Senator
Joe Bartenfelder, County Councilman
Eric Bromwell, Delegate
Todd Schuler, Delegate

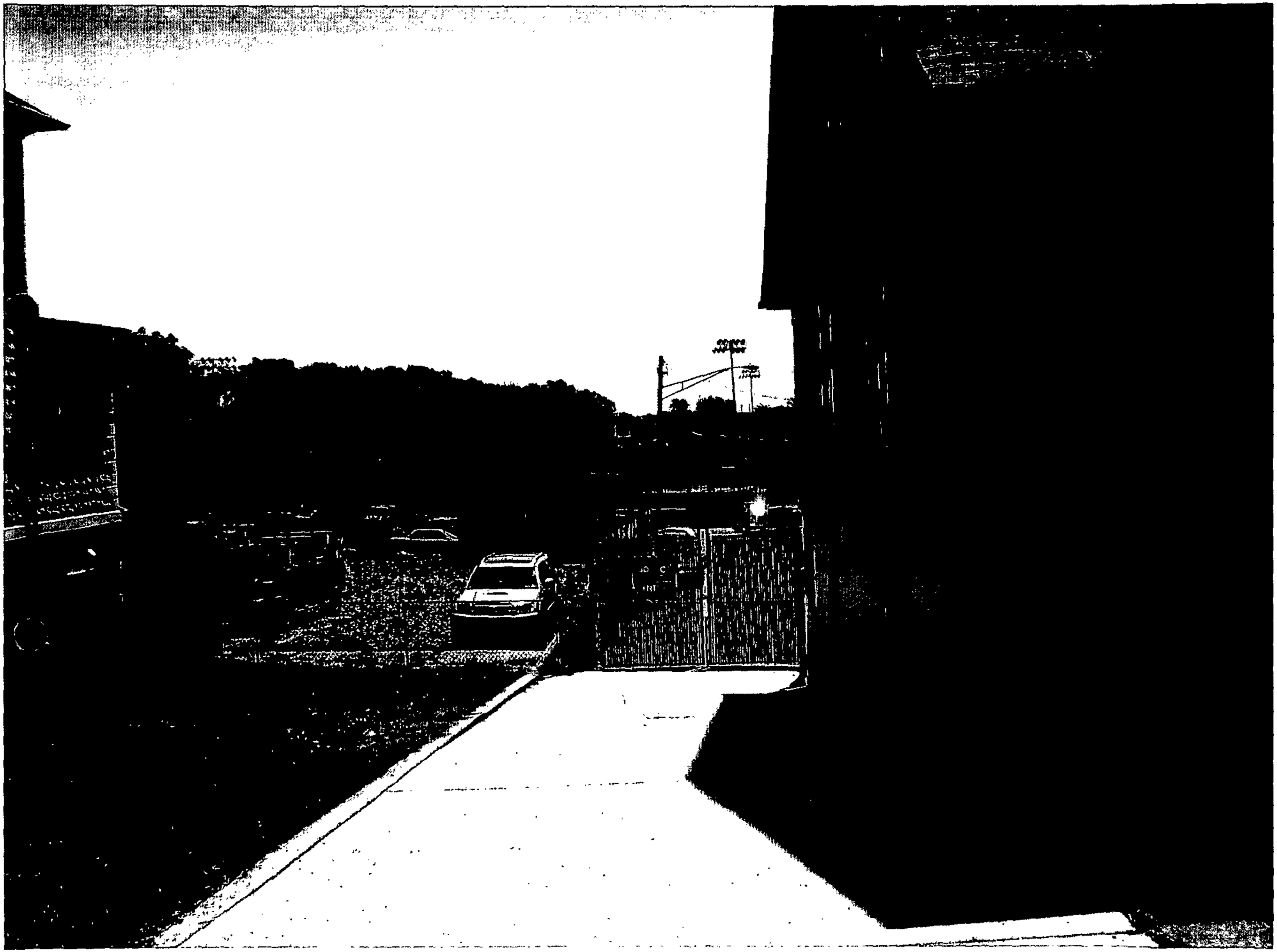
PROTESTANT'S
EXHIBIT NO. 13

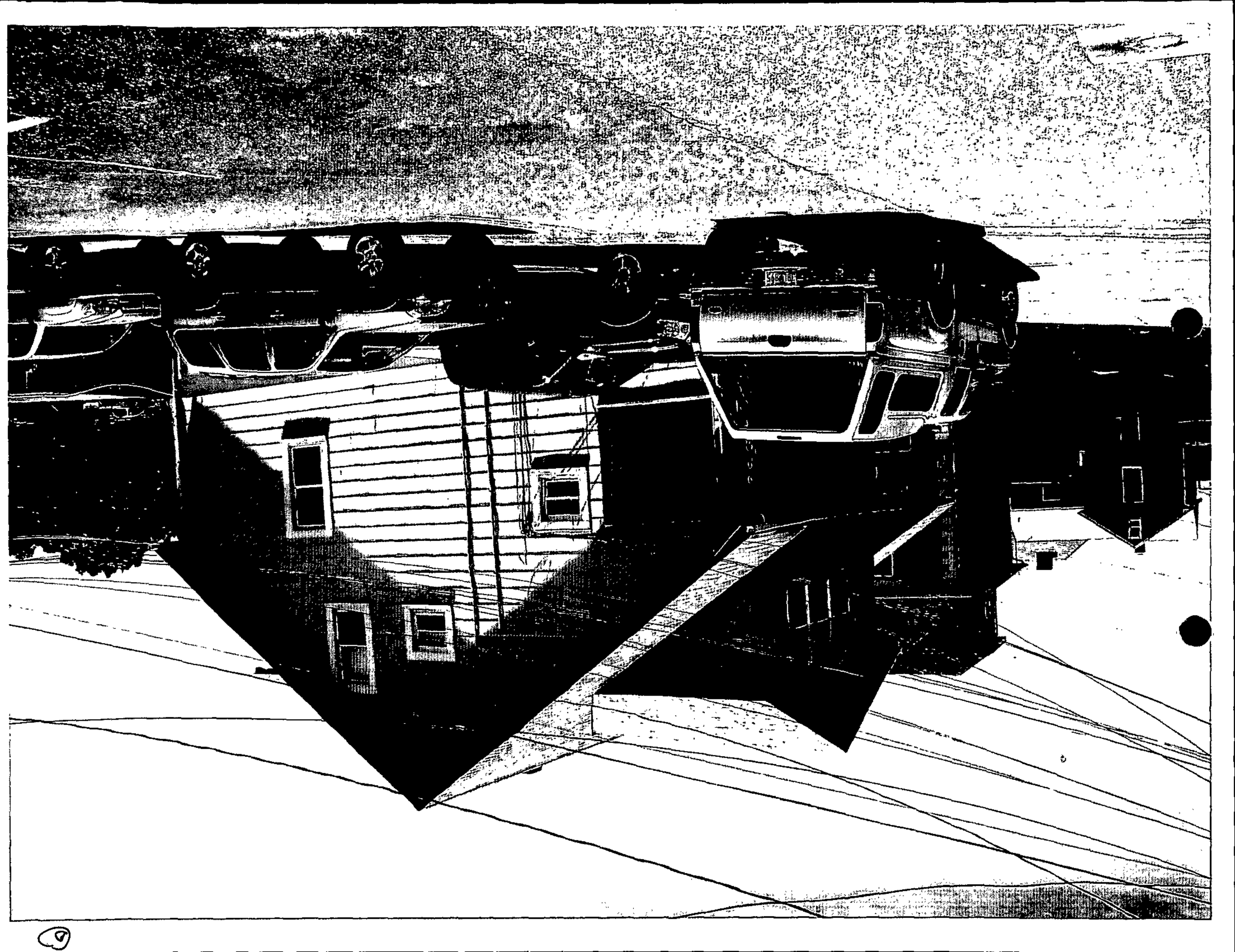
Ⓐ

Collectively
PETITIONER'S

EXHIBIT NO. 3A thru 3NN

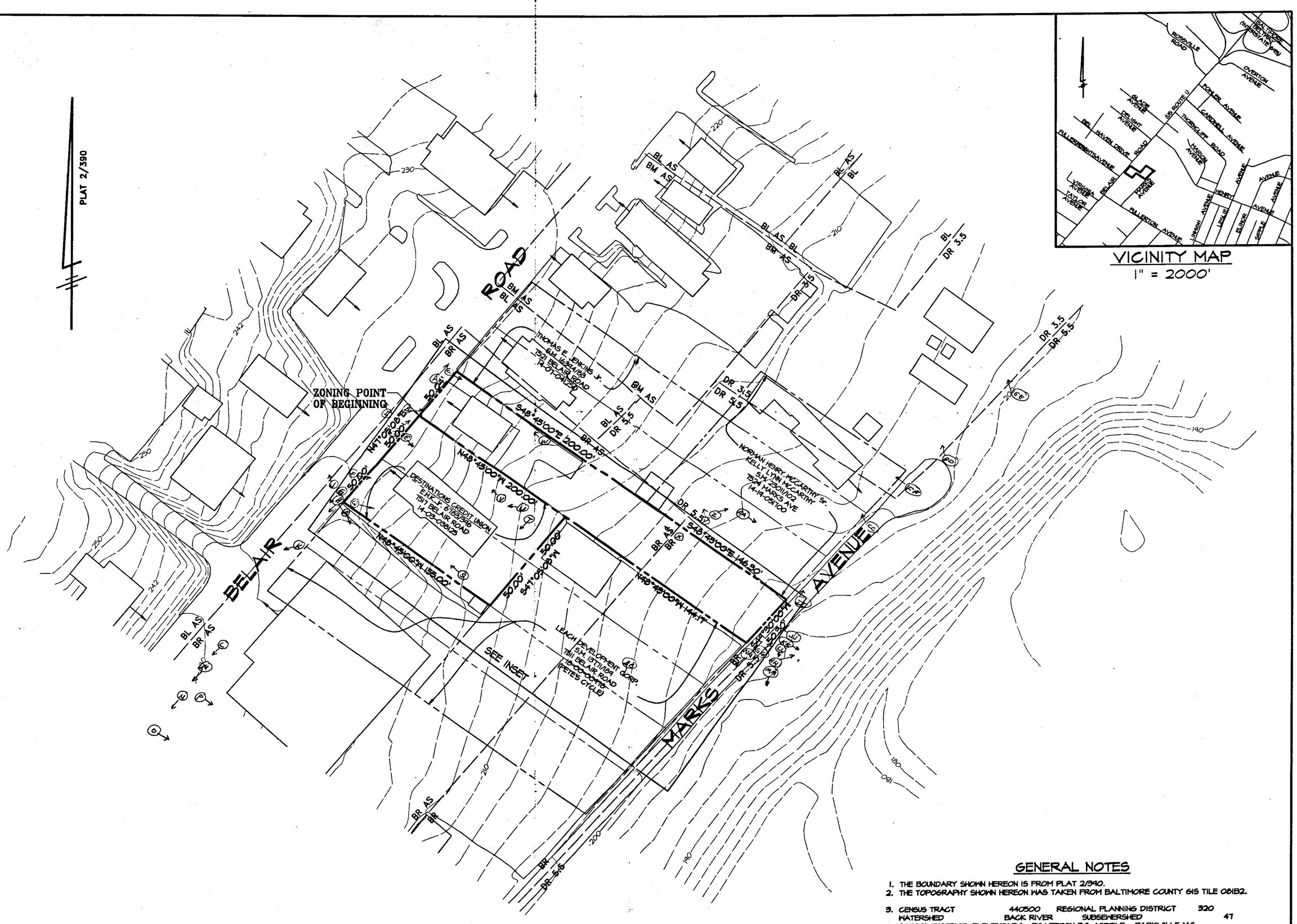
(B)





9

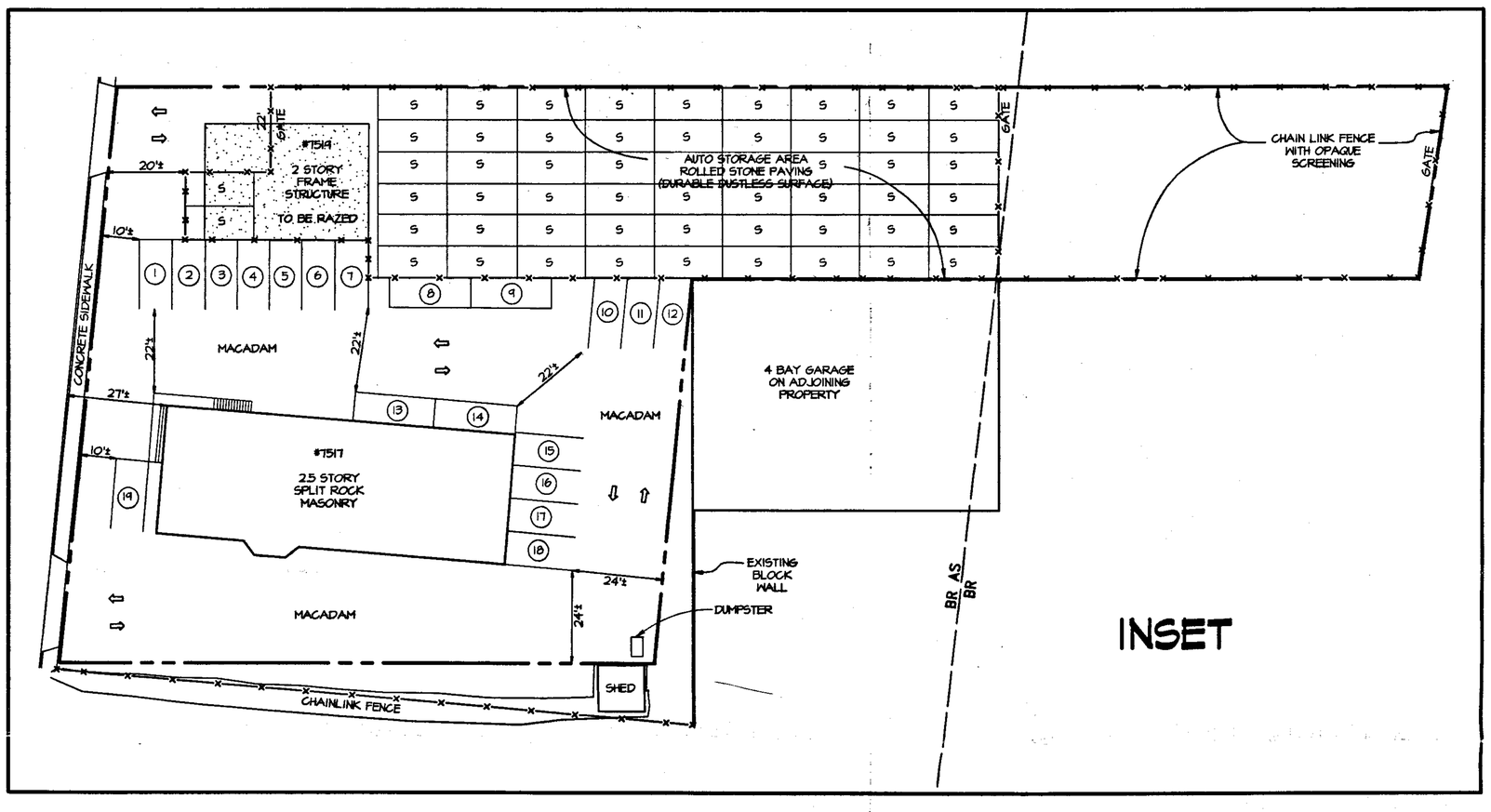
FULLERTON
AUTO BODY & PAINT
410-663-8195



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM PLAT 2/390.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 081B2.
3. CENSUS TRACT 440500 REGIONAL PLANNING DISTRICT 320
   WATERSHED BACK RIVER SUBSENERSHED 47
   SCHOOL DISTRICT: ELEMENTARY - FULLERTON E.S., MIDDLE - PARKVILLE M.S.,
   HIGH - OVERLEA H.S.
   A.D.C. MAP & GRID 28 F13
4. THERE ARE NO KNOWN PRIOR ZONING CASES ON THE SUBJECT PROPERTY.
5. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PUBLIC WATER AND SEWER.
10. PARKING SPACES INDICATED WITH AN 'S' ARE FOR STORED VEHICLES. REMAINING PARKING SPACES ARE TO BE USED FOR DISPLAY PARKING AND CUSTOMER PARKING.



OWNER\DEVELOPER

#7517
DESTINATIONS CREDIT UNION
6200 HARFORD ROAD
BALTIMORE, MD 21214
(UNDER CONTRACT TO BE PURCHASED BY NORMAN MCCARTHY, Sr.)
and
#7519
NORMAN HENRY MCCARTHY Sr.
KELLY LYNN MCCARTHY
7519 BELAIR ROAD
FALLSTON, MD 21047

STATE OF MARYLAND
BRUCE EDWIN DOAR
No. 427
REGISTERED PROPERTY LINE SURVEYOR
3/6/07

PLAN TO ACCOMPANY PHOTOGRAPHS

PARKING CALCULATIONS

MINIMUM NUMBER OF PARKING SPACES REQUIRED = 5 / 1000 SQ. FT.

TOTAL PARKING SPACES REQUIRED = 16

PARKING SPACES PROVIDED = 19

SPECIAL EXCEPTION REQUESTED

TO ALLOW AN OUTDOOR SALES AREA (AUCTION) PER SECTION 236.4 OF THE B.C.Z.R.

VARIANCES REQUESTED

FOR A VARIANCE FROM THE BALTIMORE COUNTY LANDSCAPING MANUAL - CONDITION 6 PARKING LOTS TO APPROVE A LANDSCAPE BUFFER OF 0' ON THE NORTHERN, EASTERN & SOUTHERN PROPERTY LINES IN LIEU OF THE REQUIRED 10'.

FOR A VARIANCE FROM THE BALTIMORE COUNTY LANDSCAPING MANUAL - CONDITION 6 PARKING LOTS TO APPROVE A LANDSCAPE BUFFER OF 0' ON THE WESTERN PROPERTY LINE IN LIEU OF THE REQUIRED 20'.

FLOOR AREA RATIOS

#7517	
GROSS AREA	15420 SQ. FT.
HIGHWAY WIDENING	0.0 SQ. FT.
NET AREA	15420 SQ. FT.
STRUCTURE	3054 SQ. FT.
COVERAGE ALLOWED	0.5
TOTAL COVERAGE	0.2
#7519	
GROSS AREA	17186 SQ. FT.
HIGHWAY WIDENING	0.0 SQ. FT.
NET AREA	17186 SQ. FT.
STRUCTURE	1289 SQ. FT.
COVERAGE ALLOWED	0.5
TOTAL COVERAGE	0.07

LEGEND

EXISTING BUILDING
EXISTING PAVING
ZONING LINE
PROPERTY LINE
CONTOURS
CHAIN LINK FENCE

PLAN TO ACCOMPANY A SPECIAL EXCEPTION FOR

7517 & 7519 BELAIR ROAD PROPERTIES

Deed Ref: E.H.K.,Jr. No. 6783 folio 396
Tax Account No.: 14-03-038125
Tax Map 81; Grid 16; Parcel 349; Lots 3 & 4
7519 BELAIR RD
Deed Ref: S.M. No. 15051 folio 533
Tax Account No.: 14-07-083150
Tax Map 81; Grid 16; Parcel 349; Lots 5 & 15
Zoned BR AS & BR; GIS Tile 081B2

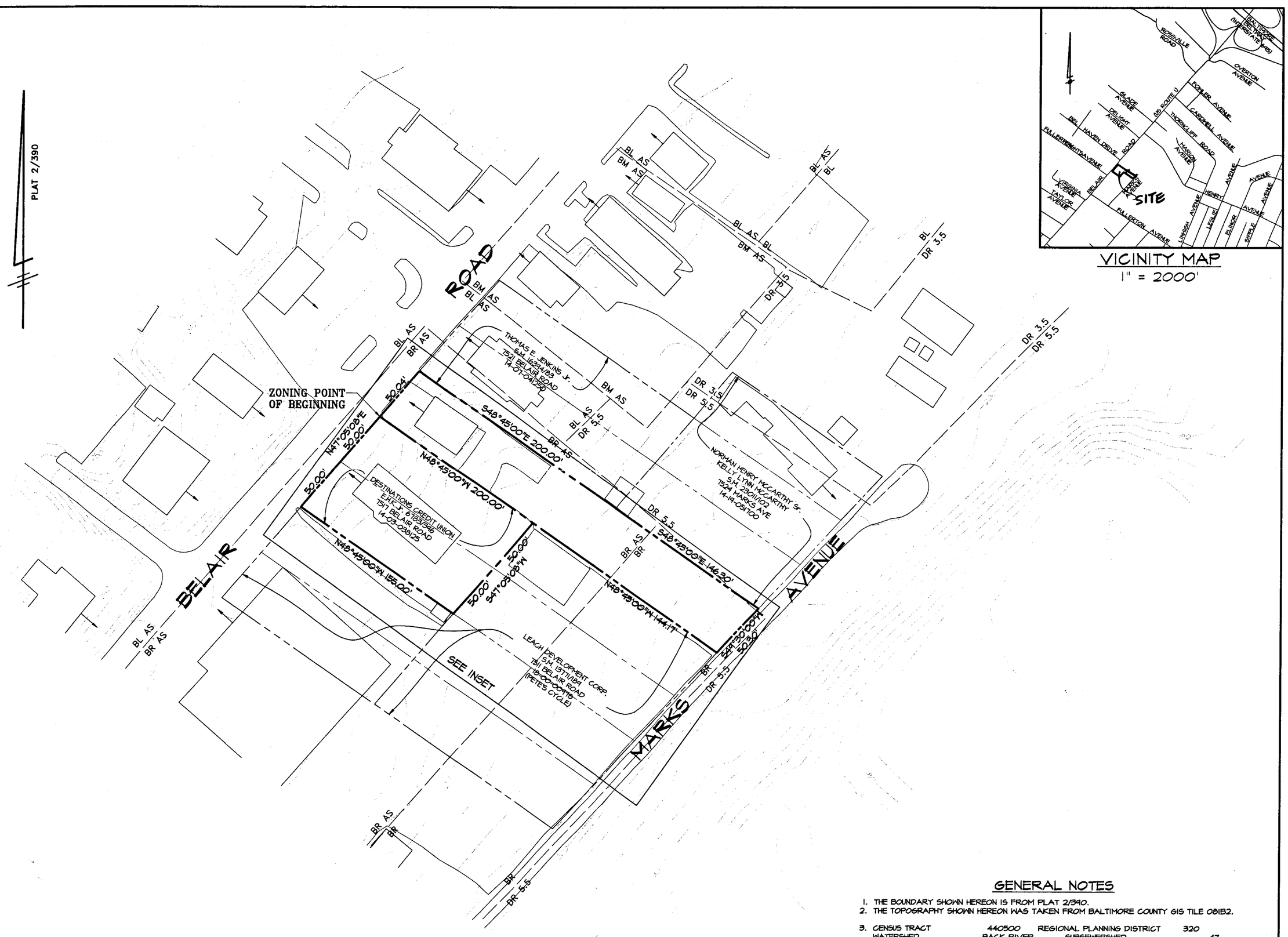
14th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=50' Date: MARCH 5, 2007

GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

REVISION	DATE	COMPUTED:	DRAWN: SMH	CHECKED:	FILE: X:\McCarthey Belair\ZONING PLAN.dwg

PETITIONER'S EXHIBIT NO. 2



GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM PLAT 2/390.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 081B2.
3. CENSUS TRACT 440500 REGIONAL PLANNING DISTRICT 320
   WATERSHED BACK RIVER SUBSEWERSHED 47
   SCHOOL DISTRICT: ELEMENTARY - FULLERTON E.S.; MIDDLE - PARKVILLE M.S.;
   HIGH - OVERLEA H.S.
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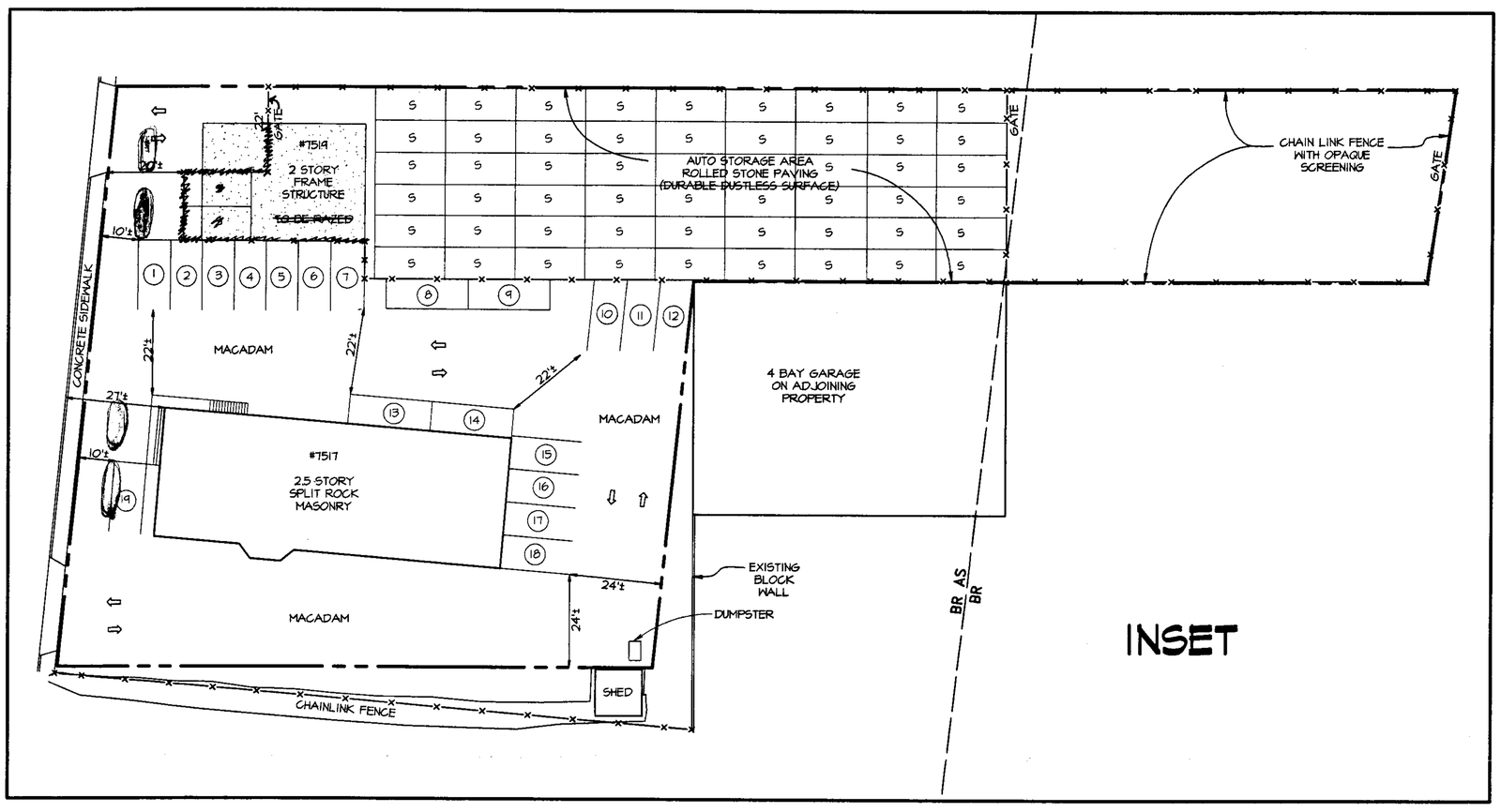

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Zoned BR AS & BR; GIS Tile 081B2

14th ELECTION DISTRICT
6th COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=50' Date: MARCH 5, 2007

REVISION	DATE
PROPOSED LANDSCAPE ISLANDS	7/11/07
REMOVAL OF "TO BE RAZED" " OF 2 SPACES & FENCE @ 7519	7/17/07

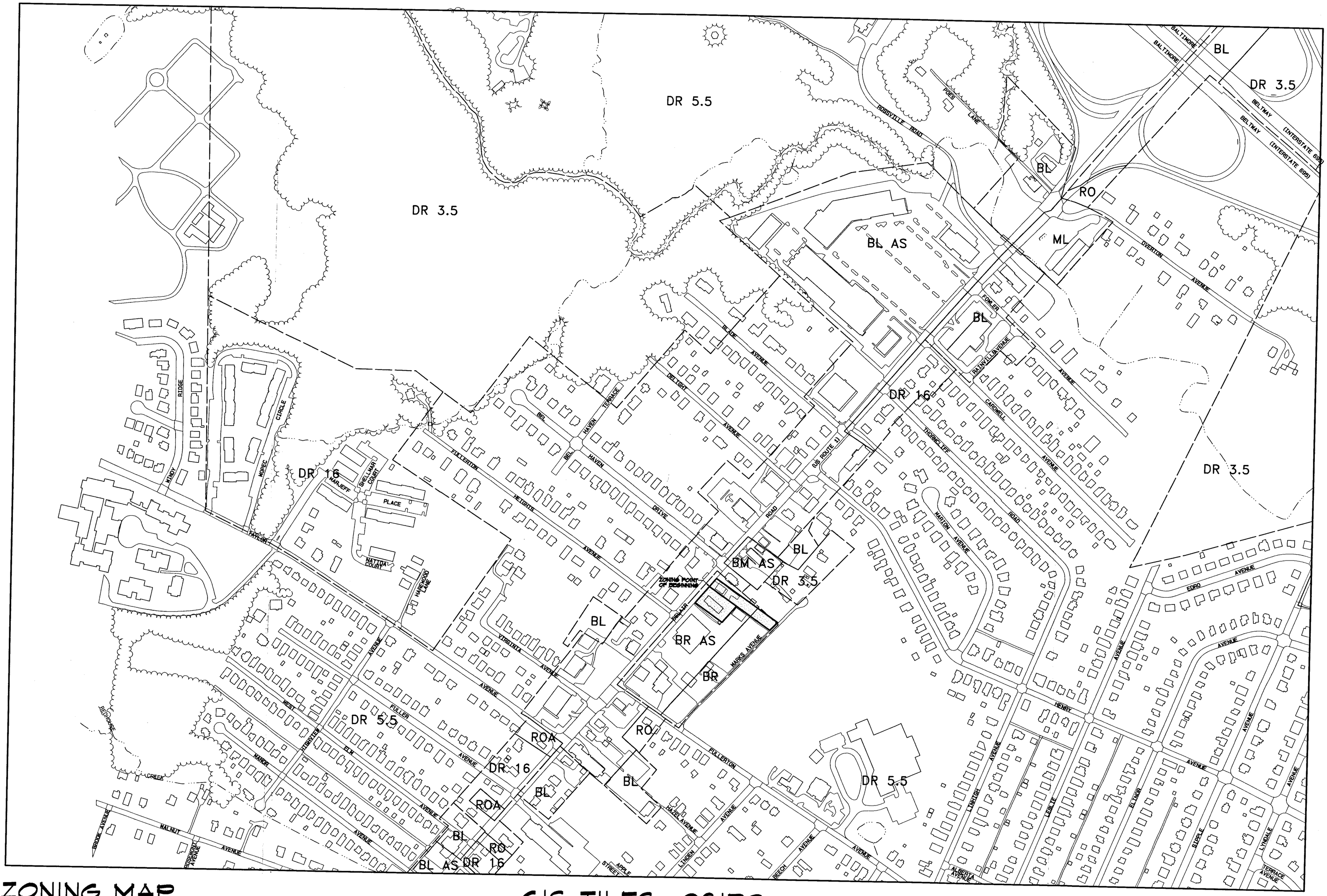
GERHOLD, CROSS & ETZEL, LTD.
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

COMPUTED: | DRAWN: SMH | CHECKED: | FILE:X:\McCarthey Belair\ZONING PLAN.dwg

07-415-XA

PETITIONER'S EXHIBIT NO. 1

07-412-~~[illegible]~~ XH

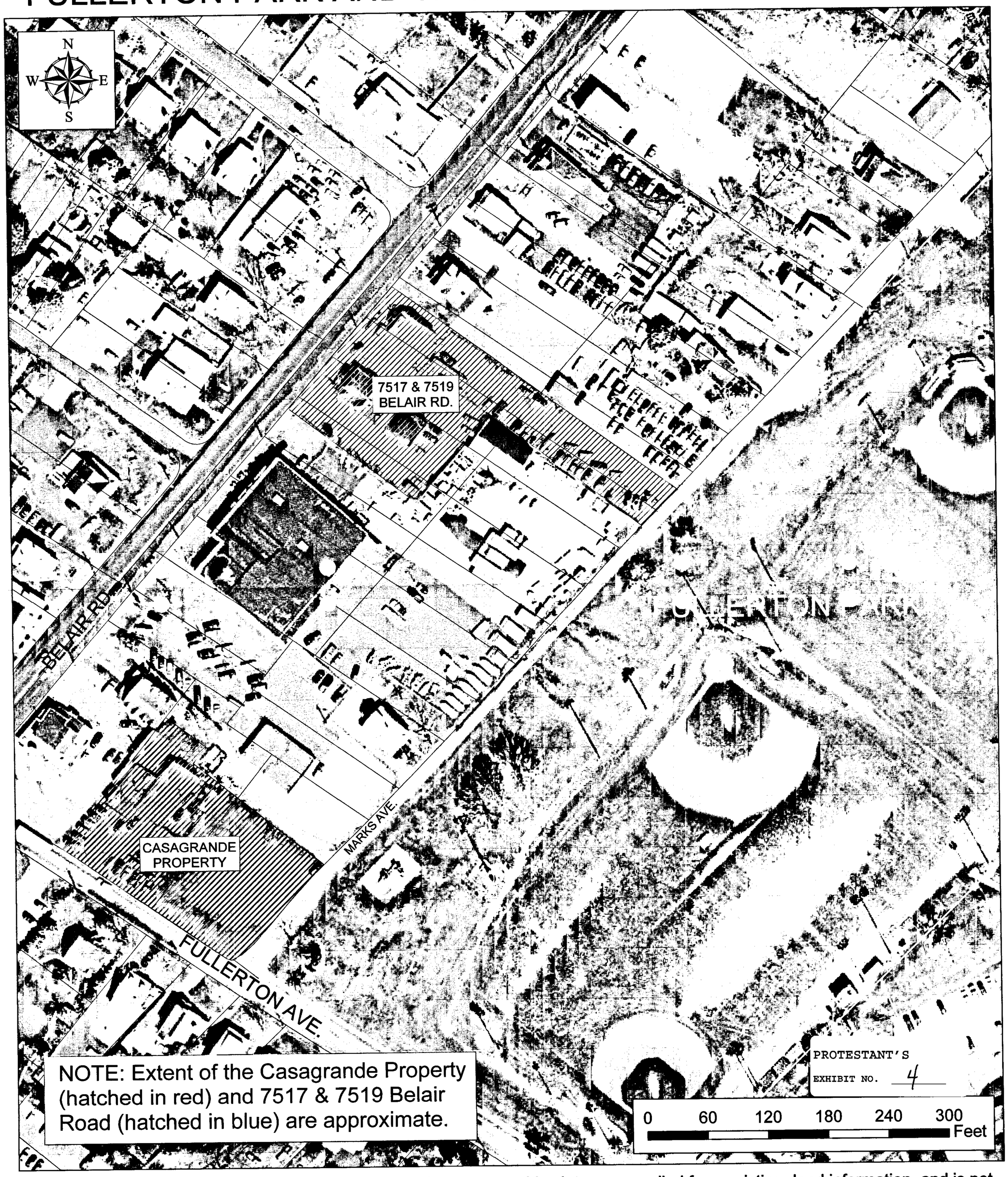


ZONING MAP

GIS TILES: 081B2

SCALE: 1" = 200'

FULLERTON PARK AND THE CASAGRANDE PROPERTY



Aerial photography flown April 2005. The cadastral information on this plot was compiled from existing deed information, and is not to be considered authoritative. Map created by the Baltimore County Department of Recreation and Parks, July 2007.