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March 11, 2010

Hon. William J. Wiseman, III
Baltimore County Zoning Commissioner
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Special Exception Case No. 08-121-X
11301 Pulaski Highway
Carmax Auto Superstores, Petitioner

Dear Mr. Wiseman:

As you know, this firm represents Carmax Auto Superstores, Inc. with regard to the above-referenced special exception. You granted a special exception for limited scale private automobile auction (Used Car Sales) by Order dated December 12, 2007 and an Amended Order dated January 14, 2008 (copies enclosed).

By this letter, we seek your concurrence that the special exception use was utilized within the scope of BCZR § 502.3 within the two year authorized period. In particular, I note that the ordinance provides, in part, as follows:

> A special exception which requires any construction for its utilization shall be deemed to have been used within its authorized time if such construction shall have commenced during the authorized period, or any extension thereof, provided said construction is thereafter pursued to completion with reasonable diligence.

In this regard, construction was commenced on the site on July 8, 2008 with extensive clearing and grading of the property. Furthermore, stormwater management has been particularly difficult on this site due to significant outfall issues which consumed a great deal of time to resolve. Nonetheless, two erosion and sediment control ponds have been completed on site, and an off-site stormwater management outfall has been relocated and is in the process of being redesigned to achieve suitable

outfall status. Construction of the off-site suitable outfall will commence within the next several weeks and is scheduled to be completed before the end of 2010. Once the erosion and sediment control ponds are connected to the off-site suitable outfall, the site will be deemed "stabilized", and the county will be in a position to issue building permits for the bricks and mortar buildings on site. However, until the site is deemed stabilized, further building permits may not be issued.

To date, Carmax has incurred costs in excess of $1.6M to accomplish these tasks. Lastly, in light of the requirements of the ordinance, it bears noting that Carmax is now pursuing and will continue to pursue completion of the construction of the entire site, including clearing, grading, stormwater management, public and private improvements, and the bricks and mortar buildings with reasonable diligence. At this time, and barring any unforeseen obstacles, we expect this $15M project to be completed by the end of 2011.

If you have any questions, please contact me directly at 410-832-2084. Otherwise, I would greatly appreciate your concurrence that the special exception was utilized within the context of BCZR §502.3 within the two year authorized period following your orders in this case. For your convenience, I have left a place for you to indicate your concurrence by countersigning this letter below. Alternatively, you may prefer to prepare a separate letter to this effect.

Thank you in advance for your attention to this matter.

Sincerely,

Dino C. La Fiandra

Enclosures, as noted.

READ AND AGREED:

March 11, 2010

William J. Wiseman, III Date
Zoning Commissioner

414682

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

* * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

were no members of the community present at the hearing, it needs to be noted that G. Macy Nelson, Esquire was present and entered his appearance on behalf of neighboring property owners Robert Mitchell, Gerald Welsh, Herbert Busch, Robert Baranoski, Dorothy Hitten, Pat Holter, as well as the Bowerman-Loreley Beach Community Association, Inc.

Mr. La Fiandra proffered Carmax's case, which was accepted and briefly summarized as follows: Petitioners' Exhibits 1A and 1B, depict the subject site. The property owned by the Schwaber Trust is comprised of 31.48 acres, more or less, located on the south side of Pulaski Highway in the White Marsh area of the County. This overall tract area will be referred to as the "Schwaber Tract" and is split-zoned B.R., M.L. and R.C.2. Carmax proposes to lease 24.85 acres of the Schwaber Tract from the Trust for Carmax's proposed service garage and auction building. This 24.85-acre area to be leased to Carmax shall be referred to herein as the "Carmax Site" and is primarily within the B.R. zoned portion of the Tract.

The property is irregularly shaped and the various areas shown on the plan are made somewhat difficult to analyze given the proposed uses. The special exception zoning area that is the subject of the petition before me can be best described as consisting of the Schwaber Tract, saving and excepting approximately 3 acres in the far northeast corner of the Schwaber Tract, as shown on Petitioners' Exhibit 1A. In the context of the zoning regulations, the Petitioners are proposing two "principal" uses on the Carmax Site: limited scale private auction, for which special exception approval is sought, and a service garage, which is permitted by right in the B.R. zone. Often, when a site plan proposes a special exception use in combination with another use which is permitted by right, the site plan shows different "use areas" for the separate uses. Mr. La Fiandra points out that the site plan submitted in this case provides mitigative measures throughout the Carmax Tract which are designed to reduce the impact of any adverse effects

generated by the auction use. Examples of such mitigative measures are the preservation of the R.C.2 zoned area in the rear of the site, as well as the installation of berms, walls, and/or landscaping as provided on the plan. *See* Petitioners Exhibit 1B. Accordingly, the special exception area is large enough to surround these mitigative measures on the site, because they relate to the proposed special exception. However, it should be noted that just because the special exception area is so large does not preclude or exclude other uses that are permitted by right within that area, as shown on Petitioners' Exhibits 1A and 1B.

The Schwaber Tract is the former site of the Pulaski Drive-In Movie Theater, and is currently vacant and unused. As previously observed, the Carmax Site is primarily zoned B.R. (20.82 acres), with some R.C.2 (3.37 acres) and M.L. (.66 acre). Carmax proposes to use the B.R. zoned portion of the Carmax Site as a vehicle service garage for the reconditioning of automobiles to be sold at retail by Carmax at one of its retail locations, and for limited scale private auto auctions through which Carmax will dispose of certain automobiles that it chooses to not sell through its retail operations. Mr. Monk, a zoning consultant, states correctly that the use of the B.R. zoned area of the property for the reconditioning of automobiles is permitted by right as a "service garage" by means of Section(s) 236.1 and 233 of the B.C.Z.R. Accordingly, this aspect of the use is not part of the Petition for Special Exception in this case.

This special exception petition involves the limited scale private auto auction.[1] Used car

[1] Carmax received approval for such auctions from the Deputy Zoning Commissioner on January 11, 2007 in Case No. 06-674-SPH. That approval was appealed to the Board of Appeals. One of the issues on appeal was whether such auction sales of automobiles was permitted within the scope of "service garage" under the definition of that term in the Baltimore County Zoning Regulations, or whether such auctions require a special exception for used car sales in the B.R. zone. By seeking the special exception for used car sales, Carmax eliminates the issue on appeal. Mr. La Fiandra noted that, if the Petition for Special Exception in this case is approved and not appealed to the Board of Appeals, Carmax would dismiss the Petition for Special Hearing presently pending before the Board of Appeals on appeal, rendering the approval in Case 06-674-SPH moot, and rendering the approval in this case the operative regulatory approval for the Special Exception Area within the Schwaber Tract.

sales are permitted in the B.R. zone by special exception pursuant to B.C.Z.R. Section 236.4. Testimony offered reveals that Carmax acquires many more cars than it sells through its retail outlets. Mr. La Fiandra explained that Carmax will auction cars that it does not want to sell at retail. According to Mr. Jagdmann, Carmax runs several auction facilities similar to the one proposed here, so it has a fair amount of experience with such auctions. Typically, auctions at this site will occur once per week, usually during the morning hours. Carmax projects that it will typically sell 180 to 200 cars at an auction in this facility, but noted that there may be times when as many as 300 or more cars are sold in an auction. Carmax aims to have one bidder for every two cars to be auctioned. Therefore, on a typical auction of approximately 200 cars, Carmax would expect approximately 100 bidders, but would proceed with the auction if there were fewer bidders.

Cars for auction will arrive at the Carmax site every day. Carmax estimates that typically there will be 4 to 5 car carrier deliveries of cars for auction per day. These cars will be stored on the Work-In-Progress (WIP) lot until the next auction. In the days leading up to the auction, the cars for auction will be arranged within the WIP lot in the order in which they will be auctioned. Auction days begin with Carmax employees arriving on-site prior to the time that bidders arrive. Bidders arrive 1 to 2 hours prior to the auction and will have an opportunity to examine cars on which they wish to bid. Once the auction begins, Carmax employees drive the cars, one at a time, through the auction building in which the auction takes place. The auction building has garage doors on each end which remain open during the entire auction. The auction participants – the bidders – are inside the auction building and bid on the cars as the cars are driven through the building very slowly. The auctions are conducted by a licensed auctioneer, who uses a loudspeaker *inside the building* to conduct the auctions. The auctions proceed very rapidly, and

Carmax estimates that a typical auction of about 200 cars will be concluded in about 2 hours, perhaps less.

The auctions are not open to the general public. The bidders are licensed automotive retailers in the state in which they operate, and are registered as auction participants with Carmax. Once the cars have been sold, the successful bidder pays for their respective cars at that time and must remove their cars from the WIP lot within 48 hours. Many cars are driven by their new owners from the lot, while others are removed from the lot on car carriers of different sizes.

As noted above, the site plan (Petitioners' Exhibits 1A and 1B) contains several features designed to mitigate adverse effects on the nearby properties. The WIP lot will have a combination of natural and man-made berms or walls along its eastern and southern edges. Carmax has proposed an 8-foot tall concrete wall extending for several hundred feet north from the southeast corner of the WIP lot. (*See* "screen wall detail" and the dark blue highlighted portion as noted on Petitioners' Exhibit 1B). I understand why Carmax proposed this as a concrete wall, however as discussed at the hearing, I am not certain that this wall is necessary in this location. Mr. Nelson indicated that this component provides no known benefit to his clients. Therefore, Carmax may construct this wall, as shown on the site plan, if it desires to do so; however, instead of the wall as proposed, Carmax may install a Class A Landscape Screen in the area along the eastern edged of the WIP lot where the wall is proposed, in accordance with the Baltimore County Landscape Manual. It may be that this wall at this location might have been an accommodation to other community members not represented by Mr. Nelson, and if so, I do not wish to interfere. However, if Carmax is otherwise able to install landscaping in this area instead of a wall as proposed, it shall have the discretion to do so which would present a more aesthetically pleasing appearance.

As demonstrated by Petitioners' Exhibit 2, the Schwaber Tract is located solidly within an area along Pulaski Highway predominately zoned in the manufacturing zones and the more intensive business zones. As illustrated by Petitioners' Exhibit 3, the auction uses are located approximately 1,200 feet from the nearest residentially zoned area. The site plan will preserve over 500 feet of mature woodland between the southern edge of the WIP lot and the closest residentially zoned property to the rear of the site. Petitioners' Exhibit 3 illustrates that the Schwaber Tract slopes downward from the area where the auction activities will occur to the rear of the site over 1,200 feet away, and that the difference in elevation between the auction activities and the nearest houses to the south of the site is approximately 90 feet. These factors lead to the conclusion that the Carmax site is well suited for the proposed uses on the site.

Furthermore, Carmax has offered a number of conditions, set forth on Petitioners' Exhibit 1A under the heading "Special Notes", which will mitigate any adverse effects. Carmax's proposed conditions are:

a. There shall be no external loudspeakers on the Property.

b. Vehicles for auction shall not be started (for display purposes) before 8 AM on auction days.

c. There shall be no test-drives of vehicles through residential neighborhoods. Carmax shall post a written notice of this policy in the auction building.

d. All lighting throughout the site shall be on poles not to exceed 24 feet in height.

e. Lights at the edge of the WIP lot shall have shields to reduce spillage of light off the lot.

f. Auctions may be held on weekdays only.

g. There shall be no more than one auction per day.

h. Auction (exclusive of staging, idling, bidder inspection, and similar activities) may not start prior to 9 AM and must conclude by 5 PM.

i. Auction participants shall have access to the customer parking lot at least as early as 6 AM, so as to avoid queuing into Pulaski Highway.

j. The R.C.2 zoned area, as identified on the site plan, shall not be disturbed until such time as Carmax no longer has a leasehold interest in the Carmax Site.

In addition, the site plan shows a limit of disturbance (LOD) along the eastern and western property lines. Carmax and the Trust have agreed to not disturb any existing vegetation located within the Carmax Site along the eastern and western property lines which is outside of the LOD until such time as Carmax no longer has a leasehold interest in the Carmax Tract.

As the courts have consistently acknowledged, all uses of land, including those that are permitted by special exception, are presumed to have certain adverse effects. Uses that are permitted by special exception require an individualized determination that the adverse effects generated by the proposed use are not exacerbated by a unique characteristic of the proposed use or the proposed location. Special exception uses enjoy a legislative presumption that they are compatible with the uses that are permitted in adjoining areas under the applicable zoning regulations, absent a showing to the contrary. In *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), a leading Maryland case on special exceptions, the Court stated:

> "...[T}he appropriate standard to be used in determining whether a special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* at 14.

There is no evidence that the adverse effects generated by the auction use, as proposed, are above and beyond those inherently associated with such a use, regardless of its location. Furthermore, I find that the requirements of Section 502.1 of the B.C.Z.R., relating to special exceptions, have been met.

ORDER RECEIVED FOR FILING
Date 12-19-07
By

Although there were no adverse Zoning Advisory Committee (ZAC) comments received, the State Highway Administration (SHA) requested that as part of any approval given, I impose a condition that the owner/applicant be required to obtain a permit from the SHA for improvements within the State right-of-way along Pulaski Highway. The proposed use will involve access onto US 40 (Pulaski Highway) - a State road. Carmax will need an access permit from Pulaski Highway as a matter of law, regardless of whether I impose the requirement as a condition to this zoning Order. Therefore, Carmax will need to obtain all necessary approvals and permits for access to and improvements within the right-of-way of Pulaski Highway.

Based upon the testimony and evidence offered, I find that the requirements contained in B.C.Z.R. Section 502.1 are met and that the special exception for a limited scale private automobile auction (Used Car Sales) in the B.R. zoned area, in combination with a Service Garage permitted by right, as shown on Petitioners' Exhibits 1A and 1B, will not be injurious to the health, safety or general welfare of the surrounding locale.

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

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this 12th day of December, 2007,that the Petition for Special Exception to permit the use of the described property for a limited scale private automotive auction (Used Car Sales) in the B.R. zoned area of the site, pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners' Exhibits 1A and 1B, in combination with a service garage permitted by right, be and is hereby GRANTED subject to the following additional conditions not previously set forth on the site plan under the heading "Special Notes":

ORDER RECEIVED FOR FILING
Date 12-12-07
By

1. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed, and his Order is reversed, the relief granted herein shall be rescinded.

2. The Petitioner shall comply with the ZAC comments submitted by the Office of Planning and the Department of Environmental Protection and Resource Management (DEPRM) relative to a signage package review for this site and Chesapeake Bay Critical Area regulations for the protection of water quality, streams, wetlands and forest conservation. Copies of those comments, dated November 2, 2007 and October 3, 2007, have been attached hereto and made a part hereof.

3. When applying for a building permit, the site plan(s) filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this decision must be entered within thirty (30) days of the date hereof in accordance with Section 32-3-401 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 12-6-07
By

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

* * * * * * * * *

AMENDED ORDER

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

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

previously enumerated conditions/restrictions be consolidated and set forth at the conclusion of the Order so as to avoid any potential for future confusion.

After a review of the documentation contained within the case file and the prior Order's issued in the case, I am persuaded that an Amended Order is appropriate in this instance and will grant the Motion filed by the Office of People's Counsel.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of January 2008, that the Order issued on December 12, 2007, be AMENDED to include the applicable restrictions imposed as conditions to the relief granted which are now being enumerated as follows:

1. There shall be no external loudspeakers on the Property.

2. Vehicles for auction shall not be started (for display purposes) before 8 AM on auction days.

3. There shall be no test-drives of vehicles through residential neighborhoods. Carmax shall post a written notice of this policy in the auction building.

4. All lighting throughout the site shall be on poles not to exceed 24 feet in height.

5. Lights at the edge of the WIP lot shall have shields to reduce spillage of light off of the lot.

6. Auctions may be held on weekdays only.

7. There shall be no more than one auction per day.

8. Auction (exclusive of staging, idling, bidder inspection, and similar activities) may not start prior to 9 AM and must conclude by 5 PM.

9. Auction participants shall have access to the customer parking lot at least as early as 6 AM, so as to avoid queuing into Pulaski Highway.

10. The R.C.2 zoned area, as identified on this site plan (Petitioner's Exhibit 1A), shall not be disturbed until such time as Carmax no longer has a leasehold interest in the property.

11. The site plan shows a Limit of Disturbance (LOD) along the eastern and western property lines. Carmax and the Schwaber Trust, to preserve existing vegetation, shall not disturb any existing vegetation located within the Carmax Site along the eastern and western

ORDER RECEIVED FOR FILING
Date 1-14-08
By

property lines, which is outside of the LOD until such time as Carmax no longer has a leasehold interest in the subject Carmax Tract.

12. The Petitioner shall comply with the ZAC comments submitted by the Office of Planning and the Department of Environmental Protection and Resource Management (DEPRM) relative to a signage package review for this site and Chesapeake Bay Critical Area regulations for the protection of water quality, streams, wetlands and forest conservation. Copies of those comments, dated November 2, 2007 and October 3, 2007, have been attached hereto and made a part hereof.

13. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed, and his Order is reversed, the relief granted herein shall be rescinded.

14. When applying for a building permit, the site plan(s) filed must reference this case and set forth and address the restrictions of this Order.

Any appeal of this AMENDED Order must be entered within thirty (30) days of the date hereof in accordance with Section 32-3-401 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

c: Dino C. LaFiandra, Esquire, Whiteford, Taylor & Preston, L.L.P.,
210 W. Pennsylvania Avenue, Towson, MD 21204
Joseph Jagdmann, Real Estate Manager, Carmax Auto Superstores, Inc.,
12800 Tuckahoe Creek Parkway, Richmond, VA 23238
Messrs. Sidney Weiman & Mark Wagonheim, Schwaber Trust, 901 Reisterstown Road,
Baltimore, MD 21208
Bill Monk, Morris & Ritchie Associates, Inc., 1220-C East Joppa Road, Suite 505,
Towson, MD 21286
Mickey Cornelius, The Traffic Group, Inc., 9900 Franklin Square Drive, Suite H,
Baltimore, MD 21236
Scott Harvey, P.E., Chief Engineer, Phoenix Noise and Vibration, Inc., 930 North East Street, Suite 4, Frederick, MD 21701
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Md. 21204
Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100,
Annapolis, MD 21401
Richard Cobert, Business Development, Department of Economic Development
People's Counsel; Office of Planning; DEPRM; File

ORDER RECEIVED FOR FILING
Date 1-14-08
By

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

January 10, 2008

HAND-DELIVERED
William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: PETITION FOR SPECIAL EXCEPTION
Schwaber Trust, Legal Owner & Carmax
Auto Superstores, Inc, Lessee- Petitioners
Case No: 08-121-X

Dear Mr. Wiseman:

Please accept this letter as a Motion for Reconsideration under Rule 4K of the Findings of Fact and Conclusions of Law and Order dated December 12, 2007 in the above case. The opinion lists on pages 6-7 "Special Notes" a-j as proposed conditions for loudspeakers, times for starting vehicles, test-drives, lighting, auction times (day, hour, and number), access, and R.C. 2 zone area limits. It also discusses a limit of disturbance (LOD) to preserve existing vegetation along the eastern and western property lines. The order, on page 8, makes reference "to the following additional conditions not previously set forth on the site plan under the heading "Special Notes," but then proceeds to list 3 different conditions without enumerating the aforesaid conditions a-j or the LOD. We have occasionally seen disagreements, years after a decision, about the effect of conditions or limits discussed in the opinion but not enumerated in the order. So as to avoid any potential for future confusion, would you please consider adding conditions a-j and the LOD limit to the order, in the same manner as set forth on pages 6-7.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
cc: Dino LaFiandra, Esq.
G. Macy Nelson, Esq.

BW 11/7
9 AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
Amended Comments

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

DATE: 11/02/2007

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

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

INFORMATION:

Item Number: 8-121

Petitioner: Schwaber Trust

Zoning: BR, ML and RC 2

Requested Action: **Special Exception**

RECEIVED
NOV 05 2007
BY:----------

SUMMARY OF RECOMMENDATIONS:

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

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

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

Reviewed by: CJM kyf LO

Division Chief: Lyn Lanham

AFK/LL: CM

ORDER RECEIVED FOR FILING
Date 12-12-07
By DZ

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BJ 11/7
9AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

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

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination JWL

DATE: October 3, 2007

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

Zoning Advisory Committee Meeting of September 10, 2007

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

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

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

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

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

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

Reviewer: Glenn Shaffer Date: October 1, 2007

S:\Devcoord\1 ZAC-Zoning Petitions\ZAC 2008\ZAC 08-121-X.doc

ORDER RECEIVED FOR FILING
Date 10-4-07
By JWL

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

December 12, 2007

WILLIAM J. WISEMAN III
Zoning Commissioner

Dino C. LaFiandra, Esquire
Whiteford, Taylor & Preston, L.L.P.
210 W. Pennsylvania Avenue
Towson, MD 21204

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

Dear Mr. LaFiandra:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Exception has been granted with restrictions 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: Joseph Jagdmann, Real Estate Manager, Carmax Auto Superstores, Inc., 12800 Tuckahoe Creek Parkway, Richmond, VA 23238
Messrs. Sidney Weiman & Mark Wagonheim, Schwaber Trust, 901 Reisterstown Road, Baltimore, MD 21208
Bill Monk, Morris & Ritchie Associates, Inc., 1220-C East Joppa Road, Suite 505, Towson, MD 21286
Mickey Cornelius, The Traffic Group, Inc., 9900 Franklin Square Drive, Suite H, Baltimore, MD 21236
Scott Harvey, P.E., Chief Engineer, Phoenix Noise and Vibration, Inc., 930 North East Street, Suite 4, Frederick, MD 21701
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Md. 21204
Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100, Annapolis, MD 21401
Richard Cobert, Business Development, Department of Economic Development
People's Counsel; Office of Planning; DEPRM; File

Petition for Special Exception

to the Zoning Commissioner of Baltimore County for the property located at S/S of Pulaski Highway, 970' NE of Stevens Road

which is presently zoned BR, ML, and RC2

Deed Reference: 12277 / 279 Tax Account # 1119000800
1119000801

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

Limited Scale Private Auto Auction (Used Car Sales) in the BR zoned area, in combination with a service garage permitted by right.

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:

Carmax Auto Superstores, Inc.
Name - Type or Print

Joe Jagdmann
Signature By: Joe Jagdmann, Real Estate Mgr.

12800 Tuckahoe Creek Parkway
Address 804-747-0422 Telephone No.

Richmond, Virginia 23238
City State Zip Code

Attorney For Petitioner:

Dino C. LaFiandra, Esquire
Name - Type or Print

Dino C. LaFiandra
Signature

Whiteford, Taylor & Preston, LLP
Company

210 W. Pennsylvania Ave. 410-832-2000
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

Legal Owner(s):

Schwaber Trust
Name - Type or Print

Sidney Weiman
Signature By: Sidney Weiman, Trustee

Name - Type or Print

Signature

901 Reisterstown Road
Address Telephone No.

Baltimore, Maryland 21208
City State Zip Code

Representative to be Contacted:

Dino C. La Fiandra, Esquire
Name

210 W. Pennsylvania Ave. 410-832-200
Address Telephone No.

Towson, Maryland 21204
City State Zip Code

OFFICE USE ONLY
ESTIMATED LENGTH OF HEARING _____
UNAVAILABLE FOR HEARING _____
Reviewed By A-Tsui Date 9/5/07

Case No. 08-121-X

REV 07/27/2007

ORDER RECEIVED FOR FILING
Date 12-12-07
By DO

MORRIS & RITCHIE ASSOCIATES, INC.

ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
AND LANDSCAPE ARCHITECTS

August 30, 2007

ZONING DESCRIPTION

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

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

South 45°02'33" West 618.64 feet; North 44°32'26.29" West 287.42 feet; South 45°02'32.95" West 302.95 feet; North 06°21'02" West 1361.86 feet; North 06°21'02" West 298.82 feet; North 82°05'22" East 518.59 feet; North 07°00'39" West 347.64 feet; South 82°59'21" West 365.35 feet; South 06°56'32" East 985.35 feet to the point of beginning.

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

Thomas E. Wolfe, RLA
Registered Landscape Architect MD #3171

LICENSED LANDSCAPE ARCHITECT
3173
THOMAS EDWARD WOLFE
STATE OF MARYLAND
8/30/07

08-121-X

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

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: #07-121-X

S/S of Pulaski Highway, 970 feet NE of Stevens Road
S/east side of Pulaski Highway, 982 feet n/east of the centerline of Stevens Road
11th Election District-5th Councilmanic District
Legal Owner(s): Schwaber Trust, by Sidney Weiman, Trustee

Special Exception: for Limited Scale Private Auto Auction (Used Car Sales) in the BR zoned area, in combination with a service garage permitted by right.

Hearing: Wednesday, November 7, 2007 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake 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 10/759 Oct. 23 156002

CERTIFICATE OF PUBLICATION

10/25, 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 10/23, 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 AND FINANCE
MISCELLANEOUS RECEIPT

No. 05317

Date: 9.6.07

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount
001	006			6150				380.00

Total: 380.00

Rec From: Whiteford, Taylor & Preston, LLP

For: Special Exception CarMax
08-121-X

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No.: 07-121-X

Petitioner/Developer: SCHWABER TRUST

Date of Hearing/Closing: NOV 7, 2007

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

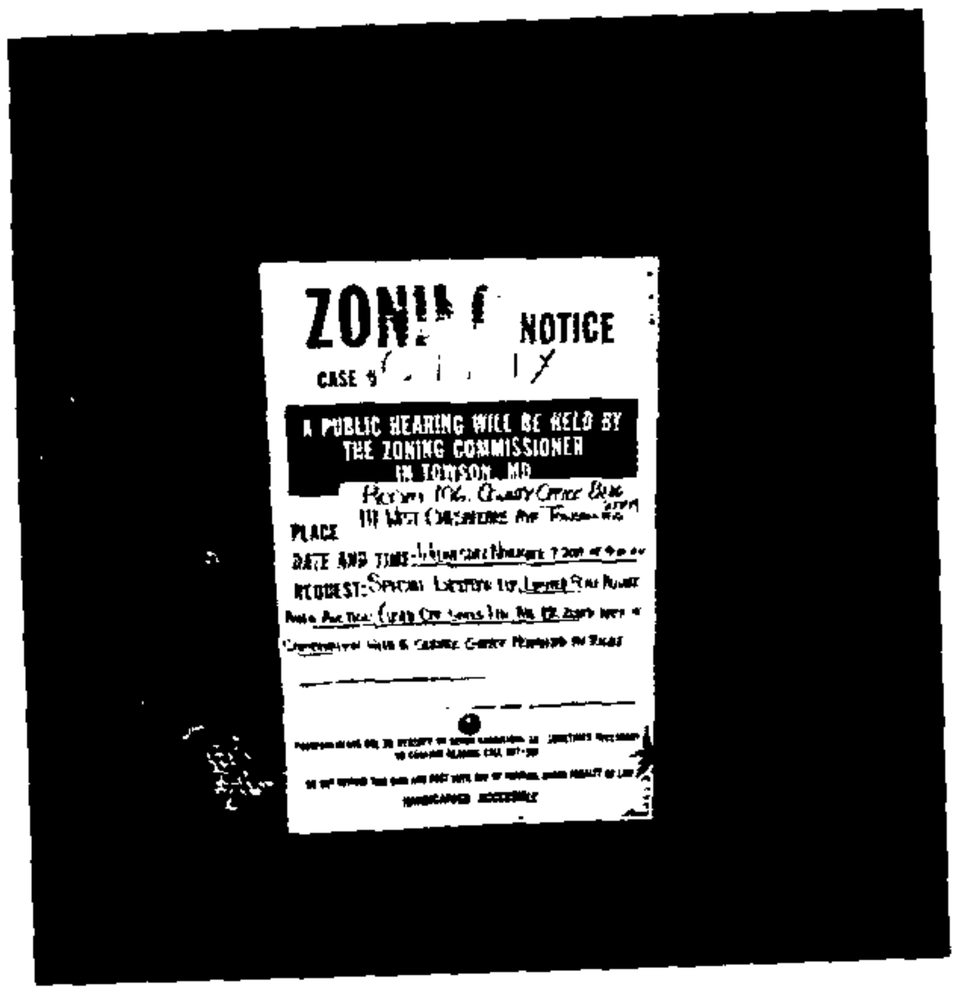
ATTN: Kristen Matthews {(410) 887-3394}

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:

S/S POLASKI HWY, 970 FT NE OF STEVENS RD

10-23-07
(Month, Day, Year)



Sincerely,

Robert Black 10-24-07
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

October 2, 2007

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: 07-121-X
S/S of Pulaski Highway, 970 feet NE of Stevens Road
S/east side of Pulaski Highway, 982 feet n/east of the centerline of Stevens Road
11th Election District – 5th Councilmanic District
Legal Owners: Schwaber Trust, by Sidney Weiman, Trustee

Special Exception for Limited Scale Private Auto Auction (Used Car Sales) in the BR zoned area, in combination with a service garage permitted by right.

Hearing: Wednesday, November 7, 2007 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Dino LaFiandra, 210 W. Pennsylvania Avenue, Towson 21204
Sidney Weiman, Schwaber Trust, 901 Reisterstown Road, Baltimore 21208
Joe Jagdmann, Carmax Auto Superstores, 12800 Tuckahoe Creek Pkwy, Richmond 23238

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 23, 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.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, October 23, 2007 Issue - Jeffersonian

Please forward billing to:
Dino LaFiandra
210 W. Pennsylvania Avenue, Ste. 400
Towson, MD 21204

410-832-2000

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: 07-121-X
S/S of Pulaski Highway, 970 feet NE of Stevens Road
S/east side of Pulaski Highway, 982 feet n/east of the centerline of Stevens Road
11th Election District – 5th Councilmanic District
Legal Owners: Schwaber Trust, by Sidney Weiman, Trustee

Special Exception for Limited Scale Private Auto Auction (Used Car Sales) in the BR zoned area, in combination with a service garage permitted by right.

Hearing: Wednesday, November 7, 2007 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS 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: ~~08~~ 08-121-X

Petitioner: Carmax Auto Superstores, Inc

Address or Location: 970' NE Stevens Road, S/S of Pulaski Highway

PLEASE FORWARD ADVERTISING BILL TO:

Name: Dino C. LaFiandra

Address: 210 W. Pennsylvania Ave, Suite 400

Towson, MD 21204

Telephone Number: 4108322000

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

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

November 1, 2007

Dino LaFiandra
Whiteford Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. LaFiandra:

RE: Case Number: 08-121-X S/S of Pulaski Highway, 970' NE of Stevens Road

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 5, 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:rjc
Enclosures

c: Peoples Council
Sidney Weiman, Schwaber Trust, 901 Reisterstown Road, Baltimore, MD 21208
Joe Jagdmann, Carmax Auto Supertores, 12800 Tuckahoe Creek Pkwy, Richmond, VA 23238

RE:	PETITION FOR SPECIAL EXCEPTION SE/S Pulaski Highway, 970' NE Stevens Road 11th Election & 5th Councilmanic Districts Legal Owner(s): Schwaber Trust, by Sidney Weiman, Trustee Contract Purchasers: Carmax Auto Superstores, Inc by Joseph Jagdmann, Real Est. Mgr Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 08-121-X

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2007, a copy of the foregoing Entry of Appearance was mailed to, Dino LaFiandra, Esquire, Whiteford, Taylor & Preston, LLP, 210 West Pennsylvania Avenue, Towson, MD 21204., Attorney for Petitioner(s).

RECEIVED
SEP 14 2007
Per.....

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

BW 11/7
9 AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
Amended Comments

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

DATE: 11/02/2007

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

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

INFORMATION:

Item Number: 8-121

Petitioner: Schwaber Trust

Zoning: BR, ML and RC 2

Requested Action: **Special Exception**

RECEIVED
NOV 05 2007
BY:

SUMMARY OF RECOMMENDATIONS:

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

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

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

Reviewed by: CJM kkg LO

Division Chief:
AFK/LL: CM

W:\DEVREV\ZAC\8-121.doc

BW 11/7
9AM

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

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

TO: Timothy M. Kotroco

FROM: Dave Lykens, DEPRM - Development Coordination JWL

DATE: October 3, 2007

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

Zoning Advisory Committee Meeting of September 10, 2007

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

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

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

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

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

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

Reviewer: Glenn Shaffer Date: October 1, 2007

S:\Devcoord\1 ZAC-Zoning Petitions\ZAC 2008\ZAC 08-121-X.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 27, 2007

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

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

INFORMATION:

Item Number: 8-121

Petitioner: Schwaber Trust

Zoning: BR, ML and RC 2

Requested Action: **Special Exception**

SUMMARY OF RECOMMENDATIONS:

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

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

Reviewed by: _____

Division Chief: _____
AFK/LL: CM

W:\DEVREV\ZAC\8-121.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: September 18, 2007

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

SUBJECT: Zoning Advisory Committee Meeting
For September 17, 2007
Item No. 08-121

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

We have no objection to the to the proposed use; however the site plan will be reviewed during the development process and it may be revised at that time.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 08-121-09172007.doc

BW 11/7
9AM

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 27, 2007

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

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

INFORMATION:

RECEIVED
OCT 0 1 2007
BY:----------

Item Number: 8-121

Petitioner: Schwaber Trust

Zoning: BR, ML and RC 2

Requested Action: **Special Exception**

SUMMARY OF RECOMMENDATIONS:

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

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

Reviewed by: _____

Division Chief: _____
AFK/LL: CM

W:\DEVREV\ZAC\8-121.doc

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

January 10, 2008

HAND-DELIVERED
William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: PETITION FOR SPECIAL EXCEPTION
Schwaber Trust, Legal Owner & Carmax
Auto Superstores, Inc, Lessee- Petitioners
Case No: 08-121-X

Dear Mr. Wiseman:

Please accept this letter as a Motion for Reconsideration under Rule 4K of the Findings of Fact and Conclusions of Law and Order dated December 12, 2007 in the above case. The opinion lists on pages 6-7 "Special Notes" a-j as proposed conditions for loudspeakers, times for starting vehicles, test-drives, lighting, auction times (day, hour, and number), access, and R.C. 2 zone area limits. It also discusses a limit of disturbance (LOD) to preserve existing vegetation along the eastern and western property lines. The order, on page 8, makes reference "to the following additional conditions not previously set forth on the site plan under the heading "Special Notes," but then proceeds to list 3 different conditions without enumerating the aforesaid conditions a-j or the LOD. We have occasionally seen disagreements, years after a decision, about the effect of conditions or limits discussed in the opinion but not enumerated in the order. So as to avoid any potential for future confusion, would you please consider adding conditions a-j and the LOD limit to the order, in the same manner as set forth on pages 6-7.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman
Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw
cc: Dino LaFiandra, Esq.
G. Macy Nelson, Esq.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE
Amended Comments

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

DATE: 11/02/2007

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

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

INFORMATION:

Item Number: 8-121

Petitioner: Schwaber Trust

Zoning: BR, ML and RC 2

Requested Action: **Special Exception**

SUMMARY OF RECOMMENDATIONS:

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

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

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

Reviewed by: _____

Division Chief: _____
AFK/LL: CM

W:\DEVREV\ZAC\8-121.doc

WHITEFORD, TAYLOR & PRESTON L.L.P.

210 WEST PENNSYLVANIA AVENUE, SUITE 400
TOWSON, MARYLAND 21204-4515
MAIN TELEPHONE (410) 832-2000
FACSIMILE (410) 832-2015

BALTIMORE, MD
COLUMBIA, MD
FALLS CHURCH, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE

WWW.WTPLAW.COM
(800) 987-8705

DINO C. LA FIANDRA
DIRECT LINE (410) 832-2084
DIRECT FAX (410) 339-4031
DLafiandra@wtplaw.com

December 7, 2007

Mr. William Wiseman
Baltimore County Zoning Commissioner
401 Bosely Avenue, Suite 405
Towson, Maryland 21204

Re: Carmax Special Exception; Case No. 08-121-X

Dear Mr. Wiseman:

I have taken the liberty of preparing the enclosed proposed order in the above-referenced case. If you would like to have the document in electronic format, please call me and I will email it to you.

Thank you.

Sincerely,

Dino C. La Fiandra

Enclosure

C: G. Macy Nelson, Esquire
Joe Jagdmann, Carmax

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before this Zoning Commissioner at a public hearing on Wednesday, November 7, 2007, for consideration of a Petition for Special Exception filed by Carmax Auto Superstores, Inc. ("Carmax"), by and through its attorneys Dino C. LaFiandra, Esquire, and Whiteford, Taylor & Preston, LLP. A Special Exception is sought to permit a limited scale private automobile auction (Used Car Sales) in the BR zoned area of the site, in combination with a Service Garage permitted by right per the Baltimore County Zoning Regulations ("BCZR"). The subject property and relief sought are more particularly described on the site plan, which was submitted into evidence and marked as Petitioners' Exhibit 1A and 1B.

The property was posted with Notice of Hearing for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning Hearing was published in "The Jeffersonian" newspaper **on ???** to notify any interested persons of the scheduled hearing date.

Appearing at the requisite public hearing on behalf of Carmax was Dino C. La Fiandra, Esquire of Whiteford, Taylor & Preston, LLP and Joseph Jagdmann, Real Estate Manager for Carmax. Also appearing was Bill Monk, the consulting landscape architect from Morris & Ritchie Associates, Inc. who supervised the preparation of the site plan. Also present for Carmax was Mick Cornelius, a traffic consultant with the Traffic Group, Inc. and Scott Harvey, a noise consultant with Phoenix Noise and Vibration, Inc.

As discussed below, the property is owned by an entity known as the Schwaber Trust. Sidney Weiman, Esquire and Mark Wagonheim were present from the Trust.

There were no members of the community actually present at the hearing. However, G. Macy Nelson, Esquire was present and entered his appearance on behalf of the following parties: Robert Mitchell, Gerald Welsh, Herbert Busch, Robert Baranoski, Dorthy Hitten, Pat Holter, and the Bowerman-Loreley Beach Community Association, Inc., (collectively, the "Community").

There were no adverse zoning advisory comments received. As discussed below, however, the State Highway Administration ("SHA") requested a condition be placed on any approval given.

Mr. La Fiandra proffered Carmax's case, and I accepted the proffer, as follows. Petitioners' Exhibits 1A and 1B, depict the subject site. The property owned by the Schwaber Trust is comprised of 31.48 acres located on the south side of Pulaski Highway. This overall tract area owned by the Trust shall be referred to herein as the "Schwaber Tract". Carmax proposes to lease 24.85 acres of the Schwaber Tract from the

Schwaber Trust for Carmax's proposed service garage and auction building shown on Petitioners' Exhibit 1A and 1B. This 24.85 acre area to be leased to Carmax shall be referred to herein as the "Carmax Site".

Complicating the description of the various areas shown on the plan is the fact that the zoning area that is subject to the Petition for Special Exception (the "Special Exception Area") consists of the Schwaber Tract, saving and excepting approximately 3 acres in the far north east corner of the Schwaber Tract, as shown on Exhibit 1A. In the context of the zoning regulations, the Plan to Accompany Petition for Special Exception proposes two "principal" uses on the Carmax Site: limited scale private auction, for which special exception approval is sought, and service garage, which is permitted by right in the BR zone. Often, when a site plan proposes a special exception use in combination with another use which is permitted by right, the site plan shows different "use areas" for the separate uses. Mr. La Fiandra explained that the Plan to Accompany the Petition for Special Exception in this case provides mitigative measures throughout the Carmax Tract which are designed to reduce the impact of any adverse effects generated the auction use. Examples of such mitigative measures are the preservation of the RC 2 zoned area in the rear of the site, as well as the installation of berms, walls, and/or landscaping as provided on the plan. Accordingly, the Special Exception Area is large enough to envelope these mitigative measures on the site, because they relate to the proposed special exception. However, it should be noted that just because the Special Exception Area is so large does not preclude or exclude other uses that are

permitted by right within that area, as shown on the Plan to Accompany Petition for Special Exception, Exhibit 1A and 1B.

The Schwaber Tract is the former site of the Pulaski Drive-In Movie Theater, and is currently vacant and unused. The Carmax Site is zoned BR (20.82 acres), RC 2 (3.37 acres) and ML (.66 acre). Carmax proposes to use the BR zoned portion of the Carmax Site as a vehicle service garage for the reconditioning of automobiles to be sold at retail by Carmax at one of its retail locations, and for limited scale private auto auctions through which Carmax will dispose of certain automobiles that it chooses to not sell through its retail operations.

The use of the BR zoned area of the property for the reconditioning of automobiles is permitted by right as a "service garage" per BCZR §236.1 and §233. Accordingly, this aspect of the use is not part of the Petition for Special Exception in this case.

This Petition for Special Exception involves the limited scale private auto auction.[1] Used car sales are permitted in the BR zone by special exception pursuant to BCZR § 236.4. Carmax acquires many more cars than it sells through its retail outlets.

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[1] Carmax received approval for such auctions from the Deputy Zoning Commissioner on January 11, 2007 in Case No. 06-674-SPH. That approval was appealed to the Board of Appeals. One of the issues on appeal was whether such auction sales of automobiles was permitted within the scope of "service garage" under the definition of that term in the Baltimore County Zoning Regulations, or whether such auctions require a special exception for used car sales in the BR zone. By seeking the special exception for used car sales, Carmax eliminates the issue on appeal. Mr. La Fiandra noted that, if the Petition for Special Exception in this case is approved and not appealed to the Board of Appeals, Carmax would dismiss the Petition for Special Hearing presently pending before the Board of Appeals on appeal, rendering the approval in Case 06-674-SPH nugatory, and rendering the approval in this case the operative regulatory approval for the Special Exception Area within the Schwaber Tract.

Mr. La Fiandra explained that Carmax will auction cars that it does not want to sell at retail.

Carmax runs several auction facilities similar to the one proposed here, so it has a fair amount of experience with such auctions. Typically, auctions at this site will occur once per week, usually in the morning hours. Carmax projects that it will typically sell 180 to 200 cars at an auction in this facility, but noted that there may be times when as many as 300 or more cars are sold in an auction. Carmax aims to have one bidder for every two cars to be auctioned. Therefore, on a typical auction of approximately 200 cars, Carmax would expect approximately 100 bidders, but would proceed with the auction if there were fewer bidders.

Cars for auction will arrive at the Carmax site every day. Carmax estimates that typically there will be 4 to 5 car carrier deliveries of cars for auction per day. These cars will be stored on the Work-In-Progress ("WIP") lot until the next auction. In the days leading up to the auction, the cars for auction will be arranged within the WIP lot in the order in which they will be auctioned.

Auction days begin with Carmax employees arriving at the site. Carmax employees will be on-site prior to the time that bidders arrive at the site. Bidders arrive at the site between 1 to 2 hours prior to the auction and have an opportunity to examine cars on which they wish to bid. Once the auction begins, Carmax employees drive the cars, one at a time, through the auction building in which the auction takes place. The auction building has garage doors on each end which remain open during the entire auction. Carmax employees drive the cars for auction through the building. The

auction participants – the bidders – are inside the auction building and bid on the cars as the cars are driven through the auction building very slowly. The auctions are conducted by a licensed auctioneer, who uses a loudspeaker inside the building to conduct the auctions. The auctions proceed very rapidly, and Carmax estimates that a typical auction of about 200 cars will be concluded in about 2 hours, perhaps less.

The auctions are not open to the general public. The bidders are licensed automotive retailers in the state in which they operate, and are registered as auction participants with Carmax.

Once the cars have been sold at auction, the successful bidder pays for their respective cars at that time and must remove their cars from the WIP lot within 48 hours. Many cars are driven by their new owners from the lot, while others are removed from the lot on car carriers of different sizes.

The site plan, Exhibit 1A and 1B, contain several features designed to mitigate adverse effects on the nearby properties. The WIP lot will have a combination of natural and man-made berms or walls along its eastern and southern edges. I note that Carmax has proposed an 8 foot tall concrete wall extending for several hundred feet north from the southeast corner of the WIP lot. I understand why Carmax proposed this as a concrete wall, however as I mentioned at the hearing, I am not certain that this wall is necessary in this location. Therefore, Carmax may construct this wall, as shown on the site plan, if it desires to do so; however, instead of the wall as proposed, Carmax may install a Class A Landscape Screen in the area along the eastern edged of the WIP lot where the wall is proposed, in accordance with the Baltimore County Landscape

Manual. I understand that this wall at this location may have been an accommodation to the community, with which I do not wish to interefere. However, if Carmax is otherwise able to install landscaping in this area instead of a wall as proposed, it shall have the discretion to do so.

As demonstrated by Carmax's Exhibit 2, the Schwaber Tract is located solidly within an area along Pulaski Highway predominately zoned in the manufacturing zones and the more intensive business zones. As illustrated by Carmax's Exhibit 3, the auction uses are located approximately 1200 feet from the nearest residentially zoned area. The site plan will preserve over 500 feet of mature woodland between the southern edge of the WIP lot and the nearest residentially zoned property to the rear of the site. Carmax's Exhibit 3 illustrates that the Schwaber Tract slopes downward from the area where the auction activities will occur to the rear of the site over 1200 feet away, and that the difference in elevation between the auction activities and the nearest houses to the south of the site is approximately 90 feet. These factors lead to the conclusion that the Carmax site is well suited for the proposed uses on the site.

Furthermore, Carmax has offered a number of conditions, set forth on Exhibit 1A under the heading "Special Notes", which will mitigate any adverse effects. Carmax's proposed conditions are:

a. There shall be no external loudspeakers on the Property.

b. Vehicles for auction shall not be started (for display purposes) before 8 a.m. on auction days.

c. There shall be no test-drives of vehicles through residential neighborhoods. Carmax shall post a written notice of this policy in the auction building.

d. All lighting throughout the site shall be on poles not to exceed 24 feet in height.

e. Lights at the edge of the WIP lot shall have shields to reduce spillage of light off the lot.

f. Auctions may be held on weekdays only.

g. There shall be no more than one auction per day.

h. Auction (exclusive of staging, idling, bidder inspection, and similar activities) may not start prior to 9 a.m. and must conclude by 5 p.m.

i. Auction participants shall have access to the customer parking lot at least as early as 6 p.m., so as to avoid queuing into Pulaski Highway.

j. The RC 2 zoned area, as identified on the site plan, shall not be disturbed until such time as Carmax no longer has a leasehold interest in the Carmax Site.

In addition, the site plan shows a limit of disturbance ("LOD") along the eastern and western property lines. Carmax and the Trust have agreed to not disturb any existing vegetation located in the within the Carmax Site along the eastern and western property lines which is outside of the LOD until such time as Carmax no longer has a leasehold interest in the Carmax Tract.

As the courts have consistently acknowledged, all uses of land, including those that are permitted by special exception, are presumed to have certain adverse effects. Uses that are permitted by special exception require an individualized determination that the adverse effects generated by the proposed use are not exacerbated by a unique characteristic of the proposed use or the proposed location. Special exception uses enjoy a legislative presumption that they are compatible with the uses that are permitted in adjoining areas under the applicable zoning regulations, absent a showing

to the contrary. In *Schultz [redacted] Pritts*, 291 Md. 1, 432 A.2d 1319 (19[redacted], a leading Maryland case on special exceptions, the Court stated:

> "…[T]he appropriate standard to be used in determining whether a special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." *Id.* at 14.

There is no evidence that the adverse effects generated by the auction use, as proposed, are above and beyond those inherently associated with such a use, regardless of its location. Furthermore, I find that the requirements of Baltimore County Zoning Regulations 502.1, relating to special exceptions, have been met.

The Zoning Advisory Comment from the State Highway Administration ("SHA") requested that as part of any approval given, I impose a condition that the owner/applicant be required to obtain a permit from the SHA for improvements within the State right-of-way along Pulaski Highway. The proposed use will involve access onto US 40 (Pulaski Highway) - a State road. With all due respect to the State Highway Administration, I believe that Carmax will need an access permit from Pulaski Highway as a matter of law, regardless of whether I impose the requirement as a condition to this zoning order. Therefore, I respectfully decline to impose the requested condition; however I note my expectation that, as a matter of law, Carmax will need to obtain all necessary approvals and permits for access to and improvements within the right of way of Pulaski Highway.

I find that the conditions contained in Section 502.1 are met and that the special exception for a limited scale private automobile auction (Used Car Sales) in the BR Zoned area, in combination with a Service Garage permitted by right, as shown on Exhibits 1A and 1B, will not be injurious to the health, safety or general welfare.

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

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County this _____ day of _____, 2007,that the Petition for Special Exception to permit is GRANTED subject to the following conditions:

1) The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at its own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed, and his Order is reversed, the relief granted herein shall be rescinded;

2) Any appeal of this decision must be taken in accordance with Section 32-3-01 of the Baltimore County Code.

WILLIAM J. WISEMAN, III
Zoning Commissioner For
Baltimore County

393440

PLEASE PRINT CLEARLY

CASE NAME Carmax-Pulaski
CASE NUMBER 08-121-SPH
DATE 11/7/07

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
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Joe Jagdmann	12800 Tuckahoe Creek Pkwy	Richmond, VA 23238	joe_jagdmann@carmax.com
MICKEY CORNELIUS	9900 FRANKLIN SQ. DR. STE H	BALTIMORE MD 21236	mcornelius@trafficgroup.com
BILL MONK	1205 E. JOPPA ROAD SUITE 505	BALTIMORE, MD 21287	wmonk@mragta.com
Rick COBERT → Economic DEV.			
Macey Nelson - For Community -			

in treaty involved

hard to solve
analyze

difficult or involved

JM ✓
11-29-06

IN RE: PETITION FOR SPECIAL HEARING
SE side of Pulaski Highway, 950 feet
NE of Stevens Road
11th Election District
5th Councilmanic District

Schwaber Trust
Legal Owner and Petitioner
Carmax Auto Superstores, Inc.
Lessee

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* CASE NO. 06-674-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

Applicable Law

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

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

Zoning Advisory Committee Comments

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

Interested Persons

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

Testimony and Evidence

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

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

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

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

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

Petitioner's Case

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Protestant's Case

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

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

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

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

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

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

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

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

Findings of Fact and Conclusions of Law

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:pz

From: Kathleen Bianco
To: Debra Wiley
Date: 11/06/07 12:15:13 PM
Subject: Re: Schwaber Trust (Owner), Carmax Auto Superstores (Lessee) - Case No. 06-674-SPH

Deb:

I've spoken with Patty regarding Bill's request - we never heard the case. Rather, when the Board convened for hearing in September, Petitioner and Protestants had reached an agreement, which was not fully signed by everyone, and so they requested a continuance pending full execution of that agreement.

So the status at this point is - we're waiting on word that the agreement *is* signed and the case will be dismissed, either by letter or on the record.

Call me if you need anything else. I've attached a copy of the status notes from our file - just as an additional FYI for Bill.

kathi

>>> Debra Wiley 11/6/2007 12:01 PM >>>
Hi Kathleen and Linda,

Bill Wiseman placed a call to your office and left a message on your recorder earlier today. I believe he's inquiring about whether the above-referenced case was appealed and heard in your office. This was a case that John Murphy heard on 11/29/06 and gave a decision on 1/11/07. If a decision has been rendered, he would be interested in receiving a copy of that decision as he will be hearing this case tomorrow morning at 9 AM.

If you have any questions, please give Bill a call at your earliest convenience about this as I am heading out to lunch in a moment.

As always, thanks for your assistance and usual cooperation. Have a wonderful day !

Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
401 Bosley Avenue, Room 405
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

CASE #: 06-674-SPH

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

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

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

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

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

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

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

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

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

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

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

Case No.: 08-121-X SE SIDE PULASKI HWY NE of STEVENS RD

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	PLANS 1A - SITE PLAN WITH CONDITIONS 1B - Colorized - Screen Exhibit	
No. 2	BUSINESS + MANUFACTURING Zones in RT 40	
No. 3	ELEVATION - 90' BETWEEN SITE & RESIDENT ZONE	
No. 4	RESUME - Scott Harvey Phoenix Noise & Vibration	
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

PETITIONER'S

EXHIBIT NO. 4

Scott B. Harvey, P.E.
President/Chief Engineer

PHOENIX
noise & vibration

Phoenix Noise & Vibration, LLC
930 North East Street, Suite 4
Frederick, Maryland 21701
301.846.4227 (phone)
301.846.4355 (fax)
www.phoenixnv.com

CAREER SUMMARY: President, Chief Engineer of Phoenix Noise & Vibration, LLC since October 2004. Vice President of Environmental Division of Polysonics Corp., working with them from 1990 until 2004. During that time, Scott was acoustical consultant for environmental noise analysis, vibration analysis, and architectural acoustics. For the five years prior to 1990, provided engineering support in the marketing of instrumentation for sound and vibration analysis.

EDUCATION: Bachelor of Science, Mechanical Engineering
University of Tennessee, Knoxville, Tennessee, 1984

PROJECT HISTORY:
Robert I. Bickford Natatorium – Prince Georges County Community College
Tower Oaks Flagship Bldg, Rockville Maryland – Traffic and Mechanical Noise Control
Shady Grove Park Loading Dock – Impact on Residential Areas
Six Flags America – Roller Coaster Noise Control
U.S. Treasury Department Building Modernization
Department of Interior – Gymnasium Noise Control
Glen Echo Park North Arcade Building – Classroom Acoustical Design
Imagination Stage, Bethesda Maryland – Theater Design and Studio Design
Phoenix at Clarendon – Emergency Generator Impact on Residential Areas
US Treasury Building – Video Teleconference Room
Social Security Administration – Video Studio
WMAL – Radio Studio
Mobil Oil Corporation – Helicopter Noise Analysis
National Institute of Health, Buildings 10, 40 & 50 Research Lab
Pepco Headquarters – Mechanical Noise Analysis & Room Acoustics
Landow House – Emergency Generator Impact on Residential Areas
Suburban Hospital – Cooling Tower Impact on Residential Areas
Prince George's County Hospital Center – Helicopter Noise Analysis
Marriott – Pentagon City Residence Inn – National Airport Noise

AWARDS AND HONORS: Professional Engineering License, August 1998
Presented structural vibration paper at 1991 Acoustical Society of America
Dean's List, University of Tennessee

MEMBERSHIP: Institute of Noise Control Engineering

CONTINUING EDUCATION UNITS: Floor Vibrations due to Human Activity
Basic Acoustics, Sound Intensity, Basic Vibrations, Machine Condition Monitoring; Accelerometers: Use and Calibration, Digital Signal Analysis, Modal Analysis, Vibration Testing, Noise Control, Traffic Noise Analysis

Expert Witness History

Scott B. Harvey, P.E.
Chief Engineer

PHOENIX
noise & vibration

Phoenix Noise & Vibration, LLC
930 North East Street, Suite 4
Frederick, Maryland 21701
301.846.4227 (phone)
301.846.4355 (fax)
www.phoenixnv.com

Anne Arundel County, Maryland

Board of Appeals

Project Name:	Three Corners at Ritchie Property
Work Performed:	Traffic Noise Analysis
Date:	March 1991

Circuit Court

Project Name:	Landsend Property
Work Performed:	Traffic Noise Analysis
Date:	November 1992

Zoning Hearing Examiner

Project Name:	Chaney Pit, Sand & Gravel Surface Mining
Work Performed:	Sand and Gravel Surface Mining Analysis
Date:	February 1993

Baltimore-Washington International Airport

BAZA Hearings

Project Name:	Crain Overlook
Work Performed:	Airport Noise Analysis
Date:	December 1990

Project Name:	Scarlet Oak Subdivision
Work Performed:	Airport Noise Impact on Residential Areas
Date:	October 1998

Project Name:	Phelps Property Subdivision
Work Performed:	Airport Noise Impact on Residential Areas
Date:	January 1999

Project Name:	Scarlet Oaks
Work Performed:	Airport Noise Impact on Residential Structures
Date:	May 2000

Project Name:	Lennox Park
Work Performed:	Airport Noise Impact on Residential Areas
Date:	June 2002

Project Name:	Queenstown Forest
Work Performed:	Airport Noise Impact on Residential Areas
Date:	November 2003

Project Name: Deep Run Overlook
Work Performed: Airport Noise Impact on Residential Areas
Date: June 2006

Charles County, Maryland

Board of Zoning Appeals

Project Name: The Rock Company
Work Performed: Sand and Gravel Pit Analysis
Date: April 1993

Howard County, Maryland

Circuit Court

Project Name: Enchanted Forest
Work Performed: Nightclub and Amusement Park Noise Analysis
Date: March 1995

Montgomery County, Maryland

Gaithersburg, MD Planning Commission

Project Name: Shady Grove Park
Work Performed: Loading Dock Warehouse Noise Impact Analysis
Date: April 1994

Board of Appeals

Project Name: Mobil Station
Work Performed: Noise Analysis
Date: June 1995

Zoning Hearing

Project Name: Germantown Station
Work Performed: Roadway and Railway Noise Analysis
Date: April 1996

District Council

Project Name: Traville
Work Performed: Barrier Analysis/Design, Outdoor/Indoor Analysis
Date: April 2001

Board of Appeals

Project Name: Suburban Hospital
Work Performed: Rooftop Mechanical Noise
Date: August 2001

Office of Zoning and Administrative Hearings

Project Name: PETsMART PETsHOTEL
Work Performed: Noise Impact on Residential Areas
Date: September 2004

Prince George's County, Maryland

Appeals Hearing

Project Name: Six Flags America Amusement Park
Work Performed: Roller Coaster Noise Impact on Residential Areas
Date: February 2000

Planning Commission Hearing

Project Name:	North Peake
Work Performed:	Gun Club Noise Analysis
Date:	March 1995

Project Name:	Wendy's Trueman Heights Restaurant
Work Performed:	Conducted Noise Analysis of Drive-thru loudspeaker
Date:	February 1996

Zoning Hearing

Project Name:	ERCO Sand & Gravel
Work Performed:	Sand and Gravel Special Exception
Date:	July 1992

Project Name:	Six Flags Amusement Park
Work Performed:	Roller Coaster Noise Impact on Residential Areas
Date:	December 1999

Project Name:	Woodmore Estates
Work Performed:	Railway Noise Impact on Residential Development
Date:	February 2000

Project Name:	Site Maintenance
Work Performed:	Landscaping Services Noise
Date:	February 2007

Animal Control Commission

Project Name:	Paradise for Pets
Work Performed:	Dog Kennel Dispute
Date:	January 1994

Washington, D.C.

Alcoholic Beverage Commission Review Board

Project Name:	1629 Connecticut Avenue
Work Performed:	Nightclub Noise Analysis
Date:	April 1993

Project Name:	St. Patrick's School
Work Performed:	Noise Impact Analysis
Date:	April 2002

Charlottesville, Virginia

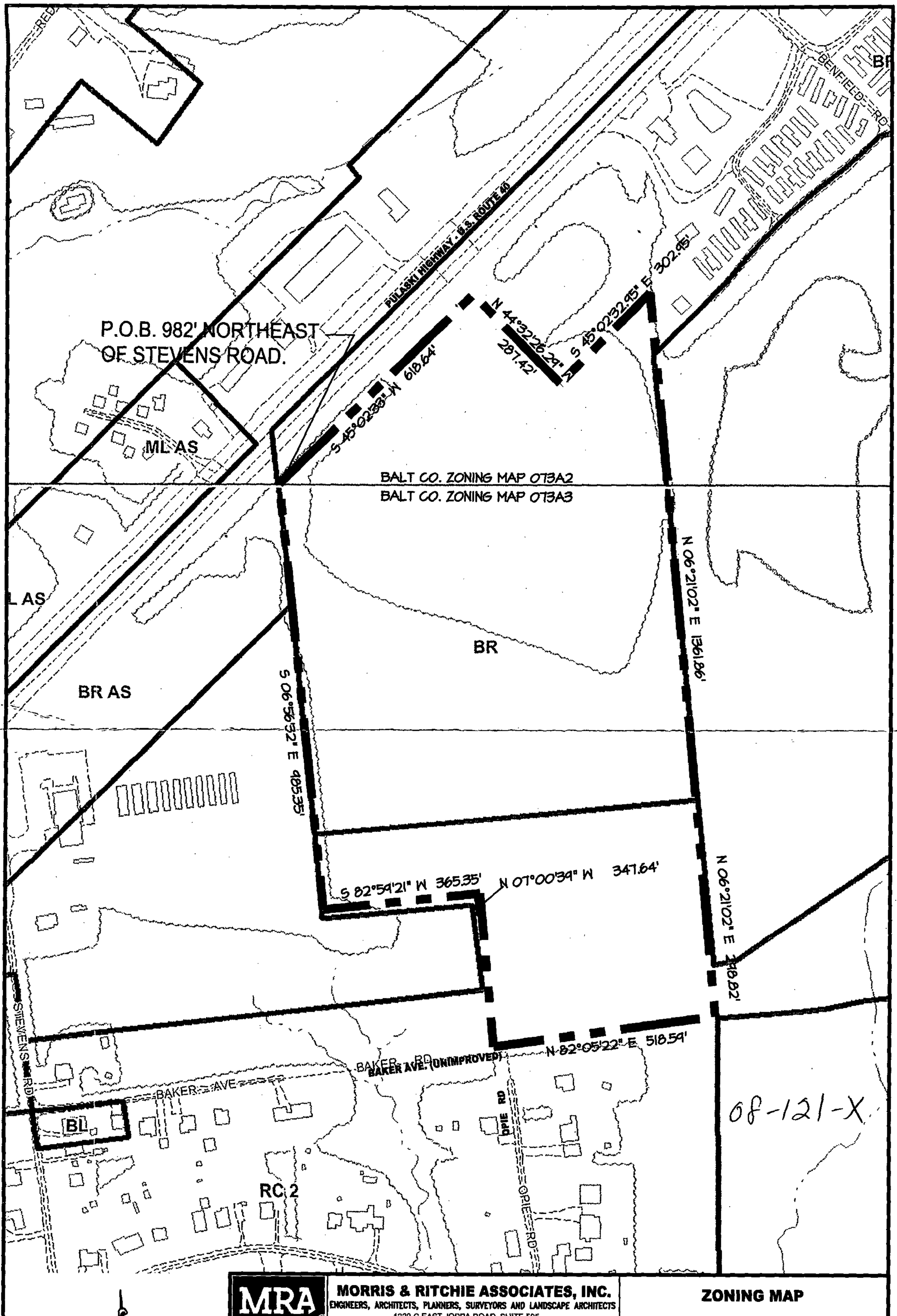
Arbitration Hearing

Project Name:	Chateau Mont Condominiums
Work Performed:	Noise and Vibration Transmission between units
Date:	1992

Fairfax County, Virginia

Arbitration Hearing

Project Name:	Pet-O-Tel
Work Performed:	Kennel Noise Analysis
Date:	March 1993



SCALE: 1"=200'	DATE: 08/30/07	DRAWN BY: KC	DESIGN BY: KC	REVIEW BY: TEW	JOB NO. : 14671.01

MRA

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

MRAGTA.COM

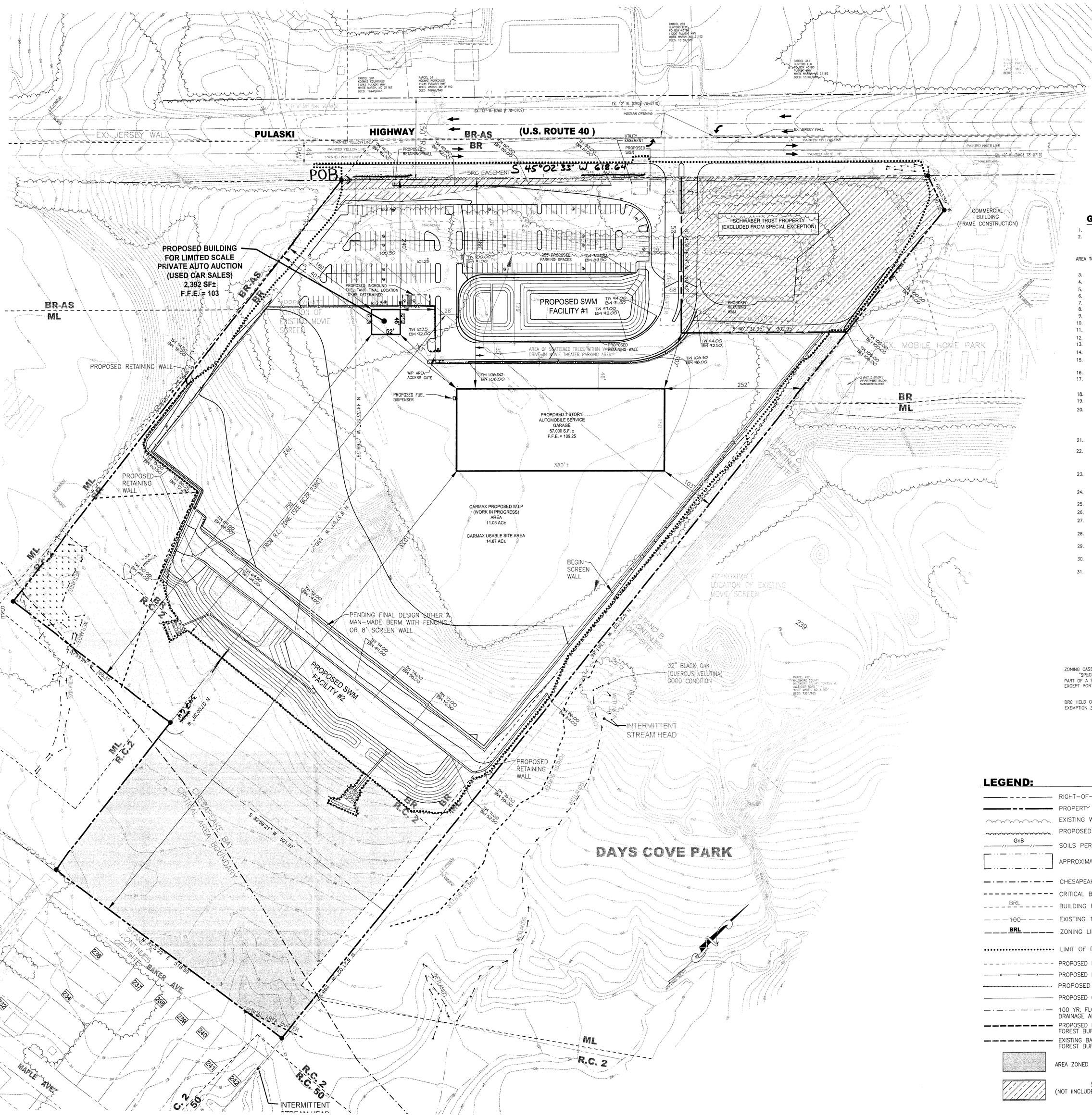
ZONING MAP

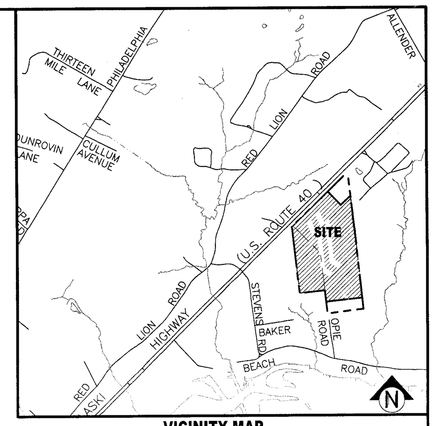
CARMAX PROPERTY

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

BALTIMORE COUNTY

08-121-X





VICINITY MAP
SCALE: 1"=1,000'

OWNER / DESIGN CONSULTANT:

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

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

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

PREMISES ADDRESS:
PULASKI HIGHWAY
WHITEMARSH, MD 21162

GENERAL NOTES:

1. ZONING: (BR=23.83 AC), (RC-2=6.84 AC), (ML= 0.81 AC)
2. SITE AREA : PARCEL 27: 24.93 AC. ± 1,085,951 S.F.±
   PARCEL 230: 6.55 AC ± 285,318 S.F.±
   TOTAL: 31.48 AC ± 1,371,269 S.F.±
   LEASE AREA: 24.85 AC ± 1,082,466 S.F.±
   AREA TO REMAIN WITH PROPERTY OWNER: 6.63 AC ± 288,802 S.F.±
3. LOCATION: MAP 30, GRID B-B
4. BALTIMORE COUNTY SOILS SURVEY MAPS 37
5. TAX MAP: 73, GRID 14, PARCEL 27 & 230
6. ZONING MAPS: 073A2 & 073A3
7. DEED REFERENCES: 12277/379 (PARCEL 27 & 230)
8. PLAT REFERENCES: NONE
9. CENSUS TRACT: 4113.02
10. WATERSHED: BIRD RIVER
11. SUBSERSHEDS: #20
12. SEWAGE PLAN DESIGNATION: S-3 Map S-17B
13. WATER SUPPLY PLAN DESIGNATION: W-1 Map W-17B
14. REGIONAL PLANNING DISTRICT: 322
15. ELECTION DISTRICT: 11
    COUNCILMANIC DISTRICT: 5
16. EXISTING USE: VACANT
17. PROPOSED USE: VEHICLE SERVICE CENTER (SERVICE GARAGE) AND LIMITED SCALE PRIVATE AUTO AUCTION (USED CAR SALES).
18. PROPOSED SERVICE GARAGE AREA: 57,000 SF. (380'x150'±)
19. PROPOSED AUCTION BUILDING AREA: 2,392 S.F. (46'x52'±)
20. FLOOR AREA RATIO (F.A.R.):
    BR ZONE: MAXIMUM ALLOWED = 2.0
    PROPOSED (59,392 SF/1,082,466 SF) = .054
    RC2 ZONE: N/A
    ML ZONE: SAME AS BR ZONE (2.0)
21. THIS SITE SHALL BE SERVICED BY PUBLIC WATER AND SEWER.
22. SCREENING AND LANDSCAPING SHALL BE PROVIDED IN ACCORDANCE WITH THE SCREENING EXHIBIT ATTACHED HERETO, AND SHALL CONFORM TO THE BALTIMORE COUNTY LANDSCAPE MANUAL.
23. THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
24. THE SITE IS NOT IN A 100 YEAR FLOODPLAIN PER BALTIMORE COUNTY FEMA MAPPING, PANEL 295, DATED MARCH 3, 1981.
25. THERE ARE NON-TIDAL WETLANDS ON THIS SITE.
26. THERE ARE FOREST BUFFERS ON THIS SITE.
27. THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
28. THERE ARE NO KNOWN HISTORICAL STRUCTURE OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
29. THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY
30. BUILDING CONSTRUCTION SHALL COMPLY WITH BUILDING AND FIRE CODE REQUIREMENTS.
31. ALL LIGHTING SHALL CONFORM TO IES STANDARDS "ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA) & (BCZR) SECTION 409.8.A.3 SEE ALSO, SPECIAL NOTE 4 & 5.
32. ALL PAVING SHALL BE BITUMINOUS DUST-FREE SURFACE AND PERMANENTLY STRIPED. THE W.I.P. AREA WILL NOT BE STRIPED.
33. STORMWATER QUALITY WILL BE PROVIDED & DESIGNED IN ACCORDANCE WITH BALTIMORE COUNTY DEPRM STANDARDS AND REGULATIONS.
34. NO KNOWN PREVIOUS COMMERCIAL PERMITS FOR PARCELS 27 & 230
35. THIS SITE IS LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
36. SIGNAGE:
    PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH B.C.Z.R. SECTION 450.
37. SETBACKS (TO PROPERTY LINES):

	SERVICE GARAGE		AUCTION	
	REQUIRED	PROVIDED	REQUIRED	PROVIDED
FRONT	50'	366'±		
SIDE	30'	102'±	50'	171'±
REAR	30'	73.5'±	30'	150'±
BUILDING TO BUILDING	60'	195'±	30'	843'±
BUILDING HEIGHT			60'	195'±

    BR (PER BCZR SECTION 231)*
    BR (35')**
    R.C. 2 (35')

    * ALL BUILDINGS MUST BE 750' (MINIMUM) BEYOND THE NEAREST R.C. ZONE. IF SETBACK DISTANCE IS MET, MAXIMUM BUILDING HEIGHT SHALL BE DETERMINED PER SECTION 231.

    ** IF ANY BUILDING IS CONSTRUCTED WITHIN 750' OF A R.C. ZONE THAN THE MAXIMUM BUILDING HEIGHT FOR ALL BUILDINGS ON SITE MAY NOT EXCEED 35'
38. THERE ARE NO KNOWN FAILED BASIC SERVICES OR INTERSECTIONS ASSOCIATED WITH THIS SITE.
39. PARKING CALCULATIONS PER (BCZR) SECTION 409.6.2.

    SERVICE GARAGE: 57,000 SQ. FT. @ 3.3 SPACES / 1000 SQ. FEET = 188.1 SPACES
    PARKING CREDIT FOR SERVICE BAYS: 44 BAYS @ 1 CREDIT PER BAY= 44 SPACES
    PARKING REQUIREMENT FOR SERVICE GARAGE: 144.1 SPACES.
    AUCTION BUILDING: 2392 SQ. FT. @ 3.3 SPACES = 7.2 SPACES.
    TOTAL REQUIRED: 151.3 = 152 SPACES.
    TOTAL PROVIDED: 255 SPACES
40. W.I.P. (WORK IN PROGRESS) AREA WILL SERVE THE FOLLOWING FUNCTIONS: STORAGE AND DISPLAY OF CARS FOR AUCTION; STORAGE OF CARS FOR RECONDITIONING PURPOSES; OVERFLOW EMPLOYEE PARKING, AS NEEDED.
41. GUARDRAIL LOCATIONS ARE APPROXIMATE PENDING FINAL DESIGN. GUARDRAIL WILL BE USED WHEN PROPOSED WALLS ARE LESS THAN 2'-3" ABOVE FINISH GRADE.

ZONING HISTORY:

ZONING CASE 05-674-SH APPROVED ON JANUARY 11, 2007 "SPECIAL HEARING TO PERMIT AUCTIONS OF AUTOMOBILES AS PART OF A SERVICE GARAGE WHICH IS PERMITTED BY RIGHT." SAVE & EXCEPT PORTION OF RC-2 ZONE.

DRC HELD ON JAY 22, 2006; DRC NUMBER 052206; DIST 11C5, LIMITED EXEMPTION 32-4-106(b)(6) GRANTED.

SPECIAL NOTES:

1. THERE SHALL BE NO EXTERNAL LOUDSPEAKERS ON THE PROPERTY.
2. VEHICLES FOR AUCTION SHALL NOT BE STARTED (FOR DISPLAY PURPOSES) BEFORE 8 A.M. ON AUCTION DAYS.
3. THERE SHALL BE NO TEST-DRIVES OF VEHICLES THROUGH RESIDENTIAL NEIGHBORHOODS. CARMAX SHALL POST A WRITTEN NOTICE OF THIS POLICY IN THE AUCTION BUILDING.
4. ALL LIGHTING THROUGHOUT THE SITE SHALL BE ON POLES NOT TO EXCEED 24 FEET IN HEIGHT.
5. LIGHTS AT THE EDGE OF THE WIP LOT SHALL HAVE SHIELDS TO REDUCE SPILLAGE OF LIGHT OFF THE LOT.
6. AUCTIONS MAY BE HELD ON WEEKDAYS ONLY.
7. THERE SHALL BE NO MORE THAN ONE AUCTION PER DAY.
8. AUCTION (EXCLUSIVE OF STAGING, IDLING, BIDDER INSPECTION, AND SIMILAR ACTIVITIES) MAY NOT START PRIOR TO 9 A.M. AND MUST CONCLUDE BY 5 P.M.
9. AUCTION PARTICIPANTS SHALL HAVE ACCESS TO THE CUSTOMER PARKING LOT AT LEAST AS EARLY AS 6 A.M., SO AS TO AVOID QUEUING INTO PULASKI HIGHWAY.
10. RC 2 ZONED AREA AS IDENTIFIED ON THIS PLAN SHALL NOT BE DISTURBED UNTIL SUCH TIME AS CARMAX NO LONGER HAS A LEASEHOLD INTEREST IN THE PROPERTY.

ZONING RELIEF REQUESTED

1. "SPECIAL EXCEPTION FOR LIMITED SCALE PRIVATE AUTOMOBILE AUCTION (USED CAR SALES) IN THE BR ZONED AREA, IN COMBINATION WITH A SERVICE GARAGE PERMITTED BY RIGHT."

LEGEND:

- RIGHT-OF-WAY
- PROPERTY LINE
- EXISTING WOOD LINE
- PROPOSED WOOD LINE
- GnB — SOILS PER SOIL CONSERVATION DISTRICT
- APPROXIMATE LIMITS OF TIDAL WETLANDS
- CHESAPEAKE BAY CRITICAL AREA BOUNDARY
- CRITICAL BUFFER EASEMENT
- BRL — BUILDING RESTRICTION LINE
- 100 — EXISTING 10' CONTOUR
- BRL — ZONING LINE
- LIMIT OF DISTURBANCE
- PROPOSED BUILDING SETBACK
- PROPOSED FENCE
- PROPOSED GUARDRAIL
- PROPOSED CURB
- 100 YR. FLOODPLAIN/PROPOSED DRAINAGE AND UTILITY EASEMENT
- PROPOSED BALTIMORE COUTY FOREST BUFFER EASEMENT
- EXISTING BALTIMORE COUTY FOREST BUFFER EASEMENT
- AREA ZONED RC 2
- SCHWABER TRUST PROPERTY (NOT INCLUDED AS PART OF SPECIAL EXCEPTION)

08-121-X

MORRIS & RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS AND LANDSCAPE ARCHITECTS
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FAX: (410) 821-1748
MRAGTA.COM

LICENSED LANDSCAPE ARCHITECT 3175 THOMAS EDWARD WOLFE STATE OF MARYLAND

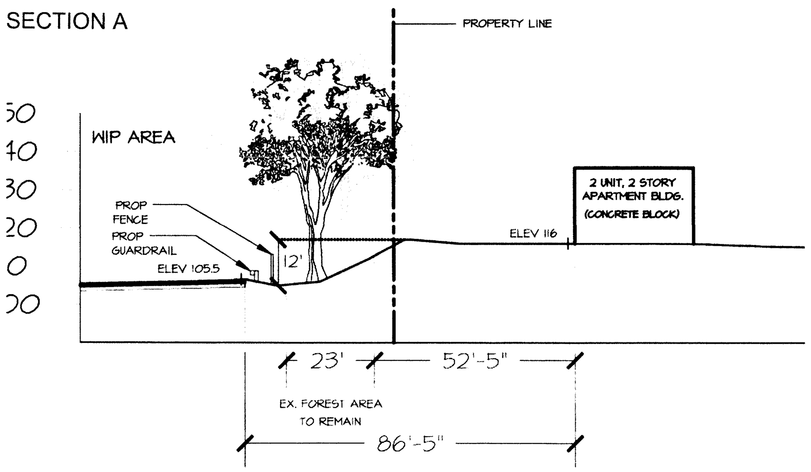
PLAN TO ACCOMPANY SPECIAL EXCEPTION APPLICATION

CARMAX
PULASKI HIGHWAY
WHITE MARSH, MARYLAND

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

DATE	REVISIONS	
		JOB NO.: 14671.01
		SCALE: 1"=60'
		DATE: 08/27/2007
		DRAWN BY: mP
		DESIGN BY: KC
		REVIEW BY: TEW
		SHEET: 1 OF 2

SECTION A



PULASKI HIGHWAY (U.S. ROUTE 40)

BR-AS BR

BR-AS ML

P.O.B.

PROPOSED BUILDING FOR LIMITED SCALE PRIVATE AUTO AUCTION (USED CAR SALES) 2,392 SF± F.F.E. = 103

PROPOSED SWM FACILITY #1

PROPOSED 1 STORY AUTOMOBILE SERVICE GARAGE 57,000 S.F. ± F.F.E. = 108.25

255 PROPOSED PARKING SPACES

SCHWABER TRUST HOLDINGS PROPOSED RETAIL PARCEL SITS 16' LOWER THAN PROPOSED WIP AND 28' BELOW ADJACENT MOBILE HOME PARK

EXISTING MOBILE HOME PARK SITS 12' ABOVE PROPOSED GRADE OF WIP

SEE SECTION A ATTACHED

BR ML

CARMAX PROPOSED W.I.P (WORK IN PROGRESS) AREA 11.03 AC±

CARMAX USABLE SITE AREA 14.87 AC±

PROPOSED RETAINING WALL

BALTIMORE COUNTY FOREST CONSERVATION FOREST BUFFER EASEMENT

PENDING FINAL DESIGN: EITHER MAN-MADE BERM (8' min.) and FENCE OR 8' SCREEN WALL

PROPOSED SWM FACILITY #2

BALTIMORE COUNTY CRITICAL AREA EASEMENT

BALTIMORE COUNTY FOREST CONSERVATION EASEMENT

BALTIMORE COUNTY CRITICAL AREA EASEMENT

INTERMITTENT STREAM HEAD

R.C.2 R.C.50

ML R.C.2

108.42'

91.36'

15.06' ABOVE DAYS COVE PARK

102.07'

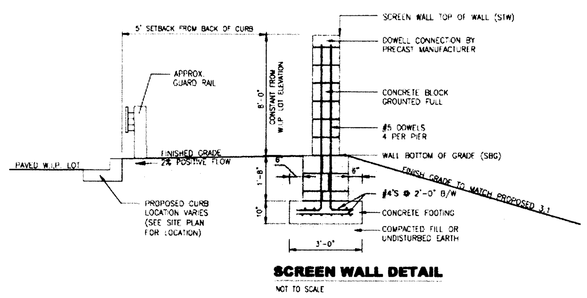
4.77' ABOVE DAYS COVE PARK

97.30'

BEGIN SCREEN WALL

32.10' ABOVE DAYS COVE PARK

99.29'

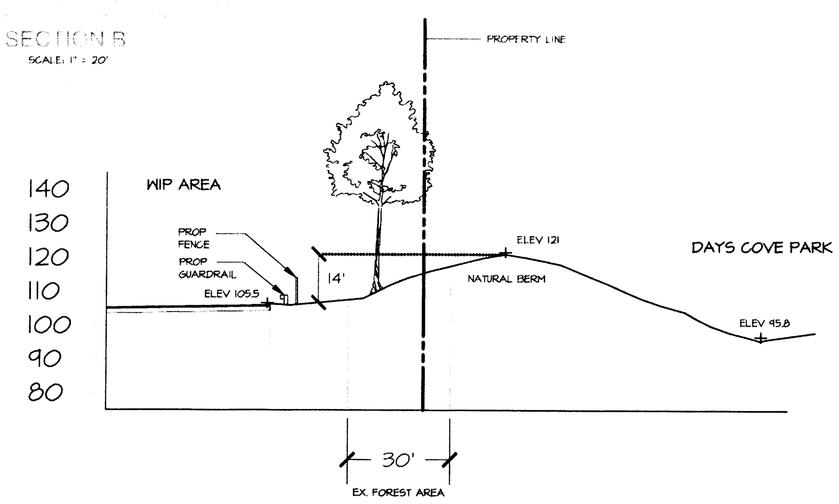


SCREEN WALL DETAIL

NOT TO SCALE

SECTION B

SCALE 1" = 20'



LEGEND:

- RIGHT OF WAY
- PROPERTY LINE
- EXISTING WOOD LINE
- PROPOSED WOOD LINE
- OnB — SOILS PER BALTIMORE COUNTY SOIL SURVEY
- APPROXIMATE LIMITS OF NON-TIDAL WETLANDS
- CHESAPEAKE BAY CRITICAL AREA BOUNDARY
- CRITICAL AREA BUFFER
- 102 — EXISTING 2' CONTOUR
- 100 — EXISTING 10' CONTOUR
- ML — ZONING LINE
- EXISTING FIRE HYDRANT
- EXISTING WATER LINE
- EXISTING SANITARY SEWER LINE
- EXISTING STORM DRAIN LINE
- OH — EXISTING OVER-HEAD WIRES
- PROPOSED BUILDING SETBACK
- PROPOSED BUILDING
- PROPOSED CURB
- PROPOSED BALTIMORE COUNTY FOREST BUFFER
- CALCULATED BALTIMORE COUNTY FOREST BUFFER
- LIMIT OF DISTURBANCE (4,666' LENGTH)
- AREA TO REMAIN FORESTED
- 8' SCREEN WALL (373' LENGTH)
- NATURAL TERRAIN BERM (8' min.) AND FENCE (613' LENGTH)
- PENDING FINAL DESIGN: EITHER MAN-MADE BERM (8' min.) and FENCE OR 8' SCREEN WALL (654' LENGTH)
- FENCE AND GUARDRAIL (247')

PDM# 11-1041

MORRIS & RITCHIE ASSOCIATES, INC.
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MRAGTA.COM

LICENSED LANDSCAPE ARCHITECT 3179 THOMAS EDWARD NOLT STATE OF MARYLAND

PLAN TO ACCOMPANY SPECIAL EXCEPTION APPLICATION

SCREENING EXHIBIT

CARMAX

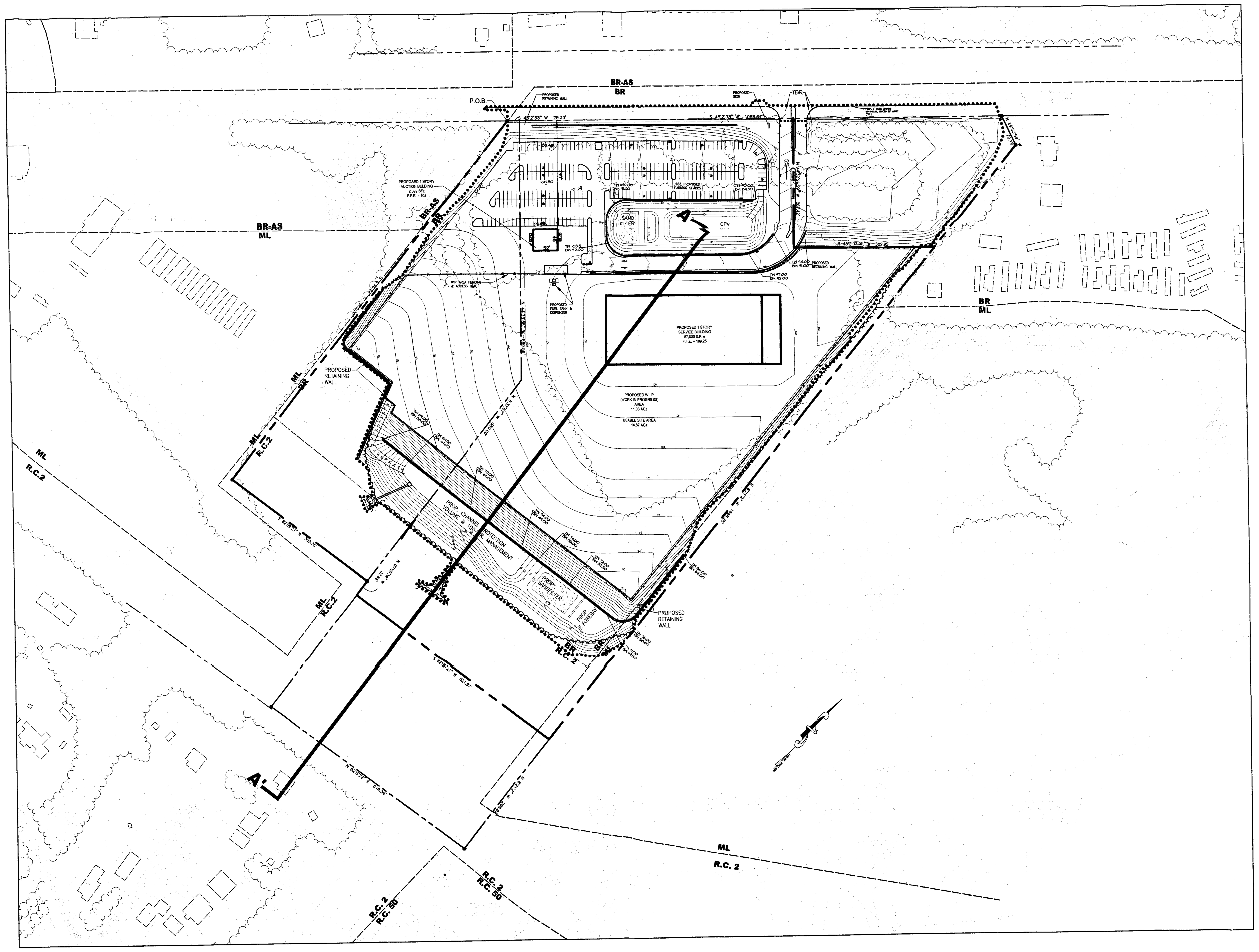
PULASKI HIGHWAY
WHITE MARSH, MARYLAND

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

DATE	REVISIONS	
		JOB NO.: 14671.01
		SCALE: 1"=60'
		DATE: 08/27/2007
		DRAWN BY: mf
		DESIGN BY: KC
		REVIEW BY: TEW
		SHEET: 2 OF 2

SECTION ELEVATION

SCALE: 1"=30'



KEY MAP

SCALE: 1"=100'

PETITIONER'S EXHIBIT

PETITIONER'S EXHIBIT NO. 3

NO.

PDM# 11-1041

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MRAGTA.COM

SPECIAL HEARING EXHIBIT
SECTION ELEVATION

CARMAX PROPERTY

11301 PULASKI HIGHWAY
WHITE MARSH, MARYLAND

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

DATE	REVISIONS

JOB NO.:	14671.02
SCALE:	AS SHOWN
DATE:	11/28/06
DRAWN BY:	KC
DESIGN BY:	KC
REVIEW BY:	JH/BM
SHEET:	2 OF 3

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

SITE

PULASKI HWY

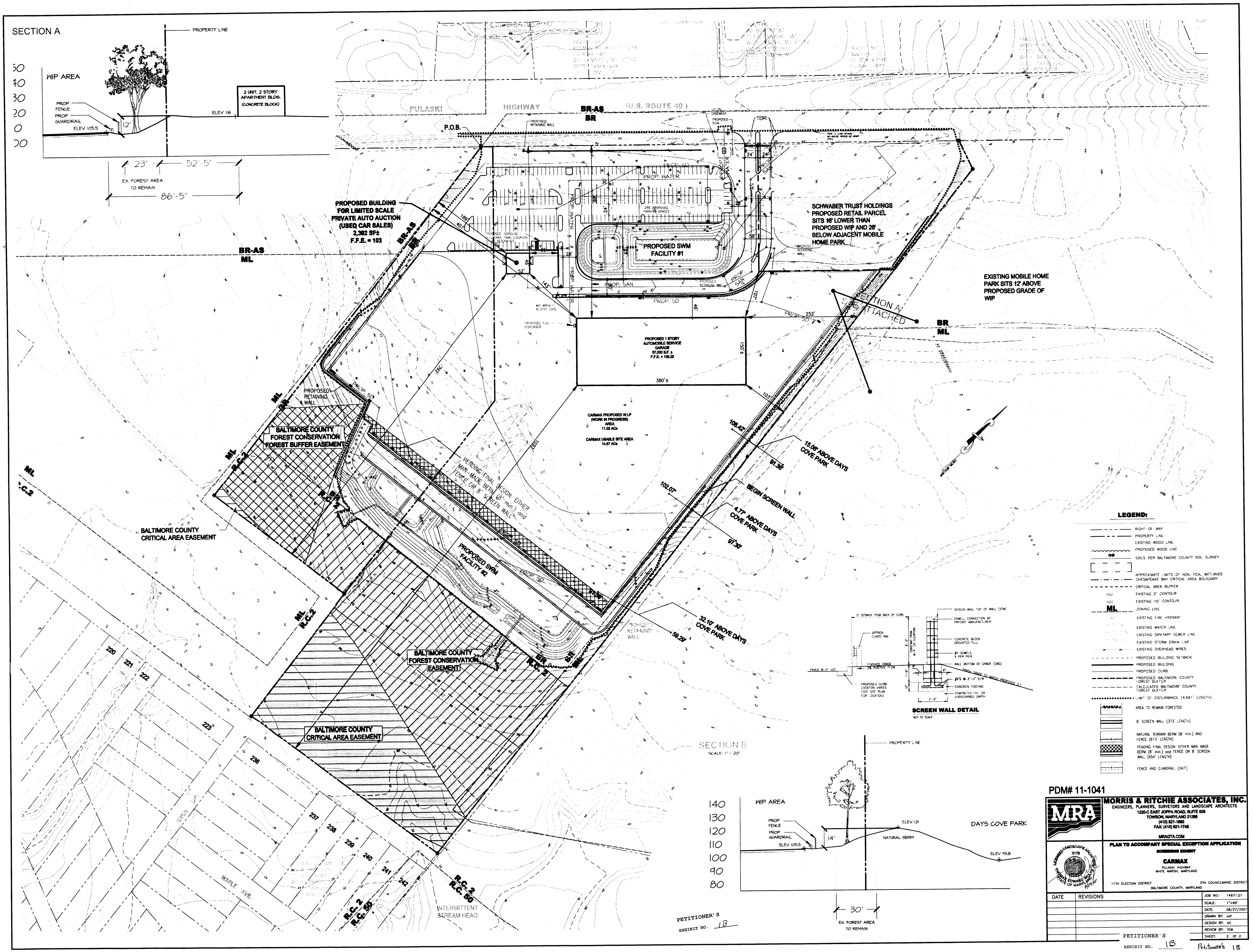
BIRD RIVER

LEGEND

BIRD BUSINESS ZONES

MANUFACTURING ZONES

PETITIONER'S
EXHIBIT NO. 2


SECTION A
WIP AREA
PROP FENCE
PROP GUARDRAIL
ELEV 105.5
12'
PROPERTY LINE
ELEV 116
2 UNIT, 2 STORY APARTMENT BLDG. (CONCRETE BLOCK)
23'
52'-5"
86'-5"
EX. FOREST AREA TO REMAIN
PULASKI HIGHWAY (U.S. ROUTE 40)
BR-AS
BR
ML
P.O.B.
TBR
PROPOSED BUILDING FOR LIMITED SCALE PRIVATE AUTO AUCTION (USED CAR SALES) 2,392 SF± F.F.E. = 103
PROPOSED SWM FACILITY #1
PROP. WATER
PROP. SD
PROP. SAN
SCHWABER TRUST HOLDINGS PROPOSED RETAIL PARCEL SITS 16' LOWER THAN PROPOSED WIP AND 26' BELOW ADJACENT MOBILE HOME PARK
EXISTING MOBILE HOME PARK SITS 12' ABOVE PROPOSED GRADE OF WIP
SECTION A SEE ATTACHED
252'
107'
46'
150'±
380'±
143'
52'
189'
401'
1033'
792'
PROPOSED 1 STORY AUTOMOBILE SERVICE GARAGE 57,000 S.F. ± F.F.E. = 109.25
CARMAX PROPOSED W.I.P (WORK IN PROGRESS) AREA 11.03 ACs
CARMAX USABLE SITE AREA 14.87 ACs
108.42'
15.08' ABOVE DAYS COVE PARK
91.36'
102.07'
BEGIN SCREEN WALL
4.77' ABOVE DAYS COVE PARK
97.30'
32.10' ABOVE DAYS COVE PARK
59.29'
PROPOSED RETAINING WALL
PENDING FINAL DESIGN: EITHER MAN-MADE BERM (8' min.) and FENCE OR 8' SCREEN WALL
PROPOSED SWM FACILITY #2
BALTIMORE COUNTY FOREST CONSERVATION FOREST BUFFER EASEMENT
BALTIMORE COUNTY FOREST CONSERVATION EASEMENT
BALTIMORE COUNTY CRITICAL AREA EASEMENT
R.C. 2
R.C. 50
INTERMITTENT STREAM HEAD
MAPLE AVE.
220
221
222
223
236
237
238
239
240
241
242
LEGEND:
RIGHT-OF-WAY
PROPERTY LINE
EXISTING WOOD LINE
PROPOSED WOOD LINE
SOILS PER BALTIMORE COUNTY SOIL SURVEY
APPROXIMATE LIMITS OF NON-TIDAL WETLANDS
CHESAPEAKE BAY CRITICAL AREA BOUNDARY
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EXISTING 2' CONTOUR
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PROPOSED BALTIMORE COUNTY FOREST BUFFER
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LIMIT OF DISTURBANCE (4,661' LENGTH)
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FENCE AND GUARDRAIL (247')
SCREEN WALL DETAIL
NOT TO SCALE
SCREEN WALL TOP OF WALL (STW)
DOWELL CONNECTION BY PRECAST MANUFACTURER
CONCRETE BLOCK GROUNTED FULL
#5 DOWELS 4 PER PIER
WALL BOTTOM OF GRADE (SBG)
FINISH GRADE TO MATCH PROPOSED 3:1
#4'S @ 2'-0" B/W
CONCRETE FOOTING
COMPACTED FILL OR UNDISTURBED EARTH
5' SETBACK FROM BACK OF CURB
APPROX. GUARD RAIL
FINISHED GRADE 2% POSITIVE FLOW
PAVED W.I.P. LOT
PROPOSED CURB LOCATION VARIES (SEE SITE PLAN FOR LOCATION)
CONSTANT FROM W.I.P. LOT ELEVATION
8'-0"
1'-8"
10"
3'-0"
SECTION B
SCALE: 1" = 20'
140
130
120
110
100
90
80
WIP AREA
PROP FENCE
PROP GUARDRAIL
ELEV 105.5
14'
PROPERTY LINE
ELEV 121
NATURAL BERM
DAYS COVE PARK
ELEV 95.8
30'
EX. FOREST AREA TO REMAIN
PDM# 11-1041
MRA
MORRIS & RITCHIE ASSOCIATES, INC.
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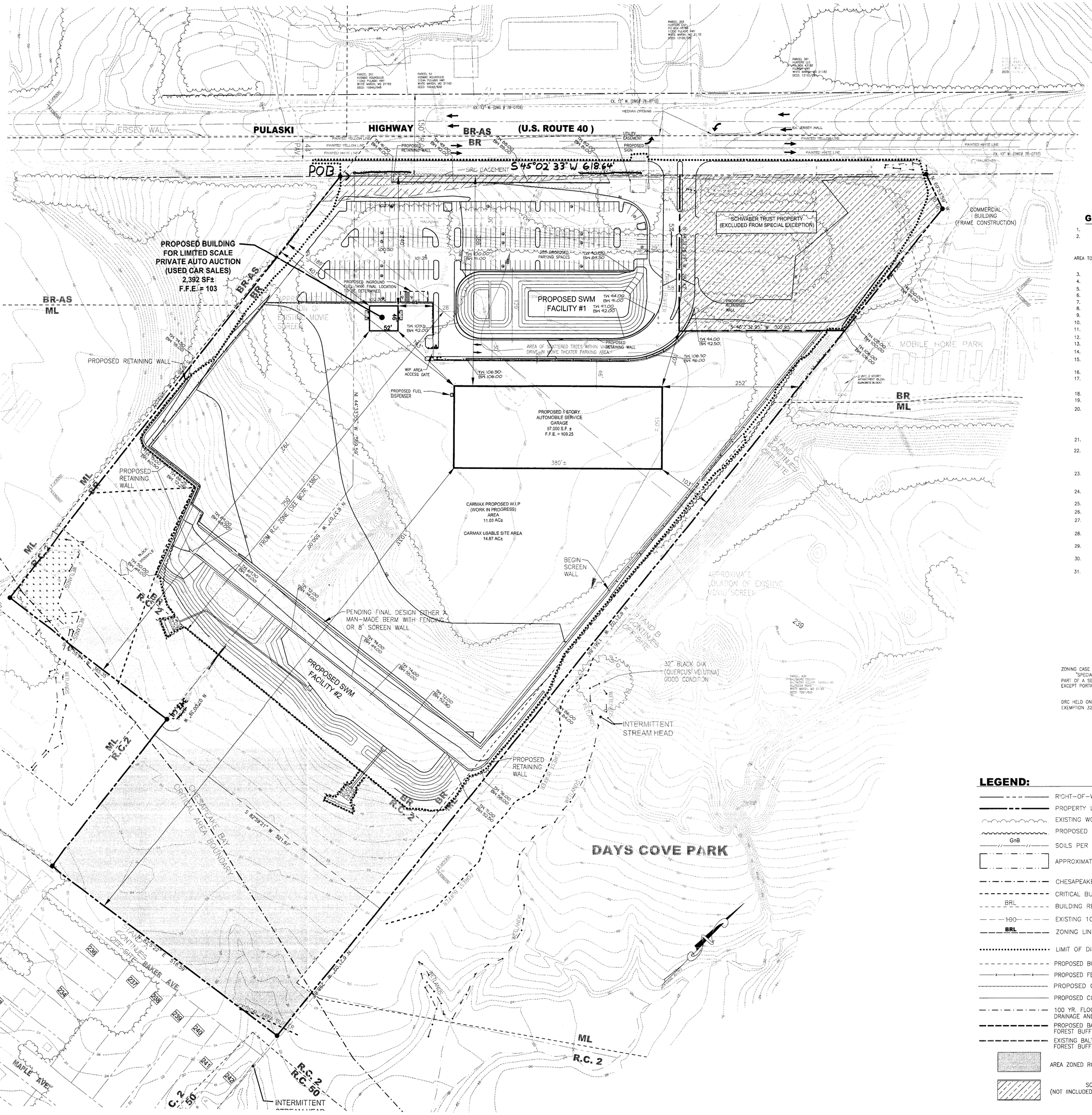
PLAN TO ACCOMPANY SPECIAL EXCEPTION APPLICATION
SCREENING EXHIBIT
CARMAX
PULASKI HIGHWAY
WHITE MARSH, MARYLAND
11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND
LICENSED LANDSCAPE ARCHITECT
3173
THOMAS EDWARD WOLFE
STATE OF MARYLAND
DATE
REVISIONS
JOB NO.: 14671.01
SCALE: 1"=60'
DATE: 08/27/2007
DRAWN BY: mP
DESIGN BY: KC
REVIEW BY: TEW
SHEET: 2 OF 2
PETITIONER'S EXHIBIT NO. 1B
Petitioner's 1B



OWNER / DESIGN CONSULTANT:

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

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

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

PREMISES ADDRESS:
PULASKI HIGHWAY
WHITEMARSH, MD 21162

GENERAL NOTES:

1. ZONING: (BR=23.83 AC), (RC-2=6.84 AC), (ML= 0.81 AC)
2. SITE AREA : PARCEL 27: 24.93 AC. – 1,085,951 S.F.±
   PARCEL 230: 6.55 AC – 285,318 S.F.±
   TOTAL: 31.48 AC – 1,371,269 S.F.±
   LEASE AREA: 24.85 AC – 1,082,466 S.F.±
   AREA TO REMAIN WITH PROPERTY OWNER: 6.63 AC – 288,802 S.F.±
3. LOCATION: MAP 30, GRID B-8
4. BALTIMORE COUNTY SOILS SURVEY MAPS 37
5. TAX MAP: 73, GRID 14, PARCEL 27 & 230
6. ZONING MAPS: 073A2 & 073A3
7. DEED REFERENCES: 12277/379 (PARCEL 27 & 230)
8. PLAT REFERENCES: NONE
9. CENSUS TRACT: 4113.02
10. WATERSHED: BIRD RIVER
11. SUBSEWERSHED: #20
12. SEWAGE PLAN DESIGNATION: S-3 Map S-17B
13. WATER SUPPLY PLAN DESIGNATION: W-1 Map W-17B
14. REGIONAL PLANNING DISTRICT: 322
15. ELECTION DISTRICT: 11
    COUNCILMANIC DISTRICT: 5
16. EXISTING USE: VACANT
17. PROPOSED USE: VEHICLE SERVICE CENTER (SERVICE GARAGE) AND LIMITED SCALE PRIVATE AUTO AUCTION (USED CAR SALES).
18. PROPOSED SERVICE GARAGE AREA: 57,000 SF. (380'x150'±)
19. PROPOSED AUCTION BUILDING AREA: 2,392 S.F. (46'x52'±)
20. FLOOR AREA RATIO (F.A.R.):
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    PROPOSED (59,392 SF/1,082,466 SF) = .054
    RC2 ZONE: N/A
    ML ZONE: SAME AS BR ZONE (2.0)
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22. SCREENING AND LANDSCAPING SHALL BE PROVIDED IN ACCORDANCE WITH THE SCREENING EXHIBIT ATTACHED HERETO, AND SHALL CONFORM TO THE BALTIMORE COUNTY LANDSCAPE MANUAL.
23. THE SITE IS NOT WITHIN A MORATORIUM AREA OR IN AN AREA WHERE FAILURE OF BASIC SERVICES MAPS CURRENTLY EXISTS PER SECTION 4A02 (BCZR).
24. THE SITE IS NOT IN A 100 YEAR FLOODPLAIN PER BALTIMORE COUNTY FEMA MAPPING PANEL 295, DATED MARCH 3, 1981.
25. THERE ARE NON-TIDAL WETLANDS ON THIS SITE.
26. THERE ARE FOREST BUFFERS ON THIS SITE.
27. THERE ARE NO KNOWN REGULATED PLANT OR WILDLIFE COMMUNITIES ASSOCIATED WITH THIS SITE.
28. THERE ARE NO KNOWN HISTORICAL STRUCTURE OR ARCHEOLOGICAL AREAS ASSOCIATED WITH THIS SITE.
29. THERE ARE NO KNOWN EXISTING WELLS OR SEPTIC FIELDS WITHIN 100' OF THIS PROPERTY
30. BUILDING CONSTRUCTION SHALL COMPLY WITH BUILDING AND FIRE CODE REQUIREMENTS.
31. ALL LIGHTING SHALL CONFORM TO IES STANDARDS (ILLUMINATING ENGINEERING SOCIETY OF NORTH AMERICA) & (BCZR) SECTION 409.8.A.3 SEE ALSO, SPECIAL NOTE 4 & 5.
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33. STORMWATER QUALITY WILL BE PROVIDED & DESIGNED IN ACCORDANCE WITH BALTIMORE COUNTY DEPRM STANDARDS AND REGULATIONS.
34. NO KNOWN PREVIOUS COMMERCIAL PERMITS FOR PARCELS 27 & 230
35. THIS SITE IS LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
36. SIGNAGE:
    PROPOSED SIGNAGE SHALL BE IN COMPLIANCE WITH B.C.Z.R. SECTION 450.
37. SETBACKS (TO PROPERTY LINES):

	SERVICE GARAGE	
	REQUIRED	PROVIDED
FRONT	50'	386'±
SIDE	30'	109'±
REAR	30'	733'±
BUILDING TO BUILDING	60'	195'±

	AUCTION	
	REQUIRED	PROVIDED
	50'	173'±
	30'	150'±
	30'	843'±
	60'	195'±

38. BUILDING HEIGHT
    BR (PER BCZR SECTION 231)* 35'
    BR (35')** 35'
    R.C. 2 (35') 35'
    * ALL BUILDINGS MUST BE 750' (MINIMUM) BEYOND THE NEAREST R.C. ZONE. IF SETBACK DISTANCE IS MET, MAXIMUM BUILDING HEIGHT SHALL BE DETERMINED PER SECTION 231.
    ** IF ANY BUILDING IS CONSTRUCTED WITHIN 750' OF A R.C. ZONE THAN THE MAXIMUM BUILDING HEIGHT FOR ALL BUILDINGS ON SITE MAY NOT EXCEED 35'
39. THERE ARE NO KNOWN FAILED BASIC SERVICES OR INTERSECTIONS ASSOCIATED WITH THIS SITE.
40. PARKING CALCULATIONS PER (BCZR) SECTION 409.6.2.

    SERVICE GARAGE: 57,000 SQ. FT. @ 3.3 SPACES / 1000 SQ. FEET = 188.1 SPACES
    PARKING CREDIT FOR SERVICE BAYS: 44 BAYS @ 1 CREDIT PER BAY= 44 SPACES
    PARKING REQUIREMENT FOR SERVICE GARAGE: 144.1 SPACES.
    AUCTION BUILDING: 2392 SQ. FT. @ 3.3 SPACES = 7.2 SPACES.
    TOTAL REQUIRED: 151.3 = 152 SPACES.
    TOTAL PROVIDED: 255 SPACES
41. W.I.P. (WORK IN PROGRESS) AREA WILL SERVE THE FOLLOWING FUNCTIONS: STORAGE AND DISPLAY OF CARS FOR AUCTION; STORAGE OF CARS FOR RECONDITIONING PURPOSES; OVERFLOW EMPLOYEE PARKING, AS NEEDED.
42. GUARDRAIL LOCATIONS ARE APPROXIMATE PENDING FINAL DESIGN. GUARDRAIL WILL BE USED WHEN PROPOSED WALLS ARE LESS THAN 2'-3" ABOVE FINISH GRADE.

ZONING HISTORY:

ZONING CASE 03-674-SH APPROVED ON JANUARY 11, 2007
- SPECIAL HEARING TO PERMIT AUCTIONS OF AUTOMOBILES AS PART OF A SERVICE GARAGE WHICH IS PERMITTED BY RIGHT." SAVE & EXCEPT PORTION OF RC-2 ZONE.

DRC HELD ON MAY 22, 2006; DRC NUMBER 052206; DIST 11CS, LIMITED EXEMPTION 32-4-106(b)(8) GRANTED.

SPECIAL NOTES:

1. THERE SHALL BE NO EXTERNAL LOUDSPEAKERS ON THE PROPERTY.
2. VEHICLES FOR AUCTION SHALL NOT BE STARTED (FOR DISPLAY PURPOSES) BEFORE 8 A.M. ON AUCTION DAYS.
3. THERE SHALL BE NO TEST-DRIVES OF VEHICLES THROUGH RESIDENTIAL NEIGHBORHOODS. CARMAX SHALL POST A WRITTEN NOTICE OF THIS POLICY IN THE AUCTION BUILDING.
4. ALL LIGHTING THROUGHOUT THE SITE SHALL BE ON POLES NOT TO EXCEED 24 FEET IN HEIGHT.
5. LIGHTS AT THE EDGE OF THE W/P LOT SHALL HAVE SHIELDS TO REDUCE SPILLAGE OF LIGHT OFF THE LOT.
6. AUCTIONS MAY BE HELD ON WEEKDAYS ONLY.
7. THERE SHALL BE NO MORE THAN ONE AUCTION PER DAY.
8. AUCTION (EXCLUSIVE OF STAGING, LOUING, BIDDER INSPECTION, AND SIMILAR ACTIVITIES) MAY NOT START PRIOR TO 9 A.M. AND MUST CONCLUDE BY 5 P.M.
9. AUCTION PARTICIPANTS SHALL HAVE ACCESS TO THE CUSTOMER PARKING LOT AT LEAST AS EARLY AS 6 A.M., SO AS TO AVOID QUEUING INTO PULASKI HIGHWAY.
10. RC 2 ZONED AREA AS IDENTIFIED ON THIS PLAN SHALL NOT BE DISTURBED UNTIL SUCH TIME AS CARMAX NO LONGER HAS A LEASEHOLD INTEREST IN THE PROPERTY.

ZONING RELIEF REQUESTED

1. "SPECIAL EXCEPTION FOR LIMITED SCALE PRIVATE AUTOMOBILE AUCTION (USED CAR SALES) IN THE BR ZONED AREA, IN COMBINATION WITH A SERVICE GARAGE PERMITTED BY RIGHT."

LEGEND:

- RIGHT-OF-WAY
- PROPERTY LINE
- EXISTING WOOD LINE
- PROPOSED WOOD LINE
- GnB — SOILS PER SOIL CONSERVATION DISTRICT
- APPROXIMATE LIMITS OF TIDAL WETLANDS
- CHESAPEAKE BAY CRITICAL AREA BOUNDARY
- CRITICAL BUFFER EASEMENT
- BRL — BUILDING RESTRICTION LINE
- 100 — EXISTING 10' CONTOUR
- BRL — ZONING LINE
- LIMIT OF DISTURBANCE
- PROPOSED BUILDING SETBACK
- PROPOSED FENCE
- PROPOSED GUARDRAIL
- PROPOSED CURB
- 100 YR. FLOODPLAIN/PROPOSED DRAINAGE AND UTILITY EASEMENT
- PROPOSED BALTIMORE COUTY FOREST BUFFER EASEMENT
- EXISTING BALTIMORE COUTY FOREST BUFFER EASEMENT
- AREA ZONED RC 2
- SCHWABER TRUST PROPERTY (NOT INCLUDED AS PART OF SPECIAL EXCEPTION)

PETITIONER'S EXHIBIT NO. 1A

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

LICENSED LANDSCAPE ARCHITECT 3179 THOMAS EDWARD WOLF STATE OF MARYLAND

PLAN TO ACCOMPANY SPECIAL EXCEPTION APPLICATION

CARMAX
PULASKI HIGHWAY
WHITE MARSH, MARYLAND

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

DATE	REVISIONS	
		JOB NO.: 14671.01
		SCALE: 1"=60'
		DATE: 08/27/2007
		DRAWN BY: mP
		DESIGN BY: KC
		REVIEW BY: TEW
		SHEET: 1 OF 2

Petitioner's 1A

RE:	PETITION FOR SPECIAL EXCEPTION SE/S Pulaski Highway, 970' NE Stevens Road 11th Election & 5th Councilmanic Districts Legal Owner(s): Schwaber Trust, by Sidney Weiman, Trustee Contract Purchasers: Carmax Auto Superstores, Inc by Joseph Jagdmann, Real Est. Mgr Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 08-121-X

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

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of September, 2007, a copy of the foregoing Entry of Appearance was mailed to, Dino LaFiandra, Esquire, Whiteford, Taylor & Preston, LLP, 210 West Pennsylvania Avenue, Towson, MD 21204., Attorney for Petitioner(s).

RECEIVED
SEP 14 2007
Per.....

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

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

SHA State Highway Administration

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

Maryland Department of Transportation

September 10, 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. 08-121-X
US 40 (Pulaski Highway) E.B.R.
790' n/e of Stevens Road
Special Exception –Used Car Sales
Carmax Superstores, Inc.
Mile Post 22.77

Dear Ms. Matthews:

Thank you for the opportunity to review ZAC Agenda Plan 08-121-X on the subject of the above captioned, which was received on September 4th. The plan illustrates a proposal for an automotive dealership (used cars). The improvements include but are not limited to a 57, 000 square feet garage for automotive service, 2,392 square feet building for private auction sales and 288 parking spaces for customers and vehicle inventory storage.

We have completed a cursory review of the site plan as well as existing field conditions. The following comments are offered for your consideration:

- The subject property is located on the south side of side of eastbound US 40 (Pulaski Highway). Our State Highway Location reference indicates that US 40 (Pulaski Highway) is principle arterial divided highway. The Annual Average Daily Traffic volume on this section of US 40 is 30,500 vehicle trips per day.
- Based on the proposed use the entrance shown on the plan is subject to further review by the State Highway Administration in order to determine consistency with current guidelines.
- Other improvements associated with this site such as traffic data, pavement widening and storm drain upgrades maybe required.

In conclusion- We request as a condition of Case Number 8-121-X approval for Carmax Superstore, Inc. that the owner/applicant be required to obtain a permit from the State Highway Administration for improvements within the State right-of-way. Please include our remarks in your staff report to the Zoning Hearing Examiner.

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

Very truly yours,

Michael P. Bailey

for Steven D. Foster, Chief
Engineering Access Permits
Division

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street · Baltimore, Maryland 21202 · Phone: 410.545.0300 · www.marylandroads.com