

1/27/10
IN THE MATTER
OF
HARNEK SINGH, *ET AL.*

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: 03-C-10-0590

RECEIVED
JUL 30 2010
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Harnek Singh and Charanjit Kaur's ("Petitioners") timely Petition for Judicial Review of the December 14, 2009 decision of the Board of Appeals of Baltimore County denying a Petition for Special Exception to allow use of the subject property for the sale of used motor vehicles. A hearing on this matter was held on July 8, 2010. For the reasons set forth herein, the decision of the Board of Appeals ("Board") is **AFFIRMED**.

BACKGROUND

Petitioners purchased 7400 and 7404 Pulaski Highway on November 18, 2003. On 7400 Pulaski Highway Petitioners operate a nightclub, restaurant/tavern, and package goods store. 7404 Pulaski Highway is unimproved. Petitioners seek to operate a used automobile sales dealership on 7404 and to that end petitioned for a Special Exception pursuant to Baltimore County Zoning Regulation ("BCZR") § 238.4.

The Board's December 14, 2009 decision reversed the Zoning Commissioner's October 14, 2008 order granting Petitioners' requested Petition for Special Exception; and, the Petition for Special Exception was denied.¹ Petitioners timely filed a Petition for Judicial Review. This Court held a hearing on July 8, 2010.

¹ This is clear despite repeated typographical errors in the Board's written decision, particular with regard to the property addresses. Specifically on pages 3 and 5 the Board refers to 7404 as 7400. The Board's written decision

QUESTIONS PRESENTED

The following questions are presented for review:

- (1) Whether the Board erred in finding that granting Petitioners' request for Special Exception would be detrimental to the health, safety or general welfare or would have an adverse effect on the surrounding properties.
- (2) Whether the Board erred in finding that the Petitioners' proposed site plan for 7404 Pulaski Highway fails to comply with the setback requirements of BCZR §238.4.
- (3) Whether the Board's decision amounts to a taking prohibited by the Fifth Amendment to the United States Constitution.

The Court's answer to the above questions is "No," and the decision of the Board shall be **AFFIRMED**.

STANDARD OF REVIEW

"A court's role in reviewing an administrative agency adjudicatory decision is narrow." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999) (citing *United Parcel Service, Inc. v. People's Counsel*, 336 Md. 569, 576 (1994)). The court is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Service, Inc.*, 336 Md. at 577; *see also* MD. ANN. CODE, STATE GOV'T § 10-222(h).

"In applying the substantial evidence test, a reviewing court decides 'whether a reasoning mind could have reached the factual conclusion the agency reached.'"

also states that Carl Engle, a witness lives across Pulaski Highway from the two lots when technically Mr. Engle lives across Philadelphia Road which becomes Pulaski Highway just past the two properties at issue.

Banks, 354 Md. at 68 (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978)). The court "must review the agency's decision in the light most favorable to it; the agency's decision is *prima facie* correct and presumed valid...." *CBS v. Comptroller*, 319 Md. 687, 698 (1990) (quoting *Ramsey, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-35 (1985)). The court needs to defer to the fact-finding of the agency and the inferences drawn by the agency, as long as those inferences are supported by the record. *CBS*, 319 Md. at 698. A reviewing court must not "substitute its own judgment for the expertise of those persons who constitute the administrative agency." *United Parcel Service, Inc.*, 336 Md. at 576-77 (quoting *Bulluck*, 283 Md. at 513). When the agency's decision is based solely on an error of law, however, the reviewing court may substitute its judgment for that of the agency. *Maryland State Police v. Lindsey*, 318 Md. 325, 334 (1990).

DISCUSSION

- I. Whether the Board erred in finding that granting Petitioners' request for Special Exception would be detrimental to the health, safety or general welfare or would have an adverse effect on the surrounding properties.

The Board in this case found that the lot at 7400 did not comply with current parking regulations. The Board, further, found that there is in fact insufficient parking at 7400. Petitioners agreed with this finding stating that 7400 was "woefully short" on parking. The Board found that 7404 has been used as overflow parking for 7400. Finally, the Board found that patrons of 7400 park on Summit Avenue in the neighboring residential area. Petitioners agree with this finding as well, acknowledging that patrons of 7400 have long parked on Summit Avenue.

Petitioner asserts that no witness testified to having personal knowledge that 7404 is used as overflow parking for 7400. Mr. Carl Engel, however, a neighbor of the properties and a patron of 7400, testified to the fact that he has seen cars park at 7404 in order to access 7400. Tr. 104: 5-8. Mr. Engel further testified that he has, himself, parked at 7404 in order to access 7400. Tr. 104: 9-10. Mr. Engel also testified to the problems that he has experienced with overflow parking from 7400 in his residential neighborhood on Friday and Saturday nights. Tr. 96-101. Mr. Engel was careful to point out his respect for Mr. Singh and the efforts that Mr. Singh makes to keep his business safe and friendly. However, Mr. Engel admitted that he feels that some of the Friday and Saturday night traffic that the nightclub at 7400 brings into the neighborhood is dangerous. Tr. 97: 19-20. The Board found the testimony of Carl Engle credible. Moreover, the Board found Joseph Larson's May 15, 2008 letter credible. This letter was submitted by Joseph Larson, Petitioners' expert, prior to trial and admits that 7404 is used for overflow parking for 7400. There was substantial evidence in support of the determination of the Board that 7404 was used for overflow parking for 7400.

Petitioners next assert that the Board erred in its determination that there was a potential hazard to 7400 patrons crossing Pulaski Highway to access the business at 7400 from the residential neighborhood. Patrons of 7400 parking in the nearby residential neighborhood, specifically on Summit Avenue, would have to cross Philadelphia Road just before it becomes Pulaski Highway. Although the Board's opinion says that there is a potential hazard with respect to patrons crossing Pulaski Highway, it is clear that the Board intended to refer to Philadelphia Road. Philadelphia Road is also a major road.

Furthermore, patrons parked on a service road across Pulaski Highway would experience risk of accident or injury crossing Pulaski Highway. The Board found Mr. Stephen Weber credible. Mr. Weber testified that there is parking on a service road across Pulaski Highway and that patrons parking there would have to cross five or six lanes of divided highway to get to 7400. Tr. 74: 20-21. The Board also, as noted above, found Carl Engel credible. Mr. Engel testified to the dangers of crossing the subject section of Pulaski Highway based on his experience with once attempting to cross that part of Pulaski Highway. Tr. 102: 2-3.

Petitioner also asserts that the Board applied *Shultz v Pritts* erroneously. *Shultz v Pritts* states that

the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts 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.

291 Md. 1, 15 (1981). *Shultz v Pritts* further explains that

a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different *from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone.*

Id. (emphasis added). Also, according to *Schultz v Pritts*,

[s]uch uses may not be developed if at the particular location proposed they have an adverse effect upon a factor such as traffic because the legislative body has determined that the

beneficial purposes that such establishments serve do not necessarily outweigh their possible adverse effects.

291 Md. at 22.

In this case the Board concluded that the special exception requested would have an adverse effect unique and different from the affect of such use located elsewhere in the zone. The Board's conclusion is not erroneous. It is clear from the record in this case that the location of 7404 and 7400, between two major roads (Pulaski Hwy. and Philadelphia Road), is a significant part of the reason that the Board found that granting the special exception in this case would have an adverse effect on traffic and the surrounding area. This adverse effect would be unique and different from the affect of such a use elsewhere in the zone, for example a location not between two major roadways.

II. Whether the Board erred in finding that the Petitioners' proposed site plan for 7404 Pulaski Highway fails to comply with the setback requirements of BCZR §238.4.

Petitioners argue that the testimony before the Board was simply Ms. Demilio's question on cross examination, "So you agree that you do not comply with Section 238.4?," followed by Mr. Larson's answer, "No." Mr. Larson testified as an expert in zoning regulations.

Petitioners' Memorandum neglects to acknowledge the whole of Mr. Larson's testimony. It is clear from Mr. Larson's testimony that it was his opinion that by asking for the special exception, Petitioners would avoid the necessity of separately filing a variance for the admitted failure to comply with the setback requirements of Section

238.4. Tr. 53: 20-21. This testimony is substantial evidence that rationally supports the Board's determination of noncompliance with Section 238.4.

Furthermore, the Board's decision is legally correct. Section 502.1 G is clear that a special exception may not be granted if it will be inconsistent, in any way, with the zoning regulations. Mr. Larson's testimony made it clear that he did not believe that the proposed plan for 7404 met the setback requirements of the zoning regulations. Mr. Larson was of the opinion that the Board could grant the special exception despite this failure. However, Section 502.1 is clear that a special exception may not be granted when the proposed use is not consistent with zoning regulations. The Board's determination that they could not grant the special exception in light of the failure to meet setback requirements was not an erroneous conclusion of law.

III. Whether the Board's decision amounts to a taking prohibited by the Fifth Amendment to the United States Constitution.

Petitioners finally assert that the Board's decision amounts to a taking under the Fifth Amendment to the Constitution. Petitioners argue that the Board's decision denies Petitioners all economically beneficial or productive use of his or her land in the name of the public at large.

This Court does not agree with Petitioners' argument. The Board's decision in this case denies Petitioners *this* economically beneficial or productive use of the land. It is not clear from the Board's opinion that there is no other economically beneficial or productive use of Petitioners' land that may be allowed. Furthermore, this situation is not one in which the government has taken property for the use of the public at large in the usual sense. Instead, in this case, if there were a "taking", it would be for the use of

the owners of the subject property themselves. The opinion of the Board was that there was a portion of 7404 that had been used and needed to continue to be used as overflow parking for 7400. Both of these are properties owned by Petitioners. The need to use part of 7404 as overflow parking is for the benefit of Petitioners' own adjacent lot.

CONCLUSION

For the reasons set forth herein, the decision of the Maryland Office of Administrative Hearings shall be **AFFIRMED**. It is so **ORDERED**.

7/27/10
DATE

Susan Souder
Judge Susan Souder

Copies mailed to:

Frank Boozer, Esq.
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, Maryland 21204

Carole Demilio, Esq.
People's Counsel for Baltimore County
105 W. Chesapeake Avenue
Room 204
Towson, Maryland 21204

Peter Zimmermann, Esq.
People's Counsel for Baltimore County
105 W. Chesapeake Avenue
Room 204
Towson, Maryland 21204

Board of Appeals of Baltimore County
105 W. Chesapeake Avenue
Towson, Maryland 21204

True Copy Test
RICHARD D. ARNOLD, JR., Clerk
Per *Kathy McCon* rk

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

Board Of Appeals Of Baltimore County The
105 W. Chesapeake Avenue
Towson MD 21204

Assignment Date: 04/12/10

Case Title: In the Matter of Harnek Singh, et al
Case No: 03-C-10-000590 AA

Bd of Appeals of Balto Co

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 04/27/10
 2. All Motions (excluding Motions in Limine) are due by..... 05/29/10
 3. TRIAL DATE is..... 07/08/10
- Civil Non-Jury Trial: Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

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

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

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

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

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

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

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APR 13 2010

BALTIMORE COUNTY
BOARD OF APPEALS

cc: Carole S Demilio Esq
cc: Frank Vernon Boozer Esq
cc: Peter M Zimmerman Esq
Issue Date 04/12/10

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

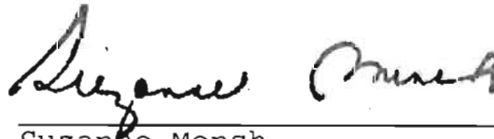
N O T I C E O F R E C O R D

Case Number: 03-C-10-000590 AA
Administrative Agency : 08-363-SPHX
C I V I L

In the Matter of Harnek Singh, et al

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 12th day of March, 2010.



Suzanne Mensh
Clerk of the Circuit Court, per



Date issued: 03/15/10

TO: BOARD OF APPEALS OF BALTIMORE COUNTY THE
105 W. Chesapeake Avenue
Towson, MD 21204

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MAR 17 2010

BALTIMORE COUNTY
BOARD OF APPEALS

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

Case Number: 03-C-10-000590

TO: BOARD OF APPEALS OF BALTIMORE COUNTY THE
105 W. Chesapeake Avenue
Towson, MD 21204

3/12/10
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
HARNEK SINGH AND CHARANJIT KAUR

CIVIL ACTION
NO. : 03-C-10-000590

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
HARNEK SINGH AND CHARANJIT KAUR
– LEGAL OWNERS/PETITIONERS
FOR SPECIAL HEARING AND SPECIAL
EXCEPTION ON PROPERTY LOCATED
AT THE NW CORNER OF 66TH STREET AND
PULASKI HIGHWAY
(7400 AND 7404 PULASKI HIGHWAY)

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-363-SPHX

* * * * *

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY**

2010 MAR 12 PM 1:42

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

No. 08-363-SPHX

February 12, 2008	Petition For Special Hearing to approve a modified parking plan and Petition for Special Exception to use the subject property for a used motor vehicle outdoor sales area filed by Frank V. Boozer, Jr., Esquire on behalf of Harnek Singh and Charanjit Kaur, Petitioners.
February 21	Entry of Appearance filed by People's Counsel for Baltimore County.
March 20	Certificate of Publication in newspaper
March 24	Certificate of Posting.
March 26	ZAC Comments.
September 11	Hearing held before the Zoning Commissioner
October 14	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Special Hearing was DISMISSED AS MOOT and the Petition for Special Exception was GRANTED subject to restrictions.
October 29, 2008	Notice of Appeal filed by People's Counsel for Baltimore County
May 5, 2009	Board convened for hearing, this matter was postponed on the record with no testimony given.
September 3, 2009	Board convened for hearing.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Lease Agreement for subject property
- 2 – Photocopy of check from Majestic Auto
- 3 – Site Plan
- 4a – Recommendations of Office of Planning dated 3/17/08, Fire Marshal's Office dated 2/25/08, and Bureau of Development Plans Review dated 2/21/08
- 4b – Letter of approval from the State Highways Administration dated 2/26/08.

People's Counsel Exhibit No.

- 1 – Deed of subject property
- 2 – Letter from Joseph Larson to Office of Planning dated 5/15/08
- 3 – Aerial Photograph of location
- 4 – Photograph of site
- 5 – Aerial photograph from Baltimore County file

6 – Letter from Joseph Larson to Office of Planning dated 8/29/09

October 9, 2009	Brief of Harek Singh and Charanjit Kaur, Petitioners, filed by Frank V. Boozer, Jr., Esquire.
October 13	Memorandum of People's Counsel for Baltimore County filed by Peter M. Zimmerman, Esquire and Carole S. Demilio, Esquire.
December 1	Board convened for Public deliberation.
December 14, 2009	Final Opinion and Order issued by the Board in which the Zoning Commissioner's Order dated October 14, 2008 granting Petitioners' requested Petition for Special Exception was REVERSED and the requested Petition for Special Exception was DENIED.
January 14, 2010	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Frank V. Boozer, Jr., Esquire, on behalf of Harnek Singh and Charanjit Kaur, Petitioners.
January 19	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
January 20, 2010	Certificate of Compliance sent to all parties and interested persons.
March 12, 2010	Transcript of testimony filed.
March 12, 2010	Record of Proceedings filed in the Circuit Court for Baltimore County.

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



Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: Frank V. Boozer, Jr., Esquire
Harnek Singh and Charanjit Kaur
Gurpreet Singh
Joseph Larson
Bob Infussi
Kris Shipley
Office of People's Counsel
William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Avery Harden, Jr., PDM
John Beverungen, County Attorney

1/20/10
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
HARNEK SINGH AND CHARANJIT KAUR

CIVIL ACTION
NO. : 03-C-10-000590

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

IN THE MATTER OF :
HARNEK SINGH AND CHARANJIT KAUR
– LEGAL OWNERS/PETITIONERS
FOR SPECIAL HEARING AND SPECIAL
EXCEPTION ON PROPERTY LOCATED
AT THE NW CORNER OF 66TH STREET AND
PULASKI HIGHWAY
(7400 AND 7404 PULASKI HIGHWAY)

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 08-363-SPHX

* * * * *

RECEIVED AND FILED
2010 JAN 20 AM 10:52
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF COMPLIANCE

Madam Clerk:

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

Harnek Singh
and Charanjit Kaur
9005 Gardenia Road
Nottingham, MD 21236

Frank Boozer, Jr.
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, MD 21204

Gurpreet Singh
9005 Gardenia Road
Nottingham, MD 21236

Joseph Larson
Spellman, Larson & Associates, Inc.
222 Bosley Avenue, Suite B-3
Towson, MD 21204

Bob Infussi
Pulaski Highway Business Association
7306 Philadelphia Road
Rosedale, MD 21237

Kris Shipley
1211 62nd Street
Baltimore, MD 21237

Avery Harden, Jr.
Office of Permits and Development Mgmt
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

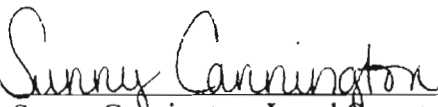
William J. Wiseman, III, Zoning
Commissioner
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold F. "Pat" Keller, Director
Office of Planning
The Jefferson Building, Suite 101
105 W. Chesapeake Avenue
Towson, MD 21204

Timothy Kotroco, Director
Office of Permits and Development Mgmt
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

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

I HEREBY CERTIFY that on this 20th day of January, 2010, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.


Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180



County Board of Appeals of Baltimore County

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

January 20, 2010

Frank V. Boozer, Jr., Esquire
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, MD 21204

Peter M. Zimmerman
Carole S. Demilio
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-10-000590
In the Matter of: Harnek Singh and Charanjit Kaur
Board of Appeals Case No.: 08-363-SPHX

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on January 14, 2010 by Frank V. Boozer, Jr., Esquire on behalf of Harnek Singh and Charanjit Kaur in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. Frank V. Boozer, Jr., Esquire on behalf of Harnek Singh and Charanjit Kaur, having taken the appeal, are responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

The Court Reporter that must be contacted to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-837-3027
HEARING DATE: September 3, 2009

This office has also notified Ms. Peatt that a transcript on the above matter is due for filing in the Circuit Court. A copy of the Petition for Judicial Review has been provided to the Court Reporter which will enable her to contact the responsible parties.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,



Sunny Cannington
Legal Secretary

Enclosure

Duplicate Original

cc: Harnek Singh and Charanjit Kaur
Gurpreet Singh
Joseph Larson
Bob Infussi
Kris Shipley
William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
Avery Harden, Jr., PDM
John Beverungen, County Attorney

1/12/10

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JAN 19 2010
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF: * IN THE
HARNEK SINGH & CHARANJIT KAUR *
9005 Gardenia Road *
Baltimore, Maryland 21236 * CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE *
DECISION OF: *
THE BOARD OF APPEALS OF *
BALTIMORE COUNTY *
105 W. Chesapeake Avenue *
Towson, Maryland 21204 * BALTIMORE COUNTY
In the Case of: *
The application of Harnek Singh and *
Charanjit Kaur, Legal Owners/ *
Petitioners for Special Hearing and *
Special Exception on property *
located at the NW Corner of 66th St. * CASE NO.
and Pulaski Highway *
(7400 & 7404 Pulaski Highway) * C-10-590
15th Election District *
7th Councilmanic District *
Board of Appeals Case #08-363-SPHX *

* * * * *

PETITION FOR JUDICIAL REVIEW

Harnek Singh and Charanjit Kaur, Legal Owners/Petitioners, by Frank V. Boozer, Jr. and Covahey, Boozer, Devan & Dore, P.A., their attorneys, request Judicial Review of the decision of the Board of Appeals of Baltimore County dated December 14, 2009, denying a Petition for Special Exception, pursuant to Section 236.4 of the Baltimore County Zoning Regulations to allow use of the subject

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2010 JAN 14 PM 3:47

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

property for the sale of used motor vehicles. The Petitioners were a party to the agency proceeding and have standing to pursue Judicial Review.



FRANK V. BOOZER, JR.
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, Maryland 21204
410-828-9441
Attorneys for Petitioners

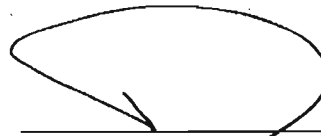
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of January, 2010, a copy of the foregoing Petition for Judicial Review was mailed, first class, postage prepaid, to:

Peter Max Zimmerman, Esq.
Carole S. DeMilio, Esq.
People's Counsel for Baltimore County
105 W. Chesapeake Ave., Room 204
Towson, Maryland 21204

and

County Board of Appeals for Baltimore County
105 W. Chesapeake Ave., Room 203
Towson, Maryland 21204



FRANK V. BOOZER, JR.

ldr100112

12/14/09

IN THE MATTER OF
THE APPLICATION OF
HARNEK SINGH AND CHARANJIT KAUR
LEGAL OWNERS; PETITIONERS
FOR SPECIAL HEARING AND
SPECIAL EXCEPTION
ON PROPERTY THE LOCATED ON
THE NW CORNER OF 66TH STREET
AND PULASKI HIGHWAY
(7400 & 7404 PULASKI HIGHWAY)

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 08-363-SPHX
*
*

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OPINION

This matter is before the Board on an appeal filed by People's Counsel for Baltimore County, from a decision of the Zoning Commissioner ('ZC') of Baltimore County, dated October 14, 2008, in which he dismissed as moot the Petitioner's request for a Petition for Special Hearing pursuant to Section 409.12B of the Baltimore County Zoning Regulations ('BCZR'); and granted (with restrictions) Petitioner's requested Petition for Special Exception, pursuant to Section 236.4 of the Baltimore County Zoning Regulations ('BCZR'), to allow use of the subject property for the sale of used motor vehicles. A hearing was held before the Board on September 3, 2009. Petitioners, Harnek Singh and Charanjit Kaur were represented by Frank V. Boozer, Jr., Esquire. Appellant/Protestant, People's Counsel for Baltimore County, was represented by Carole S. Demilio, Esquire. Closing Briefs were simultaneously filed by the parties on October 13, 2009 and a public deliberation was held on December 1, 2009.

Facts

The property in question, known as 7404 Pulaski Highway – Parcel 523, along with an adjoining parcel of property, known as 7400 Pulaski Highway, was purchased by the Petitioner's on November 18, 2003. 7404 Pulaski Highway is a squared shaped parcel approximately 0.15 acre(s) in size, located at the intersection of Pulaski Highway and Philadelphia Road at 66th

Street. The property is zoned BR-AS. In addition, the Petitioner operates a nightclub, restaurant/tavern and package goods store on the second lot, 7400 Pulaski Highway.

The Petitioner seeks to utilize the small lot in question as a used motor vehicle outdoor sales area. At the time of the application the property was being used as storage space for an automobile repair shop located on the other side of Philadelphia Road. The property is improved with a gravel parking area on the west side which gradually slopes upward and turns into grass as the property moves towards the east and 66th street.

Petitioner contends that he intends to install a small sales kiosk on the lot and resurface the sales area. The hours of operation would be Tuesday through Sunday from 10:00 a.m. until 8:00 p.m. o'clock. Mr. Singh indicated that he would be the sole salesman on the property while his wife would run the nightclub, restaurant/tavern and package goods store.

ISSUE

Whether or not the Petitioner's met the requirements of Section 502.1 of the 'BCZR', and therefore are entitled to a Special Exception to operate a used car lot on the property in question.

POSITIONS OF THE PARTIES

Petitioner 's Position – In support of it's position, Petitioners presented Harnek Singh, owner of the property. Mr. Singh testified that he owns the nightclub, restaurant/tavern and package goods store at 7400 Pulaski Highway. He stated that he wishes to operate the used car lot on the lot east of the restaurant and that this would be his full time job. He stated that the lot would be open Tuesday through Sunday from 10:00 a.m. to 8:00 p.m. o'clock and that he would be the only person there. On cross examination, Mr. Singh stated that there were seven (7) spaces for customer parking at the restaurant. He stated that he could park eleven (11) cars at the front of the restaurant on Pulaski Highway and eleven (11) parking spaces were also located at the rear of the building. He stated that his restaurant operates from 12:00 noon to 2:00 a.m.

o'clock and sells package goods and beer until 2:00 a.m. o'clock. He also stated that he operates a nightclub on weekends and the capacity of the restaurant/nightclub was One Hundred Fifty (150) people. He purchased both lots in 2003.

The Petitioner's then presented Mr. Joseph Larson, a principal of Spellman, Larson & Associates, Inc. Mr. Larson was proposed and accepted as an expert in engineering, surveying and Baltimore County regulations. He testified with respect to the site plan, which he had prepared for the lot in question. He indicated where the kiosk would be located and the location of the automobiles to be displayed on the lot.

Mr. Larson was questioned as to whether or not he had any concerns with respect to Petitioner's compliance with Section 502.1 of 'BCZR' and he replied that he had no concerns.

Mr. Larson was questioned by People's Counsel with respect to the parking for the restaurant on the lot in question. Mr. Larson was shown a letter dated May 15, 2008 to Mr. Curtis Murray of the Office of Planning of Baltimore County, in which it was stated that a portion of the lot at 7404 Pulaski Highway, which has been "partially used for parking for several years for the restaurant will not change and will continue as is. The used car sales area has been reduced to not impact the parking area." Mr. Larson indicated that it was a mistake and that there was no parking on the lot at 7400 Pulaski Highway. He admitted that he had never written a letter to Mr. Murray correcting that issue. Mr. Larson also admitted that the restaurant does not satisfy the County regulation with respect to parking requirements. He stated that it is a non-conforming use and that they did not try to satisfy the parking requirements.

Finally, Mr. Larson admitted that the kiosk was located in the middle of the lot and that the display and show area was in the front yard. He stated that it was not in compliance with Section 238.4 of the 'BCZR'. It was his contention that he did not need to ask for a Variance if he was granted the Special Exception.

Protestant's Position. Protestant's presented Mr. Stephen Weber, Director of Traffic Engineering for Baltimore County. Mr. Weber testified that he was responsible for all traffic issues with respect to Baltimore County and he was concerned with the utilization of 7400 Pulaski Highway as a used car lot. Mr. Weber testified that he had visited the site and that the nightclub, restaurant/tavern and package goods store did not have the required parking spaces in accordance with the Baltimore County Zoning regulations. He stated that there was no sign in place on the lot in question, (7400 Pulaski Highway) that stated that the nightclub, restaurant/tavern and package goods store customers could not park on the lot. He stated that with the severe lack of parking at the restaurant, there was no place for customers to park, other than on the lot in question. Without the utilization of the lot for customer parking, customers of the nightclub/restaurant would be parking in the adjacent neighborhoods and would be coming back into the neighborhoods at 1:00 a.m. to 2:00 a.m. o'clock disturbing the residents of those neighborhoods. Mr. Weber also presented a letter from Mr. Larson to Mr. John Alexander of the Office of Planning of Baltimore County, dated August 29, 2008, in which Mr. Larson stated:

"Lastly, it should be mentioned that the site that is proposed for the used car dealership has been partially used for parking for the restaurant and that parking will remain with the remainder of that vacant lot to be used for the proposed used car dealership."

Mr. Weber was also concerned with people crossing Pulaski Highway at the early hours of the morning after they had been drinking, since this could possibly lead to further accidents in that area.

People's Counsel then presented Carl Engle, who lives at 1700 Summit Avenue, across Pulaski Highway from the restaurant at 7404 Pulaski Highway. He has lived in the area since 1974. Mr. Engle stated that he was familiar with the restaurant operated by the Singhs and has visited the restaurant to purchase package goods, as well as to eat at the restaurant with his wife

several times a week. He testified that the overflow parking for the restaurant utilizes the lot at 7400 Pulaski Highway. In addition, he stated that on Friday and Saturday nights, the overflow from the nightclub ends up on the street next to his property. He testified that people come in and park around 10:30 p.m. and then return about 1:00 – 2:00 a.m. o'clock. At that time they are noisy and have awakened him and his wife. He has talked to the Baltimore County Police Department about it, but there is nothing that can be done. Mr. Engel stated that he was concerned that if the lot at 7400 is not utilized for parking, that more people will be parking in his neighborhood. He stated that there were no other taverns or nightclub in that area that could generate people coming into his neighborhood.

Decision

In order to receive a Special Exception, the Petitioner's must prove that they have complied with Section 502.1 of the BCZR. That sections reads as follows:

§502.1--Before any Special Exception may be granted, it must appear that the use for which the Special Exception is requested will not:

- A. Be detrimental to the health, safety, or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other dangers;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C. 2, R.C. 4, R.C. 5 or R.C. 7 Zone.

In addition, the case of Shultz v. Pritts, 291 Md. 1 (1981), states:

[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts 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 22-23"

This Board credits the testimony of Mr. Engel, presented by People Counsel, as well as the testimony of Mr. Weber and the two (2) letters from Mr. Larson, that the lot in question has been used for overflow parking for the nightclub, restaurant/tavern and package goods store at 7400 Pulaski Highway. Mr. Weber testified that he had evaluated the parking for the nightclub and that there was no viable space available, other than the subject site for overflow parking for the restaurant/nightclub. Mr. Engel, the neighbor who lives across Pulaski Highway from the site, testified with respect to people who he felt were patrons of the nightclub, coming into his neighborhood and parking and returning at early hours in the morning being boisterous and loud.

In the opinion of the Board, the failure to utilize the lot in question for overflow parking for the restaurant/nightclub, would be detrimental to the health, safety, or general welfare of the locality involved under Section A of 502.1 of the 'BCZR'. In addition, it could create a potential hazard or other danger in accordance with Section 502.1C of the 'BCZR', with respect to the possibility of accidents with patrons crossing Pulaski Highway to park in the neighborhoods.

The Board also finds that the Special Exception use would result in an adverse effect upon the adjoining and surrounding properties; unique and different from the adverse affect that would otherwise result in the development of such a Special Exception use located elsewhere within the zone.

The Board also finds that Petitioner did not comply with the setbacks required in Section 238.4 of the BCZR that states:

"§ 238.4 Storage and display of materials and vehicles.

Storage and display of materials, vehicles and equipment are permitted in the front yard, but not more than 15 feet in front of the required front building line."

It was acknowledged by the Petitioner that the site plan did not comply with Section 238.4 of the 'BCZR'. Petitioner's plan shows parking for 'car display' towards Pulaski Highway and well beyond the fifteen (15) feet from the sales kiosk. It was the position of Mr. Larson, the Petitioner's expert, that this would be part of the Special Exception relief; however, that is not correct. A plan for Special Exception can not be approved if it does not comply with the area standards for the zone. 'BCZR' Section 102.1 provides:

"No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations. ..."

In order for the display to be utilized as set forth in the site plan, a Variance must be requested and this has not been done. Therefore, the Board will deny the Special Exception.

ORDER

THEREFORE, IT IS THIS 14th day of December, 2009 by the
Board of Appeals of Baltimore County;

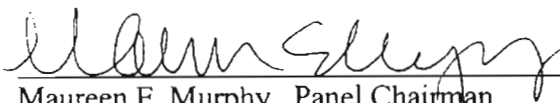
ORDERED that the Zoning Commissioner's Order dated October 14, 2008 granting Petitioner's requested Petition for Special Exception, pursuant to Section 236.4 the Baltimore

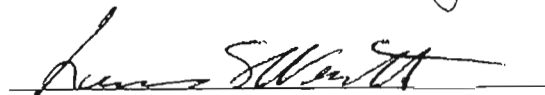
County Zoning Regulations ('BCZR'), to allow use of the subject property for the sale of used motor vehicles is hereby **REVERSED**; and it is further

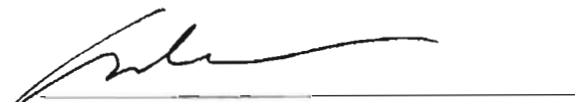
ORDERED that the requested Petition for Special Exception, pursuant to Section 236.4 the Baltimore County Zoning Regulations ('BCZR'), to allow use of the subject property for the sale of used motor vehicles is hereby **DENIED**.

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

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Lawrence S. Wescott


Andrew M. Belt



County Board of Appeals of Baltimore County

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December 14, 2009

Frank Boozer, Jr.
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, MD 21204

RE: *In the Matter of: Harnek Singh and Charanjit Kaur-Legal Owners/Petitioners*
Case No.: 08-363-SPHX

Dear Mr. Boozer:

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

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

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc
Enclosure

c: Harnek Singh and Charanjit Kaur
Gurpreet Singh
Joseph Larson
Bob Infussi/Pulaski Highway Business Association
Kris Shipley
Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Arnold F. "Pat" Keller, Director/Planning
Timothy Kotroco, Director/PDM
Avery Harden, Jr., PDM
John E. Beverungen, County Attorney

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: **Harnek Singh / Charanjit Kaur - Legal Owners /Petitioners**
7400 and 7404 Pulaski Highway
15th Election District; 7th Councilmanic District

DATE: December 1, 2009

BOARD/PANEL: Maureen E. Murphy, Panel Chairman
Lawrence S. Wescott
Andrew M. Belt

RECORDED BY: Theresa R. Shelton / Administrator

PURPOSE: To deliberate the following:

SPH – To approve a modified parking plan in accordance with Sec. 409.12B of the BCZR;
SPX - for a used motor vehicle outdoor sales area

*(10/14/08 – ZC decision that Petition for SPH – dismissed as Moot; Petition for Special
Exception – GRANTED with restrictions)*

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- The history and overflow usage of the lot with respect to the nightclub/restaurant and the day(s) of operation;
- Testimony of Mr. Weber, from Traffic Engineering, Baltimore County, opposing the Special Exception request because of the negative impact on the neighborhood, **due** to the nightclub setting;
- Testimony from neighbor, Mr. Engel, who patronizes the restaurant, that he parks **on** the lot proposed for the used car dealership during the day and has also seen other vehicles parked there;
- Standards of BCZR 502.1 not met;
- That the used car sales area would be a detriment to the health, safety or general welfare of the locality involved; and
- The request does not comply with Section 238.4 of the BCZR, regarding setbacks.

DECISION BY BOARD MEMBERS: Unanimous decision by the Board's Panel to Deny the Petitioners Request to operate a used car dealership on the property located on Pulaski Highway,

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to **REVERSE** that part of the decision of the Zoning Commissioner's Findings of Fact and Conclusion of Law, dated October 14, 2008, in which the requested relief was granted with restrictions; and the decision of the Board's Panel is to **DENY** the Petition for Special Exception seeking approval of the use of the subject property for the sale of used motor vehicles.

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

Respectfully Submitted,


Theresa R. Shelton

10/13/09

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE COUNTY
AND SPECIAL EXCEPTION		
7400 & 7404 Pulaski Highway; NW	*	BOARD OF APPEALS
corner of 66 th Street & Pulaski Highway		
15 th Election & 7 th Councilmanic Districts	*	FOR
Legal Owners: Harnek Singh & Charanjit Kaur		
Petitioner(s)	*	BALTIMORE COUNTY
	*	08-363-SPHX



* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Schultz v. Pritts 291 Md. 1, 21-22 (1981) states:

"When the legislative body determines that other uses are compatible with the permitted uses in a use district, but that the beneficial purposes such other uses serve do not outweigh their possible adverse effect, such uses are designated as conditional or special exception uses. . . Such uses cannot be developed if at the particular location proposed they have an adverse effect above and beyond that ordinarily associated with such uses." (citations omitted) (emphasis added).

Overview and People's Counsel's Position

This is a special exception request to operate a used car dealership on property located on Pulaski Highway zoned Business Roadside (B.R.). The Petitioner owns the subject site, an unimproved lot, as well as adjoining property on which he operates a nightclub/restaurant/tavern/package goods store (hereafter "nightclub"). The latter uses are operating in a structure that does not conform to parking and setback requirements. It may be that the use and the structure are nonconforming. Our position is not to challenge the operation of the nightclub. But we respectfully contend that given the historic use of the subject site for parking to support the nightclub, the parking deficiencies for the adjoining nightclub use must be considered in assessing the proposed special exception. Our concern is that by reducing the available parking for a nonconforming use, the adverse effects of developing the adjoining site would be greater here than if the special exception use were located elsewhere in the zone. The nightclub has less than one-half of the minimum parking required by BCZR § 409 "Offstreet Parking and Loading." As a

result, its customers and patrons have traditionally parked on the subject site. As a practical matter, the use of both lots has been integrated for the nightclub use. If the special exception is granted, it is tantamount to a change in the nonconforming use that is prohibited under BCZR § 104 and Prince George's County v. Gardner 293 Md. 259 (1982).

At the hearing, Petitioner claimed the adjoining nightclub use is irrelevant. We disagree. As we shall see, in special exception cases, the case law and zoning statutes specifically refer to the impact on the surrounding area. That factor is particularly significant here where both lots operated in conjunction with each other to provide parking for the nightclub. Prior to the CBA hearing, Petitioner admitted the mutual use of the sites:

1. Petitioner initially filed a Petition for Special Hearing for a modified parking plan under BCZR § 409.12 B. for both 7404 Pulaski Highway (the proposed used car dealership) and 7400 Pulaski Highway (the site of the nightclub/tavern/package goods store/restaurant).

2. Petitioner acknowledged at the hearing before the Zoning Commissioner that the special exception site was used for parking for the nightclub. On page 2, Mr. Wiseman states: *"Testimony was introduced that the gravel covered portion of the site was previously used solely as overflow parking for the bar and restaurant use at 7400 Pulaski Highway (Parcel 363)."* This testimony was introduced after Petitioner withdrew the request for modified parking in a preliminary Motion to Withdraw at the hearing before Mr. Wiseman.

3. Petitioner's expert, Mr. Joseph Larson, filed two letters with the Baltimore County Office of Planning acknowledging the use of the special exception site for parking for the nightclub. In a May 15, 2008 letter (P.C. Exh.# 2) to Mr. Curtis Murray, Mr. Larson stated: *"Lastly a portion of the lot at 7404 Pulaski Highway which has been partially used for parking for several years for the restaurant will not change and will continue as is. The used car sales area has been reduced to not impact this parking area."* In a August 29, 2008 letter to Mr. John Alexander (P.C. Exh. #6) Mr. Larson

states: *"Lastly it should be mentioned that the site that is proposed for the used car dealership has been partially used for parking for the restaurant and that parking will remain with the remainder of that vacant lot to be used for the proposed used car dealership."* Mr. Larson claimed in cross-examination that he was mistaken that the vacant lot had been used as a parking lot for the nightclub, yet there is no evidence he corrected this correspondence either orally or in writing. Furthermore there is evidence that at least all of the paved portion of the vacant lot and not just the spaces closest to the nightclub were available for patrons to park.

4. Petitioner sought and received a "lot line adjustment" which transferred part of the land on 7404 Pulaski Highway, the special exception lot, to 7400 Pulaski Highway, the nightclub lot. This confirms the integrated use and the parking deficiency for the nightclub and is supported by the physical conditions on the area transferred, namely, long-standing wheel stops and stripes designating parking adjacent to the east side of the building.

In addition to the above, People's Counsel's believes it is imperative for the CBA to review the impact of the proposed use on the existing conditions on the adjoining site:

A. The Office of Planning specifically refers to the adjoining use in its comment dated June 17, 2008 (Pet. Exh. #4) which were issued before the Zoning Commissioner's hearing on September 11, 2008: *"Furthermore, The office of Planning offers the following in response to the requested Special Exception. . . . If the area being proposed as a used car dealership has historically been used as parking for the restaurant, it should not be converted to another use. If it has not, then a demonstration of such should be made to the Zoning Commissioner."*

B. Letter in the CBA's file from our office to the Zoning Commissioner with the comments of Mr. Steve Weber, Baltimore County Department of Traffic, opposing the Special Exception because of *"significant adverse impacts"* on the nightclub parking situation. See attached Memorandum Exhibit A.

C. BCZR 502.1 requires the Petitioner show the proposed special exception use shall not: "A. Be detrimental to the health, safety or general welfare of the locality involved; B. Tend to create congestion in roads, streets or alleys therein; C. Create a potential hazard from fire, panic or other danger; D. Tend to overcrowd land and cause undue concentration of population; G. Be inconsistent with the . . . spirit and intent of these Zoning Regulations;" these factors clearly take into consideration the surrounding area and neighborhood, and justify looking at the impact on the nightclub parking requirements.

D. Petitioners purchased both lots in a single transaction and for a single purchase price. It is significant that both lots are in common ownership – Petitioner has had the benefit of continuing the nonconforming use at this site because he has relied on his adjoining parcel for parking. The constraints of 7400 Pulaski Highway did not require him to scale back the use. On the contrary, he was able to operate the business 7 days a week nearly 24 hours a day. Petitioner has expanded the use from a restaurant/tavern to nightclub. He never sought to prevent parking on his adjoining property but used it to bolster the number of customers throughout the day for the restaurant, tavern, package goods store and nightclub. It is doubtful that many businesses of this type could operate with this intensity on just .26 acres, the size of the nightclub lot. Rather, such businesses would have to arrange for sufficient parking, not just to meet current zoning requirements, but also as a practical need to accommodate customers. Moreover, Petitioner has never treated the subject site as a separate parcel. In fact, it was not assigned a separate street number until the present zoning request was filed.

Legal Analysis

Has the Petitioner met its burden of proof for a special exception under BCZR 502.1 and Schultz v. Pritts 291 Md. 1 (1981) and subsequent supporting case law for the used car dealership?

A special exception is a conditional use. The preface to BCZR 502.1 states:

“Section 502
Special Exception
BCZR 1955

Note: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another . . . All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals. . .”

Petitioner has the burden to prove the proposed special exception use satisfies all the standards in BCZR 502.1:

“502.1 Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air; [Bill No. 45-1982]
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. [Bill No. 74-2000]”

Other special exception cases support People’s Counsel’s position. A special exception, is a conditional use, although land owners and developers often give the impression the hearing is a technical requirement and the use is tantamount to a permitted use. Schultz v. Pritts, *supra* at 11 (1981); County Comm’rs v. Holbrook 314 Md. 210 (1986). On the contrary, the special exception is subject to compliance with basic special exception standards as well as other statutory prerequisites. Chester Haven L.P. v. Queen Anne’s County Board of Appeals 103 Md. App. 324 (1995).

“[T]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts 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.” Schultz, supra at 22 (emphasis added).

The burden of proof for a special exception remains with the applicant. Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App. 157 (2003). Judge Davidson wrote in Schultz 291 Md. 1, 15:

“These cases establish that a special exception use has an adverse effect and must be denied when it is determined from the facts and circumstances that the grant of the requested special exception use would result in an adverse effect upon adjoining and surrounding properties unique and different from the adverse effect that would otherwise result from the development of such a special exception use located anywhere within the zone. Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts 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 special exception use irrespective of its location within the zone.” (emphasis added).

This means that a special exception must be denied where the adverse effects are particular to the location, and above and beyond the normal adverse effects. It should be underlined, in this context, that in order for a special exception to be denied, it is not necessary that the CBA find that the proposal is in the worst possible location in the county or that it is the most extreme in size and scope. It just has to present some particular adverse effect at this location.

The Court of Special Appeals sustained a denial of a special exception for a rubble fill. Moseman v. Prince George’s County, 99 Md.App. 258 (1994). The factors particular to the site included the presence of an existing rubble fill across the street, a narrow and winding access road, the proximity of single family homes, highly erodible soils, risks to well water, and depreciation of property values. There was no evidence that the Moseman site was the worst site in Prince George’s County. There may have been other sites as bad or worse. There could have been proposed a larger or more hazardous landfill. But the potential for worse locations or worst case scenarios did not require approval at this location.

Unlike the variance standard where the unique characteristics must be indigenous to the property itself, such as geographic features, the adverse effects to deny a special exception may result from existing uses on the site or from surrounding, off-site conditions, such as traffic or road configurations.

Schultz v. Pritts implements BCZR 502.1 and focuses on whether “neighboring properties in the general neighborhood would be adversely affected.” It is elementary that “the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards . . .” The proposed use must not cause “harm or disturbance . . .” or “disruption of the harmony of the comprehensive plan.” 291 Md. at 11.

Judge Rita Davidson explained the harm must be particular, “*above and beyond the inherent ones ordinarily associated with such uses*” [in the zone]. 291 Md. at 14. She gave examples of cases involving high-tension wires and funeral homes. The inherently offensive or depressing aspects of these uses do not warrant denial. Otherwise, a special exception could never be granted. On the other hand, she wrote:

“These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied”. 291 Md., at 12.

In Schultz, the court remanded the case to consider traffic access and safety. In County Comm’rs v. Holbrook 314 Md. 210 (1988), the Court applied Schultz to reinstate a zoning board denial of a special exception based on adverse visual impact of a motor home on a residence. In Mangione, the Court of Special Appeals affirmed denial of a nursing home in a residential zone. The Court spoke approvingly of the evidence relied on by the CBA: “*Before the Board were various facts and circumstances which, we believe, satisfy the Schultz standard of particular adverse impact. The Board, under the Schultz standard, reviewed the evidence for the required particular adverse impact. . . . There was testimony concerning the effects of the intrusion of the project into the residential neighborhood presently existing around that location.*” 85 Md.App. 738, 751 (1991). In People’s Counsel v. Country Ridge Shopping Center 144 Md.App. 580 (2002), the Court affirmed denial of a pawnshop in a shopping center zoned for business

use. In each situation, there was something particular about the project or neighborhood, which justified denial.

In Futoryan v. Mayor & City Council 150 Md. App. 157 (2003), the Court affirmed denial of a conditional use (special exception) for an automobile repair garage in a business zone. Judge Charles Moylan discussed in depth the Schultz standard. He stressed that Schultz "*... was particularly helpful in clarifying the distinction between a permitted and a merely conditional use (or special exception).*" The thrust of Judge Davidson's opinion was that particular adverse neighborhood effects tolerated for uses permitted by right would not be acceptable for a special exception. It is thus false to say that a special exception should be approved where it would be no more harmful (or less harmful) than a potential permitted use. It has to be viewed on its merits. So, where evidence showed how the garage operation was "*... a detriment to the general welfare of the adjoining residential community,*" it warranted denial of the special exception.

Several points of comparison may be relevant, such as zoning and character of the surrounding area. So, a special exception acceptable in a commercial or institutional setting may be unacceptable in a residential neighborhood. Another point of comparison involves intensity of use. Judge Moylan advised:

"Even within the same zoning geography, the intensity of the proposed conditional use could also be a factor. A large-scale operation of automobile storage, automobile repair, and body and fender work completely filling, and perhaps spilling over, the entire lot could well be deemed to constitute a degree of adverse influence not constituted by a much smaller automobile repair operation as an auxiliary of a service station."

Testimony of Steve Weber

Mr. Steve Weber is an expert traffic planner who heads of the traffic division of Baltimore County's Department of Public Works. He testified in opposition to the proposed used car dealership. Mr. Weber is familiar with the site and visited it specifically in light of the proposal. He describes Pulaski Highway as a major east-west, 4 lane dual highway. He is familiar with traffic studies involving Pulaski Highway, and particularly the disproportionate number of pedestrian fatalities on this road.

Mr. Weber opposes the relief and made the following observations in his testimony:

1. He reviewed the parking requirements for the tavern/nightclub/package goods store/restaurant in BCZR 409. A tavern/nightclub requires 72 spaces and a restaurant requires 58. Here there are less than 25, including 10 in the State of Maryland right of way for Pulaski Highway, which is addressed in # 3 below.
2. The parking for the existing nightclub is not only below zoning standards but woefully inadequate as a practical matter; as a result customers use the adjoining subject site; if the Petition is granted and this area is unavailable, customers would likely seek parking on other nearby sites, including across Pulaski Highway; Mr. Weber finds crossing Pulaski Highway to be a particularly dangerous condition for patrons of a tavern/nightclub/package goods store/restaurant that serves alcohol until 2:00 a.m, 7 days a week. Not surprisingly, Petitioner presented no alternate for shared parking or parking on other business sites surrounding Petitioners' property. Mr. Weber states there is no viable space available other than the subject site. If the subject Petition is granted, the likely alternative for patrons of the nightclub is across Pulaski Highway or in the residential neighborhood to the north. A neighbor testified this has already taken place, to his detriment. This also will be discussed in more detail later in this Memorandum.
3. The parking noted on Petitioner's site plan (Pet Exh. # 3) along the southern side of the existing nightclub structure adjoining Pulaski Highway is indisputably in the State right-of-way; those parking spaces are not available for private use, are not permanent and should not be relied on by Petitioner; if these spaces were not available, it would only exacerbate the parking problem; it is compounded even further if the special exception for a used car dealership is granted.
4. Under any scenario, parking for the tavern/nightclub/package goods store/restaurant would continue to spill over into the residential neighborhood, which is problematic for the neighbors and the County as well. The purpose of the parking regulations under BCZR 409 is to prevent parking abuses, particularly a

spillover of commercial parking into residential neighborhoods. Mr. Weber testified that his department must be assured that such intrusions will not occur when reviewing a zoning or development plan since his department must answer citizens' complaints. Another witness, Mr. Engel, who resides near the subject site, testified about the particular adverse effects of insufficient parking for the nightclub.

5. There is no doubt the area designated for the proposed used car dealership has been used to meet the parking needs of the nightclub. On the subject site itself, which has never been improved with a structure, Mr. Weber described worn parking stripes perpendicular to the east side of the building along with worn long-standing wheel stops. Pictures confirm customers for the nightclub park along this area, Mr. Weber testified there are no physical barriers to prevent parking even east of this area up to the property line at 66th Street. Petitioner did not challenge this testimony or ask Mr. Weber if he observed the alleged "No Parking" sign Petitioner claims is on the subject site. These observations establish that the nightclub needs the subject site for parking, just as the Office of Planning suspected.
6. Mr. Weber differentiated the State Highway comment (Pet. Exh. # 4A & 4B) from the parking requirements under BCZR 409. The former is concerned only with access; here Petitioner proposes that the used car dealership use the existing entrance/exit, which may not violate State Highway standards. But parking requirements are a County standard under Mr. Weber's department.

Testimony of Carl Engel

Mr. Engel resides at 1700 Summit Avenue a few blocks from the subject site. He and his wife have lived there since 1995. They patronize the restaurant during the day. He often parks on the area proposed for the used car dealership and has noticed other patrons parking there as well. He passes the property often and states he is not aware of a "No Parking" sign on the subject site.

Mr. Engel testified that when the nightclub door is open, he hears the music, which also vibrates the windows in his home. He testified that patrons of the nightclub park in front of his home, a residential street, when there is no parking at the nightclub lot. They are noisy and loud and have disturbed the Engels, particularly around the 2:00 a.m. closing time. He is fearful for his safety. He has reported this to the police and has told the Petitioners about the inadequate parking for the nightclub and the spillover onto his block.

Mr. Engel described the ditch that runs along 66th Street between his house and the nightclub, which prevents parking in this area, forcing the patrons further north into the residential neighborhood. To the east is a McDonald's which has its own parking lot; Mr. Engel noted the area between the subject site and McDonald's is hilly and not suitable for parking.

Mr. Engel agrees with Mr. Weber that it is unsafe to park across Pulaski Highway. He stated it is treacherous to cross Pulaski at 66th Street, even with a traffic signal, because there are turning lanes as well as thru traffic, giving little opportunity for pedestrians to cross.

Mr. Engel testified there is always a lot of activity at the tavern because of the multiple, overlapping, high volume uses and because it is open 7 days a week, usually until 2:00 a.m. He believes putting a used car dealership at 7404 Pulaski is "pushing the envelope" in the use of Petitioners' property.

Testimony of Joseph Larson

Mr. Larson testified as an expert in surveying and land use, who prepared the site plans for the proposed special exception used car dealership. He acknowledged preparing the letters to the County agencies indicating the subject site has traditionally been used for parking for the adjoining use. (P.C. Exh. #2 & 6). He claims now that was a mistake but proceeded with the lot line adjustment that created additional parking space for the tavern/nightclub/package goods store/restaurant anyhow.

The burden of proof for a special exception remains with the applicant. Turner v. Hammond 270 Md. 41, 55-56 (1973); Futoryan v. Mayor & City Council 150 Md. App.

157 (2003). Mr. Larson offered no evidence that the proposed used car dealership satisfied the requirements of BCZR 502.1. When asked on direct examination if any of the requirements caused him concern he merely replied "no". Mr. Larson's testimony must be looked at with careful scrutiny because he was the only witness who discussed BCZR 502.1 for the Petitioner. The appellate courts are clear that such a terse response fails to satisfy Petitioners' burden of proof. In People's Counsel v. Beachwood 107 Md. App. 627, 650-651 (1995), cert. denied 342 Md. 472 (1996), the Court discussed the importance of the quality of the expert's testimony and disregarded " . . . naked declarations, unsubstantiated by facts . . ." Expert opinions are conclusory or "quasi-conclusory opinions and entitled to no weight where unsupported by adequate facts and supporting reasons. The "substantial evidence" test for a special exception also applies to other types of administrative zoning cases in which the agency must assess the facts to determine if the burden of proof has been satisfied. In Mayor & Council of Rockville v. Henry 268 Md. 469, 473-74 (1973), a zoning reclassification case, the Court rejected the testimony of the expert witness: *"Concerning the question of mistake, we agree with Judge Shearin that the evidence before the Mayor and Council was not substantial enough even to make that issue fairly debatable. The only testimony on the question was the bald assertion by appellee's expert witness, Mr. Dieudonne, a qualified realtor and appraiser, who simply responded to the question "do you think the present zoning is the correct zoning, R-60" by saying "No sir, I think that is wrong."* In A.H. Smith Sand & Gravel Co. v. Dep't of Natural Resources 270 Md. 652, 667 (1974), a case under the Administrative Procedure Act, the Court pointed out: *"This Court has observed that an expert's opinion is of no greater probative value than the soundness of his reasons given therefore will warrant."* (citations omitted.)

On the contrary, both Mr. Weber's and Mr. Engel's uncontested testimony confirm that the proposal conflicts with the standards in BCZR 502.1. They discussed how a used car dealership at this location would reduce needed parking spaces for the nightclub, jeopardizing the safety and welfare, and causing potential danger for the patrons of the existing nightclub business and the surrounding residential neighborhood.

Specifically, their concerns show that the proposed use is *detrimental to the health, safety or general welfare of the locality involved . . . tends to create congestion in roads, streets . . . creates a potential hazard from . . . other danger . . . tends to overcrowd land . . . interferes with adequate provisions for . . . other public requirements. . .and is inconsistent with the spirit and intent of these Zoning Regulations. . . all of which are requirements under BCZR 502.1.*

Even without the testimony of Mr. Weber and Mr. Engel, it bears repeating that it is the Petitioner's burden of proof under Schultz v. Pritts which unequivocally states that "*the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards . . .*" [in the zone]. 291 Md. at 14.

The Proposed Special Exception Does Not Comply with Setbacks

Petitioner's case is fatally flawed and the special exception should be denied for yet another reason. The B.R. zone establishes traditional front, side and rear yard setbacks in § 238. It also restricts storage and display of materials in conjunction with a use in §238.4:

"§ 238.4. Storage and display of materials and vehicles.

Storage and display of materials, vehicles and equipment are permitted in the front yard, but not more than 15 feet in front of the required front building line."

On cross-examination, Mr. Larson acknowledged that the site plan did not comply with BCZR 238.4. Petitioner's plan shows parking for "car display" toward Pulaski Highway and well beyond 15 ft. from the sales kiosk. Mr. Larson could offer no justification for this other than it is part of the special exception relief. But a variance is required for any deviation from a distance setback. BCZR 307.1. Petitioners failed to seek a variance nor present any evidence of uniqueness or practical difficulty. A plan for a special exception cannot be approved if it does not comply with the areas standards for the zone. BCZR 102.1 provides:

"No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations. ..."

Summary

For these reasons, the Petition for Special Exception must be denied.

Peter Max Zimmerman

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People's Counsel for Baltimore County

Carole S. Demilio

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of October, 2009, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Frank V . Boozer, Jr., Esquire, Covahey, Boozer, Devan & Dore, P.A., 614 Bosley Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel

10/3/09

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
US 40 (Pulaski Hwy) n/s	*	BOARD OF APPEALS
7404 Pulaski Highway	*	
16 th Election District	*	FOR
7 th Council District	*	
	*	BALTIMORE COUNTY
Harnek Singh, et ux.	*	
Petitioner	*	Case No. 08-363-SPHX

* * * * *

BRIEF OF HARNEK SINGH & CHARANJIT KAUR, PETITIONER(S)

Harnek Singh & Charanjit Kaur, husband and wife, (hereinafter referred to collectively as the "Petitioner") by and through their attorneys Frank V. Boozer, Jr., and Covahey, Boozer, Devan & Dore, P.A., submits this Brief and Memorandum of Law in lieu of closing argument as requested by the Board of Appeals at the conclusion of the last hearing held on September 3rd, 2009.

STATEMENT OF THE CASE

The instant matter comes before the Board as a result of a an appeal filed by Protestants, Baltimore County Office of Law, from the decision of the Zoning Commissioner for Baltimore County granting the relief requested in a Petition for Special Exception for a used motor vehicle outdoor sales area pursuant to Baltimore County Zoning Regulation(s) (BCZR) §502.1 and §236.2. The request for Special Exception for the property known as 7404 Pulaski Highway was accompanied by a site plan showing the lines of division and other relevant data. (Petitioner's Exhibit 1)

At the same time the Zoning Commissioner before hearing the testimony in the underlying proceeding dismissed the Petitioner's request for a Special Hearing to approve a

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BOARD OF APPEALS

modified parking plan in accordance with BCZR §409.12B. Thus, this matter is of no concern, not the subject of this Petition, and will receive no further comment.

This matter comes before the Board of Appeals for consideration of a Petition for Special Exception filed by the legal owner of the subject property, Harnek Singh and Charanjit Kaur. The Petitioner requests a special exception to allow the sale of used motor vehicles on the subject property located in a B.R.-A.S. Zone. The subject property and requested relief are more particularly described on the site plan submitted by Petitioner, which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing on behalf of the Petitioners at the hearing were Harnek Singh, property owner and proprietor of the proposed business; Joseph L. Larson of Spellman, Larson & Associates, Inc., the consultant who prepared the site plan; and Frank V. Boozer, Jr., Esquire of Covahey, Boozer, Devan & Dore, P.A., attorney for the Petitioner.

Petitioners have owned the property since November 18th, 2003 and wish to utilize it for a used motor vehicle outdoor sales area. The subject parcel is square shaped parcel approximately 0.15 Ac. +/- in size located at the intersection of Pulaski Highway, Philadelphia Rd., and 66th St., which is zoned B.R.-A.S. At the time of application this property was only being used as storage for a repair shop located on the other side of Philadelphia Rd. The property is unimproved with a gravel parking area on the west side which gradually slopes upward and turns into grass as the property moves toward the east. The entire parcel with the exception of the western end is surrounded by a small fence.

Petitioner testified that the surrounding area was primarily of a commercial nature, and that the only changes that would be made to the property would be the installation of a

small sales kiosk and the surfacing of the sales area. The hours of operation would be Tuesday through Sunday from 10AM until 8PM.

QUESTIONS PRESENTED

- I. IS A USED OUTDOOR MOTOR VEHICLE SALES AREA PERMITTED BY SPECIAL EXCEPTION UNDER BCZR §236.2?**
- II. DID PETITIONERS MEET THE REQUIRED BURDEN OF PROOF TO ESTABLISH THAT THEIR PROPERTY MEETS THE REQUIREMENTS AS SET FORTH IN BCZR §502.1?**
- III. IS PETITIONER BARRED FROM RELIEF DUE TO PRIOR ACTION(S) WHICH WOULD MERGE THE SUBJECT PROPERTY WITH 7000 PULASKI HIGHWAY?**

ARGUMENT

The first question is indeed a mere formality. BCZR §236.2 permits a used motor vehicle outdoor sales area, separated from the sales agency building in a B.R.A.S. zone. The fact that the subject property is zoned B.R.-A.S. can be drawn from judicial notice as well as from the testimony of Mr. Joseph Larson, of Spellman, Larson & Associates, Inc., (hereinafter referred to as "Larson"), who was admitted by the Board as an expert in civil engineering and land surveying at the hearing on September 3rd, 2009. No evidence was produced by the Protestants to refute the above facts, therefore the first question is satisfactorily answered in favor of the Petitioners

The second question is whether Petitioners met the burden of proof with regard to the requirements set forth by BCZR §502.1. In order for special exception relief to be granted, the Petitioner must meet the burden set forth in Section 502.1 of the B.C.Z.R. Generally, the Petitioner must demonstrate that the proposed use will not be detrimental to

the health, safety and general welfare of the locale. Schultz v. Pritts, 291 Md. 1 (1995).

Moreover, as has been emphasized by the Court of Appeals in discussing the law of special exceptions, it must be shown that the proposed use at the subject location will not cause any adverse impacts above and beyond those inherently associated with such use elsewhere in the zone. (See e.g., Mossberg v. Montgomery Co., 321, Md. 494 (1993).

In specific BCZR §502.1 states:

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

- A. Be detrimental to the health, safety or general welfare of the locality involved;
- B. Tend to create congestion in roads, streets or alleys therein;
- C. Create a potential hazard from fire, panic or other danger;
- D. Tend to overcrowd land and cause undue concentration of population;
- E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- F. Interfere with adequate light and air;
- G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
- H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
- I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.

Furthermore, the most recent Appellate decision regarding Special Exceptions affirms the wide discretion a zoning agency has to grant Special Exceptions when stating, [T]he local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature puts on its "Sorting

Hat" and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. People's Council for Baltimore County v. Loyola College in Maryland, No. 137. September Term (2007). As in People's Council, the local legislature deemed the type of requested use permissible provided that it meet the requirements of B.C.Z.R. §502.1.

As brevity is always appreciated, it is the opinion of the undersigned that the only two criteria which are a source of contention are items B & D listed above. These two factors are the only two that this Memorandum will discuss at length. All other factors are either self explanatory or simply not relevant to the subject property.

As to the issue of whether or not the subject relief would [T]end to create congestion in roads, streets or alleys therein, the testimony was quite clear. It will not. First, judicial notice can be taken of the comments submitted by DPRM and the Maryland State Highway Administration. After review of the instant proposal they were without comment and had no recommendations or comments for the site. Second, the testimony of Mr. Singh was that only one customer at a time would be visiting the subject site to purchase automobiles. Mr. Larson echoed Mr. Singh's comments by stating that this type of sales operation would not entice potential purchasers to come and browse the selection of cars before buying. Instead, Mr. Larson stated, potential purchasers would first find the automobile they wanted to purchase by way of advertisement and then visit the site to negotiate the deal. Third, the subject lot is already being used as an active car storage lot. The use of the property in this fashion places a far heavier burden in terms of congestion, and it has been used as such for almost two (2) years according to the testimony of Mr. Singh. Yet, in light of the suggestion by the opposition that would cause congestion, Baltimore County Chief Traffic Engineer

Mr. Stephen E. Weber testified that he was unaware of any current congestion or traffic problems on the roads, streets, or alleys surrounding the subject location. Quite simply put, not only did Protestants fail to bring forth any evidence that congestion will occur, but if the relief requested is granted, the proposed use will have among the most least onerous impacts of any use permitted under the BCZR.

The second major concern under the factors is whether or not the proposed use would [T]end to overcrowd land and cause undue concentration of population. The chief contention brought forth by Protestants is that due to inadequate parking on an adjacent lot this lot should be kept clear and without use so that it can serve as the overflow parking for the adjacent lot. This position is without merit as it places an affirmative burden on the Petitioner to keep his land unused so that it may serve a separately divided adjacent lot which has no relation to the subject property. Not only is this position without merit, it has never been recognized by any Court or administrative agency and flies in the face of the core tenants of real property law.

Notwithstanding the fact that Protestants are offering law which is dubious at best, Protestants failed to bring forth any evidence, photograph, live witness, or otherwise to support their position. No evidence was produced that the subject property was ever used in any manner as an overflow parking area for the adjacent parcel. Their own witness, went as far as to state that the only cars which he had ever seen on the subject parcel were those belonging to the car repair shop on the opposite side of Philadelphia Rd. Not only are the Protestants wrong on the law, but they failed to provide any facts to further their position.

Finally, it must also be made clear that should Protestants take the position that Petitioner's actions with regard to the property caused the merger doctrine to be applied, that

again no facts or evidence was presented to support this position. Moreover, it is critical to review the current state of Maryland law. The merger doctrine in itself can best be described as having two distinct and separate forms that best can be described as Merger by Right and Merger by Estoppel.

The first form of the merger doctrine, or Merger by Right, is recognized by a majority of jurisdictions. [A] landowner who clearly desires to combine or merge several parcels or lots of land into one large parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots of land in the service of a single structure or project. Friends of Ridge v. BG&E, 352 Md. 645 (1999). The facts as brought forth in the hearing in no way indicate that any portion of the subject property was being used as excess parking for the restaurant located on the adjacent property let alone in service of a single structure or project. Furthermore, the only evidence it was being used in any way whatsoever is as a car storage lot which by definition can not be defined as a "single structure or project." For the two above enumerated reasons the parcels can not have been considered as merged by the owners.

The second form of the merger doctrine, or Merger by Estoppel, is a much different animal than the first and would seem to the variety which Protestants contend has taken root in the instant matter. The Court of Appeals has stated that in those instances when it has been applied the doctrine of merger generally "prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard; in other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating the zoning

provisions, one of the separate, nonconforming parcels may not then or thereafter be considered nonconforming, nor may a variance be granted for that separate parcel.” Id. at 653. By Petitioner’s own admission, 7400 & 7404 Pulaski Hwy. both could currently be classified as nonconforming parcels. Under the merger doctrine, these two nonconforming parcels would be joined in order to create one conforming parcel and therefore bring the parcel(s) into conformity with zoning regulations, in which case the Petition would have to be denied. However, as Judge Cathell states in Friends of Ridge in a footnote specific to the legal theory described above, “we are unaware of any Maryland cases adopting the doctrine of zoning merger.” Id. at 653. In addition the Court of Appeals has not adopted this theory at any time subsequent to the Friends of Ridge opinion.

In so far as the Petitioner did not expressly merge the two properties for zoning purposes and Maryland Appellate Courts have not as yet has not adopted the second iteration of the merger doctrine, it must be concluded that the current state of the law does not prohibit Petitioner from seeking his stated relief. Therefore, it must be determined if the Petitioner is entitled to a Special Exception pursuant to the factors set out in B.C.Z.R. §502.1.

CONCLUSION

1. The Petitioner's are entitled to a Special Exception when applying the evidence presented at the hearing to the factors set out in §502.1.
2. That the merger doctrine does not apply for the facts in the instant matter.
3. That Petitioner is entitled to the relief sought.

Respectfully Submitted

FRANK V. BOOZER, JR.
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Ave.
Towson, MD 21204
Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 8th day of October, 2009, a copy of the foregoing Memorandum was mailed first class to:

Peter Max Zimmerman, People's Counsel
For Baltimore County
400 Washington Ave., Room 47
Towson, MD 21204

FRANK V. BOOZER, JR.

2/26/09

IN THE PETITION OF HARNEK SINGH &
CHARANJIT KAUR FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

*

IN THE

*

*

CIRCUIT COURT

IN THE CASE OF HARNEK SINGH & CHARANJIT
KAUR LEGAL OWNERS/PETITIONERS FOR SPECIAL
HEARING & SPECIAL EXCEPTION ON PROPERTY
LOCATED at NW corner of 66TH Street & Pulaski Highway
(7400 & 7404 Pulaski Highway)

*

*

FOR

*

15th Election District, 7th Councilmanic District

*

BALTIMORE COUNTY

Case No. 08-363-SPHX
Before the County Board of Appeals

*

Case No.: 03-C-10-000590

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule
7-204, submits this response to the Petition for Judicial Review filed by HARNEK SINGH &
CHARANJIT KAUR and states that they intend to participate in this action for Judicial Review.
The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

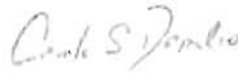
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People's Counsel for Baltimore County

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 2009, a copy of the foregoing Response to Petition for Judicial Review was mailed to County Board of Appeals, 105 West Chesapeake Avenue, Suite 203, Towson, Maryland 21204 and Frank V. Boozer, Jr., Esquire, Covahey, Boozer, Devan & Dore, P.A., 614 Bosley Avenue, Towson, MD 21204 Attorney for Petitioner.



CAROLE S. DEMILIO
Deputy People's Counsel for Baltimore County



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
January 26, 2009
*Department of Permits and
Development Management*

Frank Boozer, Jr.
Covahey, Boozer, Devan, Dore, P.A.
614 Bosley Avenue
Towson, MD 21204

Dear Mr. Boozer:

RE: Case: 2008-0363-SPH, 7400 & 7404 Pulaski Highway

Please be advised that an appeal of the above-referenced case was filed in this office on October 29, 2008 from People's Counsel. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Joseph Larson, 222 Bosley Avenue, Ste. B-3, Towson 21204
Harnek & Charanjit Kaur, 9005 Gardenia Road, Nottingham 21236
Gurpreet Singh, 9005 Gardenia Road, Nottingham 21236



Baltimore County, Maryland

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PETER MAX ZIMMERMAN
People's Counsel

October 29, 2008

CAROLE S. DEMILIO
Deputy People's Counsel

Hand-delivered

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

Re: PETITION FOR SPECIAL HEARING & SPECIAL EXCEPTION
NW corner of 66th Street & Pulaski Highway (US Route 40)
(7400 & 7404 Pulaski Highway)
15th Election District; 7th Council District
Harnek Singh, et ux. - Petitioners
Case No.: 08-363-SPHX

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated October 14, 2008 by the Baltimore County Zoning Commissioner.

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

Very truly yours,

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

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OCT 29 2008

PMZ/CSD/rmw

cc: Vernon Boozer, Esquire

10/14/08
IN RE: PETITIONS FOR SPECIAL HEARING *
AND SPECIAL EXCEPTION

NW Corner of 66th Street and Pulaski *
Highway - (US Route 40)
(7400 & 7404 Pulaski Highway) *
15th Election District *
7th Council District *

BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY

Harnek Singh, et ux *
Petitioners

Case No. 08-363-SPHX

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Special Exception filed by the legal owners of the subject property, Harnek Singh, and his wife, Charanjit Kaur, through their attorney, Vernon V. Boozer, Jr., Esquire. As filed, the Petitioners request a special hearing to approve a modified parking plan in accordance with the Baltimore County Zoning Regulations (B.C.Z.R.) Section 409.12B. Petitioners request a special exception to permit a used motor vehicle outdoor sales area on property located in the B.R.-A.S. zone. The subject property and requested relief are more particularly described on the site plan submitted by Petitioners, which was accepted into evidence and marked as Petitioners' Exhibit 1. Before testimony was taken, counsel for Petitioners made a preliminary Motion to Withdraw the Petition for special hearing. Having no opposition and finding good cause the Motion was granted, therefore this Memorandum and Order will not address the modified parking plan at 7400 Pulaski Highway.

Appearing at the requisite public hearing were Harnek Singh and Charanjit Kaur, property owners and proprietors of the proposed business; their son, Gurpreet Singh; Joseph L. Larson of Spellman, Larson & Associates, Inc., the consultant who prepared the site plan; and Frank V. Boozer, Jr., Esquire of Covahey, Boozer, Devan & Dore, P.A., attorney for the Petitioners. There were no Protestants or other interested persons present.

ORDER RECEIVED FOR FILING

Date 10-14-08

By [Signature]

Testimony and evidence were proffered which revealed that the subject properties form a triangular shaped tract located in an enlarged median strip situated between the eastbound lanes of Philadelphia Road (MD Route 7) and the westbound lanes of Pulaski Highway (US Route 40), between 65th Street and 66th Street in Rosedale. As shown on Petitioners' Exhibit 1, this triangular median strip contains two (2) parcels, shown on the Maryland Department of Assessments and Taxation Map No. 96 as Parcels 363 (0.35 acres) and 523 (0.194 acres) both of which are owned by Petitioners, however only one of which is the subject of the instant action. The subject parcel (7404 Pulaski Highway – Parcel 523), contains a combined gross area of 0.194 acres, more or less, is rectangularly shaped and zoned B.R.-A.S. (Business, Roadside in the Automotive Services District). This property is vacant and unimproved with a gravel parking area on the western portion which gradually slopes upward and turns into grass as the property approaches 66th Street along its eastern boundary. The entire parcel with the exception of the western end is surrounded by a small fence. Testimony was introduced that the gravel covered portion of the site was previously used solely as the overflow parking for the bar and restaurant use at 7400 Pulaski Highway (Parcel 363).

Mr. Singh and his wife have owned the property since November 18, 2003 and wish to utilize the vacant lot for a used automobile outdoor sales area. Petitioners testified that their property is surrounded by commercial uses, and that the only changes that would be made to the property would be the installation of a small sales kiosk and the surfacing of the sales area. The hours of operation would be Tuesday through Sunday from 10:00 AM until 8:00 PM. By proffer, Mr. Boozer offered testimony describing the site plan, location of the sales kiosk, parking where the used cars would be put on display, and the space designated for customers.

In light of the evidence brought forth, a brief discussion of the merger doctrine as it applies in the instant matter would seem appropriate. The merger doctrine in itself can best be

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described as having two (2) distinct and separate forms that best can be described as merger by right and merger by estoppel. The first form of the merger doctrine (merger by right) is recognized by a majority of jurisdictions. [A] landowner who clearly desires to combine or merge several parcels or lots of land into one large parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots of land in the service of a single structure or project. *Friends of Ridge v. BG&E*, 352 Md. 645 (1999). The facts as brought forth in the hearing indicate that a small portion of 7404 Pulaski Highway had been used as excess or overflow parking for the restaurant located on the adjacent property. This use was not instituted by the owners' desire, but instead was undertaken by consumers to find convenient parking. Furthermore, it is clear by interpretation that the overflow parking cannot be defined as a "single structure or project." For the two (2) above enumerated reasons, the two (2) parcels should not be considered as merged for zoning purposes by the owners.

The second form of merger, or merger by estoppel, is a much different and converse to the first. The Court of Appeals has stated that in those instances when it has been applied the doctrine of merger generally "prohibits the use of individual substandard parcels if the contiguous parcels have been combined or used accessory in the support of one another." See *Remes v. Montgomery County*, 387 Md. 52 (2005). Mr. Boozer argues that the Petitioners property (7400 & 7404 Pulaski Highway), while classified as nonconforming parcels by today's standards, they have not been merged.

From this evidence I conclude that the owners (prior and present) never intended to merge these lots from a zoning standpoint. No structures were erected, two (2) separate deeds exist as well as two (2) tax assessments - one for each lot. There was no overt action by prior or current owners that demonstrate an intent to merge the arguably undersized lots. It is therefore concluded that current law would not prohibit Petitioners from seeking their stated relief where

no variance relief is requested or required. It is noteworthy to point out, however, that available parking provided on Parcel 363, the tavern lot, and Parcel 523, the special exception area, generate parking issues as pointed out by the Office of People's Counsel and Stephen E. Weber, Chief of Traffic Engineering. The B.C.Z.R. permits shared parking arrangements in order to take advantage of different peak parking demands in this case for taverns and auto sales. The testimony and evidence presented shows that the parking proposed will be more than sufficient and adequate to serve the uses proposed. Mr. Singh testified that the tavern typically generates a modest number of parking spaces and far less than required by the B.C.Z.R. Indeed, the tavern doesn't get busy until after 8:00 PM to 12:00 midnight. Therefore, a condition that vehicle sales shall end by 8:00 PM is appropriate for this site and will not cause adverse impacts upon the surrounding community.

In order for special exception relief to be granted, the Petitioners must meet the burden set forth in Section 502.1 of the B.C.Z.R. Generally, a Petitioner must demonstrate that the proposed use will not be detrimental to the health, safety and general welfare of the locale. *Schultz v. Pritts*, 291 Md. 1 (1995). Moreover, as has been emphasized by the Court of Appeals in discussing the law of special exceptions in its most recent decision of *People's Counsel for Baltimore County v. Loyola* _____ Md. _____ (2007), an Applicant is not required to present a comparison of the potential and adverse affects of the proposed use at the proposed location to the potential adverse affects of the proposed use at other, like-zoned locations throughout the County.

Furthermore, this most recent decision regarding a special exception affirms the wide discretion a zoning agency has to grant special exceptions when stating, [T]he local legislature, when it determines to adopt or amend the text of a zoning ordinance with regard to designating various uses as allowed only by special exception in various zones, considers in a generic sense

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Date 10-14-08
BY [signature]

that certain adverse effects, at least in type, potentially associated with (inherent to, if you will) these uses are likely to occur wherever in the particular zone they may be located. In that sense, the local legislature puts on its "Sorting Hat" and separates permitted uses, special exceptions, and all other uses. That is why the uses are designated special exception uses, not permitted uses. *Loyola Supra*, No. 137. September Term (2007). Indeed, the County Council has deemed the type of requested use permissible provided that it meet the requirements of B.C.Z.R. Section 502.1.

After due consideration of the proffered testimony presented by Mr. Boozer and the Petitioners, I find that the relief requested complies with the special exception requirements set forth in Section 502.1. The proposed use is an appropriate use of the subject site and will not be detrimental to adjacent properties. The Petitioners, however, shall submit a landscape, signage and lighting plan to the County's Landscape Architect, Mr. Avery Harden, for review and approval prior to the issuance of any use permits.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of October 2008, that the Petition for Special Hearing to approve a modified parking plan, pursuant to Section 409.12B of the Baltimore County Zoning Regulations (B.C.Z.R.), be and is hereby DISMISSED AS MOOT.

IT IS FURTHER ORDERED that the Petition for Special Exception seeking approval of the use of the subject property for the sale of used motor vehicles, pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners' Exhibit I, be and is hereby granted, subject to the following restrictions:

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Date 10-14-08
By [Signature]

- 1) The Petitioners may apply for their use permit 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 the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.
- 2) The Petitioners shall submit a landscape, signage and lighting plan to the County's Landscape Architect, Mr. Avery Harden, for review and approval prior to the issuance of any use permits.
- 3) Used motor vehicle sales shall be limited to Monday through Saturday, 10:00 AM to 8:00 PM. There shall be no Sunday hours nor shall there be storage of damaged and disabled vehicles in the sales area.
- 4) The Special Exception relief granted is personal to Harnek Singh and Charanjit Kaur and is contingent upon the two (2) subject properties remaining in common ownership. In the event this relationship ceases, then the Special Exception relief granted hereunder shall be void and have no further force and effect unless the new owner/operator petitions for special hearing relief to amend this restriction.
- 5) When applying for any permits, the site plan/landscaping plan filed must reference this case and set forth and address the restrictions of this Order.

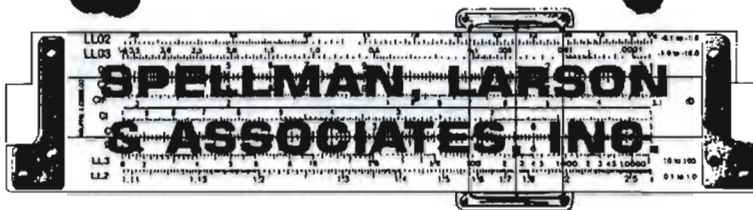
Any appeal of this decision must be made within thirty (30) days of the date of this Order.



WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

COPIES FILED FOR FILING
Date 10-14-88
By [signature]



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
TEL (410) 823-3535 / FAX (410) 825-5215

Blue Discrepancy

Mr. John Alexander
Office Of Planning
Baltimore County

August 29, 2008

Re: 7400 & 7404 Pulaski Highway
Zoning Case No. 08-363 SPHX
Job No. 207091

"Hand Delivered"

Dear John,

In response to your comments dated June 11, 2008 related to the above captioned Zoning Case which unfortunately we have just recently received, I wish to respond and advise you as follows.

In order to not be redundant I am attaching hereto a copy of our letter that was submitted to Mr. Curtis Murray, in your office, on May 15, 2008 regarding this matter which I hoped would have resolved the issues originally raised by your office.

I am attaching a copy of that letter for your review to hopefully allow you to revise your comments with regard to the upcoming Zoning Hearing scheduled for Thursday September 4, 2008.

Specifically, it is important to note that we are no longer applying for a Special Hearing for a modified parking plan whereby we are proposing to allow the existing parking to remain as has existed for years.

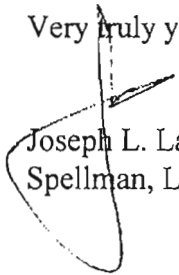
Lastly, it should be mentioned that the site that is proposed for the used car dealership has been partially used for parking for the restaurant and that parking will remain with the remainder of that vacant lot to be used for the proposed used car dealership.

Mr. John Alexander
August 29, 2008
Re: 7400 & 7404 Pulaski Highway

Page 2

I would hope that this letter and the attached letter to Mr. Murray clearly explains our position along with the attached Site Plan whereby I would hope that we can receive revised comments from your office timely prior to our upcoming Hearing.

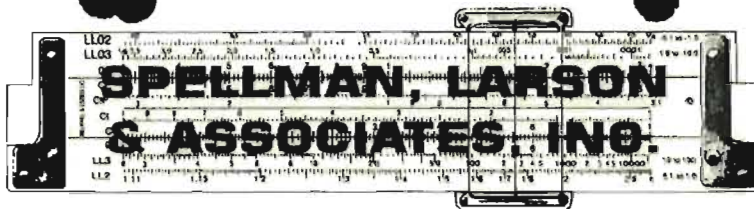
Very truly yours,



Joseph L. Larson, President
Spellman, Larson & Assoc., Inc.

cc: Frank Boozer
Harnek Singh

File#L08270802



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
TEL (410) 823-3535 / FAX (410) 825-5215

Mr. William Wiseman, Zoning Commissioner
Office of the Zoning Commissioner
Baltimore County
105 W. Chesapeake Avenue
Towson, MD 21204

August 4, 2008

Re: 7400 & 7404 Pulaski Highway
Zoning Case No. 08-363 SPHX
Job No. 207091



BY:.....

Dear Mr. Wiseman,

As you are aware, the above captioned Zoning Case was continued due to dilatory comments that we received from the Office of Planning in opposition to our Petitions which were received too late to allow us to address their issues.

We have since attempted to resolve the Office of Planning issues to the point of withdrawing the Special Hearing Petition and revising the Site Plan to address their comments and also to include meeting with Lynn Lanham, the Office of Planning Supervisor.

We have attempted to get revised comments from the Planning Office for several weeks and for whatever reason those comments are not forthcoming. At this point we wish to move ahead and reset the Zoning Hearing.

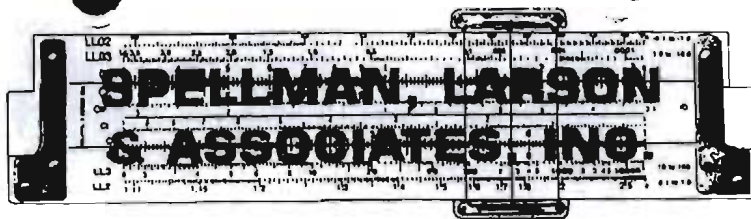
I am attaching the letter that we wrote to Mr. Curtis Murray back in May in order to move this situation along which has not been responded to whereby we feel that we cannot wait any longer and protract the delay of this project.

I will be in touch with Ms. Kristen Matthews of the Zoning Office to reset the Zoning Hearing as soon as possible.

Very truly yours,

Joseph L. Larson, President
Spellman, Larson & Assoc., Inc.

cc: Harnek Singh
Frank Boozer



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

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TOWSON, MARYLAND 21204
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Mr. Curtis Murray
Office of Planning
Baltimore County

May 15, 2008

Re: 7400 & 7404 Pulaski Highway
Zoning Case No. 08-363
Job No. 207091

"Hand Delivered"

Dear Curtis,

I am sorry that you could not attend our recent meeting with Lynn Lanham regarding the above-captioned project, but I believe that our attorney and I fully explained to Lynn the circumstances surrounding this project and our intentions regarding moving forward with our Zoning Petitions.

Prior to moving forward, I would like to address your letter of comments of March 17, 2008 so that we are all on the same page regarding the status of the project. Attached is a copy of our Zoning Plat which has been revised to address your comments.

Initially, it should be noted that the subject property is actually two separate lots of record, 7400 Pulaski Highway and 7404 Pulaski Highway.

Firstly, in fact, we did apply to the Development Review Committee for a Limited Exemption Lot Line Adjustment to eliminate a building encroachment for the restaurant building. This request was tabled subject to a Zoning Hearing for a sideyard setback variance. Since then we have decided to revise the Lot Line Adjustment to comply with the sideyard setback regulations and avoid the Variance Petition.

Prior to moving forward with our Site Development Plan submission to finalize our Limited Exemption, we applied for a Zoning Special Hearing Petition and a Special Exception Petition. With regard to those Zoning Petitions, which were originally filed as a Special Hearing for a modified parking plan and a Special Exception for the used car sales, please be advised that we are withdrawing the Special Hearing Petition for the modified parking plan and we will move forward with only the Special Exception Petition for used car sales.

We have revised our Site Plan to show the existing conditions that have prevailed on the site for years which we are not changing and allowing the lot at 7400 Pulaski Highway to continue as a non-conforming use. In our research of the Baltimore County Liquor Board files we have documented that a bar/restaurant existed on this site from 1935.

CBA-08-363-SPHX P.C. Exh 2

Mr. Curtis Murray
May 15, 2008
Re: 7400 & 7404 Pulaski Highway

Page 2

Further, the Plan also now meets all setback requirements for the used car sales operation per your request.

Lastly, a portion of the lot at 7404 Pulaski Highway which has been partially used for parking for several years for the restaurant will not change and will continue as is. The used car sales area has been reduced to not impact this parking area.

I trust that this information brings you up to date with regard to the project whereby I would appreciate your response to this correspondence so that we may move forward to re-schedule our Zoning Hearing.

Respectfully Yours,

Joseph L. Larson, President
Spellman, Larson & Assoc., Inc.

cc: Frank Boozer
Harnek Singh

File#L05050802



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 7404
7400 Pulaski Highway
which is presently zoned BR-AS

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

A modified parking plan in accordance with Section 409.12B of the BCZR.

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

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

Contract Purchaser/Lessee:

Name - Type or Print NA
Signature NA
Address NA Telephone No. NA
City NA State NA Zip Code NA

Attorney For Petitioner:

Vernon Boozer, Esq.
Name - Type or Print Vernon Boozer
Signature [Signature]
Company Covahey & Boozer et al
Address 614 Bosley Avenue Telephone No. 410-828-9441
Towson MD 21204
City State Zip Code

Legal Owner(s):

Harnek Singh
Name - Type or Print Harnek Singh
Signature [Signature]
Charanjit Kaur
Name - Type or Print Charanjit Kaur
Signature [Signature]
9005 Gardenia Road 443-744-3500
Address Telephone No.
Baltimore MD 21236-1764
City State Zip Code

Representative to be Contacted:

Joseph L. Larson
Name Joseph L. Larson
222 Bosley Ave. Ste. B-3 410-823-3535
Address Telephone No.
Towson MD 21204
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

Case No. 08-363-SPHX UNAVAILABLE FOR HEARING _____

REV 9/15/98

DATE RECEIVED FOR FILING
Date 10-14-08 Reviewed By [Signature]
By [Signature]

Date 2/12/08



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 7404 Pulaski Highway
which is presently zoned BR-AS

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for

Used motor vehicle outdoor sales area

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:

NA
Name - Type or Print
Signature
Address Telephone No.
City State Zip Code

Attorney For Petitioner:

Vernon Boozer Esq.
Name - Type or Print
Signature
Covahey, Boozer et al
Company
614 Bosley Avenue 410-828-9441
Address Telephone No.
Towson MD 21204
City State Zip Code

Legal Owner(s):

Harnek Singh
Name - Type or Print
Signature
Charanjit Kaur
Name - Type or Print
Signature
9005 Gardenia Road 443-744-3500
Address Telephone No.
Baltimore MD 21236-1764
City State Zip Code

Representative to be Contacted:

Joseph L. Larson
Name
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Address Telephone No.
Towson MD 21204
City State Zip Code

OFFICE USE ONLY

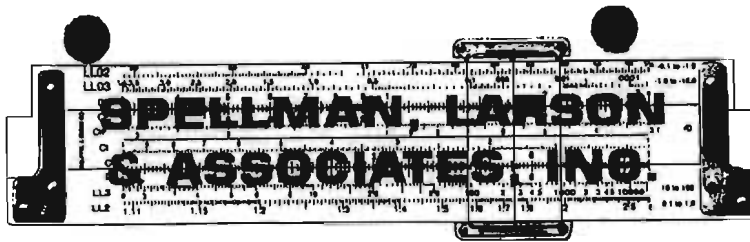
Case No. 08-363-SPHX

ESTIMATED LENGTH OF HEARING
UNAVAILABLE FOR HEARING

REV 09/15/98

RECEIVED FOR FILING
Date 10-14-08
By [Signature]

Reviewed By D.T. Date 2/12/08



ROBERT E. SPELLMAN, P.L.S.
JOSEPH L. LARSON

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
TOWSON, MARYLAND 21204
TEL (410) 823-3535 / FAX (410) 825-5215

LEGAL DESCRIPTION TO ACCOMPANY
ZONING PETITION FOR SPECIAL EXCEPTION
7404 PULASKI HIGHWAY
SINGH-KAUR PROPERTY

BEGINNING for the same at the northwest corner of the intersection of 66th Street and Pulaski Highway (US Route No. 40) and running along the north side of Pulaski Highway south 58 degrees 41 minutes 22 seconds west 77.80 feet and thence for a line of division north 31 degrees 18 minutes 38 seconds west 74.38 feet to a point on the south side of Philadelphia Road (MD Route No. 7) and running along the south side of Philadelphia Road north 47 degrees 20 minutes 17 seconds east 79.36 feet to a point on the west side of 66th Street that point also being the southwest corner of the intersection of Philadelphia Road and 66th Street and thence binding on the west side of 66th Street south 31 degrees 18 minutes 33 seconds east 90.00 feet to the place of beginning.

Said property being known as 7404 Pulaski Highway.

Property containing 0.15 acres of land more or less.

File#D01040801



08-363-SPHX

**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: 08-363 - SPHX
Petitioner: SINGH - KAUR
Address or Location: 7400-7404 PULASKI

PLEASE FORWARD ADVERTISING BILL TO:

Name: HARNEK SINGH
Address: 9005 GARDENIA RD.
BALTO. MD 21236-1764

Telephone Number: 443-744-3500

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS RECEIPT

No. **09798**

Date: **2/14/08**

PAID RECEIPT

BUSINESS ACTION TIME DEM

2/15/2008 2/14/2008 11:49:07 2

302 MAIL JESSA REF

RECEIPT # 543410 2/14/2008 01/0

Dept 3 - 520 JIMMIES VERIFICATION

09798

Receipt Tot FUG.00

\$705.00 (X) \$.00 (A)

Baltimore County, Maryland

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount
001	006			150				325.00
001	006			150				380.00

Total: **705.00**

Rec

From: **HARNEK SINGH**

For: **08-363-SPHX - 7404 PULASKI AVE**

J. THOMSON

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

**CASHIER'S
 VALIDATION**

NOTICE OF ZONING HEARING

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

Case: #08-363-SPHX

7400 & 7404 Pulaski Highway

N/West corner of 66th Street and Pulaski Highway

15th Election District - 7th Councilmanic District

Legal Owner(s): Harnek Singh & Charanjit Kaur

Special Hearing: to approve a modified parking plan in accordance with Section 409.12B of the BCZR. **Special Exception:** for a used motor vehicle outdoor sales area.

Hearing: Wednesday, April 2, 2008 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-3868.

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

4/3/754 Mar. 18

167257

CERTIFICATE OF PUBLICATION

3/20/2008

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 3/18/2008.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

DATE: 03/24/08

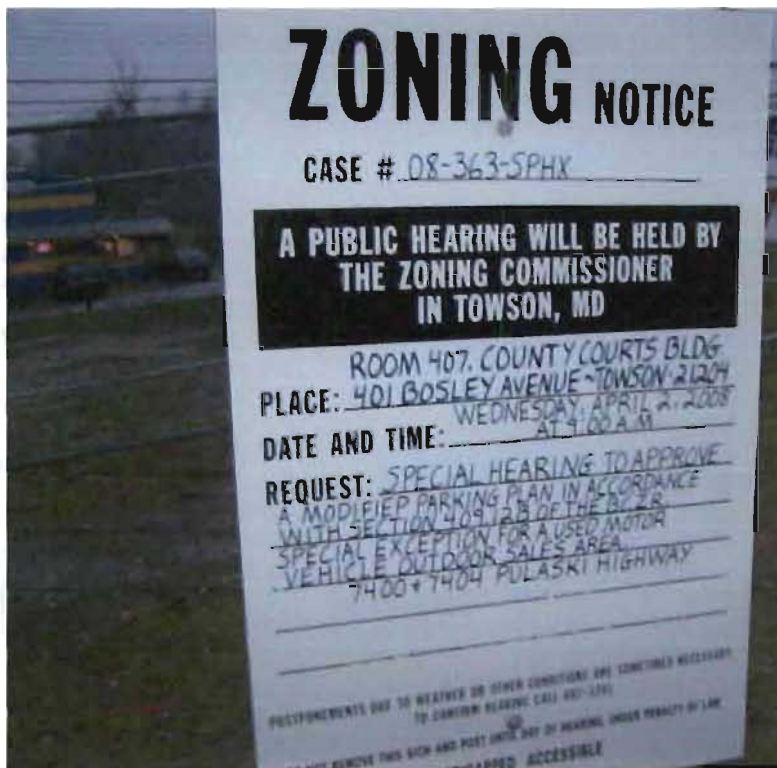
Case Number: 08-363-SPHX

Petitioner / Developer: VERNON BOOZER~ SINGH/KAUR~
JOSPEH LARSON

Date of Hearing (Closing): APRIL 2, 2008

This is to certify under the penalties of perjury that the necessary sign(s)
required by law were posted conspicuously on the property located at:
7400 & 7404 PULASKI HIGHWAY

The sign(s) were posted on: 03/19/08



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)

CERTIFICATE OF POSTING

Baltimore County Dept. of Permits &
Development Management
111 W. Chesapeake Avenue, Rm. 111
Towson, MD 21204

Date: SEPT. 2, 2008

Attention Mrs. Kristen Matthews:

RE: Case Number 08-363-SPHX
Petitioner/Developer: HARNEK SINGH
CHARANJIT KAUR
Date of Hearing/Closing: SEPT. 11, 2008

This is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at 7400 & 7404
PULASKI HIGHWAY BALTO, MD 21237

The sign(s) were posted on AUGUST 28, 2008
(Month, Day, Year)


(Signature of Sign Poster)

WILLIAM D. GULICK, JR.
(Printed Name of Sign Poster)

2944 EDGEWOOD AVE.
(Street Address of Sign Poster)

PARKVILLE, MD 21234
(City, State, Zip Code of Sign Poster)

(410) 530-6293
(Telephone Number of Sign Poster)

SEE
ATTACH PHOTOGRAPH OF
SIGN POSTED ON PROPERTY

ZONING NOTICE

CASE # 08-565-SPHX

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

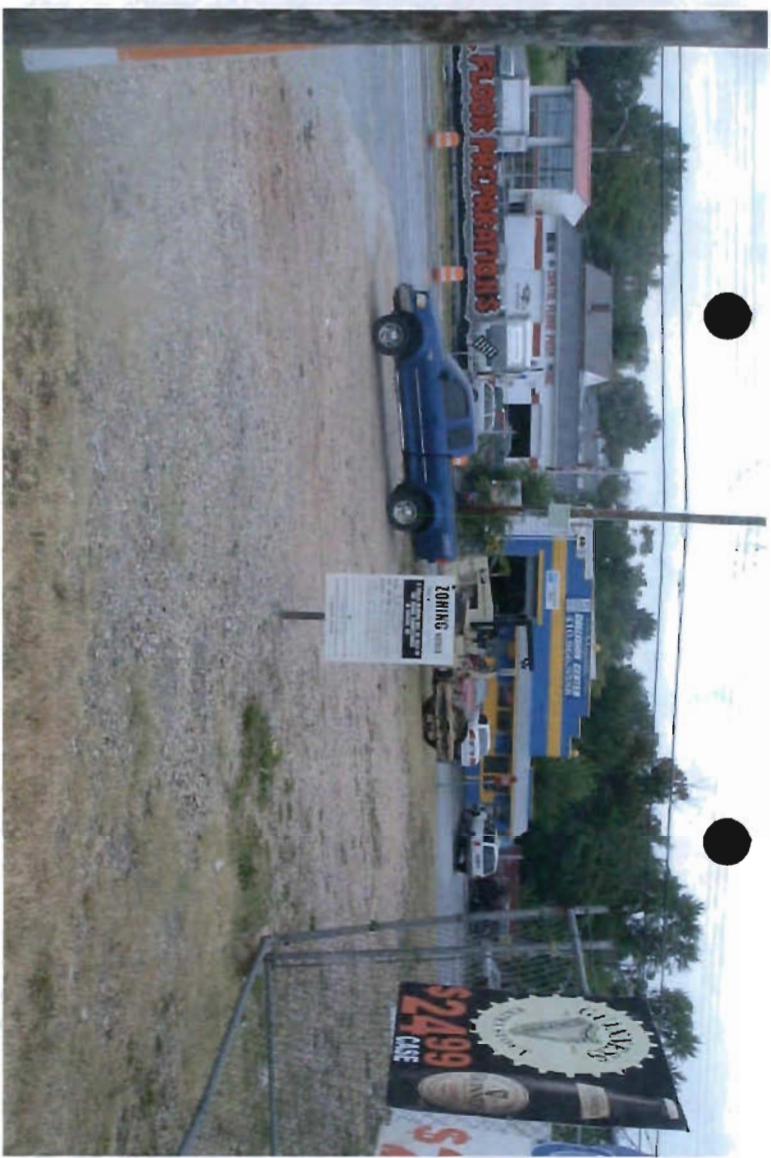
JEFFERSON BUILDING, HEARING ROOM 1
PLACE: 105 WEST CHESTNUT AVE
TOWSON, MD 21204

DATE AND TIME: THURSDAY
SEPTEMBER 11, 2008 9:00AM

REQUEST: SPECIAL EXCEPTION
FOR A USED MOTOR VEHICLE
OUTDOOR SALES AREA.

POSTING MEANS OUR 10 MEETING, OR OTHER CONDITIONS ARE DEEMED NECESSARY
IN CARRYING OUT THE DUTY OF THE ZONING COMMISSIONER

DO NOT REMOVE THIS SIGN AND POST UNTIL DATE OF HEARING UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE





BUCKSKI

HIGHWAY

RECEIVED

APR 14 2009

BALTIMORE COUNTY
BOARD OF APPEALS

Requested: January 30, 2009

APPEAL SIGN POSTING REQUEST

CASE NO.: 08-363-SPHX

7400 & 7404 Pulaski Highway

15th ELECTION DISTRICT

APPEALED: 10/29/08

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
The Jefferson Building, Suite 203
102 W. Chesapeake Avenue
Towson, MD 21204

Attention: Theresa Shelton
Administrator

CASE NO.: 08-363-SPHX

LEGAL OWNER: **Harnek Singh**

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

7400 & 7404 PULASKI HIGHWAY
NW CORNER OF 66TH STREET AND PULASKI HIGHWAY (U.S. ROUTE 40)

The sign was posted on 4-14-09, 200 .

By: M. Stuart Kelly
(Signature of Sign Poster)

M. Stuart Kelly
(Print Name)

36 E 9

PHOTOGRAPHIC RECORD

Citation/Case No.: OB-363-SPHX 7400+7404 Pulaski Hwy
Date of Photographs: 4-14-09



I HEREBY CERTIFY that I took the 2 photographs set out above, and that these photographs
(number of photos)
fairly and accurately depict the condition of the property that is the subject of the above-referenced
citation/case number on the date set out above.

M. Stuart Hahn
Enforcement Officer



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

February 25, 2008
TIMOTHY M. KOTROCO, *Director*
*Department of Permits and
Development Management*

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: 08-363-SPHX

7400 & 7404 Pulaski Highway
N/west corner of 66th Street and Pulaski Highway
15th Election District – 7th Councilmanic District
Legal Owners: Harnek Singh & Charanjit Kaur

Special Hearing to approve a modified parking plan in accordance with Section 409.12B of the BCZR. Special Exception for a used motor vehicle outdoor sales area.

Hearing: Wednesday, April 2, 2008 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204


Timothy M. Kotroco
Director

TK:klm

C: Vernon Boozer, 614 Bosley Avenue, Towson 21204
Singh/Kaur, 9005 Gardenia Road, Baltimore 21236
Joseph Larson, 222 Bosley Avenue, Ste. B-3, Towson 21204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MARCH 18, 2008.**
- (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, March 18, 2008 Issue - Jeffersonian

Please forward billing to:
Harnek Singh
9005 Gardenia Road
Baltimore, MD 21236

443-744-3500

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: 08-363-SPHX

7400 & 7404 Pulaski Highway
N/west corner of 66th Street and Pulaski Highway
15th Election District – 7th Councilmanic District
Legal Owners: Harnek Singh & Charanjit Kaur

Special Hearing to approve a modified parking plan in accordance with Section 409.12B of the BCZR. Special Exception for a used motor vehicle outdoor sales area.

Hearing: Wednesday, April 2, 2008 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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



County Board of Appeals of Baltimore County

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

PP
No Record on
Testimony

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

February 26, 2009

NOTICE OF ASSIGNMENT

CASE #: 08-363-SPHX **IN THE MATTER OF: Harnek Singh / Charanjit Kaur - Legal Owners /Petitioners**

7400 and 7404 Pulaski Highway
15th Election District; 7th Councilmanic District

RE: SPH – To approve a modified parking plan in accordance with Sec. 409.12B of the BCZR;
SPX - for a used motor vehicle outdoor sales area

10/14/08 – ZC decision that Petition for SPH – dismissed as Moot; Petition for Special Exception – GRANTED with restrictions.

ASSIGNED FOR: TUESDAY, MAY 5, 2009, AT 10:00 A.M.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Theresa R. Shelton, Administrator

c: Appellants

: Peter Max Zimmerman
Carole S. Demilio
People's Counsel for Baltimore County

Counsel for Petitioners/Legal Owners
Petitioners/Legal Owners

: Frank Boozer, Jr.
: Harnek Singh and Charanjit Kaur

Gurpreet Singh

Joseph Larson

William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Avery Harden, Jr., PDM



County Board of Appeals of Baltimore County

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

**Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue**

May 6, 2009

POSTPONEMENT AND NOTICE OF RE-ASSIGNMENT

CASE #: 08-363-SPHX IN THE MATTER OF: Harnek Singh / Charanjit Kaur - Legal Owners /Petitioners

7400 and 7404 Pulaski Highway
15th Election District; 7th Councilmanic District

RE: SPH – To approve a modified parking plan in accordance with Sec. 409.12B of the BCZR;
SPX - for a used motor vehicle outdoor sales area

10/14/08 – ZC decision that Petition for SPH – dismissed as Moot; Petition for Special Exception – GRANTED with restrictions.

This matter was scheduled on May 5, 2009 and was postponed on the record and has been re-assigned to the date listed, by agreement of Counsel.

RE-ASSIGNED FOR: THURSDAY, SEPTEMBER 3, 2009, AT 10:00 A.M.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Theresa R. Shelton, Administrator

c: Appellants

: Peter Max Zimmerman
Carole S. Demilio
People's Counsel for Baltimore County

Counsel for Petitioners/Legal Owners
Petitioners/Legal Owners

: Frank Boozer, Jr.
: Harnek Singh and Charanjit Kaur

Gurpreet Singh

Joseph Larson

Pulaski Highway Business Asso.

William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Avery Harden, Jr., PDM



County Board of Appeals of Baltimore County

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

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

October 9, 2009

NOTICE OF DELIBERATION

CASE #: 08-363-SPHX **IN THE MATTER OF: Harnek Singh / Charanjit Kaur - Legal Owners /Petitioners**
7400 and 7404 Pulaski Highway
15th Election District; 7th Councilmanic District

Having concluded this matter on 9/3/09; a public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, DECEMBER 1, 2009 at 9:30 a.m.

LOCATION : Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)

NOTE: Closing briefs are due on Tuesday, October 13, 2009, no later than 4:00 p.m.
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Theresa R. Shelton, Administrator

c: Appellants : Peter Max Zimmerman
Carole S. Demilio
People's Counsel for Baltimore County

Counsel for Petitioners/Legal Owners : Frank Boozer, Jr.
Petitioners/Legal Owners : Harnek Singh and Charanjit Kaur

Gurpreet Singh Joseph Larson Bob Infussi Kris Shipley

William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Avery Harden, Jr., PDM
John Beverungen, County Attorney



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

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

March 26, 2008

Vernon Boozer, Esquire
Covahey & Boozer
614 Bosley Avenue
Towson, MD 21204

Dear Mr. Boozer:

RE: Case Number: 08-363-SPHX, 7400 and 7404 Pulaski Highway

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on February 12, 2008. This letter is not an approval, but only a **NOTIFICATION**.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

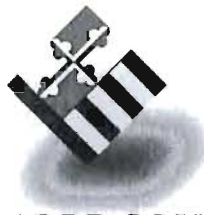
Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel
Harnek Singh Charanjit Kaur 9005 Gardenia Road Baltimore 21236-1764
Joseph Larson 222 Bosley Avenue, Suite B-3 Towson 21204



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

County Office Building, Room 111
, 2007
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

February 25, 2008

ATTENTION: Zoning Review Planners

Distribution Meeting Of: February 18, 2008

Item Number: 337,348,355,356,357,359,360,361,362,363,364,365,366,367,368,369
373

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

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

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4880 (C)443-829-2946
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: February 21, 2008

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

SUBJECT: Zoning Advisory Committee Meeting
For February 25, 2008
Item Nos. 08-337, 341, 348, 355, 356, 358,
359, 360, 361, 362, 363, 365, and 373

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

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-02212008.doc



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

State Highway
Administration

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

Maryland Department of Transportation

Date: February 26, 2008

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

RE: Baltimore County
Item No. 08-363-SPH
US 40 (Pulaski Hwy) n/s
7400 & 7404 Pulaski Hwy
Singh/Kaur Property
Plat to Accompany Zoning
Petition

Dear Ms. Matthews:

We have reviewed the site plan to accompany petition for variance on the subject of the above captioned, which was received on February 14. A field inspection and internal review reveals that the existing entrance onto US 40 and MD 7 is consistent with current State Highway Administration requirements. Therefore, this office has no objection to Singh-Kaur Property 7400 & 7404 Pulaski Highway, Case Number 08-363-SPH approval.

Should you have any questions regarding this matter feel free to 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,

FOR Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

Cc: Mr. David Malkowski, District Engineer, SHA
Mr. Michael Pasquariello, Utility Engineer, SHA

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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 17, 2008

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

SUBJECT: 7400 and 7404 Pulaski Highway

INFORMATION:

Item Number: 8-363

Petitioner: Harnek Singh

Zoning: BR-AS

Requested Action: Special Hearing and Special Exception

SUMMARY OF RECOMMENDATIONS:

The applicant went before the Development Review Committee on January 2, 2008 for a lot line adjustment. The plan shown to the DRC did not indicate the proposed use subject of this hearing (motor vehicle sales area).

The DRC granted a B-8 exemption and advised the applicant to apply for a hearing for a side yard variance. The B-8 exemption requires the preparation of a development plan that should address required parking.

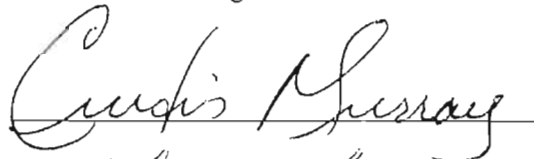
The plan before accompanying the subject petition indicates a modified parking plan and refers only to a used car dealership.

The requested Special Exception should be denied for the following reasons:

1. The car display areas do not meet setbacks from the public road.
2. The one -story brick restaurant does not show parking calculations or configurations.
3. If the area being proposed as a used car dealership has historically been used as parking for the restaurant, it should not be converted to another use.

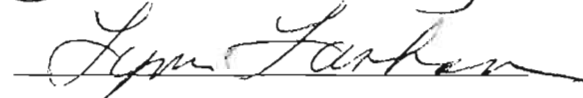
For further information concerning the matters stated here in, please contact John Alexander at 410-887-3480.

Reviewed by:



Division Chief:

AFK/LL: CM



42-08

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

June
DATE: March 17, 2008

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

SUBJECT: 7400 and 7404 Pulaski Highway
INFORMATION:

Item Number: 8-363

Petitioner: Harnek Singh

Zoning: BR-AS

Requested Action: Special Hearing and Special Exception

RECEIVED
JUN 19 2008

BY:.....

SUMMARY OF RECOMMENDATIONS:

The applicant went before the Development Review Committee on January 2, 2008 for a lot line adjustment. The plan shown to the DRC did not indicate the proposed use subject of this hearing (motor vehicle sales area).

The DRC granted a B-8 exemption and advised the applicant to apply for a hearing for a side yard variance. The B-8 exemption requires the preparation of a development plan that should address required parking.

The plan accompanying the subject-revised petition includes a modified a parking plan and refers to a used car dealership and restaurant. However parking calculations for the restaurant use are not shown.

Furthermore, The Office of Planning offers the following in response to the requested Special Exception. The plan displayed at the subject hearing accurately displays the following:

1. The car display areas meet setbacks from the public road.
2. The one-story brick restaurant shows parking calculations and configurations.
3. A landscape plan approved by Avery Harden, Baltimore County Landscape Architect shall accompany the subject site plan.
4. If the area being proposed as a used car dealership has historically been used as parking for the restaurant, it should not be converted to another use. If it has not, then a demonstration of such should be made to the Zoning Commissioner.

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

Reviewed by:

Curtis P. Lumsden

Division Chief:

AFK/LL: CM

Alvin D. Durham



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 29, 2008

RECEIVED
FEB 29 2008

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

BY:

Re: PETITION FOR SPECIAL HEARING AND SPECIAL EXCEPTION
Harnet Singh and Charanjit Kaur- Petitioners
7400 Pulaski Highway
Case No: 08-363-SPHX

Dear Mr. Wiseman,

Because this petition for a special hearing for a modified parking plan and special exception for a used motor vehicle outdoor sales area generates parking issues, we asked Stephen E. Weber, Chief of Traffic Engineering, to review the site plan. As a result, he sent the enclosed comment by e-mail dated February 28, 2008, and aerial photo. As is our custom, we forward it to you for consideration. The hearing is scheduled for April 2, 2008.

The site combines two parcels under common ownership, 7400 and 7404 Pulaski Highway. It is zoned BR-AS, triangular in shape, and located at the acute angle corner of Pulaski Highway and Philadelphia Road. The 7400 parcel is .26 acres in size, and the 7404 parcel .15 acres, for a total of just .41 acres together. There was restaurant use on the site in years past. The use continues as a restaurant or tavern/nightclub called Club 7400, which the site plan states to be a nonconforming use. There are obvious nonconformities as to setbacks and accessory off-street parking.

Mr. Weber identifies significant problems. He points out that the addition of a used car lot aggravates the existing "woefully inadequate" parking for the present use, whether calculated for restaurant or tavern/nightclub use. The proposal will eliminate 12 restaurant spaces, thus aggravating the deficiency. The site plan reflects the obvious shortage of area available for off-street parking, not to mention the requirements for site plan, landscaping, lighting, and other standards under BCZR § 409.

To support approval of a modified parking plan, an applicant must show "undue hardship" under BCZR § 409.12.B and satisfy incorporated special exception and other criteria under BCZR §§ 409.8.B.1.e, 409.8.B.2 and 502.1. These are stiff standards. Indeed, the Court of Special Appeals has defined "unnecessary and undue hardship" for the purpose of business expansion virtually as confiscation. Green v. Bair 77 Md. App. 144 (1988). There does not appear to be any undue hardship here. (We view "unnecessary" and "undue" as synonymous). This appears purely to be a business venture and/or expansion. Moreover, the proposal will undoubtedly generate offsite parking problems and adverse effects on the area.

In addition, even if the existing restaurant or nightclub is assumed to enjoy a valid nonconforming use, continuous and unchanged since before the applicable zoning laws, the addition of a used car lot would change the use. A change by addition of a new use, permitted by right or special exception, terminates the nonconforming use. BCZR § 104.1, see Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1982). In this context, Mr. Weber is absolutely right to consider the ramifications to the entire property.

Finally, under all the circumstances, apart from the nonconforming use problem, the proposed special exception clearly does not meet the BCZR § 502.1 special exception standards because of the aforesaid site constraints and parking deficiencies. The proposal squeezes in an additional use and aggravates problems on an already constrained and overcrowded site.

Thank you for your consideration.

Sincerely,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw
Enclosure

cc: Vernon Boozer, Esquire
Joseph L. Larson
Steve Weber, Traffic Engineering

From: Stephen Weber
To: People's Counsel
CC: Dennis Kennedy
Date: 02/28/2008 1:12 PM
Subject: Case No. 08-363-SPHX, 7400 & 7404 Pulaski Hwy
Attachments: 7400PulaskiHwy.bmp

Dear Mr. Zimmerman:

We have examined the request for allowing the property to be used for Used Motor Vehicle Outdoor Sales. We have significant concerns with the request because of the adverse impact this would have on providing adequate parking for the adjacent restaurant use. The submitted plan indicates that the restaurant is a non-conforming use and therefore ignores the parking needs for that site.

While we don't have exact figures on the restaurant use, it appears to be approximately 3,600 sq. ft (95' x 38'). For a restaurant, it appears this would require 16 spaces/1000 sq. ft or 58 parking spaces. To some degree, it isn't clear if this property is a restaurant or a tavern/nightclub. The establishment, called "Club 7400", if a tavern would be required to have 20 spaces/1000 sq. ft. or 72 parking spaces. Regardless, it is clear that the site, even with the #7404 parcel to the north, is woefully inadequate for parking. The Used Vehicle Outdoor Sales area would remove approximately 12 available parking spaces for the restaurant. While we understand that the restaurant may be a non-conforming use, it would not appear that fact is irrelevant in the consideration of whether this request to the Zoning Commissioner should be granted. Granting the use on its own rights without consideration of anything outside of the parcel for #7404 may not be a problem. However, granting the use will have significant adverse impacts on the adjacent parcel for #7400 (a non-conforming use) to be able to adequately accommodate parking demands generated by that non-conforming use. Since both properties are under the same ownership, granting the request for the Used Vehicle Sales would only appear to immediately place a hardship on the non-conforming use, only to provide further justification for coming in at a later date for other special considerations for that property because of the hardships of that site (even if they are self inflicted).

Attached is an aerial photo of the site. At the time this photo was taken, there were only 2 vehicles on the site. However, you will note that much of the area to the northeast of the restaurant is clearly being driven on and almost certainly used for parking for the restaurant. If it wasn't being regularly used, then it would be grass.

Should you have any questions regarding these comments or wish to discuss them further, please feel free to give me a call

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
AND SPECIAL EXCEPTION *
7400 & 7404 Pulaski Highway; NW * ZONING COMMISSIONER
corner of 66th Street & Pulaski Highway *
15th Election & 7th Councilmanic Districts * FOR
Legal Owners: Harnek Singh & Charanjit Kaur *
Petitioner(s) * BALTIMORE COUNTY
* 08-363-SPHX

* * * * *

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of February, 2008, a copy of the foregoing Entry of Appearance was mailed to Joseph Larson, 222 Bosley Avenue, Suite B-3, Towson, Maryland 21204 and Vernon Boozer, Esquire, Covahey, Boozer, Devan & Dore, P.A., 614 Bosley Avenue, Towson, MD 21204, Attorney for Petitioner(s).

RECEIVED

FEB 21

Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



4/2/08 - 08-363 SPHY

To File - Case began on 4/2 @ 9:00 AM
Joe Larson, BO Boozer & Petitioner Harnet Singh
attended - No Protestants or other interested
parties in attendance.

After finding that notice & posting
requirements satisfied Mr. Boozer requested
a continuance to investigate and address
comments received from Peoples Counsel and
Office of Planning. While dated 2/29 and
3/17 respectively neither were rec'd by
Petitioner's Counsel until late last week.

No testimony taken. Case continued
and a new site plan is anticipated.

The advertising requirement waived but
property will be posted by updating
the "ZONING Notice" sign to reflect
new date and time.

7400 + 7404 *Reads*
CASE NAME 08-363-SPHX *Thy.*
CASE NUMBER *Singh*
DATE 9-11-08

[illegible]

1 IN THE MATTER OF: * BEFORE THE
2 Harnek Singh/Charanjit Kaur - * COUNTY BOARD OF APPEALS
3 Legal Owners/Petitioners * OF
4 7400 and 7404 Pulaski Highway * BALTIMORE COUNTY
5 15th Election District * Case No. 08-363-SPHX
6 7th Councilmanic District * September 3, 2009

7 * * * * *

8 The above-entitled matter came on for hearing
9 before the County Board of Appeals of Baltimore County,
10 Hearing Room #2, Jefferson Building, 105 W. Chesapeake
11 Avenue, Towson, Maryland 21204, at 10 a.m., September 3,
12 2009.

13 * * * * *

14

15

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17

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19

20

21 Reported by: Carolyn E. Peatt

ORIGINAL

1 BOARD MEMBERS:

2
3 MAUREEN E. MURPHY, PanelChair
4 LAWRENCE S. WESCOTT
5 ANDREW W. BELT
6
7

8 APPEARANCES:

9 FRANK VERNON BOOZER, JR., Esquire
On behalf of Appellants/Petitioners
10

11 CAROLE S. DEMILIO, Esquire
Deputy People's Counsel
On behalf of Baltimore County
12
13
14
15
16
17
18
19
20
21

1 special exception for a use as a motor vehicle outdoor
2 sales area.

3 Counsel, for the record.

4 MR. BOOZER: For the record, Frank Vernon Boozer,
5 Jr., on behalf of the property owners.

6 I think, if I can correct the record this
7 morning, the confusion is coming from the fact that this
8 is simply on the special exception.

9 The modified parking plan was dismissed below.
10 We're simply here on the one issue, the special exception,
11 and I think that's reflected in the notice actually from
12 the Board of Appeals, but there has been some confusion on
13 that. That was dismissed by --

14 THE CHAIRMAN: I remember. I read that.

15 MR. BOOZER: -- by Mr. Wiseman.

16 THE CHAIRMAN: Is that correct, you weren't
17 appealing that?

18 MS. DEMILIO: No.

19 THE CHAIRMAN: So it's just on the special
20 exception?

21 MS. DEMILIO: It's up to the petitioners', what

1 PROCEEDINGS

2 * * * * *

3 THE CHAIRMAN: Good morning. This is Case No.
4 08-363-SPHX, in the matter of -- help me -- Harnek Singh.
5 Did I pronounce that right, sir?

6 MS. SINGH: Yes.

7 THE CHAIRMAN: Good. And then the next name, how
8 do you say that, Mr. Boozer?

9 MR. BOOZER: The second name on the property.

10 THE CHAIRMAN: Charanjit Kaur, legal
11 owners/petitioners, 7400 to 7404 Pulaski Highway, in the
12 15th Election District, 7th Councilmanic District.

13 This was an appeal by People's Counsel, I
14 believe, of the granting of a petition for special
15 exception with restrictions.

16 The petition for special hearing was dismissed by
17 the Zoning Commissioner as moot. That was an October 14,
18 2008 decision.

19 And this is a special hearing to approve a
20 modified parking plan in accordance with Section 409.12B
21 of the Baltimore County Zoning Regulations, and for a

1 relief they are seeking. If they dropped the petition
2 for a special hearing, that means they're just coming in
3 on the special exception.

4 MR. BOOZER: As I said, for the record, it was
5 dismissed below.

6 THE CHAIRMAN: It was. Okay. It's just the
7 special exception today.

8 MS. DEMILIO: Carole Demilio, Deputy People's
9 Counsel.

10 THE CHAIRMAN: Okay. Is there any opening
11 argument before we start?

12 MR. BOOZER: There is simply, again, the petition
13 for a special exception for a used car lot. I hope to put
14 on a short case, walk you through the nine points with Mr.
15 Larson, the engineer, and Mr. Singh, the property owner.

16 I think the nine points are very clear. Again,
17 it was granted down below. I don't see any reason why the
18 Board of Appeals shouldn't find the same here. It's quite
19 simple.

20 THE CHAIRMAN: Okay. Any opening from you?

21 MS. DEMILIO: No.

1 THE CHAIRMAN: Well, let's begin.
 2 MR. BOOZER: I call to the stand the property
 3 owner, Mr. Singh.
 4 H A R N E K S I N G H,
 5 having been called as a witness, was duly sworn, and
 6 testified as follows:
 7 DIRECT EXAMINATION
 8 BY MR. BOOZER:
 9 Q. Mr. Singh, if you would, state your name for the
 10 record, and address.
 11 A. My name is Harnek Singh. I live in 9005 Gardina
 12 Road, Nottingham, Maryland, 21236.
 13 Q. Mr. Singh, you're the owner of the property,
 14 correct?
 15 A. Yes, sir.
 16 Q. How long have you owned it?
 17 A. Almost six years.
 18 Q. Can you describe to us what the property looks
 19 like? Just the layout?
 20 A. It's grass and stone.
 21 MR. WESCOTT: What is it?

1 THE WITNESS: Grass and stone.
 2 MR. BELT: Mr. Singh, before we go any further, I
 3 know you're a little nervous.
 4 If you can try to speak up a little bit? Mr.
 5 Wescott is sitting way down there, and he'd love to know
 6 what you're saying, plus we have to make sure the
 7 microphones pick everything up.
 8 Q. Mr. Singh, you'll have to keep your voice up
 9 then.
 10 A. Yes, sir.
 11 Q. What is the lot used for at this time?
 12 A. Nothing. Only used as a car repair shop, they
 13 are using now.
 14 Q. I am going to show you a document which I will
 15 have marked as, I guess, Appellees' 1, the lease
 16 agreement.
 17 If you could describe for me what this document
 18 is, Mr. Singh, describe it to the Board?
 19 A. That is lease agreement between me and auto
 20 repair shop, Majestic Auto Repair Shop.
 21 Q. Where is Majestic Auto Repair located?

1 A. 7404 Philadelphia Road.
 2 Q. Where is that in relation --
 3 A. It's across the road.
 4 Q. Directly across the road?
 5 A. Yes. Same address.
 6 MR. BOOZER: I apologize to counsel. This will
 7 be Appellees' 2.
 8 Q. Mr. Singh, I'm going to show you --
 9 THE CHAIRMAN: Did we get No. 1?
 10 MR. BOOZER: I will enter both at the same time.
 11 He has a marked exhibit right now.
 12 A. I'm going to show you what we marked as
 13 Appellees' 2. Can you identify that document, Mr. Singh?
 14 A. What?
 15 Q. Can you identify the document?
 16 A. Yes. This is check, the payment check.
 17 Q. Who pays you?
 18 A. Auto Majestic Auto Repair.
 19 Q. How long have they had this lease?
 20 A. Almost three year now.
 21 Q. This is your signature on Appellees' 1, Mr.

1 Singh?
 2 A. Yes, sir.
 3 Q. Correct?
 4 A. Yes, sir.
 5 Q. As far as you know, you witnessed the signature
 6 of the tenant on the property, is that correct?
 7 A. Yes.
 8 MR. BOOZER: I move both these into evidence,
 9 Appellees' 1 and Two.
 10 MS. DEMILIO: No objection.
 11 Q. Mr. Singh --
 12 THE CHAIRMAN: Let's mark it Petitioners' 1, just
 13 because that's what we usually do.
 14 MR. BELT: We are de novo.
 15 THE CHAIRMAN: It's a de novo hearing.
 16 Q. Mr. Singh, has the property, since you have owned
 17 it, been used for any other use?
 18 A. No use.
 19 Q. Has anyone else ever parked cars there, left
 20 vehicles there, or has anyone, to your knowledge, ever
 21 used the property, with the exception of the tenant to

1 whom you lease?

2 A. Mostly the car repair shop, auto repair shop,
3 their customers always parking there.

4 They coming, parking there, and they go there in
5 the shop.

6 Lot of times, I talk to auto repair shop owner
7 and he said he might give me lease.

8 I want to use that property for rent, because my
9 customers on mine, I can use.

10 Q. Do you ever see cars from anywhere else parking
11 on that lot?

12 A. No.

13 MR. WESCOTT: You said your customers use it?

14 THE WITNESS: No. Majestic Auto Repair.

15 Q. Obviously, if granted the special exception,
16 you're going to have to terminate that lease agreement, is
17 that correct?

18 A. Yes. After thirty days, I can give thirty days
19 notice, I can terminate that.

20 MR. BOOZER: I think the Board can take notice of
21 reading the every-so quaint lease and the thirty-day

1 provision in there, and after the lease term expired, they
2 are, in fact, on a month-to-month at this point.

3 Q. Mr. Singh, let's talk briefly about the business
4 which you hope to operate.

5 What do you hope to do with the used car lot, if
6 granted a special exception?

7 A. We open Monday -- I'm sorry -- Tuesday to Sunday
8 and opening time is eight -- 10 a.m. to 8 p.m.

9 Q. To clarify, 10 a.m. to 8 p.m. was the time?

10 A. Yes, sir.

11 Q. Who's going to work at the car lot?

12 A. I am by myself.

13 Q. Will there be any other employees on the lot?

14 A. No, sir.

15 Q. How will you design the lot? Are you going to
16 have a kiosk, have cars there, spaces for customers?

17 A. Yes.

18 MR. BOOZER: The Board's indulgence, for just one
19 moment.

20 MR. BELT: There's not a kiosk now, one that's
21 being built?

1 Q. Mr Singh, if granted the special exception,
2 you're going to make improvements to the lot, is that
3 correct?

4 A. Yes, sir.

5 Q. The lot will no longer be gravel and grass? You
6 probably won't sell a whole lot of cars, maybe tractors?

7 A. I don't --

8 Q. But that's your intention?

9 A. Yes.

10 Q. And as you stated, if granted a special
11 exception, having the ability to open the used car lot,
12 this is going to be your full-time job, is that correct?

13 A. Yes.

14 MR. BOOZER: Board's indulgence. That's all the
15 questions I have.

16 THE CHAIRMAN: Cross?

17 CROSS EXAMINATION

18 BY MS. DEMILIO:

19 Q. Mr. Singh, where are you employed now?

20 A. I work at the liquor store now.

21 Q. Liquor store?

1 A. Yes.

2 Q. Could you show my where that is on the map, if
3 you would?

4 A. It's in this building.

5 Q. Is it --

6 A. That building.

7 Q. You're pointing to the petitioners' plat that's
8 located on the board?

9 A. Across the street.

10 Q. No. You're pointing to this brick building.
11 That's where you work right now?

12 A. Yes.

13 Q. What is that? Is that a restaurant here? So
14 it's a restaurant?

15 A. A restaurant and a liquor store.

16 Q. A liquor store?

17 A. Yes.

18 Q. Tavern?

19 A. Yeah.

20 Q. Your petition for relief, you operate a tavern
21 there. It's a tavern there as well. Do you have a liquor

1 license?

2 A. Yes.

3 Q. What about evening activities? Do you operate
4 also as a nightclub on weekends?

5 A. Yes.

6 Q. Is that Friday and Saturday nights?

7 A. Yes.

8 Q. Other nights?

9 A. No.

10 Q. So presently, that's where you're employed, and
11 you own that

12 A. Right now, I own, and after that, then I go -- I
13 can go around the car dealership and liquor store and with
14 my wife.

15 Q. Your wife will run the restaurant/nightclub/
16 liquor store/tavern?

17 A. Yes.

18 Q. Do you have any other employees there?

19 A. Yes.

20 MR. BOOZER: I'm going to object at this point.
21 I understand that this is an administrative hearing, and

1 Mr. Singh, I did ask questions about if he was going to
2 run the lot, but his wife's employment and his employment
3 at a completely other location owned by him, I think is
4 completely irrelevant.

5 MS. DEMILIO: Well, it's his site plan on there.
6 I am trying to think what else he operated there. He
7 stated where it was on the site plan.

8 THE CHAIRMAN: Are you going to raise an issue of
9 a merger?

10 MS. DEMILIO: I don't know --

11 THE CHAIRMAN: It's cross. I will let her
12 continue.

13 Q. Now, there's a solid line here. Is that the line
14 that you requested to change the property lines between
15 your restaurant/tavern and nightclub?

16 A. Yes.

17 Q. And what you're here for today?

18 A. Yes.

19 Q. Where was the original property line between
20 these two establishments?

21 A. That crossing.

1 Q. The diagonal line?

2 A. Actually, that building is going on that
3 property. Then this building will be seventy-five years
4 old, and then using that as a --

5 COURT REPORTER: I don't know what he's saying.
6 I'm sorry.

7 Q. Let me just try to clarify. This would be the
8 original property line, the diagonal line on your
9 petition?

10 A. Yes.

11 Q. You have asked to change that line, the property
12 line, to the solid line?

13 A. Yes.

14 Q. Why did you do that?

15 MR. BOOZER: I'm going to again object. This was
16 subject to a prior hearing. The property line was
17 granted.

18 I don't think it has any bearing on this hearing
19 whatsoever. He changed the property line.

20 MS. DEMILIO: It's on the site plan.

21 MR. BELT: If I can ask a question, first? The

1 problem is that's not in evidence, so, for the record, if
2 you go back and look at this, you're going to have this
3 record of everybody just pointing to things that we have
4 no idea what you're talking about.

5 MS. DEMILIO: Well, it's on the plat. I think I
6 said the plat. If the petitioner is going to put it into
7 evidence --

8 MR. BELT: Right. Just to clean it up so we
9 know, when you go back to read it, we know exactly what
10 you are doing. Do you want to mark it for identification,
11 or something of that sort?

12 MR. BOOZER: I can mark it for identification
13 purposes, but I was going to more properly, I think, put
14 it in through Mr. Larson the engineer's testimony.

15 THE CHAIRMAN: Otherwise, what will happen -- so
16 why don't we just put it into evidence.

17 MR. BELT: I'm putting it in as Three.

18 THE CHAIRMAN: Do you any objection to that, Ms.
19 Demilio?

20 MS. DEMILIO: No, I have no objection.

21 THE CHAIRMAN: We'll put it in as Petitioners' 3,

1 the site plan.
 2 Q. So on the site plan, you show a change in the
 3 line. Why did you do that?
 4 A. Because I want to make both properties clear,
 5 here, my restaurant, the building using that lot for here.
 6 Q. What is this going to be used for then?
 7 A. That restaurant parking.
 8 Q. This is restaurant parking?
 9 A. Yes.
 10 Q. So prior to changing the property line, was there
 11 restaurant parking here?
 12 A. Yes.
 13 Q. But now, where is the -- how many cars do you
 14 want to display on your petition for special exception,
 15 your used car lot?
 16 A. Eight cars.
 17 Q. How many? I'm sorry?
 18 A. Eight cars.
 19 Q. Well, I count ten. Eight here, right?
 20 A. Yes.
 21 Q. And two up here?

1 A. No. Ten.
 2 Q. There is ten?
 3 A. Ten.
 4 Q. What is this line?
 5 A. For customer parking.
 6 Q. So these ten cars then will always be there
 7 unless they are sold?
 8 A. Yes.
 9 Q. I assume you will replace them with another car
 10 to sell?
 11 A. Yes.
 12 Q. Now, how many parking spaces will be over here
 13 for the restaurant that you created?
 14 MR. BOOZER: I'm going to object. It's
 15 completely irrelevant to this hearing.
 16 We had a modified marking plan. It may be on the
 17 plat, but again, it's not the relief we are asking for,
 18 nor is it subject to cross examination.
 19 THE CHAIRMAN: Well, that's part of the special
 20 exception standards, so we'll let her continue.
 21 Q. How many parking spaces did you create here for

1 the restaurant?
 2 A. Seven.
 3 Q. Now, why didn't you just keep this for parking
 4 for your used car lot where you could have displayed more
 5 cars or had more customer parking?
 6 A. Because that entrance is using both. I have both
 7 drive and I want to give them also this --
 8 COURT REPORTER: I'm sorry. I'm not getting what
 9 he's saying.
 10 Q. You have to speak up, and a little clearer, Mr.
 11 Singh.
 12 A. I want to give business, too, for that parking.
 13 Q. So you wanted to make sure there is parking for
 14 the business on this spot between the diagonal line on
 15 Petitioners' Exhibit 3 and the solid line between the
 16 property?
 17 A. Yes.
 18 Q. Now, was there a need for more parking for the
 19 restaurant?
 20 A. No.
 21 Q. Where do they park for the restaurant?

1 A. Here, and this site.
 2 Q. How many cars can you park on the front?
 3 A. Front, we park twelve cars.
 4 Q. Twelve. How about in the rear? Six or seven?
 5 A. Around eleven cars.
 6 Q. Where is that?
 7 A. This side and this side. This side, in this
 8 space, and we can making upgrade this area.
 9 Q. Upgrade further space.
 10 A. And have more.
 11 Q. So this is being used by the state right now?
 12 A. No. Here.
 13 Q. So they park all the way back here?
 14 A. Yes.
 15 Q. That is about eleven spots?
 16 A. Yes.
 17 Q. You said six or seven here?
 18 A. No. Eleven.
 19 Q. Eleven?
 20 A. Eleven, twenty-two, and seven.
 21 Q. Would --

1 MR. BOOZER: I'm to make a continuing objection.
 2 THE CHAIRMAN: We can't hear, really. The Board
 3 is not really getting a lot.
 4 Q. If I can reiterate then, you're saying that
 5 fronting on Pulaski Highway, you have eleven spots?
 6 A. Yes.
 7 Q. To the rear of your property between Philadelphia
 8 Road and Pulaski, you have about eleven?
 9 A. Yes.
 10 Q. And the new parking spaces you've created by
 11 moving the property line is six or seven?
 12 A. Seven.
 13 Q. Now, you can have a seat. Can you tell the
 14 Board, what are the hours of operation for your restaurant
 15 where you are employed?
 16 A. Twelve to 2 a.m.
 17 Q. I'm sorry?
 18 A. Twelve p.m. to 2 a.m.
 19 Q. So you are open for lunch?
 20 A. Yes.
 21 Q. And you sell package goods at that time?

1 A. Yes.
 2 Q. And the tavern is open at that time?
 3 A. Yes, ma'am.
 4 Q. And then it's open until two in the morning, so
 5 you're selling package goods, and the bar is open until
 6 two?
 7 A. Yes, ma'am.
 8 Q. And on the weekends, there's a nightclub?
 9 A. Yes.
 10 Q. What is the capacity of the number of people that
 11 can go into your restaurant? What's the seating capacity
 12 there?
 13 A. Hundred fifty.
 14 MR. BOOZER: Again, I have to make another
 15 objection.
 16 I understand talking about traffic flow, maybe,
 17 and there were parking spaces, but now we're going into a
 18 calculation of parking spaces needed.
 19 We're not asking for relief, again, for this
 20 second parcel. It has really nothing to do with this
 21 hearing.

1 I think counsel has been enough leeway already,
 2 asking about unrelated property.
 3 THE CHAIRMAN: To the extent that she's going to
 4 bring up the merger issue --
 5 Q. So there's fifty people?
 6 A. A hundred fifty.
 7 MR. WESCOTT: A hundred?
 8 Q. You have the capacity for 150 people?
 9 A. Yes.
 10 Q. Did you purchase both parcels at the same time,
 11 Mr. Singh?
 12 A. Yes.
 13 Q. You paid one price for both?
 14 A. Both separate.
 15 Q. Separate price?
 16 A. Yes. Then we bought, make it separate price,
 17 both place.
 18 THE CHAIRMAN: But you bought them at the same
 19 time?
 20 THE WITNESS: Yes.
 21 THE CHAIRMAN: But you paid two different

1 purchase prices?
 2 THE WITNESS: Yes, because of \$45,000, we paid
 3 that time, and he charged me \$50,000.
 4 THE CHAIRMAN: One lot, you paid \$45,000, and the
 5 other, you paid 50,000?
 6 THE WITNESS: No. He brought then 45,000, owner,
 7 he bought from state. Before it's there, it's the state
 8 building.
 9 MS. DEMILIO: His predecessor.
 10 Q. But when you bought the property -- I'm going to
 11 show you your deed -- you bought it in 2003, you said?
 12 A. Yes, ma'am.
 13 Q. I'm going to show you your deed, dated August 28,
 14 2003. Is that when you and your wife purchased --
 15 A. Yes, ma'am.
 16 Q. And there are two lots there that you purchased?
 17 A. Yes, ma'am.
 18 Q. The total price was \$350,000?
 19 A. Yes.
 20 MS. DEMILIO: I'm going to offer this as People's
 21 Counsel --

1 MR. BOOZER: I have no objection.
 2 MS. DEMILIO: -- four?
 3 THE CHAIRMAN: We'll accept the deed as People's
 4 Counsel No. 1.
 5 Q. Now, when you purchased the property, and
 6 according to the deed, it was known as 7400 Pulaski
 7 Highway, is that just the whole property, or was that just
 8 the nightclub?
 9 A. Just nightclub.
 10 Q. Now, the property you want to operate as a used
 11 car lot, what is that address?
 12 A. 7404 Pulaski Highway.
 13 Q. So did you request a separate address for that
 14 lot?
 15 A. Yes, ma'am, because it's a separate property.
 16 Everything is separate.
 17 Q. But When did you request that? When you wanted
 18 to operate the used car lot?
 19 A. Yes, ma'am, before I go pay -- because nothing is
 20 coming on that address. It's unused lot.
 21 THE CHAIRMAN: What did you say?

1 THE WITNESS: Before, it's not used, anyone using
 2 that.
 3 Q. Now, Mr. Singh, when did you first decide that
 4 you wanted to operate a used car lot?
 5 MR. BOOZER: Objection. I don't see the
 6 relevance to that question whatsoever.
 7 THE CHAIRMAN: It again goes to the merger issue.
 8 A. When I bought the property.
 9 Q. Well, you bought it in 2003. When did you decide
 10 you wanted to operate a used car lot?
 11 A. Same time.
 12 Q. You filed a petition for that in February of
 13 2008.
 14 Do you recognize this petition for special
 15 exception?
 16 A. Yes, ma'am.
 17 Q. So you didn't apply until February of 2008?
 18 A. Because that time, I don't have money for
 19 operating. Financially couldn't afford to.
 20 Q. But at the same time then, you also leased the
 21 property to Majestic Auto?

1 A. Yes.
 2 Q. But when you leased it to Majestic Auto, you knew
 3 that you wanted to operate a used car lot there?
 4 A. Yes.
 5 Q. So you never intended to keep that?
 6 A. He need and he always parking there. I pay
 7 attention for him, your people, your customer, using my
 8 parking lot.
 9 He said, Give me rent, you can lease for me that
 10 property.
 11 Q. You never got any zoning approval to enter into a
 12 lease with him, did you? You never got any separate
 13 zoning approval to enter into a lease with Majestic?
 14 A. No, ma'am.
 15 Q. Is your restaurant/tavern open seven days a week?
 16 A. Yes.
 17 Q. Let me ask, on your Petitioners' Exhibit No. 3,
 18 which is the site plan, the car display where you have the
 19 cars for sale, is that going to be fenced in, do you know?
 20 A. Later on?
 21 Q. Yes. Do you have a plan to have a fence around

1 that where the cars will be that you're going --
 2 A. Yes.
 3 Q. -- to sell?
 4 A. Actually --
 5 THE CHAIRMAN: Wait until there's a question, Mr
 6 Singh.
 7 MS. DEMILIO: I have no further questions.
 8 THE CHAIRMAN: Any rebuttal?
 9 MR. BOOZER: Just briefly.
 10 REDIRECT EXAMINATION
 11 BY MR. BOOZER:
 12 Q. Mr. Singh, is it your desire to use these parcels
 13 combined in any manner?
 14 A. No.
 15 Q. Did you ever desire to use these parcels
 16 together, 7400 and 7404?
 17 A. No.
 18 Q. Did you ever undertake any act or action to title
 19 both parcels together?
 20 A. No.
 21 Q. So it was never your intention, or did you ever

1 take any overt action, to use these parcels together in
2 any manner, is that correct?

3 A. Yes.

4 MS. DEMILIO: I have a follow-up.

5 THE CHAIRMAN: Wait a minute. He's still on his
6 rebuttal.

7 Q. Mr. Singh, did you move the line because it cut
8 through the corner of your own building on the lot?

9 A. Yes.

10 Q. Did you ever use either parcel to support the
11 other parcel for its primary use?

12 A. No.

13 MR. BOOZER: I have no further questions.

14 THE CHAIRMAN: Okay. Any follow-up?

15 MS. DEMILIO: Yes.

16 RECROSS EXAMINATION

17 BY MS. DEMILIO:

18 Q. Mr. Singh, did you ever have any signs there that
19 prevented your customers, restaurant customers or tavern
20 customers, from parking on the open lot?

21 A. Yes. We have a sign for a towing company, for

1 their sign, company sign. If anybody park there,
2 publicize we can tow.

3 Q. But did you ever stop your customers from parking
4 in this space, for instance, between the original property
5 line and the new property line?

6 A. Yes.

7 Q. Did you tell me in cross examination that your
8 customers for the restaurant would park there?

9 A. Yes.

10 Q. Did you have them towed away then?

11 A. Not here, not near by building. Empty lot, don't
12 have parking already. There is grass and stone. Nobody
13 can park there.

14 Q. Wait. You're saying you can't drive on that?

15 A. No.

16 Q. How does Majestic puts cars there, don't they?

17 A. Because they pay rent.

18 Q. But it's possible, physically possible, for cars
19 to park here?

20 A. Yes.

21 Q. Did you ever tow any of your customers who parked

1 there?

2 A. I tell them if I see there, they can move,

3 Q. So they don't park -- so where do they park then?

4 A. This front and that side.

5 Q. Well, we've established that's eleven, eleven and
6 seven, you said, so that's less than thirty cars?

7 A. Yes.

8 Q. What happens -- you have a capacity for 150 in
9 your restaurant/tavern. Where do the rest of them park?

10 MR. BOOZER: I object. I understand that Ms.
11 Demilio is trying to make a case for the merger doctrine.

12 He's testified as to where the cars park. He's
13 testified to the fact that he does not permit people to
14 park on the subject property.

15 I think it's absolutely irrelevant at this point
16 where these other people park.

17 THE CHAIRMAN: Well, she's trying to follow up.
18 Just following up on the original question with Ms.

19 Demilio, Mr. Singh, you have a sign that says your
20 customers in the restaurant can't park on that lot?

21 THE WITNESS: Yes.

1 THE CHAIRMAN: Okay.

2 Q. That say your customers? Is that what the sign
3 says, your customers?

4 MR. BOOZER: He just answered the question.

5 A. Doesn't make it customer, ma'am --

6 MR. BOOZER: I object.

7 A. Anybody can park there --

8 THE CHAIRMAN: We have to hear what you're
9 saying. We can't hear what you're saying. She has to
10 take down what you're saying. Everybody stop talking.

11 The answer to the question was there was a sign,
12 you have a sign up there that your customers in your
13 restaurant don't use that lot, the vacant lot at issue for
14 parking, is that right?

15 THE WITNESS: No, not for saying their
16 restaurant. Not using -- I have a sign nobody can use.

17 THE CHAIRMAN: You say, Don't go over there,
18 don't park there?

19 THE WITNESS: Yes.

20 THE CHAIRMAN: That's the answer to your
21 question.

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1 MR. WESCOTT: There's a sign that says you can't
2 park there?
3 THE WITNESS: Yes.
4 MR. WESCOTT: The restaurant customers cannot
5 park on that lot? There's a sign there?
6 THE WITNESS: I show you cannot park there.
7 THE CHAIRMAN: But is there a sign?
8 THE WITNESS: There's a sign, a towing sign over
9 there.
10 THE CHAIRMAN: If you park there, you're going to
11 be towed?
12 THE WITNESS: Yes.
13 MR. WESCOTT: But does it say, no restaurant
14 parking there?
15 THE WITNESS: Says nothing.
16 MS. DEMILIO: He said no.
17 THE CHAIRMAN: Any other questions?
18 MS. DEMILIO: I have no further questions.
19 THE CHAIRMAN: Okay.
20 MR. BOOZER: I am finished with Mr. Singh.
21 THE CHAIRMAN: Mr. Singh, you can step down.

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1 THE WITNESS: Thank you.
2 MR. BOOZER: I call Mr. Larson from Spellman
3 Larson.
4 J O S E P H L A R S O N ,
5 having been called as a witness, was duly sworn, and
6 testified as follows:
7 MR. BOOZER: In order to move the proceeding, I
8 wonder if Ms. Demilio and the Board would accept Mr.
9 Larson as an expert in the area of engineering and
10 surveying.
11 THE CHAIRMAN: In the area of what?
12 MR. BOOZER: Engineering and surveying.
13 MS. DEMILIO: I know he's going to comment on the
14 zoning regulations. I have no objection that.
15 THE CHAIRMAN: Is he offered as an expert in the
16 zoning regulations?
17 MR. BOOZER: Yes.
18 THE CHAIRMAN: Any objection?
19 MS. DEMILIO: No.
20 THE CHAIRMAN: He's been qualified before?
21 MS. DEMILIO: Right.

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1 THE WITNESS: Yes. Many times?
2 MR. BOOZER: Dozens.
3 THE CHAIRMAN: We'll accept him as an expert
4 engineer and surveyor in the Baltimore County zoning
5 regulations.
6 DIRECT EXAMINATION
7 BY MR. BOOZER:
8 Q. Mr. Larson if you would, give your name and
9 professional address.
10 A. Joseph Larson, president of Spellman Larson
11 Associates, 222 Bosley Avenue, in Towson, Maryland 21204.
12 Q. Mr. Larson, you're probably better at this than
13 most lawyers that come in here, so I'm going to let you
14 go, if you will let you tell us exactly what is going on,
15 on this plat?
16 A. Yes. Do you mind if I stand up?
17 MR. BOOZER: Again, this has been -- if it hasn't
18 for the record -- marked as Petitioners' 3. I ask to move
19 that into evidence.
20 THE CHAIRMAN: Okay.
21 A. The subject property under review here is this

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1 heavy black lined parcel which is 0.15 acres of land zoned
2 B.L.-A.S.
3 Initially, to establish my testimony --
4 Q. Mr. Larson, which parcel do you have? I want to
5 make sure it's the same one.
6 THE CHAIRMAN: It's the amended site plan.
7 MR. BOOZER: I want to make sure it's the same
8 one we have here today, if I could approach, and take a
9 look. No. This is a different one. This is one before.
10 So if I can enter Petitioners' 3.
11 THE CHAIRMAN: You did.
12 MR. BOOZER: I can give you a copy.
13 THE CHAIRMAN: Do you have another copy?
14 MR. BOOZER: I have plenty of copies.
15 THE CHAIRMAN: That would be great.
16 MR. WESCOTT: What is the zoning?
17 THE WITNESS: B.R.-A.S.
18 (Discussion held off the record.)
19 MS. DEMILIO: I'd like to have a copy if it's not
20 the same one that's in the file.
21 MR. BOOZER: I apologize, Mr. Larson.

10 (Pages 34 to 37)

1 THE CHAIRMAN: Go ahead. I'm sorry. Go ahead.
 2 A. Okay. One thing to establish immediately with
 3 regard to my testimony is the fact that we have two
 4 separate entities, two separate lots of record, two
 5 separate lots by deeds, and I think Mr. Singh has spoken
 6 to that.

7 And the plan has been highlighted to show that
 8 this tract, which is the restaurant tract, is not part of
 9 this hearing.

10 It should not be in any way connected to the
 11 tract under review today.

12 This parcel, like I say, is 0.15 acres, zoned
 13 R.S.-A.S.

14 And it has access from Philadelphia Road at this
 15 location, and Pulaski location at this location, and also
 16 fronts on 66th Street, but no access points come off of
 17 66th Street.

18 The parcel has being laid out to show a used car
 19 facility with a kiosk located in the center part of the
 20 lot and display area, and display and parking area shown
 21 as we identified on the plan.

1 The situation here is fairly clear-cut in that
 2 Mr. Singh is attempting to get the special hearing --
 3 special approval to convert the lot to a used car facility
 4 which, in effect, won't be anything other, or would be a
 5 less intense than the use currently as an overflow parking
 6 for the Majestic Auto Repair.

7 MS. DEMILIO: Objection.

8 THE CHAIRMAN: What's the basis?

9 MR. BOOZER: He's an expert.

10 MS. DEMILIO: I object to the use of the wording
 11 intense, because that's a subjective decision for the
 12 Board to decide, not for Mr. Larson to say whether it's
 13 intense or not intense.

14 MR. BOOZER: I think that's exactly why --

15 THE CHAIRMAN: Overruled. Go ahead.

16 A. As I was saying, the current use of the property,
 17 which is for the parking for the auto use on the other
 18 side of Philadelphia Road, would be a more intense use
 19 than currently proposed as an auto dealership whereby, for
 20 the auto dealership, the cars would be displayed there
 21 more than coming and going parking, except for the fact of

1 whatever few cars were used for customers.

2 It should be pointed out that this type of a used
 3 car facility is a sort of point of sale type use where
 4 this isn't a Car Max type facility where people come to
 5 shop or people come to browse and review the merchandise.

6 This is more or less a type of facility where Mr.
 7 Singh would advertise in the paper, and the sales pitch
 8 would be done over the phone, and the customer would come
 9 to look at the car.

10 So we want to make it clear that the conversion
 11 of this facility to a used car lot is going to be a less
 12 intense use than currently exists there today.

13 Q. At this point, I'd like to speak first to the
 14 comments of the agencies.

15 I notice, Mr. Larson, have you had a chance to
 16 read the Department of Office of Planning's comment --

17 A. Yes.

18 Q. -- with regard to the property?

19 A. Yes.

20 Q. There's a concern about the setback requirements.
 21 Does the new plan meet those setbacks requirements?

1 A. Yes. There is some confusion with the county
 2 comments on this plan, which was initially presented as a
 3 plan for special exception and special hearing.

4 The withdrawal of the special hearing petition
 5 more or less makes the county comments evaporate that were
 6 initially submitted for this plan, for this project.

7 The situation here is, again, not in any way
 8 intended to involve the restaurant parcel in this
 9 petition.

10 And we went back and forth with the planning
 11 office quite a bit with regard to the plan, and that was
 12 the reason for withdrawing the special hearing, to leave
 13 the restaurant operation as self-supporting and existing
 14 as it is.

15 And the comments, that we would want to sure that
 16 we reviewed the comments that were specific to the
 17 petition that we are here for today, the special
 18 exception.

19 THE CHAIRMAN: Mr. Larson, you initially said --
 20 I think this is your testimony -- there were two deeds for
 21 these two lots, is that right?

1 THE WITNESS: Yes.
 2 THE CHAIRMAN: Because we have one deed in
 3 evidence.
 4 THE WITNESS: But I believe the deed, it
 5 describes the parcels separately.
 6 THE CHAIRMAN: So there's one deed, but it
 7 references the two different metes and bounds description?
 8 THE WITNESS: Yes, and tax numbers.
 9 THE CHAIRMAN: I understand there's two separate
 10 tax i.d. numbers?
 11 THE WITNESS: Right.
 12 THE CHAIRMAN: So the vacant lot that we're here
 13 for, how long has that been in existence, do you know?
 14 THE WITNESS: I don't know. I know that it was a
 15 lot that was used by the state as a staging area for some
 16 work they were doing in the area, and it was not purchased
 17 by Mr. Singh.
 18 It was purchased by the previous owner, and then
 19 Mr. Singh purchased the entire two-lot package at one
 20 time.
 21 Q. Mr. Larson, obviously from reviewing 502.1 of the

1 Baltimore County zoning regulations, have you reviewed
 2 those special exception requirements?
 3 A. Yes, I have.
 4 Q. Comparing those to what we are trying to
 5 accomplish with this lot and special exception, do any of
 6 those cause you any concern?
 7 A. No, they don't.
 8 MR. BOOZER: I would have no further questions of
 9 Mr. Larson.
 10 THE CHAIRMAN: Any cross?
 11 MS. DEMILIO: Yes.
 12 CROSS EXAMINATION
 13 BY MS. DEMILIO:
 14 Q. You can sit down, Mr. Larson, for now. I know
 15 you referenced some of the Baltimore County Planning
 16 Office's comments, and I'd like to show you a letter you
 17 had written to Mr. Curtis Murray, who's the director of
 18 the Office of Planning, dated May 15, 2008. Do you
 19 recognize that letter?
 20 A. Yes.
 21 Q. Is that from you?

1 A. Yes.
 2 Q. You're the Larson in Spellman Larson?
 3 A. I am.
 4 Q. I'd like to direct your attention to page two,
 5 the middle paragraph.
 6 I have highlighted it in yellow. Would you take
 7 a moment and look at that, please.
 8 What does that particular paragraph say?
 9 MS. DEMILIO: I'm going to put this into
 10 evidence.
 11 A. Well, that comment is in error. It says part of
 12 the lot was used for parking for the restaurant, which at
 13 that time, I thought it did.
 14 But in further conversations at meeting with Mr.
 15 Singh, I realized that was not the case.
 16 Q. But this was filed in May of 2008, well after the
 17 petition was filed?
 18 A. Yes.
 19 Q. And you -- this had been in preparation of the
 20 petition?
 21 A. Yes.

1 Q. Did you ever write a subsequent letter to Mr.
 2 Murray, indicating a change?
 3 A. No.
 4 Q. So in this letter of May 15, 2008, you agree or
 5 you indicated that part of the parking lot of the subject
 6 site has been used for parking for the restaurant and
 7 tavern?
 8 A. Right.
 9 MS. DEMILIO: I'm going to offer that as People's
 10 Counsel's 2.
 11 MR. BOOZER: No objection.
 12 THE CHAIRMAN: Accepted as Two.
 13 Q. Now, who told you that it was used for the
 14 restaurant?
 15 A. I just assumed.
 16 Q. Did you go to visit the site?
 17 A. No. I first reviewed the site on the Baltimore
 18 County aerials.
 19 And from what was the grassed area and paved
 20 area, it appeared to me that that lot was all one lot for
 21 the restaurant parking.

1 Q. So you never saw cars parked there?

2 A. No.

3 Q. Well, then, why is it that you, with Mr. Singh,
4 requested to change the property line from the two lots,
5 from the diagonal line that's shown on Petitioners' 3, to
6 the solid line?

7 I mean, let me just add, Mr Singh indicated this
8 would be used for parking, continue to be used for
9 parking?

10 A. Only for the portion of the lot that faces the
11 building.

12 The line was changed because, for whatever
13 reason, and when it was ever done, the property line cut
14 through the corner of the restaurant building.

15 Mr. Singh came to us to request a lot line
16 adjustment, to move that line so that it cleared the
17 restaurant building and met the zoning setback for that
18 zone, to allow both lots to be legal, zoning-wise.

19 Q. So this was a nonconforming use, and now you have
20 changed the lot?

21 A. I don't think you want to call that a

1 nonconforming use, or get into that.

2 It was preexisting, been there for many years,
3 and we are not, and that is not what's before us today.

4 Q. I understand that, Mr. Larson. I'm not trying to
5 contest the use of the building as a restaurant. That's
6 not my reason for the questioning.

7 What I'm saying to you, you had a situation where
8 you changed the boundary between the two lots?

9 A. Right.

10 Q. And you have moved it over to allow now for
11 parking?

12 A. No, ma'am.

13 Q. Well, Mr. Singh said it would allow for parking.

14 A. Well, it allows for parking because of the fact
15 that when we moved the line, that's what happened.

16 But the line was moved so that it would avoid the
17 encroachment of the building over the line.

18 And, secondly, in moving the line, we moved it
19 so it would meet the side yard setback.

20 Q. But there was no indication, and it's not your
21 testimony, that you were in violation and you had to move

1 the property line?

2 A. It absolutely was in violation --

3 Q. But --

4 A. -- and we moved it to make it legal.

5 Q. Right. But you didn't change any -- in other
6 words, you acknowledge the fact this is a nonconforming
7 structure, isn't that correct?

8 A. Right.

9 Q. So there was no need for you to, as a
10 nonconforming structure, there was no need for you to
11 change the property line?

12 A. Well --

13 Q. Just answer yes or no, Mr. Larson. It's a
14 nonconforming structure.

15 A. Yes. There was a need to change the property
16 line.

17 Q. Why was that?

18 A. Because if Mr. Singh would look to sell that lot,
19 there would be an encroachment, a flaw in the title.

20 Q. You mean on the property, to sell the restaurant?

21 A. Yes.

1 Q. But when you looked at the site, you thought the
2 area was used for parking, because it was paved?

3 A. Yes.

4 Q. So you moved the line past where you assumed
5 there was parking?

6 A. We moved the line to meet the zoning
7 requirements.

8 Q. What's the required setback?

9 A. Thirty feet.

10 Q. Thirty feet. From the building here. Now, it
11 doesn't meet any of the other setbacks, do you agree, the
12 restaurant?

13 A. No.

14 Q. So it still does not satisfy the current
15 regulations to operate a restaurant there in terms of the
16 building itself, in terms of the setback?

17 A. No.

18 Q. It doesn't meet the parking requirements either,
19 does it?

20 A. No.

21 Q. So at no time did you try to satisfy the parking

1 requirements for the building?
 2 A. No.
 3 Q. So if it were sold, would that be an impediment
 4 to sell the property? The restaurant, I mean?
 5 A. The fact that it doesn't meet parking?
 6 Q. Or the other setbacks?
 7 A. No.
 8 Q. Now, you talked about the kiosk building. What
 9 is the size of that kiosk?
 10 A. I believe it's sized on there. I think it's --
 11 Q. You can go up and look at it.
 12 A. Twelve by -- it looks like twelve by seven.
 13 Q. What will that be used for?
 14 A. That would be typically a very, very small office
 15 area that would be for the attendant as Mr. Singh when the
 16 car lot is open.
 17 Q. Now, do the zoning regulations permit a sign for
 18 the used car dealership there?
 19 A. Permit a sign? Sure.
 20 Q. Can I assume they will have a sign that conforms
 21 with the regulations?

1 A. Yes.
 2 Q. So anybody driving back by that might see a car
 3 parked there that might be interested could stop in as
 4 well?
 5 A. Sure.
 6 Q. So it's actually like a showroom, but it's an
 7 outdoor showroom. Is that the zoning regulations refer
 8 to?
 9 A. Yes.
 10 Q. So it's not just prior orders on the telephone --
 11 A. Well --
 12 Q. -- that would be the only customers?
 13 A. Well, from my experience in working with this
 14 type of facility, the used car facility, new car facility,
 15 it's been my experience that that is the mechanism of sale
 16 for this kind of used car lot.
 17 This is not a used car lot where people come to
 18 shop. There's only going to be six or ten cars on the
 19 lot.
 20 And as I say, the typical sale is made over the
 21 phone, and the buyer would come to look at that car.

1 Q. Do they put the prices in the window, is it that
 2 type?
 3 A. Sure.
 4 Q. Now, do you know if -- Mr. Singh said he would
 5 probably fence in the display area. Do you agree with
 6 that?
 7 A. I believe he testified to that.
 8 Q. Now, you have parking here for six customers?
 9 A. That could be either customer or display.
 10 Q. So you can have a display here as well. You
 11 certainly couldn't put all those customers in the kiosk
 12 area, could you?
 13 A. No.
 14 Q. Now, I want to direct your attention to the
 15 zoning regulations. You said this is a B.R. zone,
 16 correct?
 17 A. Yes.
 18 Q. Now, the address of this property is Pulaski
 19 Highway, 7404 Pulaski Highway?
 20 A. Yes.
 21 Q. So let me show you Section 238.4 of the zoning

1 regulations, if I can.
 2 A. Uh-huh.
 3 Q. Can you show -- I hate to keep making you get up,
 4 but what does that section say? If you can put it in your
 5 own words?
 6 A. That the display and what's called the show area
 7 would be in the front yard.
 8 Q. But what are the restrictions? Is there a
 9 restriction in that section that you read? 238.4.
 10 A. But not more than fifteen feet from the building.
 11 Q. So you agree that the building line is the kiosk
 12 then?
 13 A. Yes.
 14 Q. So this section does not allow cars to be placed
 15 more than fifteen feet in front?
 16 A. That's right.
 17 Q. Could you show on Petitioners' 3 where that would
 18 be? Where the show area is permitted, according to
 19 Section 238.4?
 20 A. Well, we're asking for the special exception to
 21 approve that plan, which does not conform to that section.

1 Q. So you agree that you do not comply with Section
2 238.4?

3 A. No.

4 Q. Again, you're asking the Board to approve this?

5 A. Yes.

6 Q. You didn't ask for a variance?

7 A. That would be part of the special exception.

8 Q. But you indicated that Section 502.1, in your
9 estimation, you comply with 502.1?

10 A. Yes.

11 MS. DEMILIO: One moment, please. I have no
12 further questions. Thank you.

13 REDIRECT EXAMINATION

14 BY MR. BOOZER:

15 Q Mr. Larson, one question. It's your testimony
16 that what's been marked as Respondents' 2, the May 15th
17 letter you to Curtis Murray, you had no independent
18 first-hand knowledge when you wrote that, that the parking
19 was used by the restaurant?

20 A. No.

21 Q. That was just your assumption?

1 A. Yes.

2 MR. BOOZER: No further questions.

3 THE CHAIRMAN: Mr. Larson, a question. On the
4 site plan, it says this is a use in common driveway.
5 These two lots share the same driveway?

6 THE WITNESS: Yes.

7 THE CHAIRMAN: Is that new or --

8 THE WITNESS: That's what exists.

9 THE CHAIRMAN: Okay. Any other witnesses?

10 MR. BOOZER: No other witnesses. That would be
11 the petitioners' case.

12 THE CHAIRMAN: Okay. You may step down. It's
13 your case.

14 MS. DEMILIO: I call Stephen Weber.

15 STEPHEN WEBER,
16 having been called as a witness, was duly sworn, and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MS. DEMILEO:

20 Q. Please state your name and work address.

21 A. Stephen Weber, division of traffic engineering,

1 111 West Chesapeake Avenue, Towson, 21204.

2 Q. Mr. Weber, can you tell the Board, briefly, what
3 duties and responsibilities you have in your position with
4 Baltimore County as director of traffic?

5 A. I'm responsible for all traffic issues for
6 Baltimore County, which include parking, streetlights,
7 speed limits, road markings, traffic signal, operations,
8 parking problems, review of zoning issues, handicap
9 parking. It's pretty much traffic/safety issues.

10 Q. Did you have an opportunity to review the request
11 for a special exception?

12 A. Yes, I did.

13 Q. Did you prepare some written comments for the
14 Zoning Commissioner?

15 A. Yes. Well, I prepared --

16 Q. For our office?

17 A. Yes, for your office.

18 Q. Can you tell the Board, briefly -- or not briefly,
19 actually -- what your concerns are with regard to the used
20 car lot?

21 A. The concerns basically deal with the existing use

1 of the restaurant and, currently, that if the used car lot
2 were put in as proposed, looking at the remainder of the
3 site, or the adjacent site where the restaurant is
4 located, the availability of parking for that site and
5 what the required parking would be, it's been testified
6 it's an older site. It's a nonconforming use.

7 I know there's been testimony given as to whether
8 this subject property has or has not been used by
9 restaurant patrons, and I'm not personally aware of
10 whether it has or has not been used.

11 But in going out to the site, the building
12 currently is about a 3600 foot square foot building.

13 And under county zoning regulations, if we assume
14 it's a restaurant, the property would be required to have
15 fifty-eight parking spaces.

16 Of course, it's also noted that it has the
17 ability to be used as a nightclub/tavern, also package
18 goods store.

19 If we assumed the use was a tavern in its
20 entirety, it would be required to have twenty spaces per
21 thousand square feet, or seventy-two parking spaces.

1 I personally went out to the site to note exactly
2 where the existing parking is surrounding the property and
3 how it currently --

4 MR. BOOZER: I would object to the testimony at
5 this point.

6 THE CHAIRMAN: On what basis?

7 MR. BOOZER: The relief requested has to do with
8 7404 Pulaski Highway.

9 It's been established as part of the record thus
10 far that the parking is short in a property that is
11 unrelated to this property.

12 Going through the parking calculations, and
13 whether or not this building is a nonconforming use,
14 doesn't have enough parking, is not the subject of this
15 hearing.

16 Furthermore, Mr. Singh testified -- unless
17 People's Counsel can produce any kind of other evidence --
18 that, yes, this building has been, or this lot has been
19 used for parking for the restaurant.

20 I think any of this testimony is absolutely
21 irrelevant at this point.

1 THE CHAIRMAN: I had a question. How is it that
2 when you were talking about the restaurant parking, how we
3 factor the special exception factor for that? How does
4 that come into play?

5 MS. DEMILIO: Can I show up him the regulations?

6 THE CHAIRMAN: I want to ask him questions under
7 the regulations, under the 502.1 regulations.

8 Q. We're here on a special exception, of course?

9 A. Correct. I'm not sure which regulation.

10 THE CHAIRMAN: You said you knew the Baltimore
11 County zoning regulations, sir. We're here on zoning 404
12 with special exception factors.

13 I want to hear what special exception factors
14 apply to that lot. So in talking about the restaurant
15 parking you just went through and all that. Parking
16 spaces, how does that affect -- how does that interplay
17 with these factors?

18 THE WITNESS: Okay. From the standpoint that
19 there was testimony given by Mr. Singh dealing with the
20 signing on the adjacent, whatever signing is present on
21 the stone lot, which is the subject of this hearing, while

1 there may be signs present, standard, like somebody would
2 see Pollard's unauthorized vehicles will be towed from
3 this lot if they are left there.

4 There is no signing in place which states that
5 the restaurant patrons or tavern patrons or package goods
6 patrons, or people buying their lottery tickets, there is
7 no signing on the site saying that those people cannot
8 park there.

9 So going to the site, there's no apparent -- one
10 would not even have any assumption that there is any
11 property line that exists on the stone lot, whether it be
12 the same property as the restaurant and the tavern and the
13 package goods store.

14 So if one were to pull on the lot, it would be a
15 logical assumption by any customer that that is part of
16 the same parcel that the restaurant is.

17 THE CHAIRMAN: Next question is, if we made a
18 restriction that the property owner had to put up a sign,
19 would that satisfy you that the customers from the
20 restaurant/tavern would know not to go onto the used car
21 lot?

1 THE WITNESS: It may have been, perhaps would not
2 be an issue in this particular case if there had been a
3 sign there, if the property owner had continually enforced
4 the sign, to ensure that none of the patrons were parking
5 in that place.

6 But given the lack of, severe lack of parking on
7 the site for 7400 Pulaski Highway, and given that it's so
8 far under the standard required for the parking, and there
9 was also testimony presented as to the capacity of the
10 building, Mr. Singh said while it never got 150 people in
11 there, but, again, depending on what the use is, what he's
12 doing with the particular use, he owns both parcels of
13 ground, and the severe lack of parking, it would seem to
14 be reason there probably have been many times, because
15 it's so short of parking, and the availability of the
16 stone lot that adjacent to it with no signing saying you
17 can't use it, that he has had patrons probably utilizing
18 that property.

19 THE CHAIRMAN: My question is going forward, say
20 the special exception is granted for the car lot, would
21 your office be okay with having a sign restriction that

1 part of the restriction in the order would be that the
2 property owner has to post a sign for the restaurant
3 saying customers are prohibited from going onto the
4 used car lot?

5 THE WITNESS: well, what our concern is, the
6 concern is it has been used by the patrons of 7400 Pulaski
7 Highway.

8 And to takes a specific action to remove this
9 property from the ability of their patrons using it, then
10 there's going to be no place for these people to move into
11 without moving into the adjacent residential areas, and
12 then we are going to start having problems with a
13 complaint that now we have restaurant patrons and tavern
14 patrons now invading the residential areas adjacent to the
15 property on Summit Avenue, and then that's going to become
16 a county issue that we are going to have to start dealing
17 with, because now, this property has been taken out of
18 use, where it has probably been used by these patrons for
19 the last many years.

20 THE CHAIRMAN: You say you don't have any
21 personal knowledge?

1 THE WITNESS: I don't have any personal knowledge
2 that that's the case.

3 THE CHAIRMAN: Go ahead.

4 MR. BOOZER: My objection still stands. We have
5 gone through the fact that the property is not -- this has
6 nothing to do with this property.

7 We are here on the special exception. If Mr.
8 Weber wants to testify as to factors dealing with the
9 special hearing, I'd love to hear what those are.

10 THE CHAIRMAN: I understand, and what I heard
11 from his responses, although he hasn't referenced the
12 statute, was overcrowding the land, undue concentration of
13 population, those kinds of things, conditions on the road,
14 all of which are all special exception.

15 MR. BOOZER: What I heard, he has no independent
16 knowledge whatsoever.

17 THE CHAIRMAN: We heard him say that.

18 MR. BOOZER: Very well.

19 THE CHAIRMAN: But from his office's perspective,
20 I thought maybe his office would be okay with a sign
21 restriction, but apparently his office is not. Go ahead.

1 THE WITNESS: Certainly the only thing we're
2 aware of though is prior to when this lot was purchased,
3 there was parking taking place on this parcel up until the
4 time, at least we know they were always parked on the east
5 side of the building until such time as the lot line was
6 moved, so they had been using that parcel for parking for
7 the restaurant.

8 Now, once the line has been moved, now they might
9 argue we are no longer parking on that part of the lot,
10 we're only parking on the west part of the lot that we
11 used to own, but we moved that line over, and we're now
12 not parking on that property anymore.

13 Q. (MS. DEMILIO) They're saying their property --

14 A. Right.

15 Q. The restaurant property?

16 A. Yes, right.

17 Q. But that acknowledges it's been used --

18 A. It has been used in the past for parking to
19 support the restaurant.

20 Q. I'd ask you to approach the board here and look
21 at the aerial photograph --

1 MS. DEMILO: Which I'd like to offer as four?

2 MR. BELT: I think we're at three.

3 MR. WESCOTT: What about Murray's letter?

4 MR. BELT: That was two, sir. I have it marked
5 down as two.

6 MS. DEMILIO: I'd like to offer as Petitioners'
7 3, the GIS map for this location.

8 MR. BOOZER: No objection.

9 Q. Mr. Weber, could you just -- so that the Board is
10 familiar with what we are talking about here -- sort of
11 point to where the subject site is, the property that's
12 owned by Mr. Singh.

13 Show them where it is and what's the surrounding
14 road system.

15 A. Well, the site is currently one parcel which is
16 the subject site of the special exception, or special
17 hearing, is here, the restaurant located next to it.

18 All the property down here is owned by the State
19 Highway Administration. This is Philadelphia Road on this
20 side.

21 Pulaski highway is divided by U.S. 40 on the

1 south side of the property, and 66th Street is on the
2 other side with a continuation for people coming out of
3 Baltimore City continuing on Maryland 7, or Philadelphia
4 Road,

5 The residential area up here on Summit Avenue.
6 Right here, the auto dealer/auto repair place that Mr.
7 Singh was talking about is located on this site right here
8 across the street from the subject site, across
9 Philadelphia Road.

10 There is another commercial site. All these
11 sites along Philadelphia Road in here are all commercial
12 sites.

13 Gas station, fast food over on this site, and an
14 office building. Warehouse on that side, the south side
15 of U.S 40.

16 Q. You indicated that the State Highway owns the
17 triangle to the -- is that the south of, or west?

18 A. They own the very tip of the corner where
19 Maryland 7, U.S. 40 meet.

20 There's a line of narrow grass triangle owned by
21 the State Highway Administration.

1 Then the paved parking lot that Mr. Singh owns
2 starts at that point from there east to the restaurant
3 building.

4 Q. So when Mr. Singh indicated that he could park
5 cars along this grassy green area, that really does not
6 belong to him?

7 MR. BOOZER: I object to the characterization of
8 the testimony. That grassy green area doesn't even exist
9 on the plat which Mr. Singh was pointing to.

10 MS. DEMILIO: But it's on the map.

11 MR. BOOZER: Ms. Demilio, it may be on your map,
12 but where he was pointing to is not where Ms. Demilio is
13 pointing to whatsoever.

14 MS. DEMILIO: I'm just trying to establish who
15 owns what here. That's fine.

16 MR. BOOZER: I don't think she's trying to
17 establish who owns what.

18 THE CHAIRMAN: Rephrase your question. Mr. Singh
19 actually indicated there was parking along the front.

20 MS. DEMILIO: I think he also pointed to the
21 street, I thought.

1 Q. So in your estimation, how many cars can park in
2 the rear of Mr. Singh's property that is paved, which
3 would be the southwest?

4 A. I was going to correct Ms. Demilio. I believe
5 the testimony that was given by Mr. Singh was correct.

6 The parking between the west end of the building,
7 he currently has wheel stops out there for four spaces
8 next to the building and then three spaces next to the
9 green area or the grass area that's owned by the State
10 Highway Administration.

11 So he currently has that area designated for
12 seven parking spaces on the west end of the building.

13 Looking at the site, it's possible he could
14 possibly rearrange some over those wheel stops to maybe
15 gain one more parking space.

16 But probably, at the most, you could get eight
17 parking spaces on the west side of the building.

18 MS. DEMILIO: I'm sorry if I mischaracterized it.
19 I didn't understand Mr. Singh's testimony as well.

20 We're just trying to establish where the boundary
21 line are.

1 Q. In terms of the south side of the property that
2 faces Pulaski highway, Mr. Singh indicated that he can
3 accommodate parking in that area.

4 Now, can you describe to the Board What is there,
5 what parking would be permitted?

6 A. Currently, he has a designated setup as a one-way
7 pattern in a westbound direction across the front of the
8 building.

9 They are all angled parking spaces in the front
10 of the building.

11 There's ten wheel stops, which is pretty much
12 maximized --

13 MR. BOOZER: I don't want to cut you off, but I
14 will proffer for my client that it's a nonconforming use,
15 and doesn't have the required parking.

16 If can we somehow get past this restaurant issue?
17 I don't want to spend the next hour on this.

18 I think it's absolutely irrelevant. I will
19 proffer it to People's Counsel.

20 I understand it's a nonconforming use. We all
21 agree on this, and that's fine.

1 THE CHAIRMAN: I will overrule because it goes to
2 the special exception issue. To that extent, go ahead.

3 A. Well, there's ten wheel stops in that area, so
4 ten designated parking spaces on the front of the
5 building.

6 All those spaces are located in the state
7 right-of-way, so they are actually all parking on state
8 property.

9 None of that parking is actually contained on the
10 property itself.

11 So the state could -- those spaces could
12 disappear anytime the state would want to take them.

13 Q. Then there's no other parking on this site that
14 you have observed?

15 A. The other parking that is on the site is on the
16 east side of the building, which is perpendicular parking
17 to the building.

18 There is five wheel stops in that area. There's
19 one to the rear of the building.

20 There's a dumpster in an area noted to be a no
21 parking area.

1 It's not blocking the dumpster and then there
2 appears to be one informal parking space regularly used by
3 customers going to the site.

4 The package goods store is on the east end of the
5 building.

6 The entrance is on the Pulaski Highway side to
7 the east end of the building.

8 But most of the parking activity tends from the
9 customers going in and out, tends to be concentrated on
10 the east end of the building.

11 Q. Now, the wheel stops that you have indicated, are
12 they on what was -- before the lot line adjustment, were
13 they actually on the subject site that is the site where
14 he is putting the used car lot?

15 A. Right. The five that are on the east end of the
16 building, perpendicular part on the east end of the
17 building, and one informal space used by people used to be
18 on the previous lot where the lot line had been, or had
19 existed.

20 Q. When you say wheel stop --

21 MR. BOOZER: I object to that testimony, unless

1 he has any independent knowledge.

2 MR. BOOZER: Do you have any knowledge of that,
3 sir?

4 Q. Did you observe it?

5 A. Well, it's -- I mean, all I can say is, it
6 appears --

7 MR. BOOZER: But you have no independent
8 knowledge?

9 THE CHAIRMAN: Well, let him answer.

10 A. There's no evidence -- the wheel stops that are
11 out there, the age of everything, appears to be several,
12 you know, quite a number of years old. Nothing out there
13 appears to be new.

14 It would appear to be a very old situation, so it
15 doesn't look like somebody has come out there and put
16 wheel stops.

17 The paint lines are very faded, like they haven't
18 been painted in quite some time.

19 All I can say, it looks like it has had
20 considerable age to it.

21 THE CHAIRMAN: These are based on your

1 observations?

2 THE WITNESS: Yes.

3 THE CHAIRMAN: You have been to the site?

4 THE WITNESS: Yes.

5 Q. So what you're indicating then is -- if I can
6 summarize your testimony -- there are parking spots to the
7 southwest of the building in that area that are on Mr.
8 Singh's restaurant property, and the property, the parking
9 spots that he referred to facing Pulaski Highway are
10 actually on the State Highway Administration right-of-way?

11 A. Right.

12 Q. And the parking to the east of the restaurant
13 with the wheel stops, when you say wheel stops, you mean
14 those almost about the building? They are facing the
15 building?

16 A. Correct.

17 Q. And these look like they have been there for some
18 time, and before the lot line adjustment?

19 A. Right.

20 Q. Which occurred, just occurred within the past
21 year?

1 A. Right.

2 Q. So they would have been located on what is now
3 known as 7404 Pulaski Highway?

4 A. Correct.

5 Q. Now, the insufficient parking you had alluded to,
6 you have concerns about the special exception, if there's
7 insufficient parking for the restaurant which can
8 accommodate, and tavern/nightclub, which can accommodate
9 up to 150 people, what has been your experience where the
10 overflow parking could go, and specifically what concerns
11 do you have about that, if any?

12 A. With the uses that are -- I mean, we deal with
13 several taverns/nightclubs/restaurants, those that become
14 popular places for people to go, they will start looking
15 for any place around that restaurant or that activity to
16 park their car.

17 Now, there is available parking on the other side
18 of Pulaski Highway. They have parking on the service
19 road.

20 Of course, then you have to cross five lanes or
21 six lanes of divided highway to get over there. There is

1 a traffic signal at 66 and U.S. 40.

2 There's no parking allowed at all on Philadelphia
3 Road, but there is parking within the neighborhood, or
4 parking is at least not prohibited on Summit Avenue going
5 into the residential area.

6 So people could, if they want to go there, they
7 need to find a place, these other lots are pretty much all
8 private.

9 This is all fenced off. There's no way of people
10 getting into that property.

11 So they would start searching for a location
12 either in on adjacent residential neighborhood or walking
13 across Pulaski Highway to get to the parking on the south
14 side of the street.

15 MR. BELT: Mr. Weber, where is that residential
16 neighborhood?

17 THE WITNESS: Right here. Starts basically right
18 here. This is a home, home, home. These are all houses
19 up here.

20 This is a paper alley or paper street shown on
21 here. Everything north of that paper street is all

1 residential.

2 MR. BELT: I'm not real good with a scale --

3 THE WITNESS: Sure.

4 MR. BELT: But I we're way up in the area looking
5 down at this. How far away --

6 MS. DEMILIO: We have a witness that lives up
7 there and can testify.

8 MR. BELT: Okay.

9 THE WITNESS: For instance, from there, from the
10 site plan, this distance here is about 110 feet.

11 So you're your probably looking at something that
12 is, from Philadelphia Road north up to the residential
13 property, somewhere around 750 feet.

14 Just to give an approximate idea of how far
15 you're talking, half the length of a football field.

16 THE CHAIRMAN: But Mr. Weber, you don't have any
17 knowledge of complaints being filed because of parking
18 problems now at the restaurant?

19 THE WITNESS: Right. We have not had any
20 complaints with the existing restaurant.

21 But as I said, I indicated, my concern is perhaps

1 the reason we haven't had a complaint is because they are
2 using the subject site. That's where all their
3 overflow -- their flow -- if you want to say it's
4 overflow -- is going onto this other parcel.

5 That's why we may not be hearing anything. But
6 all of a sudden, this whole parcel is removed, there goes
7 about twelve parking.

8 THE CHAIRMAN: But we're talking about personal
9 knowledge about whether there's parking or not.

10 We really don't know. It's speculation. It's
11 personal speculation, right? Whether or not they're
12 actually using that other parking lot? I mean, isn't that
13 what you said before?

14 THE WITNESS: From my standpoint, yes.

15 Q. But Mr. Weber, based upon your experience, if
16 people want to go to a particular establishment, where
17 would they park? What's the parking pattern? How would
18 people approach parking?

19 MR. BOOZER: I'm going to object.

20 Q. Based on your experience as a traffic planner.

21 MR. BOOZER: I'm going to object to the question.

1 I'm not sure if it's a sociology question, if it's a
2 traffic expert question.

3 I think we can all agree that people park as
4 close as they can.

5 THE CHAIRMAN: I think he's already testified. I
6 think he's already answered my question.

7 Q. What concerns, if any, would the county,
8 Baltimore County, have if people park across Pulaski
9 Highway that would attend, let's say, the tavern or the
10 nightclub in the evening? You said there were some
11 parking spaces here?

12 A. Correct.

13 Q. What concerns, if any, would you have as a
14 traffic employee for Baltimore County?

15 THE CHAIRMAN: I think we got that. He said they
16 walk across several lanes going to the tavern.

17 MS. DEMILIO: For the record --

18 THE CHAIRMAN: The Board got it. He's been
19 saying they cross four lanes of traffic.

20 MS. DEMILO: These are people that have been --

21 THE CHAIRMAN: We get it. It's a tavern.

1 Q. Have there been any studies done of Pulaski
2 Highway in terms of safety?

3 A. U.S. 40 is one of the corridors in Baltimore
4 County that had been targeted by our police department
5 because it has a high incidence of both pedestrian
6 accidents, oftentimes pedestrians that are under the
7 influence, so we have had a number of fatalities along
8 Pulaski Highway.

9 We've had a higher incidence of those types of
10 issues on that corridor than on most corridors in the
11 county.

12 Q. You agree, Mr. Weber, then that -- I think Mr.
13 Larson might have touched on this briefly -- but, again,
14 what are the parking requirements for the restaurant?
15 What would the standard be, just so it's clear for the
16 record, the restaurant/tavern/nightclub?

17 A. Well, for a 3600 square foot building --

18 Q. Is that what parking is based on, the size of the
19 building?

20 A. Yes. So if we assume the entire thing is used as
21 a restaurant, which it isn't, but that would be the most

1 conservative, or the lowest number of parking spaces
2 required, it would be sixteen spaces per thousand square
3 feet, and it would require fifty-eight parking spaces.

4 If we assume that the whole building was used as
5 a tavern, which, again, it's not, that would be the upper
6 limit, that would be twenty spaces per thousand square
7 feet, which would require seventy-two parking spaces.

8 THE CHAIRMAN: So the answer is seventy-two?

9 THE WITNESS: It's probably something in between.

10 THE CHAIRMAN: Between fifty-eight and
11 seventy-two?

12 THE WITNESS: Right. And currently, with the
13 submitted site plan and what's designated on the site
14 currently with the wheel stops that are out there, and
15 provided spaces on the south side the building and five
16 spaces on the north side of the building, there's twelve
17 spaces on the property itself out of the fifty-eight to
18 seventy-two spaces.

19 If you include the ten spaces that are also
20 located on state property and the right-of-way, that would
21 add up to twenty-two spaces, at least that's are

1 available, until such time when and if the state would
2 ever take those spaces back.

3 MS. DIMILIO: I have no further questions.

4 THE CHAIRMAN: CROSS.

5 CROSS EXAMINATION

6 BY MR. BOOZER:

7 Q. Mr. Weber, we have twenty-three spaces currently
8 now, is that your testimony?

9 A. We have -- yes. Well there is twenty-two plus
10 the one kind of unofficial space, so there's parking,
11 twenty-three spaces.

12 Q. And ten spaces, you think in the subject property
13 if we used that as parking?

14 A. Looks to me, something around ten to twelve.

15 Q. So why hasn't this property concerned you
16 already, for this hearing?

17 MS. DEMILIO: Objection.

18 MR. BOOZER: I want to know why -- if this is
19 such a problem -- why hasn't his department investigated
20 this property being so woefully short and having
21 alcoholics runs across the street?

1 MS. DEMILIO: If they want to say they're an
2 illegal use, I will be happy to concede that, but they're
3 trying to say they're legitimate and nonconforming, so I
4 object.

5 THE CHAIRMAN: Overruled. Go ahead.

6 A. Currently -- well, it was stated there is about
7 twenty -- point out there's about twenty-three spaces
8 currently that are being used.

9 Looks like you can get an additional ten or
10 twelve. So if we assume --

11 Q. That wasn't my question. I want to stop him.
12 If this property is so woefully short on space, why hasn't
13 this been the study of some kind of study, some kind of
14 any action by your agency?

15 A. My guess is because with the approximate
16 thirty-three spaces that are currently available on the
17 site, the stone lot, subject of the hearing, and the
18 current site where the restaurant is located, my guess is
19 the demand placed on that site by whatever activities they
20 have taking place there are contained within that
21 thirty-three spaces that are available within the

1 perimeter of 66th Street, Philadelphia Road, and Pulaski
2 Highway.

3 Q. And you've never had any problems with this
4 property whatsoever?

5 A. I don't know. I can't --

6 Q. To your knowledge?

7 A. I would say in the last probably ten years during
8 the time that Mr. Singh has owned the property, we have
9 not had any complaints to our office of which I am aware.

10 Q. Again, you have no knowledge if patrons from that
11 bar have ever parked on the subject property 404?

12 A. Are you talking about --

13 MS. DEMILIO: Objection. He's talking about the
14 wheel stops.

15 THE CHAIRMAN: We got that. He said he didn't
16 have any independent knowledge. Several times, I asked.

17 A. Well, if you're talking about as the lot line
18 lies now, or as the lot line used to lie?

19 Q. At any time.

20 A. Yes.

21 Q. How is that?

1 A. Because you're saying, because I'm confusing the
2 assumption based --

3 Q. I'm not asking you to assume. I'm asking to your
4 knowledge.

5 A. If I had any direct observation, no.

6 Q. Last question. I'm going to point to a couple of
7 places on this map. Can you tell me if they are state
8 property now, right?

9 Lower corner right here, southwest corner that
10 Ms. Demilio pointed out?

11 A. The area that's in grass is state property. You
12 will note the lot lines shown on this map --

13 Q. I'm not going to be that technical.

14 A. Okay.

15 Q. The grassy area?

16 A. Okay. The grass area is state property.

17 Q. Right-of-way, in which he has ten parking spaces?

18 A. State property.

19 Q. Philadelphia Road?

20 A. State property.

21 Q. Pulaski Highway?

1 A. State property.

2 Q. You are aware the State Highway Administration,
3 in reviewing this, said they have absolutely no comment or
4 problem? Why do you think that is?

5 A. Well, one, they would not be the ones -- again,
6 if the parking issues would come up into Summit Avenue,
7 they are not the one that would end up having to address
8 this.

9 Normally, their interest deals with tax issues on
10 the state highway.

11 I don't know if they're concerned with parking
12 issues, where that parking is going to expand into.

13 MR. BOOZER: I'm not sure if the Board has this
14 from the State Highway Administration.

15 THE CHAIRMAN: Unless you're putting the whole
16 file in --

17 MR. BOOZER: Actually, I will enter all the
18 comments collectively as Petitioners' 4. Collectively, 4.

19 (Discussion held off the record.)

20 THE CHAIRMAN: Any objection?

21 MS. DEMILIO: No.

1 MR. BOOZER: I don't have any further questions
2 of Mr. Weber.

3 THE CHAIRMAN: Petitioners' No. 4 is the county
4 agency comments.

5 MS. DEMILIO: If I can just have that State
6 Highway Administration --

7 REDIRECT EXAMINATION

8 BY MS. DEMILIO:

9 Q. Mr. Weber, isn't it true that the review with
10 this special project, and that is the special exception
11 for the used car dealership, isn't that what generated
12 these comments or not?

13 To the best of your knowledge, no one has come in
14 and asked for approval of the restaurant use there?

15 A. Correct. And the comments are specific to say
16 that the field inspection and internal review reveal
17 existing entrance on U.S. 40 and Maryland 7 is consistent
18 with current SHA requirements.

19 That's all that's stated. They are not
20 indicating that there's no issues dealing that may cause a
21 parking issue or a parking concern, or It may cause other

1 issues strictly dealing with if existing entrances are
2 adequate.

3 Q. So that also then wouldn't entail their review of
4 whether there is parking in the State Highway
5 Administration right-of-way either, would it?

6 A. Well, that wouldn't have been on the subject
7 property.

8 MR. BOOZER: I'd object to that question unless
9 he can testify he works for the State Highway
10 Administration and knows about their rules and procedures.

11 THE CHAIRMAN: Actually, I think you asked a
12 question about does he know.

13 Q. So this letter only refers to ingress and egress,
14 and it doesn't refer to any parking on the restaurant
15 area, in the State Highway Administration right-of-way,
16 correct?

17 THE CHAIRMAN: I think that's leading, and also,
18 the letter speaks for itself.

19 Q. Let me just also show you a picture of -- and
20 this is probably in the Board's file -- a picture of a
21 sign that's necessary to advertise the current zoning

1 request. Do you recognize that as being the type?

2 A. Yes. That's looking to the east side of the
3 building, looking west -- looking towards the west.

4 Q. Now, the wheel stops that you were talking about,
5 are those visible in the picture just above the sign?

6 A. Yes. They are next to the building.

7 Q. Now, at the time this was taken, there was no
8 used car lot there?

9 A. Correct.

10 Q. Isn't it, though, that there are a couple of
11 pickup trucks parked there next to the building?

12 A. Well, there's a white pickup truck. The other
13 truck may be coming from Philadelphia Road, but, yes,
14 there's a white pickup truck parked there.

15 Q. So this is what you were referring to when you
16 talked about parking on the east side of the building with
17 the wheel stops, and the parking would be for the tavern,
18 for the nightclub use?

19 A. Correct.

20 MS. DEMILIO: I will offer that as four. Thank
21 you.

1 Q. Mr. Weber, I know when we had our discussions
2 about this case, you also had some Map Quest, but do they
3 show anything different than the aerial, or are you
4 content with the aerial?

5 I don't want to clutter the exhibits. Do any of
6 these relate to your testimony? I will just after it in,
7 and describe when the picture was taken?

8 A. I mean, the problem is this was taken around
9 2005, it was about three years ago, prior to the
10 lot line adjustment.

11 There's a vehicle parked approximately the same
12 location as the previous exhibit you presented with the
13 white pickup truck in 2005, so approximately 2005, there
14 was a vehicle parked in the same location adjacent to the
15 building.

16 MS. DEMILIO: I'm going to offer this as People's
17 Counsel --

18 MR. BOOZER: I'm going to object. The testimony
19 is the picture is over four years old.

20 MS. DEMILIO: We are looking at the past history
21 of this. That's what's important, isn't it?

1 MR. BOOZER: I don't think that's the reason it
2 was offered.
3 MS. DEMILIO: I'm now offering it.
4 (Discussion off the record.)
5 MR. BOOZER: Can I ask a question in light of the
6 exhibit?
7 THE CHAIRMAN: Sure.
8 Q. (MR. BOOZER) Do you have specific knowledge of
9 how the property -- did you inspect the property in 2005?
10 A. I am just saying that the photograph is an
11 accurate representation.
12 Q. Is it an accurate depiction of now that property
13 looked in 2005?
14 A. From that location in the area.
15 Q. Do you have any independent knowledge as to
16 whether or not that picture is an accurate representation
17 of exactly how that property looked in 2005?
18 MS. DEMILIO: Objection. Asked and answered.
19 He's already answered.
20 MR. BOOZER: He's not answering the question.
21 A. I can't verify if it was actually taken -- the

1 date on it is 2005, so whether it was 2005, 2006, all I am
2 stating is, there was a vehicle.
3 This would have been taken prior to the time the
4 lot line adjustment was made, and that there is a vehicle
5 parked adjacent to the building in the area on the
6 adjacent property at 7404 Pulaski Highway.
7 MR. BOOZER: If Ms. Demilio is offering it for
8 the purpose in which she's asking, that picture cannot
9 come in.
10 The testimony is he does not have any independent
11 knowledge if that is an accurate depiction of that lot in
12 2005. The rule is clear.
13 THE CHAIRMAN: He said it's copyright in 1992, it
14 looks like to 2005. Where did you get this document?
15 THE WITNESS: Those are from the Baltimore County
16 GIS files.
17 The date, the last date, would be the approximate
18 date the picture that was taken, the aerial photo taken in
19 2005, but that's from Baltimore County GIS.
20 THE CHAIRMAN: So this is a government document
21 that's been produced by the government --

1 THE WITNESS: Yes.
2 THE CHAIRMAN: -- file, and in your possession,
3 and you pulled this, right?
4 THE WITNESS: I pulled it off of ours, over at
5 the county.
6 THE CHAIRMAN: People's Counsel No. 5. Any other
7 photographs?
8 THE WITNESS: No.
9 MS. DEMILIO: I also would like to offer in
10 evidence, which I think it's in the Board's file, a letter
11 from Mr. Larson dated August 29, 2008, to Mr. John
12 Alexander, hand-delivered, and I'd like to offer that in
13 which Mr. Larson refers to the parking for the restaurant
14 and the parking for the used car dealership.
15 The petitioner himself has put this issue into
16 play by Mr. Larson's comments and letter, so I would just
17 like --
18 THE CHAIRMAN: What is it?
19 MS. DEMILIO: It's a letter dated August 29,
20 2008, Mr. Larson to Mr. John Alexander.
21 I think it's part of the Board's file, but I will

1 put it in as a People's Counsel exhibit.
2 MR. BELT: No. 6.
3 THE CHAIRMAN: Any objection?
4 MR. BOOZER: No objection.
5 MS. DEMILIO: I have no further questions.
6 THE CHAIRMAN: Okay.
7 MR. BOOZER: No questions.
8 THE CHAIRMAN: We have one more witness?
9 (Discussion held off the record.)
10 MS. DEMILIO: Carl Engel.
11 C A R L E N G E L,
12 having been called as a witness, was duly sworn, and
13 testified as follows:
14 DIRECT EXAMINATION
15 BY MS. DEMILIO:
16 Q. State your name for the record, please.
17 A. Carl Engel. E-n-g-e-l.
18 MR. WESCOTT: Is Carl K or C?
19 THE WITNESS: C.
20 A. I live at 1700 Summit Avenue.
21 Q. Mr. Engel, I hate to make you get up, but on

1 People's Counsel No. 3, the aerial map that has been
2 admitted into evidence, would you point out where your
3 home is?

4 A. Right.

5 Q. I am going ask him to draw a circle around it and
6 put his initials.

7 A. My property is right here. Draw it?

8 Q. Put a circle around it, put your initials.

9 A. (Indicating.)

10 Q. How far are you from the subject property?

11 A. I am approximately a hundred yards.

12 Q. A hundred yards up Summit Avenue?

13 A. Correct.

14 Q. How long have you lived there?

15 A. Since '94.

16 Q. Do you live there with any other family members?

17 A. My wife.

18 Q. Are you retired, Mr. Engel?

19 A. Yes.

20 Q. Are you familiar with Mr. Singh's restaurant and
21 package goods store?

1 A. Yes, very much.

2 Q. You frequent that place?

3 A. Yes, we do.

4 Q. Have you observed the parking at Mr. Singh's when
5 you have been there?

6 A. Absolutely.

7 Q. Can you tell the Board briefly where your
8 observations are of cars that are parked?

9 A. Where we park cars?

10 Q. Do you walk, or do you drive there?

11 A. I haven't been able to walk lately because of hip
12 problems, but I occasionally would walk down there, yes.

13 Q. Have you observed cars parked there?

14 A. Absolutely. Here we are. Yes. They park, as
15 stated, they park in front, angle park, they park a few
16 cars around here.

17 If they can get past these cars that are parked
18 on an angle, they also park here, and they park,
19 over-parking from the package goods store, in and out,
20 over on this parcel.

21 Q. Now, how often do you frequent this place?

1 A. I have been there twice a week.

2 Q. Do you go inside or just get carry-out?

3 A. Both.

4 Q. Now, Mr. Singh also testified that he also uses
5 the facility as a nightclub?

6 A. Yes.

7 Q. On weekends?

8 A. Yes.

9 Q. Are you familiar with that.

10 A. Friday and Saturday.

11 Q. Would you tell the Board what your experience has
12 been with the operation of the nightclub on Friday and
13 Saturday night?

14 A. What seems to happen -- it's a very popular
15 night -- what seems to happen, their overflow traffic ends
16 up here on my property, alongside my fence.

17 I have a fence here, a cyclone fence. There is
18 ditches here and there's no availability of parking, but
19 apparently they must come through, not find a place, and
20 end up right here

21 I have as many as three o four cars here, parked.

1 And, of course, that's where my wife and I also park
2 there.

3 Q. Now, how do you know they park there? Do you
4 hear them, or just observation?

5 A. Yes. They are not quiet.

6 Q. Tell the Board exactly what you hear, and what
7 time of the night this is?

8 A. Well, not every night, but --

9 Q. I am talking about on the weekend.

10 A. On the weekend, Friday and Saturday, they may
11 start coming in at 10 o'clock, and they park.

12 I have a dog, so I know that happens. Whenever
13 that happens, I know about it, which is good.

14 So they will park and then they will trundle down
15 here. This is a hill. They trundle down.

16 Around 1:30 or two when they're done, they're in
17 a little different condition then when they went down, and
18 they are quite noisy and rambunctious here.

19 We have felt threatened by some of these people
20 coming back.

21 My wife continually wants me not to go out there

1 or say anything or do anything, and this is two in the
2 morning.

3 Q. Have you had occasion to call the police
4 department or speak to anyone?

5 A. Well, we have talked to -- about the parking
6 situation there, yes.

7 And there is nothing we can do. We have no power
8 over that. They can park there. Anyone can park there.

9 So if they are rowdy, we've called, but by the
10 time the police get there, have hour or whatever -- I'm
11 not going to say whatever -- they are gone.

12 So we're virtually powerless to deal with this
13 situation.

14 Q. Now, have there been any incidents in the
15 nightclub in the past couple of months?

16 A. Well, there was a shooting incident last month.

17 Q. In the nightclub?

18 A. Yes. Not every month, but that happens
19 apparently occasionally, and we're a little anxious
20 about -- we're anxious about the kind of people coming up
21 that hill.

1 Q. Now, if the parking were restricted, or if there
2 were sufficient parking for the nightclub on all of Mr.
3 Singh's property, would you be here today complaining?

4 A. No. I mean, we have learned to accept the
5 situation as it is.

6 However, when -- and I have discussed this with
7 Mr. Singh, my concerns about this when I learned this was
8 coming.

9 I am just kind of worried that this is going to
10 get even worse up here.

11 I hadn't been preparing any case or anything
12 about this, or whatever, we haven't been constantly
13 calling.

14 However, I am concerned that this will impact me.
15 Us.

16 Q. Is it your testimony that there is no place along
17 this area of Summit Avenue?

18 A. No. This is a ditch, four foot ditch. That's
19 why they don't park there.

20 This is a fence. This is Maryland Fence's fence.
21 This side is another ditch.

1 Okay? The first opportunity for them would be to
2 be on either side up here, or down in here, which
3 occasionally -- right.

4 Q. Are you saying it's not -- it's possible for them
5 to park further down your street?

6 A. Absolutely. The first opportunity, really, to
7 park -- I mean, it's all flat. I park there. No one
8 usually parks here.

9 This man parks on this side, but it's always
10 full, and there's no opportunity in here to do that
11 either.

12 Q. When you say, here, you mean across the street?

13 A. Right.

14 Q. And there's nothing on Summit Avenue which leads
15 to your property because of the topography of the ditch,
16 or whatever?

17 A. Right. They have ditch there they just can't put
18 their cars on.

19 Q. What about --

20 A. Plus this is more heavily traffic. This is a
21 quite little street that's only about a hundred yards

1 long, it ends here.

2 And this can be pretty rambunctious. This is
3 downhill heading towards Philadelphia Road, so they come
4 down there.

5 MR. WESCOTT: Talking about what street?

6 Q. You're talking about Summit? You're talking
7 about Summit Avenue?

8 A. Yes. This is Summit Avenue, yeah. I'm on the
9 corner of Summit and Hinely (phonetic), right here.

10 Q. Now, there's also no parking in this area?

11 A. This is a hill, a nice hill, a welcome to
12 Rosedale sign right here, you know, big traffic is this,
13 this Z going up into Golden Ring.

14 Q. Let me ask you, on this map here, the GIS map,
15 are there any other tavern or restaurants or nightclubs
16 that could be generating that traffic on your street?

17 A. Oh, no.

18 Q. Now, Mr. Weber talked about parking across
19 Pulaski Highway.

20 Can you describe what entails a pedestrian trying
21 to cross, even at the light here at the corner of 66th and

1 Pulaski?

2 A. It's very dangerous. I did it one time this
3 summer, and I don't look forward to it again.

4 Even though there's a light here, the minute the
5 light goes on crossing, there's cars coming this way and
6 cars coming this way.

7 Q. When you say that, you're saying when Pulaski
8 Highway traffic has a red light, there is other traffic
9 that is entering this area?

10 A. Exactly. Fast. Fast traffic. No sidewalks.
11 This is a very long stretch, you know, with the divider,
12 and cars are zipping this way.

13 And then, as you're trying to get across, then
14 when this changes, this starts, and this is always a line,
15 as it is here.

16 Q. So you're saying going east on Pulaski Highway,
17 there's a left-hand turn?

18 A. Yes.

19 Q. So that interferes with pedestrians crossing
20 Pulaski Highway?

21 A. There is virtually no traffic, foot traffic doing

1 there. It's very dangerous.

2 Q. Now, what about, do you hear anything coming from
3 the nightclub up to your house?

4 A. No. Usually, no. The patrons usually have their
5 radios on. One time I heard their music rattle my
6 windows.

7 MR. BOOZER: I would object. This isn't a Liquor
8 Board hearing.

9 THE CHAIRMAN: Sustained.

10 Q. Based on your twice a week visit to Mr. Singh's
11 operation, would you consider it a popular busy place, or
12 describe for us how busy it is.

13 A. Well, during the week, it's moderately busy, but
14 during the weekends, they run -- Friday and Saturday are
15 usually these nights, nightclub nights of some sort.

16 I don't patronize them. I stay away during those
17 nights, but they have armed -- not armed -- but they have
18 security and so on --

19 Q. Do you understand --

20 A. -- and bouncers to check you for weapons and
21 stuff, and a track a large, large crowd. Those are what I

1 am concerned with.

2 Q. Any other concerns that you didn't mention?

3 A. No.

4 MS. DEMILIO: I have no further questions.

5 THE CHAIRMAN: Mr. Engel, I have a question for
6 you. Do you personally observe cars from the restaurant
7 parking on the lot next to it?

8 THE WITNESS: Yes.

9 THE CHAIRMAN: Do you do that when you go there?

10 THE WITNESS: Yes.

11 THE CHAIRMAN: Is there a sign there that says
12 you're going to be towed?

13 THE WITNESS: I'm not aware of it. I'm not aware
14 of it.

15 THE CHAIRMAN: Is the lot next door being used as
16 Mr. Singh described by Majestic Car Sales?

17 THE WITNESS: Currently now, yes. Right at this
18 minute, there are twenty cars there.

19 THE CHAIRMAN: In the past and in the time you
20 have lived there, have you seen Majestic operating a
21 business there?

1 THE WITNESS: Not just them. They rent it out
2 twice a year for Christmas trees and fireworks in July.
3 They fence that off.

4 THE CHAIRMAN: To sell fireworks and to sell
5 Christmas trees?

6 THE WITNESS: Yes, 404, 7404.

7 THE CHAIRMAN: Do you know who they rent it out
8 to?

9 THE WITNESS: No.

10 THE CHAIRMAN: Have you purchased these trees
11 there?

12 THE WITNESS: No.

13 THE CHAIRMAN: But it appeared to be a separate
14 use on that lot?

15 THE WITNESS: Yes. I don't see him working
16 there. I don't see any of the family. Everyone works in
17 his family.

18 I have never seen any family over selling
19 fireworks or selling the trees.

20 I stay -- kind of stay away because that attracts
21 traffic that --

1 MR. BELT: Just for clarification, sir -- sorry,
2 don't mean to be redundant -- I just want clarification --
3 Majestic across the street uses the lot?

4 THE WITNESS: I wasn't aware of it.

5 MR. BELT: Didn't you say something about twenty
6 cars on the lot?

7 THE WITNESS: Right at this minute, there's
8 twenty cars there. I wasn't sure whose cars they were.

9 I now know they were Majestic's. I wasn't sure
10 he wasn't starting to sell cars there.

11 MR. BELT: So the twenty cars when you drove by
12 today, they were there?

13 THE WITNESS: Yes.

14 MR. BELT: So on the nights, the Friday and
15 Saturday nights, are those twenty cars from Majestic
16 sitting on that lot?

17 THE WITNESS: No. No,

18 MR. BELT: They are only temporary?

19 THE WITNESS: Well, the problem is this, if I can
20 elaborate just a little.

21 MR. BELT: Okay.

1 THE WITNESS: When you have patrons coming in to
2 go to the nightclub and/or -- to the nightclub -- they
3 can't park more than one deep, whereas the Majestic cars
4 fill the whole thing.

5 They don't care if you have three lines, or three
6 cars on a line, you know what I mean, whereas a patron
7 won't park behind someone else.

8 MR. BELT: One question. On Friday and Saturday
9 nights -- you don't know anything about Majestic -- my
10 question is, the cars that are there now, we know it's not
11 Friday or Saturday night?

12 THE WITNESS: Correct.

13 MR. BELT: On Friday and Saturday night, are some
14 of those cars still on that lot?

15 THE WITNESS: Some of them. It's not always.
16 Not always. It comes and goes. The cars come and go.

17 The fenced in area comes and goes with the fenced
18 in for the fireworks and fenced in for the -- they usually
19 came, put up their fence, sold their trees, sold their
20 fireworks, take the fence away. This year, the fence is
21 still there.

1 MR. BELT: The majority of the time, are there
2 cars occupying that lot for a use that's other than the
3 club?

4 MS. DEMILIO: Objection.

5 THE WITNESS: Not that I recollect. They're not
6 cars there all the time, except to put patrons parking for
7 carry-out and or -- not carry-out, but a package store.

8 THE CHAIRMAN: Is there a sign on the lot next
9 door for Majestic?

10 THE WITNESS: No. You mean on the Majestic
11 property?

12 THE CHAIRMAN: No, no. On the lot next to the
13 restaurant?

14 THE WITNESS: No.

15 THE CHAIRMAN: You've never seen any signs that
16 say Majestic?

17 THE WITNESS: No.

18 MR. BELT: We've heard testimony that the place
19 is open until twelve, Mr. Singh's place, twelve to two?

20 THE WITNESS: Yes. Twelve, noon.

21 MR. BELT: We're before twelve now, so when you

1 came in today, you said there were twenty cars parked on
2 that other lot?

3 THE WITNESS: Yes.

4 MR. BELT: Thank you very much.

5 THE CHAIRMAN: Cross?

6 CROSS EXAMINATION

7 BY MR. BOOZER:

8 Q. When was the last time you saw those twenty cars
9 as you did this morning on the lot?

10 A. This morning.

11 Q. Before that?

12 A. Last night.

13 Q. Before that?

14 A. Day before.

15 Q. How far can I go back so you're going to tell me
16 they weren't there?

17 A. About three days.

18 Q. What about before the three days, what was there?

19 A. Remnants of fencing from the fireworks.

20 Q. But no bar patrons?

21 A. Oh, yeah. Scattered. It's scattered. It's

1 not -- you have people coming in to buy liquor. They
2 park. If they can't park along the building, they park
3 across there.

4 Q. Why do you keep going there if people are shot
5 there?

6 MS. DEMILIO: Objection. He said he didn't go
7 there to the nightclub at night.

8 MR. BOOZER: He said he went there twice a week
9 after somebody got shot and I'm just curious.

10 MS. DEMILIO: He testified he didn't go to the
11 nightclub.

12 THE CHAIRMAN: Overruled. Go ahead and answer.

13 A. Well, my wife is a poker machine person, and I
14 cannot break her of the habit, and there's our closest
15 poker machine.

16 These are very hard-working people. We've tried
17 to be friendly neighbors, and so on.

18 I don't feel the threat. I mean, they try and do
19 keep discipline in their restaurant as much as they can.

20 I don't feel safe up with them, those people in
21 the dark, drunk, at night, at two in the morning.

1 It's different than a place that is being
2 controlled and run, than the traffic up next to my house.

3 Q. Do you go there because Mr. Singh runs a tight
4 ship? You feel safe there? You take your wife there?

5 A. Most of the time, yes. We do not go Fridays, and
6 we do not go Saturdays.

7 Q. But other than those times?

8 A. Yes, we do.

9 MR. BOOZER: No further questions.

10 REDIRECT EXAMINATION

11 BY MS. DEMILIO:

12 Q. How long has the nightclub operation been in
13 existence, as far as you know?

14 A. Since they have owned it. '03, they started
15 that, those evenings.

16 MS. DEMILIO: Thank you. No further questions.

17 THE CHAIRMAN: Thank you, sir. Any other
18 witnesses?

19 MS. DEMILIO: No.

20 THE CHAIRMAN: Is that your case?

21 MR. BOOZER: That is the case.

1 THE CHAIRMAN: Any witnesses in rebuttal?

2 MR. BOOZER: None.

3 THE CHAIRMAN: Off the record.

4 (Discussion held off the record.)

5 THE CHAIRMAN: Thank you. We are adjourned.

6 (Hearing concluded.)

7 * * * * *

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1 STATE OF MARYLAND)

2) ss

3 COUNTY OF BALTIMORE)

4 I, Carolyn E. Peatt, a Notary Public in and for

5 the County and State aforesaid, duly commissioned and

6 qualified, do hereby certify that the above proceedings as

7 set forth above, which was reduced to writing under my

8 direction and control, is a true record of the above

9 proceedings.

10 I certify that I am not of counsel, attorney, or

11 relative of any party, or otherwise interested in the

12 event of this suit.

13 In witness whereof I have hereunto set my hand

14 and affixed my notarial seal this 9th day of March, 2010.

15 
Carolyn E. Peatt
Notary Public

16

17

18 My Commission expires: June 1, 2011.

19

20

21

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V vacant 33:13 42:12 variance 54:6 vehicle 4:1 89:11,14 91:2,4 vehicles 9:20 60:2 verify 90:21 Vernon 2:9 4:4 very 5:16 50:14,14 63:18 66:18 72:14,17 95:1 96:14 102:2,11 103:1 109:4 110:16 violation 47:21 48:2 virtually 98:12 102:21 visible 88:5		Z Z 101:13 zipping 102:12 zone 46:18 52:15 zoned 37:1 38:12 zoning 3:17,21 28:11 28:13 35:14,16 36:4 37:16 43:1 46:17 49:6 50:17 51:7 52:15,21 56:8,14 57:13 59:11,11 87:21 zoning-wise 46:18	4 4 85:18,18 86:3 114:6 114:13 40 65:21 66:15,19 75:1 79:3 86:17 404 59:11 83:11 105:6 409.12B 3:20 43 113:4	
		\$ \$350,000 25:18 \$45,000 25:2,4 \$50,000 25:3		
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64 114:12
66 75:1
66th 38:16,17 66:1
83:1 101:21

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7 66:3,19 86:17
7th 1:6 3:12
7400 1:4 3:11 26:6
29:16 61:7 62:6
7404 1:4 3:11 8:1 26:12
29:16 52:19 58:8
74:3 91:6 105:6
750 76:13

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81 113:5
85 114:6
86 113:5
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9 114:3,4
9th 115:14
9005 6:11
92 114:14
93 113:6 114:15
94 94:15

Case H 08-363-SPHX Harnak Singh

Petitioners Exh.

- ✓ 1. Exh 1 - Lease Agreement
- ✓ 2. Exh 2 - check from Majestic Auto
- ✓ 3. Exh 3 - Site Plan
- ✓ 4. Exh 4 - State Highway - - All easements - County Agency
4A + 4B

Wade
9/3/09
JDS

Lease Agreement

Lease agreement is made this day December 31st 2007 between Harnek Singh and Charanjit Kaur, owners of 7404 Pulaski Highway, Rosedale, MD 21237 as "Landlord and Majestic Auto Repair Shop LLC as Tenant, whereby Landlord wants to Lease parking spaces on 7404 Pulaski Highway MD 21237 to the Tenant with the following terms:

Term: Lease will run for January 1, 2008 and will expire December 31st, 2008. The lease will renew automatically unless either party gives a 30 days notice in advance to terminate the lease.

Rent : Rent for the space will be \$3600.00 a year to be paid in 12 equal monthly installments of \$300.00 each. Rent is due on 1st of every month.

Security Deposit : Security deposit for the lease will be Zero.



Harnek Singh Charanjit Kaur (Landlord)

Witness



Edwin J Mejia President
Majestic Auto Repair Shop LLC

443-854-4614 

CBA-08-363-SPHX-721, Gxh 2

MAJESTIC AUTO REPAIR SHOP LLC

08-06

4731

EDWIN J. MEJIA

7404 PHILADELPHIA RD.
BALTIMORE, MD 21237-2525

DATE 8/28/09

7-163/520 MD
2223

PAY
TO THE
ORDER OF

HARNEK SINGH

\$ 300

Three hundred 00

DOLLARS

Bank of America



ACH RT 052001633

FOR

Rent Harry 7404 Polasky Hwy.

⑈004731⑈ ⑆052001633⑆ 00392536570⑈

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 17, 2008

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

SUBJECT: 7400 and 7404 Pulaski Highway

INFORMATION:

Item Number: 8-363

Petitioner: Harnek Singh

Zoning: BR-AS

Requested Action: Special Hearing and Special Exception

SUMMARY OF RECOMMENDATIONS:

The applicant went before the Development Review Committee on January 2, 2008 for a lot line adjustment. The plan shown to the DRC did not indicate the proposed use subject of this hearing (motor vehicle sales area).

The DRC granted a B-8 exemption and advised the applicant to apply for a hearing for a side yard variance. The B-8 exemption requires the preparation of a development plan that should address required parking.

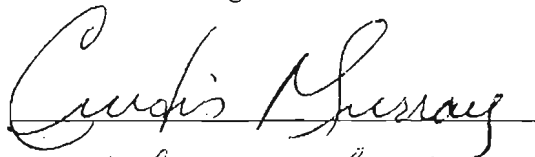
The plan before accompanying the subject petition indicates a modified parking plan and refers only to a used car dealership.

The requested Special Exception should be denied for the following reasons:

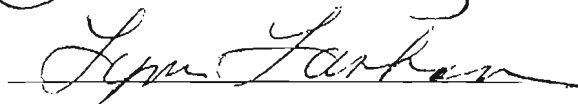
1. The car display areas do not meet setbacks from the public road.
2. The one -story brick restaurant does not show parking calculations or configurations.
3. If the area being proposed as a used car dealership has historically been used as parking for the restaurant, it should not be converted to another use.

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

Reviewed by:



Division Chief:
AFK/LL: CM





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

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

Maryland Department of Transportation

Date: February 26, 2008

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

RE: Baltimore County
Item No. 08-363-SPH
US 40 (Pulaski Hwy) n/s
7400 & 7404 Pulaski Hwy
Singh/Kaur Property
Plat to Accompany Zoning
Petition

Dear Ms. Matthews:

We have reviewed the site plan to accompany petition for variance on the subject of the above captioned, which was received on February 14. A field inspection and internal review reveals that the existing entrance onto US 40 and MD 7 is consistent with current State Highway Administration requirements. Therefore, this office has no objection to Singh-Kaur Property 7400 & 7404 Pulaski Highway, Case Number 08-363-SPH approval.

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

Very truly yours,

Foster Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

Cc: Mr. David Malkowski, District Engineer, SHA
Mr. Michael Pasquariello, Utility Engineer, SHA

CBA - 08 - 363 - SPH X - Pet G-4 46

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

People's Council Exh. Case # 08-353-574x Singh

- ✓ 1. People's Council Exh 1 - Book
- ✓ 2. P.C.'s Exh 2 - Letter from Larson to Curtis Murr - ^{office of} Planning
- ✓ 3. P.C.'s Exh 3 - Affid for location
- ✓ 4. P.C.'s Exh 4 - Photo of site
- ✓ 5. P.C. Exh 5 - Affid from R.L. Co. file
- ✓ 6. P.C. Exh 6 - Letter from Larson to Office of Planning - John Alexander

Verified

9/3/09

JSB

DEED

This Deed made this 28 day of August, 2003, by and between **HENRY BRABHAM and MYONG C BRABHAM** of the first part and **HARNEK SINGH and CHARANJIT KAUR**, husband and wife, parties of the second part.

Witnesseth that in consideration of the sum of Three Hundred Fifty Thousand Dollars (\$350,000.00) and other good and valuable considerations the receipt and sufficiency of which are hereby acknowledged, the said parties of the first part do grant and convey unto the said parties of the second part, as tenants by the entireties, their assigns, and to the survivor of them and the personal representatives, heirs and assigns of the survivor, in fee simple, all that lot of ground, situate, lying and being in Baltimore County, State of Maryland, aforesaid and described as follows, that is to say:

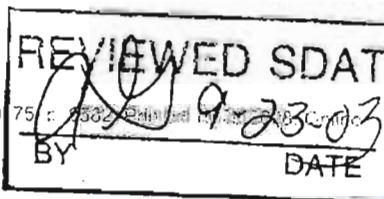
BEGINNING for the same at the end of the third or north 45 degrees, 25 minutes, 13 seconds east 203.28 feet line of Parcel No. 1 of land acquired by the State Roads Commission of Maryland by virtue of the award of the jurors which decree of the Court passed in the Circuit Court for Baltimore County in proceeding therein and entitled "Homer L Taber et al, State Roads Commission vs. The Diamond Grit Company et al Condemnation Docket 1, folio 113 as shown on the plat filed in said proceedings and running thence and binding on the 4th, 5th and 6th lines of the description of said lot of ground and the northwest line of the Pulaski Highway the three following courses and distances, namely South 31 degrees, 45 minutes, 56 seconds east 46.21 feet more or less, North 58 degrees, 35 minutes, 38 seconds east 69.69 feet more or less and north 58 degrees, 57 minutes, 13 seconds east 151.98 feet more or less, thence north 47 degrees, 35 minutes, 47 seconds west 99.58 feet more or less, thence north 47 degrees, 35 minutes, 47 seconds west 99.58 feet more or less to the center of the Philadelphia Road and thence binding on the center of the Philadelphia Road south 45 degrees, 25 minutes, 13 seconds west 199.90 feet more or less to the place of beginning. Subject to an easement imposed upon the southeasternmost portion of said lot of ground by the aforesaid award and decree as shown on said plat.

The improvements thereon being known as 7400 Pulaski Highway.

Being the same lot of ground which by Deed dated January 30, 1995 and recorded among the Land Records of Baltimore County in Liber 10980 Folio 161 was granted and conveyed by Andrew Novak, Sr and Lannia A Novak unto Henry Brabham, one of the herein grantors.

BEGINNING for the second at a point in the northerly right of way line of US 40 said point being situate 75 feet left of Station 11+ 20.75 of the base line of right of way of US 40 (Pulaski Highway) as said base line of way is delineated on the State Roads Commission of Maryland's plat numbered 54598 (rev 5/19/98) recorded or intended to be recorded among the Land Records of Baltimore County; running thence on a line (1.) N 47 Degrees 51'34"- W 69.58 feet to a point on the existing right of way line of Philadelphia Rd and being 30 feet therefrom; running thence and binding on said right of way line of Philadelphia Rd; (2) N-47degrees 20'17"-E 118.39 feet to intersect the southwesterly right of way line of 66th St at a point being situate 20 feet left of Station 1+65 of the base line of right of way of 66th St, thence running and binding on the said right of way line (3) S 31 degrees 18' 36"- E 90.00 feet to intersect existing right of way line of US 40 (Pulaski Highway) and thence running and binding on the same (4) S-58degrees 41'22"-W 96.25 feet to the place of beginning.

Being the same lot of ground which by Deed dated October 28, 1998 and recorded among



the Land Records of Baltimore County in Liber 13476 Folio 576 was grantee and conveyed by the state Highway Administration unto Henry Brabham and Myong C Brabham, the herein grantors.

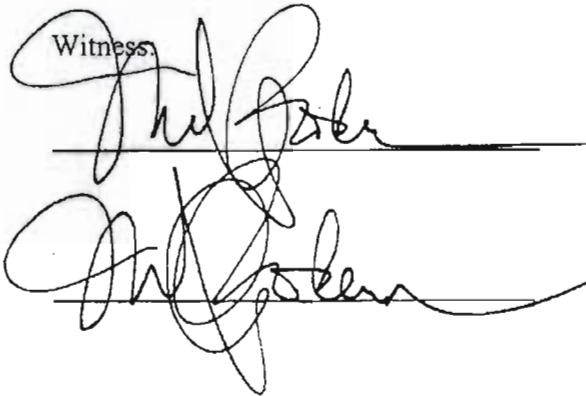
Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or aenaeus appertaining.

To have and to hold the said lot of ground and premises above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part as tenants by the entireties, their assigns, and to the survivor of them and the personal representatives, heirs and assigns of the survivor, in fee simple.

And the said party of the first part hereby covenants that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property hereby granted and that they will execute such further assurances of the same as may be requisite.

Witness the hands and seals of the said Grantor the day and year first above written.

Witness:



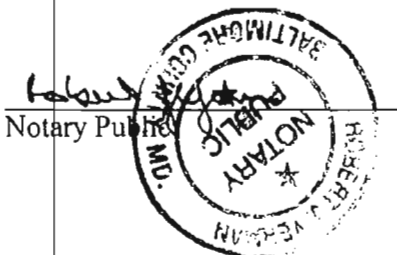
 (SEAL)
HENRY BRABHAM

 (SEAL)
MYONG C BRABHAM

State of Maryland, County/City of Baltimore to wit:

I hereby certify that on this 28 day of August, 2003, before me, the subscriber, a Notary Public in and for the County/City and State aforesaid personally appeared HENRY BRABHAM and MYONG C BRABHAM known to me or satisfactorily proven to me to be the person whose names are subscribed to the within instrument and they acknowledged that the foregoing Deed is their act and in my presence signed and sealed the same.

In witness whereof I hereunto set my hand and official seal.

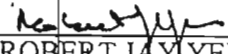


My Commission Expires: 9/1/04

deedtesinghpulaski.wpd

0019175 584

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.


ROBERT JAY YERMAN, Esquire

deedtesinghpulaski.wpd



CBM-08-363-SP11X Peoples Co. Ex 4

Case No.:

08-363-X

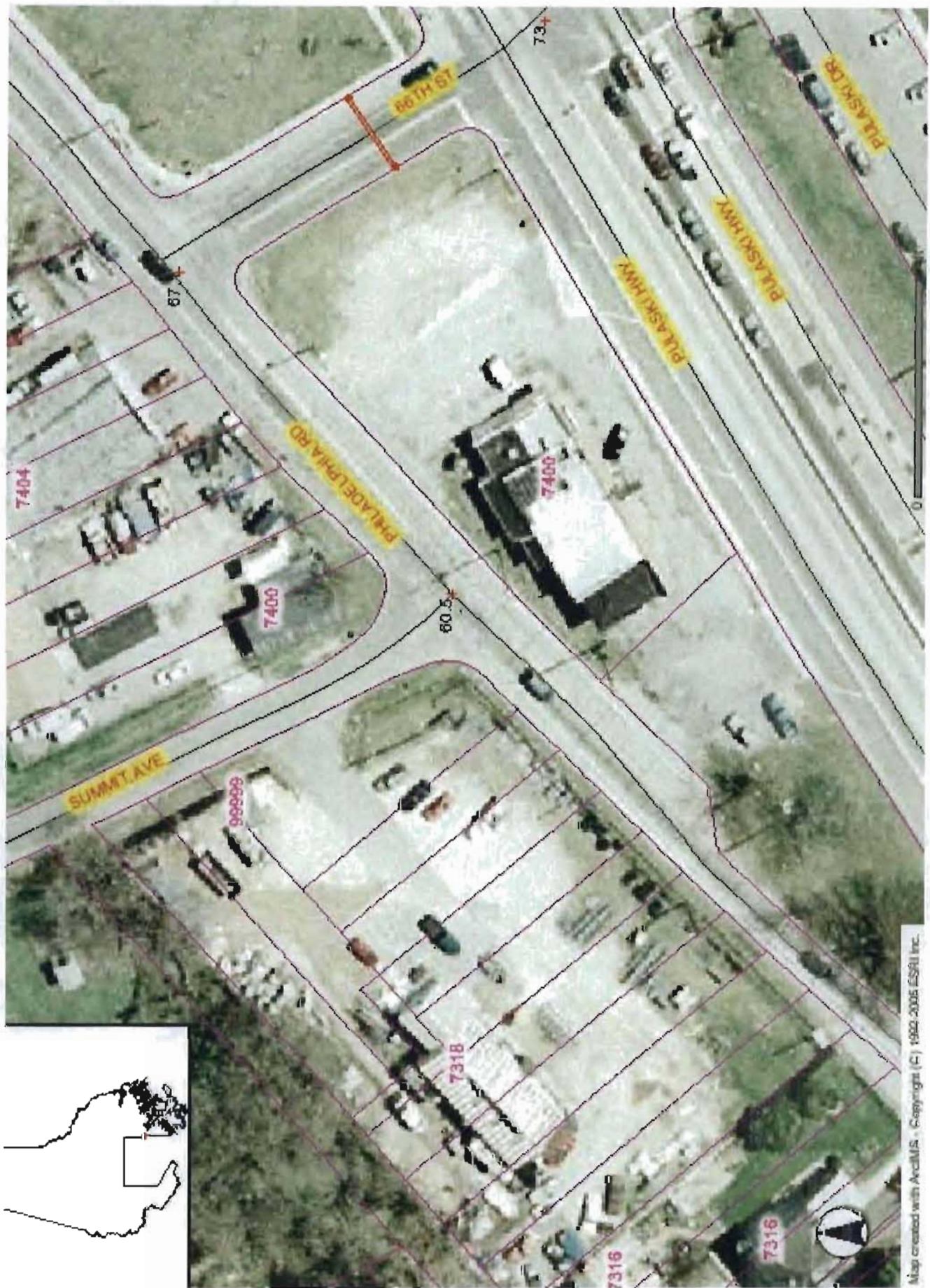
7404 PULASKI HIGHWAY

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	Amended Site Plan	
No. 2		
No. 3		
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

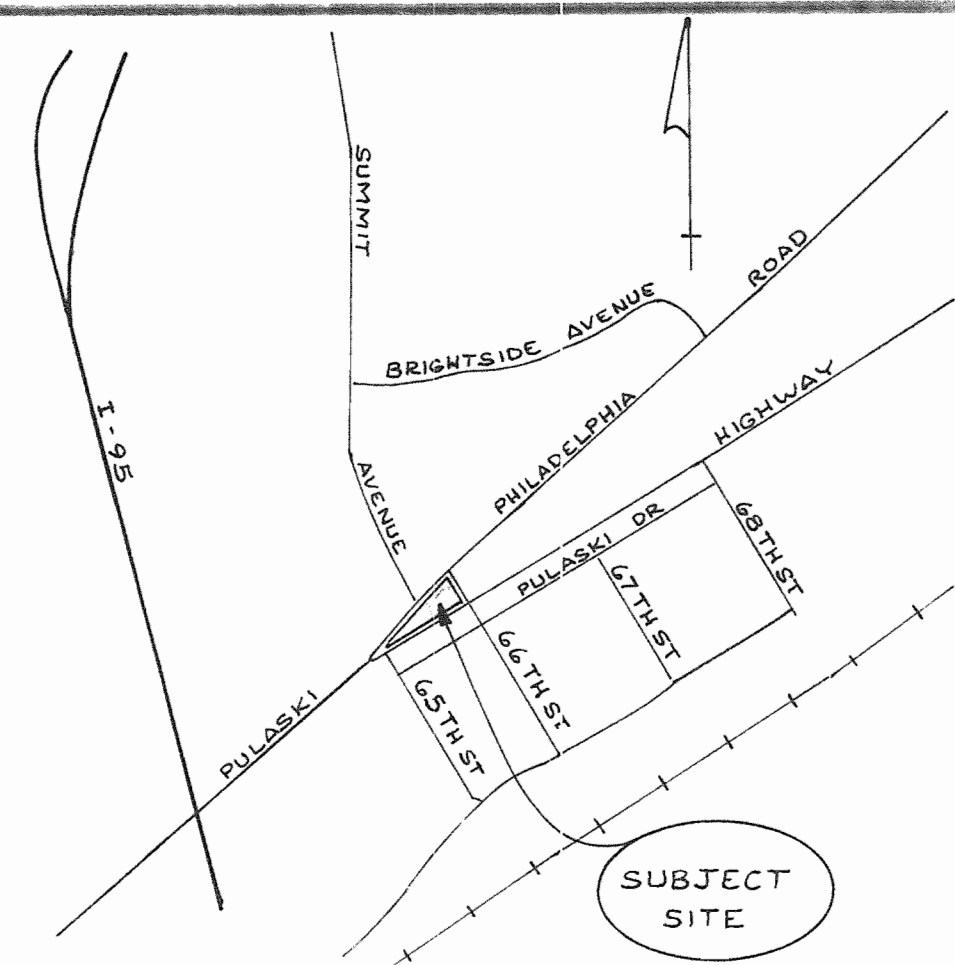


Map created with ArcGIS, Copyright (C) 1992-2005 ESRI Inc.

CBA-08-363-SPHX P.C.S. Ex 5



1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARKS ON THE SUBJECT SITE.
2. THERE ARE NO STREAMS, BODIES OF WATER, OR SPRINGS ON OR ADJACENT TO THE SUBJECT SITE.
3. THERE ARE NO UNDERGROUND STORAGE TANKS ON THE SUBJECT PROPERTY.
4. THE SUBJECT PROPERTY DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
5. THE SUBJECT PROPERTY HAS NO ZONING CASE HISTORY.



NOT TO SCALE

(7404 PULASKI HIGHWAY)

(7400 PULASKI HIGHWAY)

PARKING CALCULATIONS

(7404 PULASKI HIGHWAY)

BUILDING AREA = $12' \times 7' = 84$ SQ. FT.
PARKING REQUIRED = 1 SPACE/1000 Φ
 $1 \times 84 = 1$ SPACE
PARKING PROVIDED = 1 SPACE

(7400 PULASKI HIGHWAY)

PARKING CALCULATIONS ARE NOT APPLICABLE SINCE THIS PROPERTY IS A NON-CONFORMING USE THAT WILL REMAIN IN ITS ORIGINAL CONDITION.

DRC NO. 010208J 15C7

THE SUBJECT PROPERTY RECEIVED A TENTATIVE
APPROVAL FOR A LOT LINE ADJUSTMENT PER
LETTER DATED 1-11-08 SUBJECT TO SUBMISSION
AND APPROVAL OF A DEVELOPMENT PLAN

HARNEK SINGH
CHARANJIT KAUR

9005 GARDENIA ROAD
BALTIMORE, MD. 21236-1764
PHONE : 443 744-3500

Pet Ex #

7404 PULASKI HIGHWAY

ZONING PETITION FOR SPECIAL EXCEPTION

THIS PLAT WILL ACCOMPANY A ZONING PETITION
FOR SPECIAL EXCEPTION TO USE THE SUBJECT
PROPERTY FOR USED MOTOR VEHICLE OUTDOOR SALES.

~~7404 & 7400 PULASKI HIGHWAY~~

~~ZONING PETITION FOR SPECIAL HEARING~~

~~THIS PLAT WILL ACCOMPANY A ZONING PETITION
FOR SPECIAL HEARING FOR APPROVAL OF A
MODIFIED PARKING PLAN.~~

REVISONS		
NO.	DATE	DESCRIPTION
1	1-7-08	FILING CONFERENCE COMMENTS
2	2-4-08	REV. PER ZONING COMMENTS
3	4-11-08	REV. PER PLANNING COMMENTS
4	7-11-08	REV. PER PLANNING COMMENTS

**SPELLMAN, LARSON
&
ASSOCIATES, INC.**

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE SUITE E-3 TOWSON, MD 21204
PHONE: 410-823-3535

PLAT TO ACCOMPANY
ZONING PETITION

SINGH - KAUR PROPERTY

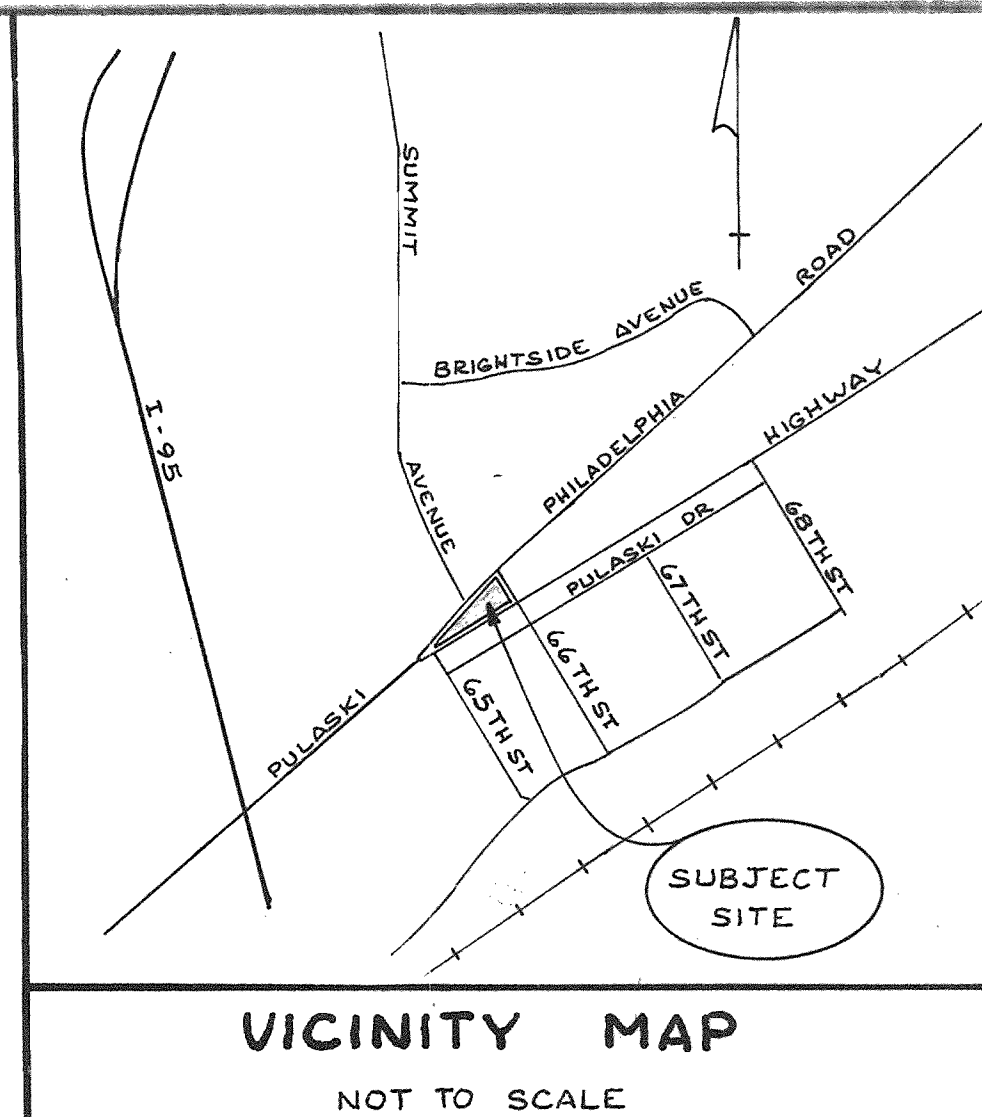
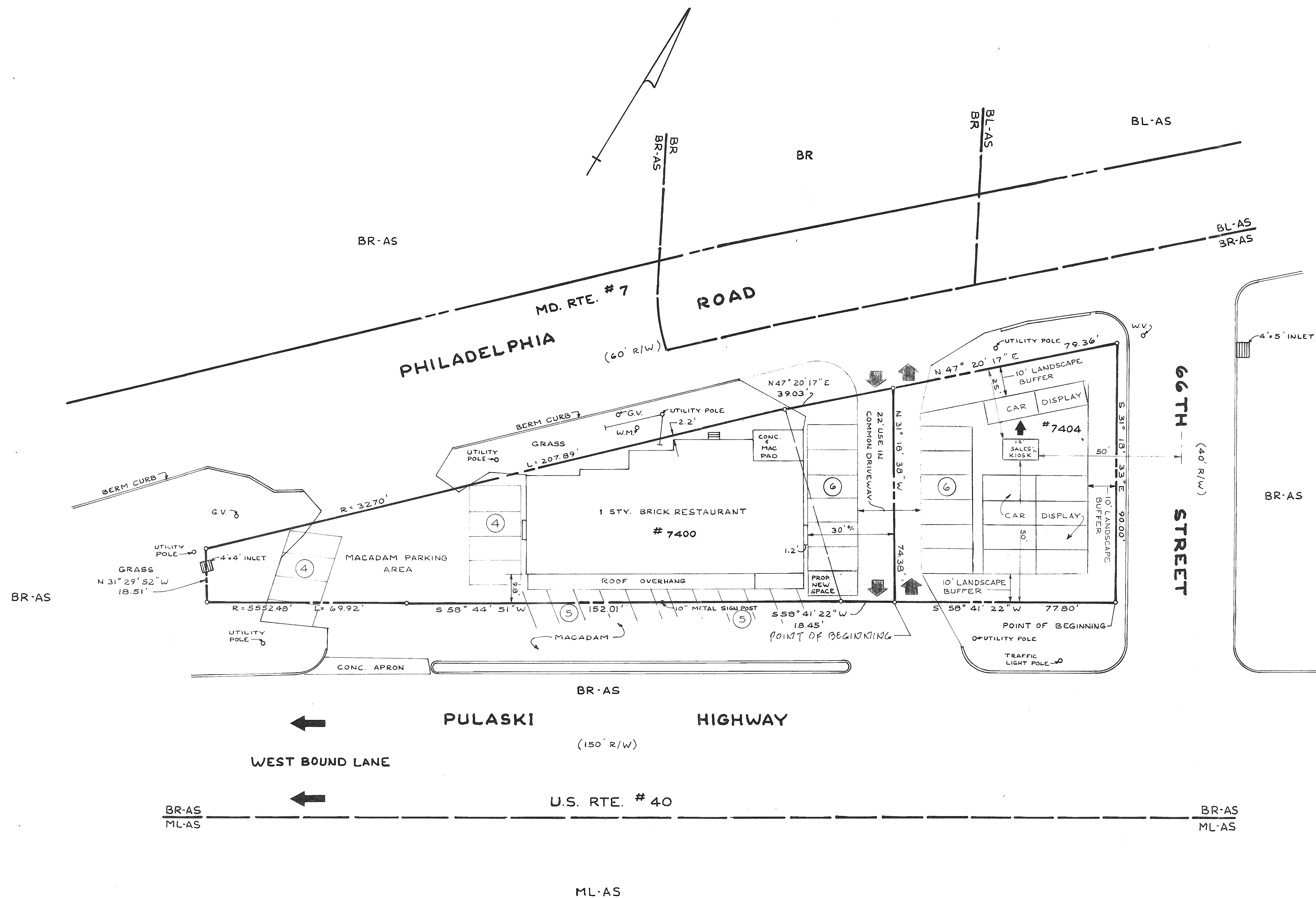
7400 & 7404 PULASKI HIGHWAY

15TH ELECTION DISTRICT BALTIMORE COUNTY

SCALE: 1" = 20'	DES. BY:	SHT. ____ OF ____
DATE: 11-26-07	DRN. BY: TC	

GENERAL NOTES

1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARKS ON THE SUBJECT SITE.
2. THERE ARE NO STREAMS, BODIES OF WATER, OR SPRINGS ON OR ADJACENT TO THE SUBJECT SITE.
3. THERE ARE NO UNDERGROUND STORAGE TANKS ON THE SUBJECT PROPERTY.
4. THE SUBJECT PROPERTY DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
5. THE SUBJECT PROPERTY HAS NO ZONING CASE HISTORY.



SITE DATA		
(7404 PULASKI HIGHWAY)		
SITE AREA	0.15 AC +/-	
EXIST. ZONING	BR-AS	
COUNCILMANIC DISTRICT	7TH	
ZONING MAP	096B1	
DEED REFERENCE	19175/582	
TAX MAP/GRID/PARCEL	96/3/523	
TAX ACCOUNT NO.	2300004366	
(7400 PULASKI HIGHWAY)		
SITE AREA	0.26 AC +/-	
EXIST. ZONING	BR-AS	
COUNCILMANIC DISTRICT	7TH	
ZONING MAP	096B1	
DEED REFERENCE	19175/582	
TAX MAP/GRID/PARCEL	96/3/363	
TAX ACCOUNT NO.	1518002210	

PARKING CALCULATIONS

(7404 PULASKI HIGHWAY)

BUILDING AREA = 12' x 7' = 84 SQ. FT.
PARKING REQUIRED = 1 SPACE/1000 SF
1 x 084 = 1 SPACE
PARKING PROVIDED = 1 SPACE

(7400 PULASKI HIGHWAY)

PARKING CALCULATIONS ARE NOT APPLICABLE SINCE THIS PROPERTY IS A NON-CONFORMING USE THAT WILL REMAIN IN ITS ORIGINAL CONDITION.

DRC REQUEST

DRC NO. 010208J15C7

THE SUBJECT PROPERTY RECEIVED A TENTATIVE APPROVAL FOR A LOT LINE ADJUSTMENT PER LETTER DATED 1-11-08 SUBJECT TO SUBMISSION AND APPROVAL OF A DEVELOPMENT PLAN.

OWNER INFORMATION

HARNEK SINGH
CHARANJIT KAUR
9005 GARDENIA ROAD
BALTIMORE, MD. 21236-1764
PHONE: 443-744-3500

PETITIONER'S
EXHIBIT NO. 1

7404 PULASKI HIGHWAY ZONING PETITION FOR SPECIAL EXCEPTION

THIS PLAT WILL ACCOMPANY A ZONING PETITION FOR SPECIAL EXCEPTION TO USE THE SUBJECT PROPERTY FOR USED MOTOR VEHICLE OUTDOOR SALES.

~~7404 & 7400 PULASKI HIGHWAY ZONING PETITION FOR SPECIAL HEARING~~

~~THIS PLAT WILL ACCOMPANY A ZONING PETITION FOR SPECIAL HEARING FOR APPROVAL OF A MODIFIED PARKING PLAN.~~

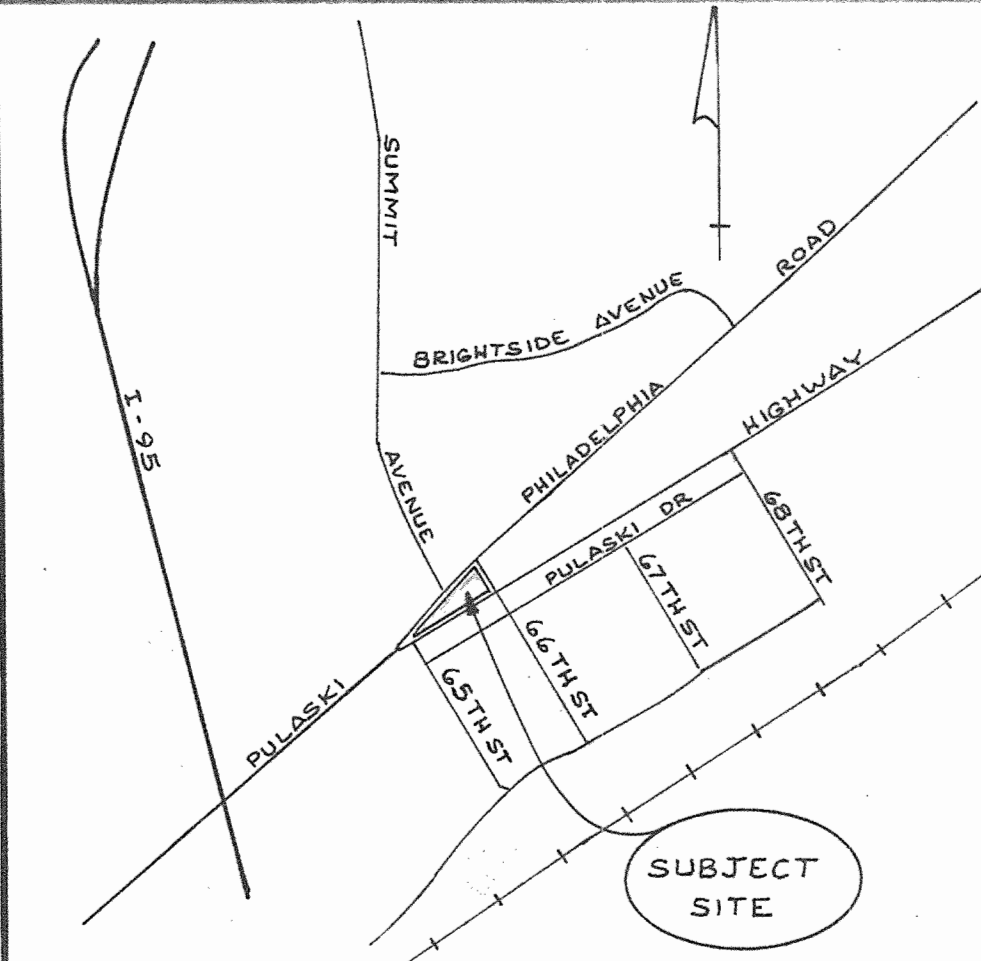
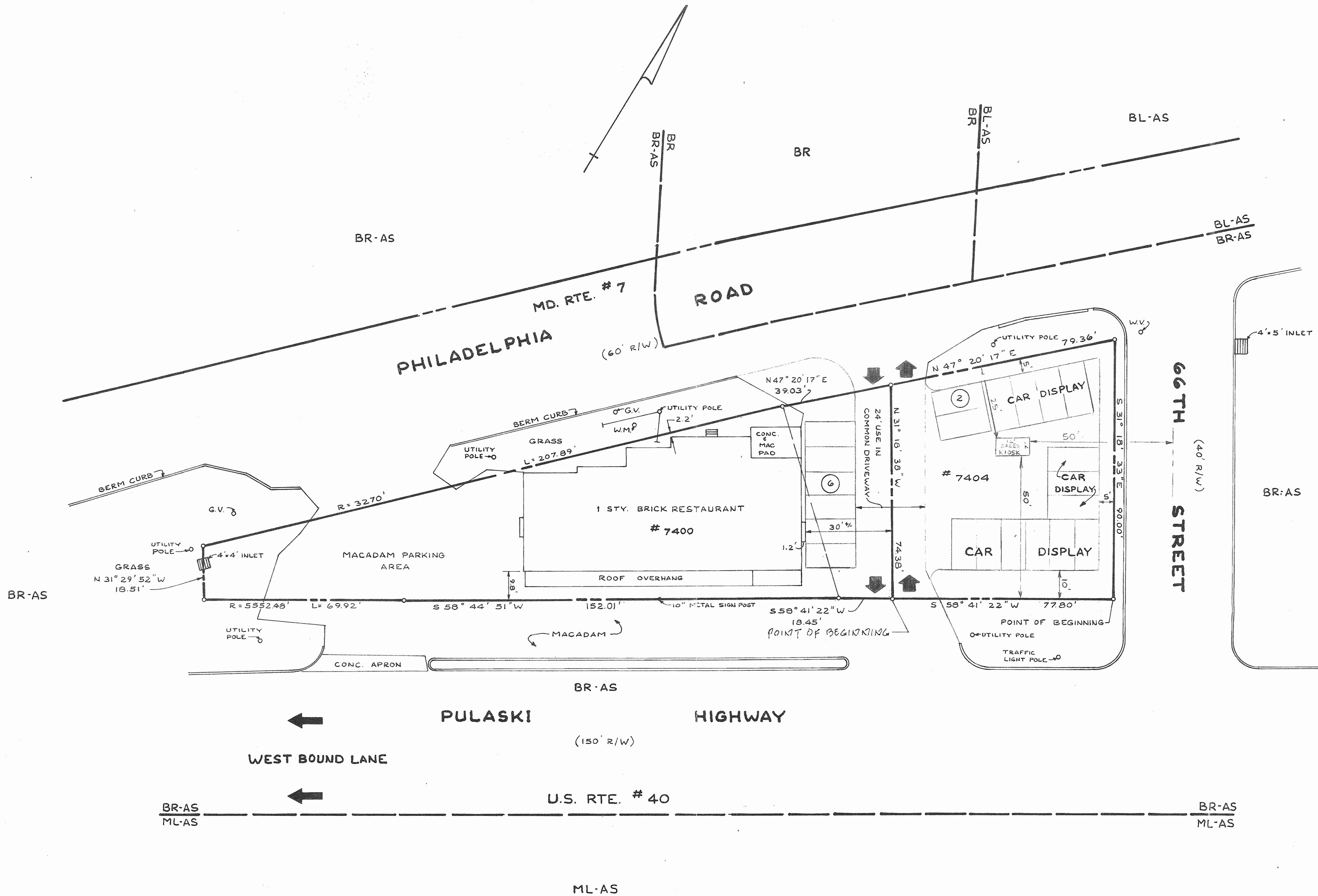
(WITHDRAWN)

REVISIONS		
NO.	DATE	DESCRIPTION
1	1-7-08	FILED CONFERENCE COMMENTS
2	2-4-08	REV. PER ZONING COMMENTS
3	4-11-08	REV. PER PLANNING COMMENTS
4	8-14-08	REV. PER PLANNING COMMENTS

SPELLMAN, LARSON & ASSOCIATES, INC.	
CIVIL ENGINEERS AND LAND SURVEYORS	
222 BOSLEY AVENUE SUITE B-3 TOWSON, MD 21204	
PHONE: 410-823-3535	
PLAT TO ACCOMPANY ZONING PETITION	
SINGH - KAUR PROPERTY	
7400 & 7404 PULASKI HIGHWAY	
15TH ELECTION DISTRICT	BALTIMORE COUNTY
SCALE: 1" = 20'	DES. BY: [Signature]
DATE: 11-26-07	DRN. BY: TC
SHT. 1	OF 1

GENERAL NOTES

1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARKS ON THE SUBJECT SITE.
2. THERE ARE NO STREAMS, BODIES OF WATER, OR SPRINGS ON OR ADJACENT TO THE SUBJECT SITE.
3. THERE ARE NO UNDERGROUND STORAGE TANKS ON THE SUBJECT PROPERTY.
4. THE SUBJECT PROPERTY DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
5. THE SUBJECT PROPERTY HAS NO ZONING CASE HISTORY.



VICINITY MAP

NOT TO SCALE

SITE DATA

(7404 PULASKI HIGHWAY)		
SITE AREA	0.15 AC +/-	
EXIST. ZONING	BR-AS	
COUNCILMANIC DISTRICT	7TH	
ZONING MAP	096 B1	
DEED REFERENCE	19175/582	
TAX MAP/GRID/PARCEL	96/3/523	
TAX ACCOUNT NO.	2300004366	
(7400 PULASKI HIGHWAY)		
SITE AREA	0.26 AC +/-	
EXIST. ZONING	BR-AS	
COUNCILMANIC DISTRICT	7TH	
ZONING MAP	096 B1	
DEED REFERENCE	19175/582	
TAX MAP/GRID/PARCEL	96/3/363	
TAX ACCOUNT NO.	1518002210	

PARKING CALCULATIONS

(7404 PULASKI HIGHWAY)

BUILDING AREA = 12' x 7' = 84 SQ. FT.
PARKING REQUIRED = 1 SPACE/1000 $\pm$
1 x 84 = 1 SPACE
PARKING PROVIDED = 2 SPACES

(7400 PULASKI HIGHWAY)

PARKING CALCULATIONS ARE NOT APPLICABLE SINCE THIS PROPERTY IS A NON-CONFORMING USE THAT WILL BE REMEDIED BY THE APPROVED FOR A MODIFIED PARKING PLAN.

DRC REQUEST

DRC NO. 010208J15C7

THE SUBJECT PROPERTY RECEIVED A TENTATIVE APPROVAL FOR A LOT LINE ADJUSTMENT PER LETTER DATED 1-11-08 SUBJECT TO SUBMISSION AND APPROVAL OF A DEVELOPMENT PLAN.

OWNER INFORMATION

HARNEK SINGH
CHARANJIT KAUR
9005 GARDENIA ROAD
BALTIMORE, MD. 21236-1764
PHONE: 443 744-3500

7404 PULASKI HIGHWAY
ZONING PETITION FOR SPECIAL EXCEPTION

THIS PLAT WILL ACCOMPANY A ZONING PETITION FOR SPECIAL EXCEPTION TO USE THE SUBJECT PROPERTY FOR USED MOTOR VEHICLE OUTDOOR SALES.

7404 & 7400 PULASKI HIGHWAY
ZONING PETITION FOR SPECIAL HEARING

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PLAT TO ACCOMPANY
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7400 & 7404 PULASKI HIGHWAY

15TH ELECTION DISTRICT BALTIMORE COUNTY

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