

8/13/09

IN THE MATTER OF
THE APPLICATION OF
RONALD HLOPAK AND
SANDRA HLOPAK -LEGAL OWNERS
FOR A PETITION FOR SPECIAL
EXCEPTION ON THE PROPERTY
LOCATED E/S NORTH POINT BLVD.,
100' S OF WISE AVENUE
(4412 NORTH POINT BOULEVARD)

15th ELECTION DISTRICT
7th COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 09-049-X

* * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal that was filed by the Office of People's Counsel, from an order of the Zoning Commissioner dated October 14, 2008 granting (with restrictions) Petitioner's Special Exception request seeking approval 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.). Petitioners, Ronald and Sandra Hlopak were represented by Michael P. Tanczyn, Esquire. Protestant, People's Counsel for Baltimore County, was represented by Peter Max Zimmerman, Esquire. A de novo public hearing was held by the Board on May 14, 2009. At the conclusion of the hearing, Counsel agreed to submit Post-Hearing Memorandum in lieu of closing arguments. A public deliberation was held on July 16, 2009.

Background

The property known as 4412 North Point Boulevard is located in the 15th Election District and 7th Councilmanic District of Baltimore County and is a rectangular shaped parcel situated on the east side of North Point Boulevard, just south of Wise Avenue, in the Dundalk/Sparrows Point area. The property is approximately 156 feet wide and one-hundred

twenty-three feet deep and contains a gross area of 1.45 acres, zoned B.R. – A.S. (Business Roadside – Automotive Service). The property is improved with a two-story structure with supporting parking spaces located on the southwest corner of the lot. *The structure is presently utilized as a tattoo parlor. The structure occupies approximately 4,000 square feet and is not part of the Petition for Special Exception to operate a used car facility on the remaining portion of the property.* The structure has its own curb cut for ingress and egress to North Point Boulevard. The area in which the property is located on North Point Boulevard is on a divided highway with numerous used car facilities and other commercial establishments, located around the property.

Mr. Zimmerman, in a letter dated May 13, 2009 to the Board prior to the hearing, stated:

“The status of the tattoo parlor is a problem. It is not allowed by right or special exception in the B.R. Zone. It is thus either nonconforming or noncompliant. Either way, it is our office’s position that the presence of the tattoo parlor precludes the special exception for the used car facility unless the tattoo parlor use terminates.”

Mr. Zimmerman’s letter also quotes correspondence by the Planning Director dated September 30, 2008 that states:

“...the legal status of the tattoo parlor may need confirmation by special hearing and the limits of the boat/used car storage appear to overlap the associated uses of the tattoo parlor.”

The letter from the Planning Director referred to in Mr. Zimmerman’s letter and which was introduced as People’s Counsel Exhibit No. 2, further states however:

“Nonetheless, if the petitioner is able to demonstrate a hardship or practical difficulty, resulting in the Zoning Commissioner granting the zoning relief, the Office of Planning has no objection.”

Evidence and Testimony

Petitioner's first witness was Joseph L. Larson, a technical consultant with Spellman, Larson & Associates, Inc. and has been a civil engineer for 35 years. He was accepted as expert witness in land use and site plans. Mr. Larson identified the title of the Hlopak's property, admitted as Petitioner's Exhibit No. 1A-C by the Deeds by which the property was obtained by Isabella Hlopak on May 4, 1938 and subsequently conveyed to her son Ronald and to Ronald's wife, Sandra in 1993. Mr. Larson confirmed the zoning on the property as B.R. – A.S. (Petitioner's Exhibit No. 2). He introduced a red-lined site plan (Petitioner's Exhibit No. 6) which addressed some of the concerns mentioned by People's Counsel in his pre-hearing letter dated May 13, 2009 to the Board, after discussion between Petitioner's Counsel and Mr. Zimmerman. Specifically, the red-line comments on the site plan set forth the limit of used car display in accordance with the B.C.Z.R. and set forth the plan for ingress and egress to the repair, detailing, and warranty bays located to the rear of the property. The red-line comments also identify the existing and proposed six (6) foot chain link fence to separate and delineate the requested use for a used car facility from the other use on the petitioner's property, namely the tattoo parlor. *He testified that this other use (tattoo parlor) was not included as part of the Special Exception request. The property which is the subject of the Petition does not include and specifically excluded the remainder of the site which had been utilized from 1998 as a*

tattoo parlor on a continuous basis. He testified the used car lot and tattoo parlor would share the building located on the property.

Petitioner, Sandra Hlopak testified that the property had been utilized as a used car facility on a continuous basis by her husband, up until when the property was occupied by FIVE STAR MARINE SERVICE as a boat sales and service facility (See Petitioner's Exhibit No.5). She testified that the boat facility has since been removed and the property restored (See Petitioner's Exhibit No. 9A and 9B). Mrs. Hlopak testified that the tattoo parlor started sometime between 1997 and 1998 but she did not know the exact date. She said she never received anything from Baltimore County pertaining to the tattoo parlor. She testified that two (2) tenants have used the building as a tattoo parlor. She said the boat facility came into being sometime between the 1990s and 2008.

Mr. Zimmerman presented no testimony but introduced Protestant's Exhibit No. 1, an aerial photograph showing the property when used as a boat facility; Exhibit No. 2, the letter from the Planning Director, dated September 30, 2008, which was referred to in the Background section of this Opinion; and Exhibit No. 3 an aerial photograph showing the zoning of the property.

Mr. Zimmerman, in his Post-Hearing Memorandum states:

"While this case presents itself as a petition for special exception for the sale of used motor vehicles in a Business Roadside (B.R.) Zone, our focus and concern has been the "tattoo parlor operation which is an unconfirmed nonconforming use," as described on petitioners' August 11, 2008 site plan."

Mr. Zimmerman also refers to his letter of May 13, 2009 to the Board concerning this same issue. He also stated that he had communicated with the Petitioner's Counsel, Mr. Tanczyn, that there should be some revision to the site plan to reflect the applicable vehicle display setbacks under B.C.Z.R. Section 238. Mr. Larson did in fact "red-line" the site plan to address this concern.

Mr. Zimmerman's Memorandum further states:

"Based on the evidence presented at the hearing and the revised site plan, we are willing to modify the position taken in our correspondence. We are still not convinced that petitioners have proved the existence of the nonconforming use. We are satisfied, however, that the used car use does not materially affect the tattoo parlor use and that a use division line can be drawn to differentiate the uses. The proposal to fence the boundary of the used car area reinforces the reasonableness of this division. Based on the evidence, the proposed used car sales use, if considered on its own, appears to satisfy the special exception standards of BCZR § 502.1, subject to the vehicle display setbacks shown on the revised plan. . ."

Mr. Zimmerman concludes in his Memorandum:

"Specifically, we would not object to the Board granting the special exception for the used car sales, subject to the following related condition: that the tattoo parlor use shall terminate by July 1, 2010 unless the petitioners file a petition for special hearing to determine the existence of a nonconforming use and obtain a final order of its approval from the Zoning Commissioner, or, if necessary, the County Board of Appeals prior to July 1, 2010."

Decision

After reviewing the testimony and exhibits presented, there is no question that a used car facility / boat facility and a tattoo parlor have co-existed on the same property for an extended period of time without controversy. Testimony presented confirms this. The request submitted by the Petitioners is for a Special Exception seeking approval to use the subject property for the sale of used motor vehicle pursuant to Section 236.4 of the B.C.Z.R. The Special Exception was approved by the Zoning Commissioner with the following restrictions:

- 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) All signage will be in accordance with the B.C.Z.R. and there shall be no flashing lights, banners, balloons, or other similar advertising on the site;
- 3) There will be no mechanical repairs or automotive body or fender repair work performed on site; and
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

The Zoning Commissioner's Order was appealed by Baltimore County's Office of People's Counsel, not on the basis of the Special Exception seeking approval to use the property for the sale of used motor vehicle, but the fact that, because there exists on the property a tattoo parlor, which they feel is a nonconforming use for that zone, before any approval can be given for the Petitioner to use the property as a used car facility, they should first file a Petition seeking approval of a nonconforming use for the tattoo parlor. Office of People's Counsel have conceded that they would have no problem with the Board approving

the Petition for Special Exception for the used car facility; however, People's Counsel would like to put on the approval the condition that the Petitioner file within a year a Petition for Special Exception to allow the tattoo parlor as a non-conforming use. As stated in his expert witness testimony: *Mr. Larson testified that this other use (tattoo parlor) was not included as part of the Special Exception request. The property which is the subject of the Petition does not include and specifically excluded the remainder of the site which had been utilized from 1998 as a tattoo parlor on a continuous basis.*

The Board feels that the issue of the tattoo parlor is not before them. The Board decided that it is possible to use a property in two separate ways without impact on each other; and People's Counsel, in his Post Hearing Memorandum, on page 2, concurs with that decision when he states that:

“...a use division line can be drawn to differentiate the uses. The proposal to fence the boundary of the used car area reinforces the reasonableness of this division.”

After thorough review of the facts, testimony, and law, the Board unanimously agreed to grant the Petitioners' request for Special Exception, seeking approval for the use of the subject property for the sale of used motor vehicles subject to one condition that any mechanical repairs be limited to routine detailing, car work to put the cars in sale condition, when purchased wholesale, and to allow warranty work to be done as is required to be provided by used car dealers who sell automobiles.

ORDER

THEREFORE, IT IS, this 13th day of August, 2009, by the
Board of Appeals of Baltimore County,

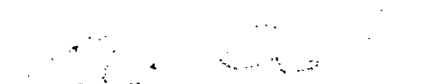
ORDERED that the Petitioners' request for Special Exception in Case No.: 09-049-A,
seeking approval of the subject property for the sale of used motor vehicles, pursuant to Section
236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), is hereby **GRANTED** subject to
the following condition:

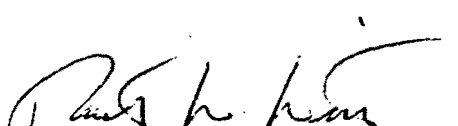
1) That any mechanical repairs be limited to routine detailing, car work to put the cars
in sale condition, when purchased wholesale, and to allow warranty work to be done as is
required to be provided by used car dealers who sell automobiles.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Wendell H. Grier, Panel Chairman


Andrew M. Belt


Robert W. Witt



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

August 13, 2009

Michael P. Tanczyn, Esquire
606 Baltimore Avenue, Ste 106
Towson, MD 21204

Peter Zimmerman, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: *In the Matter of: Ronald and Sandra Hlopak – Legal Owner/Petitioners*
Case No.: 09-049-X

Dear Counsel:

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

Duplicate Cover letter

c: Ronald and Sandra Hlopak
Joseph Larson
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, III, Director/Planning
John E. Beverungen, County Attorney

6/10/09

RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE COUNTY
4412 North Point Blvd; E/S North Point *
Blvd, 100' S of Wise Avenue * BOARD OF APPEALS
15th Election & 7th Councilmanic Districts *
Legal Owner(s): Ronald Hlopak * FOR
Petitioner(s) *
BALTIMORE COUNTY *
09-049-X *

RECEIVED

JUN 10 2009

* * * * *

BALTIMORE COUNTY
BOARD OF APPEALS

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY
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<u>Trip Associates v. Mayor & City Council</u> 392 Md. 563 (2006), excerpt	App. 36

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE COUNTY
4412 North Point Blvd; E/S North Point		
Blvd, 100' S of Wise Avenue	*	BOARD OF APPEALS
15 th Election & 7 th Councilmanic Districts		
Legal Owner(s): Ronald Hlopak	*	FOR
Petitioner(s)	*	BALTIMORE COUNTY
	*	09-049-X

* * * * *

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

Evolution of the case; People's Counsel's position

While this case presents itself as a petition for special exception for the sale of used motor vehicles in a Business Roadside (B.R.) Zone, our focus and concern has been the "tattoo parlor operation which is an unconfirmed nonconforming use," as described on petitioners' August 11, 2008 site plan. The planning director's correspondence dated September 30, 2008 reinforced our concern. Planning Director Keller wrote,

"The Office of Planning has some concerns about the legitimacy of the existing and proposed uses. Furthermore, the legal status of the tattoo parlor may need confirmation by special hearing and the limits of the boat/used car storage appear to overlap the associated uses of the tattoo parlor."

The Zoning Commissioner conducted a hearing and issued his opinion on October 14, 2009, approving the special exception, subject to conditions pertinent to signage (prohibiting flashing lights, banners, balloons, or other similar advertising) and operations (prohibiting mechanical repairs or automotive body or fender repair work).

So far as the opinion showed, neither the petitioners nor the Commissioner paid any attention to the problem of the tattoo parlor. Bill 29-98 is attached. It addressed tattoo parlor and other uses. It permits tattoo parlors in Manufacturing-Heavy (M.H.) Zones, subject to several conditions. Under Section 7, it was effective on March 20, 1998. It is codified in attached BCZR §§ 4B-101 and 4B-102, reflecting an amendment by Bill 46-06 which does not affect the present case. The main thing is that the law does not permit a tattoo parlor in any of the business zones.

In light of the unresolved issues relating to the tattoo parlor, an appeal appeared to be a necessity. There was, first of all, the question of whether the tattoo parlor was a legal nonconforming use under BCZR §§ 101 and 104.1. We could find no documentation to support the existence of the use prior to the enactment and effectiveness of Bill 29-98. The petitioners' representative, then Joseph Larson, did not produce any documentation or other evidence. Furthermore, if the use were legitimately a nonconforming use, there was a question as to whether the proposed change of use to a used car facility would affect the tattoo parlor use.

To put this in perspective, if the tattoo parlor is not a legal nonconforming use, but rather is noncompliant, there comes into play the legislative prohibition of Code § 32-4-114(c), which states,

“(c) County prohibited from processing if violations exist. The county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county.”

On the other hand, if the tattoo parlor is otherwise legally nonconforming, the question arises as to whether, under BCZR § 104.1, the used car sales operation would be a “change” which terminates the nonconforming use.

We submitted a letter on May 13, 2009 to express our concerns. We also communicated with petitioners' recently entered counsel, Michael Tanczyn that there should be some revision to the site plan to reflect the applicable vehicle display setbacks under BCZR § 238. Mr. Larson did in fact “redline” the site plan to address this concern.

On May 14, 2009, the CBA conducted a full and fair hearing. Based on the evidence presented at the hearing and the revised site plan, we are willing to modify the position taken in our correspondence. We are still not convinced that petitioners have proved the existence of the nonconforming use. We are satisfied, however, that the used car use does not materially affect the tattoo parlor use and that a use division line can be drawn to differentiate the uses. The proposal to fence the boundary of the used car area reinforces the reasonableness of this division. Based on the evidence, the proposed used car sales use, if considered on its own, appears to satisfy the special exception standards

of BCZR § 502.1, subject to the vehicle display setbacks shown on the revised plan and the conditions enumerated by the Zoning Commissioner with respect to signage (prohibiting flashing lights, banners, balloons) and operations (prohibiting mechanical repairs and body and fender repair work)..

The issue remains as to the legitimacy of the tattoo parlor use and the applicability of Code § 32-4-114(c). To repeat, for reasons to be explained, we are still not satisfied that petitioner has proved the existence of a nonconforming use. Nevertheless, we would not object to the Board providing petitioners one more opportunity to file a petition for special hearing under BCZR § 500.7 to try to obtain such approval.

Specifically, we would not object to the Board granting the special exception for the used car sales, subject to the following related condition: that the tattoo parlor use shall terminate by July 1, 2010 unless the petitioners file a petition for special hearing to determine the existence of a nonconforming use and obtain a final order of its approval from the Zoning Commissioner, or, if necessary, the County Board of Appeals prior to July 1, 2010.

Nonconforming use law; its purpose; burden of proof

Definition

The CBA has had a number of cases on nonconforming uses. Nevertheless, it is worthwhile to repeat the basics. BCZR § 101 defines a nonconforming use as,

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

Here, before enactment of Bill 29-98, the zoning regulations did not specifically address tattoo parlors. Therefore, in the absence of enumeration as permitted uses, it was unclear whether they were legal in any zone. Kowalski v. Lamar 25 Md. App. 493 (1975); People’s Counsel v. Surina 400 Md. 662 (2007). It appears, however, that Bill 29-98, Section 7, as a matter of fairness, treated tattoo parlors in operation before its effective date as nonconforming uses. The effective date, once again, was March 20, 1998.

Legislative Purpose

Nonconforming uses are problematic. Therefore, the law is structured with the goal in mind that they should disappear over time. Correlatively, as explained below, the burden is on a property owner to prove the existence of a nonconforming use.

Judge Rita Davidson delivered an excellent outline of nonconforming use law in Prince George's County v. Gardner 293 Md. 259, 267-68 (1982). She wrote,

"This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:

"Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use."

Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. *The Arundel Corp. v. Board of Zoning Appeals of Howard County*, 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); *Stieff v. Collins*, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); *Colati v. Jirout*, 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); *Beyer v. Mayor of Baltimore*, 182 Md. 444, 446, 34 A.2d 765, 766 (1943); *See Kastendike v. Baltimore Ass'n for Retarded Children, Inc.*, 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).

Here, BCZR § 104.1 implements this approach,

BCZR 104.1: "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

Burden of proof

During the hearing, there was broached the key issue of burden of proof. Consistent with the legislative purpose to restrict nonconforming uses, the burden of proof is on the property owner to prove at the outset that the use in question exists legally prior to the enactment of a zoning law to which it does not conform.

Long ago, the Court of Appeals held that the property owner "... had the burden of proving that the nonconforming use which he asserted existed [on the effective date of the law]." Lapidus v. Mayor & City Council 222 Md. 260, 262 (1960). In affirming denial of the four-family housing use, the Court found the supportive evidence "scanty." Citing Lapidus, the Court wrote in Vogl v. City of Baltimore 228 Md. 283, 288 (1962)

"There can be little doubt that each claimant must assume the burden of establishing the existence of a non-conforming use at the time of the passage of the prohibiting zoning ordinance."

Subsequently, the Court considered a skeet, trap shooting, and rifle practice facility in Parkton, Baltimore County. Chief Judge Hammond delivered the opinion in Calhoun v. County Board of Appeals 262 Md. 265 (1971). Finding the evidence insufficient to support the alleged existence of a nonconforming use, he underlined,

"The burden of proving a non-conforming use is on the claimant of the use. According to Metzenbaum, Law of Zoning, 2d Ed.) 1233, the proposition is both axiomatic and court-sustained." 262 Md. at 267.

Judge Hammond emphasized,

"An important way to meet the burden is to show that the existence of the use was known to the neighbors at the critical time." Ibid.

Remarkably, the Court of Special Appeals (CSA) cited Calhoun and Lapidus to the same effect in County Commissioners of Carroll County v. Uhler 78 Md. App. 140,

145 (1989). Again, in affirming the denial of nonconforming use certification for a junkyard, Judge Robert Bell (now Chief Judge of the Court of Appeals) wrote,

“The party asserting the existence of a nonconforming use has the burden of proving it.”

More recently, Chief Judge Bell, on the Court of Appeals, summarized the law in Trip Associates v. Mayor & City Council 392 Md. 563, 573 (2006). He wrote,

“A valid and lawful nonconforming use is established if a property owner can demonstrate that before, and at the time of, the adoption of a new zoning ordinance, the property was being used in a then-lawful manner for a use that, by later legislation, became non-permitted. *See, e.g., Chayt v. Board of Zoning Appeals of Baltimore City*, 177 Md. 426, 434, 9 A.2d 747, 750 (1939) (concluding that, to be a nonconforming use, an existing business use must have been known in the neighborhood as being employed for that given purpose); *Lapidus v. Mayor and City Council of Baltimore*, 222 Md. 260, 262, 159 A.2d 640, 641 (1960) (noting that an applicant claiming that a nonconforming use had been established before the effective date of the city zoning ordinance needed to prove that the use asserted existed prior to the date of the ordinance); *Vogl v. City of Baltimore*, 228 Md. 283, 288, 179 A.2d 693, 696 (1962) (holding that the party claiming the existence of a nonconforming use has the burden of establishing the existence of the use at the time of the passage of the prohibiting zoning ordinance). *See also Lone v. Montgomery County*, 85 Md.App. 477, 496, 584 A.2d 142, 151 (1991).”

*To assist the CBA, we attach copies of Lapidus, Vogl, Calhoun Uhler, and Trip (excerpt), with check marks next to the relevant discussions of burden of proof.

Petitioners have not met the affirmative burden to prove the existence of a legal nonconforming use

The “unconfirmed” nonconforming tattoo parlor use was apparent to Joseph Larson, the Petitioners’ consultant. He identified it on the August 11, 2008 site plan. Planning Director Keller expressed concern about it in his September 30, 2008 correspondence and recommended that a petition for special hearing be filed to examine the issue.

Despite this background, petitioners chose to move forward before the Zoning Commissioner without regard to this problem. The Commissioner just ignored it. Our office’s appeal followed. While the CBA hearing is *de novo*, the evidence produced by petitioners was scanty at best.

Petitioners produced for the first time at the May 14, 2009 hearing a printed "Permits & Development Management – Livability System" form describing "Case No. 99-7993," involving a "Tattoo Parlor Not Operating Under Proper Zones" with a "Date rev" date of "11/29/99," a "Date Inspec" of "12/30/99, and a "Close" date of "12/30/99." Pet. Exh. 7. As shown by a fax reference and testified by Joseph Larson, one of Mr. Larson's staff obtained the form in November, 2008. So far as Mr. Larson knew, there were no additional documents available. Petitioners did not produce any witness from the department to explain the meaning of the form or what happened. Petitioners did not produce any other witness with knowledge of what occurred in 1999.

With all due respect, the form is not affirmative evidence or proof of a legal nonconforming use. A matter could be closed for many reasons. A complainant may have backed off or withdrawn a complaint. The inspector or his supervisor may have been indifferent to the case or considered it low priority. Perhaps the tattoo parlor was closed at the time, or in the process of closing down. There was probably at one time a file with a citation and additional documentation, which perhaps might have shed further light on the subject. Petitioners did not produce any correspondence or documentation from their own records. Furthermore, while Mrs. Hlopak stated that she and her husband had lost many records for various reasons over the years, she did not offer any further information on the 1999 violation case.

The bottom line, in any event, is that the PDM closure of a violation file is not affirmative evidence of the existence of a nonconforming use. Unfortunately, petitioners did not in 1999 take advantage of the special hearing procedure under BCZR § 500.7 to obtain a legal determination. Perhaps it didn't occur to them that it was important. Perhaps they did not have the proof.

Remarkably, while petitioners produced form letters and petitions from various citizens to support their proposal, nobody from the area appeared to give specific testimony about the history of the tattoo parlor.

Mrs. Hlopak was the only witness who provided any history. She had no records. She could not remember the exact date when the tattoo parlor opened. She said she thought it opened in 1997 or 1998, but she was obviously guessing. If it opened after

March 20, 1998, it clearly would not qualify as a nonconforming use. On this testimony alone, there cannot be a determination that a nonconforming use existed. It is not enough to say that the use might have existed before the passage of the law, but that it might not have begun until after passage of the law, here up to nine months after. The proof has to be convincing and not speculative.

Furthermore, while Mrs. Hlopak indicated that the tattoo parlor has continued in existence under several operators, she was unable to document its existence. Again, the evidence is scanty.

Petitioners had ample time to assemble whatever evidence might be available to prove the existence of the nonconforming use. The evidence adduced is unconvincing.

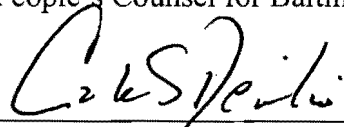
Proposed disposition and conclusion

While petitioners had plenty of time to prepare for proof of the nonconforming use, the evidence at the hearing also reflected that petitioners had difficult problems in dealing with the property. Notably, there was the cleanup of the previous tenant's boatyard, which was left in serious disrepair. We also are cognizant that petitioners did not hire an attorney until shortly before the CBA hearing. Ordinarily, this would not excuse the lack of proof, especially since the nonconforming use issue loomed from the inception of the case.

Nevertheless, as we have no real objection to the used car special exception, we would not object if the CBA decided to show mercy and provide the petitioners another opportunity, if possible, to assemble and demonstrate the proof of a nonconforming use in a special hearing proceeding before the Zoning Commissioner.

There should, however, be a reasonable deadline to file and obtain such approval. Otherwise, petitioners would have no incentive to take action. For this reason, as stated at the beginning of the memorandum we would not object to a condition that the tattoo parlor use terminate by July 1, 2010, a little over a year from now, unless by that time petitioners file a petition for special hearing and also succeed in securing a final order from the Zoning Commissioner or, if necessary, the County Board of Appeals approving the tattoo parlor as a nonconforming use.


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


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 10th day of June, 2009, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed Michael Tanczyn, Esquire, 606 Baltimore Avenue, Ste. 106, Towson, MD 21204, Attorney for Petitioner(s).


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

ARTICLE 4B

ADULT ENTERTAINMENT BUSINESSES, MASSAGE ESTABLISHMENTS AND TATTOO OR BODY PIERCING ESTABLISHMENTS

§ 4B-101. Definitions.

massage establishments and
tattoo or body-piercing
establishments.

§ 4B-102. Location of adult
entertainment businesses,

[Bill No. 29-1998¹]

§ 4B-101. Definitions.

A. As used in this article, the following terms have the meanings indicated:

ADULT ENTERTAINMENT BUSINESS — An adult store or an adult movie theater.

ADULT MOVIE THEATER —

- (1) A business establishment open to the public, or to members, that maintains display devices for viewing on the premises files, videos or other viewable material, if a substantial portion of the stock or trade is characterized by an emphasis on matters depicting, describing or relating to sexual activities.
- (2) "Adult movie theater" does not include a motion-picture theater which has seating for at least 50 persons per screen.

ADULT STORE —

- (1) A business establishment open to the public, or to members, that offers for sale or rental any printed, recorded, photographed, filmed or otherwise viewable material, or any sexually oriented paraphernalia or aid, if a substantial portion of the stock or trade is characterized by an emphasis on matters depicting, describing or relating to sexual activities.
- (2) The term does not include a motion-picture theater which has seating for at least 50 persons per screen.

1. Editor's Note: Section 4 of Bill No. 29-1998 provided that "... except as provided in Section 3 of this Act, this Act does not apply to an adult entertainment business lawfully established prior to the effective date of this Act. An adult entertainment business may continue to operate until one year from the effective date of this Act. On or after that date, all adult entertainment businesses shall conform to the requirements of this Act."

Section 6 of Bill No. 29-1998, as amended by Bill No. 46-2006, stated as follows: This Act does not apply to a massage establishment or tattoo or body-piercing establishment in existence in a business or commercial zone for at least 12 months prior to the effective date of this Act except if a massage establishment or tattoo or body-piercing establishment relocates, other than a tattoo establishment that relocates within a BM-CCC District that is less than 500 feet removed from its earlier location. This section is not intended to waive any other provision or requirement of state or county law in effect prior to the effective date of this Act.

Except for Section 3 of the Act, which amended the Baltimore County Code, Bill No. 29-1998 took effect 3-20-1998.

DISPLAY DEVICE — An electronically or mechanically controlled still or motion-picture machine, film projector, videotape player or other image-producing device that may be activated directly or indirectly by viewers or at the request of viewers for which a fee is charged.

MASSAGE — Any method of treating the external parts of the human body, for compensation, by touching, rubbing, stroking, kneading, tapping or vibrating with the hand, arm, foot or other body part provided by a massage technician.

MASSAGE ESTABLISHMENT —

- (1) Any establishment where a massage technician administers a massage to another person for compensation.
- (2) "Massage establishment" does not include a hospital, nursing home, medical clinic or other establishment where massages are administered by individuals identified under § 24-442 of the Baltimore County Code, 1988 Edition, as revised.

MASSAGE TECHNICIAN —

- (1) An individual who administers a massage to another individual for compensation.
- (2) "Massage technician" does not include a medical practitioner as defined by Section 101 of these regulations. [Bill No. 9-1999]

SEXUAL ACTIVITIES — Includes nudity or partial nudity, as defined in Section 101, and sexual conduct, sexual excitement or sadomasochistic abuse, as defined in Article 27, § 416A, of the Annotated Code of Maryland.

SKIN-PENETRATING BODY ADORNMENT PROCEDURE —

- (1) A process that involves piercing or entering the skin or the mucous membrane of an individual for the purpose of inserting pigmented patterns, jewelry or other forms of body decoration.
- (2) "Skin-penetrating body adornment procedure" includes tattooing and body-piercing.
- (3) "Skin-penetrating body adornment procedure" does not include piercing of an ear using a properly disinfected ear piercing gun and single use studs or clutches.

SUBSTANTIAL PORTION —

- (1) At least 20% of the stock in the establishment or on display consists of matters or houses devices depicting, describing or relating to sexual activities; or
- (2) At least 20% of the usable floor area is used for the display or storage of matters or devices depicting, describing or relating to sexual activities.

TATTOO OR BODY PIERCING ESTABLISHMENT — Any establishment where a skin-penetrating adornment procedure is performed.

§ 4B-102. Location of adult entertainment businesses, massage establishments and tattoo or body-piercing establishments. ²

- A. Subject to the requirements of this article, an adult entertainment business, a massage establishment or a tattoo or body-piercing establishment is permitted in an M.H. Zone.
- B. Proximity to other uses.
- (1) An adult entertainment business, a massage establishment, or a tattoo or body-piercing establishment may not be located within 1,000 feet of:
 - (a) A house of worship.
 - (b) A public or private school.
 - (c) A public park or public recreational facility.
 - (d) A public library.
 - (e) A child-care home, child care institution or family day care home licensed or registered under Maryland law.
 - (f) A lot zoned residentially or devoted primarily to residential use.
 - (2) An adult entertainment business, a massage establishment or a tattoo or body-piercing establishment may not be located within 2,500 feet of another adult entertainment business, a massage establishment or a tattoo or body-piercing establishment.
- C. In determining compliance with the siting requirements in Subsection B of this section, measurements shall be made in a straight line, without regard to intervening objects, from the closest point of the structure containing the adult entertainment business, massage establishment or tattoo or body-piercing establishment to the nearest property line of the lot or use listed in Subsection B of this section.

2. Editor's Note: For licensing requirements, see Article 21, Title 2 of the Baltimore County Code, 2003, as revised.

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1998, Legislative Day No. 4

Bill No. 29-98

Councilmembers Moxley, Kamenetz, McIntire, Riley, Gardina, Bartenfelder, and DePazzo
By Request of County Executive

By the County Council, February 17, 1998

A BILL
ENTITLED

AN ACT concerning

Adult Entertainment Businesses, Massage Establishments,
and ~~Tattoo or Body Piercing Establishments~~

For the purpose of amending the Zoning Regulations in order to regulate the location of adult
entertainment businesses, massage establishments, and ~~tattoo or body piercing~~
~~establishments~~; requiring adult entertainment businesses to obtain a license; requiring
adult entertainment businesses to have a certain interior arrangement; establishing terms
and renewal of the license and grounds for suspension or revocation of the license;
prohibiting the transfer of a license; requiring the Director to conduct certain inspections;
establishing certain criminal and civil penalties; establishing certain appeals; providing
for certain application requirements; stating certain findings; defining certain terms;
providing for the application of this Act; providing for the effective date of this Act; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining INDICATES AMENDMENTS TO BILL.

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generally relating to adult entertainment businesses, massage establishments, and tattoo or body piercing establishments.

BY repealing and reenacting, with amendments,

Section 101, definition of "Striptease Business"
Baltimore County Zoning Regulations, as amended

BY adding

Sections 4B-101 and 4B-102
Article 4B - M.H. Zones
Baltimore County Zoning Regulations, as amended

By adding

Sections 24-470 to 24-483
Article XII, Adult Entertainment Businesses
Title 24. Permits and Licenses and Business Regulation
Baltimore County Code, 1988

WHEREAS, in April of 1997, the Baltimore County Council requested the advice of the Planning Board on the issue of the regulation of adult video and book stores in Baltimore County; and

WHEREAS, the Office of Planning has issued a staff report indicating and the Council believes that there is a demonstrated need for immediate legislative action on this regulatory issue; and

WHEREAS, the Baltimore County Council finds that, in order to protect the health, safety and welfare of the county's citizens, it is necessary to allow suitable locations for certain adult entertainment businesses, massage establishments, and tattoo or body piercing establishments while limiting their adverse secondary effects on the community; and

WHEREAS, the County Council finds that adult entertainment businesses, massage establishments and tattoo or body piercing establishments frequently are used for unlawful sexual activities, may facilitate the transmission of diseases, contribute generally to crime, decrease property values, and adversely impact the quality of life in their surrounding areas; and

WHEREAS, many land use studies have documented the adverse secondary effects of certain adult entertainment businesses, massage establishments, and tattoo or body piercing establishments; and

~~WHEREAS, in order to lessen and control these effects and to limit exposure of these businesses to children, it is necessary to place certain restrictions on the location and arrangement of adult entertainment businesses, massage establishments, and tattoo or body piercing establishments, now therefore~~

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE

2 COUNTY, MARYLAND, that Section 101 - Definitions, the definition of "Striptease Business"
3 of the Baltimore County Zoning Regulations, as amended, be and they are hereby repealed and
4 reenacted to read as follows:

5 Section 101 - Definitions.

6 Striptease Business: A commercial establishment where persons appear in a state of total
7 or partial nudity in person [or on film, slides or videotapes. For the purposes of this definition,
8 the term "film" shall not include motion pictures rated by the Motion Picture Association of
9 America]. Such establishment shall, for example, include, but not be limited to, a restaurant,
10 nightclub, dance club[, peep show] or social hall if such entertainment is provided as an
11 accessory or principal use. A striptease business, including the building or portion thereof that

1 contains or advertises the business, must be located at least 1000 feet from a dwelling, church,
2 park, child care center or school existing on the effective date of this legislation and be arranged
3 so that the interior is not visible from the outside. A striptease business may not operate between
4 2:00 A.M. and 6:00 A.M.

5 For the purpose of this definition, an establishment which is duly licensed by the Board
6 of Liquor Commissioners for Baltimore County and which features striptease dancing, nudity, or
7 partial nudity as an accessory use shall not be considered a striptease establishment, except that it
8 shall satisfy the setback limitation established hereinabove for a striptease business.

9 The 1,000 foot distance requirement shall be considered an area requirement and, in
10 addition to the authority and limitations set forth in Section 307.1 of these regulations, a variance
11 may be granted if strict compliance with said setback would result in severe economic
12 circumstances which are NOT the result of actions by the Petitioner.

13 SECTION 2. AND BE IT FURTHER ENACTED, that Article 4B, Sections 4B-101
14 through 4B-102, inclusive, be and they are hereby added to the Baltimore County Zoning
15 regulations, as amended, to read as follows:

16 ARTICLE 4B - M. H. ZONES

17 SECTION 4B-101. DEFINITIONS

18 (A) AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE
19 MEANINGS INDICATED.

20 (B) ADULT ENTERTAINMENT BUSINESS MEANS AN ADULT STORE OR AN
21 ADULT MOVIE THEATER.

1 (C) (1) ADULT STORE MEANS A BUSINESS ESTABLISHMENT OPEN TO
2 THE PUBLIC, OR TO MEMBERS, THAT OFFERS FOR SALE OR RENTAL ANY
3 PRINTED, RECORDED, PHOTOGRAPHED, FILMED OR OTHERWISE VIEWABLE
4 MATERIAL, OR ANY SEXUALLY ORIENTED PARAPHERNALIA OR AID, IF A
5 SUBSTANTIAL PORTION OF THE STOCK OR TRADE IS CHARACTERIZED BY AN
6 EMPHASIS ON MATTERS DEPICTING, DESCRIBING OR RELATING TO SEXUAL
7 ACTIVITIES.

8 (2) THE TERM DOES NOT INCLUDE A MOTION PICTURE THEATER
9 WHICH HAS SEATING FOR AT LEAST 50 PERSONS PER SCREEN.

10 (D) (1) ADULT MOVIE THEATER MEANS A BUSINESS ESTABLISHMENT
11 OPEN TO THE PUBLIC, OR TO MEMBERS, THAT MAINTAINS DISPLAY DEVICES FOR
12 VIEWING ON THE PREMISES FILES, VIDEOS OR OTHER VIEWABLE MATERIAL.

13 (2) ADULT MOVIE THEATER DOES NOT INCLUDE A MOTION
14 PICTURE THEATER WHICH HAS SEATING FOR AT LEAST 50 PERSONS PER SCREEN.

15 (E) DISPLAY DEVICE MEANS AN ELECTRONICALLY OR MECHANICALLY
16 CONTROLLED STILL OR MOTION PICTURE MACHINE, FILM PROJECTOR,
17 VIDEOTAPE PLAYER, OR OTHER IMAGE-PRODUCING DEVICE THAT MAY BE
18 ACTIVATED DIRECTLY OR INDIRECTLY BY VIEWERS OR AT THE REQUEST OF
19 VIEWERS FOR WHICH A FEE IS CHARGED.

20 (F) MESSAGE MEANS ANY METHOD OF TREATING THE EXTERNAL
21 PARTS OF THE HUMAN BODY, FOR COMPENSATION, BY TOUCHING, RUBBING,

1 STROKING, KNEADING, TAPPING OR VIBRATING WITH THE HAND, ARM, FOOT OR
2 OTHER BODY PART PROVIDED BY A MASSAGE TECHNICIAN.

3 (G) (1) MASSAGE ESTABLISHMENT MEANS ANY ESTABLISHMENT
4 WHERE A MASSAGE TECHNICIAN ADMINISTERS A MASSAGE TO ANOTHER
5 PERSON FOR COMPENSATION.

6 (2) MASSAGE ESTABLISHMENT DOES NOT INCLUDE A HOSPITAL,
7 NURSING HOME, MEDICAL CLINIC OR OTHER ESTABLISHMENT WHERE
8 MESSAGES ARE ADMINISTERED BY INDIVIDUALS IDENTIFIED UNDER §24-442 OF
9 THE BALTIMORE COUNTY CODE.

10 (H) (1) MASSAGE TECHNICIAN MEANS AN INDIVIDUAL WHO
11 ADMINISTERS A MASSAGE TO ANOTHER INDIVIDUAL FOR COMPENSATION.

12 (2) MASSAGE TECHNICIAN DOES NOT INCLUDE:

13 (I) A CERTIFIED MASSAGE THERAPIST AS DEFINED BY
14 §3-5A-01 OF THE HEALTH OCCUPATIONS ARTICLE OF THE ANNOTATED CODE
15 OF MARYLAND; OR

16 (II) A MEDICAL PRACTITIONER AS DEFINED BY §101 OF
17 THESE REGULATIONS.

18 (I) SEXUAL ACTIVITIES INCLUDES NUDITY OR PARTIAL NUDITY, AS
19 DEFINED IN §101, AND SEXUAL CONDUCT, SEXUAL EXCITEMENT OR
20 SADOMASOCHISTIC ABUSE, AS DEFINED IN ARTICLE 27, §416A OF THE
21 ANNOTATED CODE OF MARYLAND.

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1 (J) (1) SKIN PENETRATING BODY ADORNMENT PROCEDURE MEANS

2 A PROCESS THAT INVOLVES PIERCING OR ENTERING THE SKIN OR THE MUCOUS
3 MEMBRANE OF AN INDIVIDUAL FOR THE PURPOSE OF INSERTING PIGMENTED
4 PATTERNS, JEWELRY, OR OTHER FORMS OF BODY DECORATION.

5 (2) SKIN PENETRATING BODY ADORNMENT PROCEDURE

6 INCLUDES TATTOOING AND BODY PIERCING.

7 (3) SKIN PENETRATING BODY ADORNMENT PROCEDURE DOES

8 NOT INCLUDE PIERCING OF AN EAR USING A PROPERLY DISINFECTED EAR
9 PIERCING GUN AND SINGLE USE STUDS OR CLUTCHES.

0 (K) SUBSTANTIAL PORTION MEANS:

1 (1) AT LEAST 20% OF THE STOCK IN THE ESTABLISHMENT OR ON

2 DISPLAY CONSISTS OF MATTERS OR HOUSES DEVICES DEPICTING, DESCRIBING,
3 OR RELATING TO SEXUAL ACTIVITIES; OR

4 (2) AT LEAST 20% OF THE USABLE FLOOR AREA IS USED FOR THE

5 DISPLAY OR STORAGE OF MATTERS OR DEVICES DEPICTING, DESCRIBING, OR
6 RELATING TO SEXUAL ACTIVITIES.

7 (L) TATTOO OR BODY PIERCING ESTABLISHMENT MEANS ANY

8 ESTABLISHMENT WHERE A SKIN PENETRATING ADORNMENT PROCEDURE IS
9 PERFORMED.

0 SECTION 4B-102. LOCATION OF ADULT ENTERTAINMENT BUSINESSES,

1 MASSAGE ESTABLISHMENTS, AND TATTOO OR BODY PIERCING

2 ESTABLISHMENTS.

App. 10

1 (A) SUBJECT TO THE REQUIREMENTS OF THIS ARTICLE, AN ADULT
2 ENTERTAINMENT BUSINESS, A MASSAGE ESTABLISHMENT, OR A TATTOO OR
3 BODY-PIERCING ESTABLISHMENT IS PERMITTED IN A M.H. ZONE.

4 (B) (1) AN ADULT ENTERTAINMENT BUSINESS, A MASSAGE
5 ESTABLISHMENT, OR A TATTOO OR BODY PIERCING ESTABLISHMENT MAY NOT
6 BE LOCATED WITHIN 1,000 FEET OF:

7 (I) A HOUSE OF WORSHIP;

8 (II) A PUBLIC OR PRIVATE SCHOOL;

9 (III) A PUBLIC PARK OR PUBLIC RECREATIONAL FACILITY;

10 (IV) A PUBLIC LIBRARY;

11 (V) A CHILD CARE HOME, CHILD CARE INSTITUTION, OR
12 FAMILY DAY CARE HOME LICENSED OR REGISTERED UNDER MARYLAND LAW;
13 OR

14 (VI) A LOT ZONED RESIDENTIALLY OR DEVOTED PRIMARILY
15 TO RESIDENTIAL USE.

16 (2) AN ADULT ENTERTAINMENT BUSINESS, A MASSAGE
17 ESTABLISHMENT, OR A TATTOO OR BODY PIERCING ESTABLISHMENT MAY NOT
18 BE LOCATED WITHIN 2,500 FEET OF ANOTHER ADULT ENTERTAINMENT
19 BUSINESS, A MASSAGE ESTABLISHMENT, OR A TATTOO OR BODY PIERCING
20 ESTABLISHMENT.

21 (C) IN DETERMINING COMPLIANCE WITH THE SITING REQUIREMENTS IN
22 SUBSECTION (B) OF THIS SECTION, MEASUREMENTS SHALL BE MADE IN A

1 STRAIGHT LINE, WITHOUT REGARD TO INTERVENING OBJECTS, FROM THE
2 CLOSEST POINT OF THE STRUCTURE CONTAINING THE ADULT ENTERTAINMENT
3 BUSINESS, MASSAGE ESTABLISHMENT, OR TATTOO OR BODY PIERCING
4 ESTABLISHMENT TO THE NEAREST PROPERTY LINE OF THE LOT OR USE LISTED
5 IN SUBSECTION (B) OF THIS SECTION.

6 SECTION 3. AND BE IT FURTHER ENACTED, that Sections 24-470 through 24-483,
7 Article XII. Adult Entertainment Business, be added to Title 24. "Permits and Licenses and
8 Business Regulation ," Baltimore County Code, 1988, as amended to read as follows:

9 ~~ARTICLE XII~~ - ADULT ENTERTAINMENT BUSINESSES

0 SECTION 24-470. DEFINITIONS

1 (A) IN THIS ARTICLE, THE FOLLOWING WORDS HAVE THE MEANINGS
2 INDICATED.

3 (B) ADULT ENTERTAINMENT BUSINESS MEANS AN ADULT STORE OR AN
4 ADULT MOVIE THEATER.

5 (C) ADULT STORE MEANS A BUSINESS ESTABLISHMENT OPEN TO THE
6 PUBLIC, OR TO MEMBERS, THAT OFFERS FOR SALE OR RENTAL ANY PRINTED,
7 RECORDED, PHOTOGRAPHED, FILMED OR OTHERWISE VIEWABLE MATERIAL, OR
8 ANY PARAPHERNALIA, IF A SUBSTANTIAL PORTION OF THE STOCK OR TRADE IS
9 CHARACTERIZED BY AN EMPHASIS ON MATTERS DEPICTING, DESCRIBING OR
0 RELATING TO SEXUAL ACTIVITIES.

1 (D) (1) ADULT MOVIE THEATER MEANS A BUSINESS ESTABLISHMENT

2 OPEN TO THE PUBLIC, OR TO MEMBERS, THAT MAINTAINS DISPLAY DEVICES FOR
3 VIEWING ON THE PREMISES FILMS, VIDEOS OR OTHER VIEWABLE MATERIAL.

4 (2) ADULT MOVIE THEATER DOES NOT INCLUDE A MOTION

5 PICTURE THEATER WHICH HAS SEATING FOR AT LEAST 50 PERSONS PER SCREEN.

6 (E) DEPARTMENT MEANS THE DEPARTMENT OF PERMITS AND

7 DEVELOPMENT MANAGEMENT.

8 (F) DIRECTOR MEANS THE DIRECTOR OF PERMITS AND DEVELOPMENT

9 MANAGEMENT OR THE DIRECTOR'S DESIGNEE.

0 (G) DISPLAY DEVICE MEANS AN ELECTRONICALLY OR MECHANICALLY

1 CONTROLLED STILL OR MOTION PICTURE MACHINE, FILM PROJECTOR,

2 VIDEOTAPE PLAYER, OR OTHER IMAGE-PRODUCING DEVICE THAT MAY BE

3 ACTIVATED DIRECTLY OR INDIRECTLY BY VIEWERS OR AT THE REQUEST OF

4 VIEWERS FOR WHICH A FEE IS CHARGED.

5 (H) SEXUAL ACTIVITIES INCLUDES NUDITY OR PARTIAL NUDITY, AS

6 DEFINED IN §101, AND SEXUAL CONDUCT, SEXUAL EXCITEMENT OR

7 SADOMASOCHISTIC ABUSE, AS DEFINED IN ARTICLE 27, §416A OF THE

8 ANNOTATED CODE OF MARYLAND.

9 (I) SUBSTANTIAL PORTION MEANS:

0 (1) AT LEAST 20% OF THE STOCK IN THE ESTABLISHMENT OR ON

1 DISPLAY CONSISTS OF MATTERS OR HOUSES DEVICES DEPICTING, DESCRIBING

2 OR RELATING TO SEXUAL ACTIVITIES; OR

1 (2) AT LEAST 20% OF THE USABLE FLOOR AREA IS USED FOR THE
2 DISPLAY OR STORAGE OF MATTERS OR HOUSES DEVICES DEPICTING,
3 DESCRIBING, OR RELATING TO SEXUAL ACTIVITIES.

4 (J) VIEWING BOOTH MEANS A SPACE OR AREA WITHIN AN ADULT
5 ENTERTAINMENT BUSINESS IN WHICH A DISPLAY DEVICE IS LOCATED FOR
6 PURPOSES OF VIEWING PICTURES, FILMS, VIDEOTAPES, OR OTHER IMAGES.

7 SECTION 25-471. RULES AND REGULATIONS.

8 THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE
9 PROVISIONS OF THIS ARTICLE.

10 SEC. 24-472. LICENSE REQUIRED-- ADULT ENTERTAINMENT BUSINESSES.

11 A PERSON MAY NOT OWN OR OPERATE AN ADULT ENTERTAINMENT
12 BUSINESS WITHOUT A VALID LICENSE ISSUED BY THE DEPARTMENT.

13 SECTION 24-473. INTERIOR ARRANGEMENT OF ADULT ENTERTAINMENT
14 BUSINESSES.

15 (A) PRINTED OR RECORDED MATERIAL FOR RENTAL OR SALE IN AN
16 ADULT ENTERTAINMENT BUSINESS SHALL BE ARRANGED SO THAT EMPLOYEES
17 CAN OBSERVE ALL SUCH MATERIAL.

18 (B) VIEWING BOOTHS MAY NOT BE EQUIPPED WITH CURTAINS OR
19 DOORS THAT ALLOW A BOOTH'S INTERIOR TO BE COMPLETELY SCREENED
20 FROM THE VIEW OF EMPLOYEES.

APP. 14

1 (C) MERCHANDISE OR MATERIAL DEPICTING, DESCRIBING, OR
2 RELATING TO SEXUAL ACTIVITY MAY NOT BE VISIBLE FROM OUTSIDE AN
3 ADULT ENTERTAINMENT BUSINESS.

4 SECTION 24-474.-- APPLICATION, FEE.

5 (A) EACH APPLICATION FOR AN ADULT ENTERTAINMENT BUSINESS
6 LICENSE SHALL BE ON THE FORM PROVIDED BY THE DEPARTMENT AND SHALL
7 CONTAIN:

8 (1) THE NAME AND ADDRESS OF THE APPLICANT;

9 (2) IF THE APPLICANT IS AN INDIVIDUAL, THE APPLICANT'S
10 RESIDENCE ADDRESS FOR THE 3-YEAR PERIOD PRECEDING THE DATE OF
11 APPLICATION;

12 (3) IF THE APPLICANT IS A CORPORATION:

13 (I) THE NAME AND BUSINESS RESIDENCE ADDRESSES OF
14 EACH OFFICER, DIRECTOR, AND STOCKHOLDER;

15 (II) THE NAME AND BUSINESS RESIDENCE ADDRESSES OF
16 EACH OFFICER, DIRECTOR AND STOCKHOLDER OF EACH CORPORATION
17 HOLDING 10% OR MORE OF THE STOCK OF THE APPLICANT CORPORATION;

18 (III) THE RESIDENCE ADDRESS FOR THE THREE-YEAR
19 PERIOD IMMEDIATELY PRECEDING THE DATE OF APPLICATION OF EACH
20 OFFICER, DIRECTOR, AND STOCKHOLDER OF THE APPLICANT;

21 (IV) THE RESIDENCE ADDRESS FOR THE THREE-YEAR
22 PERIOD IMMEDIATELY PRECEDING THE DATE OF APPLICATION OF EACH

1 OFFICER AND DIRECTOR OF EACH CORPORATION HOLDING 10% OR MORE OF
2 THE STOCK OF THE APPLICANT CORPORATION;

3 (V) THE NAME AND BUSINESS AND RESIDENCE ADDRESSES
4 OF THE RESIDENT AGENT OF THE APPLICANT CORPORATION; AND

5 (VI) A COPY OF THE DOCUMENTS ESTABLISHING THE
6 CORPORATION AND THE CORPORATION'S BYLAWS;

7 (4) IF THE APPLICANT IS AN ASSOCIATION OR PARTNERSHIP:

8 (I) THE NAME AND BUSINESS AND RESIDENCE ADDRESS
9 OF EACH PRINCIPAL OR PARTNER;

10 (II) THE RESIDENCE ADDRESS FOR THE THREE-YEAR
11 PERIOD IMMEDIATELY PRECEDING THE DATE OF APPLICATION OF EACH
12 PRINCIPAL OR PARTNER;

13 (5) A COMPLETE SET OF FINGERPRINTS TAKEN BY THE COUNTY
14 POLICE DEPARTMENT OF EACH INDIVIDUAL LISTED IN PARAGRAPHS (2), (3)(I)
15 AND (II), AND (4) OF THIS SUBSECTION;

16 (6) THE LOCATION AND MAILING ADDRESS OF THE PROPOSED
17 ESTABLISHMENT;

18 (7) A DESCRIPTION OF THE FACILITIES AND DISPLAY DEVICES
19 AND VIEWING BOOTHS, IF APPLICABLE, TO BE OFFERED OR AVAILABLE ON THE
20 PREMISES;

21 (8) THE HISTORY OF THE APPLICANT AND EACH OF ITS OFFICERS,
22 DIRECTORS, PRINCIPALS, AND PARTNERS, IF APPLICABLE, IN THE OPERATION OF

2 WHETHER ANY PERMIT OR LICENSE FOR THE APPLICANT AND EACH OF ITS
3 OFFICERS, DIRECTORS, PRINCIPALS, AND PARTNERS, IF APPLICABLE, HAS BEEN
4 DENIED, SUSPENDED, OR REVOKED AND THE REASON FOR THE DENIAL,
5 SUSPENSION, OR REVOCATION; AND

6 (9) OTHER THAN MISDEMEANOR TRAFFIC VIOLATIONS OF THE
7 APPLICANT, THE CRIMINAL RECORD, IF ANY, INCLUDING:

8 (I) IF THE APPLICANT IS A CORPORATION, THE
9 APPLICANT'S OFFICERS, DIRECTORS, AND PRINCIPALS; AND

10 (II) IF THE APPLICANT IS A PARTNERSHIP OR ASSOCIATION,
11 THE APPLICANT'S PRINCIPALS AND PARTNERS; AND

12 (10) A NOTARIZED STATEMENT BY THE APPLICANT, OR IF THE
13 APPLICANT IS A CORPORATION, ASSOCIATION, OR PARTNERSHIP, BY AN
14 AUTHORIZED OFFICER, PRINCIPAL, OR PARTNER OF THE APPLICANT, ATTESTING
15 TO THE TRUTH OF THE INFORMATION PROVIDED IN THE APPLICATION; AND

16 (B) EACH APPLICATION SHALL BE ACCOMPANIED BY:

17 (1) AN APPLICATION FEE OF \$200, WHICH IS NOT REFUNDABLE;

18 AND

19 (2) THE LICENSE FEE REQUIRED BY THIS ARTICLE.

20 (C) THE APPLICATION IS CONTINUING IN NATURE AND THE APPLICANT
21 SHALL FURNISH THE DIRECTOR WITH CHANGES IN INFORMATION AS THEY
22 OCCUR.

APP. 17

1 (D) (1) THE DEPARTMENT SHALL ACT ON THE LICENSE APPLICATION
2 WITHIN 30 DAYS OF RECEIPT OF THE APPLICATION.

3 (2) IF THE APPLICANT COMPLIES WITH THE REQUIREMENTS OF
4 THIS ARTICLE, THE APPLICATION SHALL BE APPROVED.

5 (3) IF THE DEPARTMENT FAILS TO ACT ON THE LICENSE
6 APPLICATION WITHIN 30 DAYS THE APPLICATION SHALL BE DEEMED TO BE
7 DENIED.

8 SECTION 24-475. TERM AND RENEWAL OF LICENSE.

9 (A) UNLESS A LICENSE IS RENEWED FOR A 1-YEAR TERM AS PROVIDED
0 IN THIS SECTION, THE LICENSE EXPIRES ON THE FIRST ANNIVERSARY OF ITS
1 EFFECTIVE DATE.

2 (B) AT LEAST 1 MONTH BEFORE A LICENSE EXPIRES, THE DEPARTMENT
3 SHALL MAIL TO THE LICENSEE, AT THE LAST KNOWN ADDRESS OF THE
4 LICENSEE:

5 (1) A RENEWAL APPLICATION FORM; AND

6 (2) A NOTICE THAT STATES:

7 (I) THE DATE ON WHICH THE CURRENT LICENSE EXPIRES;

8 (II) THE DATE BY WHICH THE DEPARTMENT MUST RECEIVE

9 THE RENEWAL APPLICATION FOR THE RENEWAL TO BE ISSUED AND MAILED
0 BEFORE THE LICENSE EXPIRES; AND

1 (III) THE AMOUNT OF THE RENEWAL FEE.

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1 (C) BEFORE A LICENSE EXPIRES, THE LICENSEE MAY RENEW IT FOR AN
2 ADDITIONAL 1-YEAR TERM, IF THE LICENSEE:

3 (1) IS OTHERWISE ENTITLED TO BE LICENSED;

4 (2) PAYS TO THE DEPARTMENT A RENEWAL FEE; AND

5 (3) SUBMITS TO THE DEPARTMENT:

6 (I) A RENEWAL APPLICATION ON THE FORM THAT THE
7 DEPARTMENT REQUIRES; AND

8 (II) SATISFACTORY EVIDENCE OF COMPLIANCE WITH THE
9 REQUIREMENTS OF THIS ARTICLE.

10 (D) THE ANNUAL FEE FOR AN ADULT ENTERTAINMENT BUSINESS
11 LICENSE IS \$450.00.

12 SECTION 24-476. GROUNDS FOR SUSPENSION, DENIAL, NON-RENEWAL, OR
13 REVOCATION OF LICENSE.

14 (A) THE DIRECTOR MAY DENY, SUSPEND, OR REVOKE A LICENSE, OR
15 DENY THE RENEWAL OF ANY LICENSE UNDER THIS ARTICLE IF THE DIRECTOR
16 FINDS THAT THE APPLICANT, OR IF THE APPLICANT IS A CORPORATION OR
17 PARTNERSHIP, ANY OFFICER, DIRECTOR, PRINCIPAL, PARTNER, OR
18 STOCKHOLDER OF THE CORPORATION, OR OF ANY CORPORATION,
19 ASSOCIATION, OR PARTNERSHIP HAVING AN INTEREST OF 10% OR MORE IN THE
20 APPLICANT:

21 (1) VIOLATED ANY PROVISION OF THIS ARTICLE;

1 (2) FALSIFIED ANY PART OF THE APPLICATION ON WHICH
2 LICENSE WAS GRANTED UNDER THIS ARTICLE;

3 (3) FAILED TO NOTIFY THE DIRECTOR WITHIN 14 DAYS OF ANY
4 CHANGE IN THE INFORMATION PROVIDED IN THE APPLICATION FOR THE
5 LICENSE;

6 (4) REFUSED A RIGHT OF ENTRY OR INSPECTION TO A PERSON
7 AUTHORIZED UNDER THIS ARTICLE; OR

8 (5) HAS BEEN CONVICTED, PLACED ON PROBATION BEFORE
9 VERDICT, OR HELD LIABLE FOR ANY:

10 (I) VIOLATION OF THIS ARTICLE; OR

11 (II) ACT INVOLVING MORAL TURPITUDE, INCLUDING ANY
12 VIOLATION OF FEDERAL, STATE OR LOCAL LAW.

13 SECTION 24-477. TRANSFER OF LICENSE; CHANGE OF ESTABLISHMENT
14 LOCATION.

15 (A) A LICENSE ISSUED UNDER THIS ARTICLE IS NON-TRANSFERRABLE.

16 (B) THE LOCATION OF AN ADULT ENTERTAINMENT BUSINESS MAY NOT
17 BE CHANGED WITHOUT THE REAPPLICATION AND APPROVAL OF A LICENSE
18 UNDER THIS ARTICLE.

19 SECTION 24-478. INSPECTIONS.

20 (A) THE DIRECTOR SHALL PERIODICALLY INSPECT THE PREMISES OF
21 EVERY ADULT ENTERTAINMENT BUSINESS TO ENSURE COMPLIANCE WITH THIS
22 ARTICLE.

1 (B) THE DIRECTOR, THE CHIEF OF POLICE OR THEIR AUTHORIZED
2 DESIGNEES, ON EXHIBITING PROPER CREDENTIALS ON REQUEST, MAY ENTER
3 ANY ADULT ENTERTAINMENT BUSINESS WITHOUT THE CONSENT OF THE
4 OWNER OR OCCUPANT AT ANY TIME DURING BUSINESS OR OPERATING HOURS
5 AND AT SUCH OTHER TIMES AS MAY BE NECESSARY IN ANY SITUATION THAT
6 MAY POSE AN IMMEDIATE THREAT TO LIFE, PROPERTY, OR PUBLIC SAFETY, FOR
7 THE PURPOSE OF PERFORMING THEIR DUTIES UNDER THIS ARTICLE OR
8 ENFORCING ITS PROVISIONS.

9 (2) IF THE DIRECTOR, THE CHIEF OF POLICE OR THEIR DESIGNEES
10 ARE DENIED ENTRY TO ANY ADULT ENTERTAINMENT BUSINESS AT ANY
11 REASONABLE TIME, THE DIRECTOR SHALL IMMEDIATELY SUSPEND THE LICENSE
12 OF THE ADULT ENTERTAINMENT BUSINESS.

13 SECTION 24-479. CRIMINAL PENALTIES.

14 A PERSON WHO VIOLATES ANY PROVISION OF THIS ARTICLE IS GUILTY OF
15 A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
16 \$1,000.00 OR IMPRISONMENT NOT EXCEEDING SIX MONTHS OR BOTH.

17 SECTION 24-480. CIVIL PENALTIES.

18 (A) THE DIRECTOR MAY ENFORCE THE PROVISIONS OF THIS ARTICLE
19 THROUGH INJUNCTIVE PROCEEDINGS, ACTION FOR SPECIFIC PERFORMANCE, OR
20 ANY OTHER APPROPRIATE LEGAL OR EQUITABLE PROCEEDING.

21 (B) A LICENSEE WHO VIOLATES ANY PROVISION OF THIS ARTICLE
22 SHALL BE SUBJECT TO A CIVIL FINE OF \$500 PER DAY FOR EACH DAY THAT THE

1 LICENSEE OPERATES IN VIOLATION OF AN ORDER SUSPENDING OR REVOKING
2 ITS LICENSE.

3 SECTION 24-481. REMEDIES CUMULATIVE.

4 THE REMEDIES AVAILABLE TO THE COUNTY AND THE DIRECTOR UNDER
5 THIS ARTICLE ARE CUMULATIVE AND NOT EXCLUSIVE.

6 SECTION 24-482. APPEAL.

7 (A) A PERSON AGGRIEVED BY A DECISION OF THE DIRECTOR MAY
8 APPEAL THE DECISION TO THE COUNTY BOARD OF APPEALS WITHIN 30 DAYS OF
9 RECEIPT OF THE DECISION.

10 (B) THE COUNTY BOARD OF APPEALS SHALL ISSUE A DECISION WITHIN
11 30 DAYS OF RECEIPT OF THE APPEAL.

12 SEC. 24-483.-- FEES.

13 THE COUNTY ADMINISTRATIVE OFFICER SHALL HAVE AUTHORITY TO
14 CHANGE THE AMOUNT OF THE FEES REQUIRED BY THIS ARTICLE.

15 SECTION 4. AND BE IT FURTHER ENACTED, that, except as provided in Section 3
16 of this Act, this Act does not apply to an adult entertainment business lawfully established prior
17 to the effective date of this act. An adult entertainment business may continue to operate until
18 one year from the effective date of this Act. On or after that date, all adult entertainment
19 businesses shall conform to the requirements of this Act.

20 SECTION 5. AND BE IT FURTHER ENACTED, that Section 3 of this Act shall take
21 effect on April 15, 1998.

1 SECTION 6. AND BE IT FURTHER ENACTED, that this Act does not apply to a
2 massage establishment or tattoo or body piercing establishment lawfully established prior to the
3 effective date of this Act except if a massage establishment or tattoo or body piercing
4 establishment relocates.

5 SECTION 7. AND BE IT FURTHER ENACTED, that, except as provided in Section 5
6 of this Act, this Act, having been passed by an affirmative vote of five members of the County
7 Council shall take effect on March 20, 1998.

B02998.

App. 23

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C

Court of Appeals of Maryland.
 Samuel LAPIDUS

v.
 MAYOR AND CITY COUNCIL OF BAL-
 TIMORE.
 No. 178.

April 13, 1960.

Proceeding to review order of Board of Municipal and Zoning Appeals which denied application of property owner to continue housing four families in property contrary to present zoning law on ground that a nonconforming use was established prior to the original date of the city zoning ordinance. From order of the Baltimore City Court, Reuben Oppenheimer, J., affirming the decision of the Board, property owner appealed. The Court of Appeals, Prescott, J., held that the evidence failed to show the existence of the nonconforming use, and that there was substantial evidence to sustain the Board's action.

Affirmed.

West Headnotes

[1] Zoning and Planning 414 ⇐323

414 Zoning and Planning
 414VI Nonconforming Uses
 414k323 k. Existence of Use in General.
 Most Cited Cases

In proceeding on application before Board of Municipal and Zoning Appeals to continue housing of four families in property contrary to present zoning of area, evidence failed to show that a nonconforming use was established prior to original date of city zoning ordinance, and was sufficient to support action of Board in denying application.

[2] Zoning and Planning 414 ⇐323

414 Zoning and Planning
 414VI Nonconforming Uses
 414k323 k. Existence of Use in General.

Most Cited Cases
 In proceeding on application before Board of Municipal and Zoning Appeals to continue housing four families in property contrary to present zoning of area on theory that a nonconforming use was established before original date of city zoning ordinance, applicant had the burden of proving that the nonconforming use which he asserted existed prior to original date of ordinance.

*260 **640 Eugene Hettelman, Baltimore, for appellant.

John A. Dewicki, Asst. City Solicitor, Baltimore (Harrison L. Winter, City Solicitor, and Ambrose T. Hartman, Deputy City Solicitor, Baltimore, on the brief), for appellee.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

*261 PRESCOTT, Judge.

When the Baltimore City Court affirmed a decision of the Board of Municipal and Zoning Appeals (Board), which denied the appellant's application to continue the housing of four families in property known as 227 S. Sharp Street in Baltimore City, the appellant appealed.

The question involved is a narrow one, and not difficult of solution. It is simply whether the action of the Board in denying the application was arbitrary and capricious, and the answer depends solely upon whether the property was utilized to house four families on March 30, 1931 (the original date of the Baltimore City Zoning Ordinance); because admittedly **641 the housing of four families in this property is a violation of the present zoning law unless a nonconforming use in 1931 was established by the petitioner.

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He purchased the property in 1936. His son testified at the hearing before the Board that his father had owned the property continuously since its purchase, and there were four apartments upstairs ever since the date of purchase in 1936. The only other evidence offered by the petitioner was the testimony of one Willie Wilson, who stated that he lived within a block of the property for thirty years; that he was familiar with the property in 1928 and he knew, by talking to the people, that four families lived in the property at that time. However, he admitted that he was never in the building (until just before the hearing), and he made no attempt to describe its occupancy specifically as of 1931. Nothing further was offered by the petitioner as to the density of occupancy between 1928 and 1936.

At the hearing before the Board, there was a letter from the Zoning Enforcement Officer that stated, *inter alia*, that an application had been filed with 'this bureau' in 1952, signed illegibly, which stated the property was used for two families and a vacant store. Also before the Board was the Police Survey of 1931, which the appellant concedes was proper to be considered by it. According to this Survey, the property in question consisted of two and not four dwelling units on the crucial date.

[1] The Board, in its resolution that denied the application, referred*262 to the part of the letter from the Zoning Enforcement Officer which we have mentioned above as a 'Records of the Building Engineer's Office,'^{FN1} and the appellant strongly objects to this reference. He contends that no such evidence from the Building Engineer's Office was presented at the hearing, nor was the letter ever introduced at the hearing before the Board. For the purposes of this decision, we shall assume, without deciding, that the letter was not properly before the Board. Even with its exclusion, the evidence before the Board was ample to support its action in denying the application, as is ably pointed out by Judge Oppenheimer.

FN1. The letter from the Zoning Enforcement Officer was, in reality, simply a sum-

mary of the record of the Bureau of Building Inspection.

[2] In the presentation of his case before the Board, the appellant had the burden of proving that the nonconforming use which he asserted existed on March 30, 1931. 2 Rathkoff, the Law of Zoning and Planning, Ch. 61, Section 2, and cases there cited. Cf. *Easter v. City of Baltimore*, 195 Md. 395, 400, 73 A.2d 491; *City of Baltimore v. Weinberg*, 204 Md. 257, 103 A.2d 567. The evidence offered by the petitioner attempting to establish the nonconforming use as of March 30, 1931, was so scanty that possibly the Board would have been warranted in denying the application on the ground that the petitioner had failed to meet the burden of proof.

However, in addition to what we have said above, there was in evidence before the Board the Police Survey of 1931, which concededly it was proper for the Board to consider. In *Lipsitz v. City of Baltimore*, 219 Md. 605, 606, 150 A.2d 259, we sustained the action of the Board in denying an application for a continuance of a claimed nonconforming use of premises to house five families upon the strength of the Police Survey of 1931, which contradicted evidence that was much stronger than that offered in the case at bar. See also, *Aaron v. City of Baltimore*, 207 Md. 401, 114 A.2d 639. We think there was substantial evidence to sustain the resolution of the Board.

*263 Finding no error in the order appealed from, it will be affirmed with costs.

Order affirmed, with costs.

Md. 1960
Lapidus v. Mayor and City Council of Baltimore
 222 Md. 260, 159 A.2d 640

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C

Court of Appeals of Maryland.
 Irvin A. VOGL
 v.
 CITY OF BALTIMORE.
 No. 226.

April 10, 1962.

Proceeding on application of property owner to extend existing nonconforming use. The Baltimore City Court, J., Gilbert Prendergast, J., affirmed decision of Board of Municipal and Zoning Appeals denying application, and the property owner appealed. The Court of Appeals, Prescott, J., held that evidence supported finding of Board of Municipal and Zoning Appeals that nonconforming use of two adjoining garages for printing shop storage had been abandoned.

Order affirmed.

West Headnotes

[1] Zoning and Planning 414 ⇨ 336.1

414 Zoning and Planning
 414VI Nonconforming Uses
 414k336 Discontinuance or Abandonment
 414k336.1 k. In General. Most Cited Cases
 (Formerly 414k336)
 Nonconforming uses may be abandoned.

[2] Zoning and Planning 414 ⇨ 323

414 Zoning and Planning
 414VI Nonconforming Uses
 414k323 k. Existence of Use in General.
 Most Cited Cases
 Party claiming existence of nonconforming use must assume burden of establishing existence of nonconforming use at time of passage of prohibiting zoning ordinance.

[3] Zoning and Planning 414 ⇨ 705

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(C) Scope of Review
 414X(C)4 Questions of Fact
 414k705 k. Particular Questions. Most Cited Cases
 Whether nonconforming use exists or has been abandoned are questions of fact to be decided by zoning board.

[4] Zoning and Planning 414 ⇨ 336.1

414 Zoning and Planning
 414VI Nonconforming Uses
 414k336 Discontinuance or Abandonment
 414k336.1 k. In General. Most Cited Cases
 (Formerly 414k336)
 Abandonment of nonconforming use depends on concurrence of intention to abandon and some overt act, or failure to act, which carries implication that owner neither claims nor retains any interest in subject matter of abandonment.

[5] Zoning and Planning 414 ⇨ 336.1

414 Zoning and Planning
 414VI Nonconforming Uses
 414k336 Discontinuance or Abandonment
 414k336.1 k. In General. Most Cited Cases
 (Formerly 414k336)
 Evidence supported finding of Board of Municipal and Zoning Appeals that nonconforming use of two adjoining garages for printing shop storage had been abandoned.
 *284 **694 A. Risley Ensor, Baltimore, for appellant.

John A. Dewicki, Asst. City Sol. (Francis B. Burch, City Sol., and James B. Murphy, Asst. City Sol., Baltimore, on the brief), for appellee.

APP 216

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Before HENDERSON, HAMMOND, PRESCOTT,
HORNEY and SYBERT, JJ.

PRESCOTT, Judge.

In April, 1961, appellant applied to the Building Inspector Engineer of Baltimore City for permission to extend his existing 36 by 23 foot non-conforming use printing shop to include an adjoining 18 foot unit, all, originally, being part of a chain garage structure consisting of eight nine foot garages. After denial of the application, an appeal was taken to the Board of Municipal and Zoning Appeals (Board). A hearing was duly held by the Board, and the application disapproved; whereupon an appeal was taken to the Baltimore City Court, and that court affirmed. This appeal followed.

The sole question presented is whether the decision of the Board was supported by substantial evidence within the meaning of the law that an administrative board's decision which *285 lacks such supporting evidence is unreasonable, arbitrary and capricious.

Appellant is the owner of premises known as 1711 DeSoto Road, located in a residential use district. In the rear of said premises is a ten foot alley. Facing on this alley is a one-story 72 by 23 foot brick building belonging to appellant, which, as stated above, originally consisted of eight nine foot garages. By 1931, when zoning first went into effect in Baltimore, the four easternmost sections were being utilized by the then owner as a machine shop. In 1953, appellant, who had become a nephew-in-law of the owner of the premises and was living at said premises petitioned (in the name of the owner) the Building Engineer for permission 'to use [a] portion of garages, formerly used as Machine Shop for printing establishment,' stating the building was being 'used for 4 garages and machine shop, [and was] to be used [if permission were granted] for 4 garages and a printing shop.' The petition further stated there would be 'no alterations.' The Building Engineer denied the application, but the Board reversed and granted it, permitting the operation of

the printing shop as a non-conforming use in the eastern 36 feet of the building. Baltimore City Code (1950), Article 40, as amended by Sections 13(a) and (f) of Ordinance 711, approved May 21, 1953.

The present application is based upon the theory that the appellant and his predecessors had used, before 1931 and since, the 18 foot section now under consideration (consisting of two of the former nine foot sections with the partition removed) for **695 storage purposes in conjunction with the machine shop and printing shop operations, thereby establishing a non-conforming use. And as 'storage' and 'printing establishments' are in the same use classification and the Ordinance, supra, permits a non-conforming use to be changed to a use of the same classification, appellant is entitled to use the section in his printing business.

Appellant testified that his printing business ran into difficulty. As a result he was forced to start overprinting soap boxes. The 18 foot section under consideration had been used *286 by him since 1950 for storage and the 'old machinist' (the former owner) had used it since 1928 for spare parts, for lawn mowers and storage of various kinds of supplies. He thought it was part of the 1953 non-conforming use allowed him. When it was called to his attention that he had stated in 1953 that the garages were used for the storage of automobiles, he said if he stated that, '[he] made a mistake-maybe [he] didn't understand the question.' When asked by Judge Prendergast why he did not ask in his application of 1953 that the 18 foot unit adjacent to the printing shop be included in the non-conforming use, he replied: '* * * There's a confusion. When you say 'printing shop,' it used to be garages. I always called them garages. Even the printing shop, I just said garage.' When asked further if his 1953 application had not proposed that all of the building, except the 36 foot section occupied by the printing shop, was to be used as a garage (or garages), he said: 'I did not mean it; I was confused.' He further stated that the partition between the two former nine foot sections (creating the 18 foot unit now un-

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der consideration) had been removed 'recently.'

The appellant produced three witnesses. Carl Exner, who came to this country in 1929 and became acquainted with the 'old machinist' in 1930, gave testimony that was not of a very definite or precise nature, as is illustrated by the following questions asked by appellant's counsel and the witness' answers:

Q: 'And the 18 foot unit next to the existing shop was used for what?' A: 'Storage.'

Q: 'Storage in connection with the machine shop?' A: 'No.'

Q: 'I say, was the storage used in connection with the machine shop business?' A: 'Yes, machine tools and old lawn mowers, and step ladders and household goods, shutters, and what he used on the building too.'

The substance of his testimony, in this rather indecisive manner, was to the effect that the 18 foot unit had been utilized *287 for storage purposes before 1931 until some six years before 1961, when he stopped going to the property.

Frank Zoucheck said he lived in the neighborhood from 1927 until 1931 and the 18 foot unit adjacent to the machine shop was utilized for storage of spare parts, old lawn mowers, etc. He estimated 75 to 80 percent of the storage was in connection with the business; the remainder was for household purposes.

H. R. Hartow sold a printing press to the appellant in 1951, and has been there many times since. In 1951, the 18 foot unit was being used for storage; in 1961, there was no storage, the appellant having installed an embossing press therein.

Mrs. Dillman, a protestant, moved into 1707 DeSoto Road in about 1936. At that time, the 36 foot eastern unit was used as a machine shop. The nine foot garage (not 18 foot), or unit, adjacent was used to store coal, ladders and 'stuff like that.' The

operation on appellant's property has increased in volume, and is very annoying. The presses are operated 'from early in the morning and * * * even * * * on Sunday.' Some of the trucks coming in are so large they cannot 'make it down' the alley. Mr. Kolberg (appellant's predecessor) **696 used one nine foot unit only for storage, but appellant 'broke it [presumably the two nine foot units] up' and is using it for a printing shop.

Peter Dillman, the husband of the previous witness and another protestant, found the operation conducted by the appellant very displeasing and disturbing. One, and only one, nine foot section, or garage, had ever been used for storage.

All of the proceedings relating to the 1953 application, including the testimony, was introduced into evidence. Accompanying the 1953 application was a blue print plat, which clearly delineated the 36 by 23 foot unit to be used as a printing establishment, and the remaining units that were to be used for garages. The appellant testified twice that 'the first and second garages [presumably the westernmost units] were rented and the third and fourth [the 18 foot unit now under consideration] were vacant.' And, as already indicated, the *288 application specifically stated the property was to be used for the printing shop and four garages, with no alterations.

It was also shown that the records of the Police Survey of 1931 showed the dwelling on the subject premises was arranged for two apartments, and there were seven garages for three cars in the rear; no mention was made of the machine shop.

[1] The appellant states: 'The sole issue of fact was how the 18 foot unit in question was used in 1931 when the Baltimore zoning law went into effect.' In this statement, he is in error. Non-conforming uses may be abandoned, and whether the alleged non-conforming use in this case (if there were one) was in fact abandoned, we shall consider below, after briefly discussing whether the evidence was sufficient to establish a non-conforming use as of 1931.

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[2][3] There can be little doubt that each claimant must assume the burden of establishing the existence of a non-conforming use at the time of the passage of the prohibiting zoning ordinance. *Lapidus v. Mayor and City Council of Baltimore City*, 222 Md. 260, 262, 159 A.2d 640, 2 Metzenbaum, Law of Zoning (2nd ed.), 1233, says the proposition is both axiomatic and court-sustained. And whether a non-conforming use exists or has been abandoned are questions of fact to be decided by the Board. Ordinance, supra, Section 13(f). We shall not again review the testimony at this point. It may well be that the Board would have been justified in finding that appellant failed to meet his burden in establishing a non-conforming use in the 18 foot unit as of 1931, but the Board did not make any specific finding concerning the same. We shall therefore assume, without deciding, that the alleged non-conforming use (commercial storage) was existent in 1931, and proceed with the question of abandonment.

The Board found that a printing establishment is a use excluded from a residential zone-a fact conceded by all. It then went on to state:

'In a prior appeal to this Board * * *, the Board found that the premises now being used as a printing shop, size 23 feet by 36 feet, had the status of a non-conforming use and was entitled to be continued to *289 be used as a printing shop. The records in that case show that the remainder of the building on the rear of the lot was then being used as four garages and was to continue to be used as four garages. Testimony offered at the public hearing, on the application now under consideration, indicates that some use of the 18 foot by 23 foot space adjoining the printing shop has been for the storage of equipment used in conjunction with the use of the space now used as a printing shop. No evidence was submitted to show that such use of the 18 foot space adjoining was ever authorized, and the Board finds no sufficient reason to warrant it is making an exception to the use district regulations so as to approve the use of the adjoining garage space **697

as a printing shop.' (Emphasis added.)

The italicized portion of the above resolution, we think, was a clear finding of fact by the Board as to the actual use being made of the property in 1953 and the intention of the owner concerning its future use. With the record before us as we have outlined it above, we would be completely unwarranted in holding that these findings of the Board were not based upon substantial evidence, i. e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 168 A.2d 390.

[4][5] It is well-established law that abandonment of a non-conforming use depends upon the concurrence of two, and only two factors: one an intention to abandon; and two, some overt act, or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment. *Landay v. Board of Zoning Appeals*, 173 Md. 460, 196 A. 293, 114 A.L.R. 984, 2 Rathkopf, The Law of Zoning § 61-2, citing *Landay*, states, 'cessation of use alone is merely some evidence of such intent [intention to abandon]; the decisive test is whether the circumstances surrounding such cessation of use are indicative of an intention to abandon the use and the vested rights therein.' Appellant's testimony before *290 the Board in 1953 relating to the then use of the subject property as four garages.^{FN1} and his filing of the applications mentioned (especially the one wherein he stated under the heading 'Describe fully and completely what is to be done' that he intended 'to use [a] portion of the garages, formerly used as Machine Shop for Printing establishment-no alterations') were sufficient bases for the Board to find an abandonment and an overt act carrying a strong implication that the owner neither claimed nor retained any interest in the subject matter of the abandonment.

FN1. It is conceded that 'garages' are in a higher use classification than 'printing establishments,' and a non-conforming use,

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if changed to a use of a higher classification, may not thereafter be changed to a use of a lower classification.

The case of *Knox v. Mayor & City Council of Baltimore*, 180 Md. 88, 23 A.2d 15, was factually somewhat analogous to the one at bar. The property owner claimed a non-conforming use of lower classification than residential use. The City contended that if the non-conforming use had ever existed, it had been abandoned or relinquished by the use of the property in a higher classification (residential). The owner admitted that in 1936 (the case was decided in 1941) he had applied for a permit to construct a dwelling and garage on the lot in question, but claimed he had been misled by the Building Engineer's office when he applied for the permit. The court pointed out the two elements necessary for abandonment: intention and an overt act or failure to act. And, although the Court was not required to make a specific holding on the point in that case, it clearly indicated what the holding would have been, had one been required, by stating, 'as to the intention of appellant and some other (sic) act on his part, he admits that he applied for the permit and obtained it, that he built the garage and the reason he did not build the dwelling house was because he could not finance it.'

We shall not prolong this opinion further. We hold that the Board's findings were supported by substantial evidence; consequently the trial court's affirmation of the Board's decision was correct.

Order affirmed, with costs.

Md. 1962
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C

Court of Appeals of Maryland.
 John H. CALHOUN et al.
 v.
 COUNTY BOARD OF APPEALS OF BAL-
 TIMORE COUNTY et al.
 No. 428.

June 1, 1971.

Action by neighbors who objected to regular and extensive skeet and trap shooting and rifle practice on defendant's property on theory that controlled explosions involved violated zoning classification covering property in question. The Circuit Court, Baltimore County, Walter R. Haile, J., affirmed board of appeals' affirmation of zoning commissioner's finding that there was no violation, and neighbors appealed. The Court of Appeals, Hammond, C. J., held that evidence was insufficient to support finding that shooting nonconforming use existed on property on January 2, 1945, effective date of zoning regulations.

Reversed and remanded for order in accordance with opinion.

West Headnotes

[1] Zoning and Planning 414 323

414 Zoning and Planning
 414VI Nonconforming Uses
 414k323 k. Existence of Use in General.
 Most Cited Cases

In action by neighbors who objected to regular and extensive skeet and trap shooting and rifle practice on defendant's property on theory that such controlled explosion violated law because not permitted in zoning classification covering property, evidence was insufficient to support finding that shooting nonconforming use existed on property on January 2, 1945, effective date of zoning regulations.

[2] Zoning and Planning 414 329.1

414 Zoning and Planning
 414VI Nonconforming Uses
 414k329 Enlargement or Extension of Use
 414k329.1 k. In General. Most Cited Cases
 (Formerly 414k329)

Even assuming defendant's predecessor in interest operated a private club before 1945, effective date of zoning regulation which permitted undefined private clubs but which did not allow rifle ranges and skeet and trap shooting ranges in residential areas except by permit on temporary basis and subject to restrictions and safeguards, defendant's use of land for extensive skeet and trap shooting and rifle practice was not permissible intensification of use but impermissible extension.

*266 **589 Thomas G. Bodie and William E. Brannan, Towson (Robert J. Ryan, Moore, Hennegan, Brannan & Carney and Gordon G. Power and Power & Mosner, Towson, on the brief), for appellants.

Richard C. Murray, Towson, for North Baltimore Hunting and Fishing Ass'n.

R. Bruce Alderman and Maurice W. Baldwin, Jr., Towson, submitted brief for County Bd. of Appeals of Baltimore County.

Argued before HAMMOND, C. J., and BARNES, McWILLIAMS, FINAN, SINGLEY, SMITH and DIGGES, JJ.

**590 HAMMOND, Chief Judge.

Neighbors who objected to regular and extensive skeet and trap shooting and rifle practice on the property of North Baltimore Hunting and Fishing Association, Inc. (North Baltimore) located on Spooks Hill Road, Parkton, in Baltimore County, complained that these controlled explosions violated the law because not permitted in the zoning

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classification which covers the property. The Board of Appeals, in affirming the Zoning Commissioner's finding that there was no violation, said: 'The testimony given in this case is somewhat vague, contradictory and is reasonably debatable as to when shooting activities actually commenced on the subject property.' The holding was 'that firearms shootings on the subject property were a legal non-conforming use at the time of the adoption of the 1945 Zoning Regulations, and that such status has been preserved through a continuity of use to the present date and thereby enjoys the right to be legally continued * * *.' Judge Haile affirmed the Board. We reverse, finding there was no evidence that would support a finding that a nonconforming use existed on January 2, 1945, the day the zoning law of Baltimore County first became effective.

[1] North Baltimore acquired the property from Govans Beagle Club, Inc. in August 1948. Govans had bought it from John and Ida Baublitz in December 1946. The only witness for North Baltimore who came even close to testimony*267 that would support a finding that there was regular shooting on the property prior to January 2, 1945 (other than an occasional hunter or an occasional shot over the beagles that Govans trained and ran) was Lee Bishop, who testified that Govans used the land for two years prior to December 1946 'to run dogs,' 'very seldom' 'shooting over (the) dogs, to keep them from being gunshy,' and at times in 1945 and 1946 using a hand trap for trap shooting. On cross he was asked whether there had been shooting prior to 1945 and 1946. He replied: 'Only in hunting. I have hunted through there with Mr. Stallknecht, but I can't tell you the exact dates of when it was. * * * We run beagles according to the American Kennel Club, and try to make champions out of them. The only shooting we do, the shooting over gun dogs, to keep them from being gun-shy.'

The protestants produced a number of witnesses who had lived nearby continuously before and after 1945, including Mrs. Matthews, a daughter of the Baublitzes who lived on the land in 1945, and each

testified with clarity and force that the earliest shooting on the property was well after 1946, perhaps as late as 1950.

The burden of proving a non-conforming use is on the claimant of the use. According to 2 Metzenbaum, Law of Zoning (2d Ed.) 1233, this proposition is both axiomatic and court-sustained. We said in *Vogl v. Mayor & C. C. of Balto.*, 228 Md. 283, 288, 179 A.2d 693, 696: 'There can be little doubt that each claimant must assume the burden of establishing the existence of a non-conforming use at the time of the passage of the prohibiting zoning ordinance.'

North Baltimore had the burden of showing that the use it now claims as of right existed on January 2, 1945. An important way to meet that burden is to show that the existence of the use was known to the neighbors at the critical time. *Feldstein v. LaVale Zoning Board*, 246 Md. 204, 210, 227 A.2d 731; *Richmond Corp. v. Bd. of Co. Comm'rs.*, 254 Md. 244, 256, 255 A.2d 398. There was no testimony of this here; all the testimony was to the contrary. We do not think a reasoning mind could rationally find from the testimony in *268 favor of North Baltimore that the use was there on January 2, 1945. There was nothing to debate.

[2] North Baltimore argues that Govans operated on the land as a private club before 1945 and now may use the property for any purpose any private club uses any land. The Board made no finding on the point and we think the evidence showed no more than a casual and occasional use of **591 the property for any purpose prior to 1945. Occasional or casual use does not create a right to a non-conforming use. *Mayor & C. C. of Balto. v. Shapiro*, 187 Md. 623, 634, 51 A.2d 273; *Daniels v. Board of Zoning Appeals*, 205 Md. 36, 41, 106 A.2d 57. If it be assumed that Govans did operate as a private club before 1945, the 1945 law which permitted undefined private clubs did not allow rifle ranges and skeet and trap shooting ranges in residential areas except by permit on a temporary basis, and subject to restrictions and safeguards.

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We think the generality of the law as to private clubs would not extend to the specific provisions in the same law as to shootings but would be restricted by the specific provisions. It appears to us that the present uses of the land, assuming some form of non-conforming use existed on January 2, 1945, would not be a permissible intensification of use but an impermissible extension. *Jahnigen v. Staley*, 245 Md. 130, 137-138, 225 A.2d 277.

Order reversed, with costs, and case remanded for the entry of an order appropriate under the opinion herein.

Md. 1971.
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Court of Special Appeals of Maryland.
 COUNTY COMMISSIONERS OF CARROLL
 COUNTY

v.
 James M. UHLER, et ux.
 No. 671, Sept. Term, 1988.

Feb. 2, 1989.

County board of zoning appeals denied landowners' application for certification of their property as nonconforming use junkyard and/or contractor's equipment storage yard, and landowners appealed. The Circuit Court for Carroll County, Donald J. Gilmore, J., reversed board and remanded case for issuance of zoning certificate to landowners, and county commissioners appealed. The Court of Special Appeals, Robert M. Bell, J., held that: (1) board's determination not to credit testimony regarding nonconforming use provided substantial evidence for board's denial of application; (2) testimony did not compel conclusion that nonconforming contractor's equipment storage yard had been established; and (3) landowner's failure to comply with requirement for obtaining nonconforming use certification required discontinuance of nonconforming use.

Reversed and remanded.

West Headnotes

[1] Zoning and Planning 414 ⇨323

414 Zoning and Planning
 414VI Nonconforming Uses
 414k323 k. Existence of Use in General.
 Most Cited Cases
 Party asserting existence of nonconforming use has burden of proving it.

[2] Zoning and Planning 414 ⇨703

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(C) Scope of Review
 414X(C)4 Questions of Fact
 414k703 k. Substantial Evidence. Most Cited Cases
 When appellate court reviews decision of county board of zoning appeals denying application for certification of property as nonconforming use, court is limited to determining whether decision is supported by substantial evidence.

[3] Zoning and Planning 414 ⇨703

414 Zoning and Planning
 414X Judicial Review or Relief
 414X(C) Scope of Review
 414X(C)4 Questions of Fact
 414k703 k. Substantial Evidence. Most Cited Cases
 Mere fact of presentation of testimony to board of zoning appeals does not entitle that testimony to be credited, and board's determination not to credit it, in and of itself, provides substantial evidence for board's conclusion to deny application for certification of property as nonconforming use.

[4] Zoning and Planning 414 ⇨323

414 Zoning and Planning
 414VI Nonconforming Uses
 414k323 k. Existence of Use in General.
 Most Cited Cases
 Evidence did not compel county board of zoning appeals to conclude that nonconforming contractor's equipment storage yard had existed on landowners' property, where former zoning inspector's testimony tended to establish that property was used as nonconforming junkyard, testimony of other witnesses tended to establish that property was used as contractor's equipment storage yard, and discrepancy existed between witnesses' testimony concerning what could be seen on property from road.

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[5] Zoning and Planning 414 C-289

414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k278 Particular Terms and Uses
414k289 k. Warehousing and Storage. Most Cited Cases

In deciding for zoning purposes whether property was used as equipment storage yard or as junkyard, "equipment storage yard" contemplates place where use of all equipment is stored; when equipment is not usable and is kept on property because of that fact, it becomes junk and property on which it is kept is junkyard or something else, but is certainly not equipment storage yard.

[6] Zoning and Planning 414 C-336.1

414 Zoning and Planning
414VI Nonconforming Uses
414k336 Discontinuance or Abandonment
414k336.1 k. In General. Most Cited Cases
(Formerly 414k336)

Pursuant to county zoning ordinance stating that certification of nonconforming uses was required within specified time, that information concerning exact nature and extent of nonconforming use had to be furnished to obtain certification, and that sanction for failure to comply with certification requirement was discontinuance of nonconforming use, discontinuance of nonconforming use upon failure to comply with certification requirement was not directory, but was mandatory.

**942 *142 Charles W. Thompson, Jr., County Atty. for Carroll County (Laurel E. Taylor, Asst. County Atty. for Carroll County, on the brief), Westminster, for appellant.

V. Lanny Harchenhorn (Ellen Luff, on the brief), Westminster, for appellees.

**943 Argued before WILNER, BLOOM and

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ROBERT M. BELL, JJ.

ROBERT M. BELL, Judge.

The County Commissioners of Carroll County, appellant, appeal from the judgment of the Circuit Court for Carroll County, reversing the denial, by the Board of Zoning Appeals of Carroll County ("the Board"), of an application by appellees James and Carla Uhler for certification of their property as a nonconforming use junk yard and/or contractor's equipment storage yard. The basis of the court's decision was its conclusion that the testimony before the Board "compelled" the court to conclude that the non-conforming equipment storage yard existed on [appellees'] property prior to August, 1965, and has continued uninterrupted to the present day." It was undisputed that appellee's predecessor in title had not complied with a Carroll County ordinance requiring owners or operators of nonconforming junkyards to certify them as such not later than April, 1966. Although the court had previously determined that that ordinance was directory rather than mandatory, it did not decide whether appellees proved the existence of a nonconforming junkyard. Directly challenging the court's judgment, appellant asks:

Whether the mere presence of testimony requires a Board of Zoning Appeals to find an issue not fairly debatable. *143 especially where that testimony is contradicted and undermined by other evidence before the Board.

We answer that question in the negative. This requires us, in the interest of avoiding a second appeal, see Maryland Rule 8-131(a), to address appellant's challenge to the court's determination concerning the mandatory or directory effect of the Carroll County ordinance. Since we find merit in that challenge as well, we will reverse the judgment of the circuit court.

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At the hearing, held to consider appellees' application, appellees presented testimony tending to support their position that their property was used, before the deadline date, as either a nonconforming junkyard or a nonconforming contractor's equipment storage yard. In addition to Mr. Uhler's testimony, which was to the effect that the property had equipment and/or junk on it ever since he could remember, they presented the testimony of three other witnesses.^{FN1} Each of those witnesses testified to their observations of the property and how it was used during various periods of time. One of the witnesses testified concerning the period between 1962 to 1966. During that period, he said, there was "always" equipment there. He acknowledged, however, that his observations were made from the road and that he had not been on the property. Furthermore, he *144 asserted that, "except on the upper end ... towards the Westminster side", he could not see much from the road. Another witness, who also had not been on the property, testified to observing the property and its use over a period of 30 years, as he drove to and from his job in Baltimore. He too testified to always seeing equipment on the property, although, once in a while, equipment was removed or added. That witness also testified that he, along with his brother, had business dealings with Mr. Uhler.

FN1. Another witness appeared and testified in the protestant's stage of the hearing. He was the watershed manager for the City of Baltimore, who appeared because the City owned property adjacent to the subject property. The purpose of his appearance is disclosed in the following comments he made during his direct examination:

If this hearing and subsequent Board action would open the way for development of a junkyard so near our reservoir, we would, of course, be quite concerned. However we must rely on the good offices of Carroll County to protect our in-

terests as well as their own in this critical area. We trust that the decision reached by the Board of Zoning Appeals will address this concern, that responsible agencies will require that sediment control and storm water management practices are implemented and maintained to protect Liberty Reservoir and City property.

The final witness produced by appellees was a former zoning inspector who visited the property beginning in 1968 or 1970 and **944 continuing until 1982. Although somewhat ambiguous and certainly subject to differing interpretation, his testimony was that he could not see much on the property from the road. In any event, he testified to seeing "several big, heavy-duty trucks all rusted up and not being used-they couldn't be used for anything else really-and a couple of heavy pieces of equipment which was just laying there, really, in all of this underbrush". He also testified that the windows and windshields on the trucks were broken; he estimated that the items had been on the property between 15 and 18 years. The purpose of his visits to the property was to investigate zoning violations. Having cited Mr. Uhler for a violation, he found on subsequent visits to the property that much of the equipment had been removed.^{FN2}

FN2. Presumably the purpose of the former inspector's testimony was to establish the existence of a nonconforming use junk yard.

The Board denied the application. In its Official Decision, it found that the applicants failed to meet their burden of proof. Specifically as regards the equipment storage yard argument, it noted that "while there is some evidence that equipment was stored from time to time on the property, we cannot find from this evidence the property was anything more than a location where pieces of equipment were infrequently parked." The Board also noted:

*145 In weighing the credibility of the witnesses,

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we believe that there is sufficient reason to doubt testimony that the property has long been a contractor's equipment storage yard. For example, one witness testified that he observed contractor's equipment on the property over the course of thirty (30) years as he travelled to and from Baltimore. The Zoning Inspector, on the other hand, testified that he had to go to the rear of the property to make his inspection because he could not see anything on the property from highway.

On appeal, the circuit court did not agree. Finding that the testimony compelled the conclusion that a nonconforming contractor's equipment storage yard had been established, it reversed the Board and ordered that it issue a zoning certificate to appellants. It remanded the case to the Board for further proceedings.^{FN3}

FN3. The application also sought "approval of any structural alterations and/or expansion, if any be found, of the nonconforming use." It was for further proceedings as to this matter that the case was remanded to the Board.

[1] The party asserting the existence of a nonconforming use has the burden of proving it. *Calkoun v. County Board of Appeals*, 262 Md. 265, 167, 277 A.2d 589 (1971); *Lapidus v. Mayor & City Council of Baltimore*, 222 Md. 260, 262, 159 A.2d 640 (1960). Whether that party has met its burden is a matter entrusted to the Board. And, since that decision, as is the decision whether to certify a nonconforming use, can be made only after hearing and determining facts, the Board acts in a quasi-judicial capacity in making it. See *Heaps v. Cobb*, 185 Md. 372, 378, 45 A.2d 73 (1945). In that capacity, the Board acts as factfinder, assessing the credibility of the witnesses and determining what inferences to draw from the evidence. See *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 513, 390 A.2d 1119 (1978); *Boehm v. Anne Arundel County*, 54 Md.App. 497, 514, 459 A.2d 590, cert. denied, 297 Md. 108 (1983).

*146 [2] When an appellate court reviews the Board's decision, it is limited to determining whether the decision is supported by substantial evidence, i.e., "Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Snowden v. Mayor & City Council of Baltimore*, 224 Md. 443, 448, 168 A.2d 390 (1961); *Bulluck*, 283 Md. at 512, 390 A.2d 1119. If the record is such as to have permitted "a reasoning mind reasonably [to] have reached the factual conclusion the agency reached," *Dickinson-Tidewater v. Supervisor*, 273 Md. 245, 256, 329 A.2d 18 (1974), then the decision is "fairly debatable" and, therefore, the court must uphold it, even though, were it the factfinder, it would have reached a different conclusion. See *Eger v. Stone*, 253 Md. 533, 542, 253 A.2d 372 (1969). In other words, "The **945 court may not substitute its judgment on the question [of] whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not rightness." *Snowden*, 224 Md. at 448, 168 A.2d 390.

[3] We agree with appellant that the court applied an improper standard of review. Indeed, we think the court substituted its judgment for that of the Board. Implicit in the court's position is the notion that, when there is no opposition to an application, the Board may not assess the credibility of the witnesses who appear before it. In other words, the court apparently believed that if there was any evidence in the record supporting the relief requested, which is not controverted, as opposed to contradicted, then the Board must grant the relief sought. We do not agree.

As we have already indicated, the assessment of the credibility of the witnesses is a matter entrusted to the Board. We can no more require the Board, which has had the opportunity of seeing and hearing the witnesses, to accept the testimony of witnesses simply because no one testified in opposition to the relief sought, than we could require it to reject such testimony simply because there was opposition testimony. That would constitute usurpa-

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tion of the Board's function and, necessarily, substitution of our *147 judgment, including assessment of credibility, for that of the Board. We hold, therefore, that the mere fact of presentation of testimony to the Board does not entitle that testimony to be credited and the Board's determination not to credit it, in and of itself, provides substantial evidence for the Board's conclusion.

[4][5] In this case, there is another basis upon which the court's decision must be reversed. The evidence before the Board was not uncontradicted. There was a major discrepancy between the former zoning inspector's testimony and that of the other witnesses concerning both the use of the property and what could be seen on the property from the road. Concerning the use of the property, the inspector's testimony tended to establish that the property was used as a nonconforming junkyard, while the testimony of the other witnesses tended to establish that it was used as a contractor's equipment storage yard. Certainly the Board was free to so view the evidence; and when the evidence is so viewed, the uses are mutually exclusive.^{FN4}

FN4. Appellees argue that there is no inconsistency, necessarily, between a contractor's equipment storage yard and a junkyard. They reason that, if equipment is parked on the property, whether it is usable or not, the property is used for equipment storage. That same equipment, if it is not usable, they say, may also be the basis for finding that the property was used as a junkyard. We reject the argument. In our view, an equipment storage yard contemplates a place where usable equipment is stored; when it is not usable and is kept on property because of that fact, it becomes junk and the property on which it is kept is a junkyard or something else, but certainly not an equipment storage yard.

Insofar as what could be seen on the property from the road is concerned, as we have pointed out, while the zoning inspector's testimony was far from

clear, the Board could have drawn from it the conclusion that in order to see what was on the property one had to go onto the property. Viewed from this light, it is patent, once again, that the Board's decision is fairly debatable.

*148 2.

[6] Enacted August 17, 1965, § 4.3 of the Carroll County Zoning Ordinance, in relevant part, provides:

Any building, structure or premises lawfully existing at the time of the adoption of this ordinance, or lawfully existing at the time this ordinance is amended, may continue to be used even though such building, structure or premises does not conform to use or dimensional regulations of the zoning district in which it is located; subject, however, to the following provisions:

(e) the owner or operator of any existing nonconforming use involving used car lots, service garages or junk yards shall, not later than April 17, 1966, certify in writing, on a prescribed form, to the Office of the Zoning Administrator, **946 that such nonconforming use did exist on the adoption date of this ordinance. In order that the exact nature and extent of such nonconforming use may be determined, a survey plat prepared by a professional engineer or registered surveyor shall accompany any prescribed form....

Appellants purchased the subject property in 1978. They do not dispute that their predecessor in title did not timely file the certification pursuant to the ordinance. Instead, before the Board, they argued that § 4.3(e) is directory, rather than mandatory, a position that the Board rejected, but with which the circuit court agreed.

This issue was presented to and decided by the lower court; therefore, it is properly before us. See Maryland 8-131(a). Furthermore, in view of our prior holding, it is necessary that we address it. *Id.*

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We start with related, but distinct, propositions. First, "A lawfully established non-conforming use is a vested right and is entitled to constitutional protection." *Higgins v. City of Baltimore*, 206 Md. 89, 98, 110 A.2d 503 (1955), citing *149 *Amereihn v. Korras*, 194 Md. 591, 601, 71 A.2d 865 (1950). See also *Laque v. State*, 207 Md. 242, 251, 113 A.2d 893, cert. denied, 350 U.S. 863, 76 S.Ct. 105, 100 L.Ed. 765 (1955). Second, "... the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned ..." *Grant v. City of Baltimore*, 212 Md. 301, 307, 129 A.2d 363 (1957). Finally, "the right ... to 'continue' a non-conforming use is not a perpetual easement to make a use of one's property detrimental to his neighbors and forbidden to them." *Id.* We are also mindful of the canon of statutory construction which requires that, when seeking the legislative intent of an enactment, "absent a clear intention to the contrary, a statute, when reasonably possible, is to be read so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless, or nugatory." *Mayor & City Council of Baltimore v. Hackley*, 300 Md. 277, 283, 477 A.2d 1174 (1984).

The purpose of § 4.3 clearly is to bring about conformance, through the zoning process, of nonconforming uses as speedily as possible. To accomplish this, the County Commissioners needed to know where the applicable nonconforming uses were located; thus, the required certification of the nonconforming uses within a specified time. In addition, the County Commissioners sought to prevent unlawful expansion of such uses; hence the requirement that information concerning the exact nature and extent of the nonconforming use was required to be furnished. Moreover, the County Commissioners provided a sanction for a landowner's failure to comply with the certification requirement-the discontinuance of the nonconforming use. Although the sanction is not expressed as directly as it might have been, it is implicit in that portion of § 4.3 which makes the continuance of such uses

subject to certain conditions, one of which is that set out in subsection (e). A fair interpretation of § 4.3, therefore, giving effect to each of its words, clauses, sentences, and phrases, is that failure to *150 comply with subsection (e) will result in the discontinuance of the nonconforming use.

Appellees' first argument to the contrary is premised upon cases which hold that, although a statute may use the word "shall", its context, usually the failure to prescribe a sanction for nonconformance, may indicate that its effect is intended to be directory, rather than mandatory. See, for example, *In Re Dwayne*, 290 Md. 401, 405-07, 430 A.2d 76 (1981); *Resetar v. State Bd. of Education*, 284 Md. 537, 547-50, 399 A.2d 725, cert. denied, 444 U.S. 838, 100 S.Ct. 74, 62 L.Ed.2d 49 (1979); *Blumenthal v. Clerk of Cir. Ct.*, 278 Md. 398, 408-409, 365 A.2d 279 (1976); *People's Counsel v. Public Service Commission*, 52 Md.App. 715, 719-720, 451 A.2d 945 (1982), cert. denied, 295 Md. 441 (1983); *Pope v. Secretary of Personnel*, 46 Md.App. 716, 717-19, 420 A.2d 1017 (1980), cert. denied, 289 Md. 739 (1981). This argument and the cases relied upon to support it are not apposite, however, since, as we have pointed out, there is a sanction provided by the ordinance in this case.

**947 Appellees also contend that, because the Board's interpretation of § 4.3 as mandatory is the first instance it has been so interpreted, either by the Board or by the Circuit Court for Carroll County, we ought to give it the construction which the prior Boards and the courts have given it. We have no doubt that appellees are correct that prior interpretations of the ordinance have been in favor of directory, rather than mandatory, effect. Nevertheless, we do not believe that we are bound by those interpretations, particularly when they have been, and are, erroneous.

For the foregoing reasons, we hold that the Board correctly interpreted § 4.3(e) as mandatory and, conversely, that the circuit court erred in reversing that interpretation. In view of this conclusion, we remand the matter to the Circuit Court for Carroll

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County for entry of an order affirming the decision of the Board. There is no occasion, therefore, for the matter to be further remanded to the Board to consider questions related to the expansion and/or structural alteration of the nonconforming use.

***151 JUDGMENT REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR CARROLL COUNTY FOR ENTRY OF AN ORDER AFFIRMING THE DECISION OF ZONING APPEALS FOR CARROLL COUNTY.**

COSTS TO BE PAID BY APPELLEES.

Md.App., 1989.
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(The decision of the Maryland Court of Appeals is referenced in the Atlantic Reporter in a table captioned "Petitions for Writ of Certiorari.")

Court of Appeals of Maryland
Uhler
v.
County Comm'rs of Carroll County
NO. 96 SEPT. TERM 1989

JUN 29, 1989

Reported below: 78 Md.App. 140, 552 A.2d 942.

Denied.

Md. 1989.
Uhler v. County Comm'rs of Carroll County
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Court of Appeals of Maryland.
TRIP ASSOCIATES, INC. et al.
v.
MAYOR AND CITY COUNCIL OF BAL-
TIMORE.
No. 58 Sept. Term, 2003.

May 9, 2006.

Background: Nightclub petitioned for judicial review of decision by city's board of municipal and zoning appeals that nightclub had only established a nonconforming use of its premises for adult entertainment for two nights a week. The Circuit Court for Baltimore City, John Carroll Byrnes, J., affirmed, and also held that nightclub was required to obtain an adult entertainment license. Nightclub appealed. The Court of Special Appeals, 151 Md.App. 167, 824 A.2d 977, vacated in part and affirmed in part. Nightclub petitioned for certiorari.

Holding: Upon grant of certiorari, the Court of Appeals, Bell, C.J., held that nightclub's use of nonconforming use more frequently constituted a permissible intensification of the use.
Reversed.

West Headnotes

✓ [1] Zoning and Planning ¶321

414k321 Most Cited Cases

A valid and lawful nonconforming use is established if a property owner can demonstrate that before, and at the time of, the adoption of a new zoning ordinance, the property was being used in a then-lawful manner for a use that, by later legislation, became non-permitted.

✓ [2] Zoning and Planning ¶321

414k321 Most Cited Cases

Nonconforming uses are not favored.

[3] Constitutional Law ¶2642

92k2642 Most Cited Cases

(Formerly 92k93(1))

[3] Zoning and Planning ¶321

414k321 Most Cited Cases

A nonconforming use is a vested right entitled to constitutional protection.

[4] Zoning and Planning ¶321

414k321 Most Cited Cases

[4] Zoning and Planning ¶337

414k337 Most Cited Cases

A nonconforming use may be reduced to conformance or eliminated in two ways: (1) by amortization, that is, requiring its termination over a reasonable period of time, and (2) by abandonment, i.e. non-use for a specific of time.

[5] Zoning and Planning ¶324

414k84 Most Cited Cases

So long as it provides for a reasonable relationship between the amortization and the nature of the nonconforming use, an ordinance prescribing such amortization is not unconstitutional.

[6] Zoning and Planning ¶336.1

414k336.1 Most Cited Cases

Abandonment of a nonconforming use focuses not on the owner's intent, but rather, on whether the owner failed to use the property as a nonconforming use in the time period specified in the zoning ordinance.

[7] Zoning and Planning ¶336.1

414k336.1 Most Cited Cases

The abandonment or discontinuance of a nonconforming use must be active and actual.

[8] Zoning and Planning ¶331

414k331 Most Cited Cases

Nightclub's use of valid nonconforming use more frequently than when it was being used when the use became nonconforming constituted a permissible intensification of the use rather than a prohibited expansion of the use, and thus, nightclub was entitled to present adult entertainment more than

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two nights per week.

[9] Zoning and Planning 331
414k331 Most Cited Cases

The intensification of a nonconforming use is permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used.

**450 John A. Austin, Towson, for Petitioners.

Sandra R. Gutman, Chief Sol. (Thurman W. Zollcoffer, Jr., City Sol., on brief), Baltimore, for Respondent.

Argued before BELL, C.J., RAKER, WILNER, CATHELL, HARRELL, BATTAGLIA and JOHN C. ELDRIDGE, (Retired, Specially Assigned), JJ.

BELL, Chief Judge.

*565 The question this case presents is whether the Board of Municipal and Zoning Appeals ("the Board") erred when it restricted the number of days per week the appellants could operate a valid nonconforming use. The appellants' property, located in the B-5-1 Zoning District in Baltimore City, is being used for the operation of "Club Choices," a nightclub and after-hours establishment that sometimes **451 features adult entertainment. The Club is owned by the appellant, Anthony Dwight Triplin ("Triplin"), who also is the owner of Triplin Associates, Inc. ("Trip"), the other appellant.

Triplin purchased 1815-17 North Charles Street, the property at issue, in 1983. Prior to his purchase, the property had been a nightclub featuring adult entertainment, including male and female exotic dancing. The adult entertainment had been presented up to five nights a week since 1979. When Triplin purchased the property, the applicable zoning ordinance did not prohibit the use of the property as an adult entertainment facility. Nevertheless, Triplin reduced the number of nights of nude or exotic dancing from five to two nights per week, featuring music and comedy on the other nights. The Board *566 approved his use of the premise as an "after

hours establishment" in 1992. [FN1] With this approval, the adult entertainment was presented after hours, exclusively.

FN1. The Baltimore City Zoning Code, § 1-107(a), (b), defines "after hours establishment" to be "any banquet hall, dance hall, meeting hall, private club or lodge, or similar place that remains open after 2 a.m. on any day" and "includes a restaurant that provides live entertainment or dancing and remains open after 2 a.m. on any day."

On December 15, 1994, Ordinance No. 443 was enacted. That ordinance, codified at Baltimore City Code, Art. 20, § 8.0-6l, regulated adult entertainment businesses, "where persons appear in a state of total or partial nudity." [FN2] It also provided that "[a]ny adult entertainment business existing on September 10, 1993 is considered a nonconforming use, subject to all Class III regulations." [FN3] Baltimore City Zoning Code § 13-609. After this Ordinance was passed, Triplin continued to use the facility as a club that provided adult entertainment after hours. That use was unchallenged until April 14, 2000, when a Baltimore City zoning inspector issued a "Code Violation Notice and Order" to the Club. The violation notice charged:

FN2. Ordinance No. 443 originated as Bill No. 773, which repealed and recodified with amendments Ordinance No. 258. See *Mayor and City Council of Baltimore v. Dembo*, 123 Md.App. 527, 530, 719 A.2d 1007, 1009 (1998).

FN3. "Class III" is defined in the Baltimore City Zoning Code, § 13-401. In describing what is regulated by the subtitle, it states:

"§ 13-401. Scope of subtitle. "This subtitle applies to Class III nonconforming uses, which comprise:

"(1) any nonconforming use of all or part of a structure that was designated and erected primarily for a use that is no longer al-

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lowed in the district in which it was located;
"(2) any nonconforming use of the lot on which that structure is located; and
"(3) any nonconforming use of land or structures not regulated as Class I or Class II."

***ZONING VIOLATION**

"1. Using portion of premises for adult entertainment without first obtaining proper Adult Entertainment Ordinance *567 and Adult Entertainment License. DISCONTINUE SAID USE. REMOVE ALL STOCK, MATERIAL, EQUIPMENT, AND ANY ADVERTISING SIGNS ASSOCIATED WITH SAID USE. OBTAIN CERTIFICATE OF OCCUPANCY BEFORE RE-ESTABLISHING ANY USE."

Triplin appealed to the Board. On appeal, Triplin testified that Club Choices featured exotic dancing and adult entertainment two times a week, Wednesdays and Fridays, for two hours each night. That testimony was confirmed by employees, who offered further that such dancing with partial nudity has been presented two nights per week since 1983.

The Board ruled:

**452 "1.... [A]dult entertainment may be continued two nights during the week.

"The Board finds that a non-conforming use of the premises for adult entertainment had been established prior to Ordinance 443 (adult entertainment business approved December 15, 1994) and may be continued under Subsection 13- 402 [FN4]] of the Zoning Code. The Board finds that with the above condition that the request would not be detrimental to or endanger the public health, security, general welfare, or morals or be injurious to the use and enjoyment of other property in the immediate vicinity, nor substantially diminish and impair property values in the neighborhood. Further, and as agreed by the appellant that this is specifically for the appellant Mr. Triplin, the owner and operator of the subject site and a copy of the resolution/decision is to be recorded

in the land records of Baltimore City and the *568 appellant is to provide to the Board a court certified copy to be placed in the file ... as part of the record. The purpose of the recording requirement is to give the Charles North Community Association legal standing to enjoin any uses as adult entertainment to a subsequent purchaser, owner, lessee or operator....

FN4. Baltimore City Zoning Code § 13-402 provides:

"§ 13-402. Continuation of use. "Except as specified in this article, Class III nonconforming uses of structures may be continued, subject to the regulations of this subtitle."

Regulations in the subtitle include, e.g., § 13-403, governing the "Repairs and alterations" of nonconforming use structures, § 13-404, governing the "Restoration of damaged structures," and § 13-405, governing the "Changes in use" of nonconforming use structures.

"In accordance with the above facts and findings and subject to the aforementioned condition, (adult entertainment two nights a week only) the Board approves the application."

Board of Municipal and Zoning Appeals, Appeal No. 327-00X, October 12, 2000. Thus, the Board, despite finding that Club Choices was a valid nonconforming use, limited that use, based on the testimony, to two nights per week.

Triplin petitioned the Circuit Court for Baltimore City for judicial review of the Board's decision. That court affirmed the Board's decision and, in addition, ruled that Triplin needed to "apply for and obtain all necessary and relevant licenses required by the City for the operation of an adult entertainment business." Upholding the Board's power to impose the two night per week restriction, it reasoned [FN5]:

FN5. This rationale was offered in answer to Triplin's motion for reconsideration, in

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204, 227 A.2d 731 (1967) (increasing quantity and height of scrap metal stored in junkyard), and *Nyburg v. Solmsion*, 205 Md. 150, 106 A.2d 483 (1954) (increasing the parking and storage of cars on a nonconforming lot) recognized a distinction between the more intensive use of property and the expansion of a nonconforming use, the intermediate appellate court characterized a temporal modification of a nonconforming use as an expansion of that use, rather than a mere intensification of it. In justification of that characterization, the court said:

"[T]o hold that a temporal extension of operating hours is an intensification, not an expansion, of a non-conforming use undermines governmental efforts to reconcile public policy *572 with private interest. If we were to so rule, localities would be presented with the harsh choice of either tolerating the growth of an undesirable use or eliminating it all together. Depriving localities, as such a ruling would, of a milder alternative—that of restricting a nonconforming use to its current level—benefits neither the regulating locality nor nonconforming property **455 owners, whereas holding, as we do, that the Board had a right to control temporal expansions of use accommodates the interests of both."

151 Md.App. at 180-181, 824 A.2d at 985. [FN8]

FN8. The Court of Special Appeals was aware of *Green v. Garrett*, 192 Md. 52, 63 A.2d 326 (1949). Indeed, the Court of Special Appeals conceded that *Green* does support Triplin's view that a temporal expansion of a nonconforming use is a mere intensification of the use and not an unlawful expansion. It dismisses *Green* as of little precedential value, reasoning: "*Green* was decided before the zoning administrative process was created. Therefore, considerations such as the deference owed an administrative body's interpretation of its governing statute and the substantial evidence rule played no role in the Court's decision."

Trip Associates, Inc. v. Mayor and City

Council of Baltimore, 151 Md.App. 167, 180, 824 A.2d 977, 985 (2003). It added: "[T]o hold that a temporal extension of operating hours is an intensification, not an expansion, of a non-conforming use undermines governmental efforts to reconcile public policy with private interest. If we were to so rule, localities would be presented with the harsh choice of either tolerating the growth of an undesirable use or eliminating it altogether. Depriving localities, as such a ruling would, of a milder alternative—that of restricting a nonconforming use to its current level—benefits neither the regulating locality nor nonconforming property owners, whereas holding, as we do, that the Board had a right to control temporal expansions of use accommodates the interests of both."

Id. at 180-181, 824 A.2d at 985.

We are not persuaded, the reasons for which we shall demonstrate *infra*.

Triplin filed a petition with this Court for a writ of certiorari, which we granted. *Trip v. Baltimore*, 377 Md. 112, 832 A.2d 204 (2003). We shall reverse.

A.

[1] Title 13 of the Baltimore City Zoning Code establishes the zoning districts in Baltimore, and "provides for the regulation *573 of nonconforming uses and noncomplying structures existing in the various districts." Baltimore City Zoning Code § 13-102. Under the Baltimore City Zoning Code, a "nonconforming use" is defined as "any lawfully existing use of a structure or of land that does not conform to the applicable use regulations of the district in which it is located." Baltimore City Zoning Code § 13-101(c). A valid and lawful nonconforming use is established if a property owner can demonstrate that before, and at the time of, the adoption of a new zoning ordinance, the property was being used in a then-lawful manner for a use that, by later legislation, became non-permitted. See, e.g., *Chayt v. Board of Zoning Appeals of Bal-*

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timore City, 177 Md. 426, 434, 9 A.2d 747, 750 (1939) (concluding that, to be a nonconforming use, an existing business use must have been known in the neighborhood as being employed for that given purpose); *Lepidus v. Mayor and City Council of Baltimore*, 222 Md. 260, 262, 159 A.2d 640, 641 (1960) (noting that an applicant claiming that a nonconforming use had been established before the effective date of the city zoning ordinance needed to prove that the use asserted existed prior to the date of the ordinance); *Vogl v. City of Baltimore*, 228 Md. 283, 288, 179 A.2d 693, 696 (1962) (holding that the party claiming the existence of a nonconforming use has the burden of establishing the existence of the use at the time of the passage of the prohibiting zoning ordinance). See also *Lowe v. Montgomery County*, 85 Md.App. 477, 496, 584 A.2d 142, 151 (1991).

[2] As the Court of Special Appeals recognized, nonconforming uses are not favored. *County Council v. Gardner, Inc.*, 293 Md. at 268, 443 A.2d at 119 ("These local ordinances must be strictly construed **456 in order to effectuate the purpose of eliminating nonconforming uses."); *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 308, 129 A.2d 363, 365 (1957) ("Indeed, there is general agreement that the fundamental problem facing zoning is the inability to eliminate the nonconforming use"); *Colati v. Jirout*, 186 Md. 652, 657, 47 A.2d 613, 615 (1946) (noting that the spirit of the Baltimore City Zoning Ordinance is against the extension of non-conforming *574 uses). Indeed, in *Grant*, this Court stated, "[T]he earnest aim and ultimate purpose of zoning was and is to reduce non-conformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned." 212 Md. at 307, 129 A.2d at 365. The context for this conclusion was the historical development of the nonconforming use, which the Court also detailed:

"Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely

to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun."

Id.

[3] Nevertheless, a "nonconforming use is a vested right entitled to constitutional protection." *Amereihn v. Korrar*, 194 Md. 591, 601, 71 A.2d 865, 869 (1950). The Court in *Amereihn* made that point forcefully. There, after the area in which a light manufacturing plant was located was zoned as residential, the neighbors brought a complaint, praying that the new owners of the plant be restrained from using the property for manufacturing purposes. This Court, in ruling against the neighbors, pointed out:

"If a property is used for a factory, and thereafter the neighborhood in which it is located is zoned residential, if such regulations applied to the factory it would cease to exist, and the zoning regulation would have the effect of confiscating such property and destroying a vested right *575 therein of the owner. Manifestly this cannot be done, because it would amount to a confiscation of the property."

194 Md. at 601, 71 A.2d at 869 (citations omitted). See also *Board of Zoning Appeals of Howard County v. Meyer*, 207 Md. 389, 114 A.2d 626 (1955), in which the Court of Appeals held that an owner of a truck manufacturing plant on land that had been rezoned as residential had a valid nonconforming use, observing, "[t]he law is established that the zoning of an area as residential cannot apply to a previously established factory in that area, which is entitled under the circumstances to consti-

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6/12/09

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
E/S North Point Boulevard, 100'S of *
Wise Avenue * BOARD OF APPEALS
(4412 North point Boulevard) *
15th Election District * FOR
7th Council District * BALTIMORE COUNTY
Ronald Hlopak, et ux *
Petitioners *
Case No. 2009-0049-X

* * * * *

PETITIONERS' MEMORANDUM TO THE BOARD

Now comes Mr. and Mrs. Ronald Hlopak, Petitioners, by their attorney, Michael P. Tanczyn, submits the within Memorandum to the Board of Appeals to assist the Board in its consideration of this request.

STATEMENT OF THE CASE

The Petitioners who have held this property at 4412 North Point Boulevard in the family since May of 1938 to the present petitioned the Zoning Commissioner for a special exception to allow the use of the subject property for a used motor vehicle outdoor sales with incidental warranty, detailing and maintenance. The Zoning Commissioner conducted a hearing as duly advertised and there were no Protestants or other interested persons present. After hearing, the Zoning Commissioner issued his Findings of Fact and Conclusions of Law and Order and ordered October 14, 2008 that the Petition for Special Exception for sale of used motor vehicles pursuant to BCZR, Section 236.4 was granted with four enumerated conditions in the Order.

On October 28, 2008 People's Counsel entered an appeal to the Board of Appeals from that decision. This matter was scheduled for hearing before the Board of Appeals of Baltimore County on May 14, 2008.

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BOARD OF APPEALS

Statement of Facts

To describe the site, the property in question is a rectangular shaped parcel on the east side of North Point Boulevard, just south of Wise Avenue in the Dundalk/Sparrows Point area. The property is approximately 156 feet wide and 123 feet deep and contains a gross area of .45 acres zoned BR-AS, Business Roadside-Automotive Service district suffix. At the Board of Appeals' hearing, the Petitioner's first witness was Joseph Larson who testified he was the technical consultant with Spellman Larson Associates, Inc. Mr. Larson identified the title of the Hlopaks to this property, admitted as Petitioner's Exhibits 1A-C which are the deeds by which the property was obtained first by Isabelle Hlopak May 4, 1938 and its subsequent reconveyance to her son Ronald and subsequently to his wife, Sandra, in 1993.

Mr. Larson identified the zoning on the property by the zoning excerpt map, admitted as Plaintiff's Exhibit 2 from below as BR-AS and identified the zoning and uses in the surrounding community included within the BR-AS zone with ML-IM zoning, to the rear of the subject property. Mr. Larson introduced a redlined site plan which attempted to address some of the concerns mentioned by People's Counsel in his pre-hearing letter to the Board of Appeals after discussions between Petitioner's counsel and Mr. Zimmerman.

Specifically the redline comments set forth the limit of used car display in accordance with the Baltimore County Zoning Regulations and set forth the plan for ingress and egress to the repair, detailing, warranty service bays in the building located to the rear of the property. Redline comments also identified the existing and proposed 6 foot chain link fencing to separate and delineate the requested use for a used car sale facility from the other use on the Petitioners' property. The other use on the Petitioners' property was not included as part of the special exception petition request. No variances were requested by the Petitioner as part of this zoning

request. The property which was the subject of the Petition did not include and specifically excluded the remainder of the site which had been utilized since 1998 as a tattoo parlor on a continuous basis, according to the testimony of Sandra Hlopak. Mr. Larson testified as to the other commercial and industrial uses in the neighborhood which were graphically described or shown on the People's Counsel 1 aerial exhibit.

That aerial exhibit was dated because it showed boats on the subject property which had not been there according to the testimony of Mrs. Hlopak since the boat dealer tenant was removed from the property and the property was cleaned up in the December 2007 to March 2008 time period. Photographic evidence was admitted showing the condition of the premises at the time of the boat dealer was asked to leave the property as well as the results of the cleanup and major restoration and repairs made by Ms. Hlopak and her husband and their contractors to the property between March and June of 2008. Ms. Hlopak also authenticated a letter order dated May 20, 1977 from S. Eric Dinenna, Zoning Commissioner, approving the existing operation, at that time by Mr. Ron Hlopak, as a legal nonconforming use for a used car lot with an attachment showing that the property had been used continuously from 1952 through the time of the Zoning Commissioner's decision as a used car facility.

The present zoning allows a property to be used for a used car facility as special exception. Ms. Hlopak introduced numerous letters of support for the Petition from neighboring property owners, as well as signed petitions of support by others for the special exception request and the existing tattoo parlor use from individuals which were admitted as exhibits by the Board of Appeals.

Even though the tattoo parlor was located on the remainder of Petitioners' property, and it was not the subject of the Special Exception, Ms. Hlopak testified that a tattoo parlor had

operated continuously at that location from early in 1998. Mr. Larson had earlier introduced a document obtained by his office after the issue surfaced by People's Counsel about the tattoo parlor from the Office of Code Enforcement for Case 99-7993 for the Petitioners' property. It reflected an inquiry that the tattoo parlor was not operating under the proper zone. That notice noted that the inquiry leading to the investigation was received November 29, 1999 and that the property was inspected on December 30, 1999 by a Baltimore County Code Enforcement inspector and that the case was closed on that same day, December 30, 1999.

Ms. Hlopak testified she had no problems with the tattoo parlor tenants, patrons or visitors of any kind and she considered them to be good tenants. She testified she and her husband relied on the income from this property for their personal income. She testified in answer to People's Counsel's question that when she moved from this area to western Maryland, near Deep Creek Lake a number of years ago that she had to get rid of a bunch of old records and that she therefore had no historical records concerning the tattoo parlor or leases at this time.

Mr. Larson had testified that the special exception request would meet the requirements of BCZR 502.1 (a) through (i) and the Schultz v. Pritts test was met. Ms. Hlopak testified to the Board that some of the conditions set forth in the Zoning Commissioner's opinion would impose a hardship on the Petitioner if included in the final order. She believed that to be the case because of the abundance of other used car sale facilities in the immediate area testified to by both Mr. Larson and her. The specific conditions which she asked not be included in the Board of Appeals' Order if the Board were to grant the special exception were that the provision for advertising described in the condition be removed. Further, the condition

for no mechanical repairs be modified to allow routine detailing, car work to put the cars in sale condition when purchased wholesale and to allow warranty work to be done as is required to be provided by used car dealers who sell automobiles.

People's Counsel called no witnesses and introduced the Planning Department comment from the ZAC comment in this case and also provided excerpts of the Baltimore County Zoning Regulations which he believed supported his position that tattoo parlors were prohibited from being located by right or special exception in the BR-AS zones.

Questions Presented

1. Have the Petitioners proved that the subject property for which the special exception is requested should be approved for a used car facility with ancillary detailing, maintenance and warranty work allowed?

2. Whether the Petitioner bears a burden to prove the existence of a non-conforming use for the tattoo parlor as a pre-condition to the approval of the used car facility on the area of the Petitioners' site which is not part of the special exception property as designated on the site plan in the Petition before the Board?

Argument 1

As to the proof, the Petitioner introduced substantial evidence to show that the property is properly zoned for a used car sales facility because Section 236.2 of Special Exceptions specifically enumerates a used motor vehicle outdoor sales area separated from sales agency building as a use permitted by special exceptions. The property meets all setback requirements for the proposed use and no variances have been requested. There were no interested persons who appeared in opposition to the request either before the Zoning Commissioner or before the Board of Appeals. Even the People's Counsel, in his

comments stated that his objection was not to the used car sales facility but rather to the existence of the tattoo parlor on the remaining portion of the Petitioners' lot. The area in which the property is located on North Point Boulevard is on a divided highway with numerous used car facilities and other commercial establishments located around the property. The Petitioners' pictures showed the current conditions of the property; and reflect all the effort and expense expended by the Petitioners to clean up the property from the previous tenant who operated a boat sales and repair facility on the site and allowed the property to become less attractive than it now appears to be. The history of use at the property is significant in that it had been used as a used car facility according to the exhibit continuously from 1952 through 1991 including the time period when Ronald Hlopak operated it as his own used car facility from 1970 until 1985. In that twenty-five year period, there is no record of problems nor any problems identified concerning the subject property which arose in its operation and use as a used car facility as a non-conforming use. The site is now legitimated by the imposition of the current zoning which allows for this use specifically to be allowed by special exception as noted earlier. Mr. Larson's testimony that the property met the requirements of Section 502.1 is borne out by all of the agency comments or lack thereof from Baltimore County. Further, Ms. Hlopak testified as to the operation of it by Ron Hlopak as a used care facility for many of those earlier years without incident or problem. Again, once the redline comments were added to the plan, People's Counsel expressed to the Board his lack of objection as to the used car facility per se. Finally, the letters of support from a substantial number of neighboring property owners as well as the Petition signed by individuals supporting the special exception use are testament

to the Hlopak's operation of the site in a way which does not upset or bother their neighbors in any way.

The Petitioners therefore believe that they have met their burden of proof as well as additional evidence of community support for approval of the special exception. Petitioners would ask the Board if the Board is inclined to grant the special exception that the conditions contained in the Zoning Commissioner's Order regarding advertising and restricting the Petitioner from perhaps providing detailing and mechanical prep work for the vehicles when they are brought to the site from the auction prior to sale and warranty work which is required by Maryland State Law of used car dealers be allowed rather than restricted or prohibited by condition or in any interpretation of the conditions as imposed by the Zoning Commissioner.

Argument 2

Petitioner avers that the concerns expressed by People's Counsel concerning the legitimate existence of a tattoo parlor on the remainder of the Petitioners' site set forth in his prehearing letter which relied on the case of County Council of Prince George's County v. Gardner, Inc., 293 Md. 259, 443 A.2d 114 (1982) is misplaced and distinguishable from the facts present in the instant Petition. People's counsel also relies on Baltimore County Code Section 32-4-114(c):

County prohibited from processing if violations exist. The county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists at the time of application or during the processing of the application the violation of the zoning or development regulations of the county.

The next section of the County Code, Section 32-4-115 provides for enforcement and remedies and states that the county may bring an action for specific performance or to

set aside a conveyance made in violation of that article. In this case, People's Counsel claims the tattoo parlor represents an existing violation. People's Counsel is in error because there is no threatened claim of violation by the County concerning the tattoo parlor at this site. On evidence before the Board following passage of the law, a copy of which People's Counsel gave to the Board, the law went into effect in March 1998.

Following effective date of the statute, on November 29, 1999, an inquiry was made about the existence of the tattoo parlor on the Hlopaks property which was investigated by Code Enforcement by an inspection on December 30, 1999. That same day Code Enforcement closed the case. The closure of a case is a "de facto" action by the County to end the investigation.

A summary review of the Code Enforcement Article found in County Code Section 3-6-101 et seq. will show why that is the case. In the "definition" section, of significance, "violation" is defined as the failure to comply with a provision of the County Code or a Code. A "violation" is defined as the person charged with the violation. The testimony before the Board is that the property owners, the Hlopaks, had never been charged with a violation of the County Code under the Code Enforcement Section. Moving forward, that County Code section provides in Section 3-6-203(a):

After inspection, if the Code Official determines that a person has committed a violation, the Code Official may issue a correction notice to the violator directing the violator to comply with the requirements of the Code.

Further the correction notice must be in writing and describe with particularity the nature of the violation and the manner of correction. It is explicit in that provision of the Code that an inspection is required for the property. In Case 99-7993, County Code Enforcement Inspector Jay Schrack noted that an inspection occurred on December 30,

1999. If Inspector Schrack had determined at that time that there was a violation, he would not have closed the case. In fact, that is in keeping with the testimony in the case from Ms. Hlopak, who testified that it was early in 1998 that a tattoo parlor was a tenant in the same area that it presently exists.

Returning to the Code Enforcement section of the Baltimore County Code, Sections 3-6-204 and 205 provide if a correction notice is issued and is not complied with in a timely manner that the Code Official may cite the property owner which did not occur in this case.

Another problem with People's Counsel's analysis of this situation is that he is raising this issue for the first time at the Board of Appeals' hearing on the special exception request for a used car facility. On the Petitioners' site plan, the area of the tattoo parlor is specifically excluded. The site plan note specifically recites that it is not included in this special exception request. The testimony at the hearing was that no part of the used car facility will utilize the tattoo parlor and that the same is true vice versa. Ms. Hlopak in fact testified that the office for the used car facility is walled off from the tattoo parlor.

The Baltimore County Code provides appellate jurisdiction only to the Board of Appeals and Code Enforcement actions under Section 3-6-301 et seq. The procedural requirements as a condition for the Board to entertain an appeal must be met under 3-6-302, none of which were complied with in this case for the following reason: In People's Counsel's prehearing letter to the Chairman of the Board of Appeals, he asserts on page 2 that the tattoo parlor is either non-conforming or non-compliant. He then jumps from that statement to state the following sentence that "If the use is non-compliant, then the processing is precluded by the Code Section." There is no factual basis for his jump to conclude that the property or use is non-compliant. There is no requirement of which

Petitioners are aware that Petitioners must join and prove by Special Hearing Petition for the tattoo parlor unless or until there is a proper challenge to its legal existence.

The basis on which the People's Counsel relies in his claim it is not a present lawful use are not supported by facts or evidence. In fact, the evidence is to the contrary. The only evidence before the Board is that since the tattoo parlor zoning bill was enacted and became effective in March of 1998, the only inquiry about this specific property raising the same issue mentioned by People's Counsel was closed at time of inspection. No correction notice was ever issued by the County. No citation was ever issued by the county. Therefore, there is no support for People's Counsel's premise that if it exists, it must be illegal. People's Counsel's point mentioned in his letter that the public policy favors eliminating non-conforming uses has nothing to do with the Petition for a used car facility on an adjacent property. The tattoo parlor is not proposed to be changed, modified, altered, expanded or reduced. It is simply going to be fenced off from the used car facility with its own parking area and gate; which it has already as pointed out by People's Counsel in his cross examination of Ms. Hlopak.

Turning to the case cited by People's Counsel, County Council of Prince George's County, supra, that case involved a sand and gravel mining operation which enjoyed a legal non-conforming use. The property owner subsequently sought to expand or alter the operation under the zoning regulations of Prince George's County and the Court of Appeals held in its decision that the additional proposed uses under the special exception petition were separate and distinct from the prior non-conforming use and the Court found each use had different standards, regulations and requirements. Therefore, the Court of Appeals concluded that the non-conforming use could continue but it could not morph into

additional use under different regulations where the additional proposed use was in the opinion of the Court different from that permitted under the existing non-conforming sand and gravel mining operation. Therefore the proposed uses represents represented under those circumstances a change of use of the subject property which was prohibited under the laws of Prince George's County. Baltimore County has a similar prohibition on continuance of non-conforming uses, based on change of use under Section 104.1 of the Baltimore County Zoning Regulations. However, that issue is off point and not before the Board in this case. There is no authority to support the People's Counsel's position cited by People's Counsel, which he believes mandates or requires a "de novo" appeal that Petitioners are required to go back to square one and either ask for additional zoning relief under a Special Hearing Petition to prove a non-conforming use. People's Counsel relies on the County Code the section of law which he believes requires that the used car special exception cannot be approved if there has not been a special hearing approval obtained for a non-conforming use for the tattoo parlor. However, the section of the Code on which he relies, does not say or require that. It simply says no processing if a "violation" exists. For a "violation" to exist, the evidence would have to prove the County Code enforcement arm had initiated a case and have at least issued a correction notice; if not a citation alleging that the property is in violation of County Code.

At all times herein pertinent, no such situation occurred or existed from the time Petitioners' first requested the special exception all the way through the present. The Board may recall that People's Counsel when asked by the Board Chair if he had any such evidence candidly stated he did not to indicate that a violation had been charged by the County or was found by the County.

People's Counsel following conclusion of the hearing has informally communicated with Petitioners' Counsel prior to the submission of these Memos. People's Counsel has indicated he will request in his Memo that if the Board is inclined to approve the special exception for the used car facility that he does not have any real objection to that approval. He does intend to request that the Board impose a condition on that approval requiring that the Petitioners apply for a special hearing to approve a non-conforming use for the tattoo parlor within what he believes to be a reasonable period of time and to terminate the use in a reasonable period of time if they do not.

Petitioners' counsel is further given to understand that People's Counsel will request the Board if it should impose such a condition to impose a further condition in its order that the use as a tattoo parlor must cease if the petition is not filed within a period of time as set by the Board.

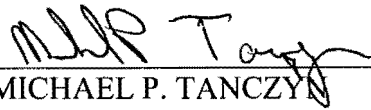
Most respectfully and for the reasons already stated, the People's Counsel if he makes such a request, will be asking the Board to exercise primary code enforcement jurisdiction which the Board does not have under County Code. As a practical matter, this concern has nothing to do with the merits of the used car sales facility under Section 502.1 of the Zoning Regulations. Again, there is nothing currently charged as a violation by Baltimore County against the property either by way of a correction notice or a citation as of the time of hearing. That has been the situation ever since December 30, 1999 when after inquiry and inspection the County closed the case concerning the tattoo parlor at this site and took no other action which it would have been charged with taking under the law if the inspector believed that the existence of the tattoo parlor at that site and at that time violated some provision of law in Baltimore County.

It is also worth noting the letters of support from the adjacent property owners and the persons who signed the petitions of support for the Special Exception Petition, as well as approval of the existing uses. These uses have been at this site for more than eleven years, according to testimony before the Board. Almost two years after the tattoo parlor law went into effect, the only County inquiry concerning whether the tattoo parlor was a legal operation through Code Enforcement was closed at intake after inspection. Petitioners request that the Board keep in mind that there are two kinds of legal non-conforming uses in Baltimore County: those which have gone through the special hearing process and received a final order that they are a legal non-conforming use; and those which for one reason or another have not been challenged. To the extent the Board reasonably views the 99 code enforcement case as a challenge to the tattoo parlor's continued existence from a zoning perspective, the County's actions in that case indicate neither something to be corrected or a violation, then until now.

CONCLUSION

For the reasons aforesaid, Petitioners respectfully request this Board of Appeals to approve the Special Exception for the used car facility with ancillary detailing, fix up work to prepare for sale, and warranty work to be performed in the maintenance facility shown on the Petitioners' site plan. Petitioners also further request that the Board not impose the restriction number 2 from the Zoning Commissioner's Order regarding advertising based on the nature of the surrounding neighborhood and the existence of competitive used car facilities who are not so restricted.

Respectfully submitted,


MICHAEL P. TANCZYN

Suite 106
606 Baltimore Avenue
Towson, Maryland 21204
410-296-8823
Attorney for Ronald and Sandra Hlopak

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17~~th~~ day of June, 2009, a copy of the
aforegoing Petitioners' Memorandum was hand delivered to People's Counsel, Peter
Zimmerman, Esquire, Office of the People's Counsel, Baltimore County Board of Appeals,
105 W. Chesapeake Avenue, Suite 204, Towson, Maryland 21204.


MICHAEL P. TANCZYN

E

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue

Towson, Maryland 21204

Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827

Email: mptlaw@verizon.net

June 12, 2009

County Board of Appeals of Baltimore County
Attn: Mrs. Theresa R. Shelton, Administrator
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

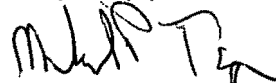
Re: PETITION FOR SPECIAL EXCEPTION
E/S North Point Boulevard, 100'S of
Wise Avenue
(4412 North point Boulevard)
15th Election District
7th Council District
Case No. 2009-0049-X

Dear Ms. Shelton:

Per the Board's direction, enclosed herewith please find the Petitioner's Memorandum and three copies for filing in this matter.

Thank you for your assistance in this regard.

Very truly yours,


Michael P. Tanczyn

MPT:aef

Enclosures

cc: Mr. and Mrs. Ronald Hlopak
Peter Max Zimmerman, Esquire

RECEIVED
JUN 12 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

10/14/08

IN RE: PETITION FOR SPECIAL EXCEPTION *

E/S North Point Boulevard, 100' S of
Wise Avenue

(4412 North Point Boulevard)

15th Election District

7th Council District

Ronald Hlopak, et ux

Petitioners

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

Case No. 2009-0049-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Special Exception filed by the legal owners of the subject property, Ronald T. Hlopak, and his wife, Sandra L. Hlopak. The Petitioners request a special exception to allow the sale of used motor vehicles on the major portion of 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, which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing were Ronald and Sandra Hlopak, property owners, and Joseph L. Larson of Spellman, Larson & Associates, Inc., the consultant who prepared the site plan. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject property is a rectangular shaped parcel on the east side of North Point Boulevard (MD Route 151) just south of Wise Avenue in the Dundalk/Sparrows Point area. The property is approximately 156 feet wide and 123 feet deep and contains a gross area of 0.45 acres, more or less, zoned B.R.-A.S. (Business, Roadside in the Automotive Services District). Presently, the property is improved with a 23' x 30' two-story structure with supporting parking (seven [7] spaces) located on the southwest corner off the lot used as a tattoo parlor. This building, as delineated on the site plan (Petitioners' Exhibit 1), is

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Date 10-14-08
By [Signature]

surrounded by hatch marks designating a lot area of 85' wide and 52' deep. This hatched area consists of approximately 4,000 square feet, operates separately, is not a part of the special exception area and has its own curb cut for ingress and egress to North Point Boulevard. The remaining major portion of the lot is completely fenced, contains 0.39 acres¹ and will serve as the used motor vehicle sales area. This lot shaded in blue on Petitioners' Exhibit 1 is improved with a small office (15' x 34'), a combination three-bay garage and office (68' x 28') and ten (10) parking spaces. The remainder of the lot is labeled auto storage yard and has its own access to North Point Boulevard.

An appreciation of the property's past history and use is relevant and briefly outlined. Mr. Hlopak testified that since his birth in 1941 his parents owned the subject property with the improvements described above. Since the early 1950's through to the 1990's, the property served as "Ron's Used Cars". In 1993 following his mother's death, the Petitioners took title to the property and the use was converted from that of used motor sales to the sale of boats.² The Petitioners now appear, as they must, desirous of again utilizing the special exception area for the sale of used cars, using the same space arrangement that was previously used since the early 1950's. In this regard, the site has been completely restored to its pre-boatyard condition. As evidenced by Petitioners' photographic Exhibits 2A (before) and 2B (after), all boats and debris

¹ The legal description for the Special Exception area is described as follows: "BEGINNING for the same at a point on the east side of North Point Boulevard (Maryland Route 151) said point being 100 feet more or less southerly from the south side of Wise Avenue and running thence for a line of division south 85 degrees 27 minutes 00 seconds east 122.74 feet thence south 1 degree 52 minutes 00 seconds west 156.00 feet thence north 87 degrees 15 minutes 00 seconds west 79.00 feet thence north 1 degree 52 minutes west 33.00 feet thence south 87 degrees 15 minutes east 8.40 feet thence north 1 degree 52 minutes west 52.00 feet thence north 87 degrees 15 minutes west 52.53 feet to a point on the east side of North Point Boulevard thence running along the east side of North Point Boulevard north 1 degree 52 minutes 00 seconds west 74.85 feet to the place of beginning."

² A boatyard is a permitted use by right in the B.M. zone per Section 233.2 of the B.C.Z.R.

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Date 10-14-08
By [Signature]

have been removed from the lot and the improvements thereon rehabilitated to an attractive condition.

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. (See *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) and *People's Counsel for Baltimore County v. Loyola* _____ Md. _____ (2007).

After due consideration of the proffered testimony presented by Mr. Larson and the Petitioners, I find that the relief requested complies with the special exception requirements set forth in Section 502.1 of the B.C.Z.R. The proposed use is an appropriate use of the subject site (as it had been for the past 40 years) and will not be detrimental to adjacent properties.

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

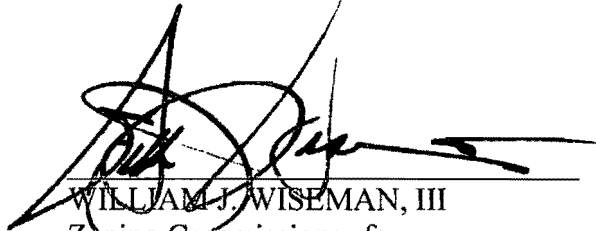
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 14th day of October 2008, that the Petition for Special Exception seeking approval of the use of the subject property for the sale of used motor vehicles, pursuant to Section 236.4 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with Petitioners' Exhibit 1, be and is hereby granted, subject to the following restrictions:

- 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

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

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.

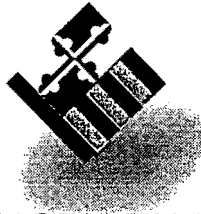
- 2) All signage will be in accordance with the B.C.Z.R. and there shall be no flashing lights, banners, balloons, or other similar advertising on the site.
- 3) There will be no mechanical repairs or automotive body or fender repair work performed on site.
- 4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.



WILLIAM J. WISEMAN, III
Zoning Commissioner for
Baltimore County

WJW:dlw

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



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

October 14, 2008

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

RE: **PETITION FOR SPECIAL EXCEPTION**
E/S North Point Boulevard, 100' S of Wise Avenue
(4412 North Point Boulevard)
15th Election District - 7th Council District
Ronald Hlopak, et ux – Petitioners
Case No. 2009-0049-X

Dear Mr. Larson:

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

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

Very truly yours,

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a large, stylized circular flourish.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

c: Ronald and Sandra Hlopak, 4412 North Point Boulevard, Baltimore, MD 21219
People's Counsel; Office of Planning; File



Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 4412 North Point Boulevard

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

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:

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

Attorney For Petitioner:

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

Legal Owner(s):

Ronald Hlopak
Name - Type or Print _____
Signature Ronald Hlopak
Name - Type or Print _____
Sandra Hlopak
Signature _____

Sandra Hlopak 1-301-387-9089
Address Telephone No.
4412 North Point Blvd. 21219
City Baltimore MD State Zip Code

Representative to be Contacted:

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

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____
UNAVAILABLE FOR HEARING _____

Reviewed By Jim Date 08-18-08

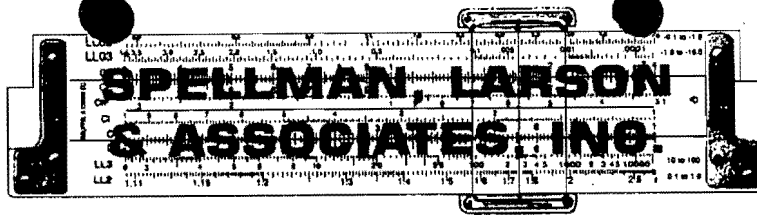
Case No. 2009-0049-X

REV 09/15/98

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Date 10-14-08

By NSW



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
4412 NORTH POINT BOULEVARD
15TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

BEGINNING for the same at a point on the east side of North Point Boulevard (Maryland Route 151) said point being 100 feet more or less southerly from the south side of Wise Avenue and running thence for a line of division south 85 degrees 27 minutes 00 seconds east 122.74 feet thence south 1 degree 52 minutes 00 seconds west 156.00 feet thence north 87 degrees 15 minutes 00 seconds west 122.62 feet to a point on the east side of North Point Boulevard and then running along the east side of North Point Boulevard north 1 degree 52 minutes 00 seconds west 159.86 feet to the place of beginning.

CONTAINING 0.45 acres of land more or less.

LEGAL DESCRIPTION TO ACCOMPANY ZONING PETITION
FOR SPECIAL EXCEPTION
4412 NORTH POINT BOULEVARD, 15TH ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

11 BEGINNING for the same at a point on the east side of North Point Boulevard (Maryland Route 151) said point being 100 feet more or less southerly from the south side of Wise Avenue and running thence for a line of division south 85 degrees 27 minutes 00 seconds east 122.74 feet thence south 1 degree 52 minutes 00 seconds west 156.00 feet thence north 87 degrees 15 minutes 00 seconds west 79.00 feet thence north 1 degree 52 minutes west 33.00 feet thence south 87 degrees 15 minutes east 8.40 feet thence north 1 degree 52 minutes west 52.00 feet thence north 87 degrees 15 minutes west 52.53 feet to a point on the east side of North Point Boulevard thence running along the east side of North Point Boulevard north 1 degree 52 minutes 00 seconds west 74.85 feet to the place of beginning. 11

CONTAINING 0.349 acres of land more or less.

File#D08130801



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS RECEIPT

No. **18579**

PAID RECEIPT

Date: **08-18-08**

BUSINESS ACTUAL TIME DPM
 19/2008 8/18/2008 09:17:57 2

Fund	Agcy	Orgn	Sub Orgn	Rev Source	Sub Rev	Rept Catg	BS Acct	Amount
001	006	0000		6150				380.00

REG 1000 MAIL ORVA JEF
 RECEIPT # 500209 8/18/2008 OFLA
 5 520 JMDNA VERIFICATION
 OF N. 018579

Recpt Tot \$380.00
 \$380.00 LX \$.00 CA
 Baltimore County, Maryland

Total: **380.00**

Rec From: **Spellman, Larson**

For: **2009-0049-X**

4412 NORTH FANT BLVD

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: # 2009-0049-X

4412 North Point Boulevard
E/side of North Point Boulevard,
100 feet +/- South of
Wise Avenue

15th Election District

7th Councilmanic District

Legal Owner(s): Ronald & Sandra Hlopak

Special Exception: for a used motor vehicle outdoor sales.

Hearing: Tuesday, October 7,
2008 at 9:00 a.m. Jefferson
Building, Room 104, 105
West Chesapeake Avenue,
Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1). Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

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

JT 9/07-Sept. 23, 184137

CERTIFICATE OF PUBLICATION

9/25/2008

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 9/23/2008.

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

J. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

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

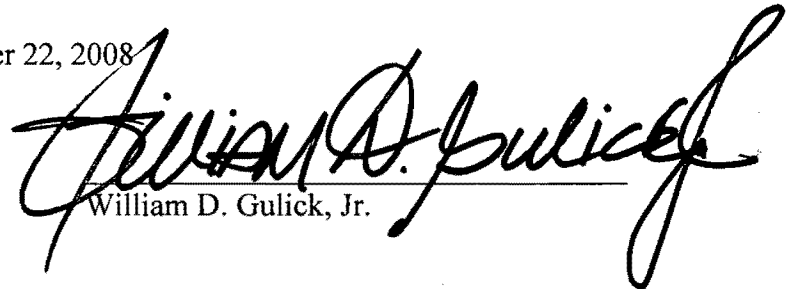
Date: September 22, 2008

Zoning Office
Attention: Ms. Kristen Matthews/ Mr. Timothy Kotroco

Re: Case Number: 2009-0049-X
Petitioner/Developer: Ronald & Sandra Hlopak
Date of Hearing/Closing: Tuesday October 7, 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: 4412 North Point Boulevard Baltimore, MD 21219.

The sign (s) were posted on: September 22, 2008



William D. Gulick, Jr.

2944 Edgewood Avenue
Baltimore, MD 21234
(410) 530-6293

WILLIAM D. GULICK, JR
Baltimore County Approved Sign Poster

410-530-6293

2944 Edgewood Avenue
Baltimore, MD 21234

DATE: **SEPT. 22, 2008**

TO: **ZONING OFFICE**
PDM
BALTIMORE COUNTY

Re: **CASE NO. 2009 - 0049 - X**
4412 NORTH POINT BLVD
HLOPAK PROPERTY

ATTENTION: **MR. TIMOTHY KOTROGO / MRS. KRISTEN MATTHEWS**

☒ We are submitting () We are returning () We are forwarding

() Herewith () Under separate cover

No.	Description
1	CERTIFICATE OF POSTING
2	SITE PHOTOS

☒ For processing ☒ For your use () For your review

() Please call when ready () Please return to this office () In accordance with your request

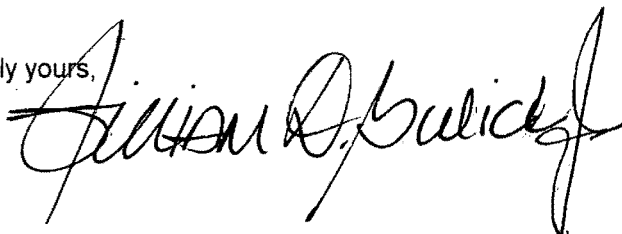
Remarks :

For further information, please contact the writer at this office.

CC SPELMAN, LARSON
& ASSOC. INC.

RONALD & SANDRA
HLOPAK

Very truly yours,



ZONING NOTICE

CASE # 2009-0049-X

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

JEFFERSON BUILDING, ROOM 104
105 WEST CHESAPEAKE AVENUE
PLACE: TOWSON, MD 21204

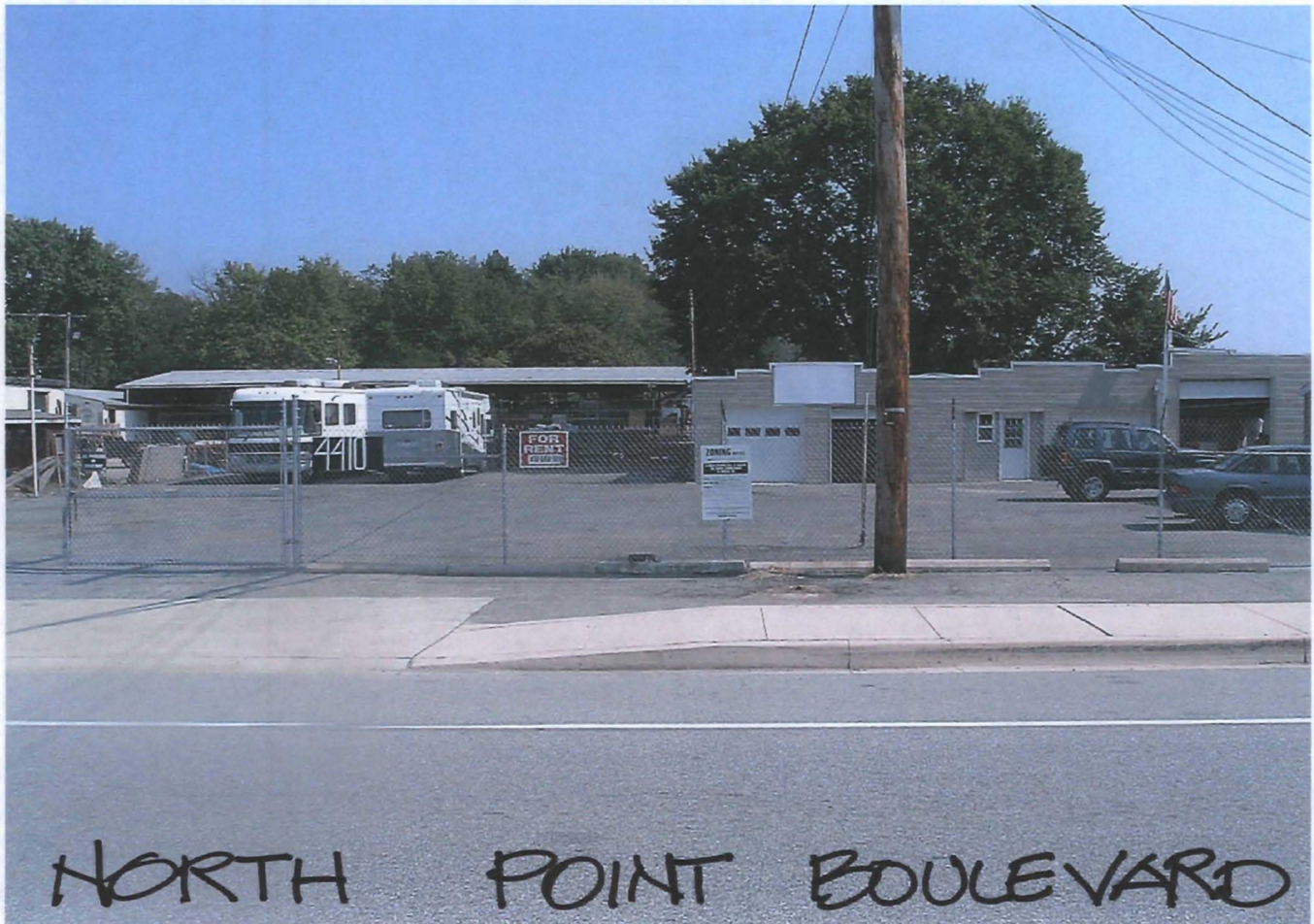
DATE AND TIME: OCT. 7, 2008
TUESDAY @ 9:00 AM

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

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 787-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE



PHOTOGRAPHIC RECORD

Citation/Case No.: 09-049-X 4412 North Point Boulevard
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.

Michael Kelly
Enforcement Officer

11/14/00



RECEIVED

APR 14 2009

BALTIMORE COUNTY
BOARD OF APPEALS

Requested: January 30, 2009

APPEAL SIGN POSTING REQUEST

CASE NO.: 09-049-X

4412 North Point Boulevard

15th ELECTION DISTRICT

APPEALED: 10/28/08

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

45 E6

CASE NO.: 09-049-X

LEGAL OWNER: Ronald Hlopak

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

4412 NORTH POINT BOULEVARD
E/S NORTH POINT BOULEVARD, 100' S OF WISE AVENUE

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

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

M. Stuart Kelly
(Print Name)

**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: 0049
Petitioner: RONALD HIOPAK & SANDRA HIOPAK
Address or Location: 4412 NORTH POINT BLVE

PLEASE FORWARD ADVERTISING BILL TO:

Name: RONALD HIOPAK & SANDRA HIOPAK
Address: 515 CLEANINGS DRIVE
MCHENRY MD 21541-1472

Telephone Number: (1-301-387-9089)

TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 23, 2008 Issue - Jeffersonian

Please forward billing to:

Ronald & Sandra Hlopak
515 Gleanings Drive
McHenry, MD 21541-1472

1-301-387-9089

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: 2009-0049-X

4412 North Point Boulevard

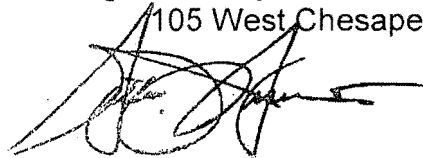
E/side of North Point Boulevard, 100 feet +/- South of Wise Avenue

15th Election District – 7th Councilmanic District

Legal Owners: Ronald & Sandra Hlopak

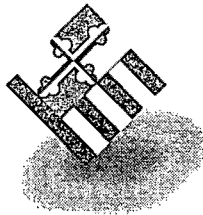
Special Exception for a used motor vehicle outdoor sales.

Hearing: Tuesday, October 7, 2008 at 9:00 a.m. Jefferson Building, Room 104,
105 West Chesapeake Avenue, Towson 21204



WILLIAM J. WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

September 18, 2008
TIMOTHY 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: 2009-0049-X

4412 North Point Boulevard

E/side of North Point Boulevard, 100 feet +/- South of Wise Avenue

15th Election District – 7th Councilmanic District

Legal Owners: Ronald & Sandra Hlopak

Special Exception for a used motor vehicle outdoor sales.

Hearing: Tuesday, October 7, 2008 at 9:00 a.m. Jefferson Building, Room 104,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in cursive script that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Mr. & Mrs. Hlopak, 4412 North Point Blvd., Baltimore 21219
Joseph Larson, 222 Bosley Avenue, Ste. B-3, Towson 12204

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, SEPTEMBER 22, 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.



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 14, 2009

NOTICE OF DELIBERATION

CASE #: 09-049-X

MATTER OF: Ronald Hlopak and Sandra Hlopak –
Legal Owners / Petitioners
4412 North Point Boulevard
15th Election District; 7th Councilmanic District

RE: – To allow the sale of used motor vehicles on the subject property located in a B.R.-A.S. zone.

10/14/08 – ZC decision that Petition for Special Exception – GRANTED with restrictions.

Having heard this matter on 5/14/09, public deliberation has been scheduled for the following date /time:

DATE AND TIME : THURSDAY, JULY 16, 2009 at 9:00 a.m.

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

NOTE: Closing briefs are due no later than 4:00 p.m. on Friday, June 12, 2009
(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	: Michael Tanczyn, Esquire
Petitioners/Legal Owners	: Ronald Hlopak and Sandra Hlopak

Joseph Larson
William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/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

February 26, 2009

NOTICE OF ASSIGNMENT

CASE #: 09-049-X

MATTER OF: Ronald Hlopak and Sandra Hlopak –
Legal Owners / Petitioners
4412 North Point Boulevard
15th Election District; 7th Councilmanic District

RE: – To allow the sale of used motor vehicles on the subject property located in a B.R.-A.S. zone.

10/14/08 – ZC decision that Petition for Special Exception – GRANTED with restrictions.

ASSIGNED FOR: THURSDAY, MAY 14, 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

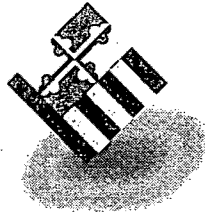
c: Appellants

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

Consultant for Petitioners/Legal Owners
Petitioners/Legal Owners

: Joseph Larson
: Ronald Hlopak and Sandra Hlopak

William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM



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

October 1, 2008

Ronald & Sandra Hlopak
4412 North Point Blvd.
Baltimore, MD 21219

Dear: Ronald & Sandra Hlopak

RE: Case Number 2009-0049-X, 4412 North Point Blvd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on August 18, 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,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." with a stylized flourish at the end.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Joseph L. Larson, 222 Bosley Ave. Ste. B-3, Towson, MD 21204

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

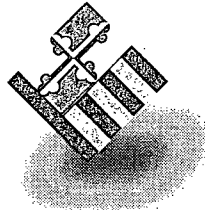
DATE: August 26, 2008

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

SUBJECT: Zoning Advisory Committee Meeting
For September 2, 2008
Item Nos. 09-0037, 0039, 0046, 0047, 0048
0049 and 0050

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

DAK:CEN:lrk
cc: File
ZAC- 08262008-NO COMMENTS



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
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

August 28, 2008

ATTENTION: Zoning Review Planners

Distribution Meeting Of: August 25, 2008

Item Number: 0033, 0037, 0039, 0047, 0048, 0049, 0050

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

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

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

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 30, 2008

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

RECEIVED
OCT 07 2008

BY: _____

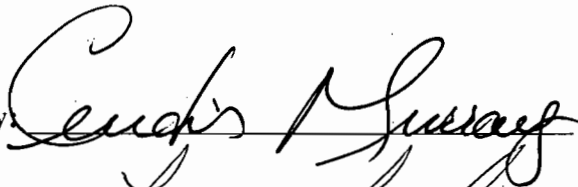
SUBJECT: Zoning Advisory Petition(s): **Case(s) 09-049- Special Exception**

The Office of Planning has reviewed the above referenced case(s) and has concerns surrounding the petitioner's request. The site plan indicates the subject property is currently used for auto storage and is not surrounded by residential uses. However, after review of aerial photography it appears that boats are being stored and/or sold on the site. The Office of Planning has some concerns about the legitimacy of the existing and proposed uses. Furthermore, the legal status of the tattoo parlor may need confirmation by special hearing and the limits of the boat/ used car storage appear to overlap the associated uses of the tattoo parlor.

Nonetheless, if the petitioner is able to demonstrate a hardship or practical difficulty, resulting in the Zoning Commissioner granting the zoning relief, the Office of Planning has no objection.

For further questions or additional information concerning the matters stated herein, please contact John Alexander in the Office of Planning at 410-887-3480.

Prepared By:



Division Chief:
CM/LL





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: August 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. 2009-0049-X
4412 NORTH POINT BLVD.
MD 151
HIOPAK PROPERTY
SPECIAL EXCEPTION

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 08/26. A field inspection and internal review reveals that the existing entrance onto is consistent with current State Highway Administration requirements. Therefore, this office has no objection to 2009-0049-X, Case Number 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,

Foster 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



RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
4412 North Point Blvd; E/S North Point *
Blvd, 100' S of Wise Avenue * ZONING COMMISSIONER
15th Election & 7th Councilmanic Districts *
Legal Owner(s): Ronald Hlopak * FOR
Petitioner(s) * BALTIMORE COUNTY
* 09-049-X

* * * * *

ENTRY OF APPEARANCE

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

RECEIVED

AUG 28 2008

.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2008, a copy of the foregoing Entry of Appearance was mailed to Joseph Larson, 222 Bosley Avenue, Suite B-3, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
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 8, 2009
*Department of Permits and
Development Management*

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

Dear Mr. Larson:

RE: Case: 2009-0049-X, 4412 North Point Blvd.

Please be advised that an appeal of the above-referenced case was filed in this office on October 28, 2008 from People's Counsel of Baltimore County. 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,

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Ronald & Sandra Hlopak, 4412 North Point Blvd., Baltimore 21219



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

October 28, 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 EXCEPTION
E/S North Point Blvd., 100' S of Wise Avenue
(4412 North Point Blvd.)
15th Election District; 7th Council District
Ronald Hlopak, et ux. - Petitioners
Case No.: 09-049-X

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

RECEIVED

OCT 28 2008

.....

PMZ/CSD/rmw

cc: Joseph L. Larson, Representative for Petitioners
Ronald Hlopak, Petitioner

APPEAL

Petition for Special Exception
4412 North Point Boulevard
E/S North Point Blvd., 100' S of Wise Avenue
15th Election District – 7th Councilmanic District
Legal Owners: Ronald Hlopak

Case No.: 2009-0049-X

Petition for Special Exception (August 18, 2008)

Zoning Description of Property

Notice of Zoning Hearing (September 10, 2008)

Certification of Publication (The Jeffersonian – September 23, 2008)

Certificate of Posting (September 22, 2008) by William Gulick, Jr.

Entry of Appearance by People's Counsel (August 28, 2008)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – None

Zoning Advisory Committee Comments

Petitioners' Exhibit

1. Site Plan
2. Photographs (A & B)

Protestants' Exhibits - None

Miscellaneous (Not Marked as Exhibit) - None

Zoning Commissioner's Order (GRANTED – October 14, 2008)

Notice of Appeal received on October 28, 2008 by the Office of People's Counsel

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Joseph Larson
Ronald Hlopak

date sent January 8, 2009, klm

CASE #: 09-049-X

**MATTER OF: Ronald Hlopak and Sandra Hlopak –
Legal Owners / Petitioners
4412 North Point Boulevard
15th Election District; 7th Councilmanic District**

RE: – To allow the sale of used motor vehicles on the subject property located in a B.R.-A.S. zone.

10/14/08 – ZC decision that Petition for Special Exception – GRANTED with restrictions.

2/26/09 – Notice of Assignment for Thursday, May 14, 2009 was sent to the following:

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

Counsel for Petitioners/Legal Owners
Petitioners/Legal Owners

Michael Tanczyn
: Ronald Hlopak and Sandra Hlopak

: Joseph Larson

William Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM

4/24/09	Entry of Appearance of Michael Tanczyn on behalf Petitioners / Legal Owners
---------	---

5/13/09 at 3:39 p.m.	– Received letter from People's Counsel outlining information re: a tattoo parlor on the property.
----------------------	--

5/14/09	Board convened for hearing (Grier – Bob – Andy). Hearing concluded. Memos due Friday 6/12/09. Deliberation scheduled for Thursday, July 16, 2009 at 9:00 a.m. Notices sent to all parties.
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6/10/09	Memo received from People's Counsel.
---------	--------------------------------------

6/11/09	Informed Mike Tanczyn that office would be closed at 2 PM on Friday. He will have the Memo to the office prior to 2 .
---------	---

6/15/09	Memos distributed to Board. (Grier – Bob – Andy)
---------	--

Page 2

CASE #: 09-049-X

**MATTER OF: Ronald Hlopak and Sandra Hlopak –
Legal Owners / Petitioners**
4412 North Point Boulevard
15th Election District; 7th Councilmanic District

RE: – To allow the sale of used motor vehicles on the subject property located in a B.R.-A.S.
zone.

10/14/08 – ZC decision that Petition for Special Exception – GRANTED with restrictions.

7/16/09	Board convened for Public Deliberation – Petition GRANTED
7/23/09	Received tape for transcription of Opinion.
7/27/09	Tape transcribed and given to Bob for review.

LAW OFFICES
MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue
Towson, Maryland 21204
Phone: (410) 296-8823 • (410) 296-8824 • Fax: (410) 296-8827
Email: mptlaw@verizon.net

April 24, 2009

County Board of Appeals of Baltimore County
Attn: Mrs. Theresa R. Shelton, Administrator
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Petition for Special Exception
Case No. 2009-0049-X

Dear Ms. Shelton:

Enclosed herewith please find our Notice of Appearance to be filed on behalf of Mr. and Mrs. Ronald Hlopak. Thank you for your assistance in this regard.

Very truly yours,



Michael P. Tanczyn

MPT/aes
Enclosure

RECEIVED

APR 24 2009

BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
E/S North Point Boulevard, 100'S of * BOARD OF APPEALS
Wise Avenue *
(4412 North point Boulevard) * FOR
15th Election District *
7th Council District *
BALTIMORE COUNTY
Ronald Hlopak, et ux *
Petitioners *
Case No. 2009-0049-X
*
* * * * *

NOTICE OF APPEARANCE

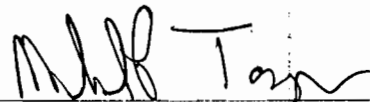
RECEIVED

APR 24 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

Mr./Ms. Clerk:

Please enter my appearance on behalf of the Petitioners in the above captioned case.



MICHAEL P. TANCZYN
Suite 106
606 Baltimore Avenue
Towson, Maryland 21204
410-296-8323
Attorney for Ronald and Sandra Hlopak

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of April, 2009, a copy of the foregoing Notice of Appearance was first class mailed, postage prepaid, to: Peter Zimmerman, Esquire, Office of the People's Counsel, Baltimore County Board of Appeals, 105 W. Chesapeake Avenue, Suite 204, Towson, Maryland 21204.



MICHAEL P. TANCZYN



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

May 13, 2009

Hand-delivered

Wendell H. Grier, Panel Chair
County Board of Appeals
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: Ronald and Sandra Hlopak, property owners
4412 North Point Boulevard
Case No.: 09-049-X

RECEIVED

MAY 13 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

Dear Chairman Grier:

It appears to me helpful to outline in writing some preliminary observations. While the case on its surface involves the property owners' petition for special exception for a used car facility, there is a complication involving an "unconfirmed nonconforming use" of a tattoo parlor on the property. In discussing the situation with Michael Tanczyn, Esq., who recently entered his appearance for the property owners, it came up that the tenants might file a petition for special hearing separately relating to the tattoo parlor. I suggested that it might be reasonable to postpone the present case and eventually to have the special hearing case consolidated with it. For various reasons, Mr. Tanczyn informed me today that he would like to go ahead with the present case, and I respect that. In this context, as background to my opening statement, I would like to provide the following information as an introductory memorandum.

The property is in southeastern Baltimore County at 4410 North Point Boulevard. It occupies a little less than one-half of an acre. The petition for special exception is for a used motor vehicle outdoor sales area in a Business Roadside (B.R.) Zone. An unusual problem is the presence of a tattoo parlor building facing North Point Boulevard. The site plan shows that the proposed used car facility would more or less surround or overlap the tattoo parlor use in an L-shape.

In 1998, the County Council enacted Bill 29-98 to address tattoo parlors and other specified uses. The Bill is codified primarily in BCZR §§ 4B-101 and 4B-102. It allows tattoo parlors in M.H. Zones only, and subject to specified setback restrictions. The use is not permitted in the B.R. Zone.

The site plan refers to the tattoo parlor use on the property as an "unconfirmed nonconforming use." The September 30, 2008 correspondence of the Planning Director states, among other things,

"The Office of Planning has reviewed the above referenced case(s) and has concerns surrounding the petitioner's request. The site plan indicates the subject property is currently used for auto storage and is not surrounded by residential uses. However, after review of aerial photography it appears that boats are being stored and/or sold on the

site. The Office of Planning has some concerns about the legitimacy of the existing and proposed uses. Furthermore, the legal status of the tattoo parlor may need confirmation by special hearing and the limits of the boat/used car storage appear to overlap the associated uses of the tattoo parlor."

The status of the tattoo parlor is a problem. It is not allowed by right or special exception in the B.R. Zone. It is thus either nonconforming or noncompliant. Either way, it is our office's position that the presence of the tattoo parlor precludes the special exception for the used car facility unless the tattoo parlor use terminates. If the use is noncompliant, then the processing of another zoning petition is precluded by Code § 32-4-114(c). If the use is otherwise legally nonconforming, a used car facility would amount to a change in the use of the property which, in our view, would terminate under BCZR § 104.1. Indeed, the history of the property suggests that there may already have been a change.

So there is no misunderstanding, our office views the property as a single property under unitary ownership. In this context, the proposed outdoor used automobile sales area must not be viewed in isolation, or unrelated to the tattoo parlor use. It should also be remembered that the policy of the law is to eliminate nonconforming uses. We believe the Court of Appeals decision in County Council for Prince George's County v. Gardner 293 Md. 259 (1982) supports our position as to the relevance of the integrated consideration of the entire property and use.

In light of our view as to the interrelationship of the tattoo parlor issue with the use car facility issue, I hope this letter provides a helpful introduction. If the Board agrees with our position, the decision in this case will affect the tattoo parlor use. Therefore, the owners and tenants should be prepared to submit whatever information they feel is relevant as to the status of the tattoo parlor. In other words, the decision here must consider and resolve the impact of the tattoo parlor use on the proposed special exception.

There are other issues with respect to the site plan for the used car facility which I have discussed with Mr. Tanczyn. These will be illuminated at the hearing.

Thank you for your consideration in this matter.

Sincerely,



Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw

cc: Michael Tanczyn, Esquire via first class mail and fax

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:

Ronald and Sandra Hlopak

09-049-X

DATE:

July 16, 2009

BOARD/PANEL:

Wendell Grier
Andrew Belt
Robert Witt

RECORDED BY:

Sunny Cannington/Legal Secretary

PURPOSE:

To deliberate the following:

1. Petition for Special Exception to allow the sale of used motor vehicles on the major portion of the subject property.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed the Petitioners' desired use of the subject property. The Petitioners indicated to the Board that they wish to use the property for the sale of used motor vehicles with warranty, detailing and maintenance completed on the property.
- The Zoning Commissioner previously granted the Special Exception relief with conditions.
- People's Counsel argued that the tattoo parlor that operates on the property is the non-conforming use as it has been in use continuously for more than one year. People's Counsel also argued that property has not been in use as a used motor vehicle sales area in the recent past. The subject section of the property was last used as a boat sales area.
- The Board feels that the issue of the tattoo parlor is not before them. They decided that it is possible to use a property in two separate ways without an impact on each other. People's Counsel did not provide any evidence with regard to any precedent indicating the Board was had to rule on the whole of the property or if they could section out part of the property for a Special Exception. The Board decided they were not considering the tattoo parlor in their decision regarding the Special Exception.
- The Board finds that this property and intended use does allow for a Special Exception. There is no evidence that there will be a detrimental effect on the surrounding area. There is no evidence that the vehicle sales will cause increased traffic in the area.
- People's Counsel requested that if the Board were to Grant the Special Exception, they include a condition that the Petitioners request a non-conforming use for the Tattoo parlor within one year or close the tattoo parlor. The Board determined that they do not have jurisdiction to make that condition and since the Board is not considering the issue of the tattoo parlor, it is inappropriate for the Board to respond to this request of People's Counsel.

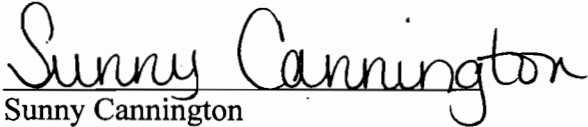
- The Board went through the Zoning Commissioner's conditions. The Board determined that they will be changing the wording of the Zoning Commissioner's condition to allow only "ancillary detailing, maintenance and warranty work."

DECISION BY BOARD MEMBERS: The Board will not be considering the tattoo parlor as a factor in the Petition for Special Exception. The Petition for Special Exception will be granted with restrictions.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the Petition for Special Exception with conditions.

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,


Sunny Cannington

BALTIMORE COUNTY, MARYLAND

Board of Appeals of Baltimore County

Interoffice Correspondence

Phone: 410-887-3180

Fax: 410-887-3182

To: Stuart Kelly, Code Enforcement

From: Sunny Cannington, Legal Secretary

Date: August 17, 2009

Re: Signs to be Picked up

Hunt Valley 75 Limited Partnership
Board of Appeals Case No.: 08-582-A
11311 McCormick Road

and

Ronald and Sandra Hlopak
Board of Appeals Case No.: 09-049-X
4412 North Point Boulevard

Please be advised that these cases have been completed and the signs can be picked up at your convenience.

Thank you for all your help. Please do not hesitate to contact us should you have any problems or questions.

From: Debra Wiley
To: Murray, Curtis
Date: 10/03/08 1:17:13 PM
Subject: Comment Needed for 10/7 Hearing (Bill)

Hi Curtis,

Bill has a hearing scheduled for Tuesday, October 7th @ 9 AM and we need a comment from your office.
I have provided a case description for your convenience as follows:

Case No. 2009-0049-X

4412 North Point Blvd.

E/side of North Point Blvd., 100 ft. +/- South of Wise Ave.

15th Election District - 7th Council District

Legal Owners: Ronald & Sandra Hlopak

Special Exception for a used motor vehicle outdoor sales

Hearing: Tuesday, October 7, 2008 at 9:00 a.m. Jefferson Building, Room 104,
105 West Chesapeake Avenue, Towson 21204

Thanks and have a wonderful weekend !

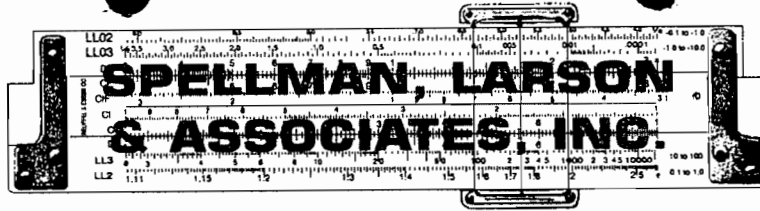
Debbie Wiley
Legal Administrative Secretary
Office of the Zoning Commissioner
105 West Chesapeake Avenue, Suite 103
Towson, Md. 21204
410-887-3868
410-887-3468 (fax)
dwiley@baltimorecountymd.gov

CC: Are, Kathy

Missing
OP

10/3

BW 10/17
9am



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

October 10, 2008

Memo to: Mr. William Wiseman, Zoning Commissioner
Baltimore County

RECEIVED
OCT 14 2008

BY:

Re: 4412 North Point Boulevard
Case No. 2009-0049 X

Dear Bill,

As promised, I am attaching hereto six photographs of the above captioned property, three of which show the very poorly maintained condition of the property as it was left by the tenant who ran the boat sales operation.

Secondly, the second group of photographs show the current condition of the property after the owner reclaimed the property and restored it to what is now impeccable condition.

I trust that these photographs are sufficient for your needs at this point whereby should you need any additional information from this office please feel free to contact me at any time.

Very truly yours,

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

cc: Ron & Sandy Hlopak

File#L10090801



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw6.3)

[Go Back](#)
[View Map](#)
[New Search](#)

Account Identifier: District - 15 Account Number - 1508640040

Owner Information

Owner Name:	HLOPAK RONALD T HLOPAK SANDRA L	Use:	COMMERCIAL
Mailing Address:	515 GLEANINGS DR MC HENRY MD 21541-1472	Principal Residence:	NO
		Deed Reference:	1) /10233/ 698 2)

Location & Structure Information

Premises Address	Legal Description
4412 NORTH POINT BLVD	PT LT 10 H C SNAVELY PLAT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
104	21	87						3	Plat Ref: 2/ 218

Special Tax Areas

Town	
Ad Valorem	
Tax Class	

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1904	1,950 SF	19,553.00 SF	06

Stories	Basement	Type	Exterior
----------------	-----------------	-------------	-----------------

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2006	07/01/2008	07/01/2009
Land	148,600	148,600		
Improvements:	71,500	71,500		
Total:	220,100	220,100	220,100	NOT AVAIL
Preferential Land:	0	0	0	NOT AVAIL

Transfer Information

Seller: HLOPAK ISABELLA, ET AL	Date: 12/22/1993	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /10233/ 698	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *

CASE NAME 2009-0049X
CASE NUMBER H200X
DATE 10-7-08

PETITIONER'S SIGN-IN SHEET

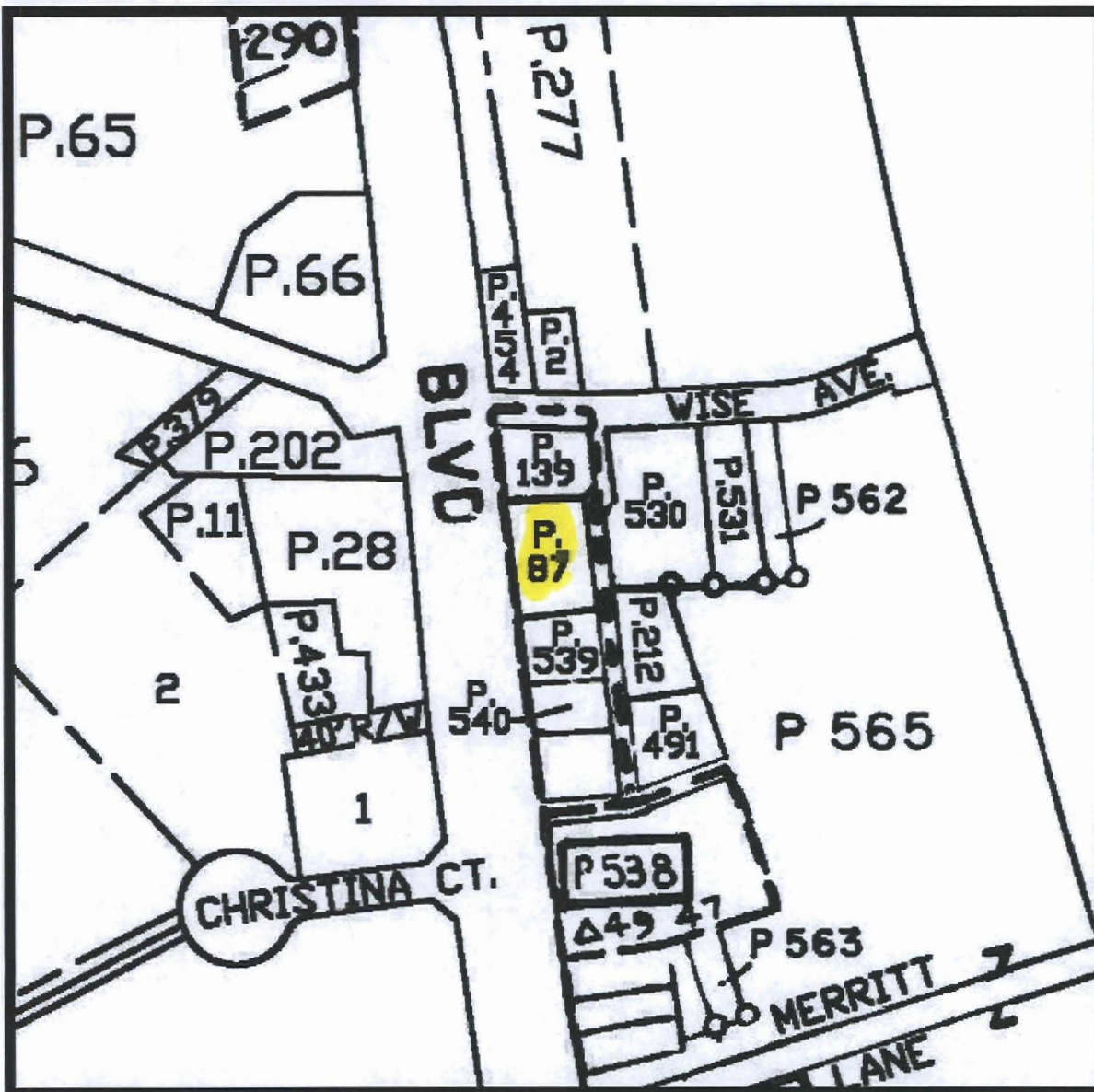
[illegible]



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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[View Map](#)
[New Search](#)

District - 15 Account Number - 1508640040



Property maps provided courtesy of the Maryland Department of Planning ©2004.
 For more information on electronic mapping applications, visit the Maryland Department of Planning web
 site at www.mdp.state.md.us/webcom/index.html





09-049-X

May 14, 2009 @ 10:00 ✓
concluded

memos due 6/12/09

Opinion
Issued 8/13/09

09-049-X

July 16, 2009 @ 9:00 Deliberation ✓
(20090049)

EXHIBITS

2 of 2

Case No.: 2009-0049-X 4412 NORTH POINT BLVD

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	Site Plan	
No. 2	PHOTOGRAPHS OF 2A - Before 2B - after SITE - EXISTING CONDITIONS	
No. 3		
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

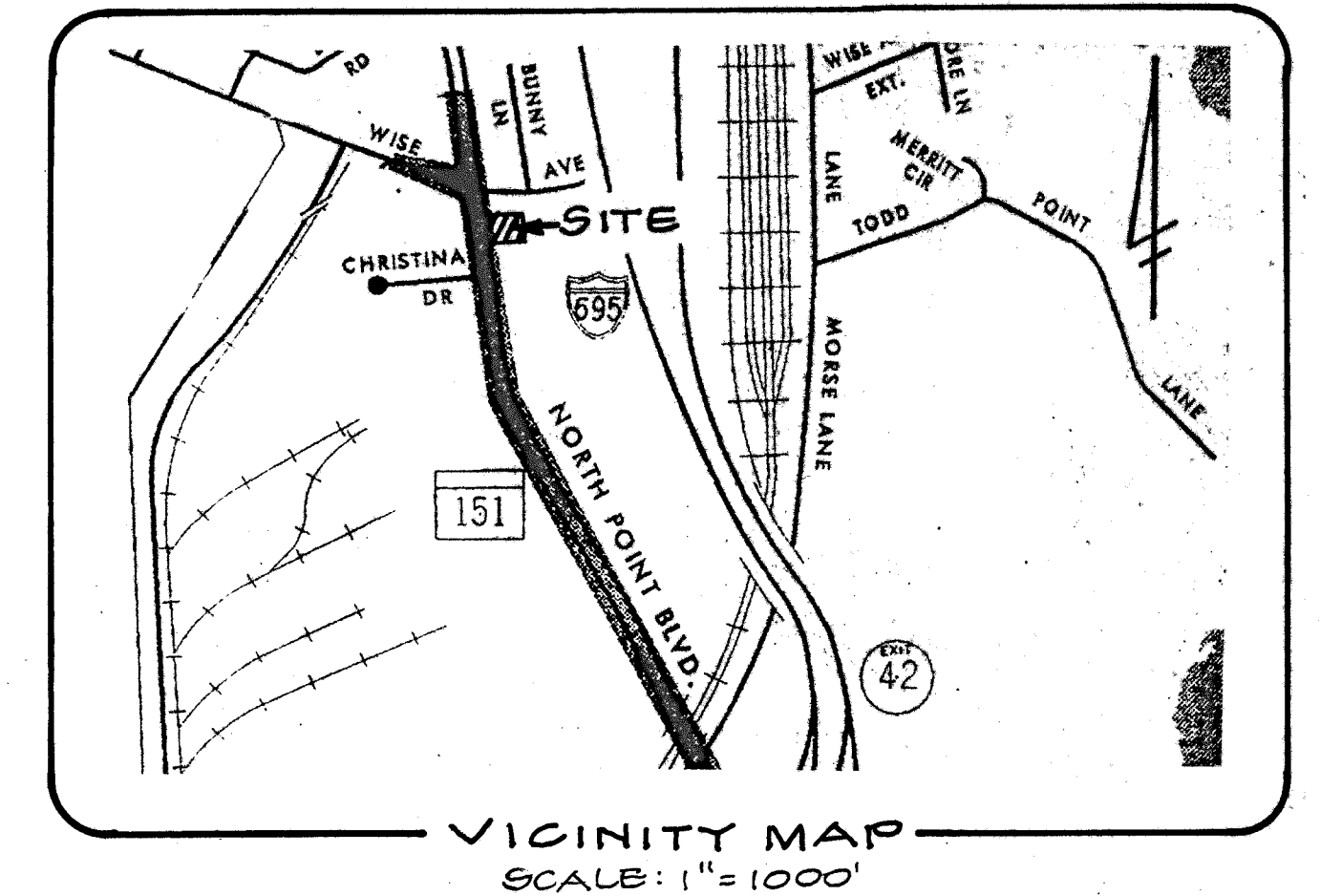
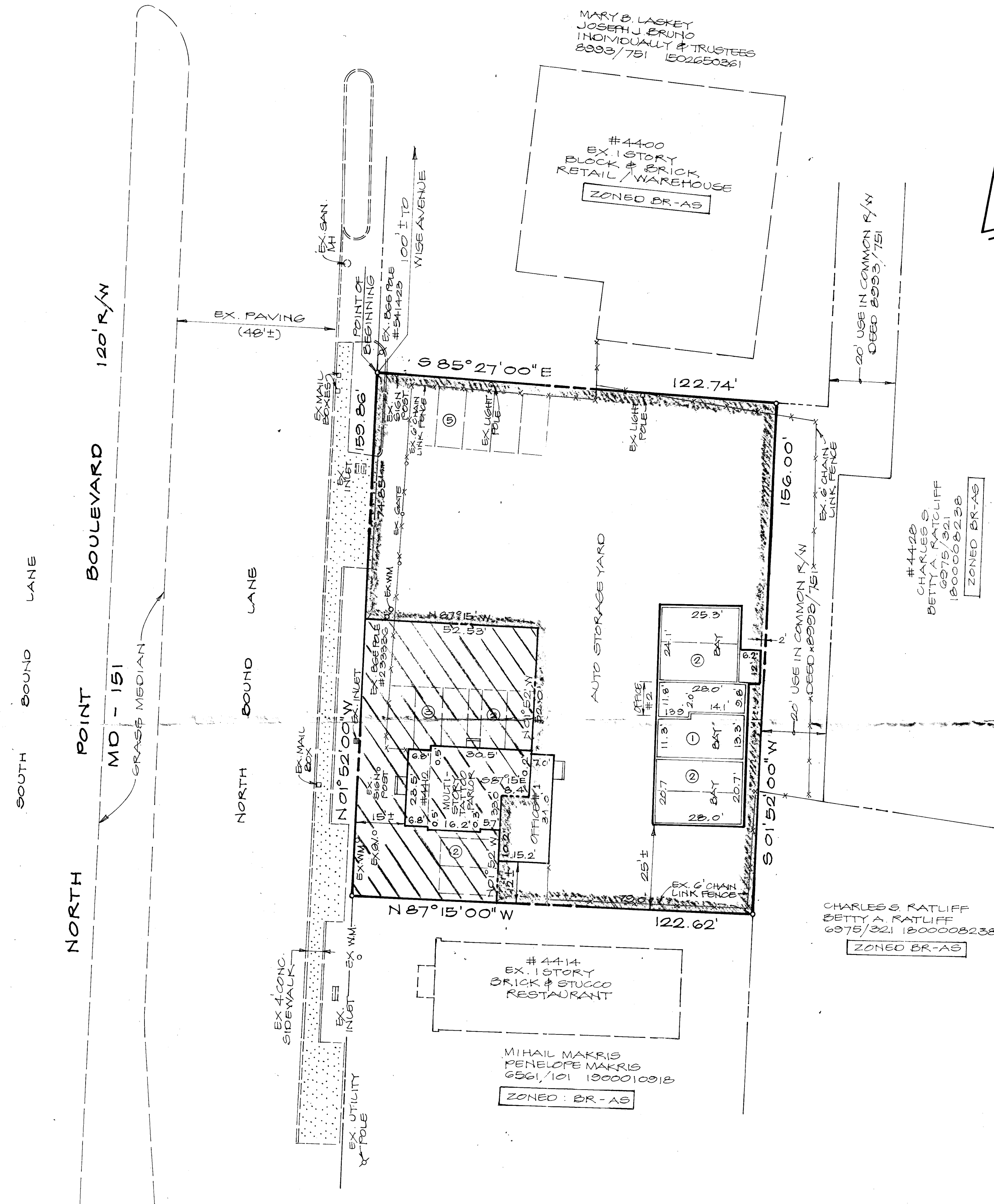
1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARKS ON THE SUBJECT PROPERTY.
2. THERE ARE NO STREAMS, BODIES OF WATER OR SPRINGS ON OR ADJACENT TO THE SUBJECT SITE.
3. THERE ARE NO UNDERGROUND STORAGE TANKS ON THE SUBJECT SITE.

AUTO DEALERSHIP =
OFFICE # 1 : 408 SQ.FT.
OFFICE # 2 : 302 SQ.FT.
TOTAL : 710 SQ.FT.
PARKING REQUIRED $5/1000 = 4$ SPACES
PARKING PROVIDED = 10 SPACES

THE PORTION OF THE SUBJECT SITE SHOWN HATCHED IS
A TATTOO PARLOR OPERATION WHICH IS AN UNCON-
FIRMED NON-CONFORMING USE.

THE PORTION OF THE SUBJECT SITE SHOWN SHADED IS
THE FOCUS OF THIS SPECIAL EXCEPTION ZONING
PETITION TO BE USED AS A MOTOR VEHICLE OUTDOOR
SALES.

THIS PLAT ACCOMPANIES A ZONING PETITION FOR SPECIAL EXCEPTION TO ALLOW THE USE OF THE SUBJECT PROPERTY FOR USED MOTOR VEHICLE OUTDOOR SALES.



Councilmanic District: 7TH
Election District: 15TH
1"=200' scale map#: SE 4H - 10483
Zoning: BR-AS
Lot size: 0.45 19,602
 acreage square feet

public private

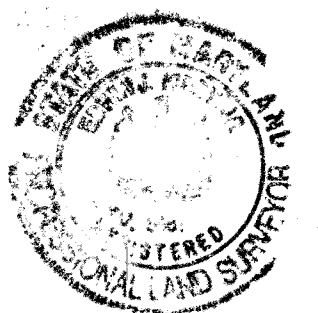
SEWER: ☒ ☐

WATER: ☒ ☐

yes no

Chesapeake Bay Critical Area: ☐ ☒

Prior Zoning Hearings: NONE

[illegible]

CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
PHONE: 823-3535

SPECIAL EXCEPTION

PETITIONER' S

EXHIBIT NO. —

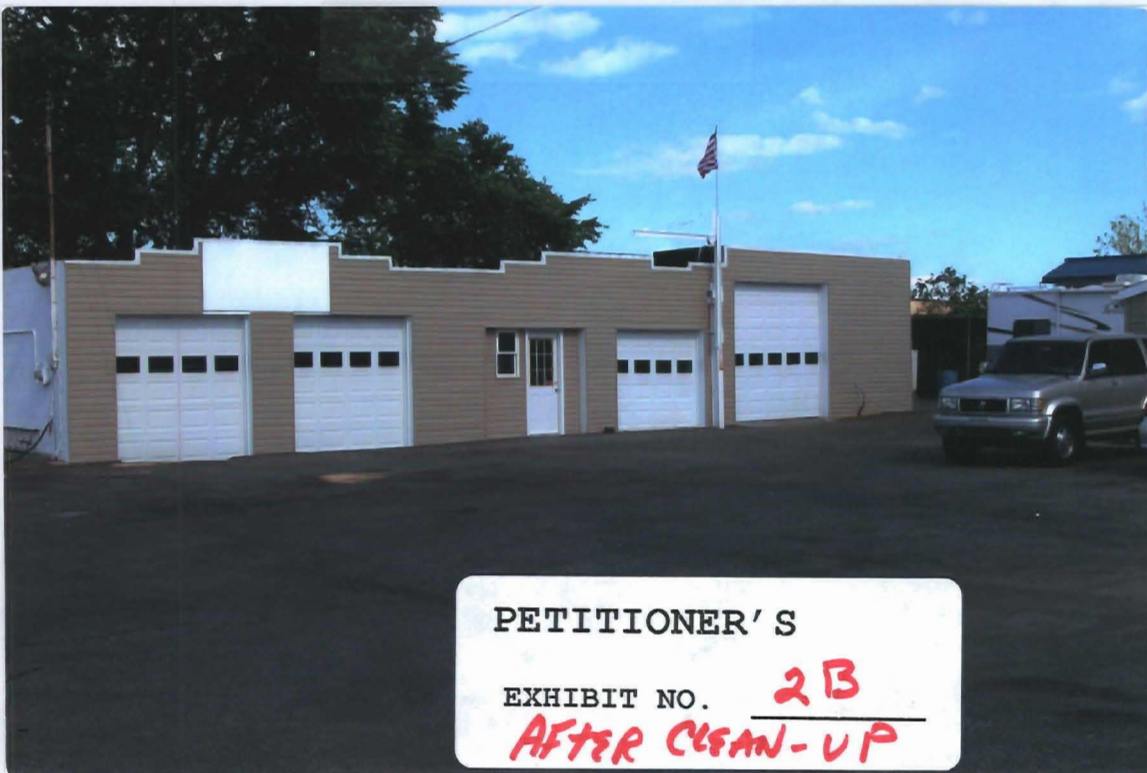
15TH ELECTION DISTRICT BALTO. CO., MD

SCALE: 1" = 20'	DES. BY: J.L.L.	SHT. 1 OF 1
DATE: AUG 11, 2008	DRN. BY: W.O.G.	

RONALD T. HLOPAK
SANDRA L. HLOPAK
515 GLEANINGS DRIVE
MC HENRY MD 21541-1472

TAX MAP 104 GRID 21 PARCEL 87
TAX ACCT. NO. 15-03-640040
DEED REF.: 10233/998





PETITIONER' S

EXHIBIT NO. 2B

AFTER CLEAN-UP





21.6

23.1

1.9

4400 NORTH POINT BLVD

4400 NORTH POINT BLVD

4400 NORTH POINT BLVD

4410 NORTH POINT BLVD

4412 NORTH POINT BLVD

4414 NORTH POINT BLVD

23.2

4416 NORTH POINT BLVD

CASE NO. 09-049-X

PEOPLES COUNSEL EXHIBITS

✓ 1. AERIAL PHOTO - 2007

✓ 2. BALTIMORE COUNTY INTER-OFF. CORR. 9/30/08 FROM OFFICE
OF PLANNING, REF. 09-049.

✓ 3. AERIAL PHOTO.

verified
5/14/09

hrs

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: September 30, 2008

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

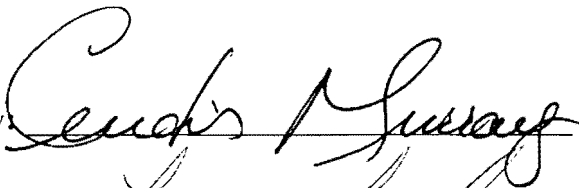
SUBJECT: Zoning Advisory Petition(s): **Case(s) 09-049- Special Exception**

The Office of Planning has reviewed the above referenced case(s) and has concerns surrounding the petitioner's request. The site plan indicates the subject property is currently used for auto storage and is not surrounded by residential uses. However, after review of aerial photography it appears that boats are being stored and/or sold on the site. The Office of Planning has some concerns about the legitimacy of the existing and proposed uses. Furthermore, the legal status of the tattoo parlor may need confirmation by special hearing and the limits of the boat/ used car storage appear to overlap the associated uses of the tattoo parlor.

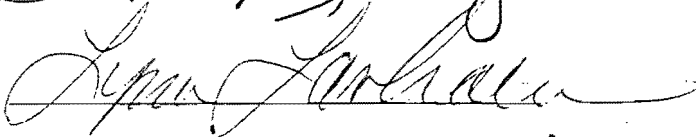
Nonetheless, if the petitioner is able to demonstrate a hardship or practical difficulty, resulting in the Zoning Commissioner granting the zoning relief, the Office of Planning has no objection.

For further questions or additional information concerning the matters stated herein, please contact John Alexander in the Office of Planning at 410-887-3480.

Prepared By:

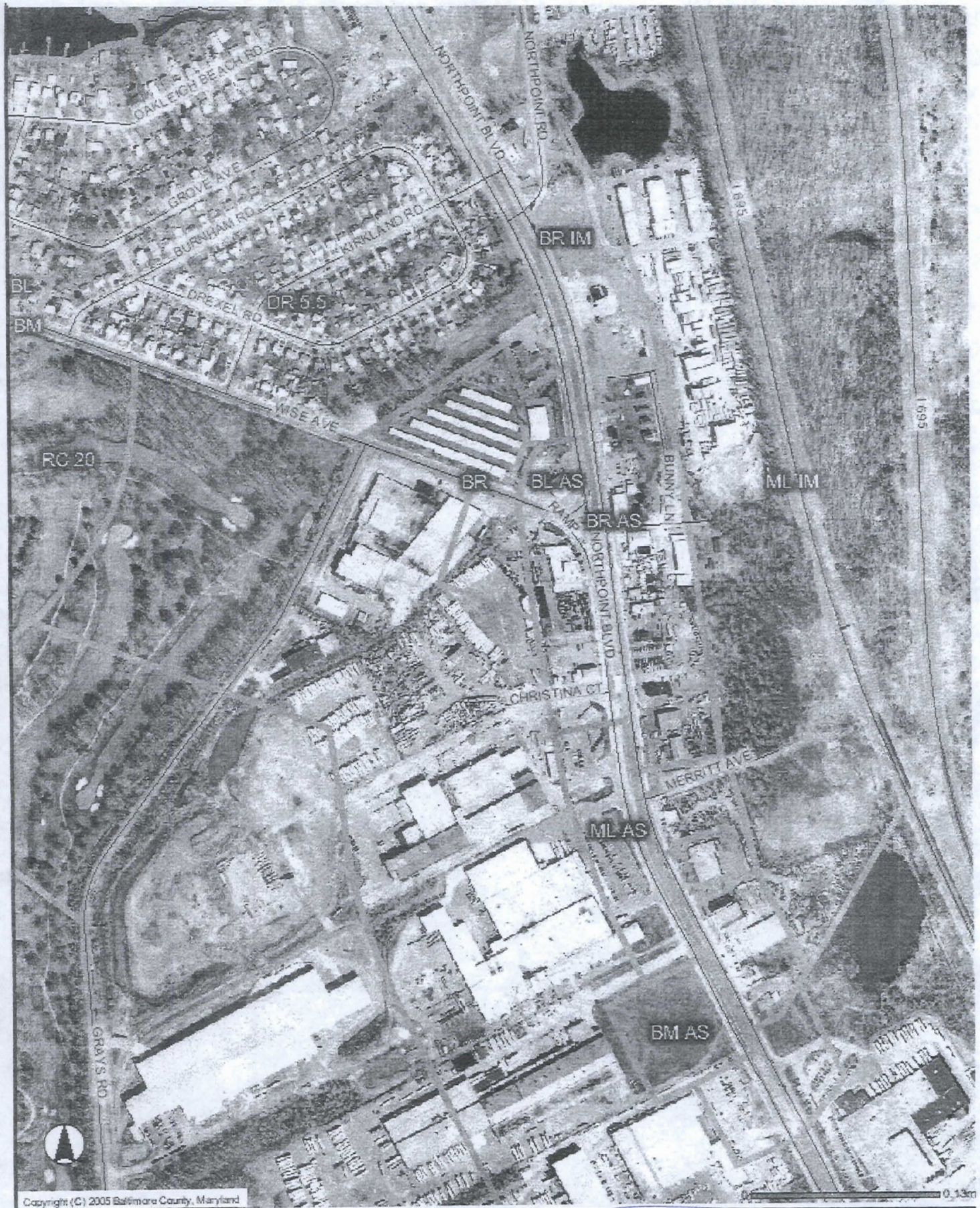


Division Chief:
CM/LL



CBA PC EXH. NO 2





CBA P/C Ex. No. 3

CASE NO. 09-049-X

PETITIONERS' EXHIBITS

- ✓ 1. A. DEED 5/4/38 T. BAYARD WILLIAMS, JR TO ISABELLA HLOPAK.
- ✓ B. DEED 3/10/69 ^(ETRAIN PERSON) L. H. V. CALABRESE TO ISABELLE, RONALD + PATRICIA HLOPAK
- ✓ C. DEED 11/23/93 RONALD TO RONALD AND SANDRA
- ✓ 2. ZONING OF THE PROPERTY
- ✓ 3. MD OF A+T DATA SEARCH FOR PROPERTY
- ✓ 4. AERIAL PHOTO OF THE PROPERTY AND NEIGHBORHOOD
- ✓ 5. LETTER OF APPROVAL 5/20/77
 - ✓ LETTER REQUESTING APPROVAL 10/31/91
 - ✓ LETTER REQUESTING APPROVAL 5/10/77
- ✓ 6. SITE PLAN OF THE PROPERTY.
- ✓ 7. CASE NO. 99-7993 CLOSED 12/30/99.
- ✓ 8. A. Pictures Taken 12/07-2/08 (3)
 - ✓ B. Pictures " " (3)
- ✓ 9. A. PICTURE OF HOUSE, BLOCK BLDG., OFFICE
 - ✓ B PICTURE OF PAVED LOT, SERVICE BLDG.
- ✓ 10. A-R LETTERS SUPPORTING PETITIONERS (PROPERTY OWNERS)
- ✓ 11. A-N LETTERS SUPPORTING PETITIONERS (NON-PROPERTY OWNERS)

Verified
3/14/09
HSD

1031 / 276

proceeded with unless prior to the day appointed therefor legal tender be made of said principal costs expenses and commission

And the said Mortgagors for themselves their personal representatives and assigns do further covenant to insure and pending the existence of this Mortgage to keep insured in some good company satisfactory to the said Mortgagees their successors and assigns the improvements on the hereby mortgaged land to the amount of at least Three Hundred Dollars and to cause the policy to be affected thereon to be so framed or endorsed as in case of fire to insure to the benefit of the said Mortgagees their successors and assigns to the extent of their lien or claim hereunder and to deliver said policy or policies to the said Mortgagees their successors and assigns

Witness the hands and seals of the said Mortgagors

Test	Agnes Laskey	(Seal)
Alice V Edwards	John Laskey	(Seal)
State of Maryland Baltimore City To Wit		

I Hereby Certify that on this 4th day of May in the year nineteen hundred and thirty-eight before me the subscriber a Notary Public of the State of Maryland in and for the City aforesaid personally appeared Agnes Laskey and John Laskey her husband the Mortgagors named in the foregoing Mortgage and they each acknowledged the foregoing Mortgage to be their act At the same time also appeared T Bayard Williams and William G Lynch Trustees and made oath in due form of law that the consideration set forth in said Mortgage is true and bona fide as therein set forth

(Notarial)

Alice V Edwards

(Seal)

Notary Public

Recorded May 10 1938 At 3 P M & Exd Per C Willing Browne Jr Clerk

FOR VALUE RECEIVED we do hereby release the within mortgage As
Witness our hands and seals this 14th day of October in the year
Nineteen Hundred and Thirty-nine

Witness
Alice V Edwards

T Bayard Williams (SEAL)
William G Lynch (SEAL)

Trustees of Estate of John T Grace

Recorded Oct 16 1939 at 11.45 A M & Exd per C Willing Browne Jr Clerk

RECORDED AUG 15 1938

101713

T Bayard Williams Jr

Deed to

Isabella Hlopak

This Deed made this 4th day of May in the year Nineteen Hundred and Thirty-eight by and between T Bayard Williams Junior unmarried of Baltimore City in the State of Maryland of the first part and Isabella Hlopak of Baltimore County in the State of Maryland of the second part

Witnesseth that in consideration of the sum of Five Dollars and other good and valuable considerations this day mid receipt of which is hereby acknowledged the said T Bayard Williams Junior doth grant and convey unto the said Isabella Hlopak her heirs and assigns in fee-simple

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ORA of 35 15

3-12-68

Alma P. Doellman

This Deed, Made this 10th day of March,

in the year one thousand nine hundred and sixty-nine, by and between

JOHN VICTOR CALABRESE, unmarried,

of Baltimore City, State of Maryland

, of the first part, and

ISABELLA HLOPAK, widow, and RONALD HLOPAK and PATRICIA M. HLOPAK, his wife, all of Baltimore County, State of Maryland,

of the second part.

Witnesseth, that in consideration of the sum of Five (\$5.00) Dollars, and other good and valuable consideration, the receipt of which is hereby acknowledged, the said party of the first part

does hereby grant and convey unto the said party of the second part a one-half (1/2) undivided interest unto Isabella Hlopak, her heirs and assigns, and the remaining one-half (1/2) undivided interest unto Ronald Hlopak and Patricia M. Hlopak, his wife, as tenants by the entireties, their assigns, the survivor of them, his or her

heirs and assigns,

in fee simple, all that lot(s) of ground, situate, lying and being in

Baltimore County, State of Maryland, and described as follows, that is to say:—

Beginning for the same on the East side of North Point Road at the Northwest corner of the lot of ground conveyed by Benjamin F. Snively and wife to Frank Lock and wife by Deed dated November 24, 1913, and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 422, folio 106, said place of beginning being also at the distance of 117.25 feet Southerly from the center line of Wise Avenue if said center line is extended Southeasterly to the East side of North Point Road and running thence South 1 degree 40 minutes East binding on the East side of North Point Road 161.75 feet thence South 87 degrees 15 minutes East 173.40 feet to the Easternmost outline of the land conveyed as above stated by Snively to Lock thence binding on said line North 1 degree 52 minutes East 156 feet to the Northernmost outline of said land thence North 85 degrees 27 minutes West binding thereon 183.75 feet to the place of beginning.

SAVING AND EXCEPTING THEREFROM all that portion of land which was conveyed by Isabella Hlopak and Michael Hlopak, et al., unto the State Roads Commission of Maryland, by virtue of a Deed dated October 14, 1939, recorded among the Land Records of Baltimore County in Liber C.W.B. Jr. No. 1076, folio 462.

CRA P/ EXH 1B 1B

LIBER 10233 PAGE 698

THIS DEED, Made this 23rd day of November, in the year one thousand nine hundred and ninety-three, by and between RONALD T. HLOPAK, of Baltimore County, State of Maryland, party of the first part, and RONALD T. HLOPAK and SANDRA L. HLOPAK, his wife, parties of the second part.

WITNESSETH, That in consideration of NONE, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part does hereby grant and convey to the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them and unto the survivor's personal representatives and assigns, in fee simple, all that parcel of ground situate, lying and being in Baltimore County, State of Maryland, and described as follows, that is to say:

BEGINNING for the same on the East side of North Point Road at the Northwest corner of the lot ground conveyed by Benjamin F. Snively and wife to Frank Lock and wife by Deed dated November 24, 1913, and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 422, folio 106, said place of beginning being also at the distance of 117.25 feet Southerly from the center line of Wise Avenue if said center line is extended Southeasterly to the East side of North Point Road and running thence South 1 degree 40 minutes East binding on the East side of North Point Road 161.75 feet thence South 87 degrees 15 minutes East 173.40 feet to the Easternmost outline of the land conveyed as above stated by Snively to Lock thence binding on said line North 1 degree 52 minutes East 156 feet to the Northernmost outline of said land thence North 85 degrees 27 minutes West binding thereon 183.75 feet to the place of beginning.

SAVING AND EXCEPTING THEREFROM all that portion of land which was conveyed by Isabella Hlopak and Michael Hlopak, et al., unto the State Roads Commission of Maryland, by virtue of a Deed dated October 14, 1939, recorded among the Land Records of Baltimore County in Liber C.W.B. Jr., No. 1076, folio 462.

BEING the same property which by Deed dated March 10, 1969 and recorded among the Land Records of Baltimore County in Liber No. 4971, folio 697, was granted and conveyed by John Victor Calabrese unto Isabella Hlopak, and Ronald Hlopak and Patricia M. Hlopak, his wife.

BEING ALSO the same property which by Deed dated June 6, 1988 and recorded among the Land Records of Baltimore County in Liber No. 8054, folio 478, was granted and conveyed by Isabella Hlopak, unto Ronald Hlopak, as to her undivided one-half (1/2) interest, reserving, however a bare life estate with no powers of disposition.

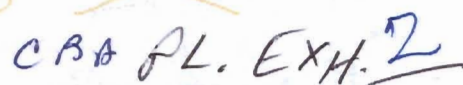
FURTHER BEING the same property which by Deed dated December 12, 1988 and recorded among the Land Records of Baltimore County in Liber No. 8054, folio 480, was granted and conveyed by Donald L. Shope, Sr., Personal Representative of the Estate of Patricia M. Shope, formerly known as Patricia M. Hlopak, deceased, to Ronald T. Hlopak.

THE SAID Isabella Hlopak has since departed this life on or about March 8, 1993 whereby vesting title solely in the said Ronald T. Hlopak, the Grantor herein.

RECEIVED FOR TRANSFER
State Department of
Revenue & Taxation

AGRICULTURAL TRANSFER TAX
EXEMPTIBLE

CBA PE EXH. 18 1C





Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw4.3)

[Go Back](#)
[View Map](#)
[New Search](#)

Account Identifier: District - 15 Account Number - 1508640040

Owner Information

Owner Name:	HLOPAK RONALD T HLOPAK SANDRA L	Use:	COMMERCIAL
Mailing Address:	515 GLEANINGS DR MC HENRY MD 21541-1472	Principal Residence:	NO
		Deed Reference:	1) /10233/ 698 2)

Location & Structure Information

Premises Address	Legal Description
4412 NORTH POINT BLVD	PT LT 10 H C SNAVELY PLAT

Map Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
104	21	87					3	Plat Ref: 2/ 218

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1904	1,950 SF	19,553.00 SF	06
Stories	Basement	Type	Exterior

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2009	07/01/2008	07/01/2009
Land	148,600	270,700		
Improvements:	71,500	77,400		
Total:	220,100	348,100	220,100	262,766
Preferential Land:	0	0	0	0

Transfer Information

Seller: HLOPAK ISABELLA, ET AL	Date: 12/22/1993	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /10233/ 698	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

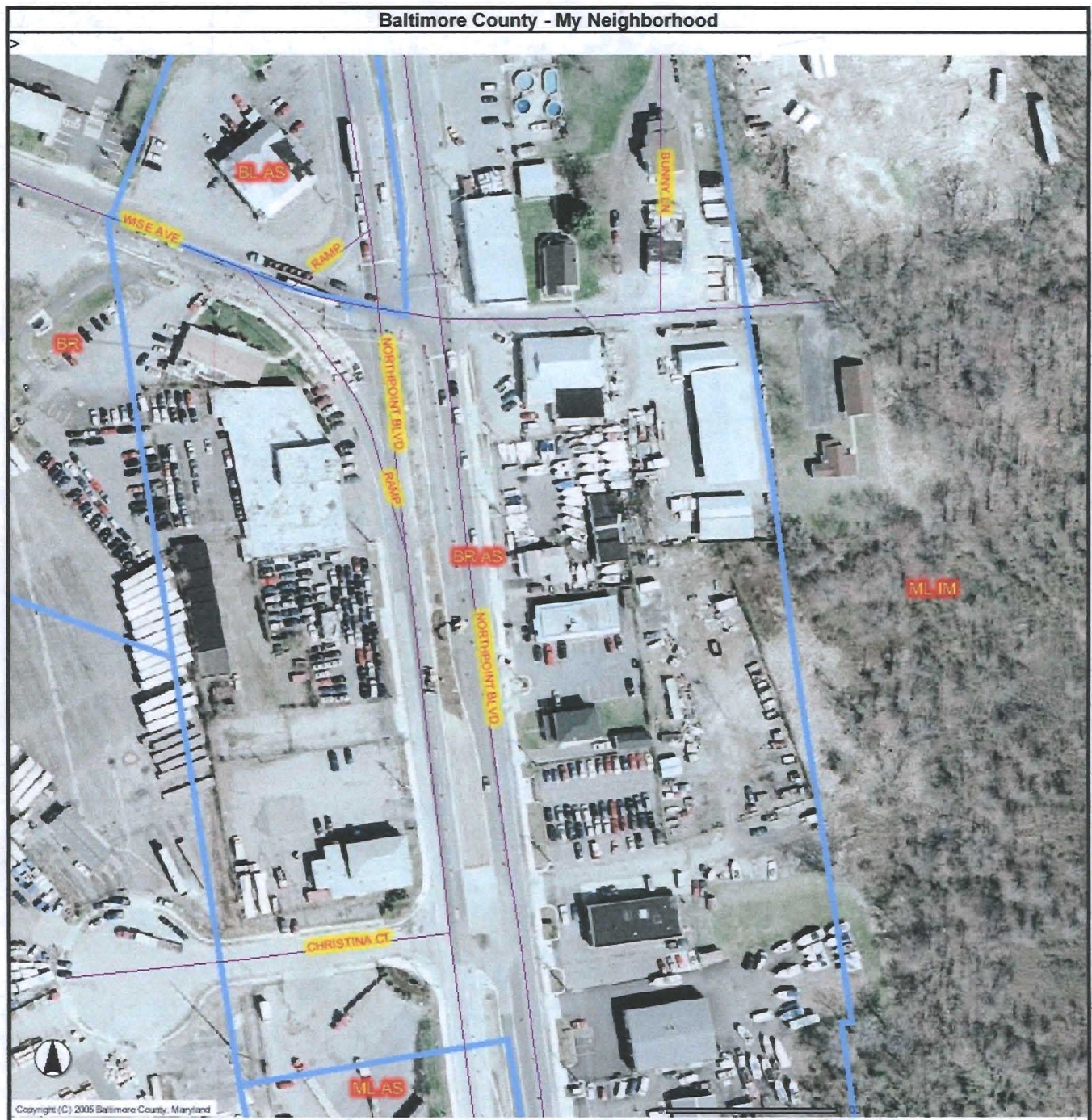
Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
 * NONE *

CBA Pst 3/4 3



03A P 1 & 4



Office of Planning and Zoning
TOWSON, MARYLAND 21204
(301) 494-3351

May 20, 1977

S. ERIC DINENNA
ZONING COMMISSIONER

Mr. George Osenburg
Dealer Licensing Department
Department of Motor Vehicles
Ritchie Highway N. E.
Glen Burnie, Maryland 21061

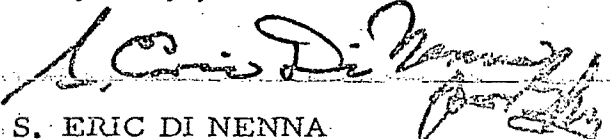
RE: Zoning Approval for
Ron's Used Cars, Inc.
4412 North Point Blvd. -
15th Election District

Dear Mr. Osenburg:

I am in receipt of Mr. Hlopak's correspondence of May 10, 1977, in which he submits proof of the continuous operation of a used car lot at the above location since 1952. Therefore, this office will issue its approval for the existing operation as a legal non-conforming use.

If you have any further questions concerning this matter, please feel free to contact this office.

Very truly yours,


S. ERIC DI NENNA
Zoning Commissioner

SED/JDP/smw

cc: Joseph D. Parr, Planning & Zoning Associate I
James E. Dyer, Zoning Supervisor
George J. Martinak, Deputy Zoning Commissioner

Mr. Ronald T. Hlopak, President
Ron's Used Cars, Inc.
4412 North Point Boulevard
Baltimore, Maryland 21219

CBA PE EXH 5 (5)

October 31, 1991

Department of Planning and Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: 4412 North Point Blvd.
Baltimore, Md. 21219

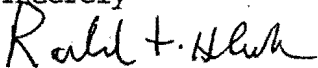
Dear Sirs,

The above property location has been utilized as a Used Car operation since 1952 without interruption. Please consider the following information upon your review and grant the request for the continued approval for same.

1952-1953 John Ashton, T/A Wise Motors
1954-1957 Earl Roberts, T/A Fairlane Motors
1958-1960 Walter J. Pirog, T/A County Motors
1961-1963 Thomas Gilbert Sr., T/A Gilbert Auto Sales
1964-1965 Curtis Lewis, T/A Lewis Motors
1966-1969 F. Stevens, T/A Tiny's Auto Sales
1970-1977 Ronald T. Hlopak, T/A Ron's Used Cars
1977-1985 Ronald T. Hlopak, T/A Ron's Used Cars Inc.
1985-1987 Waverly Auto, T/A Ron's Used Cars
1987-1989 Hugh Little, T/A Don's Motors
1989-1991 Discount Motors Inc.

Enclosed you will also find copies of prior correspondence that may be of use. Your consideration in this matter is greatly appreciated.

Sincerely



Ronald T. Hlopak
2709 Clayton Road
Joppa, Maryland 21085
301-679-8225

OBA PET. NO. 5

Mr. S. Eric Dinenna
Zoning Commissioner
111 West Chesapeake Ave.
Towson Maryland 21204

May 10, 1977

RE: Ron's Used Cars Inc.
4412 North Point Blvd.
Baltimore, Md. 21219
477-4136

Dear Sir;

Please be advised that the above mentioned property has been a used car lot for the past twenty-five years. The original owner of this property is my mother, Isabelle M. Hlopak. The original address was Box 386 North Point Rd. Baltimore, Md. 21219. This same property's address was changed to 4412 North Point Blvd. by the United States Postal Service approximately 1975.

The above property has been functioning as a used car lot at this same location by the following:

1952-1953	Mr. John Ashton, trading as Wise Motors
1954-1957	Mr. Earl Roberts, trading as Fairlane Motors
1958-1960	Mr. Walter J. Pirog, trading as County Motors
1961-1963	Mr. Thomas Gilbert Sr., trading as Gilbert Auto Sales
1964-1965	Mr. Curtis Lewis, trading as Lewis Motors
1966-1969	Mr. F. Stevens, trading as Tiny's Auto Sales
1970-1977	Mr. Ronald T. Hlopak, trading as Ron's Used Cars

As of May 1, 1977, my used car division is trading as Ron's Used Cars Inc. I have maintained this business since 1970 and my mother still remains as co-owner.

I hope that this information helps in clearing up all questions that the Motor Vehicle Administration has, regarding the proper zoning of this property. Please forward your verification of this to Mr. George Osenburg, Motor Vehicle Administration-Dealer Licensing Dept.

Your prompt consideration and help in this matter would be greatly appreciated.

Notary
James C. Jaworski Jr.
W. A. R. & P. Inc. Co.
7/1/78

Sincerely,
Ronald T. Hlopak
Ronald T. Hlopak
Ron's Used Cars Inc., Pres.

CBA REG. No 5

GENERAL NOTES

- 1. THERE ARE NO ARCHEOLOGICAL SITES, HAZARDOUS MATERIALS, ENDANGERED SPECIES HABITATS, OR HISTORIC BUILDINGS OR LANDMARKS ON THE SUBJECT PROPERTY.
- 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 SITE.

PARKING CALCULATIONS

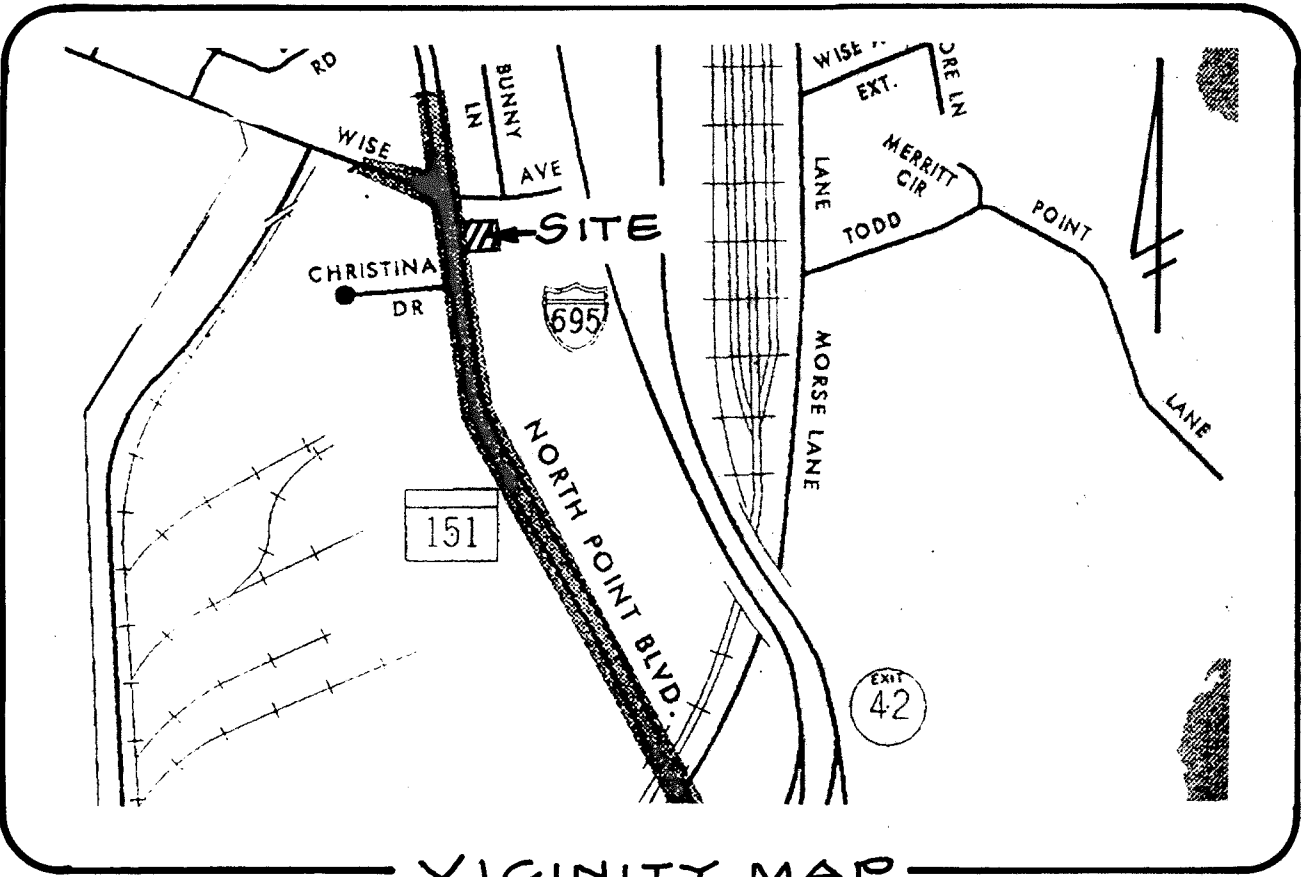
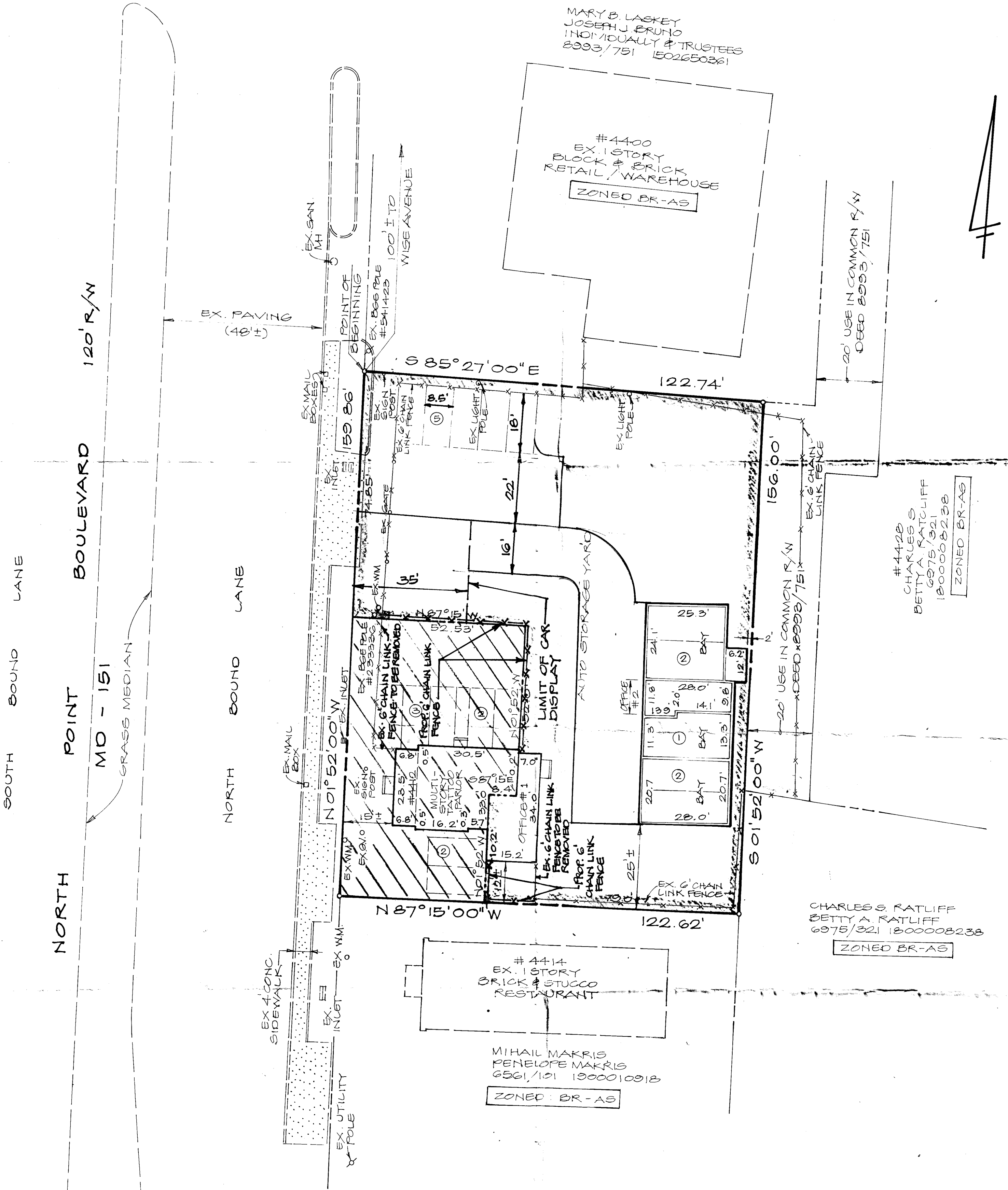
AUTO DEALERSHIP =
OFFICE # 1: 408 SQ. FT.
OFFICE # 2: 302 SQ. FT.
TOTAL: 710 SQ. FT.
PARKING REQUIRED 5/1000 = 4 SPACES
PARKING PROVIDED = 10 SPACES

SITE SPECIFIC NOTE

THE PORTION OF THE SUBJECT SITE SHOWN HATCHED IS A TATTOO PARLOR OPERATION WHICH IS AN UNCONFORMING NON-CONFORMING USE.
THE PORTION OF THE SUBJECT SITE SHOWN SHADED IS THE FOCUS OF THIS SPECIAL EXCEPTION ZONING PETITION TO BE USED AS A MOTOR VEHICLE OUTDOOR SALES.
THE SITE LAYOUT FOR THE PROPOSED USED CAR DEALERSHIP WILL COMPLY WITH SECTION 238.1 OF THE BCZR FOR FRONT YARD SETBACKS AND SECTION 238.4 FOR VEHICLE DISPLAY.

ZONING PETITION

THIS PLAT ACCOMPANIES A ZONING PETITION FOR SPECIAL EXCEPTION TO ALLOW THE USE OF THE SUBJECT PROPERTY FOR USED MOTOR VEHICLE OUTDOOR SALES.



VICINITY MAP
SCALE: 1" = 1000'

LOCATION INFORMATION

Councilmanic District: 7TH
Election District: 15TH
1"=200' scale map#: SE 4H - 10483
Zoning: BR-AS
Lot size: 0.45 acreage 19,602 square feet
SEWER: ☒ public ☐ private
WATER: ☒ yes ☐ no
Chesapeake Bay Critical Area: ☐ ☒
Prior Zoning Hearings: NONE

REVISIONS		
NO.	DATE	DESCRIPTION
1	5-13-09	REDLINE REVISIONS

SPELLMAN, LARSON & ASSOCIATES, INC.
CIVIL ENGINEERS AND LAND SURVEYORS
222 BOSLEY AVENUE, SUITE B-3
PHONE: 823-3535

PLAT TO ACCOMPANY
ZONING PETITION
FOR
SPECIAL EXCEPTION
4412 NORTH POINT BLVD.

15TH ELECTION DISTRICT BALTO. CO., MD

SCALE: 1" = 20'
DATE: AUG 11, 2008
DES. BY: J.L.L.
DRN. BY: W.D.G.
SHT. 1 OF 1

OWNER INFORMATION

RONALD T. HLOPAK
SANDRA L. HLOPAK
515 CLEANINGS DRIVE
MCHEMRY MD 21541-472
TAX MAP 104 GRID 21 PARCEL 87
TAX ACCT. NO. 15-03-640040
DEED REF.: 10233/698

PDLV0102F Permits & Development - Livability System
View CasesCase No: 99-7993Address: 04412 NORTHPOINT BLVD 21222Insp Area: 001 Dist: 000 Date Rcv: 11/29/1999 Grp: ENF Intk: _____Inspec: SCHRACK, J Inspec2: _____ Date Inspec: 12/30/1999Close: 12/30/1999 Activity: _____ Delete: XProblem: TATTOO PARLOR NOT OPERATING UNDER PROPER ZONES

CL Name: _____

CL Address: 00000 _____CL Home Phone: _____ CL Work Phone: _____ Tax Acct. 0000000000

Owner: _____

Enter=Continue F12=Cancel

Post-it® Fax Note 7671		11-7-00 Date <u>11-7-00</u> # of pages <u>1</u>	
To <u>Bill Glick</u>		From _____	
Co./Dept. _____		Co. <u>Jim Thompson</u>	
Phone // _____		Phone # _____	
Fax # <u>410-225-5215</u>		Fax # _____	

CRA for 27 (7)



CBA PE. EXIT. 88 (8A)



CBA Pet. ExH 88



ABA DE, EXH. 99 (9A)



CBA PET. EX. 9B

4-29

2009

Chairperson
Board of Appeals for Balto. Co.
105 W. Chesapeake Ave., Suite 203
Towson, Maryland 21204

RE: 4412 North Point Blvd.
Petition for Special Exception to Allow
the Sale of Used Motor Vehicles
Zone BR-AS
Case 09-049X

Dear Chairperson and Panel Members:

I am the owner of adjacent property near the subject property for this Petition. I am familiar with the request of the Hlopaks for a special exception to allow the sale of used motor vehicles on a major portion of the subject property located in a BR-AS zone. I have no problem with the proposed use or any existing uses on the property and am writing this letter in support of the request for Special Exception. It is my understanding that this property has been owned by members of the Hlopak family since 1969 and they have been good and responsible owners as far as their use of the property.

Sincerely,


Signature

Charles S. RATLIFF JR.
Printed Name

Address
4428 N Point Blvd
BALTO, MD 21219

cc: Mr. and Mrs. Ronald Hlopak

CBA Pet. EX

Pat 10A

IN RE: PETITION FOR SPECIAL EXCEPTION *
E/S North Point Boulevard, 100'S of *
Wise Avenue *
(4412 North point Boulevard) *
15th Election District *
7th Council District *

Ronald Hlopak, et ux *
Petitioners *

BEFORE THE
BOARD OF APPEALS
FOR
BALTIMORE COUNTY

Case No. 2009-0049-X

* * * * *

PETITION OF SUPPORT

The undersigned, who are familiar with the existing and proposed uses at 4412 North Point Boulevard, including the subject Petition for a Special Exception to allow the sale of used motor vehicles on a major portion of the subject property located in a BR-AS zone at 4412 North Point Boulevard, are signing this Petition in support of the Petition for a Special Exception.

Name:	Address:	Date:
Amanda Bartulis	8225 N. Bourdoy	8/5/09
	Ind. Dundalk MD	
	21222	
		()
		()
		()
		()
		()

CBA Pet. EXH. Pet 11A