

**IN RE: PETITIONS FOR SPECIAL HEARING
AND SPECIAL EXCEPTION**

NE Side of Old York Road, 290' SW of c/line of
Kirkwood Shop Road
7th Election District
3rd Councilmanic District
(19529 Old York Road)

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY

John A. Brown, Jr.
Legal Owner

* **CASE NO. 2011-0282-SPHX**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings for consideration of Petitions for Special Hearing and Special Exception filed by the legal property owner, John A. Brown, Jr. The Petitions seek relief, in the alternative, for the continued use of a portion of the property located at 19529 Old York Road ("subject property") for used motor vehicle outdoor sales area, as well as an amendment to the relief and site plan approved in Case No. 2002-123-SPH.

The record in this case reflects that the subject property was properly posted and advertised as required by the Baltimore County Zoning Regulations ("B.C.Z.R."). Appearing at the public hearing on this Petition were Geoffrey C. Schultz, PLS, President of McKee & Associates, Inc., the engineering/surveying/land planning firm that prepared the plat to accompany the Petitions and John A. Brown, Jr., the owner of the subject property. The Petitioner was represented by Howard L. Alderman, Jr., Esquire. There were three community members present in support of the relief requested; there were no Protestants present.

The proffered testimony indicated in 2001, the subject property, together with adjoining, separately owned property, were the subject of a public hearing on a joint Petition for Special Hearing filed in Case No. 2002-123-SPH ("prior case"). The final Order in the prior case

ORDER RECEIVED FOR FILING

Date

By

5-23-11

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approved, as a legal non-conforming use, pursuant to Sections 101, 104 and 428 of the Baltimore County Zoning Regulations ("B.C.Z.R.") use of the then petitioned properties as a junk yard, established and continued in operation without lapse prior to the adoption of the B.C.Z.R. A copy of the final Order in the prior case was offered and accepted as Petitioner's Exhibit 3.

The Petitioner's proffered testimony, which Mr. Brown acknowledged and adopted under oath, was that following the death of both parents, he has owned in his individual name the subject property since 2000. Mr. Brown reviewed the Plat which accompanied the Petitions and acknowledged that it identified accurately his property and the areas of the nonconforming junkyard and used car sales uses located thereon. Mr. Brown's earliest memory of the use of the subject property was in 1948-1949 and since that period he has personally witnessed and/or been involved, either as an employee or owner, with the junkyard and used car sales on the subject property.

Mr. Brown testified that in his lifelong experience, used car sales are a related use associated with junkyards. On the subject property, the land area devoted to used car sales has always been substantially smaller than that used as a junkyard. Mr. Brown affirmed that the principal junkyard use was neither altered nor substantially changed as a result of the accessory used car sales.

In support of the relief requested, the Petitioner presented the affidavit of Lester Paul Brown which was accepted into evidence as Petitioner's Exhibit 2. Lester Brown, who due to his 85 years of age and related health issues, was unable to attend the public hearing, declared and affirmed that since 1942 the subject property has been used principally as a junkyard and secondarily for the sale of used cars, and that both uses that have continued without abandonment or discontinuance for a period of one year or more. *See*, B.C.Z.R. Section 104.1.

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Date

5-23-11

By

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Geoffrey C. Schultz, a licensed Maryland Property Line Surveyor, was offered and accepted as an expert surveyor with particular expertise in Baltimore County zoning matters. His proffered testimony, which he acknowledged and adopted under oath, was that the Plat which accompanied the Petitions depicted accurately the subject property, the area that has been devoted to used car sales and that he sealed and signed the Plat. Mr. Schultz is very familiar with the area of the subject property and affirmed that the 9.94 +/- acres comprising the property was split zoned BR (Business Roadside), MH (Manufacturing Heavy) and RC-2 (Resource Conservation - 2). Of the entire subject property only 4,000 square feet are devoted to used car sales as depicted on the Plat which was accepted as Petitioner's Exhibit 1.

Mr. Schultz identified and acknowledged his familiarity with Petitioner's Exhibit 3, the final Order in the prior case. Mr. Schultz described the Special Hearing relief requested to amend both the relief and site plan approved in the prior case to confirm, as a legally nonconforming the used car sales and area devoted to it. Describing his meeting with officials of the Maryland State Highway Administration on the subject property, Mr. Schultz identified the State approved location on Petitioner's Exhibit 1 for the continued sales of used cars.

In the expert opinion of Mr. Schultz, the accessory, nonconforming used car sales use on the subject property can continue as it has for nearly 7 decades without detrimental effect on the health, safety or general welfare of the community, nor will the continuation of use create any congestion in the road network. Mr. Schultz opined that the continuation of the used car sales would not create a potential hazard, overcrowd the land or interfere with provisions for public facilities and improvements. As a nonconforming use, that would otherwise be capable of being initiated in the BR zone via approval of a Special Exception, Mr. Schultz opined that the used car sales was not inconsistent with the purposes set forth in the BR zone or the spirit and intent of the B.C.Z.R.

In an abundance of caution, the Petitioner filed a separate, Petition for Special Exception as an alternative means of approving the used car sales on the subject property. Mr. Schultz described the area of the Special Exception was 4,000 square feet, approximately 0.92 percent of the subject property, and located entirely in the BR zoned portion of the property. Used car sales are permitted in the BR zone pursuant to Special Exception approval under Sections 236.2 and 502.1 of the B.C.Z.R. Mr. Schultz reviewed the Zoning Advisory Committee (ZAC) comments, none of which opposed or requested conditions on the Special Hearing or alternative Special Exception relief requested. Mr. Schultz then reiterated his professional opinion regarding the standards for Special Exception approval pursuant to B.C.Z.R. Section 502.1 – the same standards testified to regarding approval of the Special Hearing relief requested. There was no testimony or evidence offered in contradiction or in opposition to the relief requested by the Petitioner.

Based on the un-contradicted testimony and evidence presented, it is clear to me that the used car sales use on the subject property could be permitted under the relief requested by either Petition. I find that used car sales have been conducted on a small area of the subject property since 1942 without substantial alteration, impairment or change to the previously established legal nonconforming junkyard use. Testimony and evidence indicated that used car sales, especially on the subject property, have been subordinate in both area and intensity as compared to the junkyard use.

As with all nonconforming use cases, the burden is on the Petitioner to produce evidence that a legal nonconforming use existed on the subject property prior to the year in which a change in the zoning regulations rendered it an unpermitted use. The controlling year in this case is 1945. The evaluation of nonconformity must include a determination of whether there has been a change in the use of the subject property, breaking the continued nature of the nonconforming use. If the use of the subject property has changed to a different use, the current use of the property cannot be

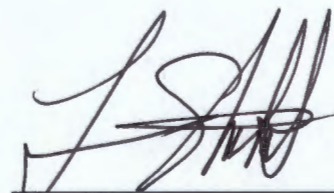
considered as nonconforming. See, B.C.Z.R. Section 104; *McKemy v. Baltimore County, Maryland*, 39 Md. App. 257 (1978).

All the testimony and evidence received result in a determination that the nonconforming uses on the subject property have not changed since 1942, three years before the modification of the zoning regulations made them unpermitted uses in the zoning classifications applied to the subject property. Moreover, it was established that used cars have been sold continuously and uninterrupted for more than one year at the subject property.

Pursuant to the advertisement, posting of the subject property and public hearing held and for the reasons set forth above, the Special Hearing relief should be granted. With that grant, the Special Exception relief is rendered moot.

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this 23rd day of May, 2011, that the Petitioner's request for Special Hearing pursuant to B.C.Z.R. Sections 101, 104 and 500.7, to approve use of the subject property for used motor vehicle outdoor sales area as a legal, nonconforming use as depicted on Petitioner's Exhibit 1, as well as an amendment to the relief and site plan approved in Case No. 2002-123-SPH, be and is hereby APPROVED, and the relief requested by Special Exception is rendered MOOT.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.



LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS:dlw

ORDER RECEIVED FOR FILING

Date

By



KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
TIMOTHY M. KOTROCO
Administrative Law Judges

May 23, 2011

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, MD 21204

Re: Petitions for Special Hearing and Special Exception
Case No. 2011-0282-SPHX
Property: 19529 Old York Road

Dear Mr. Alderman:

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", is written over the word "Sincerely,".

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/dlw
Enclosure

- c: Geoffrey C. Schultz, PLS, President of McKee & Associates, Inc., 5 Shawan Road,
Suite 1, Cockeysville, MD 21030
Philip Tagliaferri, 2808 Shepperd Road, Monkton, MD 21111
Joel D. Brown, Jr. & Shirley A. Brown, 19832 Graystone Road, White Hall, MD 21161
Peter Max Zimmerman, People's Counsel



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 19529 OLD YORK ROAD
which is presently zoned BR, MH & RC-2

(This petition **must** be filed in person, in the zoning office, in triplicate, with original signatures.)

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

SEE ATTACHED

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

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

Contract Purchaser/Lessee:

N/A

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esq.

Name - Type or Print

Signature

Levin & Gann, P.A. Nottingham Centre 8th Floor

Company

502 Washington Avenue

410-321-0600

Address

Telephone No.

Towson

MD

212104

City

State

Zip Code

Legal Owner(s):

JOHN A. BROWN, JR.

Name - Type or Print

Signature

Name - Type or Print

Signature

19529 Old York Road 410-357-4040

Address

Telephone No.

White Hall

MD

21161-9165

City

State

Zip Code

Representative to be Contacted:

Geoffrey C. Schultz/McKee & Associates, Inc.

Name

5 Shawan Road, Suite 1 410-527-1555

Address

Telephone No.

Cockeysville

MD

21030

City

State

Zip Code

Date 5-23-11

OFFICE USE ONLY

By [Signature]

ESTIMATED LENGTH OF HEARING

Case No. 2011-0282-SPHX

UNAVAILABLE FOR HEARING

REV 9/15/98

Reviewed By [Signature]

Date 3/23/11

Attachment 1
PETITION FOR SPECIAL HEARING

CASE NO: 2011- -X *2011-0282-SPHX*

Address: 19529 Old York Road

Legal Owner: John A. Brown, Jr.

Present Zoning: BR, MH & RC-2

REQUESTED RELIEF:

To approve pursuant to BCZR § 500.7 & BCC 32-3-301: [1] an amendment to the site plan approved and relief granted in Case No. 2002-123-SPH consistent with the relief requested by and site plan accompanying this Petition; **and** [2] such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the existing and proposed uses.

For Additional Information Contact:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre
502 Washington Centre
8th Floor
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801

halderman@LevinGann.com

Item #0282

Letter of Transmittal

William D. Gulick, Jr.

Consultant to Land Development and Industry

Commercial and Residential

2944 Edgewood Avenue

Baltimore, MD 21234

Phone - 410-530-6293

E-mail - wdgjr@comcast.net

We Are Sending You: ☒ Attached ☐ Under separate cover the following items:

☐ Copy of Letter ☒ Prints ☒ Documents ☐ Other

No. of Copies

Date

Description

1	4-15-2011	Certificate Of Posting
2	4-15-2011	Site Photos

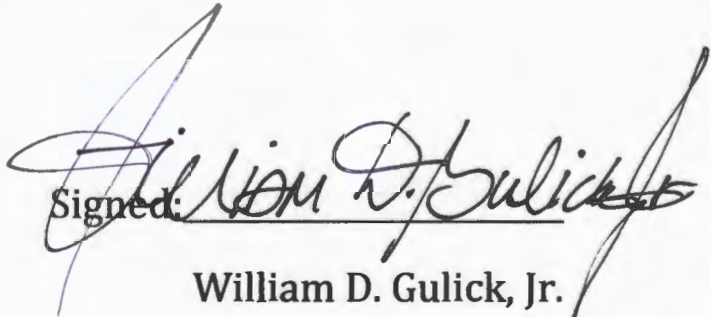
Transmittals are as checked below:

☐ For approval ☒ For your use ☐ As requested ☐ For review & content

Remarks:

ZONING OFFICE

ATTN. MS. KRISTEN LEWIS

Signed: 

William D. Gulick, Jr.

Chief Office Engineer

cc: McKee & Assoc. , Inc
Mr. Geoff Schultz

Certificate of Posting

Department of Permits, Approval, and Inspections
Baltimore County
111 W. Chesapeake Avenue
Room 111
Towson, MD 21204

Date: April 15, 2011

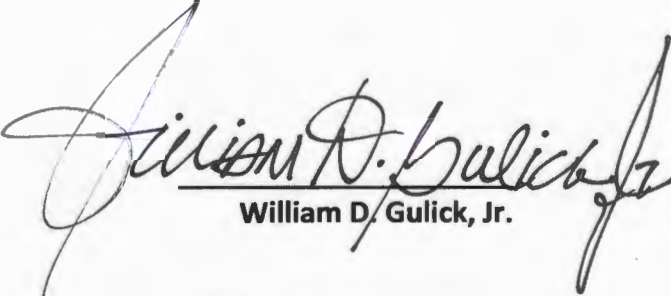
Attention: Zoning Office – Ms. Kristen Lewis

Re: Case Number: 2011 – 0282 - SPHX
Petitioner/Developer: John A. Brown, Jr.
Date of Hearing/Closing: Monday, May 2, 2011

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: 19529 Old York Road

The sign(s) were posted on:

April 15, 2011



William D. Gulick, Jr.

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

ZONING NOTICE

CASE # 2011-0282-SPHX

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

JEFFERSON BUILDING-ROOM 205
105 W. CHESAPEAKE AVENUE
PLACE: TOWSON, MD 21204

DATE AND TIME: MONDAY
MAY 2, 2011 AT 10:00 AM

REQUEST: SPECIAL HEARING AND
SPECIAL EXCEPTION

SPECIAL HEARING for an amendment to the site plan approved and relief granted in Case No. 2008-0123-SPHX consistent with the relief requested by and site plan accompanying this Petition; and such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the existing and proposed uses. **Special Exceptions** to approve a used motor vehicle outdoor sales area, separated from sales agency building and such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the proposed use.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391 (410)

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



OLD YORK ROAD



Petition for Special Exception

to the Zoning Commissioner of Baltimore County for the property
located at 19529 OLD YORK ROAD

which is presently zoned BR, MH & RC-2

Deed Reference: 14826 / 638 Tax Account # 2300010995

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

SEE ATTACHED

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:

N/A

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Howard L. Alderman, Jr., Esq.

Name - Type or Print

Signature

Levin & Gann, P.A. Nottingham Centre, 8th Floor

Company

502 Washington Avenue 410-321-0600

Address Telephone No.

Towson MD 21204

City State Zip Code

Date 5-23-11

By WJ

Case No. 2011-0282-SPHX

Legal Owner(s):

JOHN A. BROWN, JR.

Name - Type or Print

Signature

Name - Type or Print

Signature

19529 Old York Road 410-357-4040

Address Telephone No.

White Hall MD 21161-9165

City State Zip Code

Representative to be Contacted:

Geoffrey C. Schultz/McKee & Associates, Inc.

Name

5 Shawan Road, Suite 1 410-527-1555

Address Telephone No.

Cockeysville MD 21030

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Reviewed By RJ

Date 3/23/11

Attachment 1
PETITION FOR SPECIAL EXCEPTION

CASE NO: 2011- -X 2011-0282-SPHX

Address: 19529 Old York Road

Legal Owner: John A. Brown, Jr.

Present Zoning: BR, MH & RC-2

REQUESTED RELIEF:

To approve: i) within the BR zone, pursuant to BCZR § 236.2 & BCC 32-3-301, a used motor vehicle outdoor sales area, separated from sales agency building; and ii) such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the proposed use.

For Additional Information Contact:

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre
502 Washington Centre
8th Floor
Towson, Maryland 21204

(410) 321-0600
Fax: (410) 296-2801

halderman@LevinGann.com

Item #0282

McKEE & ASSOCIATES, INC.

*Engineering • Surveying • Environmental Planning
Real Estate Development*

Zoning Description
19529 Old York Road
7th Election District
3rd Councilmanic District
Baltimore County, MD



Beginning at a point in the center of Old York Road, said point being 290 feet Southeast of the center of Kirkwood Shop Road, thence running along said road S 67° 00'30"E 40.50 feet and S 72° 29'35" E 79.00 feet to a point on the North side of Old York Road, thence leaving said road and running Northeasterly 174 feet to the True Point of Beginning, thence running Northwesterly 40.00 feet, Northeasterly 100.00 feet, Southeasterly 40.00 feet, and Southwesterly 100.00 feet to the point of beginning.

Containing 4000 square feet or 0.092 acres of land more or less as recorded in Deed Liber 14826 Folio 638.

Item #0282



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

Date April 19, 2011

Mr. John Brown, Jr.
19529 Old York Road
White Hall, MD 21161

RE: Case Number 2011-0282SPHX, 19529 Old York Road

Dear Mr. Parker,

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on March 23, 2011. 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." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:mcn

Enclosures

c: People's Counsel
Geoffrey C. Schultz/McKee & Assoc., Inc., 5 Shawan Road, Ste. 1, Cockeysville, MD 21030
Howard Alderman, Jr./Levin & Gann, Nottingham Ctr. 8th Flr., 502 Washington Ave., Towson, MD 21204

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

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

SUBJECT: Zoning Advisory Committee Meeting
For April 1, 2011
Item Nos. 2011- 272, 274, 275, 277,
278, 279, 282 and 241

DATE: March 31, 2011

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

DAK:CEN:cab

cc: File

G:\DevPlanRev\ZAC -No Comments\ZAC-04012011 -NO COMMENTS.doc

5/2 10-12
Rm 205

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits,
Approvals and Inspections

DATE: April 18, 2011

FROM: Jeff Mayhew
(Acting) Director, Office of Planning

SUBJECT: 19529 Old York Road

INFORMATION:

Item Number: 11-282

Petitioner: John A. Brown, Jr.

Zoning: BR, MH and RC 2

Requested Action: Special Hearing and Special Exception

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OFFICE OF ADMINISTRATIVE HEARINGS

SUMMARY OF RECOMMENDATIONS:

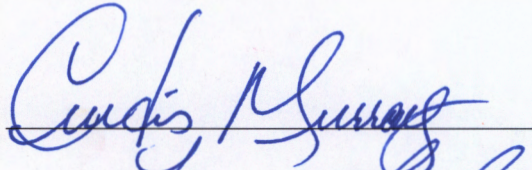
The Office of Planning would not oppose any relief granted under the subject special exception or in the special hearing. It is Office of Planning's understanding that at some point in time there was an existing motor vehicle sales operation on the subject property. However, the Petitioner allowed the use permit to expire.

Provided the Administrative Law Judge grants any relief the Office of Planning requests the following conditions be made part of the Administrative Law Judge's order:

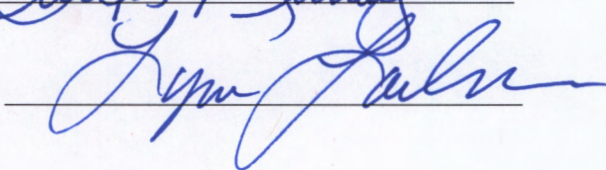
- No additional lighting shall be permitted on the property for general illumination nor to illuminate the sales area,
- No banners/streamers advertising car sales are to be displayed.
- Lastly, if the Petitioner has plans for any signage on the property, the Office of Planning requests the review and approval of a sign package to ensure compatibility with the rural character of the community.

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

Prepared by:



Division Chief:
JM/LL: CM





BALTIMORE COUNTY
MARYLAND

BALTIMORE COUNTY
OFFICE OF ADMINISTRATIVE HEARINGS
JEFFERSON BUILDING, SUITE 103
105 WEST CHESAPEAKE AVENUE
TOWSON, MD 21204

Phone: 410-887-3868

Fax: 410-887-3468

F A X C O V E R S H E E T

DATE: 5-16-11

NO. OF PAGES INCLUDING COVER SHEET: 3

TO:

Howard Alderman

FROM:

Patte

PHONE:

FAX NO.: 410-296-2801

MESSAGE:

Case No. 2011-0282-SPHX
Comments from Planning & DEPS

REMARKS: ☒ YOUR COPY

☐ URGENT

☐ FOR REVIEW

☐ PLEASE REPLY

☐ PLEASE COMMENT

PLEASE PRINT CLEARLY

CASE NAME 19529 OLD YORK ROAD
CASE NUMBER 2011-0202-SPHX
DATE 5/2/2011

PETITIONER'S

CITIZEN'S SIGN-IN SHEET

NAME

ADDRESS

CITY, STATE, ZIP

E-MAIL

GEORGEY C. SCHULTZ

5 SHAWAN RD

COCKEYSVILLE MD 21030

JAY D. BROWN

3015 GARRETT RD.

WHITE HALL MD. 21161

JOHN A BROWN JR

2510 OPENSHAW RD

WHITE HALL MD 21161

Howard L Alderman Jr

502 Washington Ave Suite 802

Towson MD 21204

CASE NAME 19529 Old York Rd
CASE NUMBER 2011-082-SPTX
DATE ~~5/2/2011~~ 5/2/2011

[illegible]

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: David Lykens, Department of Environmental Protection and Sustainability
(DEPS) - Development Coordination

DATE: April 20, 2011

SUBJECT: DEPS Comment for Zoning Item # 11-282-SPHX
Address 19529 Old York Road
(Brown Property)

Zoning Advisory Committee Meeting of March 28, 2011.

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

1. Development of this property must comply with the Forest Conservation Law (Sections 33-6-101 through 33-6-122 of the Baltimore County Code). – *Michael Kulis; Environmental Impact Review*
2. Any proposed building permits for this site at 19529 Old York Road will need Groundwater Mgmt. review. – *Dan Esser; Groundwater Management*

RECEIVED

APR 20 2011

OFFICE OF ADMINISTRATIVE HEARINGS

**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/neighborhood 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: 2011-0282-SPHX
Petitioner: JOHN BROWN
Address or Location: 19529 OLD YORK ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: JOHN BROWN
Address: 19529 OLD YORK ROAD
WHITE HALL, MD 21161

Telephone Number: 410-357-4040



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

April 6, 2011

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2011-0282-SPHX

19529 Old York Road

N/east side of Old York Road, 290 feet s/west of centerline of Kirkwood Shop Road

7th Election District – 3rd Councilmanic District

Legal Owners: John A. Brown, Jr.

Special Hearing for an amendment to the site plan approved and relief granted in Case No. 2002-0123-SPH consistent with the relief requested by and site plan accompanying this Petition; and such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the existing and proposed uses. Special Exception to approve a used motor vehicle outdoor sales area, separated from sales agency building and such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the proposed use.

Hearing: Monday, May 2, 2011 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink, appearing to read "Arnold Jablon", is written over a horizontal line.

Arnold Jablon
Director

AJ:kl

C: Howard Alderman, Jr., 502 Washington Avenue, 8th Fl., Towson 21204
John Brown, Jr., 19529 Old York Road, White Hall 21161-9165
Geoffrey Schultz, 5 Shawan Road, Ste. 1, Cockeysville 21030

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, APRIL 16, 2011.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, April 14, 2011 Issue - Jeffersonian

Please forward billing to:

John Brown
19529 Old York Road
White Hall, MD 21161

410-357-4040

NOTICE OF ZONING HEARING

The Administrative Hearings 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: 2011-0282-SPHX

19529 Old York Road

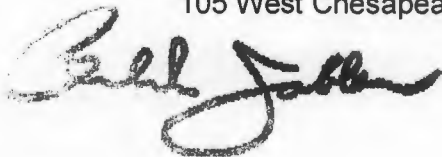
N/east side of Old York Road, 290 feet s/west of centerline of Kirkwood Shop Road

7th Election District – 3rd Councilmanic District

Legal Owners: John A. Brown, Jr.

Special Hearing for an amendment to the site plan approved and relief granted in Case No. 2002-0123-SPH consistent with the relief requested by and site plan accompanying this Petition; and such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the existing and proposed uses. Special Exception to approve a used motor vehicle outdoor sales area, separated from sales agency building and such additional relief as the nature of this case as presented at the time of the hearing on this Petition may require, within the spirit and intent of the BCZR to permit the proposed use.

Hearing: Monday, May 2, 2011 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon

Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
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Case: # 2011-0282-SPHX

19529 Old York Road

N/east side of Old York Road, 290 feet s/west of center-line of Kirkwood Shop Road

7th Election District — 3rd Councilmanic District

Legal Owner(s): John A. Brown, Jr.

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Hearing: Monday, May 2, 2011 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

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

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

04/09/5 April 14

272550

CERTIFICATE OF PUBLICATION

4/14/2011

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 4/14/2011.

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

J. Wilkinson

LEGAL ADVERTISING

KEVIN KAMENETZ
County Executive



JOHN J. HOHMAN, Chief
Fire Department

011

s time.



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

State Highway
Administration

Beverly K. Swaim-Staley, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: 3-31-2011

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

RE: Baltimore County
Item No. 2011-0282-SPHX
MD 439 (Old York Road)
19529 Old York Road
BROWN PROPERTY
SPECIAL EXCEPTION -
SPECIAL HEARING -

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 3-23-2011. A field inspection and internal review reveals that an entrance onto MD 439 consistent with current State Highway Administration guidelines is not required. Therefore, SHA has no objection to approval for 19529 Old York RD, Case Number 2011-0282-SPHX.

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 email him at (mbailey@sha.state.md.us). Thank you for your attention.

Very truly yours,

For¹ Steven D. Foster, Chief
Access Management 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 HEARING * BEFORE THE
AND SPECIAL EXCEPTION * ZONING COMMISSIONER
19529 Old York Road; NE/side of *
Old York Road, 290 ft. SW of centerline *
Kirkwood Shop Road * FOR
7th Election & 3rd Councilmanic District *
Legal Owner(s): John Brown, Jr. * BALTIMORE COUNTY
Petitioner(s) * 2011-0282-SPHX

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carol S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of March, 2011, a copy of the foregoing Entry of Appearance was mailed to Howard L. Alderman, Jr., Esq., Levin & Gann, P.A. Nottingham Centre, 502 Washington Avenue, Suite 800, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



WILLIAM PROPERTY (PDM File/Project #)

Pt. Bk./Folio # 052053

PDM # 070269

1900014455/
Pt. Bk. 52, Folio 53
Pt. Bk./Folio # MP91232

MH

0702065128

19521

2300010994

20020123

SITE

19607
0702065126

19529

013C2

0702065350

0702065300

19601

19920235
19850104

BR CR

7 ED

NE 34-B

013B2

1700013345

PDM # 070078

Lot # 2

20 Pt. Bk. 40, Folio 77
Pt. Bk./Folio # 040077

Pt. Bk./Folio # MP08030
Pt. Bk. 2, Folio 475

PDM # 070439

NE 34-C

3 CD

2300010995

19529

PDM # 070043

Pt. Bk./Folio # 035146

Pt. Bk. 35, Folio 146

0701035610

0701035050

0705040010

0723052380

RC 2
0701035560

ZONING MAP
19529 OLD YORK RD.

19920363

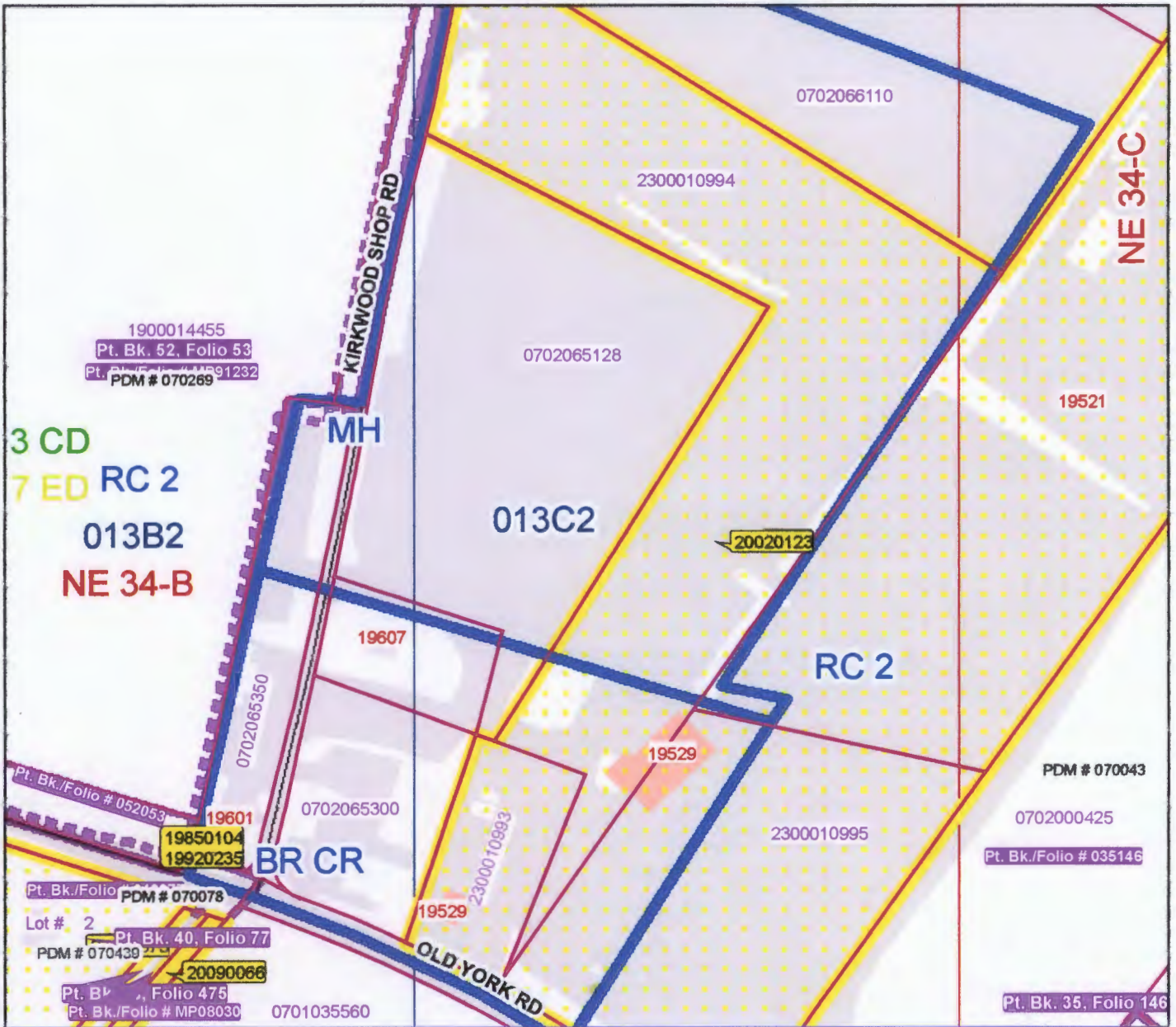
4500

OLD YORK RD

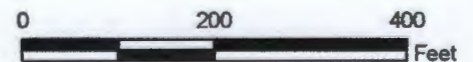
JOLLY ACRES RD

Item # 0282

19529 Old York Road



Publication Date: March 23, 2011
Publication Agency: Department of Permits & Development Management
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



1 inch = 200 feet

Item #0282

IN RE: PETITION FOR SPECIAL HEARING

N/S of Old York Road,, 185' E
centerline of Kirkwood Shop Road
7th Election District
3rd Councilmanic District
(19529 (A&B) Old York Road

John A. Brown, Jr. & Joel D. Brown Sr.
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 02-123-SPH

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing filed by the legal owners of the subject property, John A. Brown, Jr. & Joel D. Brown Sr. The Petitioners are requesting a special hearing for property they own located at 19529 Old York Road in the White Hall area of Baltimore County.

Appearing at the hearing on behalf of the special hearing request were John and Joel Brown, owners of the property. The Petitioners were represented by Howard L. Alderman, Jr. and Mark H. Wittstadt, attorneys at law. Appearing in support of the Petitioners' request were many residents from the surrounding community, all of whom signed in on the Petitioner's Sign-In sheet. No one appeared in opposition to this special hearing request.

The special hearing requested by the Petitioners is to approve a legal nonconforming use pursuant to Sections 101, 104 and 428 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve a junk yard as having been established and continued in operation without lapse prior to the adoption of the Baltimore County Zoning Regulations. The testimony and evidence offered at the hearing demonstrated that the Petitioners own property located on the north side of Old York Road, east of its intersection with Kirkwood Shop Road. The details of the property owned by these Petitioners is more particularly shown on Petitioners' Exhibit No. 1, the site plan submitted into evidence. The site plan submitted contains areas which are highlighted in pink,



whether or not the current activity is within the scope of the nonconforming use, the Deputy Zoning Commissioner should consider the following factors:

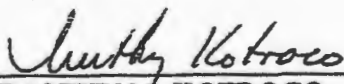
- (a) "To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
- (b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;
- (c) Does the current use have a substantially different effect upon the neighborhood;
- (d) Is the current use a "drastic enlargement or extension" of the original nonconforming use."

McKemy v. Baltimore County, Md., supra.

Pursuant to the advertisement, posting of the property and public hearing held on the petition and for the reasons given above, the special hearing request should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 4th day of January, 2002, that the Petitioners' Request for Special Hearing from Sections 101, 104 and 428 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the subject property as depicted on Petitioners' Exhibit No. 1, highlighted in pink, yellow and red marker, be and is hereby APPROVED.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

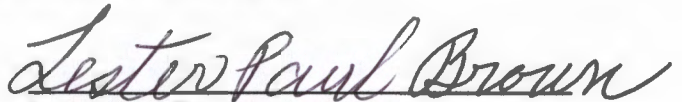
TMK:raj

19529 Old York Road/Case No. 2011-0282-SPHX
JOHN A. BROWN, JR. PROPERTY

**AFFIDAVIT OF CONTINUOUS ACCESSORY USE - SALE OF USED
CARS ACCESSORY TO JUNKYARD USE**

1. I am a person over 18 years of age, and am legally competent to execute and deliver this Affidavit.
2. I have resided in the White Hall area of Baltimore County for most of my ~~eighty-six (86)~~ ⁸⁵ years on this earth.
3. I am familiar with the property owned by John A. Brown, Jr., located at 19529 Old York Road, White Hall, Maryland (the "Property").
4. Based upon personal knowledge and belief, I am aware that the Property has been **used continuously**, without interruption for more than one year, principally as a **junk yard** and secondarily for the sale of **used cars** since 1942.
5. The sale of used cars from the Property has always been a smaller use on the Property than the overall use as a junkyard.
6. The information contained in this Affidavit is consistent with the information that I supplied during the 2002 hearing.
7. Except for reasons related to my present health I would be present at the hearing on Monday, May 2, 2011, to offer my personal testimony consistent with the information set forth in this Affidavit.

I DO SOLEMNLY DECLARE AND AFFIRM under the penalties of perjury that the above facts set forth are based on my personal knowledge and are true and correct.

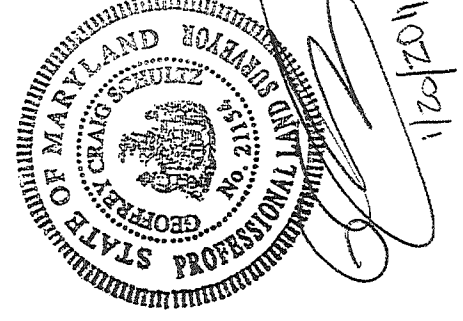

Lester Paul Brown



NOTES:

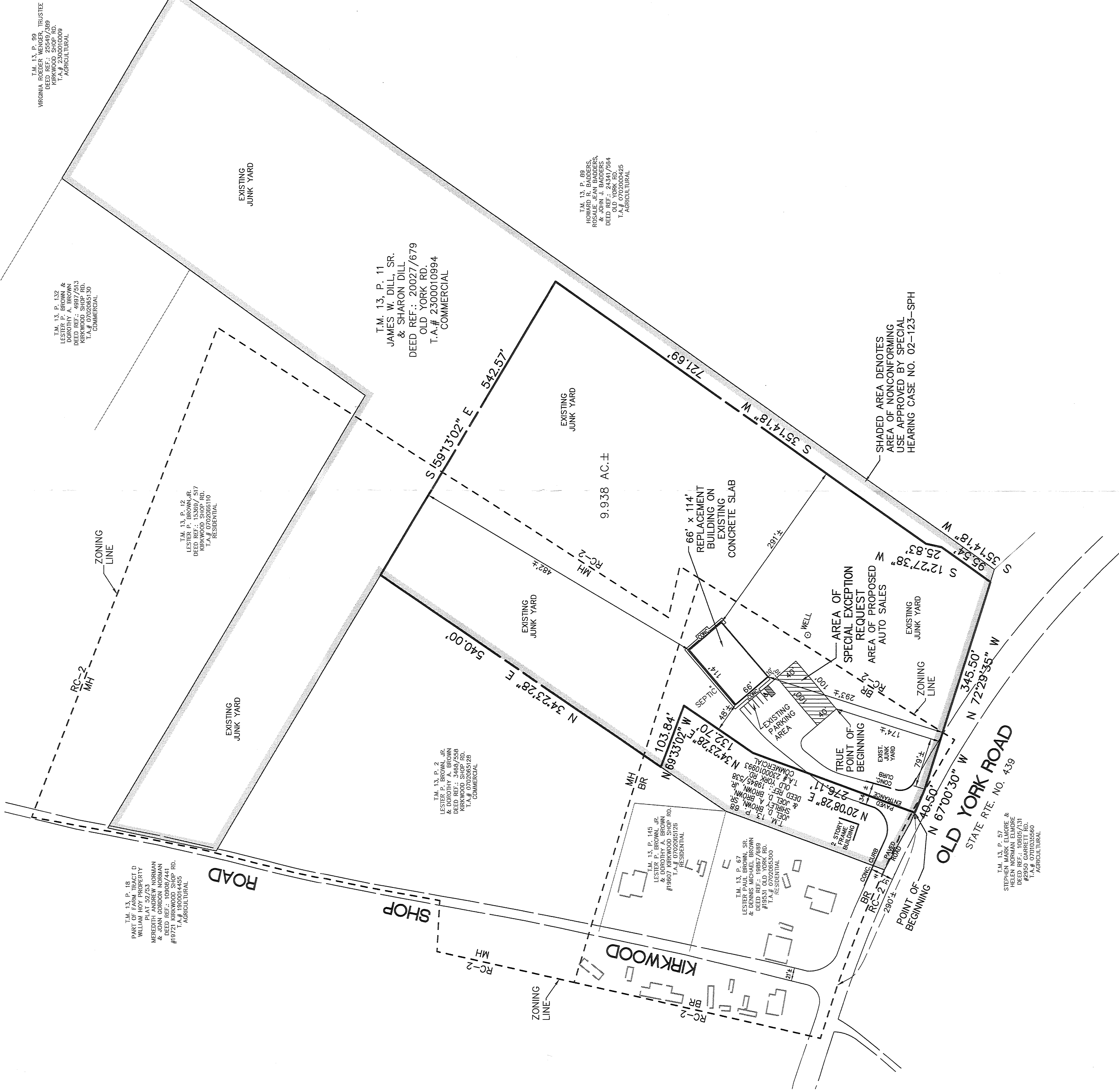
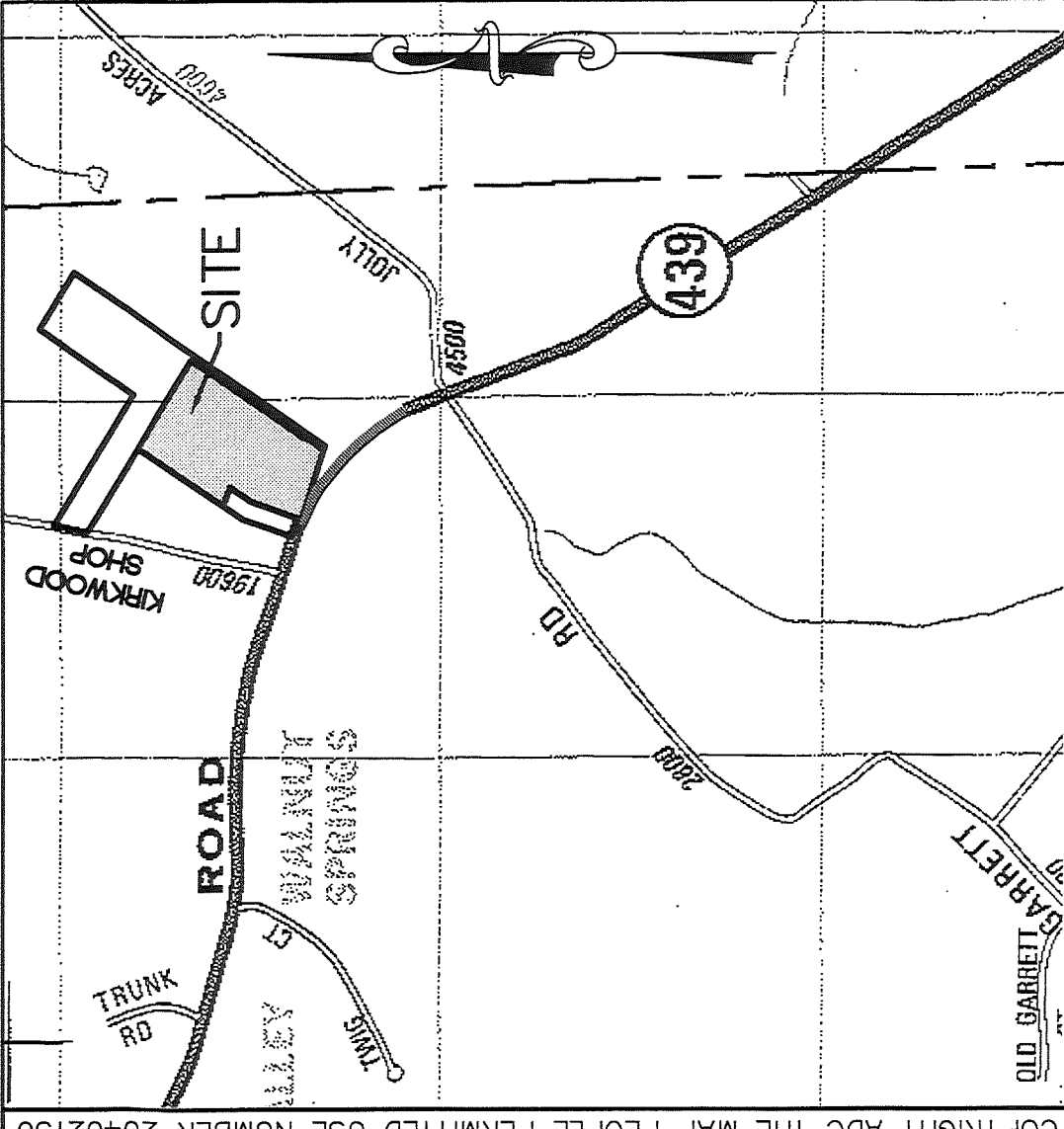
1. EXISTING ZONING: BR, MH & RC-2.
2. GROSS AND NET AREA: 432,882 S.F.± = 9.938 AC.±
3. 200 SCALE ZONING MAP NO. 013C2.
4. THERE ARE NO EXISTING OR IMPENDING FAILURES OF THE BASIC SERVICES MAPS FOR THIS SITE.
5. THIS LOT IS SERVED BY PRIVATE WELL AND SEPTIC SYSTEMS.
6. OWNER INFORMATION:
JOHN A. BROWN, JR.
DEED REFERENCE: 14826/638
TAX ACCT.# 2300010995
TAX MAP 13, GRID 11, PARCEL 113
7. THIS PROPERTY IS NOT IN THE CBCA.
8. THIS SITE IS NOT IN A 100 YEAR FLOOD PLAIN.
9. THIS SITE IS NOT HISTORIC.
10. ALL PARKING SPACES ARE A MINIMUM 8.5' x 18' FOR PERPENDICULAR PARKING.
11. AREA OF PROPOSED EXCEPTION: 4,000 S.F.± = 0.092 AC.±
12. EXISTING USE OF PROPERTY: JUNKYARD
13. PROPOSED USE OF PROPERTY: JUNKYARD WITH AUTO SALES IN THE DESIGNATED AREA.

14826/638



McKEE & ASSOCIATES, INC.
Engineering – Land Planning – Land Surveying

Natural Resource Planning – Real Estate Development
5 SHAWAN ROAD, Suite 1 COCKEYSVILLE, MARYLAND 21030
TELEPHONE: (410) 527-1555 FACSIMILE: (410) 527-1563



PREVIOUS ZONING HEARING INFO.

CASE NO. 02-123-SPH
SPECIAL HEARING APPROVED CONFIRMING A LEGAL NONCONFORMING USE OF THE PROPERTIES AS A JUNK YARD PURSUANT TO SECTIONS 101, 104, AND 428 BCZR.
ORDER:

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 4th day of January, 2002, that the Petitioners' Request for Special Hearing from Sections 101, 104 and 428 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve the subject property as depicted on Petitioners' Exhibit No. 1, highlighted in pink, yellow and red marker, be and is hereby APPROVED.

IT IS FURTHER ORDERED that any appeal of this decision must be made within thirty (30) days of the date of this Order.

Timothy M. Kotroco
TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

PLAT TO ACCOMPANY PETITIONS FOR
SPECIAL HEARING AND SPECIAL EXCEPTION REQUESTS
#19529 OLD YORK ROAD

7TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND
DATE: JANUARY 20, 2011
SCALE: 1"= 100'

