

9-16-16



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

September 6, 2016

CAROLE S. DEMILIO
Deputy People's Counsel

HAND DELIVERED

John Beverungen, Administrative Law Judge
The Jefferson Building
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

RECEIVED

SEP 06 2016

OFFICE OF ADMINISTRATIVE HEARINGS

Re: Zulfikar Shah – Legal Owner
Case No.: 2017-004-SPH
September 16, 2016 Hearing Schedule

Dear Judge Beverungen,

This petition comes in as a special hearing to amend the last previous zoning order for this mainly B.R. property in Case No. 2009-211-X, attached. The proposal is for a commercial addition. The petition was filed July 7, 2016.

Deputy Zoning Commissioner Thomas Bostwick approved a special exception for used motor vehicle sales, along with a service garage, including a side yard setback variance. However, there were strict conditions limiting the number of vehicles for sale to 10 at any one time, prohibiting body or fender work, defining storage, limiting hours of operation, requiring landscaping, and complying with MVA and fire department regulations.

Shortly after the petition came in, I reviewed the site plan. It shows the proposal of a substantial new garage addition. However, it does not reflect compliance with the 2009 Order and includes 14 parking spaces for sales, 4 for display, 7 undefined, and 2 for service, for a total of 27 spaces. There is no showing of any landscaping. There is no reference to the other conditions.

I communicated informally to one of petitioner's representatives that the petition and site plan appeared to be inadequate. At the very least, an amended petition and site plan needed to be prepared, in my opinion.

I reviewed the file more recently and found that no amended petition has been filed. I communicated that to petitioner's representative.

Coincidentally, our office received in the last few days a copy of the August 8, 2016 comment of the Department of Planning, also attached. Based on its site visit, the DOP has found that the site does not comply with the 2009 conditions limiting the number of vehicles and requiring landscaping. The noncompliance is described as substantial. The DOP also describes a

number of illegal signs in the form of pennants and banner. Under the circumstances, the DOP opposes the petition and recommends that petitioner be required to comply with the 2009 previously approved plan.

Having reviewed the situation, our office must add that there does not appear to be any justification to depart from the strict conditions imposed by Deputy Zoning Commissioner Bostwick in 2009. The *res judicata* doctrine is applicable. In the absence of a substantial change in circumstances to warrant a different result, the matter is concluded by the earlier case, whether involving a denial or the conditions of a grant. Whittle v. Board of Appeals 211 Md. 36 (1956); Woiodlawn Area Citizens v. Board of County Comm'rs 241 Md. 187 (1966); Seminary Galleria v. Dulaney Valley Improvement Ass'n 192 Md. 719 (2010). More recently, there have been similar rulings, preserving conditions, in Belvedere Baptist Church/Davenport Preschool No. 15-004-SPH (ALJ and CBA decisions) and Boone-Kondylas No.16-003 (ALJ decision, CBA deliberation, written decision to follow). These are attached.

Also attached are Google Earth photographs and a MyNeighborhood Map.

Our position at this time is that the petition should be denied, as a matter of law. The matter of enforcement would be within the jurisdiction of the appropriate division of the Department of Permits, Appeals, and Inspections.

Sincerely,



Peter Max Zimmerman

People's Counsel for Baltimore County

cc: Lee Giroux, Petitioner's Representative
Stephen W. Fogleman, Esquire
Kathy Schlabach, Dennis Wertz, Lloyd Moxley, DOP
Lionel Van Dommelen, Department of Permits, Approvals, and Inspections
Shirley Supik, Liberty Road Community Council



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 7110 Liberty Road which is presently zoned BR
 Deed References: 0026/0125 10 Digit Tax Account # 0213400002
 Property Owner(s) Printed Name(s) PAK US CO

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ a **Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commission should approve
 Special Hearing to amend the previously approved order and site plan from Zoning Case # 2009-0211-X to allow a proposed commercial addition.
2. ☐ a **Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for
3. ☐ a **Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
 (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

Property is to be posted and advertised as prescribed by the zoning regulations.

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print _____
 Signature _____
 Mailing Address _____ City _____ State _____
 Zip Code _____ Telephone # _____ Email Address _____

Attorney for Petitioner:

Stephen W. Fogleman, Esquire
 Name- Type or Print _____
 Signature _____

1720 Thames St Baltimore MD
 Mailing Address _____ City _____ State _____

21231 4102588500 marylandlegal@gmail.com
 Zip Code _____ Telephone # _____ Email Address _____

Legal Owners (Petitioners):

ZULFIKAR SHAH

Name #1 - Type or Print _____ Name #2 - Type or Print _____
☒ Signature #1 _____ Signature #2 _____
12216 Statewood Rd Reisterstown MD
 Mailing Address _____ City _____ State _____
21136 443.220-3373 Pakusshah@yahoo.com
 Zip Code _____ Telephone # _____ Email Address _____

Representative to be contacted:

Lee Giroux
 Name - Type or Print _____
 Signature _____
1550 Cottage Lane Towson MD 21286
 Mailing Address _____ City _____ State _____
21286 443-564-8875 Girouxlee@gmail.com
 Zip Code _____ Telephone # _____ Email Address _____

CASE NUMBER 2017-0004-SPH Filing Date 7/7/16 Do Not Schedule Dates: (will call) Reviewer JS

**DESCRIPTION TO ACCOMPANY ZONING PETITION
7110 LIBERTY ROAD
2nd ELECTION DISTRICT, C-2**

Beginning for the same at a point on the east side of Liberty Road (MD RT 26), having coordinates: E 1-33,898.17 and N 17,578.86, running thence:

1. North 65° 24' 10" West 25.00 feet along the east side of Liberty Road (MD RT 26) thence,
2. North 25° 05' 50" East 10.00 feet to the east side of Liberty Road (MD RT 26) thence,
3. North 65° 24' 10" West 125.00 feet along the east side of Liberty Road (MD RT 26) thence,
4. North 25° 05' 50" East 150.00 feet thence,
5. South 65° 24' 10" East 150.00 feet thence,
6. South 25° 05' 50" West 160.00 feet to the place of beginning.

Containing 0.526 acres +/-

This description is intended for zoning purposes only and shall not be used for conveyance of land.

2017-0004-SPH



501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 4399163

Sold To:

Lee Giroux - CU00556727
12 Valley Lake Pl
Apt East
Cockeysville, MD 21030-5337

Bill To:

Lee Giroux - CU00556727
12 Valley Lake Pl
Apt East
Cockeysville, MD 21030-5337

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Aug 25, 2016

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: # 2017-0004-SPH
7110 Liberty Road
NE/s Liberty Road, 225 ft. NW of intersection with Essex Road
3rd Election District - 2nd Councilmanic District
Legal Owner(s) Zulfikar Shah

Special Hearing: to amend the previously approved Order and Site Plan from Zoning Case 2009-0211-X to allow a proposed commercial addition.

Hearing: Friday, September 16, 2016 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.

8/19/16 August 25 4399163

The Baltimore Sun Media Group

By S. Wilkinson
Legal Advertising



KEVIN KAMENETZ
County Executive

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

August 8, 2016

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: 2017-0004-SPH

7110 Liberty Road

NE/s Liberty Road, 225 ft. NW of intersection with Essex Road

3rd Election District – 2nd Councilmanic District

Legal Owners: Zulfikar Shah

Special Hearing to amend the previously approved Order and Site Plan from Zoning Case 2009-0211-X to allow a proposed commercial addition.

Hearing: Friday, September 16, 2016 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".

Arnold Jablon
Director

AJ:kl

C: Stephen Fogleman, 1720 Thames St., Baltimore 21231
Zulfikar Shah, 12216 Statewood Road, Reisterstown 21136
Lee Giroux, 1550 Cottage Lane, Towson 21286

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, AUGUST 27, 2016**
- (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.

RE: PETITION FOR SPECIAL HEARING
7110 Liberty Road; NE/S Liberty Road,
225' NW of intersection with Essex Road
3rd Election & 2nd Councilmanic Districts
Legal Owner(s): Zulfikar Shah
Petitioner(s)

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* 2017-004-SPH

* * * * *

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

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

JUL 19 2016

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of July, 2016, a copy of the foregoing Entry of Appearance was mailed to Lee Giroux, 1550 Cottage Lane, Towson, Maryland 21286 and Stephen W. Fogleman, Esquire, 1720 Thames Street, Baltimore, Maryland 21231, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

**DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE**

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 legal owner/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 legal owner/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:

Case Number: 2017-0004 SPM
Property Address: 7110 LIBERTY ROAD
Property Description: _____
Legal Owners (Petitioners): ZULFIKAR SHAH
Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: LEE GIROUX
Company/Firm (if applicable): _____
Address: 12 VALLEY LAKE PLACE
APT. E
COCKEYSVILLE, MD 21030
Telephone Number: 443-564-8875

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No.

141336

Date:

7/7/16

PAID RECEIPT

BUSINESS ACTUAL TIME ISO
7/08/2016 7/07/2016 11:32:05 3

REC US03 WALKIN CAN
>> RECEIPT # 893407 7/07/2016 OFLN

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				\$ 385.00

Dept 5 528 ZONING VERIFICATION
Cv ID. 141336

Receipt Tot \$385.00
\$385.00 CK \$0.00 CA
Baltimore County, Maryland

Total:

\$ 385.00

Rec

From:

PAKUSCO

For:

2017-0004-SPH

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

CASHIER'S
VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 127192

Date: 6/26/15

Fund	Dept	Unit	Sub Unit	Rev Source/	Sub Rev/	Obj	Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150						150.00

Total: 150.00

Rec From: Payless Motors

For: Spirit & Intent

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

PAID RECEIPT

BUSINESS ACTUAL TIME IRM
6/30/2015 6/26/2015 13:54:47 1

REG MSD1 WALKIN LRAS LJR
RECEIPT # 588482 6/26/2015 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 127192

Recpt Tot \$150.00
\$150.00 CK \$1.00 CA
Baltimore County, Maryland

CASHIER'S
VALIDATION



KEVIN KAMENETZ
County Executive

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

September 7, 2016

Zulfikar Shah
12216 Statewood Road
Reisterstown MD 21136

RE: Case Number: 2017-0004 SPH, Address: 710 Liberty Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on July 7, 2016. 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: jaw

Enclosures

c: People's Counsel
Stephen W Fogleman, Esquire, 1720 Thames Street, Baltimore MD 21231
Lee Giroux, 1550 Cottage Lane, Towson MD 21286

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary
Gregory C. Johnson, P.E., Administrator

Date: 7/11/16

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals & Inspections
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 7/11/16. A field inspection and internal review reveals that an entrance onto MDZ-6 consistent with current State Highway Administration guidelines is not required. Therefore, SHA has no objection to approval for Special Permit. Case Number 2017-0004-SHA.

Zelil Khan Shah
7110 Liberty Road
MDZ6

Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) X 2332 or by email at (rzeller@sha.state.md.us).

Sincerely,

A handwritten signature in black ink, appearing to read 'Wendy Wolcott'.

Wendy Wolcott, PLA
Acting Metropolitan District Engineer – District 4
Baltimore & Harford Counties

WW/RAZ

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

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

SUBJECT: Zoning Advisory Committee Meeting
For July 18, 2016
Item No. 2017-0004

DATE: July 18, 2016

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

A 100-year flood plain exists on this property. No Special Hearing Amendments should be allowed until the site plan is revised to show the flood plain and setbacks/buffers from it.

Landscape and Lighting Plans are required per the requirements of the Landscape Manual, prior to building permit. A Greenway Easement may be required pending determination of Forest Buffer.

* * * * *

DAK:CEN
cc:file

ZAC-ITEM NO 17-0004-07182016.doc

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM



TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 8, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-004

INFORMATION:

Property Address: 7110 Liberty Road
Petitioner: Zulfikar Shah
Zoning: BR and BLR
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for special hearing to determine whether or not the Administrative Law Judge should approve an amendment to the previously approved order and site plan from Zoning Case # 2009-0211-X to allow a proposed commercial addition.

The property is located in the Liberty Road Commercial Revitalization District. Commercial Revitalization Districts are the "front doors" to established communities. They offer shopping and entertainment experiences where family owned business and national retail chains are neighbors in local communities providing a range of services aimed at maintaining the health and vitality of our neighborhood commercial areas.

A site visit was conducted on 7/14/2016. More than 40 vehicles for sale were observed parked/displayed on the premises during the site visit, some apparently within the Liberty Road right-of-way.

The Department objects to granting the requested zoning relief. Site observations indicate that conditions imposed by the Deputy Zoning Commissioner in the prior Zoning Case # 2009-0211-X have not been met. Specifically:

- #2) "Petitioner is only permitted to store or maintain up to ten (10) vehicles for sale on the property at any one time. If Petitioner exceeds this number, he will be subject to the civil fines and penalties prescribed by the Baltimore County Code and the B.C.Z.R".

And

- #6) "Petitioner must complete the landscaping in the front of the property that is designated as a planting area on the site plan."

To exacerbate the overly intensive non-compliant use of the property, a number of illegal signs in the form of pennants and banners were observed. The Department recommends these be removed and the petitioner be required to comply with the previously approved site plan.

For further information concerning the matters stated herein, please contact Dennis Wertz at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Dennis Wertz
James Hermann, R.L.A., Permits, Approvals and Inspections
Lee Giroux
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



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

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: July 11, 2016

SUBJECT: DEPS Comment for Zoning Item # 2017-0004-SPH
Address 7110 Liberty Road
(Shah Property)

Zoning Advisory Committee Meeting of **July 18, 2016**.

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford

Date: 07-11-2016



KEVIN KAMENETZ
County Executive

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

July 9, 2015

Payless Motors LLC Car Dealership
7110 Liberty Road
Baltimore, Maryland 21207
Attn: Zulfiker Shah-President of PAK US CO

Dear Zulfiker Shah:

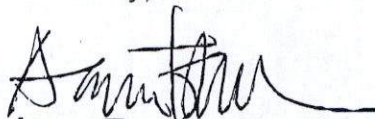
RE: Used Car Dealership
7110 Liberty Road
Spirit and Intent, Zoning Case No. 2009-0211-X

This refers to your recent letter and a site plan for the proposed addition, received by Permits, Approvals, and Inspections on 6/26/2015. In your letter, you requested a zoning S&I (Spirit and Intent) verification that the proposed addition is in compliance with the S&I as in Zoning Case #2009-0211-X. As noted, the proposed addition contains 1800 square feet in area which is more or less 106% addition to the existing building.

After consultation with Mr. John Beverungen, the Administrative Law Judge, Mr. Beverungen has determined that the proposed new addition is not within the Spirit and Intent of the Zoning Case # 2009-0211-X. A new Special Hearing is required to amend the previous approved Special Exception zoning case, and, a variance may also be required for the building side yard setback for the proposed extension/addition. Please find enclosed the petition forms and a check list for your use should you decide to proceed with the Special Hearing and Variance petition.

A development plan is required to be submitted to the Development Review Committee (DRC) for review and approval by the County agencies.

Sincerely,


Aaron Tsui
Planner II, Zoning Review

File: 15-210
Zoning Case no.2009-0211-X

Payless Motors LLC Car Dealer
7110 Liberty Road
Baltimore, Md. 21207

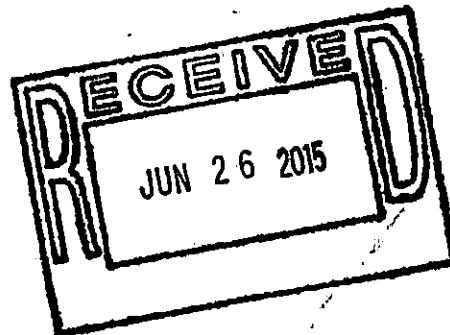
Letter of Spirit and Intent

To Whom It may concern:

The following property located at 7110 Liberty Rd. The property is currently zoned as a used car dealership and auto repair filed under zoning reference number cs#2009-0211-X. In the spirit and intent of the ruling the owner has no intention of change or altering the zoning approve for the building. The addition is 1800 ft. total-420 SF. will be used for the office to be extended to provide additional work and waiting space for company daily operation 1380 SF. will be designated for storage of inventory.

Regards,

Zulfiker Shah-President of PAK US CO



**IN RE: PETITION FOR SPECIAL
EXCEPTION**

NE side of Liberty Road, 250 feet NW
of the c/l of Essex Road
2nd Election District
4th Councilmanic District
(7110 Liberty Road)

PAK US CO
Petitioner

* BEFORE THE DEPUTY
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* **Case No. 2009-0211-X**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Zulfikar Shah, President of PAK US CO, the legal owner of the subject property. Petitioner requests special exception approval to use the subject property for the sale of used motor vehicles, in addition to the present use as a service garage. Petitioner also requests confirmation that the side yard setback variance of 15 feet in lieu of the required 30 feet, approved by the Deputy Zoning Commissioner in Case No. 03-099-A, will be applicable to the use of the property for the sale of used motor vehicles as well as for the existing service garage. The subject property and requested relief are more fully described on the site plan, which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief were Zulfiker Shah, President of Petitioner PAK US CO, as well as Keith Heindel and Gary Ganjon with Professional Surveys, LLC, the firm that prepared the site plan. Michael L. Snyder, Esquire, appeared and represented Petitioner. There were no Protestants or other interested persons in attendance at the public hearing.

Testimony and evidence offered revealed that the subject property is square-shaped and contains approximately 23,775 square feet or 0.546 acre, more or less, zoned primarily B.R.

RECEIVED FOR FILE

5.6.09
PM

(22,257 square feet) with a strip of B.L.R. (1,518 square feet) on the western end of the property. This commercial property is located on the north side of Liberty Road near the intersection of Essex Road, less than a mile east of Interstate 695 in the Lochearn area of Baltimore County. Petitioner submitted an aerial photograph of the subject property that was marked and accepted into evidence as Petitioner's Exhibit 4. The photograph reveals that the property is improved with a one-story service garage that is surrounded by several commercial buildings that line the northern side of Liberty Road. Petitioner also submitted a series of photographs of the subject property and surrounding area. The photographs, which were marked and accepted into evidence as Petitioner's Exhibits 2A through 2J, reveal that the property to the west contains a fast food establishment, and the properties to the east respectively are used as a pawn shop, grocery/convenience store, and fuel service station. Across the street from the subject property is a residential area that is setback from Liberty Road with a tall dividing wall and service road.

Further testimony and evidence revealed that Mr. Zulfikar purchased the subject property approximately three years ago and has operated a business known as Payless Auto Services on a lot that was formerly used as a Meineke Service Center. The company performs minor auto repairs such as oil changes, brake and muffler repairs, and general automobile tune-ups. Petitioner does not perform any paint or body repair work, and testified that he does not intend to expand the services offered by his business even if the special exception is granted.

The requested special exception is to enable Petitioner to sell a small number of used cars in conjunction with his auto repair business. Mr. Zulfikar testified that his customers often ask him where to purchase a reliable used car, and he realizes that he could improve his business by adding a small auto sale component to the repair business, while also benefiting his customers with safe, reliable transportation. As the site plan indicates, Petitioner is not proposing to expand

the existing structure or facilities, and the only change to the property would be a planting area that would add a strip of landscaping to the front of the property. Each of the existing parking spaces is labeled on the site plan as either service or sales parking, and the parking meets the requirements of the B.C.Z.R. Petitioner submitted a supportive letter from the Liberty Road Business Association, an association that represents the interests of businesses in the vicinity of the subject property. The letter, which was marked and accepted into evidence as Petitioner's Exhibit 3, states that the area is in need of a facility that sells good quality used cars, and that the local association supports this request for special exception.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated March 30, 2009 which indicate that the site is located within a Master Plan 2010 designated Revitalization District; however, the proposed use as a service garage and used car sales location is too intense of a use for the subject site. The site plan provided does not clearly delineate parking for sales, service, etc. The Office of Planning recommends denial of the subject request.

After considering all of the testimony and evidence presented at the public hearing, I am convinced that the requested special exception should be granted.¹ It should be noted, however, that Petitioner will not be permitted to run free with his request to sell used cars, as this approval will be subject to several conditions that address the Office of Planning's concerns regarding the intensity of the proposed use on the property. That said, the uncontradicted testimony of Keith Heindel, the professional surveyor who assisted in the preparation of the site plan for Petitioner, has convinced me that this request, when subjected to several limiting conditions, meets the criteria contained in Section 502.1 of the B.C.Z.R.

¹ For clarification, this Petition does not affect the variance that was approved in Case No. 03-099-A for Special Exception. Petitioner will still retain the variance with the added use granted in this Petition.

Specifically, as indicated by the testimony and evidence, I find that the request will not be detrimental to the health, safety or general welfare of the locality involved, as the proposed use will be at most complimentary to a small business located in a commercial Revitalization District along a commercial corridor of Liberty Road. The request will not tend to create congestion in the roads, streets or alleys therein as Petitioner expects primarily to sell used cars to his existing customers. There is no evidence that the relief would create a potential hazard from fire, panic or other danger, or tend to overcrowd land and cause undue concentration of the population. In fact, the request will not have any effect on the density of the property, and the relief will be conditioned so as to limit the number of cars that can remain on the property.

This Petition also will have no effect on the existence of adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, and will not interfere with adequate light and air on the property. The request will not be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations, nor would it be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in a resource conservation zone.

Finally, I find that this request is consistent with the purposes of the property's zoning classification and the relief is consistent with the spirit and intent of the B.C.Z.R. The property is located in a commercial Revitalization District, and this request will assist a small, local business, while being conditioned to prevent any negative impact on the surrounding locale. It is no secret that the dire economic conditions faced throughout the country have drastically reduced the number of new cars being purchased. Indeed, the secondary market has become even more important to consumers these days. I find that permitting Petitioner's local auto repair business

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to sell a limited number of used cars would provide an increasingly important service to the local community while fulfilling the spirit and intent of the commercial Revitalization District. Accordingly, after considering all of the evidence and testimony presented at the public hearing, I am convinced that the requested special exception should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering all of the testimony and evidence offered by Petitioner, I find that Petitioner's three special exception requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 6th day of May, 2009, that the Petition for Special Exception to use the subject property for the sale of used motor vehicles, in addition to the present use as a service garage be and is hereby GRANTED; and

IT IS FURTHER ORDERED that Petitioner's request for confirmation that the side yard setback variance of 15 feet in lieu of the required 30 feet, approved by the Deputy Zoning Commissioner in Case No. 03-099-A, will be applicable to the use of the property for the sale of used motor vehicles as well as for the existing service garage, be and is hereby GRANTED.

The Special Exception shall be subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner is only permitted to store or maintain up to ten (10) vehicles for sale on the property at any one time. If Petitioner exceeds this number, he will be subject to the civil fines and penalties prescribed by the Baltimore County Code and the B.C.Z.R.

3. Petitioner may not perform any body repair or paint work on the premises and may not expand the repair services already offered by Payless Auto Service.
4. Petitioner must store all replacement parts kept on the premises inside the existing one-story service center.
5. Petitioner's hours of operation are limited to 9:00 am to 5:00 pm Monday through Saturday. Petitioner will not be open for business on Sundays.
6. Petitioner must complete the landscaping in the front of the property that is designated as a planting area on the site plan.
7. Petitioner must obtain all necessary permits or licenses from the MVA before selling automobiles on the premises.
8. Petitioner must ensure that the property remains in compliance with all local fire department regulations.

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

Order.


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

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PM

IN RE: PETITION FOR VARIANCE

E/S Liberty Road, 230' +/-
N of Essex Road
2nd Election District
2nd Councilmanic District
(7110 Liberty Road)

Bird Holdings, LLC
Petitioners

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 03-099-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Bird Holdings, LLC. The variance request involves property located at 7110 Liberty Road. The Petitioners are requesting variance relief to construct an addition to an existing commercial building with a side yard setback of 15 ft. in lieu of the required 30 ft.

Appearing at the hearing on behalf of the variance request were Iwona Zarska, the professional engineer who prepared the site plan of the property, Peter Bird, owner of the property, and Larry Haislip, attorney at law, representing the Petitioners. There were no protestants in attendance.

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of 0.624 acres, more or less, zoned BR. The property is the site of a Meineke franchise. Mr. Bird is the owner and operator of the Meineke at this location. He is desirous of constructing an addition on the front of his existing commercial building in order to expand his business and provide a more comfortable waiting area for his customers. The addition itself will maintain the exact same side yard setback as does the existing building and, therefore, he

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10/4/02
By: R. [Signature]

proposes no further encroachment into the side yard than that which exists on the property today. In order to proceed with the construction of this addition, the variance request is necessary.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to Petitioners and their property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioners must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

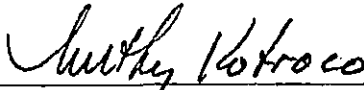
After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioners seek relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance request should be granted.

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10/14/02
H. J. J. J.

THEREFORE, IT IS ORDERED, this 4th day of October, 2002, by this Deputy Zoning Commissioner, that the Petitioners' request for variance, to construct an addition to an existing commercial building with a side yard setback of 15 ft. in lieu of the required 30 ft., be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

- 1) The Petitioners may apply for their 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 such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) The Petitioners shall submit elevation drawings to the Office of Planning for their review and approval prior to the construction of this addition.


TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

OFFICE RECEIVED FOR FILING

DATE 10/14/02
BY R. J. Johnson

Real Property Data Search (w4)

Guide to searching the database

Search Result for BALTIMORE COUNTY

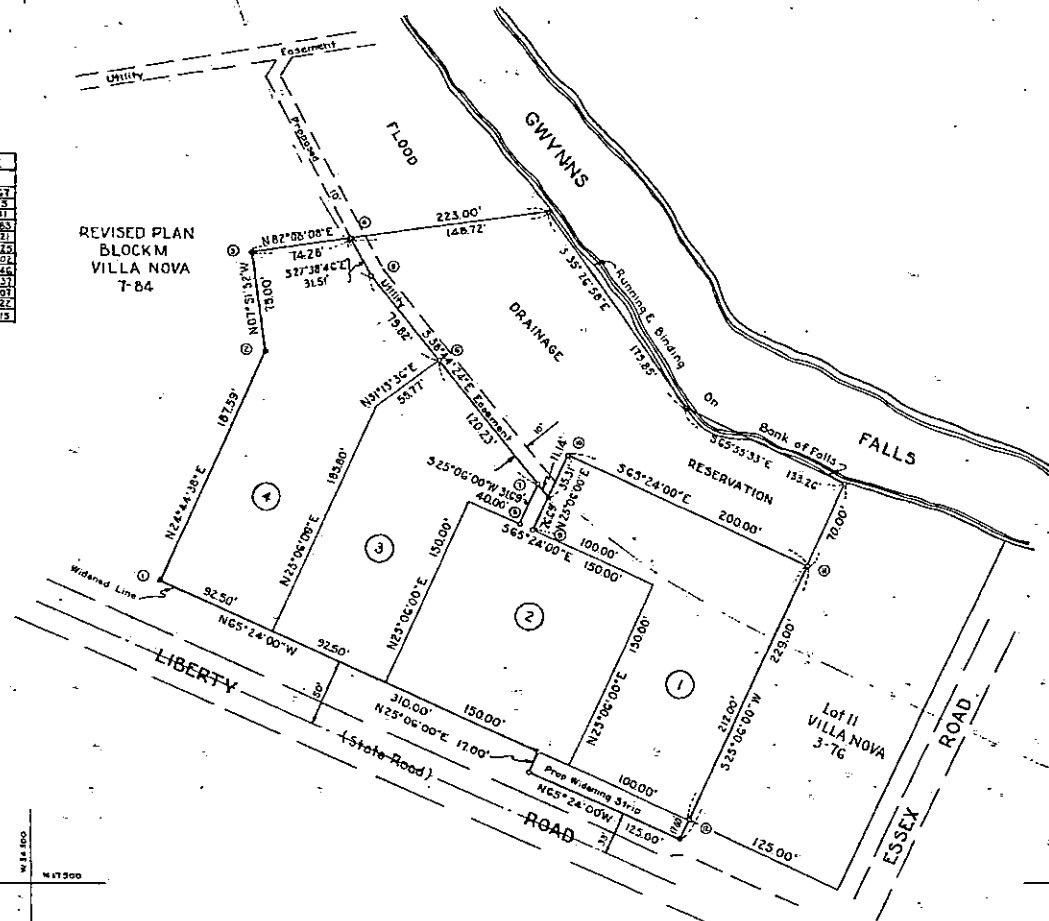
View Map		View GroundRent Redemption		View GroundRent Registration	
Account Identifier:		District - 02 Account Number - 0213400002			
Owner Information					
Owner Name:		PAK US CO		Use:	COMMERCIAL
Mailing Address:		12216 STATEWOOD RD REISTERSTOWN MD 21136-4720		Principal Residence:	NO
				Deed Reference:	/25567/ 00530
Location & Structure Information					
Premises Address:		7110 LIBERTY RD BALTIMORE MD 21207-4518		Legal Description:	PT LT 2 & STRIP 7110 LIBERTY RD VILLA NOVA SHOPPING CTR
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:
0088	0002	0467		0000	
					Block:
					2
					Lot:
					2
					Assessment Year:
					2016
					Plat No:
					0026/
					Plat Ref:
					0125
Special Tax Areas:			Town:		
			NONE		
			Ad Valorem:		
			NONE		
			Tax Class:		
			NONE		
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area	Property Land Area	County Use	
1960	1620		23,775 SF	06	
Stories	Basement	Type	Exterior	Full/Half Bath	Garage
		AUTO CENTER			
Value Information					
Base Value		Value As of 01/01/2016	Phase-in Assessments As of 07/01/2015 As of 07/01/2016		
Land:	308,700	308,700			
Improvements	110,200	113,500			
Total:	418,900	422,200	418,900	420,000	
Preferential Land:	0			0	
Transfer Information					
Seller: BIRD HOLDING INC		Date: 05/01/2007	Price: \$300,000		
Type: NON-ARMS LENGTH OTHER		Deed1: /25567/ 00530	Deed2:		
Seller: 7110 LIBERTY ROAD		Date: 01/31/2001	Price: \$250,000		
Type: ARMS LENGTH IMPROVED		Deed1: /14951/ 00057	Deed2:		
Seller: BRADLEY JAMES K		Date: 10/05/1984	Price: \$0		
Type: NON-ARMS LENGTH OTHER		Deed1: /06799/ 00036	Deed2:		
Exemption Information					
Partial Exempt Assessments:	Class	07/01/2015	07/01/2016		
County:	000	0.00			
State:	000	0.00			
Municipal:	000	0.00 0.00	0.00 0.00		
Tax Exempt:		Special Tax Recapture:			
Exempt Class:		NONE			
Homestead Application Information					
Homestead Application Status: No Application					

1. This screen allows you to search the Real Property database and display property records.
2. Click [here](#) for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.



COORDINATE TABLE		
N	E	
1	17 727.34	34 156.67
2	17 827.71	34 120.15
3	17 912.00	34 105.41
4	17 982.16	34 096.85
5	17 954.24	34 062.91
6	17 831.39	33 997.45
7	17 728.22	33 917.02
8	17 709.57	33 830.46
9	17 709.34	33 921.57
10	17 811.51	33 895.01
11	17 738.25	33 713.22
12	17 844.27	33 803.15

REVISED PLAN
BLOCKM
VILLA NOVA
7-84



VILLA NOVA SHOPPING CENTER
A DEVELOPMENT OF
ALBERT F. METZGER

2ND ELECTION DISTRICT

BALTIMORE COUNTY, MD.

SCALE: 1" = 50'

NOVEMBER 16, 1959

WJA 26 FOLIO 125

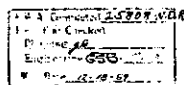
RECEIVED FOR RECORD
DEC 24 1959 at
same day recorded in Liber
W.J.A. 80. Folio
One of the Records of
Baltimore County and ex-
amined, per

• DENOTES

51-1-1959 20000

SET MAY 1958

Approved: _____
County Roads Engineer
Date: _____
Approved: Baltimore County Planning Board
Date: _____
Director
Approved: _____
Deputy State & County Health Officer



The streets and/or roads as shown hereon and the markers there-
of in deeds are for the purpose of description only and the same
are not intended to be dedicated to public use; the fee simple
title thereof is expressly reserved in the grantors of the deed
to which this plat is attached, their heirs and assigns.

Coordinates Shown On This Plat Are Based On The Metropolitan
District Of Baltimore County Coordinate System.

The requirements of section 72A, 72B, and of Article 17 of the Annotated Code
of Maryland, 1939 Edition (Title: Clerks of Court, Subtitle: Clerks of Circuit Courts),
as far as they relate to the making of this plat and setting the markers have been
complied with.

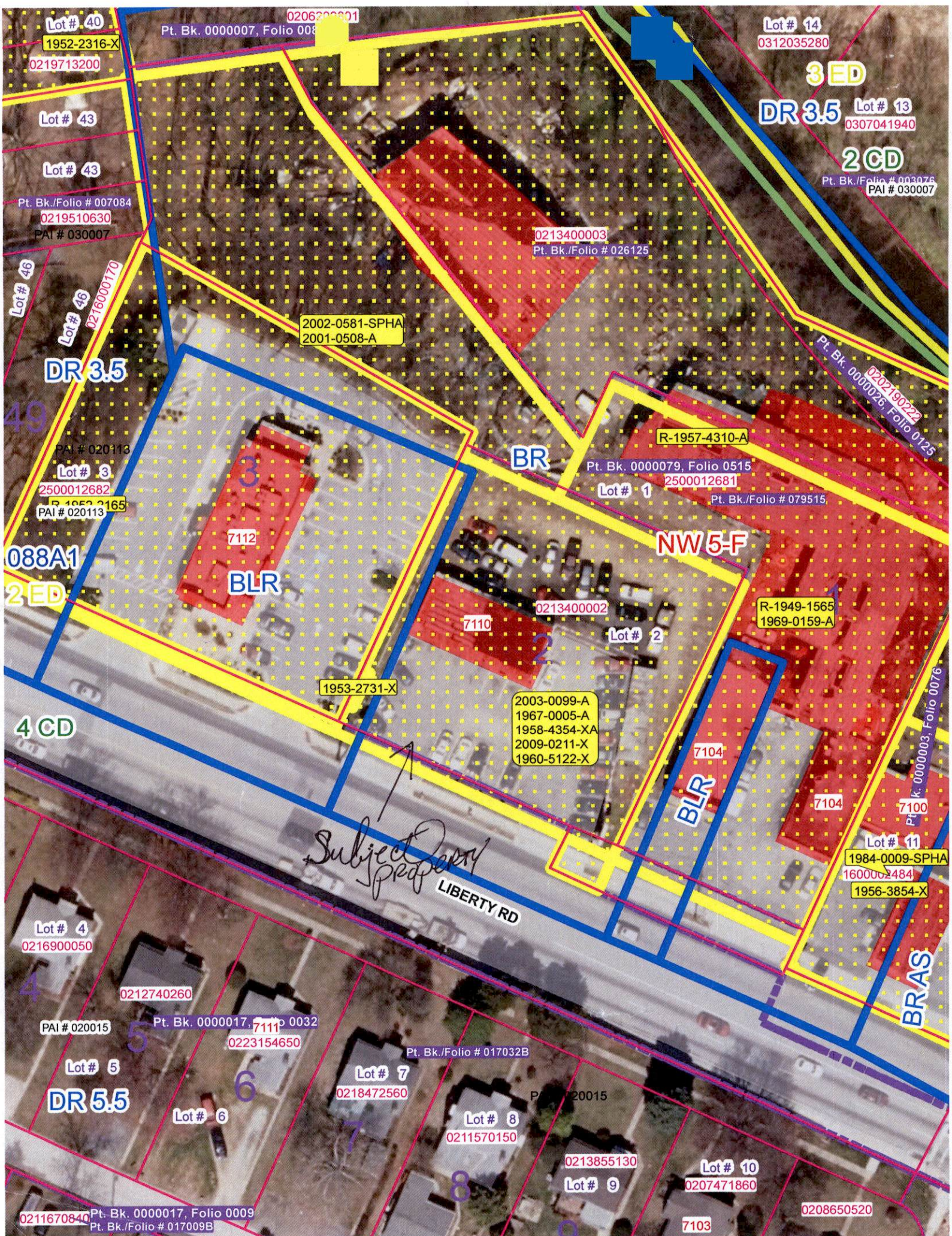
Albert F. Metzger
Owner of the land shown hereon
Dwight K. Sutcliffe
Registered Professional Land Surveyor

ALBERT F. METZGER
OWNER



SUTCLIFFE & ASSOCIATE
SURVEYORS - ENGINEERS
5912 LIBERTY ROAD
BALTIMORE, 7, MARYLAND

MSA 3541836-0150



Lot # 40
1952-2316-X
0219713200

Pt. Bk. 0000007, Folio 008

Lot # 14
0312035280

3 ED
DR 3.5 Lot # 13
0307041940

2 CD
Pt. Bk./Folio # 003076
PAI # 030007

Lot # 43

Lot # 43

Pt. Bk./Folio # 007084
0219510630
PAI # 030007

0213400003
Pt. Bk./Folio # 026125

2002-0581-SPHA
2001-0508-A

DR 3.5

BR

R-1957-4310-A

Pt. Bk. 0000079, Folio 0515
2500012681

Lot # 1

Pt. Bk./Folio # 079515

PAI # 020113
Lot # 3
2500012682
R-1957-4310-A
PAI # 020113

7112

BLR

NW 5-F

R-1949-1565
1969-0159-A

7110

0213400002

Lot # 2

1953-2731-X

2003-0099-A
1967-0005-A
1958-4354-XA
2009-0211-X
1960-5122-X

7104

BLR

7104

7100

Lot # 11
1984-0009-SPHA
1600002484
1956-3854-X

Subject property

LIBERTY RD

BRAS

Lot # 4
0216900050

0212740260

PAI # 020015

Pt. Bk. 0000017, Folio 0032

0223154650

Lot # 5

DR 5.5

Lot # 6

Pt. Bk./Folio # 017032B

Lot # 7

0218472560

Lot # 8

0211570150

0213855130

Lot # 9

Lot # 10

0207471860

0208650520

0211670840

Pt. Bk. 0000017, Folio 0009
Pt. Bk./Folio # 017009B

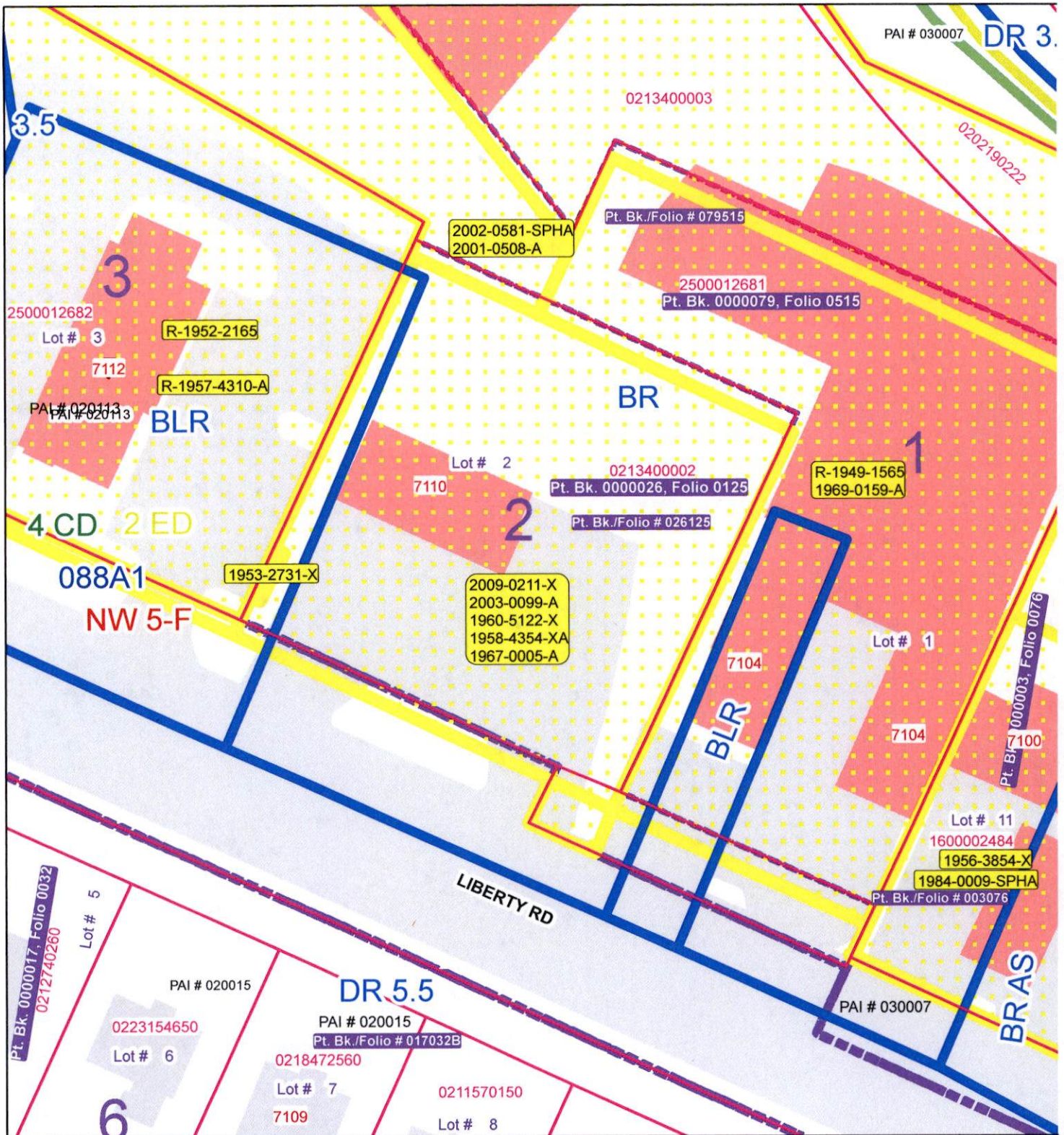
7103

15162184 (16 sets)

~~no~~

↑
no change

7110 Liberty Road



Publication Date: 3/15/2016



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 12.525 50 75 100 Feet

1 inch = 50 feet

Sherry Nuffer

From: Peter Max Zimmerman
Sent: Thursday, September 15, 2016 12:11 PM
To: John E. Beverungen; marylandlegal@gmail.com
Cc: Peoples Counsel; Debra Wiley; Sherry Nuffer; Kristen L Lewis; epsafehousesupik@verizon.net
Subject: RE: Case No. 2017-0004-SPH

Dear Judge Beverungen,

Thank you for the notice of postponement. We appreciate being in the loop on rescheduling.

Please note also that Shirley Supik, President of the Liberty Road Community Council, has let me know of her interest in the case. I have included her in the copy recipients of this e-mail.

Sincerely, Peter Max Zimmerman, People's Counsel 410 887-2188

From: John E. Beverungen
Sent: Thursday, September 15, 2016 10:38 AM
To: marylandlegal@gmail.com
Cc: Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>; Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>
Subject: Case No. 2017-0004-SPH

Mr. Fogleman,

I am in receipt of your postponement request in the above matter, currently scheduled for tomorrow at 10:00 A.M. I am usually disinclined to grant a postponement request so close to the hearing date, since it can result in citizens showing up for a hearing that has been cancelled. In these circumstances, you indicate the sign was not posted, so I would not expect anyone to attend the hearing. So I will grant the request, but would ask that you notify anyone with whom you have been in contact of the postponement, and again provide notice of the rescheduled hearing date to the same individuals. Your email refers to "opposing counsel," which I assume is Mr. Zimmerman? Finally, to reschedule the hearing you will need to contact Ms. Lewis in the Department of Permits, Inspections and Approvals.

John Beverungen
ALJ

Debra Wiley

From: Stephan Fogleman <marylandlegal@gmail.com>
Sent: Thursday, September 15, 2016 7:51 AM
To: Peoples Counsel; Administrative Hearings
Cc: Lee Giroux
Subject: Re: Zulfikar Shah 2017-004 SPH

Dear Commissioner Beverungen:

Please be advised that I represent the applicant in the above-captioned matter. I am requesting that the hearing scheduled for Friday, September 16, 2016 at 10:00 a.m. be postponed to the next available date. The applicant was unable to post notice in time due to international summer travel plans. I would also like more time to work with opposing counsel to reach an amicable agreement in the matter. Thank you for your time and attention to this matter.

Steve Fogleman

--
Stephan W. Fogleman, Esquire
Senior Partner
Fogleman & Ransom
1720 Thames Street
Baltimore, MD 21231
(410) 258-8500
fax: (410) 220-0726
<http://legalmaryland.com/>

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SEP 15 2016

OFFICE OF ADMINISTRATIVE HEARINGS

Notice: This communication may contain information that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please note that any dissemination, distribution, or copying of this communication is strictly prohibited.

**IN RE: PETITION FOR SPECIAL
EXCEPTION**

NE side of Liberty Road, 250 feet NW
of the c/l of Essex Road
2nd Election District
4th Councilmanic District
(7110 Liberty Road)

PAK US CO
Petitioner

* BEFORE THE DEPUTY
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* Case No. 2009-0211-X

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Special Exception filed by Zulfikar Shah, President of PAK US CO, the legal owner of the subject property. Petitioner requests special exception approval to use the subject property for the sale of used motor vehicles, in addition to the present use as a service garage. Petitioner also requests confirmation that the side yard setback variance of 15 feet in lieu of the required 30 feet, approved by the Deputy Zoning Commissioner in Case No. 03-099-A, will be applicable to the use of the property for the sale of used motor vehicles as well as for the existing service garage. The subject property and requested relief are more fully described on the site plan, which was marked and accepted into evidence as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the requested relief were Zulfiker Shah, President of Petitioner PAK US CO, as well as Keith Heindel and Gary Ganjon with Professional Surveys, LLC, the firm that prepared the site plan. Michael L. Snyder, Esquire, appeared and represented Petitioner. There were no Protestants or other interested persons in attendance at the public hearing.

Testimony and evidence offered revealed that the subject property is square-shaped and contains approximately 23,775 square feet or 0.546 acre, more or less, zoned primarily B.R.

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PM

(22,257 square feet) with a strip of B.L.R. (1,518 square feet) on the western end of the property. This commercial property is located on the north side of Liberty Road near the intersection of Essex Road, less than a mile east of Interstate 695 in the Lochearn area of Baltimore County. Petitioner submitted an aerial photograph of the subject property that was marked and accepted into evidence as Petitioner's Exhibit 4. The photograph reveals that the property is improved with a one-story service garage that is surrounded by several commercial buildings that line the northern side of Liberty Road. Petitioner also submitted a series of photographs of the subject property and surrounding area. The photographs, which were marked and accepted into evidence as Petitioner's Exhibits 2A through 2J, reveal that the property to the west contains a fast food establishment, and the properties to the east respectively are used as a pawn shop, grocery/convenience store, and fuel service station. Across the street from the subject property is a residential area that is setback from Liberty Road with a tall dividing wall and service road.

Further testimony and evidence revealed that Mr. Zulfikar purchased the subject property approximately three years ago and has operated a business known as Payless Auto Services on a lot that was formerly used as a Meineke Service Center. The company performs minor auto repairs such as oil changes, brake and muffler repairs, and general automobile tune-ups. Petitioner does not perform any paint or body repair work, and testified that he does not intend to expand the services offered by his business even if the special exception is granted.

The requested special exception is to enable Petitioner to sell a small number of used cars in conjunction with his auto repair business. Mr. Zulfikar testified that his customers often ask him where to purchase a reliable used car, and he realizes that he could improve his business by adding a small auto sale component to the repair business, while also benefiting his customers with safe, reliable transportation. As the site plan indicates, Petitioner is not proposing to expand

the existing structure or facilities, and the only change to the property would be a planting area that would add a strip of landscaping to the front of the property. Each of the existing parking spaces is labeled on the site plan as either service or sales parking, and the parking meets the requirements of the B.C.Z.R. Petitioner submitted a supportive letter from the Liberty Road Business Association, an association that represents the interests of businesses in the vicinity of the subject property. The letter, which was marked and accepted into evidence as Petitioner's Exhibit 3, states that the area is in need of a facility that sells good quality used cars, and that the local association supports this request for special exception.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated March 30, 2009 which indicate that the site is located within a Master Plan 2010 designated Revitalization District; however, the proposed use as a service garage and used car sales location is too intense of a use for the subject site. The site plan provided does not clearly delineate parking for sales, service, etc. The Office of Planning recommends denial of the subject request.

After considering all of the testimony and evidence presented at the public hearing, I am convinced that the requested special exception should be granted.¹ It should be noted, however, that Petitioner will not be permitted to run free with his request to sell used cars, as this approval will be subject to several conditions that address the Office of Planning's concerns regarding the intensity of the proposed use on the property. That said, the uncontradicted testimony of Keith Heindel, the professional surveyor who assisted in the preparation of the site plan for Petitioner, has convinced me that this request, when subjected to several limiting conditions, meets the criteria contained in Section 502.1 of the B.C.Z.R.

¹ For clarification, this Petition does not affect the variance that was approved in Case No. 03-099-A for Special Exception. Petitioner will still retain the variance with the added use granted in this Petition.

Specifically, as indicated by the testimony and evidence, I find that the request will not be detrimental to the health, safety or general welfare of the locality involved, as the proposed use will be at most complimentary to a small business located in a commercial Revitalization District along a commercial corridor of Liberty Road. The request will not tend to create congestion in the roads, streets or alleys therein as Petitioner expects primarily to sell used cars to his existing customers. There is no evidence that the relief would create a potential hazard from fire, panic or other danger, or tend to overcrowd land and cause undue concentration of the population. In fact, the request will not have any effect on the density of the property, and the relief will be conditioned so as to limit the number of cars that can remain on the property.

This Petition also will have no effect on the existence of adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements, and will not interfere with adequate light and air on the property. The request will not be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations, nor would it be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in a resource conservation zone.

Finally, I find that this request is consistent with the purposes of the property's zoning classification and the relief is consistent with the spirit and intent of the B.C.Z.R. The property is located in a commercial Revitalization District, and this request will assist a small, local business, while being conditioned to prevent any negative impact on the surrounding locale. It is no secret that the dire economic conditions faced throughout the country have drastically reduced the number of new cars being purchased. Indeed, the secondary market has become even more important to consumers these days. I find that permitting Petitioner's local auto repair business

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5.16.09


to sell a limited number of used cars would provide an increasingly important service to the local community while fulfilling the spirit and intent of the commercial Revitalization District. Accordingly, after considering all of the evidence and testimony presented at the public hearing, I am convinced that the requested special exception should be granted.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering all of the testimony and evidence offered by Petitioner, I find that Petitioner's three special exception requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County, this 5th day of May, 2009, that the Petition for Special Exception to use the subject property for the sale of used motor vehicles, in addition to the present use as a service garage be and is hereby GRANTED; and

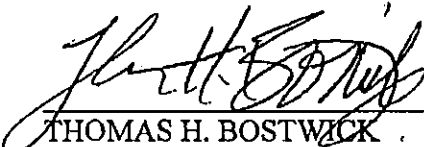
IT IS FURTHER ORDERED that Petitioner's request for confirmation that the side yard setback variance of 15 feet in lieu of the required 30 feet, approved by the Deputy Zoning Commissioner in Case No. 03-099-A, will be applicable to the use of the property for the sale of used motor vehicles as well as for the existing service garage, be and is hereby GRANTED.

The Special Exception shall be subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioner may apply for permits and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioner would be required to return, and be responsible for returning, said property to its original condition.
2. Petitioner is only permitted to store or maintain up to ten (10) vehicles for sale on the property at any one time. If Petitioner exceeds this number, he will be subject to the civil fines and penalties prescribed by the Baltimore County Code and the B.C.Z.R.

3. Petitioner may not perform any body repair or paint work on the premises and may not expand the repair services already offered by Payless Auto Service.
4. Petitioner must store all replacement parts kept on the premises inside the existing one-story service center.
5. Petitioner's hours of operation are limited to 9:00 am to 5:00 pm Monday through Saturday. Petitioner will not be open for business on Sundays.
6. Petitioner must complete the landscaping in the front of the property that is designated as a planting area on the site plan.
7. Petitioner must obtain all necessary permits or licenses from the MVA before selling automobiles on the premises.
8. Petitioner must ensure that the property remains in compliance with all local fire department regulations.

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


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

RECEIVED FOR FILED

5.6.09

TB 4/14
9am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 30, 2009

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

RECEIVED

SUBJECT: 7110 Liberty Road

APR 01 2009

INFORMATION:

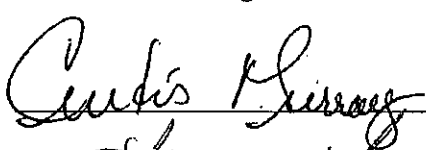
ZONING COMMISSIONER

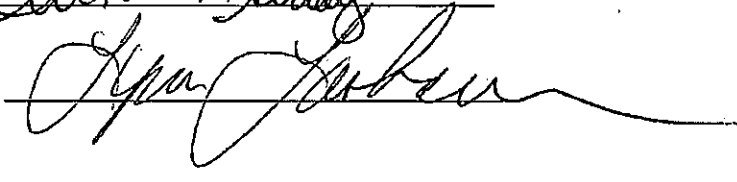
Item Number: 9-211
Petitioner: Pak US Co
Zoning: BR and BLR
Requested Action: Special Exception

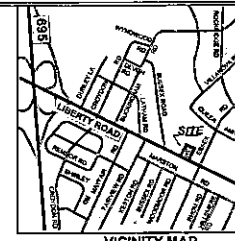
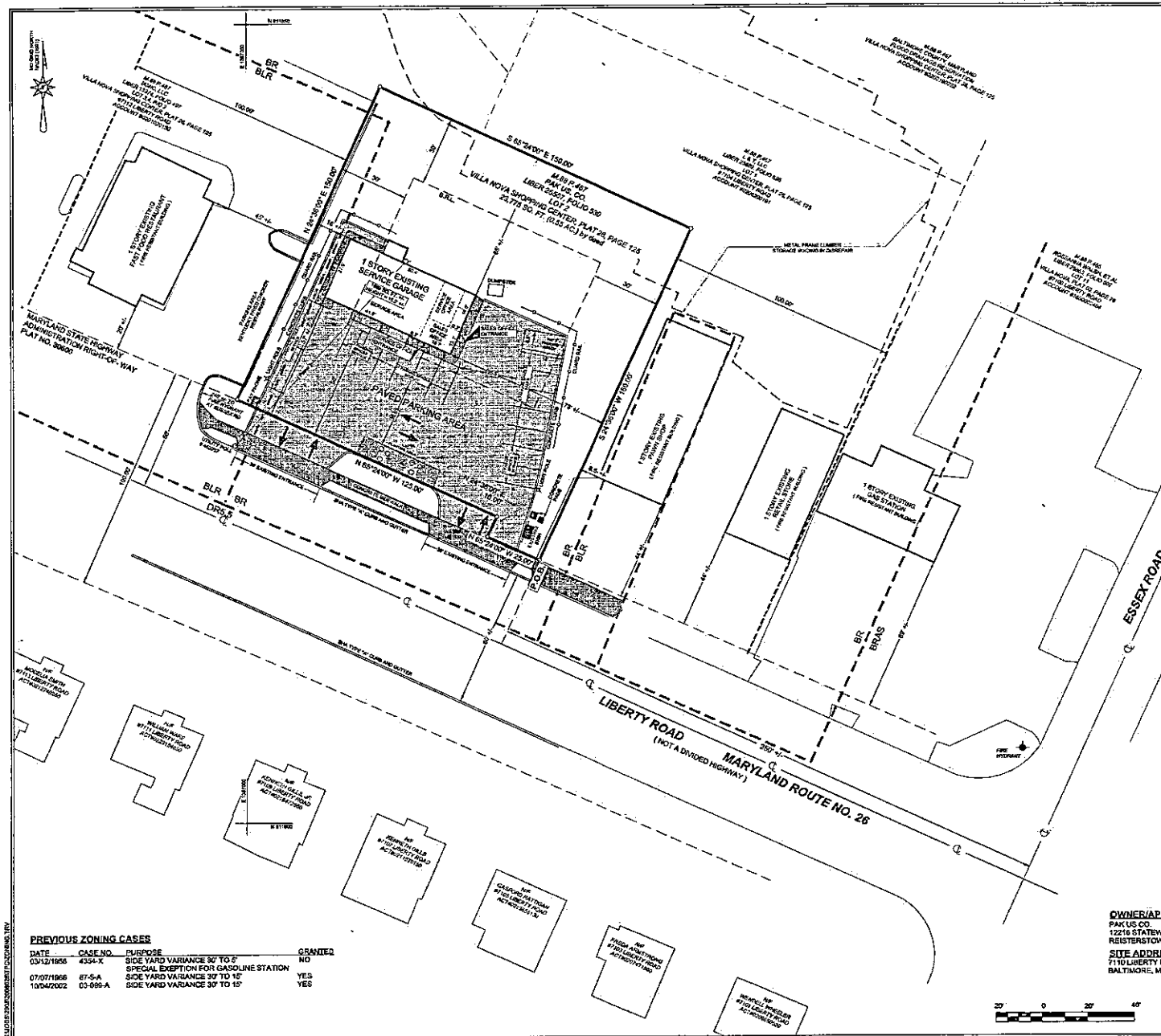
SUMMARY OF RECOMMENDATIONS:

The subject site is located within a *Master Plan 2010* designated Revitalization District. The proposed use as a service garage and used car sales location is too intense of a use for the subject site. The site plan provided does not clearly delineate parking for sales, service etc... Nonetheless, the Office of Planning recommends denial of the subject request.

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

Prepared by: 

Division Chief: 
AFK/LL: CM



- GENERAL NOTES**
1. THE PROPERTY OUTLINE SHOWN HEREON IS FROM DEEDS AND PLATS OF RECORD ONLY AND DOES NOT REPRESENT AN ACTUAL BOUNDARY SURVEY BY PROFESSIONAL SURVEYS, LLC.
 2. THE IMPROVEMENTS SHOWN HEREON WERE LOCATED BY FIELD SURVEY DATED 7/20/2008 AND ALSO TAKEN FROM BALTIMORE COUNTY GIS FILE 8841.
 3. GROSS AREA = 25,775 SQUARE FEET OR 0.594 ACRES (BY DEED).
 4. CURRENT ZONING CLASSIFICATIONS (ZONING MAP #8841): BR ZONE = 22,227 SQ. FT. BLR ZONE = 1,518 SQ. FT.
 5. FLOOR AREA RATIO CALCULATIONS (FAR): 1689 SF/2377 SSF = 0.71, MAXIMUM FAR ALLOWED = 2.0.
 6. EXISTING SIGN, 25' TALL, 100 SQ. FT., DOUBLE SIDED.
 7. ACCORDING TO BALTIMORE COUNTY BASIC SERVICE MAP, SITE MAY FALL WITHIN SPECIAL CONCERN AREA #104.
 8. EXISTING PARKING SPACES VARY IN SIZE AND NUMBER 14 TOTAL.
 9. REQUIRED OFF STREET PARKING: 3.3 SPACES PER 1,000 AUTO SERVICE: (3.3/1000) x 1689 = 5.57 (6 SPACES REQ) AUTO SALES: (0.3/1000) x 1689 = 0.51 (1 SPACE REQ) 15 SPACES PROVIDED
 10. EXISTING USE: GENERAL AUTO REPAIR.
 11. PROPOSED USE: GENERAL AUTO REPAIR AND USED CAR SALES.
 12. BASIC SERVICE MAPS: SEWER = AREA OF SPECIAL CONCERN #104 WATER = OK TRANSPORTATION = OK
- LANDSCAPE LEGEND**
- LANDSCAPE LEGEND
 DECIDUOUS TREE
 EVERGREEN TREE

PLAN TO
ACCOMPANY ZONING HEARING
#7110 LIBERTY ROAD
 2ND ELECTION DISTRICT, 4TH COUNCILMANIC DISTRICT
 BALTIMORE COUNTY, MARYLAND
 ACCOUNT #0213400002

PREVIOUS ZONING CASES

DATE	CASE NO.	PURPOSE	GRANTED
03/12/1956	4334-K	SIDE YARD VARIANCE 30' TO 6'	NO
07/07/1966	67-5-A	SPECIAL EXCEPTION FOR GASOLINE STATION	YES
10/04/2002	03-005-A	SIDE YARD VARIANCE 30' TO 15'	YES

OWNER/APPLICANT
 PARK US CO.
 12215 STATEWOOD ROAD
 REISTERSTOWN, MARYLAND 21138-4720

SITE ADDRESS
 7110 LIBERTY ROAD
 BALTIMORE, MARYLAND 21207-4518

Professional Surveys

1711 Hughes Green Road
 Towson, MD 21204
 Phone: 410-251-6795
 Fax: 410-251-6796

DATE: 07/20/2008
 CHECK BY: JAH
 COUNTY FILE NO.:
 DRAWN BY: LGE
 CHECK BY: JAH
 COUNTY FILE NO.:
 PARTIAL ADDRESS/ATTORNEY NOTES
 ADDRESS/ATTORNEY COMMENTS



The original document contained a north arrow and the signature of the surveyor. The surveyor is not responsible for the accuracy of the information shown on this drawing. The drawing is an unrecorded copy and may contain errors. The drawing is not to be used for any other purpose without the written consent of the surveyor. Please call 410-251-6795.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 8, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-004

INFORMATION:

Property Address: 7110 Liberty Road
Petitioner: Zulfikar Shah
Zoning: BR and BLR
Requested Action: Special Hearing

The Department of Planning has reviewed the petition for special hearing to determine whether or not the Administrative Law Judge should approve an amendment to the previously approved order and site plan from Zoning Case # 2009-0211-X to allow a proposed commercial addition.

The property is located in the Liberty Road Commercial Revitalization District. Commercial Revitalization Districts are the "front doors" to established communities. They offer shopping and entertainment experiences where family owned business and national retail chains are neighbors in local communities providing a range of services aimed at maintaining the health and vitality of our neighborhood commercial areas.

A site visit was conducted on 7/14/2016. More than 40 vehicles for sale were observed parked/displayed on the premises during the site visit, some apparently within the Liberty Road right-of-way.

The Department objects to granting the requested zoning relief. Site observations indicate that conditions imposed by the Deputy Zoning Commissioner in the prior Zoning Case # 2009-0211-X have not been met. Specifically:

- #2) "Petitioner is only permitted to store or maintain up to ten (10) vehicles for sale on the property at any one time. If Petitioner exceeds this number, he will be subject to the civil fines and penalties prescribed by the Baltimore County Code and the B.C.Z.R".

And

- #6) "Petitioner must complete the landscaping in the front of the property that is designated as a planting area on the site plan."

To exacerbate the overly intensive non-compliant use of the property, a number of illegal signs in the form of pennants and banners were observed. The Department recommends these be removed and the petitioner be required to comply with the previously approved site plan.

For further information concerning the matters stated herein, please contact Dennis Wertz at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Dennis Wertz
James Hermann, R.L.A., Permits, Approvals and Inspections
Lee Giroux
Office of the Administrative Hearings
People's Counsel for Baltimore County

RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 1301 CHEVERLY ROAD *
 9th Election & 3rd Councilmanic Districts * BOARD OF APPEALS

Legal Owner: The Belvedere Baptist Church * FOR
 of Baltimore *
 Lessee: Davenport Preschool LLC, * BALTIMORE COUNTY
 Petitioners * Case No.: 15-004-SPH

OPINION

This case comes before the Baltimore County Board of Appeals on an appeal of Administrative Law Judge John Beverungen's decision denying a Petition for a Special Hearing to approve an amendment to Restriction No. 2 in Zoning Case No. 2013-0166-X for the property located at 1301 Cheverly Road in Eastern Baltimore County. People's Counsel for Baltimore County has moved for dismissal of Petitioners' appeal on the grounds of *res judicata*. Petitioner Davenport Preschool, LLC ("Davenport")¹ and People's Counsel submitted Memoranda, and the Board heard oral arguments on January 27, 2015. Matthew T. Vocci of Ober Kaler Grimes & Shriver appeared on behalf of Davenport, J. Carroll Holzer appeared on behalf of the Protestants, and Peter M. Zimmerman appeared on behalf of People's Counsel. The Board publicly deliberated the Motion to Dismiss on January 27, 2015.

BACKGROUND

The dispute at issue dates back to March 28, 2013, when Administrative Law Judge ("ALJ") Beverungen of the Office of Administrative Hearings issued a written order granting, with certain conditions, the Petition for a Special Exception filed by The Belvedere Baptist Church of

¹ Counsel for Davenport has indicated the proper name of the Lessee is 'Davenport Education, LLC.'

Baltimore, Legal Owner ("Belvedere") and Davenport, the Lessee. (Belvedere and Davenport are collectively referenced herein as "Petitioners"). Petitioners had sought the special exception pursuant to §424.5.A of the Baltimore County Zoning Regulations ("BCZR") to permit a Class B Group Child Care Center with more than 40 children in an existing church on the subject property. (Case No. 2013-166-X). After a contested hearing involving testimony and evidence from Davenport and several members of the community, the ALJ granted the Petition, subject to three conditions. The pertinent condition is No. 2, which states as follows:

2. The Petitioner shall have no more than 120 children in the facility at any one time, unless state regulations or fire and life safety regulations provide a lower number which would prevail.

(March 28, 2013 ALJ Opinion and Order at 7). Petitioners did not file an appeal of this Order. Certain community members ("Protestants") did file a timely appeal to the Board of Appeals from the ALJ's decision but subsequently withdrew their appeal. By Order dated June 27, 2013, the Board of Appeals dismissed Protestant's appeal with prejudice. (The 2013 hearing and appeal process shall be referred to as "Davenport I").

More than a year later, on July 8, 2014 and pursuant to § 500.7 of the BCZR, Petitioners filed for a Special Hearing, seeking amendment of Condition No. 2. Specifically, Petitioners wanted the ALJ to amend that condition to allow a maximum of 150 rather than 120 children in the child care facility. A public hearing was held and both sides again presented testimony and evidence. By Order dated September 12, 2014, ALJ Beverungen denied the Petition. Petitioners filed a timely appeal to this Board of Appeals. (The 2014 hearing and appeal process shall be referred to as "Davenport II"). People's Counsel has filed a Motion to Dismiss Petition for Special Hearing, based on the doctrine of *res judicata*. Petitioner Davenport opposes the Motion.

FACTS

In Davenport I, Petitioner Davenport sought a special exception in order to operate a childcare facility for more than forty children. Davenport intended to lease space in the existing Belvedere Baptist Church to house the facility. The Church is situated on a 12.711 acre property in a rural residential neighborhood consisting of approximately 160 homes and zoned DR 1. See Davenport I ALJ Opinion at 2,4. Under the DR 1 classification the Petitioners would be permitted to operate a class B Group Child Care Center with up to forty children as a matter of right. See BCZR §1B01.1.A.12. The Regulations require a Special Exception to operate a facility with more than forty children. See BCZR §424.5.A.

During the hearing in Davenport I, the Davenport representative indicated that applicable child care regulations would limit the number of child in the facility as planned to approximately 135. Davenport stated further that its goal was to enroll 150 children, resulting in approximately 120 children attending the center on any given day.² See Davenport I ALJ Opinion at 5-6. Neighborhood residents who spoke at the hearing identified potential traffic problems as their primary concern. Id. at 4. There was some divergent testimony as to the estimated number of vehicle trips through the neighborhood 150 enrolled children would generate. ALJ Beverungen stated that each such estimate represented "a lot of traffic" for the rural residential neighborhood and may well disturb the peace and quiet of the neighborhood. He stated further, however, that a large child care center with 100+ children would generate a large volume of traffic in any DR zone, not just this particular location. Id. at 4. According to ALJ Beverungen, the increase in traffic was "inherent" in the proposed use and "is exactly the type of inherent adverse effect that the legislature

² Given that some of the younger children would attend on a part-time basis, Davenport counted two such part-time children as one full-time enrollment.

was presumed to have anticipated when it allowed the use by a special exception." Id. He concluded he was compelled to grant the Petition because the Protestants failed to show that the proposed use at the particular location would have non-inherent adverse effects. Id. at 5.

Although he granted the Petition, ALJ Beverungen also conditioned the relief in an attempt "to mitigate the impacts on the community." Id. The "most significant condition" concerned the number of children at the facility. Considering both the expected traffic problems, and Davenport's testimony regarding the anticipated number of students and classrooms, the ALJ concluded 120 children was an appropriate figure. Id. He thus granted the special exception subject to the condition that Davenport would have "no more than 120 children in the facility at any one time. . . ." Id. at 7. Petitioners did not appeal this decision. Protestants did file but later withdrew an appeal. Therefore, on June 27, 2013, this Board dismissed the appeal with prejudice.

In July 2014 Petitioners reemerged and filed a Petition for a Special Zoning Hearing. The Petition sought amendment of Condition No. 2 in the March 2013 Order, such that Davenport would be permitted to increase the number of children in the facility to 150, rather than 120. Petitioners also wanted to build an additional classroom on the property to accommodate more children. ALJ Beverungen again heard testimony from witnesses for the Petitioner and Protestants and received exhibits regarding the proposed changes. In an Opinion dated September 12, 2014, ALJ Beverungen denied the Petition for Special Hearing. He emphasized that Petitioners had failed to indicate why the original restriction should not remain in place, that Davenport had not yet reached the maximum number of students permitted in condition No. 2,³ and that Petitioners failed to demonstrate some change in circumstances that would justify a different restriction. See

³ The Davenport representative indicated the then-current class had 109 children and that she wanted to build another classroom to house 16 more students. See Davenport II ALJ Opinion at 2.

Davenport II ALJ Opinion at 2-3. On October 10, 2014 Davenport filed a Notice of Appeal. People's Counsel filed a Motion to Dismiss the Petition for Special Hearing and Petitioner's appeal from the decision in Davenport II on the ground of *res judicata*. Davenport responded and on January 27, 2015 all parties presented arguments before the Board of Appeals.

DISCUSSION

I. Res Judicata

Under the doctrine of *res judicata*, a judgment on the merits in a previous suit between the same parties or their privies is entitled to full preclusive effect and bars a second suit predicated upon the same cause of action. Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n, Inc., 192 Md. App. 719, 734 (2010)(citations omitted). *Res judicata* acts as "an absolute bar, not only as to all matters which were litigated in the earlier case, but as to all matters which could have been litigated." Whittle v. Bd. of Zoning Appeals, 211 Md. 36, 49 (1956). See Garrett Park v. Montgomery County Council, 257 Md. 250, 257 (1970) (*res judicata* applies to every matter that was or might have been presented in the prior case).

Although some older cases held that *res judicata* did not apply to rulings of administrative agencies, it is now well-established that "when an administrative agency is performing a quasi-judicial function, the principles of *res judicata* are applicable." Seminary Galleria, 192 Md. App. at 735. This determination is guided by a three-part test: 1) whether the agency was acting in a judicial capacity; 2) whether the issue presented to the tribunal was actually litigated before the agency; and 3) whether the issue's resolution was necessary to the agency's decision. Id. at 736. See Batson v. Shiflett, 325 Md. 684, 705-08 (1992).

In acting upon the Petitions filed herein, the Office of Administrative Hearings acted in a judicial capacity, conducting a hearing and allowing the parties to present evidence. The parties

were precisely the same in both Davenport I and II. The issues regarding the maximum number of children presented in Davenport II were previously addressed, litigated and resolved in Davenport I. That resolution was key to the original decision. According to these criteria, the resulting conditioned decision rendered by ALJ Beverungen in Davenport I should preclude maintenance of a second action to amend that same condition.

Petitioners argue the decision is not entitled to a preclusive effect because it was based on an error of law. However, just as a final decision in a prior litigation, even if incorrect, will bind the parties to the litigation, a decision by an administrative agency acting in a judicial capacity is equally binding whether or not the decision was made in error. See Powell v. Breslin, 430 Md. 52, 64-65 (2013)(an incorrect ruling in a prior action does not deprive the ruling of *res judicata* effect). This should particularly apply when the party striving for that proverbial second bite at the apple failed to appeal the first determination. Even if this were not the case, the decision in Davenport I was not in error. Petitioners argue that Schultz v. Pritts, 291 Md. 1 (1981) and its progeny such as Montgomery County v. Butler, 417 Md. 271 (2010) should be considered in analyzing the matter. However, that is exactly the path ALJ Beverungen followed. Citing Schultz and Butler, the ALJ concluded that insofar as the community's traffic concerns are an inherent effect of a large child-care center in any DR zone, he was bound to, and therefore he did grant the Petition. See Davenport I ALJ Opinion at 3-4.

The fact that the ALJ also imposed certain conditions in an attempt to alleviate the traffic burden and protect the neighborhood does not in any way undermine the validity of his decision. To the contrary, the applicable zoning regulations specifically permit such conditional grants. According to BCZR §502.2, "[i]n granting any special exception, the Zoning Commissioner . . . shall impose such conditions, restrictions or regulations as may be deemed necessary or

advisable for the protection of surrounding and neighboring properties." See Halle Companies v. Crofton Civic Ass'n, 339 Md. 131, 140 (1995) (agency may impose reasonable conditions and restrictions in connection with a special exception order to mitigate the effect upon neighboring property and the community at large.); Baylis v. City Council of Baltimore, 219 Md. 164, 168 (1959). The ALJ permitted Petitioners to operate their business on a scale larger than that permitted as of right while concomitantly imposing certain restrictions intended to protect the neighborhood and its residents. This compromise was an appropriate use of his discretionary powers.

II. Substantial Change in Circumstances

Res judicata operates on the premise that faced with the same information, there is no reason to expend judicial resources and force opposing parties to rehash the same case in an ongoing effort to reach a different result. Thus, if a party *does* provide evidence of substantial changes in circumstances and fact between the first case and the second, *res judicata* may not necessarily prevent a second hearing on a previously decided matter. This issue arises fairly often in the zoning arena. According to the Court of Appeals, "[t]his rule seems to rest not strictly on the doctrine of *res judicata* but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law." Whittle, 211 Md. at 45. See Seminary, 192 Md. App. at 737 ("The Court of Appeals has emphasized that before a party can apply to a zoning agency for relief previously denied by the agency, 'substantial changes in fact and circumstances' must be, indeed, substantial.") (citations omitted); Jack v. Foster Branch Homeowner's Ass'n No. 1, Inc., 53 Md. App. 325, 333 (1982) (*res judicata* doctrine may not preclude a second case where there has been a material change in circumstances since the first decision); Chatham Corp. v. Beltram, 243 Md. 138, 151-52 (1966)

(barring a second attempt to re-raise a previously decided issue where the underlying facts remained unchanged).

Davenport contends that the actual operation of the school is a significant change in circumstances. They point to a document all school parents are required to sign regarding safe driving through the neighborhood and note that there have not been any traffic accidents. They further indicate that the growth of the student population and current space restrictions may require them in the future to refuse admittance to a few families. (Davenport's Response Memorandum at 7-8). These are not significant material changes that would warrant a rehearing or amendment of Condition No. 2. These same items were raised in Davenport I. The school's operation and the consequences thereof was a fact that was anticipated and discussed at the prior hearing. Condition No. 2 was imposed precisely to mitigate contemplated traffic problems resulting from the student population; the current absence of accidents argues more for the continuation of the condition rather than its amendment and a larger student body.⁴ As to the school's parents now signing an agreement regarding safety and neighborhood issues, that is not a change warranting a rehearing; one would have assumed that school parents would obey traffic laws and exercise caution when driving through the neighborhood irrespective of the agreement.⁵ In short, there was no substantial change to the property, the neighborhood or the facts that would lead to a contrary result upon re-litigation, particularly in the relatively short time span between the decisions.

⁴ Moreover, while Davenport may desire more available student slots, the school has yet to reach the maximum number of students allowed under the existing condition.

⁵ The "Community Respect Agreement" signed by the Davenport parents includes such statements as "I will come to a complete stop at every stop sign" and "I will not speed through the neighborhood"

CONCLUSION

In Davenport I, the ALJ struck a valid compromise between each party's concerns in light of the governing law. If Petitioners took issue with Condition No. 2 in the ALJ's decision they could have and should have filed a timely appeal with the Board. They failed to do so. The Protestants filed an appeal but withdrew that appeal in the apparent belief that Petitioners would be adhering to the conditions set forth in Davenport I. The community's good faith in withdrawing its appeal should not mean they are now required to fight the same battle every now school year. The parties in both Davenport I and II are identical, there are no material changes of fact or law, and the issues now presented either were addressed or could have been addressed in Davenport I. Petitioners have not presented any compelling reason permitting them, contrary to the doctrine of *res judicata*, to go back to the well and re-litigate the same issue in the hope of achieving a different result.

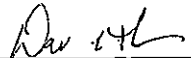
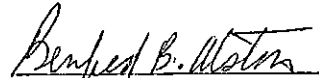
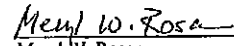
ORDER

IT IS THEREFORE, this 27th day of February, 2015 by the Board of Appeals for Baltimore County,

ORDERED, that the Motion to Dismiss Petition for Special Hearing filed by Baltimore County's People's Counsel be and is hereby GRANTED; and it is further

ORDERED, that the appeal in Case No. 2015-0004-SPH be and is hereby DISMISSED WITH PREJUDICE.

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

BOARD OF APPEALS
OF BALTIMORE COUNTY
David L. Thurston, Chairman
Benfred B. Alston
Meryl W. Rosen



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

February 27, 2015

Matthew Thomas Vocci, Esquire
Ober, Kaler, Grimes & Shriver
100 Light Street, 19th Floor
Baltimore, Maryland 21202

J. Carroll Holzer, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286

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

RE: *In the Matter of: The Belvedere Baptist Church of Baltimore -- Legal Owner*
Davenport Preschool, LLC
Case No.: 15-004-SPH

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,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Multiple Original Cover Letters

cc: See Attached Distribution List

In Re: The Belvedere Baptist Church of Baltimore -- Legal Owner
Davenport Preschool, LLC -- Lessee
Distribution List
February 27, 2015
Page 2

The Belvedere Baptist Church of Baltimore
Carl Dykberg
Davenport Preschool, LLC
Liz Harlan
Julio Sugar
Mary Barry
Edward and Terry Shapiro
Helen Kraft
M.J. Watson
Larry and Cheryl Cleavenger
William and Linda Lilly
Wayne Skinner
Sandy Kylläinen
Linda M. Rubeor
Richard and Susan Pescatore
Richard and Joan Magnani
Tim and Ellen Mering
Daniel and Theresa Driscoll
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney/Office of Law
Michael Field, County Attorney/Office of Law

10/22/15

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
(9025 Cuckold Point Road) * OFFICE OF
15th Election District *
7th Council District *
Boone Kondylas, LLC * ADMINISTRATIVE HEARINGS
Legal Owner * FOR BALTIMORE COUNTY
Petitioner * Case No. 2016-0003-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed on behalf of Boone Kondylas, LLC, legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to amend previous restrictions imposed in Cases 07-144 SPH, CBA-06-044 and CBA-07-134 so as to permit future use of the property as a restaurant with limited accessory music.

Ken Boone appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioner. Several neighbors, represented by Francis Borgerding, Esq., attended and opposed the request. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Neither agency opposed the request, but suggested certain conditions be imposed if relief is granted.

The subject property is 1.27 acres and zoned B.L. The property is improved with a restaurant known as "Dock of the Bay." The restaurant has new ownership, which proposes to offer limited music and live entertainment as an "accessory" use to the food and beverage service. This property and business have been the subject of protracted litigation concerning loud music and unruly patrons which disturbed the neighborhood. The operation was found by the court of

special appeals to constitute a "nightclub," a use prohibited in the B.L. zone. Protestants contend the petition is barred by *res judicata*, while Petitioner argues that unlike the former operation the current business is first and foremost a restaurant, with music offered to compliment the dining experience.

Under Maryland law, an agency determination affirmed on appeal is entitled to preclusive effect. *Esslinger v. Balto. City*, 95 Md. App. 607, 621 (1993). This is the case, and *res judicata* will apply, unless there is a significant change in circumstances between the earlier and subsequent action. *See, e.g., Alvey v. Hedin*, 243 Md. 334, 340 (1966). In light of this authority, I believe the doctrine of *res judicata* mandates that the petition in this case be dismissed.

As an initial matter, I do not believe the OAH has the authority to "amend" restrictions found in previous cases (at least under the circumstances presented here), as Petitioner has requested. The zoning violation and special hearing cases cited in the Petition were appealed to the board of appeals, circuit court and then the court of special appeals. In an unreported opinion (No. 810, September Term, 2009) the appellate court affirmed the agency findings, which necessarily included the conditions and restrictions found in those orders. To amend those restrictions at this juncture would be akin to reversing the appellate court, which an administrative agency cannot do.

I believe the Petition must also be denied based on *res judicata*. As discussed above, *res judicata* will bar a subsequent zoning case involving the same property unless there have been significant changes since the earlier case was heard. For example, if the owner of the subject property was now proposing to operate a barbershop or beauty salon at the site, that would constitute a significant change and *res judicata* would not apply. But here, I do not believe there

have been significant changes; Petitioner is still proposing to operate a restaurant that would offer live and/or recorded music.

The same was true of the prior Dock of the Bay operation, even though the entertainment now proposed would not be as loud or disruptive as the music played during Mr. Thanner's tenure. There is nothing in the opinion of the court of special appeals that would indicate the result would have been different if Dock of the Bay played Frank Sinatra tunes instead of rock music. As noted by the court, the Dock of the Bay is both a restaurant and nightclub, and that finding is equally applicable in this case. Seminary Galleria, LLC v. Dulaney Valley Improv. Ass'n., 192 Md. App. 719 (2010).

THEREFORE, IT IS ORDERED this 22nd day of October, 2015 by this Administrative Law Judge, that the Petition for Special Hearing pursuant to B.C.Z.R. § 500.7 to amend previous restrictions imposed in Cases 07-144 SPH, CBA-06-044 and CBA-07-134 so as to permit future use of the property as a restaurant with limited accessory music, be and is hereby DENIED.

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

JEB:slh


JOHN J. BEVERUNGEN
Administrative Law Judge
for Baltimore County

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Boone Kondylas, LLC
(aka Dock of the Bay)

16-003-SPH

DATE: June 14, 2016

BOARD/PANEL: Maureen E. Murphy, Chairman
Jane M. Hanley
Benfred B. Alston

RECORDED BY: Sunny Cannington/Administrator

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to amend previous restrictions imposed in cases 07-144-SPH, CBA-06-044, and CBA-07-134 so as to permit future use of the property as a restaurant with limited accessory music

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed that this property has a history. The previous owner was cited for operating a nightclub. This matter requests to amend the restrictions to allow the current owner to play music. The previous cases were appealed to the Circuit Court and Court of Special Appeals.
- The Board stated that a Motion to Dismiss was made verbally by People's Counsel at the hearing. In other cases such as Galasso and Zinn, the new cases were clearly identical to previously requested relief. The Board decided at the hearing that they needed to hear the facts of this matter to determine if *res judicata* applied.
- The Board reviewed that in order for *res judicata* to not apply the Petitioners must show a substantial change in circumstances.
- In the previous case, the property owner operated a restaurant/night club which provided live and recorded music. It was determined that he was not allowed to do that on the property due to the zoning classification.
- The current owner purchased the property and is operating a restaurant. He wishes to provide live and recorded music. The Board was unable to find a substantial change. The property has not changed; the neighborhood has not changed; the only change they were able to find was in the ownership of the property.
- The Board understands that the competition is allowed to provide live and recorded music but the properties are zoned differently. The Board determined that the law requires that a substantial change must have already occurred.
- The Board finds that there have not been any substantial changes to the property or circumstances in this matter and therefore the request to allow limited accessory music on the subject property is barred by *res judicata*.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the requested Petition for Special Hearing relief and GRANTED the Motion to Dismiss.

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

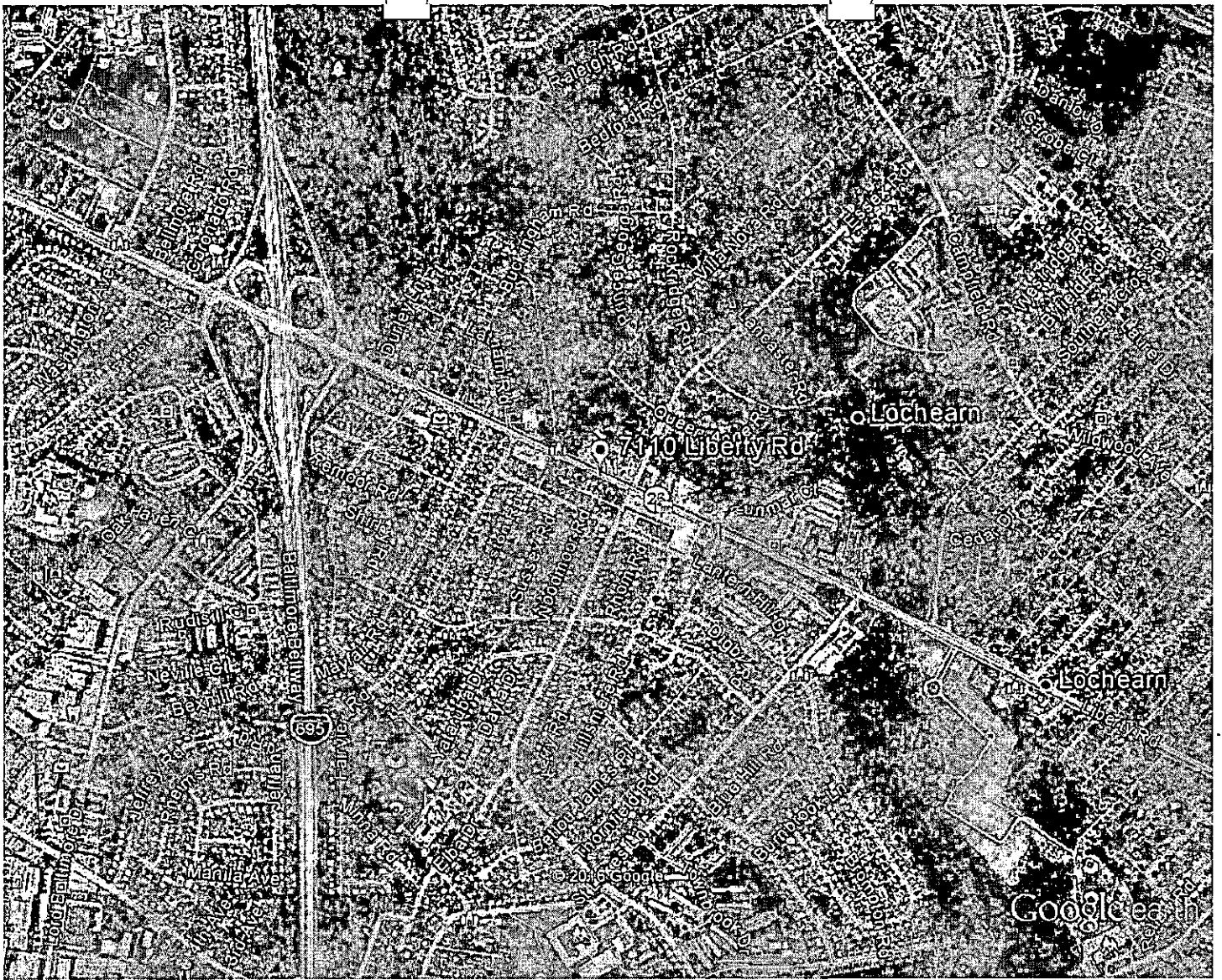


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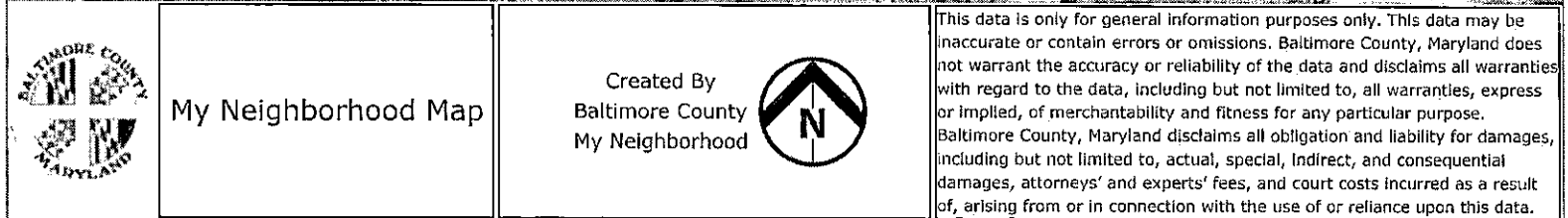
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9-16

BALTIMORE COUNTY, MARYLAND INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 8, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 17-004

RECEIVED

AUG 19 2016

INFORMATION:

Property Address: 7110 Liberty Road
Petitioner: Zulfikar Shah
Zoning: BR and BLR
Requested Action: Special Hearing

OFFICE OF ADMINISTRATIVE HEARINGS

The Department of Planning has reviewed the petition for special hearing to determine whether or not the Administrative Law Judge should approve an amendment to the previously approved order and site plan from Zoning Case # 2009-0211-X to allow a proposed commercial addition.

The property is located in the Liberty Road Commercial Revitalization District. Commercial Revitalization Districts are the "front doors" to established communities. They offer shopping and entertainment experiences where family owned business and national retail chains are neighbors in local communities providing a range of services aimed at maintaining the health and vitality of our neighborhood commercial areas.

A site visit was conducted on 7/14/2016. More than 40 vehicles for sale were observed parked/displayed on the premises during the site visit, some apparently within the Liberty Road right-of-way.

The Department objects to granting the requested zoning relief. Site observations indicate that conditions imposed by the Deputy Zoning Commissioner in the prior Zoning Case # 2009-0211-X have not been met. Specifically:

- #2) "Petitioner is only permitted to store or maintain up to ten (10) vehicles for sale on the property at any one time. If Petitioner exceeds this number, he will be subject to the civil fines and penalties prescribed by the Baltimore County Code and the B.C.Z.R".

And

- #6) "Petitioner must complete the landscaping in the front of the property that is designated as a planting area on the site plan."

To exacerbate the overly intensive non-compliant use of the property, a number of illegal signs in the form of pennants and banners were observed. The Department recommends these be removed and the petitioner be required to comply with the previously approved site plan.

For further information concerning the matters stated herein, please contact Dennis Wertz at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

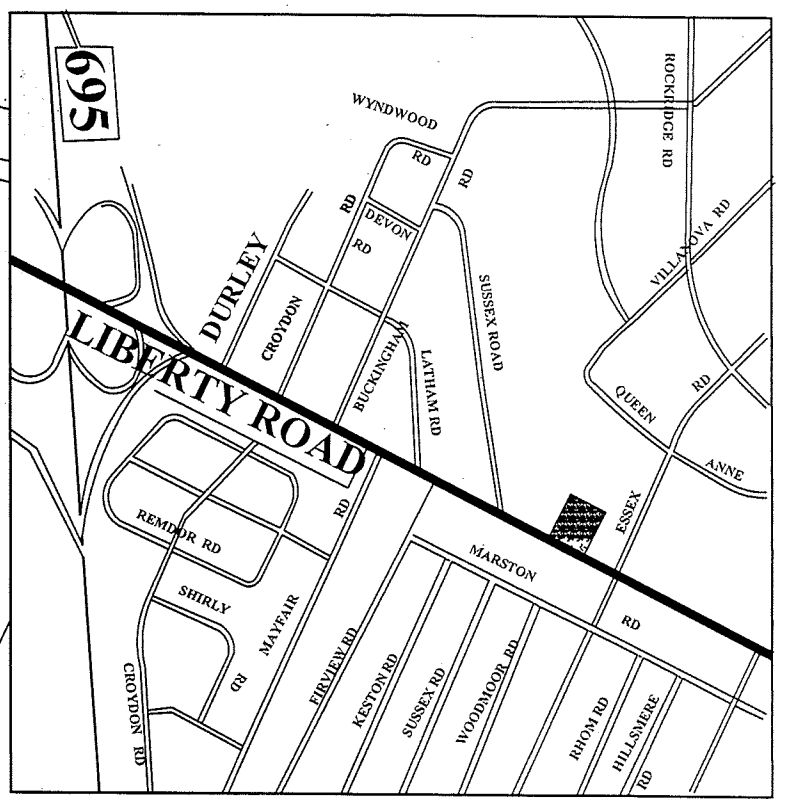
AVA/KS/LTM/ka

c: Dennis Wertz
James Hermann, R.L.A., Permits, Approvals and Inspections
Lee Giroux
Office of the Administrative Hearings
People's Counsel for Baltimore County

GENERAL NOTE

1. THE PROPERTY OUTLINE SHOWN HEREON IS FORM DEEDS AND PLATS OF RECORD ONLY AND DOES NOT REPRESENT AN ACTUAL BOUNDARY SURVEY BY DEETEC ENGINEERS & SURVEYORS, LLC.
2. THE IMPROVEMENTS SHOWN HEREON WERE LOCATED BY FIELD SURVEY DATED 9/1/2015 AND ALSO TAKEN FROM BALTIMORE COUNTY GIS TILE 88A1.
3. GROSS AREA = 22,924 SQUARE FEET OR 0.526 ACRES (BY DEED).
4. CURRENT ZONING CLASSIFICATIONS (ZONING MAP #88A) BR ZONE = 22257 SQ. FT. BLR ZONE = 1,518 SQ. FT.
5. FLOOR AREA RATIO CALCULATION (FAR): 1689 SF/23775SF = 0.071, MAXIMUM FAR, ALLOWED = 2.0.
6. EXISTING SIGN, 25' TALL, 100 SQ. FT., DOUBLE SIDED.
7. ACCORDING TO BALTIMORE COUNTY BASIC SERVICE MAP, SITE MAY FALL WITHIN SPECIAL CONCERN AREA #104.
8. EXISTING PARKING SPACES VARY IN SIZE AND NUMBER 27 TOTAL
9. REQUIRED OFF STREET PARKING: 3.3 SPACES PER 1,000 ADO SERVICE: (3.3/1000) X 1689 = 5.57 (6 SPACES REQ) 16 SPACES PROVIDED
10. EXISTING USE: GENERAL AUTO REPAIR
11. PROPOSED USE: GENERAL AUTO REPAIR AND USED CAR SALES.
12. BASIC SERVICE MAPS:
SEWER = AREA OF SPECIAL CONCERN #104
WATER = OK
TRANSPORTATION = OK

ZONING HEARING PLAN FOR VARIANCE ☒ FOR SPECIAL HEARING ☐
 ADDRESS 7110 Liberty Road OWNER(S) NAME(S) PAK US CO
 SUBDIVISION NAME VILLA NOVA Shopping Center LOT # 2 BLOCK # SECTION #
 PLAT BOOK # 0026 FOLIO # 530 10DIGIT TAX # 02-134-00002 DEED REF. # 25567/00530



VICINITY MAP
MAP IS NOT TO SCALE

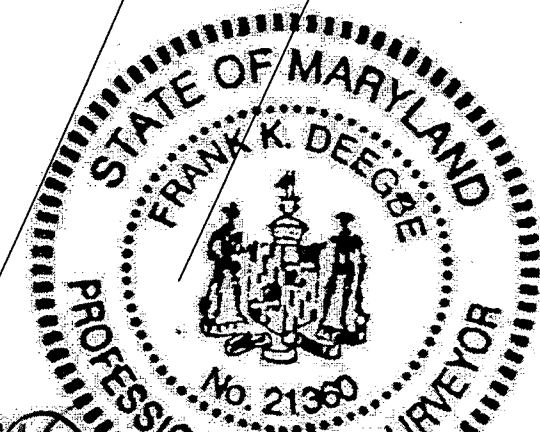
ZONING MAP# 88A
 SITE ZONED BLR
 ELECTION DISTRICT 2nd
 COUNCIL DISTRICT 4TH
 LOT AREA ACREAGE 0.526
 OR SQUARE FEET 22,924
 HISTORIC? NO
 IN CBCA? NO
 IN FLOOD PLAIN? NO
 UTILITIES? MARK WITH X
 WATER IS: PUBLIC ☒ PRIVATE ☐
 SEWER IS: PUBLIC ☒ PRIVATE ☐
 PRIOR HEARING? yes
 IF SO GIVE CASE NUMBER AND ORDER RESULT BELOW
2003-0099A
2009-0211X
 VIOLATION CASE INFO:
2003-0099A
2009-0211X

PETITIONER'S
EXHIBIT NO

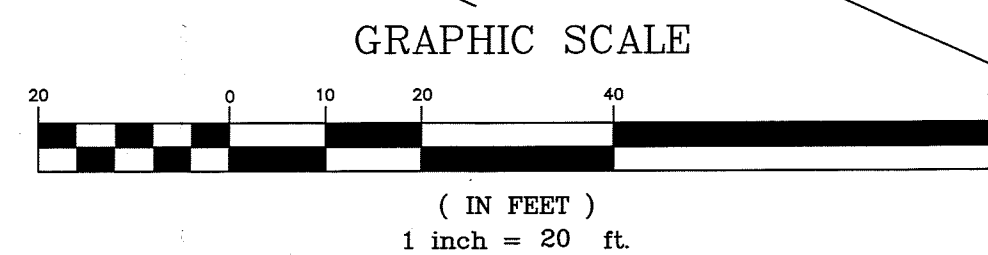
2017-0004-SPH

PLAN TO
ACCOMPANY VARIANCE
#7110 LIBERTY ROAD
2ND ELECTION DISTRICT,
4TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND
ACCOUNT #0213400002

OWNER/APPLICANT
PAK US CO.
12216 STATEWOOD ROAD
REISTERSTOWN, MARYLAND 21136-4720
 SITE ADDRESS
7110 LIBERTY ROAD
BALTIMORE, MARYLAND 2120707-45618



5/16/16
LIC. EXP. 7/15/17

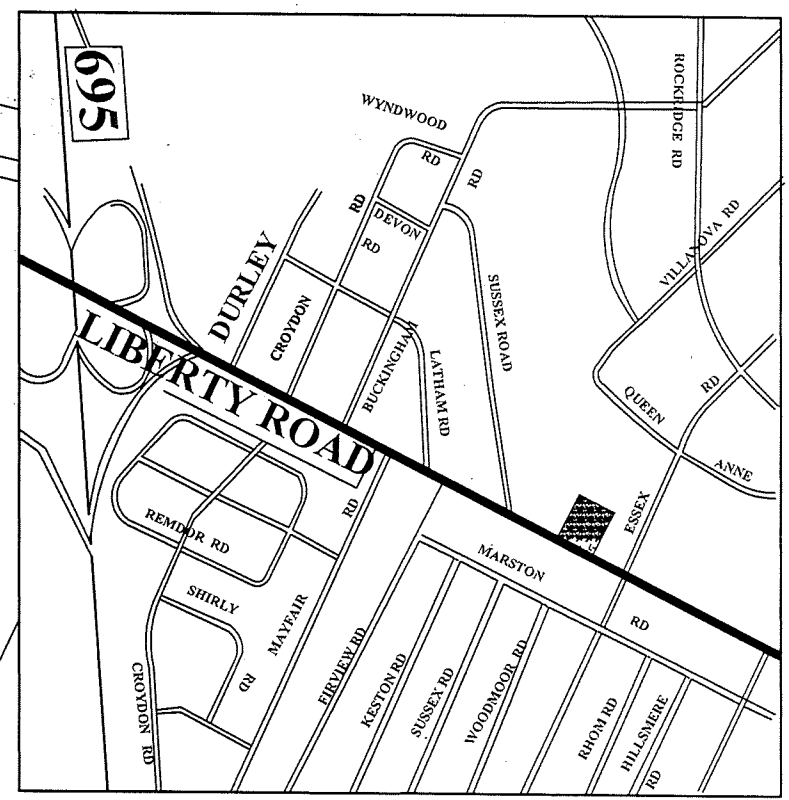


Deetec
ENGINEERS & SURVEYORS
13751 HARVEST GLEN WAY
GERMANTOWN, MARYLAND 20874
Tel: (240) 643-5020 Fax: (240) 449-8685
www.deetec.net email: deetec@deetec.net

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TRANSPORTATION = OK

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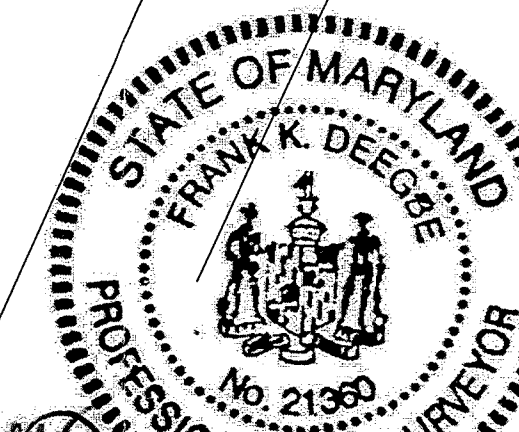
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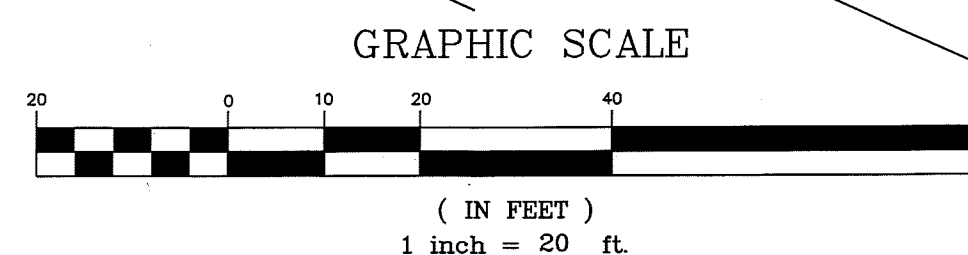
2017-0004-SPH

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 ACCOMPANY VARIANCE
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 2ND ELECTION DISTRICT,
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OWNER/APPLICANT
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