

Hearing Date: September 9, 2014

**Report to the Board of Appeals
Request for Expansion of a Non-Conforming Situation
Special Exception #1313**

SUMMARY OF REQUEST

Site Area: 15.00 Acres (Total Tract Area)

Location of Site: 2900 Camp Hedges Place
Bryans Road, MD 20616

Tax Map 5, Grid 18, Parcel 81

7th Election District

Proposed Activities: Expansion of legally nonconforming situation in the form of a garage for towing, school bus storage and repair business

Zoning: **CRR** - Core Retail/Residential &
CMR – Core Mixed Residential

SUMMARY

The following is a discussion of specific issues identified by Staff for consideration by the Board of Appeals. The applicant is requesting permission for the expansion of a non-conforming situation, noted on the application as “expansion of vehicle storage area”. The property is located at 2900 Camp Hedges Place on the west side of MD Route 210, approximately .70 miles north of the Bryans Road Shopping Center. It is zoned partially Core Retail/Residential (CRR) and partially Core Mixed Residential (CMR). Prior to the Bryans Road Sub-Area Plan rezoning, effective September 8, 2005, the subject property was zoned CB–Central Business and RM-Medium Density Suburban Residential.

The principal issue is whether or not the legally non-conforming situation may move a portion of their use to another part of the property and expand in accordance with the requirements of the Zoning Regulations.

BACKGROUND

The subject property is the location of a legally nonconforming situation in the form of a garage for towing, school bus storage, and a repair business.

Board of Appeals

The property and its uses was the subject of BOA Docket #1202, which was submitted in

November 2007 and went before the BOA during several hearings in 2008. The application submitted on November 19, 2007 for BOA Case #1202 was for an Extension or Expansion of a Non-Conforming Situation. However, the allowable area that encompassed the Non-Conforming Situation had not been formally delineated at that time. The Applicant stated that he had met with County officials/staff several times throughout the life of his business, which initially began in the late 1950s. A sketch of the property and location of the non-conforming use was submitted by the applicant prior to the January 26, 2008 meeting; however, the staff report recommended submission of a formal site plan delineating the area of the non-conforming use. The BOA, the Applicant, and the Applicant's attorney, Mr. John Hungerford, agreed. The meeting was continued until May 13, 2008 at which time a formal site plan would be submitted.

At the May 13, 2008 meeting, a series of the Applicant's exhibits were shown demonstrating the uses on the property through the years, since inception in 1959. The Assistant County Attorney at the time, John Buchanan, suggested the Board first determine what originally existed and then determine whether or not to allow an expansion. The meeting was continued until May 27, 2008.

At the May 27, 2008 BOA meeting, further discussion with Assistant County Attorney, John Buchannan clarified that the Board needed to determine if there had been enough evidence to establish whether a "junkyard" existed prior to approval of an expansion. Mr. Hungerford, the Applicant's attorney, clarified that a repair, salvage, and restoration of vehicles facility is in existence in addition to the "junkyard". The Vice Chairman of the BOA stated it was difficult to justify when the operation first began, and decided to remand the case back to the Zoning Officer for a determination as to whether it was an existing non-conforming use based on the testimony and exhibits presented.

On September 8, 2008, Melvin C. Beall, the Director of Planning and Growth Management at that time, sent a letter to the Applicant's attorney stating the following:

“..The subject property is recognized as a legally nonconforming situation in the form of a garage for towing and school bus storage, and repair business. It has been determined that “Area A” shown on the attached site plan contains 19,215 square feet and has in the past been used to store vehicles in association with the towing business. In addition, the area labeled “C” is an existing bluestone parking area for school buses...” (See Appendix A)

The letter also stated that any expansion and possible relocation of Area A must be approved by the BOA per Charles County Zoning Regulations 297-465.

District Court of Maryland for Charles County

Case #0402 0002608-2007, County Commissioners of Charles County, MD (Plaintiff) vs. Elvan Hedges, Joan Hedges And Michael Hedges (Defendants) was being processed within the District Court of Maryland for Charles County, concurrently with BOA Docket #1202. The February 29, 2008 Consent Order signed by the defendants stated that Michael A. Hedges was to immediately begin removing inoperable and/or untagged vehicles and/or vehicle parts from the subject

property, specifically twenty (20) cars per month. The Consent Order also stated Mr. Hedges was not to bring any more untagged and/or inoperable vehicles upon the subject property, other than vehicles towed into the existing impound lot by order of Charles County Sheriff's Department. The amount of cars that was legally able to remain on the subject property was stated to be contingent upon the pending final resolution and decision in the Charles County Zoning Board Case # 07-0023, 1202 (BOA Docket #1202). All cars except the amount allowed per the BOA Docket #1202 were ordered to be removed within eighteen (18) months.

As stated above, the BOA remanded the case back to the Zoning Officer for a Non-Conforming Use Determination; therefore the amount of cars allowed to remain was not determined by the BOA. However, as aforementioned, the square footage of the non-conforming situation was determined in the September 8, 2008 Zoning Officer Determination letter. Since the February 29, 2008 Consent Order was signed, Michael A Hedges has removed a significant amount of vehicles from the property and has furnished lists of said cars to the County. Some months he met the requirement of removing twenty (20) cars, and some months he did not. The case was brought back before the District Court in May 2013. The May 15, 2013 Order found the Defendants in contempt of the February 13, 2008 Court Order due to incompleteness of car removal within the order's timeframe. The May 15, 2013 Order stated the Defendants shall remove remaining inoperable/untagged vehicles, OR move them into an enclosed fenced off area. Furthermore it was stated that if the fenced off area was not within the confines of the non-conforming use area granted by the Zoning Officer on September 8, 2008, they shall petition the Board of Appeals to have the non-conforming use area relocated on or before July 14, 2013. Lastly, it was stated if the BOA does not allow re-location of the non-conforming area, the Defendants shall have 60 days from the date of final disposition of said petition to move all vehicles to the permitted area allowed per the September 8, 2008 Determination Letter.

Background Conclusion

The Applicants petitioned the BOA for an Expansion of a Non-Conforming Use on July 12, 2013, which is the subject case of this report. They are requesting a 50% expansion of Area A and 50% expansion of Area C, as shown on the September 2013 site plan of the property (See Appendix A). The Applicants are also requesting that the allowable square footage of Area A be relocated to the existing, enclosed fenced-off area west of Area C. Area A is currently largely wooded with mature trees, and has cars stored amongst the trees. Therefore, if the relocation of Area A and the expansion/extension are approved, the fenced area would include the allowable square footage of Area A plus the square footage of the requested increase.

Area A = 19,215 sq. ft. (50 % of A = 9,607.5 sq. ft.)

Area C = 38,258 sq. ft. (50 % of C = 19,129 sq. ft.)

Total increase proposed = 28,736.5 sq. ft.

Area A (19,215 sq.ft.) + Increase (28, 736.5 sq.ft.) = 47, 951.5 sq.ft. (max. Area A allowable)
Actual Fenced Area = 46,900 sq. ft.

Site Visit - August 21, 2013

On August 21, 2013, Erica Hahn, Planner I, and Robert Padgett, Zoning Inspector, performed a

site visit at the Hedges' property. The wooden fenced in area appeared to be fully enclosed, with a smaller chain link fenced area adjoining. (see photos in Appendix B) There were numerous vehicles being stored within the fenced area. There was a pile of tires near the treeline just south of existing Area A (see photo in Appendix B). There were approximately 40-50 cars remaining in Area A as of the August 21st site visit (See photos in Appendix B). The Applicant, Michael Hedges, stated it was his intention to move the cars remaining in Area A, to the fenced-off area (new Area A). As stated in his BOA application under Docket #1313, it is his intention to move allowable Area A to the fenced area and request an expansion. All school buses were parked within the bluestone parking area (Area C). After the site visit, staff contacted the engineer and Mr. Hedge's attorney, John Hungerford, to request an exact measurement of the existing fenced area. The existing fenced area was measured at 46,900 sq ft., and an updated site plan for the case was provided showing the exact measurements of each area, including the proposed new Area A within the enclosed fence. If the Applicant's request for relocation of Area A and 50% expansion are granted, the new Area A could be no larger than 47,951.5 sq ft. Since the fenced area (proposed new Area A) was measured to be 46,900, it meets the square footage threshold of requesting no more than a 50% increase of the original non-conforming situation.

There has been a delay in scheduling of this case due to comments by the State Highway Administration (SHA) regarding the driveway access standards. A condition of approval has been recommended stating that the applicant shall comply with SHA's driveway access standards.

NEED FOR BOARD OF APPEALS APPROVAL

Article XXV, Section 297-418 of the Charles County Zoning Regulations: Expansion or extension of nonconforming uses states that:

- A. *The Board [of Appeals] is authorized to consider and approve the expansion or extension of an existing nonconforming situation in accordance with the provisions and requirements of this Article XXV.*
- B. *A decision of the Board granting an extension or expansion of an existing nonconforming situation shall adhere to the standards provided in this Article XXV.*

The County recognizes Areas A & C as legal non-conforming situations and the Applicants are requesting a partial relocation and expansion of that situation.

Minimum Zoning Requirements

The Zoning Regulations, Section 297- 465 outlines the findings and criteria to be used by the Board for an Extension or Enlargement of Nonconforming Situations. Specifically, Section 297-465.G. states the following:

- G. *The Board of Appeals shall consider and may grant approval, with or without conditions, for the expansion or extension of existing non-conforming situations based on the following standards:*

- (1) *Such an application shall be subject to the provisions of this Ordinance applicable to Special Exception uses.*
- (2) *No approval shall be granted for an extension or expansion which exceeds 50% of the land area or gross floor area in use at the time of the creation of the non-conforming situation.*
- (3) *The extension or expansion shall not occur on any adjoining property under the same ownership at the time of the creation of the non-conforming situation.*
- (4) *The extension or expansion shall involve continuance of the activities which were permitted and being conducted on the site at the time of the creation of the non-conforming situation.*

The subject application indicates that the request is for a “need to expand and extend a non-conforming use area to the location shown on attached site plan (proposed vehicle storage area). The existing vehicle storage area referenced in December 11, 2007 letter in Case #1202 is not adequate”.

By granting the proposal, the Board of Appeals would be permitting the expansion of the area of the legally nonconforming situation to include an area of land for the purposes of storing disabled vehicles associated with the aforementioned uses. By granting the proposal, the Board of Appeals would also be permitting the relocation of legal non-conforming situation Area A to the existing fenced area, west of Area C. The Board must find that the proposed expansion of the legally nonconforming situation is consistent with the requirements of such an expansion per Section 297-465 of the Zoning Regulations.

DESCRIPTION OF PROPERTY

The fifteen (15) acre parcel is a rectangular shape, with approximately the front 75% of the property being cleared. The site contains a single-family dwelling, shed/outbuilding, garage associated with the permitted auto repair/towing business, bluestone parking area (Area C), an area enclosed by chain link fence (Secure Area) connected to the larger wooden fenced area (Proposed/New Area A plus proposed expansion area). At the time of the site visit, approximately forty (40) to fifty (50) cars remained within original Area A. Aside from the cars remaining in original Area A, the remainder of the towed/disabled cars are currently within the enclosed wooden and chain link fenced area. The school buses are located within the Bluestone Parking Area. The rear 25% of the property is partially forested, with two additional outbuildings.

IMPACT ON SURROUNDING USES

The property has driveway access off of MD Route 210. The character of the surrounding neighborhood is residential and commercial. Adjacent properties are zoned CMR and CRR.

PRELIMINARY FINDINGS

The following preliminary Findings of Fact are presented for consideration by the Board:

1. Elvan and Joan Hedges are the owners of the subject property, known as Parcel 81, containing approximately 15 acres, on Tax Map 5.
2. Prior to the Bryans Road Sub-Area Plan rezoning, effective September 8, 2005, the subject property was zoned CB–Central Business and RM-Medium Density Suburban Residential.
3. Following the Bryans Road Sub-Area Plan rezoning, effective September 8, 2005, the subject property was rezoned as CRR-Core Retail/Residential and CMR-Core Mixed Residential.
4. The application is a request for an extension or expansion of storage areas for disabled vehicles associated with a legally non-conforming situation for a garage for towing and school bus storage and repair business.

PLANNING DIVISION RECOMMENDATIONS

The Planning division staff finds that the applicant has provided adequate information for review of their request. Therefore, for the purposes of providing compliance with the requirements of the Zoning Regulations, the Planning division staff recommends the following Conditions of Approval, should the Board choose to approve the application for Expansion/Extension of a Non-Conforming Situation for Docket #1313.

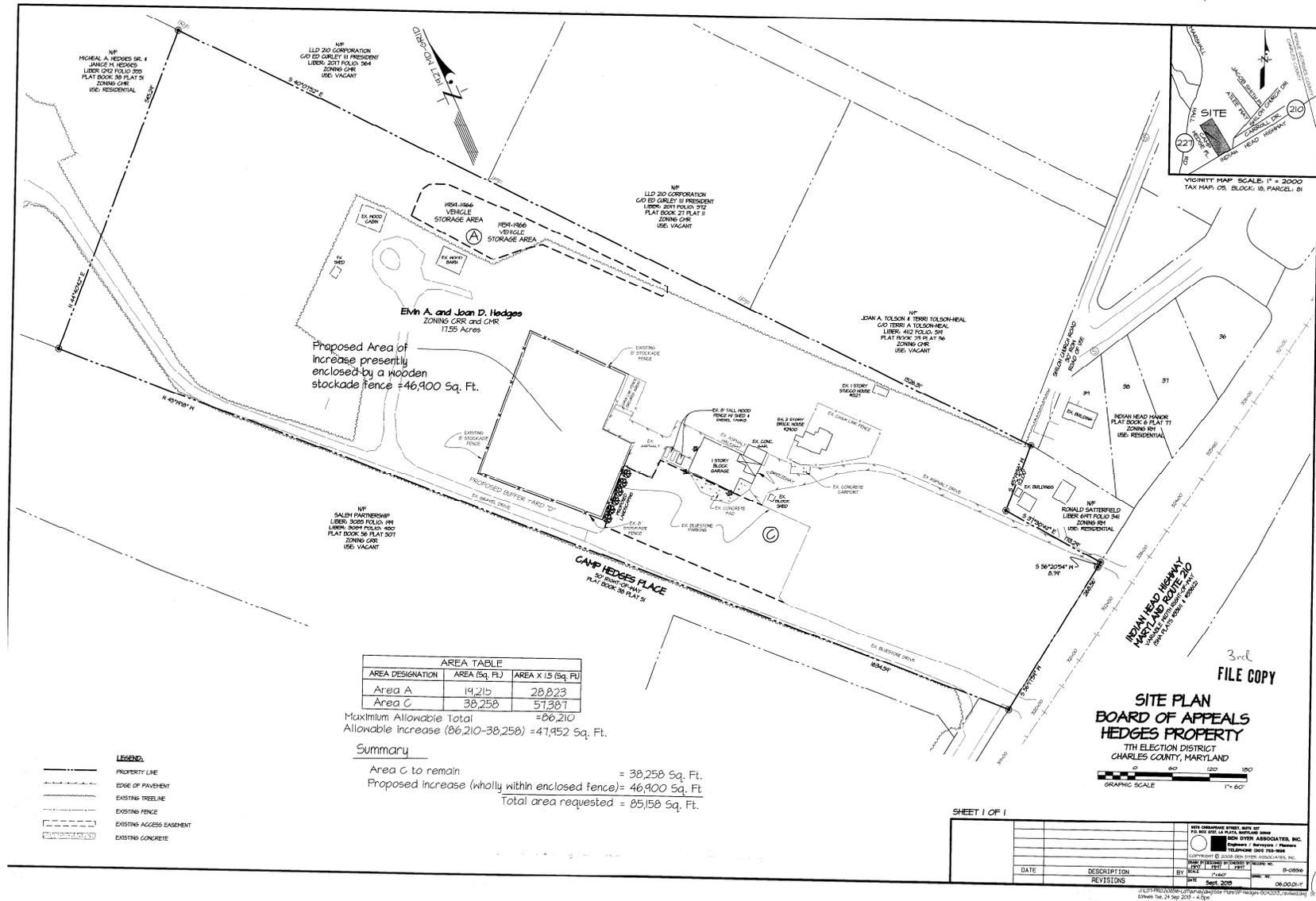
1. Any expansion approved must comply with the Zoning Regulations, Section 297-465.G. (2) and (4) of the Zoning Regulations. Specifically, the extension or expansion of the existing nonconforming situation shall not exceed 50% of the land area or gross floor area in use at the time of the creation of the nonconforming situation; and, the extension or expansion shall involve continuance of the activities which were permitted and being conducted on the site at the time of the creation of the nonconforming situation. If this expansion/extension and relocation of Area A are approved, there shall be no further expansions/extensions permitted.
2. All vehicles associated with the businesses on the site, disabled or not, shall be confined to the Bluestone Parking Area and the fenced area as shown on the September 2013 site plan. The fenced area shall not be expanded or altered as to increase the capacity of the enclosed area.
3. Vehicles that are in an inoperable state must remain within the enclosed fenced area portion of the nonconforming situation while being stored.

4. All vehicles and vehicle parts must be removed from existing Area A if and when the relocation of Area A is approved.
5. Per June 2, 2014 email correspondence from the Maryland State Highway Administration (SHA), the applicant shall comply with driveway access standards as required by the Maryland SHA.

Prepared by the Planning Office, Department of Planning and Growth Management.

Prepared by: Erica J Hahn Date: 8/19/14
Erica Hahn, Planner I

Reviewed by: Charles Rice Date: 8-19-14
Charles Rice, Program Manager
Environmental Programs



Appendix B:

Photos from August 21, 2013 Site Visit



Photo 1: Inside the Fenced Area
(proposed new Area plus
expansion area)



Photo 2: Inside the Secure Area
within Fenced Area



Photo 3: View from outside the Fenced Area looking in



Photo 4: Inside the Fenced Area (proposed new Area A plus expansion area)



Photo 5: Inside the Fenced Area
(proposed new Area plus
expansion area)



Photo 6: Inside the Fenced Area
(proposed new Area plus
expansion area)



Photo 7: Open field north of fenced area



Photo 8: Field north of fenced area



Photo 9: View of forested area where existing Area A is located



Photo 10: Inside existing Area A



Photo 11: Inside existing Area A



Photo 12: Open field behind (west of) fenced/proposed Area A



Photo 11: Area south of fenced/proposed Area A, adjacent to Gravel Drive



Photo 12: Open field behind (west of) fenced area



Photo 13: Bluestone Parking area (right), repair garage (left)



Photo 14: Bluestone Parking area/bus storage

CHARLES COUNTY GOVERNMENT
Planning and Growth Management

MELVIN C. BEALL, JR., P.E., *Director*



September 8, 2008

John Hungerford, Esquire
P. O. Box 221
Bryans Road, Maryland 20616

RE: Non-Conforming Use Determination
Tax Map 5, Grid 18, Parcel 81
Tax Acct. ID # 007020449
Elvan A. & Joan D. Hedges, Owners

Dear Mr. Hungerford:

As you are aware, this matter went before the Board of Appeal on May 27, 2008 and the Board remanded the case back to the Zoning Officer for a non conforming use determination.

This is in response to a nonconforming use determination received July 12, 2008, for the automobiles storage area as shown on the attached site plan as "Area A".

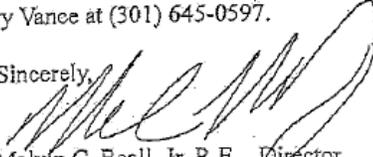
Based on the application, affidavit, and staffs inspection of the property, the following has been determined:

The subject property contains 15.00 acres and is currently zoned Core Retail/Residential (CRR) and Core Mixed Residential (CMR). The subject property is recognized as a legally nonconforming situation in the form of a garage for towing and school bus storage and repair business. It has been determined that "Area A" as shown on the attached site plan contains 19,215 square feet and has in the past been used to store vehicles in association with the towing business. In addition, the area labeled "C" is an existing bluestone parking area for school buses.

I hope this approval of non-conforming status for the referenced property is helpful to you and your client. However, any expansion and possible relocation of this area (Area A) must be approved by the Board of Appeals per the Charles County Zoning Regulations 297-465. Please contact Carrol Everett, Clerk to the Board of Appeals @301-645-0689 to schedule a hearing date.

If you should have any questions, contact Mary Vance at (301) 645-0597.

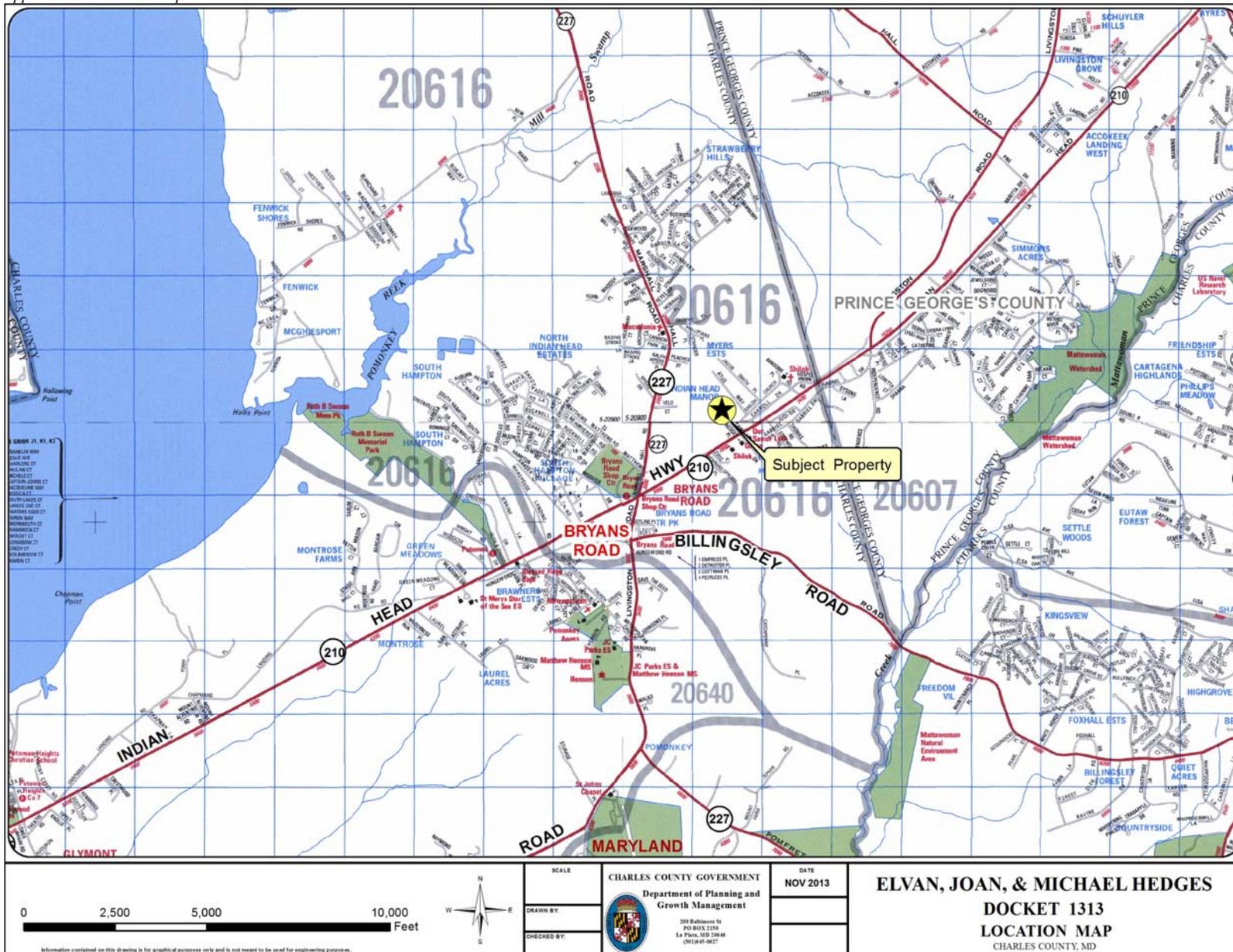
Sincerely,


Melvin C. Beall, Jr. P. E., *Director*
Planning and Growth Management

cc: Elvan and Joan Hedges

Mary Vance, Zoning Administrator
SAY NO TO DRUGS
Office: Box 2150 • La Plata, Maryland 20646
Administration: (301) 645-0627 • Capital Services: (301) 645-0621 • Development Services (301) 645-0618 / (301) 870-3973
Permits: (301) 645-0692 / (301) 870-3935 • Planning: (301) 645-0689 / (301) 645-0540 / (301) 870-3896
TDD Transfer Number for the Hearing Impaired: 1-800-735-2258
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(2)



Appendix E: Zoning Map

