

VAN DEWATER AND VAN DEWATER, LLP

COUNSELORS AT LAW

John B. Van DeWater (1892-1968)
Robert B. Van DeWater (1921-1990)
James E. Nelson
Gerard J. Comatos, Jr.
Kyle W. Barnett
Daniel F. Thomas III

Rebecca S. Mensch

Danielle E. Strauch

85 CIVIC CENTER PLAZA, SUITE 101
P.O. BOX 112
POUGHKEEPSIE, NEW YORK 12601

(845) 452-5900
Fax (845) 452-5848

WEBSITE ADDRESS:
www.vandewaterlaw.com

GENERAL E-MAIL ADDRESS:
info@vandewaterlaw.com

Noel deCordova, Jr. (1929-2013)
Edward vK Cunningham, Jr. (1935-2018)
Ronald C. Blass, Jr. (1951-2018)

John K. Gifford
Jeffrey S. Battistoni
Counsel

August 30, 2020

Paul H. Schwartz, Chairman
Town of Washington Planning Board
10 Reservoir Drive
P. O. Box 667
Millbrook, NY 12545

Re: Audia/Ruge's Chevrolet

Dear Chairman Schwartz:

An application for site plan approval dated June 16, 2020 has been submitted to the Planning Board entitled Proposed Parking Lot Improvements/Ruge's Chevrolet Automobile Dealership. It relates to two parcels of land. I have been asked to provide an opinion letter regarding the "use" of these two parcels. The background is as follows.

Robert Audia and Peter Audia own a parcel of land located at 3 North Mabbettsville Road, identified by Parcel Grid ID # 135889-6865-03-353381-0000 (0.68 acres of land) (herein, the "353381 Parcel") and a parcel of land located at 7 North Mabbettsville Road, identified by Parcel Grid ID # 135889-6858-03-335381-0000 (1.45 acres of land) (herein, the "335381 Parcel". For informational purposes, I have attached copies of ParcelAccess Reports for each property.

I met with Robert and/or Peter Audia on a few occasions and they provided information and documents about their history of ownership and "use" of the properties. They purchased the properties in 1985 and began to use them in conjunction with an auto sales business they owned across the street. At that time for zoning purposes, the 353381 Parcel was in the HB District

and 335381 Parcel was in two Districts - HB and a residential district. The HB District allowed "Auto Sales" as a permitted use and also allowed a parcel with split zoning to have a commercial use extended 35 feet into an adjoining residential district. Attached is a copy of the Zoning Ordinance as it was then in effect showing this information.

There was a house on the 335381 Parcel (which still exists) and Robert and Peter began to use both parcels to store vehicles in relation to their Auto Sales business. They have produced photographs from before, during and after that time period which substantiate the uses. I am attaching copies of those photographs, although they may not be very clear after photocopying and transmission. They have also provided a copy of their survey from 1986, which shows how the zoning district line bisected the 335381 Parcel. I have attached a copy of that survey, reduced and broken into two pages because of its size. Based upon all of these documents, it is my opinion that the "use" of the properties as depicted for vehicle storage in relation to the Auto Sales business was a permitted use under zoning as then in effect.

The zoning of the two parcels later changed to HM (Hamlet Mixed-Use), which does not allow auto sales as a principal or specially permitted use. The "use" of each of the two parcels thus became and is now properly classified as a non-conforming use.

The two parcels are now leased to a business known as Ruge's Chevrolet Auto Dealership. The owner of that business, with the consent of the owners of the two properties, has submitted the subject application to pave much of the two parcels and install various drainage improvements in order to improve the site. That application does not change the "use" of the two parcels.

Very truly yours,

VAN DEWATER AND VAN DEWATER, LLP

By: _____

Jeffrey S. Battistoni

JEFFREY S. BATTISTONI

JSB/jsb
Attachments



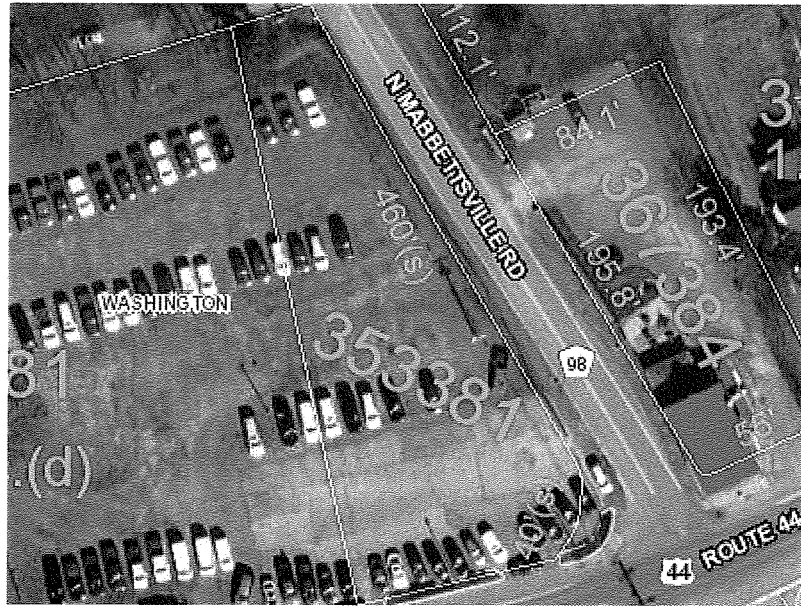
Final Roll

Parcel Grid Identification #:
135889-6865-03-353381-0000
Municipality: Washington

Parcel Location:
N 3 Mabbettsville Rd

Owner Name on March 1:
Audia , Robert S (P)
Audia , Peter P (A)

Primary (P) Owner Mail Address:
3692 Route 44
Millbrook NY 125450000



Parcel Details

Size (acres): 0.68 Ac (C) Land Use Class: (438) Commercial: Motor Vehicle Services: Parking Lot
File Map: Agri. Dist.: (0)
File Lot #: School District: (135801)
Split Town

Assessment Information (Current)

Land: Total: County Taxable: Town Taxable: School Taxable: Village Taxable:
\$54700 \$85700 \$85700 \$85700 \$85700 \$0

Tax Code: Roll Section: Uniform %: Full Market Value:
1 97 \$ 88400

Tent. Roll: Final. Roll: Valuation:
5/1/2020 7/1/2020 7/1/2019

Last Sale/Transfer

Sales Price: Sale Date: Deed Book: Deed Page: Sale Condition: No. Parcels:
\$0 0 2004 0250 () 0

Site Information:

Site Number: 1
Water Supply: Sewer Type: Desirability: Zoning Code: Used As:
(1) None (1) None (2) Fair HM (G01) Auto dealer

Special District Information:

Special District: WF037
Spec. Dist. Name: Washington Fire Prot Primary Units: 0 Advalorem Value: 85700

ABSOLUTELY NO ACCURACY OR COMPLETENESS GUARANTEE IS IMPLIED OR INTENDED. ALL INFORMATION ON THIS MAP IS SUBJECT TO CHANGE BASED ON A COMPLETE TITLE SEARCH OR FIELD SURVEY.

This report was produced with ParcelAccess Internet on 8/29/2020. Developed and maintained by OCIS - Dutchess County, NY.



Final Roll

Parcel Grid Identification #:
135889-6865-03-335381-0000
Municipality: Washington

Parcel Location
N 7 Mabbettsville Rd

Owner Name on March 1
Audia , Robert (P)
Audia , Peter (A)

Primary (P) Owner Mail Address
PO Box 589
Millbrook NY 125450000



Parcel Details

Size (acres): 1.45 Ac (D) **Land Use Class:** (210) Residential: One Family Year-Round Residence
File Map: **Agri. Dist.:** (0)
File Lot #: **School District:** (135801)
Split Town

Assessment Information (Current)

Land: **Total:** **County Taxable:** **Town Taxable:** **School Taxable:** **Village Taxable:**
\$62100 \$206200 \$206200 \$206200 \$206200 \$0

Tax Code: **Roll Section:** **Uniform %:** **Full Market Value:**
1 97 \$ 212600

Tent. Roll: **Final. Roll:** **Valuation:**
5/1/2020 7/1/2020 7/1/2019

Last Sale/Transfer

Sales Price: **Sale Date:** **Deed Book:** **Deed Page:** **Sale Condition:** **No. Parcels:**
\$0 0 1695 0264 () 0

Site Information:

Site Number: 1
Water Supply: **Sewer Type:** **Desirability:** **Zoning Code:** **Used As:**
(2) Private (2) Private (2) Typical HM ()

Residential Building Information:

Site Number: 1
Year Built: **Year Remod.:** **Building Style:** **No. Stories:** **Sfla:** **Overall Cond.:**
1800 0 (08) Old style 1.5 1659 (3) Normal

No. Kitchens: **No. Full Baths:** **No. Half Baths:** **No. Bedrooms:** **No. Fire Places:** **Basement Type:**
1 1 0 3 0 (4) Full

Central Air: **Heat Type:** **Fuel Type:** **First Story:** **Second Story:** **Addl. Story:**
0 (3) Hot wtr/stm (4) Oil (4) 1407 (4) 0 (4) 0

Half Story: **3/4 Story:** **Fin. Over. Gar.:** **Fin. Attic:** **Unfin 1/2 Story:** **Unfin 3/4 Story:**
252 0 0 0 0 0

Fin. Basement: **Fin Rec Room:** **No. Rooms:** **Grade:** **Grade Adj. Pct.:**
0 0 0 (C) Average 100

Improvements:

Site Number: 1
Improvement Number: 1

Structure Code: (RP2) Porch-covered	Dim 1: 0	Dim 2 0	Quantity 1	Year Built 1800
---	-------------	------------	---------------	--------------------

Condition: (3) Normal	Grade D	Sq. Ft. 32
---------------------------------	------------	---------------

Site Number: 1
Improvement Number: 2

Structure Code: (RP2) Porch-covered	Dim 1: 0	Dim 2 0	Quantity 1	Year Built 1800
---	-------------	------------	---------------	--------------------

Condition: (3) Normal	Grade D	Sq. Ft. 171
---------------------------------	------------	----------------

Site Number: 1
Improvement Number: 3

Structure Code: (FC4) Shed-finishd	Dim 1: 0	Dim 2 0	Quantity 1	Year Built 1800
--	-------------	------------	---------------	--------------------

Condition: (3) Normal	Grade D	Sq. Ft. 80
---------------------------------	------------	---------------

Site Number: 1
Improvement Number: 4

Structure Code: (FC4) Shed-finishd	Dim 1: 0	Dim 2 0	Quantity 1	Year Built 1800
--	-------------	------------	---------------	--------------------

Condition: (3) Normal	Grade D	Sq. Ft. 120
---------------------------------	------------	----------------

Site Number: 1
Improvement Number: 5

Structure Code: (FC4) Shed-finishd	Dim 1: 0	Dim 2 0	Quantity 0	Year Built 1800
--	-------------	------------	---------------	--------------------

Condition: (3) Normal	Grade D	Sq. Ft. 168
---------------------------------	------------	----------------

Site Number: 1
Improvement Number: 6

Structure Code: (FB4) Barn-1.0 gen	Dim 1: 0	Dim 2 0	Quantity 0	Year Built 1800
--	-------------	------------	---------------	--------------------

Condition: (3) Normal	Grade D	Sq. Ft. 468
---------------------------------	------------	----------------

Site Number: 1
Improvement Number: 7

Structure Code: (FC1) Shed-machine	Dim 1: 0	Dim 2 0	Quantity 0	Year Built 1800
--	-------------	------------	---------------	--------------------

Condition: (3) Normal	Grade D	Sq. Ft. 168
---------------------------------	------------	----------------

Special District Information:

Special District: WF037

Spec. Dist. Name:
Washington Fire Prot

Primary Units:
0

Advalorem Value
206200

ABSOLUTELY NO ACCURACY OR COMPLETENESS GUARANTEE IS IMPLIED OR INTENDED. ALL INFORMATION ON THIS MAP IS SUBJECT TO CHANGE BASED ON A COMPLETE TITLE SEARCH OR FIELD SURVEY.

This report was produced with ParcelAccess Internet on 8/29/2020. Developed and maintained by OCIS - Dutchess County, NY.

ZONING ORDINANCE

AN ORDINANCE ESTABLISHING A COMPREHENSIVE ZONING PLAN FOR THE TOWN OF WASHINGTON, NEW YORK AND FOR SAID PURPOSES DIVIDING THE TOWN INTO APPROPRIATE ZONING DISTRICTS.

The Town Board for the Town of Washington does hereby repeal the Town of Washington Zoning Ordinance adopted on December 7, 1952, and all amendments thereto and does hereby establish a revised comprehensive zoning plan for the Town of Washington, Dutchess County, New York, which plan is set forth below in the form of text, map and schedules that collectively shall be known and cited as the "Town of Washington Comprehensive Zoning Ordinance."

ARTICLE I — PURPOSES

100. INTENT

Subject Ordinance is adopted pursuant to the authority and power granted by Town Law, Chapter 62, Article 16, of the Consolidated Laws of New York State with intent to promote the public health, welfare, safety, convenience, order, prosperity and morals of the community in the following respects:

101. To guide the future growth and development of the Town in accordance with the Comprehensive Master Plan by establishing population densities that will reflect a beneficial influence considering the most appropriate use of land relative to population trends, existing land use, topographical features, soil types, economic activity, building development and recognizing such conditions and trends both within the Town and in surrounding areas.
102. To secure safety from fire, flood, panic and other dangers; provide adequate light and air; prevent overcrowding of the land; and avoid undue concentration of population.
103. To conserve the value of land and buildings in accordance with the character of the district and its peculiar suitability for particular uses; protect the economic stability of the entire Town; and provide for orderly and beneficial growth commensurate with the availability and capacity of public facilities and services.
104. To establish the most beneficial relationship between land use, buildings and the circulation of traffic throughout the Town with particular regard to the lessening of congestion, the safe and efficient movement of vehicles and pedestrians, the provision of adequate parking facilities and convenient access appropriate to the perspective use.

105. To guide public policy so as to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements; and guide private enterprise in building development, investment and other economic activity relating to land use and buildings.
106. To safeguard the natural resources; prevent the contamination of wells, streams and ponds; and preserve the integrity, stability and beauty of the community.
107. To assure privacy for residences and freedom from nuisances and harmful, unsightly uses; and protect the community against unsightly, obtrusive, and noisome land uses and operations.
110. **MASTER PLAN**
The regulations contained herein have been made in accordance with the Comprehensive Master Plan for the Town of Washington with reasonable consideration as to the character of land and the extent of development in each district as well as the suitability of each district for particular uses.

ARTICLE II — ESTABLISHMENT OF DISTRICTS

200. DISTRICTS

The Town of Washington is hereby divided into the following types of districts:

- R-10A Agricultural
- R-5A Rural Residential
- R-2A Low Density Residential
- R-1A Medium Density Residential
- HB Highway Business
- I Industrial
- LC Land Conservation

210. ZONING MAP

Said districts are bounded as shown on the map entitled "Zoning Map, Town of Washington, Dutchess County, New York" which, with all explanatory matter thereon, is made a part of this ordinance.

220. INTERPRETATION OF DISTRICT BOUNDARIES

Where uncertainty exists with respect to the boundaries of any of the aforesaid districts, the rules specified below shall apply. In cases where these rules do not identify the true location of a district boundary line, the Zoning Board of Appeals shall render a determination with respect thereto.

221. Along Centerlines

Where district boundaries are indicated as following roads, highways, driveways, watercourses, or power lines, the centerlines of such rights-of-way shall be construed to be the boundaries of the zoning district.

222. Parallel to Centerlines

Where district boundaries are indicated as being parallel to roads, highways, driveways, watercourses or power lines, a line parallel to the centerline of such rights-of-way and at a distance therefrom as specified in the Zoning Map shall be construed to be the boundaries of the zoning district. If no distance is given, such dimension shall be determined by use of the scale shown on the Zoning Map.

223. **Along Lot Lines**

Where district boundaries are indicated as following lot lines, such lot lines shall be construed to be the boundaries of the zoning district.

224. **Land Conservation Districts**

Areas zoned as Land Conservation Districts represent swamps, wetlands or flood plains which are not suited for building purposes. The boundaries shown on the Zoning Map represent the approximate edge of the wet area unless noted otherwise, as determined from 1:20,000 United State Geological Survey Maps covering the Town of Washington and dated 1960.

230. **LOTS IN MORE THAN ONE DISTRICT**

Where a district boundary line divides a lot or land in single ownership as existing at the time of the enactment of this Ordinance, the use authorized on and the district requirements applying to the less restricted portion of the property shall be construed as extending into the remaining portion of the property beyond the district boundary lines for a distance not exceeding thirty-five (35) feet.

ARTICLE III — DISTRICT REGULATIONS

300. **APPLICATION**

In interpreting and applying this Ordinance, the requirements contained herein are declared to be the minimum. Further, this Ordinance shall not be deemed to affect, in any manner whatsoever, any easements, covenants or other agreements between parties, provided, however, that where this Ordinance imposes a greater restriction upon the use of buildings or land, or upon the erection, construction, establishment, moving, alteration or enlargement of buildings than are imposed by other ordinances, rules, regulations, licenses, certificates or other authorizations, or by easements, covenants or agreements, the provisions of this Ordinance shall prevail.

310. **SCHEDULES**

To facilitate public understanding and for convenience in administration, there is hereby declared to be a part of this Ordinance a Schedule of Use Regulations, a Schedule of Area and Bulk Regulations and an Off-Street Parking and Loading Schedule which list: the uses permitted in each district, the minimum lot areas, minimum yard widths, building height limitations, off-street parking needs and other basic requirements which, in some cases, are supplemented by other regulations in the Ordinance.

311. **Schedule of Use Regulations**

In any district established by this Ordinance, no premises shall be used, and no building shall be erected, constructed, enlarged, altered, arranged or designed to be used in whole or in part except for use as set forth in the accompanying Schedules of Residential and Non-Residential Use Regulations. Only those uses specifically listed shall be permitted.

312. **Schedule of Area and Bulk Regulations**

In any district established by this Ordinance, no premises shall be used, and no building shall be erected, constructed, enlarged, altered or arranged on a lot except in accordance with the requirements set forth in the accompanying Schedule of Area and Bulk Regulations.

No yard or other open space provided around any building for the purpose of complying with the provisions of this Schedule shall be considered as providing a yard or open space for any other building, and no yard or other open space on one lot shall be considered as providing a yard or open space for a building on any other lot.

313. Off-Street Parking & Loading Schedule

In any district established by this Ordinance, off-street parking facilities shall be provided in accordance with the requirements set forth in the accompanying Off-Street Parking and Loading Schedule, except where additional parking may be required as a condition for the issuance of a special permit.

SCHEDULE OF RESIDENTIAL DISTRICT USE REGULATIONS

Residential District	Principal Uses Permitted by Right	Accessory Uses Permitted by Right	Special Uses Which May Be Allowed by Special Permit and Subject to Site Plan Approval
R-10A	Agriculture Animal Husbandry *Camps, private Conservation Area Dwelling, one-family Dwelling, two-family Farm Forestry Game Preserve Golf Course Parks, public and private Playgrounds *Stables, private	Uses customarily incidental to principal use *Customary Home Occupations Garages, private Off-Street parking Open storage of farm machinery or vehicles associated with agriculture only on farms *Professional offices *Swimming pools *Signs Temporary structures	Animal Hospital Boarding House Cemetery Church *Cluster Development *Educational Institution Fur Farm Kennel Membership Club Nursing and Convalescent Home *Pig Farm *Poultry Farm, cage-type *Public Utilities *Quarrying *Riding Academy Sanitarium *Soil Mining *Stable, public Tourist Home Any special use permitted in the R-10A Agricultural District
R-5A	Any use provided in the R-10A Agricultural District	Any accessory use permitted in the R-10A Agricultural District	Any special use permitted in the R-10A Agricultural District

R-2A	Any principal use permitted in the R-5A Rural Residential District except: Camps, private	Any accessory use permitted in the R-5A Rural Residential District except: Open storage of farm machinery or vehicles	Church *Cluster Development *Dwelling, multi-family Dwelling, two-family *Educational Institutions Membership Club Nursing or Convalescent Home Tourist Home
R-1A	Any principal use permitted in R-2A Low Density Residential District	Any accessory use permitted in the R-2A Low Density Residential District	Church *Cluster Development *Dwelling, multi-family Dwelling, two-family Hospital Nursery School Nursing or Convalescent Home Sanitarium Tourist Home

*See Supplementary Use Regulations

SCHEDULE OF NON-RESIDENTIAL DISTRICT USE REGULATIONS

Non-Residential District	Principal Uses Permitted By Right But Subject to Site Plan Approval	Accessory Uses Permitted By Right But Subject to Site Plan Approval	Special Uses Which May Be Allowed By Special Permit and Subject to Site Plan Approval
HB	Antique Shops Auto Sales Boat & Marine Accessory	Uses customarily incidental to the principal use	Auto Laundry Drive-In Business Gas Service Stations

Sales
 Bowling Alley
 Building Material Sales
 Clubhouse
 Commercial Nursery
 Farm Machinery Sales &
 Rental
 Furniture Store
 Home Furnishings
 Hotel, Motel
 Lumber Yard
 Medical & Health Services
 Restaurant
 Agriculture
 Animal Husbandry
 Building Material Sales
 Farm Machinery, Sales &
 Rental
 Hospital, Animal
 Kennel
 Lumber Yard
 Manufacturing subject to
 provisions of section
 Nurseries
 Public Utilities
 Research Facilities
 Testing Laboratories
 Agriculture
 Forest Nurseries
 Forestry
 Game Preserve
 Golf Course
 Parks, Public & Private
 Wildlife Preserve

Uses customarily incidental
 to the principal use
 Radio/TV Transmission Fac.

Uses customarily incidental
 to the principal use
 Dwelling, one-family
 Recreation Facilities
 Rod & Gun Club

I

LC

SCHEDULE OF AREA AND BULK REGULATIONS

District	Use	Min. Lot Size Area (acres)	Width (ft)	Front (ft)	Min. Yards (Setback) Each Side (ft)	Rear (ft)	Building Height (stories)	Building Height (ft.)	Max. Building Coverage
R-10A	Any Permitted Use	10	400	100	100	75	2½	35	10
R-5A	Any Permitted Use	5	300	100	75	75	2½	35	5
R-2A	Any Permitted Use	2	200	75	50	50	2½	35	10
R-1A	Multi-Family Use	10	350	100	100	100	2½	35	20
HB	Any Permitted Use	1	200	50	30	25	2½	35	7
I	Any Permitted Use	½	350	100	100	100	2½	35	20
LC	Any Permitted Use	5	400	80	15	50	—	35	15
	Any Permitted Use	10	400	100	100	75	1	35	20
								15	5

[8]

OFF-STREET PARKING AND LOADING SCHEDULE

USES

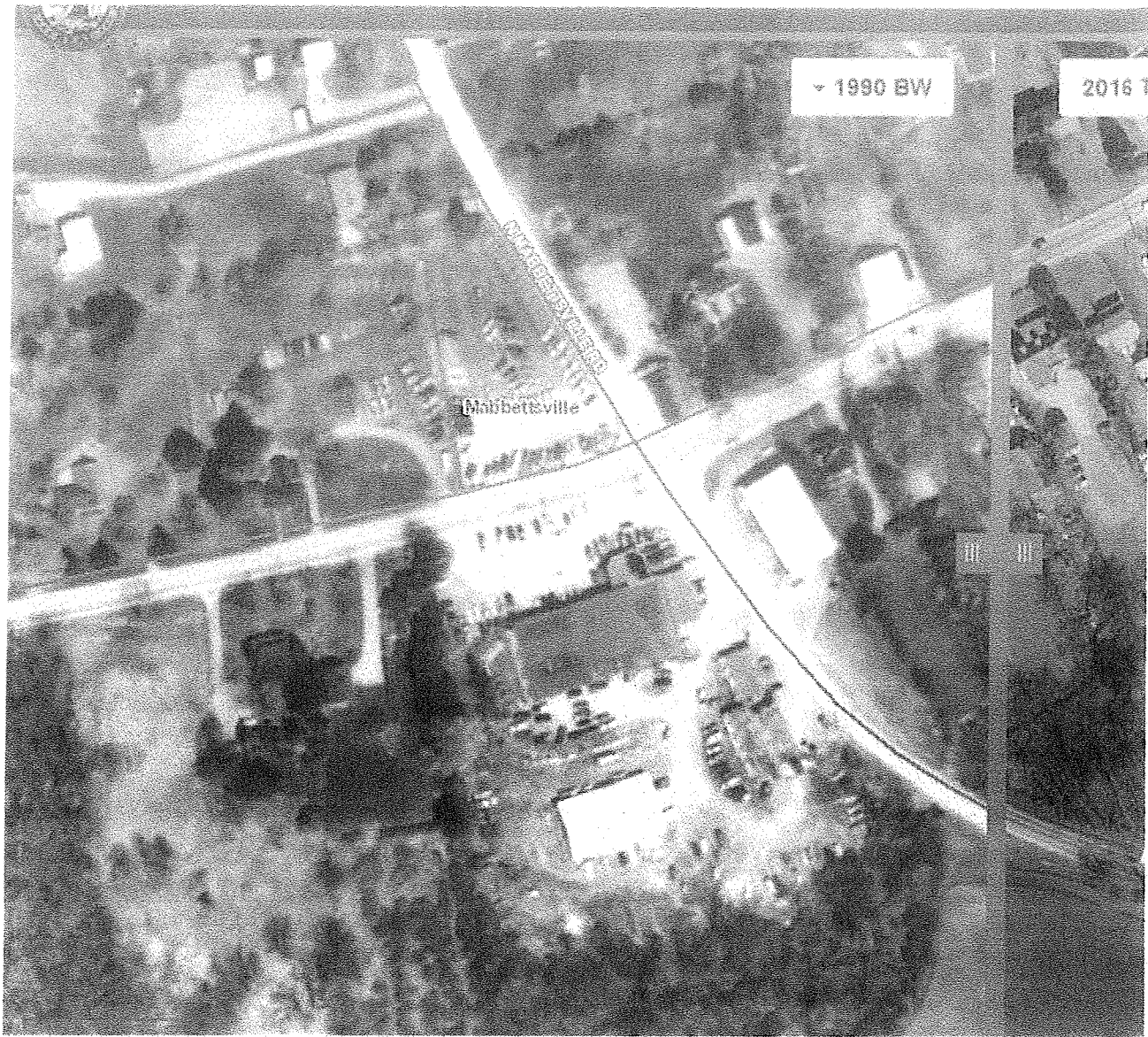
USES	NUMBER OF OFF-STREET PARKING SPACES REQUIRED
Places of Public Assembly	One for Each Four Seats
One-Family and Two-Family Dwellings	Two for Each Dwelling Unit
Hospitals	Two for Each Dwelling Unit
Retail Stores and Shops	One for Each Five Beds
Gasoline Service Stations	One for Each One Hundred (100) Square Feet of Ground Floor
Motels, Hotels	Three Per Each Employee Plus Space for All Vehicles Used
Restaurants	Directly in the Conduct of Such Business
Customary Home Occupations	One for Each Rental Unit
Nursing Homes	One for Each Five Seats
Educational Institutions	Four for Each Dwelling Unit
Sanitaria	Two for Each Three Beds Plus One for Each Employee
Industrial Establishments	One for Each Four Seats Plus One for Each Employee
Nursery Schools	One Per Each Three Beds Plus One for Each Employee
	Two Per Classroom

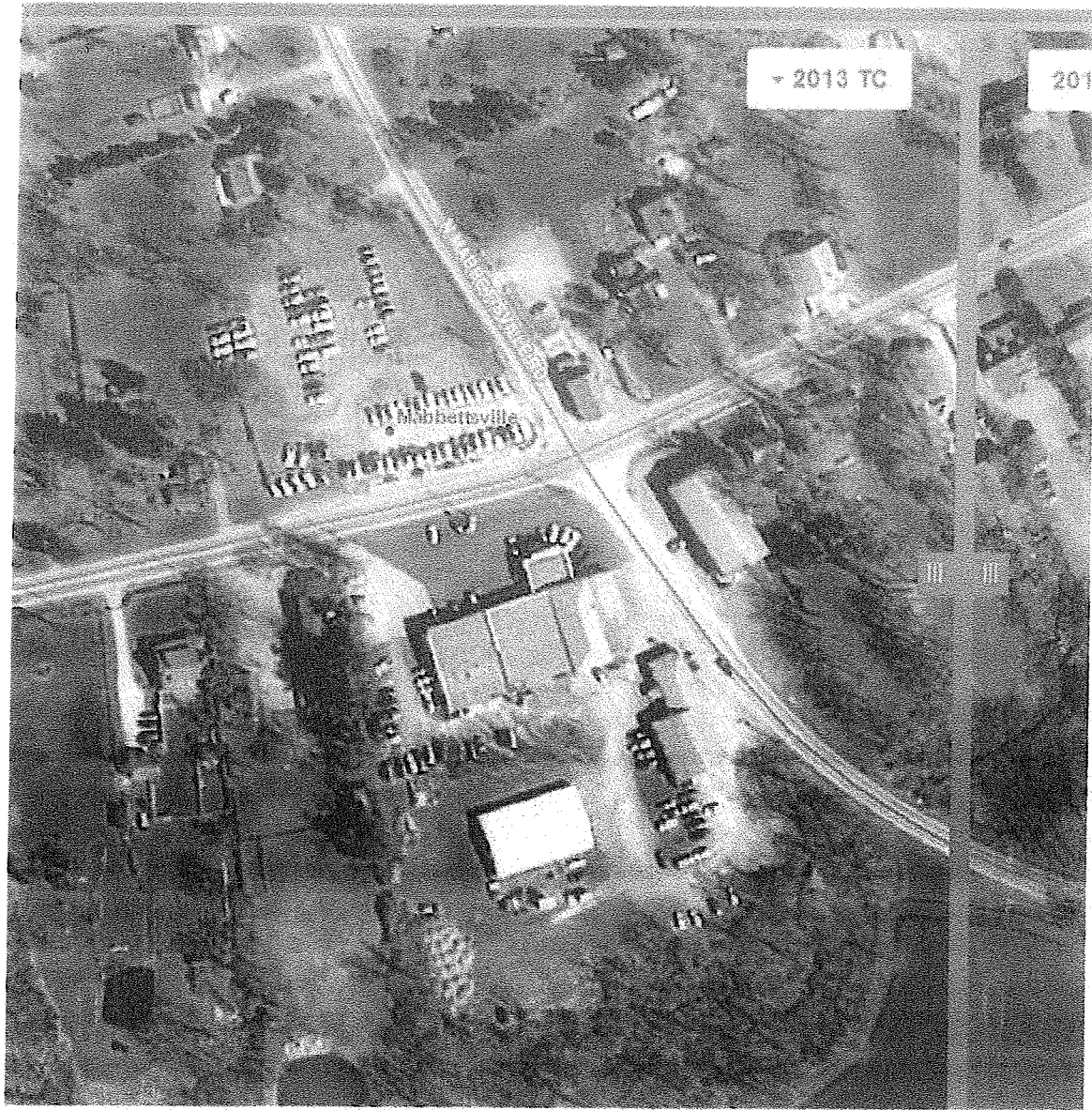
Exhibit 1

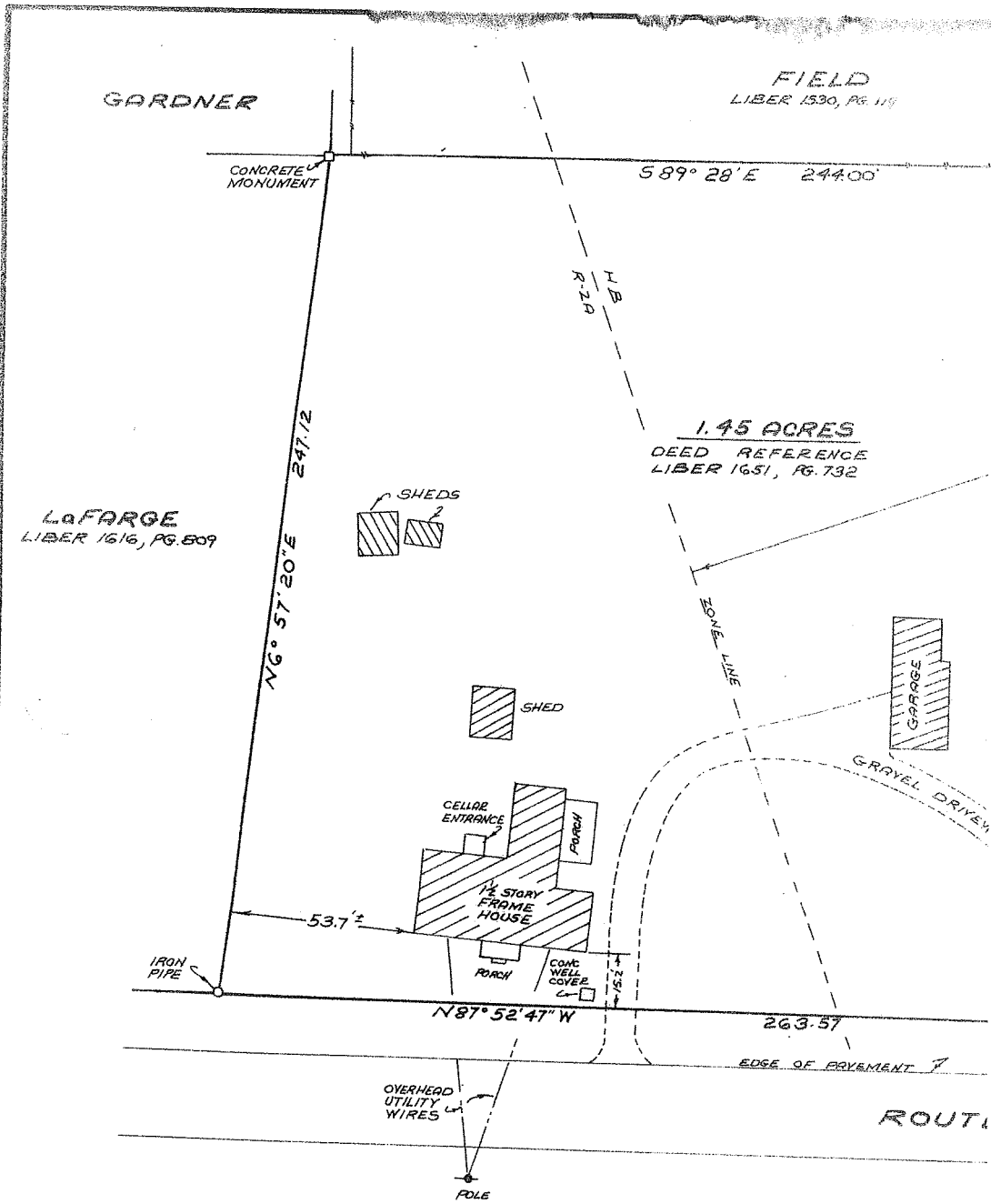
Establishment of Use

Following documents/pictures demonstrate the use of the tax grid no. 135889-6865-03-335381 and tax grid no. 135889-6865-03-353381 as a Auto Sales display and new/used car parking area dating back as far as 1970.





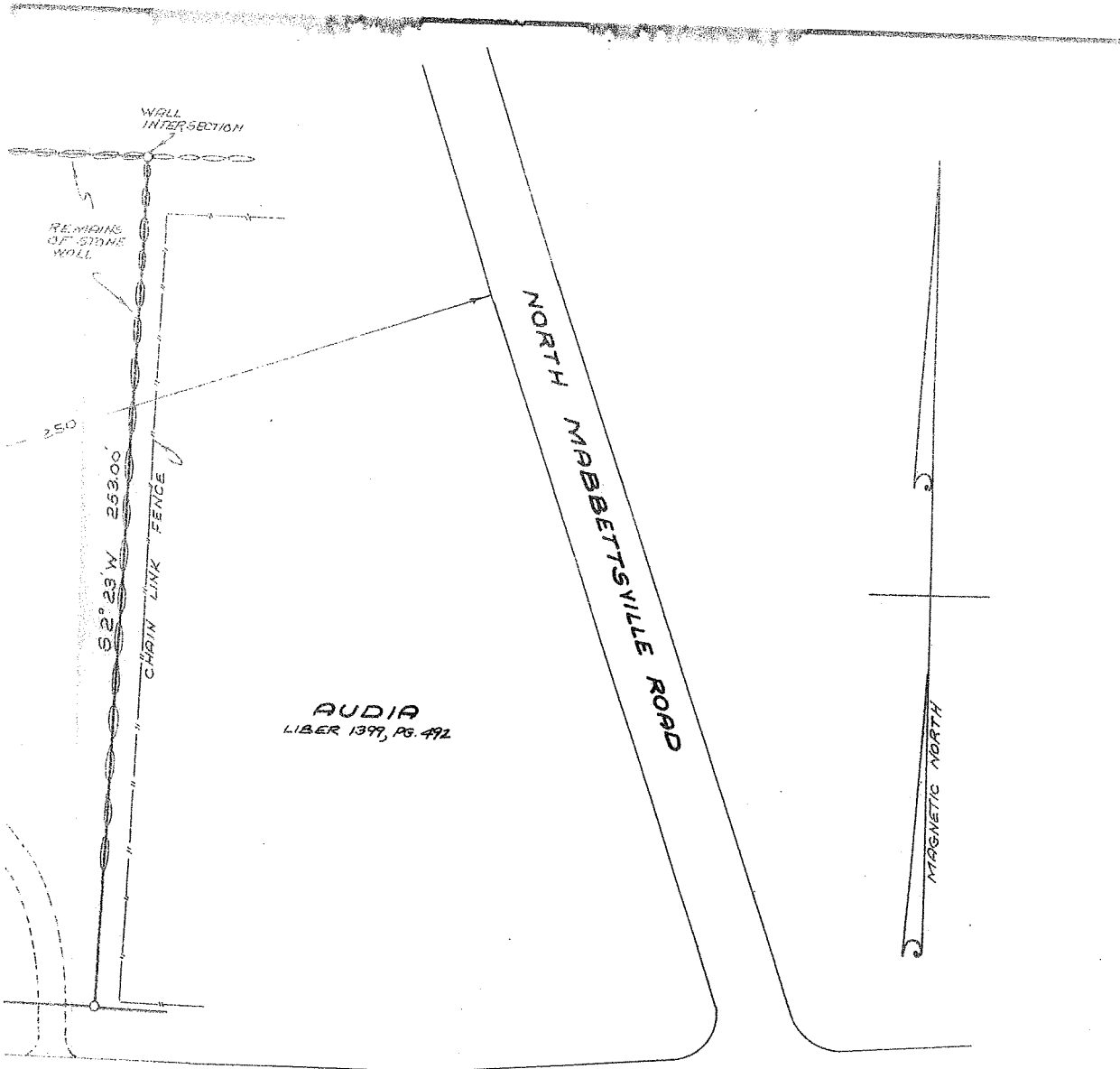




SURVEY MAP
 PREPARED FOR
ROBERT AUDIA
 AND
PETER AUDIA

TOWN OF WASHINGTON DUTCHESS CO., N.Y.
 SCALE 1" = 40' DECEMBER 10, 1981

CERTIFIED TO: 1. ROBERT AUDIA
 2. PETER AUDIA
 3. BANK OF MILLBROOK
 4. COMMONWEALTH LAND TITLE



44



KEVIN CUNNINGHAM
LAND SURVEYOR
P.O. BOX 577 BANGALL, N.Y.
914-868-7423