

JOHN H. DENNIS, Jr. and
MIRIAM S. DENNIS, his wife
VS
H. GUY CAMPBELL,
DANIEL W. DENNIS and
CARL F. VOHSEK
Constituting the Board of
Zoning Appeals of
Baltimore County

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY

ANSWER TO WRIT OF HABEAS CORPUS AND ORIGINAL
AND REVOKED COPIES OF PROCEEDINGS BEFORE
THE ZONING COMMISSIONER AND BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY

Mr. Clerk:

Please file, etc.

Counsel to Board of
Zoning Appeals of Baltimore County

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"The appeal in the above entitled matter coming on for hearing on the 11th day of December, 1952, before the Board of Zoning Appeals of Baltimore County, from an Order of Zoning Commissioner of Baltimore County dated November 13, 1952, granting a re-classification from an "A" Residential Zone to an "M" Light Industrial Zone in regard to the property therein described; and it appearing from the facts and evidence adduced at the appeal for the re-classification of an "A" Residential Zone to an "M" Light Industrial Zone would be detrimental to the general welfare of the community and for the welfare of the Buildings and Zoning Commissioner of Baltimore County and denying the application."

5. That the aforesaid Order of the Board of Zoning Appeals of Baltimore County dated May 7, 1953 should be reversed, set aside and annulled by this Honorable Court, because the said Order is illegal for the following reasons:-

A. That the Order of the Board of Zoning Appeals of Baltimore County constitutes and is an arbitrary and capricious act, and a gross abuse of administrative discretion for the following reason:

(1) That said Board in its opinion as a basis for the Order stated that a plat was introduced in evidence purporting to show the proposed location of the Baltimore County Beltway and Harrisburg Expressway and said opinion further added that from said plat that the Harrisburg Expressway, if actually constructed, in accordance with said plans, would cut off a portion of the Petitioner's property from access to any road except by a proposed service road. The Harrisburg Expressway (continuing from said opinion) has been subject to numerous changes as to location, and it does not appear that any plans which are only proposed and are not final should be of much weight in determining the re-classification of a piece of property, that in fact, said plat definitely shows the final location of the Baltimore County Beltway crossing the Northern Central Railroad and the property included in this petition for re-classification at an elevation of some thirty (30) feet, thereby completely cutting off this part from access to the remaining portion of the property of the applicant except by the intention of a right of way through property not owned by the applicant, and because of the construction of the Beltway and the taking of additional land south of the Beltway by the State Roads Commission for an interchange from the Harrisburg Expressway renders the land practically valueless as will be hereinafter more fully set forth. That the Board therefore in ignoring the existence of the proposed

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TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come H. Guy Campbell, Daniel W. Dennis and Carl F. Vohsek, constituting the Board of Zoning Appeals of Baltimore County, and in answer to the writ of certiorari directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies of original papers on file in the office of the Zoning Department of Baltimore County:

NO. 2051
ZONING MATTERS FROM BOOK OF ZONING
COMMISSIONER'S BALTIMORE COUNTY
July 10, 1953
Petition of John H. Dennis, Jr. and Miriam S. Dennis, his wife, for reclassification of property on the west side of Barton Ave., 1075 feet south of Seminary Ave., 5th District of Baltimore County, for reclassification from an "A" Residential Zone to an "M" Light Industrial Zone, filed.
Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for August 13, 1952 at 1:00 p.m.
Aug. 13, 1952
Certificate of posting filed
" 6, "
Aug. 13, "
At 1:00 p.m. hearing held on petition by Zoning Commissioner, same held sub voce.

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roads definitely to be constructed in accordance with said plans was arbitrary, illegal and unwarranted.

(2) That the Board in its opinion upon which the Order of May 7, 1953 was passed attempts to differentiate the case of Cook v. Board of Zoning Appeals of Baltimore County in which this Honorable Court reversed said Board in that said opinion states that the property under consideration in this application has ample means of ingress and egress over property now classified "A" Residential, which is entirely contrary to the facts and the evidence in that the Beltway and the Harrisburg Expressway, as the map clearly shows, completely cutting off the property being the subject of this application from any other property belonging to the applicant, savings and excepting across lands not owned by him and over which a right of way would have to be obtained.

(3) That the Order of the Board completely ignore testimony uncontradicted that at least a considerable portion of the property the subject of this petition for re-classification would be rendered useless for residential purposes and that the remainder could only be developed residentially by a comparatively cheap type of house entirely out of keeping with any other residential development in the area.

(4) That a majority of the protestants against the granting of the Petition are residents living North of the proposed Beltway and because of the construction of the Beltway at the height of thirty (30) feet, the property in question would be out of view and they could be in no wise adversely effected. That all of the remaining protestants, except one living on the opposite side of the road, are also at many places from three to ten feet above the level of the property sought to be re-classified, and likewise could not be adversely effected.

(5) That the Board of Zoning Appeals of Baltimore County in its opinion completely ignored the evidence in the case by stating that the area is a well established residential neighborhood when, in fact, a large sewage treatment plant much closer to the protestants than the property of the applicant, the Lutherville Lumber Company and the Stebbins-Anderson Coal Yard are all in the immediate vicinity. That said opinion also stated that

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Nov. 13, 1952
" 20, "
Order of Zoning Commissioner granting the reclassification in part, from an "A" Residential Zone to an "M" Light Industrial Zone.
Order of appeal to the Board of Zoning Appeals of Baltimore County, from Order of Zoning Commissioner, filed.

Dec. 13, "
Hearing on appeal before Board of Zoning Appeals.

May 7, 1953
Order of Board of Zoning Appeals filed reversing Order of Zoning Commissioner denying the petition for reclassification of the property, from an "A" Residential Zone to an "M" Light Industrial Zone.

June 4, "
Writ of certiorari and appeal to the Circuit Court for Baltimore County served on the Board of Zoning Appeals.

June 8, "
Transcript of testimony taken at appeal hearing filed.

June 10, 1953
Petitions, cards, letter and telegram of protest, list of names of persons appearing at appeal hearing, maps, plat and maps and maps filed at hearing before the Zoning Commissioner and Board of Zoning Appeals.

Record of proceedings filed in Circuit Court for Baltimore County.

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County as are also the use district maps and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations together with the zoning use district maps at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted,

Counsel to the Board of
Zoning Appeals of Baltimore County

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no error having been found in the original zoning, nor has there been a sufficient change to justify re-classification, again ignore the construction of the Baltimore County Beltway and the Harrisburg Expressway completely cutting off the property in question from the other property of the applicant and rendering the part proposed to be re-zoned totally unfit for residential use and thereby amounts to confiscation.

(6) Because said Board of Zoning Appeals states that the granting of the application would be detrimental to the general welfare of the community apparently based upon no specific reasons except generally as hereinafter set forth and is in direct contradiction of another order of said Board passed in a similar zoning application for a tract of forty-six acres on the Reisterstown Road in which hearing the overwhelming testimony was that said property on the Reisterstown Road was readily and easily adaptable for residential purposes, notwithstanding said Board affirmed a previous order of the Zoning Commissioner of Baltimore County granting said re-classification.

(7) That the Zoning Ordinance of Baltimore County and amendments thereto, and the Acts of the General Assembly under which said Ordinance has been passed are unconstitutional, illegal and void.

That this Petition and appeal in filed pursuant to the provisions of Chapter 502 of the Laws of Maryland 1945 Section of the General Assembly.

WHEREFORE, Your Petitioners pray:-

1. That a Writ of Certiorari be issued by this Honorable Court, directed to the Board of Zoning Appeals of Baltimore County, and prescribing a time within which a return thereto must be made and served upon the relative's attorney.

2. That this Honorable Court reverse, set aside, annul and declare void and of no effect the order of the Board of Zoning Appeals of Baltimore County dated May 7, 1953.

3. That the Board of Zoning Appeals of Baltimore County be required to return to this Honorable Court the original papers acted upon by it, or certified or sworn copies thereof, together with a transcript of

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FILED JUN 4 1953

JOHN H. DENNIS, JR. and
MIRIAM S. DENNIS, his wife
VS
H. GUY CAMPBELL,
DANIEL W. DENNIS and
CARL F. VOHSEK
Constituting the Board of
Zoning Appeals of Baltimore
County

IN THE CIRCUIT COURT

FOR

BALTIMORE COUNTY

PETITION FOR
WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition and appeal of John H. Dennis, Jr. and Miriam S. Dennis, his wife, petitioners, respectfully show:-

1. That your Petitioner, John H. Dennis, Jr., is the owner of a certain parcel of land located near Lutherville in the Eighth Election District of Baltimore County, Maryland, said parcel of ground being more fully described in an Application for re-classification filed with the Zoning Commissioner of Baltimore County hereinafter referred to.

2. That your Petitioner heretofore filed a petition for re-classification for said property from an "A" Residential Zone to an "M" Light Industrial Zone in May, 1952.

3. That under date of November 13, 1952 the Buildings and Zoning Commissioner for Baltimore County passed an Order in which he granted your Petitioner's request for the aforesaid re-classification, as will more fully appear from the copy of said Order filed in said proceedings.

4. That subsequent to said decision and Order of the Buildings and Zoning Commissioner of Baltimore County passed as aforesaid, an appeal was filed by a number of protestants to the Board of Zoning Appeals of Baltimore County that upon said appeal said Board of Zoning Appeals of Baltimore County began hearings on the 11th day of December, 1952, which hearings were continued on January 8, 1953, and on May 7, 1953 said Board passed an Order sustaining the appeal and reversing the decision of the Buildings and Zoning Commissioner of Baltimore County, the grounds of said decision being stated said Order, after preliminary comments in an opinion then filed as follows:

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testimony taken at the time of the hearing before the said Board, and all exhibits or copies thereof, and that such return shall set forth such other facts or facts as may be pertinent and material to show the grounds upon which the Order appealed from was made.

5. And for such other and further relief as the nature of your Petitioner's cause may require.

John H. Dennis, Jr.

Miriam S. Dennis

James W. L. Anderson
Attorney for Petitioners

STATE OF MARYLAND, BALTIMORE COUNTY, to-wit:-

I HEREBY CERTIFY, That on this day of June, 1953, before me, the undersigned, a Notary Public of the State of Maryland, in and for Baltimore County aforesaid, personally appeared JOHN H. DENNIS, JR. and MIRIAM S. DENNIS, his wife, Petitioners herein, and made oath in due form of law that the matters and facts set forth therein are true to the best of their knowledge, information and belief.

AS WITNESSES my hand and Notarial Seal.

Notary Public

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JAMES H. DENNIS, JR. and
MIRIAM S. DENNIS, his wife,
vs.
N. OTT CAMPBELL,
DANIEL W. HUBBARD and
CARL F. WILSON,
consisting of the BOARD OF
ZONING APPEALS OF BALTIMORE
COUNTY

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY

ORDER

UPON the foregoing Petition, Appeal and Affidavit, it is
this 7th day of June, 1953, by the Circuit Court for Baltimore County,
ORDERED that a writ of Certiorari be issued, directed to the
Board of Zoning Appeals of Baltimore County, to review the decision and order
of said Board of Zoning Appeals for Baltimore County dated May 7, 1953 and
that a return thereof must be made and served upon the relators' attorney
within ten (10) days from the date of this Order; and

It is further ordered that the Board of Zoning Appeals of
Baltimore County be and it is hereby required to return to this Court the
original papers acted upon by it, or certified or sworn copies thereof, to-
gether with a transcript of testimony taken at the hearing before said Board,
exhibits or copies of the exhibits filed before it, and conclusively settling
forth such other facts that may be pertinent and material to show the grounds
of the decision and order appealed from.

True Copy Test.
George F. Ryer, Jr.
Clerk.

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**OPINION OF THE BOARD OF ZONING APPEALS
OF
BALTIMORE COUNTY**

This is an appeal by William H. C. Edwards, Raymond
P. Gili, and William S. Payson from an Order of the Zoning
Commissioner of Baltimore County dated November 13, 1952,
granting the reclassification from an "A" Residence Zone to
an "F" Light Industrial Zone in regard to the part of the
property described in the petition.

The case came on for hearing before the Board, testi-
mony was taken, and counsel heard.

The property which is the subject of this petition
is located on the northwest side of the Northern Central Railroad
at the southernmost end of Burton Avenue, Lutherville, containing
approximately 8 acres of land. A plat purporting to show the
proposed location of the Baltimore County Beltway and the
Harrisburg Expressway was introduced, and from said plat it was
noted that the Harrisburg Expressway, if actually constructed
in accordance with said plans, would cut off a portion of the
Petitioners' property from access to any road except by a proposed
service road. The Harrisburg Expressway has been subject to
numerous changes as to location, and it does not appear that
any plans which are only proposed and are not final should be
of much weight in determining the reclassification of a piece
of property.

This case is different from Cook vs. Board of Zoning
Appeals of Baltimore County in several respects, one of which
is that the particular piece of property now under consideration
does have ample means of ingress and egress over property which
is now classified "A" Residential. It can also be distinguished
from the Thomas Offutt vs. Board of Zoning Appeals case at
Gwings Mills, Maryland, in that there are no areas reclassified
for Light Industrial in the vicinity of the Dennis property.

RE: PETITION FOR RECLASSIFICATION FROM AN "A"
RESIDENCE ZONE TO AN "F" LIGHT INDUSTRIAL
ZONE - W. S. Burton Ave., 1075 ft. S. Seminary
Ave., 8th Dist., John M. Dennis, Jr., and Miriam
S. Dennis, Petitioners.

The appeal in the above entitled matter coming on
for hearing on the 18th day of December, 1952, before the
Board of Zoning Appeals of Baltimore County, from an Order
of the Zoning Commissioner of Baltimore County dated November
13, 1952, granting a reclassification from an "A" Residence
Zone to an "F" Light Industrial Zone in regard to the property
described therein; and it appearing from the facts and evidence
adduced at the appeal that the reclassification of an "A"
Residence Zone to an "F" Light Industrial Zone would be
detrimental to the general welfare of the community and for
reasons set forth in the opinion; therefore,

It is this 7th day of May, 1953, Ordered by the
Board of Zoning Appeals of Baltimore County that the Order of
the Zoning Commissioner of Baltimore County be reversed and the
petition for reclassification from an "A" Residence Zone to an
"F" Light Industrial Zone be denied.

Board of Zoning Appeals of
Baltimore County

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in this case; and it will, therefore, pass its Order denying
the petition for reclassification from an "A" Residence Zone
to an "F" Light Industrial Zone.

Petition for Reclassification from an
"A" Residence Zone to an "F" Light
Industrial Zone - W.S. Burton Ave.,
1075 ft. S. Seminary Ave., 8th Dist.
John M. Dennis, Jr. and Miriam S. Dennis,
Petitioners

BEFORE
AUGUSTINE J. MILLER
Zoning Commissioner of
Baltimore County

Mr. Commissioners
Please enter an appeal on behalf of William H. C. Edwards,
Raymond P. Gili, and William S. Payson from the decision in the above
entitled case to the Board of Zoning Appeals.

Board of Zoning Appeals of
Baltimore County

RE: PETITION FOR RECLASSIFICATION FROM AN "A"
RESIDENCE ZONE TO AN "F" LIGHT INDUSTRIAL
ZONE - W. S. Burton Ave., 1075 ft. S. Seminary
Ave., 8th Dist., John M. Dennis, Jr., and Miriam
S. Dennis, Petitioners

The property which is the subject of this petition is located
on the northwest side of the Northern Central Railroad at the
southernmost end of Burton Avenue, Lutherville, 8th District.
It is the contention of the petitioners, J. M. Dennis, Jr., and
Miriam Dennis, Incorporated, the contract purchaser, that the property
located as it is adjacent to the railroad is ideally suited
for light industry. It is also the contention of the petitioner
that the property, lying between the railroad and the proposed
Baltimore County Beltway and the Harrisburg Expressway, is
unsuitable for residential development.

The plan on file in this Department indicates that the
Harrisburg Expressway, if continued south of the proposed Baltimore
County Beltway, will leave a parcel of land comprising approximately
8 acres. This eight acre tract is the southernmost portion of the
land described in the petition for reclassification. It is also
Gili, Director of the Baltimore County Planning Commission, informed
this Department that the location of the Beltway will be as shown
on the plan on file with this Department. This plan calls for
the Beltway to cross the Northern Central Railroad immediately
to the south of the southernmost end of Burton Avenue. The Planning
Commission also informed this Department that no access will be
had to the Beltway from Burton Avenue nor will there be any access
to Burton Avenue from the eight acre parcel which is the subject
of this petition.

Protestants to the granting of this reclassification
stated that Burton Avenue should not be used for access to this
proposed industrial use as such use of a residential road would
have an adverse effect upon the residences there situated. The
protestants also testified that the use of the property in
question for industrial use could have an adverse effect upon
the enjoyment of their property for residential use, as well
as having an adverse effect upon the value of their properties.

It is the opinion of the Zoning Commissioner of Baltimore
County, that, that portion of the land described in the petition
hereinafter described, is not suitable for residential develop-
ment, being located as it is between the railroad and the Beltway,
both of which will be heavily travelled through roads. It would
appear that the logical use of such a parcel of land would be for
light industrial. The State Roads Commission has indicated that
access to the property should be by means of a service driveway
leading easterly either to Therman Road or to Deppa Road
and that no access will be allowed by way of Burton Avenue as
said Burton Avenue will terminate north of the Beltway.

nor have there been any reclassifications from "A" Residential
to Light Industrial since the original zoning.

From the testimony in the case and from the view
of the property, it is apparent that this is a well established
residential neighborhood and there is no evidence or showing
that there has been any error in the original zoning, nor that
there has been a sufficient change to justify a reclassification.

There was considerable testimony as to Light Industrial
Zones being set up along railroads in general, and that the
property lying along a railroad is not adapted to residential
development; but there was much testimony to the contrary,
namely, that many substantial homes exist along this railroad
and have been there for a number of years, and also that new
homes have been built in recent years in spite of the closeness
of the railroad tracks. The mere existence of a railroad does
not make the adjoining property unfit for residential use, nor
per se make it adaptable for industry.

The mere allegation of a need for industry in the
County and particularly in this area in order to provide work
and employment for persons living in the area is worthy of
consideration, but in an effort to establish such zones there
is danger of destroying the effectiveness of established
residential zones and it is incumbent to show more than a need
for industry, but rather that the same should be properly located
which has not been done in this instance.

The Board is of the opinion that the granting of this
reclassification would be detrimental to the general welfare
of the community, and that it is not the logical or reasonable
location for industry, and that there has been shown no error
of original zoning, nor change or need justifying reclassification.

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There is a great need for the disposal of industry
in the County. In addition to the desirability of dispersal from
standpoint, there is also a great need from a civilian
standpoint. There is a need for the setting up of light industrial
areas to the north, northwest and northeast of the city to provide
and labor are available. Not only are these locations desirable
as far as industry is concerned but they are desirable as far as
the inhabitants are concerned in that they will provide local
employment.

With the increase of traffic problems in the County
herebefore mentioned be required to travel to either the south-
eastern or southwestern sections of the County or to Baltimore
City where existing industrial areas have been established and
where industry is now located.

For these reasons it would appear that the location of
a desirable industry on the property in question is logical and
reasonable.

It is the opinion of the Zoning Commissioner of Baltimore
County that the reclassification of this property for Light Industrial
use will not be detrimental to the health, safety and general welfare
of the community and the reclassification should be made.

It is this 13th day of November, 1952, ORDERED by the
Zoning Commissioner of Baltimore County that, that part of the
above described property hereinafter described, should be and the
same is hereby reclassified, from and after the date of this Order
from an "A" Residence Zone to an "F" Light Industrial Zone, the
property as to be reclassified being as outlined in red on the
attached plat which is made a part of this Order and more particularly
described as follows:

All that parcel of land beginning at a point on the
northwest side of the Northern Central Railroad and the southern-
most point being 300 feet southeast of the intersection of the west
side of Burton Avenue and the northwest side of the Northern
Central Railroad, thence binding on the northwest side of said
feet, more or less, to intersect the North 3 degrees 25 minutes
East 142.21 feet line in petition, thence binding in part on said line
North 3 degrees 25 minutes East 745 feet, more or less, to the
southeast corner of the proposed Harrisburg Expressway, thence
thence binding on said easement line and running in a northeasterly
and easterly direction, 1520 feet, more or less, to beginning.

Board of Zoning Appeals of
Baltimore County

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RE: PETITION FOR RECLASSIFICATION FROM AN "A" RESIDENCE ZONE TO AN "I" LIGHT INDUSTRIAL ZONE - S. S. Burton Ave., 1475 To S. Chesapeake Ave., 5th Dist. John H. Dennis, Jr. and Miriam S. Dennis, Petitioners

The hearing of this case before this Board on appeal by certain protestants from an Order of Augustine J. Haller, Zoning Commissioner of Baltimore County, passed on the 13th day of November, 1952 granting the reclassification as applied for.

The applicant in the presentation before this Honorable Board located with particularity the property of the Indwin Incorporated, contract purchaser, described in minute detail not only the operation of the proposed industry, but also the character of the building proposed to be erected both as to size and construction.

The plans were introduced in evidence showing the location of this property with respect to the balance of the property owned by the applicant and it is bounded roughly in the following manner: On the east and southeast by the Northern Central Railway, on the west by property owned by Mary Gilles Dennis and on the north and northwest by the outline as indicated on said plat of the property proposed to be acquired by the State of Maryland and Baltimore County for the extension of the Harrisburg Expressway and the Baltimore County Beltway respectively. The whole tract proposed to be rezoned contains about 8 acres, of which approximately 3 acres is contained in a narrow neck or strip of land lying between the railroad and the proposed road. The remaining 5 acres contain some fairly level and slightly elevated land, the remaining portion being swampy and adjacent to the railroad.

The applicant, and particularly the contract purchaser, Indwin Incorporated through its officials, testified that the building would be one story in height not exceeding 16 feet of masonry construction and attractively finished. They further stated it was their idea to use gas for heating purposes (gas now being available in the development known as "Spring Valley", a part of the Dennis property and in reasonable close proximity to the property sought to be rezoned, thereby enabling the extension of gas economically). It was further testified and not contradicted that from the operation of the Indwin Incorporated in the manufacture of plastic products, that no offensive odors were created which could be detrimental to the neighborhood, that there

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was no noise or smoke and that within 5 feet of the operation little or no evidence was apparent of any operation at all. One shift is the extent of the present operation requiring no night work, and any night lighting would be of a minor character and for protection and safety purposes only. The movement of materials and finished products in and out of the premises is of a very minor nature from a traffic standpoint, with a daily average not exceeding twelve trucks and if a railroad siding were needed there would be delivered about two cars per week. It was further testified that while there was some noise in the building during operations, nothing could be heard a few feet away, that electricity was used for the machinery, creating some slight noise in the building, but not heard outside, that the materials and finished product was resistant to combustion and created no fire hazard. The only shift operated consists from 50 to 175 employees and is of day time use and, while other employees to the extent of 20 to 40 would be used on other shifts to keep the machinery operating so the production would not be slowed down by a stoppage of the machinery, it constituted no noticeable operation. No dirt of any kind would emanate as the way nature of the business required cleanliness to a minute detail. The proposed building would cover about an acre with ample parking space provided for employees driving their automobiles and the testimony showed that the property was to be landscaped, thereby making it an attractive setting. It was conceded by the applicant that there was a possibility of the growth of the plant beyond the present proposal, but this was precluded as to both time and extent.

Many of the protestants live on Seabury Avenue or in Lutherville and the evidence clearly showed that this protest was without any substantial foundation inasmuch as between the proposed Indwin plant and the Seabury Avenue and Lutherville residents the Beltway would be constructed crossing the railroad to the north of this property at an elevation of 20 feet above the bed of the railroad and continuing eastward through the Dennis property, thereby completely eliminating the plant building from sight or hearing. One protestant appeared from the development of "Spring Valley", a Mrs. Weldon, who stated that she and her husband objected to the factory, as she termed it, as they don't like the noise, smoke or traffic and there was no evidence of the existence of any of these factors. Twelve trucks a day over a service road, which

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would have to be constructed, as both the Beltway and the extension of the Harrisburg Expressway are non-access highways and would extend from the property in question to the Joppa Road, would make this truck movement compared to the probable thousands of trucks which would pass near not only the property of Mr. & Mrs. Weldon, but all other properties in the neighborhood, of such a relatively small quantity compared to the large number traveling the highways as to make the comparison absolutely negligible.

The remaining protestants were Mr. William Herrick, who owns property across the railroad and fronting on Seabury Avenue, and some occupants of homes on the latter. It is respectfully submitted that this protest is without much force inasmuch as their properties face away from the property in question, a railroad intervenes, a sewerage disposal unit is almost in their back yards, and the proposed plant would have no possible effect upon them or the safety, health, morals or general welfare of the community.

Some testimony was introduced based purely upon conjecture that it would depreciate the value of their property and yet the only concrete evidence which entirely refutes such contention was that a lot on Seabury Avenue originally sold by Mr. Herrick for \$2750.00, was resold for \$3000.00 long after this zoning application had been filed and after the first hearing before the Commissioner.

The reclassification of this particular property had been applied for in the summer of 1951 and a hearing held before the Commissioner. No action was taken by the Commissioner upon the request of the Chief Engineer of Baltimore County and the Director of the State Roads Commission pending the final decision as to the location of said roads and the amount of property belonging to Mr. Dennis that would be needed for road purposes. It was not until these latter questions were definitely decided that the Zoning Commissioner was released from this restriction and enabled to render a decision and upon said release the application for rezoning was granted only during all this preceding period due to no fault of the applicant his property was held up of any use whatever no matter what day has been his desire.

The testimony of real estate experts produced on behalf of the applicant with respect to this property was definitely to the effect that because of the location of the two roads proposed by the State and County authorities

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(which the applicant had no power to prevent) it rendered this property absolutely unfit for any use other than light industrial. This applied not only to the lot, or narrow strip as shown on the plat, but also as to the remainder of the property sought to be reclassified because of the swampy nature of part of it and the non-access of the balance to any roads or estate except by permissive use across lands not owned by the applicant. While the real estate experts testifying for the protestants as to the effect upon surrounding residential properties was that it might have some adverse effect, they, nevertheless, also testified that the strip of land shown on the plat was utterly useless for residential purposes and that while, in their judgment, a part of the land sought to be classified may be available for residential use, it would have to be for a class of houses inferior not only to the properties of the applicant but even to the development of "Spring Valley", which probably was of a somewhat less expensive general character.

All this leads to one conclusion that to deny the application for rezoning would amount to confiscation of the land of the applicant.

The courts in all of the decisions pertaining to zoning readily state that the zoning is in derogation of the common law rule of property owners to use property in any manner they may see fit, the creation of businesses, of course, being excepted. The courts further say that in the exercise of this police power of municipal corporation (1) that any plans shall be by no means governed, and (2) that where failure because of conditions applicable to any special tract render the property unusable for any other purpose than for which reclassification is sought amounts to confiscation of an owners' property and every constitution guarantees that confiscation shall not be had without due process of law. Judge Murray in a most recent opinion in the case of Edwin B. Klotner, et al against the Board of Zoning Appeals dealt with special exceptions of reclassification as contrasted with so called spot zoning and in that opinion the court said -

"A special exception means exactly what the original (statutory) use of the words imply, a special permitted use in a particular area granted only for the overriding and compelling reasons not applied to the whole area, and based on need, hardship and other related foundations."

In *Dwyatt vs. Maryland Jockey Club*, 175 Md. 390, the court announced the rule that -

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FILED JUL 10 1951 #2051 Petition for Zoning Re-Classification

To The Zoning Commissioner of Baltimore County -
I, or we, John H. Dennis, Jr. and Miriam S. Dennis, of the property situate

All that parcel of land on the west side of Burton Ave., 1475 To S. Chesapeake Ave., 5th District of Baltimore County, beginning 1075 feet South of Seabury Ave., thence easterly and bounding on the west side of Burton Ave., 200 feet, thence southerly and bounding on the north side of the Northern Central Railroad, thence southerly and bounding on the north side of the Northern Central Railroad, 270 feet, thence North 3 degrees and 30 minutes East 100 feet, thence South 87 degrees 30 minutes East 200 feet to place of beginning

hereby petition that the zoning status of the above described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an "A" Residence zone to an "I" Light Industrial zone for Reclassification - property located adjacent to railroad - and is ideal for light industry - Contract purchaser in plastic industry.

Size and height of building: front - feet, depth - feet, height - feet. Front and side set backs of building from street lines: front - feet, side - feet. Property to be posted as prescribed by Zoning Regulations.

We, we, agree to pay expenses of above reclassification, advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

WEDNESDAY, AUGUST 22, 1951
by T.W. Wainwright, President
Contract Purchaser Address: Rockwood Road

ORDERED By The Zoning Commissioner of Baltimore County, this 30th day of August, 1951, that the subject matter of this petition be advertised, as required by the "Zoning Law of Baltimore County," in a newspaper of general circulation throughout Baltimore County, that property be posted, and that the public hearing herein be held in the office of the Zoning Commissioner of Baltimore County, in the Rockwood Bldg., in Towson, Baltimore County, on the 13th day of August, 1951, at 1:00 o'clock, P.M.

Zoning Commissioner of Baltimore County

(over)

MICROFILMED

"Restrictions imposed by the State upon private property can only be justified where they are required for the reasonable protection of the public health, safety, morals or welfare."

Certainly in this case the restriction of residential classification upon the private property of John H. Dennis, Jr. cannot be justified when there is no evidence that a change in classification effects in any way the reasonable protection of public health, safety, morals or welfare. This case further held in effect that in rezoning from a higher to a lower class the presumption favors the lower classification and unless clear proof is had that such reclassification jeopardizes the public health, morals, safety or welfare, the power to rezoned exists as a matter of right.

For all of the reasons above stated, and particularly because there is no evidence in this case of any special or substantial nature of any adverse effect upon surrounding property, but on the contrary, only affects only the property of the applicant by practical confiscation, if reclassification is not granted, we respectfully submit that the order of the Zoning Commissioner should be upheld. It might be further noted in conclusion that the installation of the roads themselves, namely the Beltway and Expressway, will completely change the character of the entire neighborhood and the erection of an industrial plant in this depressed area, certainly as it is by the proposed new road and the railroad, not only render it an adaptable place for industry but render the property practically unfit for any other use, thereby depriving the owner of his common law right of use of property by what would be a confiscatory use of the police power of the State. We respectfully urge the Board of Zoning Appeals to sustain the Order of the Commissioner, who very clearly and adequately states in his opinion, a part of this record, his reasoning for the granting of the application.

Respectfully submitted,

John H. Dennis, Jr.
Miriam S. Dennis

Attorneys for Petitioners

MICROFILMED

\$21.00

RECORDED by John H. Dennis, Jr., the son of Twenty Three (23) Dollars, being cost of petition for reclassification, advertising and posting property, west side Burton Avenue, 5th District of Baltimore County.

Zoning Commissioner

Hearings
Monday, August 22, 1951
at 1:00 P.M.
303 Washington Avenue

PAID
AUG 20 1951
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

\$9.20

RECORDED by James C. L. Anderson, Attorney for John H. Dennis, Jr., et al, the sum of \$9.20 being cost of certified copy of petition and other papers filed in the matter of Reclassification of property on Burton Ave., 5th District.

Zoning Commissioner

PAID
JUN 30 1953
COUNTY COMMISSIONERS
OF BALTIMORE COUNTY

July 27, 1951

\$23.00

RECEIVED of John M. Dennis, Jr., the sum of Twenty
Three (\$23.00) Dollars, being cost of petition for reclassification,
advertising and posting property, west side Burton Avenue,
8th District of Baltimore County.

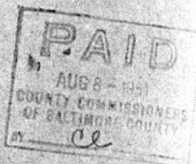
Zoning Commissioner

Hearings:

Monday, August 13, 1951

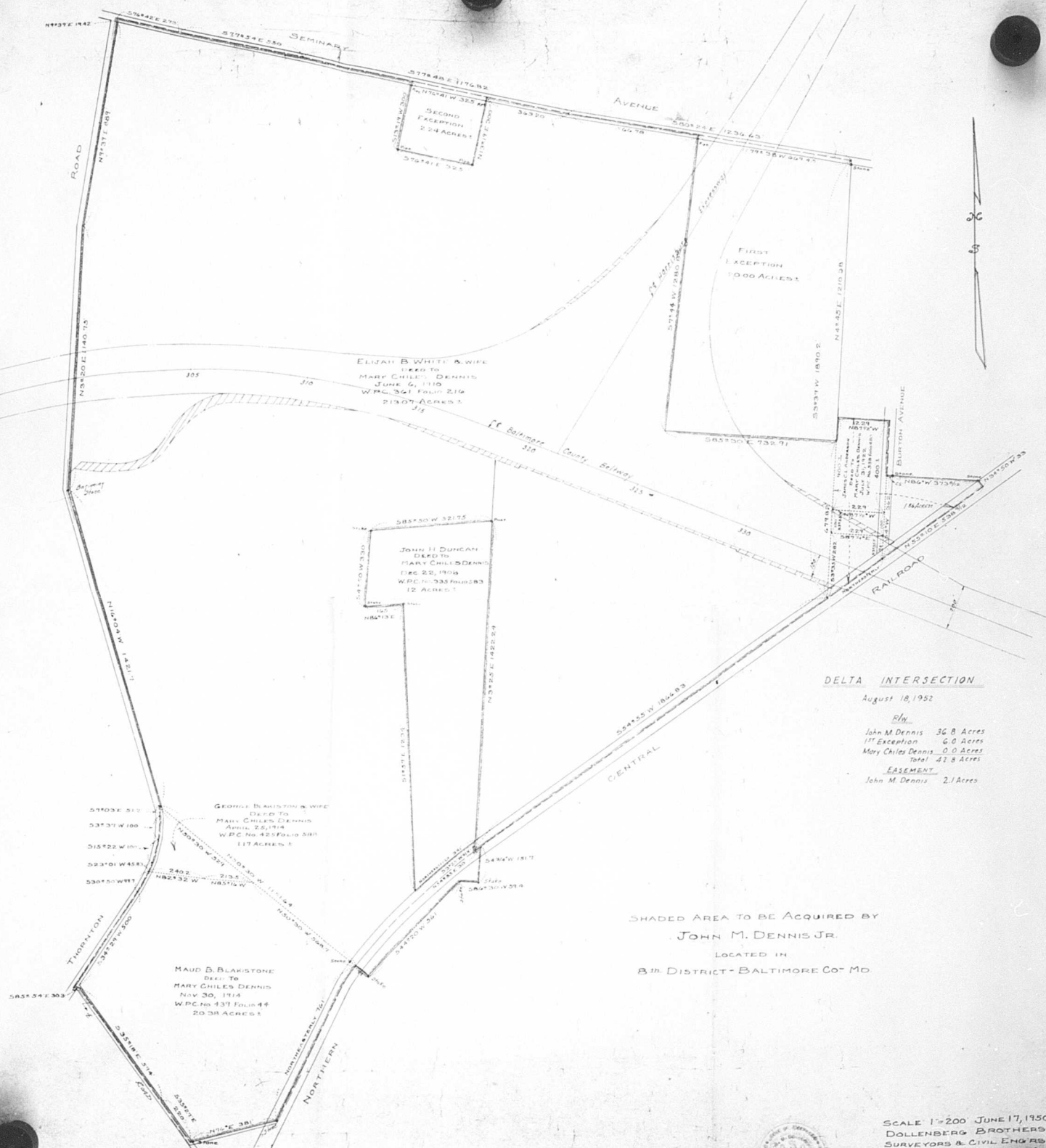
at 1:00 p. m.

303 Washington Avenue



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 8th #2051
Posted for: From an "A" Residence Zone to an "F" Light Industrial Zone
Petitioner: John M. Dennis, Jr. Date of Posting: 8-3-51
Location of property: W. S. Burton Ave. beginning 1075 feet south of
Seminary Avenue.
Location of Signs: Two signs, one posted at the intersection of west side
of Burton Ave. at intersection of Seminar Ave., second 1090 ft south of Seminar Ave.
Remarks: W. S. Burton Ave.
Posted by: George R. Hummel Date of return: 8-3-51



DELTA INTERSECTION

August 18, 1952

PLG

John M. Dennis 36.8 Acres

1st Exception 6.0 Acres

Mary Chiles Dennis 0.0 Acres

Total 42.8 Acres

EASEMENT

John M. Dennis 2.1 Acres

SHADED AREA TO BE ACQUIRED BY
JOHN M. DENNIS JR.
LOCATED IN
BTH DISTRICT - BALTIMORE CO - MD.

SCALE 1"=200' JUNE 17, 1950
DOLLENBERG BROTHERS
SURVEYORS & CIVIL ENGINEERS
709 WASH. AVE. TOWSON, MD.

Note: Compiled from deeds.

