

Department of Public Works
BUREAU OF LAND DEVELOPMENT
Inter-Office Correspondence

From: GEORGE N. LEWIS
to: CHARLES H. FITZPATRICK
Subject: Zoning Petition #270-8-10
Reclassification & Exception
Drive-In Theatre
Belair Road 1/2 E of White Marsh Run
District #11

This office has received the following comments from the Bureau of Engineering with respect to the flood plain for White Marsh Run and White Marsh Boulevard and its effect on the subject property:

"Attached is a copy of the plat covering the property under consideration for reclassification and exception as a Drive-In Theatre on the south side of Belair Road just north of White Marsh Run. We have indicated on the plat the extent of a 50 year flood plain along White Marsh Run, because of the low flat areas adjacent to the stream, the flood plain spreads out to as much as 300' in some spots. This information was developed by the use of our 1" = 300' scale topographic maps."

Attached also is a plat showing the tentative location of White Marsh Boulevard with respect to this property.

George R. Lewis
GEORGE N. LEWIS
Chief - Permit Section

CH:ls
Attach. (2 plats)

March 24, 1957

\$9.00

RECEIVED of Johnson Bowls, Attorney for Petitioners, the sum of Nine (\$9.00) Dollars, being cost of certified copies of papers filed in the matter of petition for a special exception for Drive-In Movie Theatre, southeast side of Bel Air Road 750 feet north of White Marsh Run, 11th District.

Zoning Commissioner

01.621

RECEIVED
MAR 27 1957
COMPTROLLER
770

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
TOWSON, MARYLAND

District: 11th Date of Posting: 11-28-56
Posted for: Maurice W. Baldwin, 20 York & Belair, Inc. Trustees
Petitioner: Milton Tolle, 212 Washington Avenue, Towson, Maryland
Location of property: 721 1/2 Belair Rd. 1/2 E of White Marsh Run
Location of sign: East side of Belair Rd. 721 1/2 ft. southeast of subject property
Remarks: None
Posted by: George R. Lewis Date of return: 11-28-56

December 10, 1956

\$10.00

RECEIVED of Johnson Bowls, attorney for petitioners Tolle and Blanchard, the sum of Ten (\$10.00) dollars to cover additional cost of advertising the property on Belair Road and White Marsh Run, 11th District of Baltimore County.

Zoning Commissioner
of Baltimore County

trd

RECEIVED
DEC 11 1956
COMPTROLLER'S OFFICE

December 28, 1956

November 19, 1956

\$50.00

RECEIVED of Lawrence E. Emery, attorney for petitioners, the sum of Fifty (\$50.00) Dollars, being cost of appeal to the Board of Zoning Appeals of Baltimore County from the decision of the Zoning Commissioner granting reclassification and special exception for a Drive-In Theatre, east side of Bel Air Road 721 feet northeast of White Marsh Road, 11th District, Milton Tolle, et al, petitioners.

Zoning Commissioner

01.623 Zoning Service Charge

RECEIVED
NOV 19 1956
COMPTROLLER'S OFFICE
770

\$30.00

RECEIVED of Johnson Bowls, attorney for petitioners, Tolle and Blanchard, the sum of Thirty-eight (\$38.00) dollars, being cost of petition for Reclassification and Special Exception of the property located in the center of Belair Road 721 feet Northeast of White Marsh Run, Eleventh District of Baltimore County.

Thank you.

Zoning Commissioner
of Baltimore County

HEARD:

Monday, December 10, 1956
at 11:00 A. M.

Room 108
County Office Building
111 N. Chesapeake Avenue
Towson, Maryland

RECEIVED
NOV 19 1956
COMPTROLLER'S OFFICE
770

01.623 - \$10.00
01.623 - \$25.00

PETITION FOR (1) ZONING RECLASSIFICATION
(2) SPECIAL EXCEPTION

To the Zoning Commissioner of Baltimore County:

I, or we, MILTON TOLLE and MELVIN F. BLANCHARD, Trustees, Legal Owners

All that parcel of land in the Eleventh District of Baltimore County, beginning for the same in the center of the Belair Road 721 feet Northwest of White Marsh Run; thence running and bisecting in the center of the Belair Road, South 72 degrees 15 minutes West 61.35 feet; thence leaving the road, South 39 degrees 10 minutes East 511.71 feet; thence South 31 degrees 55 minutes East 374.20 feet; thence South 71 degrees 04 minutes West 214.34 feet; thence the following three courses and distances, viz: South 37 degrees 24 minutes East 263.55 feet; South 21 degrees 24 minutes East 274.50 feet; and South 9 degrees 36 minutes West 135.00 feet; thence South 63 degrees 58 minutes East 511.60 feet; thence North 36 degrees 02 minutes East 77.00 feet to the center of the White Marsh Run; thence bisecting in the center of said run and running Northeasterly 1308.55 feet; thence leaving the White Marsh Run and running North 15 degrees 41 minutes East 110.29 feet; thence North 59 degrees 13 minutes 20 seconds East 2527.79 feet to the place of beginning.

Property to be posted as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above reclassification and Special Exception, 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.

Christian H. Kahl
Christian H. Kahl, Agent
Contract Purchaser
531 York Road
Towson, Md.

Maurice W. Baldwin
Johnston Bowls
Attorneys
Dorchester Bldg (A)

Milton Tolle
Milton Tolle, Trustee
212 Washington Avenue
Towson, Md.

Melvin F. Blanchard
Melvin F. Blanchard, Trustee
212 Washington Avenue
Towson, Md.

12/10/56
11 A.M.

and CHRISTIAN H. KAHN, Agent, Contract Purchaser, of the property on the southeast side of Belair Road, containing 29.71 acres of land, more or less, located 700 feet, more or less, northeasterly from the intersection of White Marsh Run and Belair Road, as per the attached description, -----

herely petition (1) that the zoning status of the above described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an R6 Zone to an R20 Zone; and (2) for a Special Exception, under said Zoning Law and Zoning Regulations of Baltimore County, to use the above described property, for a drive-in theatre.

Property to be posted as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above reclassification and Special Exception, 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.

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Christian H. Kahl, Agent
Contract Purchaser
531 York Road
Towson, Md.

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12/10/56
11 A.M.

Court of Appeals of Maryland

3498
No. 291, September Term, 1957-1958 July 2, 1958
REVEREND S. M. QUINN ET AL.

MILTON TOLLE ET AL. TRUSTEES, ETC. AND BOARD OF ZONING APPEALS OF BALTIMORE COUNTY
Appeal from the Circuit Court for Baltimore County
Howard Day Judge

Assigned by Associate E. Rouse and William S. Foxworth, both of Towson, Md., for appellants.

Assigned by Associate E. Rouse, Towson, Md., Milton Tolle et al. trustees and Charles H. Hall, Contract Trustees, part of appellants--no brief and no appearance for Board of Zoning Appeals, Inc.

Assigned before JUDGE C. J. HENDERSON, HARMONIA PARKWAY and BOWEN, JR.

Issue in Baltimore County--Change in the Classification--Change in the Zoning.

Board of Zoning Appeals refused change in classification of an area of land from an "R-6" to an "R-20" zone. There is no question that the Board of Zoning Appeals is authorized to make such a change in the classification of land. The question is whether the Board of Zoning Appeals has the right to make such a change in the classification of land.

Under the charter of Baltimore County, the Board of Zoning Appeals is authorized to make such a change in the classification of land.

HENDERSON, J.:

This appeal is from an order of the Board of Zoning Appeals of Baltimore County, dated January 1, 1957, refusing to change the classification of a tract of land from an "R-6" to an "R-20" zone.

The Board of Zoning Appeals is authorized to make such a change in the classification of land.

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RE: PETITION FOR RECLASSIFICATION
AND SPECIAL EXCEPTION FOR DRIVE-IN
THEATRE - Property on East side
of Bel Air Road, 721 feet North-
east of White Marsh Run, 11th
District of Baltimore County -
Hilton Tolle and Melvin F. Blanchard,
Petitioners

BEFORE
BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY
Case No. 3998

OPINION

This is a petition to reclassify a tract of land on the eastmost side of Bel Air Road from an "R-6" zone to an "R-20" zone and for a special exception to use the property for a Drive-In Theatre.

The property consists of a tract of approximately 30 acres with a relatively small frontage on the eastmost side of Bel Air Road with the major portion of the property located easterly from the Bel Air Road.

The normal operation of a Drive-In Theatre will result in having great numbers of automobiles entering and leaving the property from Bel Air Road. Although Bel Air Road is a four-lane highway there are no sidewalks and pedestrians use the road for walking. The access to the property is on a grade with a slight distance of approximately 600 feet in one direction. It is our opinion that the use of this property for a Drive-In Theatre will inevitably create a traffic hazard.

In addition, the classification and special exception if granted would result in the commercial invasion of what is now essentially a residential district with churches and schools in the neighborhood.

The noise and disturbance at times at night when the showing of the moving pictures is concluded is impossible to curtail. For that reason it would make it practically impossible for the residential owners in that area to enjoy their homes and would necessarily result in a serious depreciation on the values of their properties.

It should also be noted in passing that Mr. Dill, Director of Planning, testified that the proposed White Marsh Expressway will traverse this property.

For those reasons we do not believe that the reclassification and special exception herein requested should be granted.

ORDER

For the reasons set forth in the foregoing Opinion it is this 19th day of January, 1957, ORDERED by the Board of Zoning Appeals of Baltimore County that the reclassification and special exception herein requested, be and the same is hereby denied.

BOARD OF ZONING APPEALS
BALTIMORE COUNTY

Charles H. Hall
Secretary

LAWRENCE E. KINNON
ATTORNEY AT LAW
COLUMBIA, MARYLAND
TOWSON 4, MD.
VALLEY ROAD

December 21, 1956

Mr. Wilkie H. Adams
Zoning Commissioner of Baltimore County
County Office Building
Towson 1, Maryland

Re: Petition for Reclassification
from an "R-6" Zone to an "R-20"
Zone and Special Exception for
Drive-In Theatre - E. S. Belair
Road, 721 feet N.E. White Marsh
Road, 11th District - Hilton Tolle
and Melvin F. Blanchard, Petitioners

Dear Mr. Adams:

You will find enclosed an order to enter an appeal to the Board of Zoning Appeals from your decision and order in the above entitled matter.

I am enclosing you check in the amount of \$50.00 covering the appeal cost.

Yours very truly,

Lawrence E. Kinnon

LES:mp

Encl: (2)



ORDERED by the Zoning Commissioner of Baltimore County this 21st day of November, 1956, that the subject matter of this petition be advertised in a newspaper of general circulation throughout Baltimore County and that the property be posted, as required by the Zoning Regulations and Act of Assembly aforesaid, and that a public hearing thereon be had in the office of the Zoning Commissioner of Baltimore County, Maryland, on the 10th day of December, 1956, at 11 o'clock A.M.

Zoning Commissioner
of Baltimore County

OFFICE OF PLANNING

Inter-Office Correspondence

FROM: Office of Planning
TO: Mr. Wilkie H. Adams, Zoning Commissioner
SUBJECT: E2098 - R-6 to R-20 and Special Exception
for Drive-In Theatre, Beginning on Centerline of Belair Road 221 feet Northeast of White Marsh Run, 29.7 acres, 11th District.
Hearing December 13, 1956.

(1) White Marsh Expressway is shown on the County Capital Improvement's Program Map. Exact alignment of this road West of the Northeastern Expressway is not yet fully determined, since the section from Belair Road to the Northeastern Expressway is not yet set up to be built prior to 1963, although its timing may be set ahead to meet the traffic needs of the Berlin Plant.

However, preliminary study indicates definitely a location on the Northerly side of White Marsh Run. The probable limits within which a 250 foot right of way may be taken are shown on the accompanying drawing. The form of the interchange with Belair Road cannot be shown as yet but may conflict with the small access of the subject property to Belair Road. As may be seen, the White Marsh Expressway itself is in decided conflict with the proposed Drive-In Theatre.

(It should be noted that neither the State or the County considers improvement of Silver Spring Road as a possible alternative for the construction of the White Marsh Expressway.)

(2) The short frontage of the subject property does not permit proper channeling of outdoor theatre traffic to the Belair Road. Traffic moving to and from the southbound traffic lane of the Belair Road, on a decided grade approaching the top of a hill, will be especially difficult to handle.

RE: PETITION FOR RECLASSIFICATION
FROM AN "R-6" ZONE TO AN "R-20"
ZONE AND SPECIAL EXCEPTION FOR
DRIVE-IN THEATRE - E. S. Belair
Road 721 feet N.E. White Marsh
Run, 11th District - Hilton Tolle
and Melvin F. Blanchard, Petitioners

BEFORE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
No. 3998-IX

Upon hearing on petition (1) for reclassification from an "R-6" zone to an "R-20" zone and (2) for a special exception to use the property described in the within petition for a Drive-In Theatre, from the testimony and facts presented at the hearing it is the opinion of the Zoning Commissioner that the petition should be granted.

Section 502.1 of the Zoning Regulations provides that it must appear the use for which the special exception is requested will not:

- Be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys thereon;
- Create a potential hazard from fire, panic or other dangers;
- Tend to overcrowd land and cause undue concentration of population;
- Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
- Interfere with adequate light and air.

MILTON TOLLE and
MELVIN F. BLANCHARD, TRUSTEES
213 Washington Avenue
Towson 4, Maryland
and
CHRISTIAN H. KAIL, AGENT
531 York Road
Towson 4, Maryland
vs.
CHARLES H. DOING,
CARL F. THOMAS, and
DANIEL W. HUGHES,
SHRIMP AND CONSTITUTING THE
BOARD OF ZONING APPEALS
OF BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR
BALTIMORE COUNTY

Miscellaneous Docket No. 6, Folio 41
Case No. 1694

OPINION

This is an appeal from the action of the Board of Zoning Appeals denying rezoning and the granting of a special exception for a Drive-In Theatre.

The property involved contains 29.71 acres and is located on the easterly side of Bel Air Road, in the Eleventh Election District of Baltimore County, the entrance thereto being on Bel Air Road, 720 feet, more or less, in a northeasterly direction from White Marsh Run. The main portion of the property is hidden away a considerable distance from Bel Air Road or any contiguous residential properties except at its entrance which is a long funnel shaped strip of land. The property has been used for light farming and hog raising and at present there is a storage equipment yard on an adjoining property and a large trailer camp nearby.

On November 18th, 1956, Milton Tolle and Melvin F. Blanchard, Trustees, filed a petition with the Zoning Commissioner of Baltimore County to reclassify this tract or parcel of land from an R-6 Residential Zone to an R-20 Residential Zone and to obtain a special exception to use the property for a Drive-In Theatre. On December 10th, 1956, a hearing was held on this petition

before the Zoning Commissioner who passed an order on December 14th, 1956, granting the reclassification and special exception applied for. In granting the petition the Zoning Commissioner held that the reclassification and special exception would not be detrimental to the health, safety and general welfare of the locality involved. The reclassification and special exception were granted subject to the submission of a plat showing ingress and egress for the approval of the Bureau of Land Development.

An appeal was taken from the action of the Zoning Commissioner to the Board of Zoning Appeals on December 21st, 1957, and a hearing was held before the Board on January 17th, 1957. On January 18th, 1957, the Board handed down its opinion and order passed pursuant thereto refusing the reclassification and special exception.

In its opinion the Board stated that the normal operation of a Drive-In Theatre would result in great numbers of automobiles entering and leaving the property from Bel Air Road; that Bel Air Road is a four-lane highway with no sidewalks and that pedestrians use the road for walking; that access to the property is on a grade with a sight distance of approximately 600 feet in one direction; and that the use of the property for a Drive-In Theatre would create a traffic hazard. In addition, the Board held that the reclassification and special exception would result in the commercial invasion of an essentially residential district with churches and schools in the neighborhood. The Board also referred to possible noises and disturbances at the conclusion of the showing of pictures which would depreciate the value of the homes of the residential owners. In conclusion, the Board referred to the testimony of the Director of Planning in regard to the proposed White Marsh Expressway traversing the property in question.

The province of the Court in reviewing the action of the Board of Zoning Appeals has been clearly defined by the Court of Appeals in a number of cases, several of which were appealed from this Court. All of these cases make it clear that the Court is not to substitute its judgment for that of the

Board who are presumed to be experts in their field, and that the action of the Board should be sustained unless it is found to be arbitrary, capricious, discriminatory or illegal.

Krackie vs. Weinberg, 197 Md., 339.

In the case of Ourler vs. Board of Zoning Appeals, 204 Md., page 405, the Court said:

"The function of a Zoning Board is to exercise the discretion of experts, and the court on appeal will not disturb the Board's finding where it has complied with the legal requirements of notice and hearing, and the record shows substantial evidence to sustain the finding."

See also Offutt vs. Board of Zoning Appeals, 204 Md., 551.

Section 502.1 of the Zoning Regulations provides as follows:

"Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

- Be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein;
- Create a potential hazard from fire, panic or other dangers;
- Tend to overcrowd land and cause undue concentration of population;
- Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
- Interfere with adequate light and air."

After careful examination of the testimony presented the Court is of the opinion that there is no substantial evidence to support the finding of the Board that the granting of a reclassification would result in a commercial invasion of what is now an essentially residential district. While the testimony shows that there is a fringe of residential properties along both sides of Bel Air Road and a large church and school in the neighborhood the testimony also shows that a tract of land containing 123 acres, more or less, across Bel Air Road from the entrance to the subject property was zoned Light Industrial in March, 1955; and another nearby tract was zoned Business

Major as recently as August 6, 1956.

There is certainly no substantial evidence to support the finding of the Board that property values in the neighborhood would be depreciated by the reclassification and special exception applied for and the possibility of the construction of the White Marsh Expressway over the subject property is too vague and indefinite to merit serious consideration.

The question which gives the Court the greatest concern is whether the record shows that the granting of a special exception for a Drive-In Theatre at the location in question would create a traffic hazard on Bel Air Road.

While it is no doubt true that a great many automobiles will enter and leave the property by means of the Bel Air Road there is no testimony to show that this will necessarily create a traffic hazard unless it is to be assumed that the mere increase in the number of cars on a highway necessarily creates a traffic hazard. The testimony clearly shows that the sight distance in both directions from the entrance to the property is in excess of 1000 feet, and not 600 feet as stated in the opinion of the Zoning Board. Bel Air Road at the entrance to this property has a paved surface 40 feet in width and the speed limit on that portion of said road is 40 miles per hour for automobiles and 30 miles per hour for trucks. There are no street intersections along this portion of Bel Air Road nor are there any entrances to public property or business establishments for considerable distances in both directions. While it is true that the entrance is on a grade there are no curves or other conditions to create a hazard. The entrance to the property is over 60 feet in width which allows ample room to provide proper means of ingress and egress. From Bel Air Road the entrance widens rapidly in a funnel-like shape to a width of 300 feet at a distance of 800 feet from Bel Air Road. The testimony shows that there will be, in all, approximately 1500 feet of storage lane for automobiles. This large storage space for cars entering the property greatly reduces, if not entirely eliminates, the possibility of congestion on Bel Air

Road by cars entering the property. The testimony does show that there is a serious traffic hazard at the church located over 1000 feet north of the entrance to the subject property but that entrance is located at the brow of a hill and the sight line there is limited in both directions. In view of the testimony submitted by the petitioners as to the operation of a Drive-In Theatre at Elkridge on the Washington Boulevard where the conditions are quite similar to those in the present case it is clear that, with proper safeguards, no traffic hazard would be created. No doubt the Zoning Commissioner had such safeguards in mind when he granted the reclassification and special exception subject to the submission of plans showing ingress and egress for the approval of the Bureau of Land Development for the development of said property. In any event, approval of the plans for ingress and egress would be required to comply with the specifications and regulations of the State Roads Commission.

It is clear from the above that the traffic conditions on Bel Air Road are quite different from those in the case of Price v. Cohen, 213 Md. 457, in which the Court of Appeals affirmed the denial of a reclassification because of traffic conditions. In that case the petitioners desired to construct a shopping centre with three entrances at the crest of a hill on Liberty Road. At that point Liberty Road was only 22 feet in width with a 5 foot shoulder and was handling capacity traffic. Under such circumstances the denial of the reclassification is readily understandable.

The Court has carefully considered the testimony of many protestants to the granting of the application but an analysis of their testimony shows that they object to a Drive-In Theatre, as such. The plat filed as an exhibit in the case shows that the screen for the theatre and the buildings to be erected in connection with the operation of the theatre will be over 2000 feet from the Bel Air Road. An inspection of the site by the Court revealed the fact that the screen and buildings will be located in a rather remote spot well away from homes or, in fact, buildings of any kind or description. It is, therefore, difficult to understand how the operation of the theatre can disturb

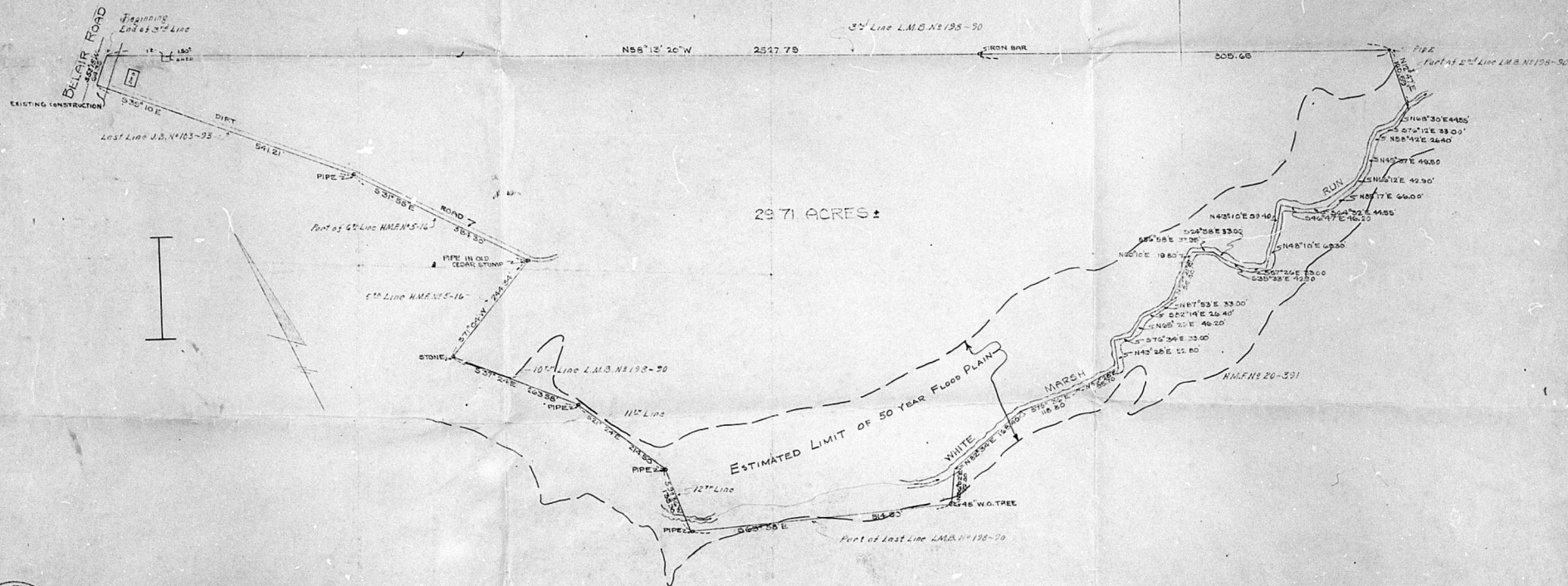
or annoy persons who reside on Bel Air Road except those whose homes are located near the entrance. As there is considerable traffic on Bel Air Road at all hours of the day and night it is unreasonable to assume that automobiles entering and leaving the theatre for the nightly shows would add an appreciable amount of noise to that created by the automobiles and heavy trucks on Bel Air Road.

The Court has weighed very carefully the evidence presented to show that the operation of the Drive-In Theatre would interfere with the large church and school above referred to, located on Bel Air Road over 1000 feet in a northerly direction from the entrance to the subject property. From the testimony presented and a personal inspection of the property the Court is of the opinion that the activities of the church would not be affected by the proposed use. The location of the screen and parking area will be a considerable distance from the church and almost, if not entirely, hidden from view at that point.

For the reasons above set forth the Court is of the opinion that the action of the Board of Zoning Appeals was arbitrary, discriminatory and illegal and the Order denying the rezoning and special exception applied for must be reversed.

Stewart Day

FILED JAN 14 1958



WILLIAM M. MAYNARD
REGISTERED ENGINEER & LAND SURVEYOR
DUNCAN BLDG. TOWSON MD
SCALE 1"=100' MAY 5, 1956