



Baltimore County  
Department of Permits and  
Development Management

Development Processing  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

July 1, 1998

Mr. Steve Schoendienst  
The Planning & Zoning Resource Corporation  
2212 N.W. 50th Street  
Suite 246  
Oklahoma City, OK 73112

RE: Perring Parkway Center  
1801 Wentworth Road  
9th Election District

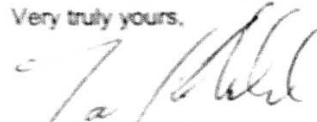
Dear Mr. Schoendienst:

The subject property is zoned R-O (Residential-Office). The existing facility is in no special overlay district, nor is it a PUD. A zoning hearing, case number 5397, granted a special exception and/or reclassification in 1961 to change the zoning.

There are no current outstanding citations issued against this property.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Very truly yours,

  
John R. Alexander  
Planner II  
Zoning Review

JRA:scj

Enclosure



**THE PLANNING & ZONING RESOURCE CORPORATION**

2212 NW 50TH STREET, SUITE 246 • OKLAHOMA CITY, OKLAHOMA 73112  
TOLL-FREE TELEPHONE 1.800.411.2010 • FAX 1.405.840.2608

To Whom it May Concern:

NE. 8-C

We are preparing a due diligence report. Prior to a proposed loan, our client is concerned with certain aspects of the Site as listed below. As a first preference, our client would like a detailed zoning verification letter on your jurisdiction's letterhead. As the second preference, would you please respond and return your answers by FAX? Finally, if there are severe time constraints, would you please call in your answers?

SITE ADDRESS: 1801 Wentworth Road (Perring Pkwy Nsq Ctr), Baltimore  
ZONING DESIGNATION AND BRIEF DEFINITION: 5th CD OAKLEIGH & WENTWORTH

IS THIS PROPERTY IN ANY SPECIAL, RESTRICTIVE, OR OVERLAY DISTRICT?

YES -  NO -  (Please explain): \_\_\_\_\_

DO SPECIAL PERMITS OR CONDITION(S) APPLY WITH THIS PROPERTY?

YES -  NO -  (Please explain): \_\_\_\_\_

DOES THIS PROPERTY ABUT RESIDENTIAL OR DOES ANY OTHER ZONING/SITE EFFECT

THIS PROPERTY'S STANDARDS? YES -  NO -  (Please explain): \_\_\_\_\_

WAS THIS DEVELOPED WITH SITE PLAN APPROVAL?

YES -  NO -  (Please explain): \_\_\_\_\_

WAS THIS A PLANNED UNIT DEVELOPMENT?

YES -  NO -  (Please explain): \_\_\_\_\_

WERE ANY VARIANCES GRANTED?

YES -  NO -  (Please explain): \_\_\_\_\_

DO YOUR RECORDS SHOW ANY OUTSTANDING BUILDING CODE VIOLATIONS?

YES -  NO -  (Please explain): \_\_\_\_\_

DO YOUR RECORDS SHOW ANY ZONING ORDINANCE VIOLATIONS?

YES -  NO -  (Please explain): \_\_\_\_\_

EFFECTIVE DATE OF ZONING CODE? OR DATES OF LAST REVISION? \_\_\_\_\_

WOULD YOU PROVIDE A COPY OF THE CERTIFICATE OF OCCUPANCY?

YES -  NO -  (Please explain): \_\_\_\_\_

IF NOT, WOULD YOU PLEASE PROVIDE A NAME AND NUMBER OF SOMEONE WHO COULD? : \_\_\_\_\_

NAME: \_\_\_\_\_ DATE: \_\_\_\_\_  
TITLE: \_\_\_\_\_ PHONE: \_\_\_\_\_  
JURISDICTION: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ ZIP: \_\_\_\_\_

Thank you!

NATIONAL PLANNING AND ZONING CONSULTING SERVICE

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

5397 OLD MAP #9 PA 5 BL 11/9/61

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Knows, The Inter-City Land Company owner... hereby petition (1) that the zoning status of the herein described property be re-classified...

- Parcel A from R-6 to R-A - 3 14.3 acres
Parcel B from R-6 to R-A - 1
Parcel C from R-6 to B-L - 1

for the following reasons:

- (a) Changes occurring since original zoning in 1945
(b) Nature of topography

See Attached Descriptions

Country to use the herein described property...

Property is to be posted and advertised as prescribed by Zoning Regulations.

I or we, agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc., upon filing of this petition...

Richard C. Murray, Petitioner's Attorney

The Inter-City Land Company, 7214 Old Harford Road, Baltimore 14, Maryland

Address: The Jefferson Building, Towson 4, Maryland

ORDERED By the Zoning Commissioner of Baltimore County, this 22nd day of September, 1961...

SEP 27 1961 stamp and signature

OFFICE OF PLANNING AND ZONING

5397

Date November 3, 1961

To: Mr. John G. Rose, Zoning Commissioner

From: Mr. George L. Gawells, Deputy Director

Subject: #5397. Parcel A from R-6 Zone to R-A Zone

5th District, Wednesday, November 15, 1961 (2:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for zoning reclassification and has the following advisory comment to make:

Parcel A. In light of its criteria on desirable locations for apartment house projects, the planning staff considers that Parcel A to be appropriate for R-A zoning reclassification.

Parcel B. Although access to Parcel B will be exclusively from Perring Parkway upon its completion, it appears that R-A zoning here is incongruous with the use potentials of the adjoining single family lots.

Parcel C. The petitioner was the subdivider of the adjacent R-6 area known as Harford Hill. The planning staff considers the creation of B-L zoning for Parcel C to be an intrusion of commercial use potentials into an otherwise exclusively residential area.

STATE OF MARYLAND STATE ROADS COMMISSION, 300 WEST PRESTON STREET, BALTIMORE 1, MD.

Mr. John G. Rose, Zoning Commissioner, County Office Building, Towson 4, Maryland

Dear Mr. Rose: This office reviewed the subject petition and has no objection to the change, however, the following comments are for your information if you should see fit to grant the petition.

Our only concern is Parcel C inasmuch as the other parcels do not front on any existing or proposed State Roads. Perring Parkway is at present a State Roads Commission proposal not scheduled for construction until after 1965.

Thank you for your cooperation. Very truly yours, Charles Lee, Chief Development Engineering Section

John L. Durr, Asst. Development Engineer

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of... the above Reclassification should be had; and it further appearing that by reason of... a Special Exception for a... should be granted.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of... the above reclassification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 14th day of December, 1961, that the above reclassification be and the same is hereby DENIED...

Zoning Commissioner of Baltimore County

MICROFILMED

DESCRIPTION OF PARCEL A, HARFORD PARK FOR REZONING FROM R-6 TO R-A. PARCEL B FROM R-6 ZONE TO R-A ZONE. PARCEL C FROM R-6 ZONE TO B-L ZONE.

Being the property of The Inter-City Land Company, as shown on plat filed with the Zoning Department...

Being the property of The Inter-City Land Company, as shown on plat filed with the Zoning Department...

Being the property of The Inter-City Land Company, as shown on plat filed with the Zoning Department...

CERTIFICATE OF PUBLICATION

TOWSON, MD., October 27, 1961

THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on...

THE JEFFERSONIAN, Leah Henthorn, Manager

Cost of Advertisement, \$...

SMITH AND HARRISON, LAW OFFICES

Mr. John G. Rose, Zoning Commissioner of Balto. Co., County Office Building, Towson 4, Maryland

Dear Mr. Rose: Please enter an appeal to the County Board of Appeals from your decision of December 1, 1961, in the above entitled matter.

Very truly yours, Richard C. Murray, Attorney for applicant

Richard C. Murray, Attorney for applicant

Richard C. Murray, Attorney for applicant

Richard C. Murray, Attorney for applicant

Richard C. Murray, Attorney for applicant

Richard C. Murray, Attorney for applicant

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Richard C. Murray, Attorney for applicant

Richard C. Murray, Attorney for applicant

Richard C. Murray, Attorney for applicant

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE, Division of Collection and Receipts, TOWSON 4, MARYLAND. Invoice No. 9700

SMITH AND HARRISON, LAW OFFICES, THE JEFFERSON BLDG, TOWSON 4, MARYLAND. Invoice No. 20809

SMITH AND HARRISON, LAW OFFICES, THE JEFFERSON BLDG, TOWSON 4, MARYLAND. Invoice No. 20809

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INVOICE  
BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE  
Division of Collection and Receipts  
COURT HOUSE  
TOWSON 4, MARYLAND

No. 8137  
DATE 9/22/61

TO: Messrs. Smith & Harrison  
212 Washington Ave.  
Towson 4, Md.

BILLED BY: Zoning Department of Baltimore County

REPORT TO ACCOUNT NO. 01622

| QUANTITY | DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE      | TOTAL AMOUNT \$50.00 COST |
|----------|-----------------------------------------------------------|---------------------------|
|          | Petition for Reclassification for Inter City Land Company | 50.00                     |
|          |                                                           | 0.00                      |
|          |                                                           | 0.00                      |

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND  
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND  
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 9<sup>th</sup> #5397  
Date of Posting: 3-28-62

Posted for: *Apparel Planning*  
Petitioner: *The Inter City Land Co.*  
Location of property: *Washington St. Myrtle Rd. Calverly Road, Md.*  
Location of Signs: *Calverly Rd. Myrtle Rd. Calverly Rd.*  
Remarks: *See map of zoning at the office of Craigston, Md.*

Posted by: *George R. Himmell*  
Date of return: 3-28-62

INVOICE  
BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE  
Division of Collection and Receipts  
COURT HOUSE  
TOWSON 4, MARYLAND

No. 9722  
DATE 12/16/61

TO: Messrs. Smith & Harrison  
Jefferson Building  
Towson 4, Maryland

BILLED BY: Zoning Department of Baltimore County  
113 County Office Bldg.,  
Towson 4, Md.

REPORT TO ACCOUNT NO. 01622

| QUANTITY | DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE | TOTAL AMOUNT \$70.00 COST |
|----------|------------------------------------------------------|---------------------------|
|          | Cost of appeal to County Board of Appeals            | 70.00                     |
|          | Inter-City Land Co.                                  |                           |
|          | No. 5397                                             |                           |

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND  
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND  
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 9<sup>th</sup> #5397  
Date of Posting: 10-25-61

Posted for: *App. R-6 zoning on R-4 zone R-6 zone units - 1 zone*  
Petitioner: *The Inter City Land Co.*  
Location of property: *W 1st of Washington St. + Myrtle Rd. Md.*  
Location of Signs: *Calverly Rd. 1st St. of Myrtle Rd. Md.*  
Remarks: *See map of zoning at the office of Craigston, Md.*

Posted by: *George R. Himmell*  
Date of return: 10-26-61

THE INTER CITY LAND COMPANY  
7214 Old Harford Road  
Baltimore County, Maryland

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

NATHAN H. KAUFMAN,  
C. MITCHELL AUSTIN and  
CHARLES STEINBOCK, JR.,  
being and constituting  
the County Board of Appeals  
of Baltimore County

ORDER FOR APPEAL

The Inter City Land Company hereby appeals from the Order and Decision rendered by the County Board of Appeals of Baltimore County on or about December 17, 1961 in zoning case #5397 before said Board being an application of The Inter City Land Company for reclassification of said property lying and being in the 9th Election District of Baltimore County from an "R-6" zoning classification to an "R-A" zoning classification.

SMITH AND HARRISON

By: Richard C. Murray  
104 Jefferson Building  
Towson 4, Maryland  
Valley 3 6200

I hereby certify that on this 7<sup>th</sup> day of January, 1964, copy of the foregoing Order for Appeal sent to the County Board of Appeals by personally delivering the same to the Secretary of said Board at its offices, County Office Building, Towson 4, Maryland.

Richard C. Murray

I HEREBY CERTIFY that on this \_\_\_\_\_ day of November 1964, copy of the foregoing notice of appeal was mailed by Richard C. Murray, Esquire, 22 W. Pennsylvania Avenue, Towson, Maryland 21204, Attorney for Inter City Land Company, and E. Scott Moore, Esquire, County Office Building, Towson, Maryland 21204, Attorney for County Board of Appeals of Baltimore County.

Edward F. Borgarding

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 9<sup>th</sup> #5397  
Date of Posting: 8/15/63

Posted for: *Apparel Planning*  
Petitioner: *The Inter City Land Co.*  
Location of property: *Washington St. Myrtle Rd. Calverly Road, Md.*  
Location of Signs: *Calverly Rd. Myrtle Rd. Calverly Rd.*  
Remarks: *See map of zoning at the office of Craigston, Md.*

Posted by: *George R. Himmell*  
Date of return: 8/15/63

INTER CITY LAND COMPANY  
7214 Old Harford Road  
Baltimore County, Maryland

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

NATHAN H. KAUFMAN  
C. MITCHELL AUSTIN and  
CHARLES STEINBOCK, JR., being  
and constituting the County  
Board of Appeals of Baltimore  
County

341 - 7 - 2932

and

JAMES P. PALLACE, Sr. and  
ESTELLE PALLACE, his wife  
2501 Canterbury Road  
Baltimore 34, Maryland

and

FRANK P. GALEONE and  
ELAINE E. GALEONE, his wife  
1849 Bycliffe Road  
Baltimore 34, Maryland

See Answer  
zoning file # 5397

INTER CITY LAND COMPANY  
VS.  
NATHAN H. KAUFMAN, et al  
AND  
JAMES P. PALLACE, Sr., et al

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

AT LAW - 341-7-2932

MEMORANDUM

This is an appeal by the Petitioner from an adverse decision by the Board of Appeals of Baltimore County wherein that Board denied a requested reclassification from R-6 to R-A for two parcels of land.

Parcel A contains 14.42 acres; Parcel B contains 1.3 acres. Both parcels are located in that part of the Ninth District of Baltimore County that has not yet been the subject of a modern, comprehensive zoning map. Both parcels are in the same ownership; within the same general area; but are dissimilar with respect to shape and topography.

The Petitioner sought reclassification for each parcel upon the grounds: (a) changing character since original zoning in 1915; and (b) nature of topography. The changes within the area since 1915 have been myriad. This Court, considering this fact, cannot escape the conclusion, however, that the record in this case shows that the question whether such changes require the reclassification of the subject parcels is reasonably debatable and thus furnishes no ground for reversal of the Board's decision on this account.

This leaves for determination the question whether these parcels are susceptible of any reasonable use within the existing zoning classification -- or, otherwise stated, whether the existing zoning classification, applied to them, operates as a constitutional confiscation.

The answer to this question as to Parcel A is simple. It will suffice to say that the heavy burden cast upon the Petitioner who suggests this effect of zoning upon his property has not been met.

This question as to Parcel B, however, seems to require the conclusion that such heavy burden by the Petitioner has been met.

L. Allen Evans, a surveyor and civil engineer, stated categorically that Parcel B was not possible to utilize under the existing R-6 classification. He made clear that the size and shape of the lot, coupled with the requirement that it meet the grade required by the State Roads Commission for Perring Parkway created conditions of grade that would require double cellars and was not economically feasible for R-6 usage. He went on to point out that it was not possible to provide fill for Parcel B because the drainage channel in the rear would forbid its introduction.

William James Hill, developer of the development of surrounding Harford Park, gave substantially identical testimony, as did Frederick P. Kleus, realtor and appraiser.

The opinions expressed by these expert witnesses seems to the Court to be fully supported by a mere glance at the plat offered as Petitioner's Exhibit 3, and by the photograph offered as Petitioner's Exhibit 5C.

The testimony offered by the protestors does not in any reasonable or substantial manner contradict the evidence that Parcel B could not be utilized under existing zoning.

In these circumstances the refusal to rezone Parcel B from R-6 to R-A was arbitrary and capricious.

The decision of the Board of Appeals as to Parcel A is affirmed; as to Parcel B it is reversed with directions to reclassify Parcel B from R-6 to R-A.

ALBERT BENCHENT, Judge

October 7, 1964

CERTIFICATE OF POSTING  
ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 9<sup>th</sup> #5397  
Date of Posting: 12-27-62

Posted for: *Apparel Planning*  
Petitioner: *The Inter City Land Company*  
Location of property: *Washington St. Myrtle Rd. Calverly Road, Md.*  
Location of Signs: *Calverly Rd. Myrtle Rd. Calverly Rd.*  
Remarks: *See map of zoning at the office of Craigston, Md.*

Posted by: *George R. Himmell*  
Date of return: 12-28-62

MR. CLERK:

Please enter an appeal in the above entitled matter to the Court of Appeals of Maryland on behalf of James P. Pallace, Sr. and Estelle Pallace, his wife, and Frank P. Galeone and Elaine E. Galeone, his wife.

Edward F. Borgarding  
Attorney for James P. Pallace, Sr. and Estelle Pallace, his wife, and Frank P. Galeone and Elaine E. Galeone, his wife  
213 One Charles Center  
Baltimore, Maryland 21201  
539-8663

Edward F. Borgarding  
Attorney for James P. Pallace, Sr. and Estelle Pallace, his wife, and Frank P. Galeone and Elaine E. Galeone, his wife  
213 One Charles Center  
Baltimore, Maryland 21201  
539-8663

Edward F. Borgarding  
Attorney for James P. Pallace, Sr. and Estelle Pallace, his wife, and Frank P. Galeone and Elaine E. Galeone, his wife  
213 One Charles Center  
Baltimore, Maryland 21201  
539-8663

RE: PETITION FOR RECLASSIFICATION : BEFORE  
 Parcel "A" from "R-6" to "R-A" : COUNTY BOARD OF APPEALS  
 Parcel "B" from "R-6" to "R-A" : OF  
 Parcel "C" from "R-6" to "B-L" : BALTIMORE COUNTY  
 Darlington Drive, Wycliffe and :  
 Oakleigh Roads; NE corner of :  
 Wycliffe and Perring Parkway and :  
 NE corner Perring Parkway and : No. 5377  
 Oakleigh Road, :  
 9th District :  
 The Inter City Land Company, :  
 Petitioners :

OPINION

At the time of the hearing, the petitioner amended the petition by deleting Parcel "C" from the request.

Parcel "A" consists of 14.43 acres and Parcel "B" is 1.3 acres in size.

Mr. W. Barnes Hall, President of Inter City Land Company, testified that his company has owned the subject tract since 1929 and that since 1930 he has built 700 or 800 homes in Harford Park, the surrounding area.

Witnesses for the petitioner stated that the topography of Parcels "A" and "B" made it unsuitable for "R-6" development without considerable fill. However, there was conflicting testimony as to the amount of fill needed and one witness stated that half of the required fill is already in place.

The petitioner also contended that changes in the neighborhood such as the construction of Perring Parkway (not yet completed), the availability of water and sewer, and zoning reclassifications in the area, warranted the granting of this petition.

Perring Parkway was undertaken to relieve the traffic situation created by the rapid development of this section, water and sewer lines made possible the construction of "R-6" homes on surrounding land and is in itself no reason for making the subject tract "R-A". The zoning reclassifications mentioned were not considered sufficiently close as to have any effect on the petitioner's land.

Residents of the neighborhood, who protested this petition, said the erection of apartments would adversely affect the value of their homes, would overcrowd the land and cause traffic congestion in the streets.

The members of the Board, with the permission of the attorneys for both petitioner and protestants, personally inspected the site. They are of the opinion that the two parcels do not differ greatly from the land already developed by the petitioner.

In reviewing the testimony, it is the unanimous opinion of the Board of Appeals that the petitioner has failed to prove that there has been sufficient change in the character of the neighborhood to warrant reclassification and further, there was no testimony regarding error in the zoning map. The Board is of the opinion that the subject tract is correctly zoned and could be developed under its present classification.

It is, therefore, the unanimous opinion of the Board of Appeals that the petition for reclassification be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of December, 1963, by the County Board of Appeals ORDERED that the reclassification petitioned for, be and the same is hereby denied.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS  
 OF BALTIMORE COUNTY

*A. Nathan*  
 CHAIRMAN

*G. Mitchell Austin*

*Charles S. ...*

IN THE COURT OF APPEALS OF MARYLAND

NO. 377  
 September Term, 1964

JAMES P. FALLACE, SR., et al

v.

THE INTER CITY LAND COMPANY

Horney  
 Marbury  
 Sybert  
 Oppenheimer  
 Barnes,

JJ.

Concurring Opinion by Barnes, J.

Filed: July 30, 1965

Barnes, J. concurring:

I concur in the result reached by the Court. It is, however, a reluctant concurrence as I would have granted the application of the property owner for the reclassification of Parcels A and B had I been acting as the Board. But judicial opinion in regard to the weight of the evidence cannot be substituted for that of the Board in this essentially legislative determination if there is sufficient credible evidence before the Board to make the issues of fact "fairly debatable." If the issues are "fairly debatable" it cannot be held by the courts that the action of the Board is arbitrary, unreasonable or capricious. In my opinion this is the true test and not whether there has been a "mistake in original zoning" or "a substantial change in physical conditions in the neighborhood" as the exclusive test to determine the validity of the re-zoning of land by the Board or the refusal of the Board to rezone. I have heretofore rather fully given my views on the Maryland - "mistake-change in physical conditions" - Rule in my dissenting opinion in MacDonald v. County Board, 238 Md. 549, 576-601, 210 A. 2d 365, 340-354 (1965), and I adhere to those views.

As is pointed out in the Court's opinion, the Board might lawfully have granted the requested reclassification and such action could not have been successfully challenged in the courts. The Board, however, declined to grant the requested reclassification and I cannot say from the evidence before it

*Hall - Macfarland had zoning*

that a reasonable man could not have reached that conclusion even though, as I have indicated, I would have reached a different result. These facts have been set out in the Court's opinion and need not be repeated here.

The question of whether the existing R-6 zoning is unconstitutional as applied to Parcel B is, in my opinion, a close one. In presenting this issue to the Circuit Court on appeal from the Board the property owner had the burden of showing by the evidence that the property owner of the land in question is deprived of all reasonable beneficial use of his property under the applicable existing zoning ordinance. In the case at bar, I think the applicant did establish from the evidence that Parcel B may not be used for the erection and sale of individual homes.

I do not agree with the implication in the Court's opinion that an expert witness need necessarily give specific figures to show the costs involved, if he is qualified by his experience and background to testify to the ultimate conclusion of fact as was Mr. Klaus in this case. Specific figures may be sought by cross-examination if the expert's conclusion is thought by the opposing party to be unsound, but in the absence of this, the conclusion of fact is prima facie correct. In Frankel v. City of Baltimore, 223 Md. 97,

162 A. 2d 482 (1960), the expert witnesses for the property owner gave no specific cost figures in their testimony that under the applicable zoning regulations in that case the property owner would be deprived of all reasonable use of his property. One witness, an experienced real estate expert and developer testified that it would be "economic suicide" to attempt to build the permitted buildings. The trial court in Frankel, in affirming the Board, accepted the testimony of an expert witness for the City of Baltimore who did give estimated cost figures and who testified that it was economically feasible to erect individual dwellings. We reversed and held that the testimony of the experts for the property owner (who gave no specific cost figures) was confirmed by the uncontrovertible physical facts and held that the existing zoning regulations did deprive the property owner of all reasonable use of his property and resulted in an unconstitutional taking of his property without just compensation. The lack of specific cost data may go to the weight of the expert's testimony. But this is for the trier of facts to evaluate and Judge Menchine, in this case, apparently accepted and relied upon the testimony of Mr. Klaus. Pahi v. County Board of Appeals, 237 Md. 294, and DePaul v. Board, 237 Md. 221 do not purport to overrule the Frankel case on this point and,

In my opinion, the dicta in Paul and DePaul referred to in the Court's opinion in the case at bar, are consistent with the position that the lack of cost data goes to the weight the trier of fact will give testimony of the expert, rather than to its admissibility and prima facie correctness.

The burden, however, was upon the applicant to establish that Parcel B could not reasonably be used for any of the uses permitted in an R-6 zone. Among the permitted uses are semi-detached houses. As the Court points out in its opinion, the testimony of both Mr. Hall and Mr. Evans was confined almost entirely to the erection of individual homes, and Mr. Hall indicated on cross-examination that consideration had not been given to the use of Parcel B for semi-detached houses. The substance of the testimony of Mr. Klaus was also directed principally at the economic feasibility of erecting individual homes. His attention was not directed to the possible erection of semi-detached houses on Parcel B. In the light of this testimony and other testimony in the case, I concur in the Court's opinion that the applicant did not meet the burden of showing that it is deprived by the existing R-6 zoning regulations of all reasonable beneficial use of Parcel B, and that an unconstitutional taking of its property without just compensation has occurred.

No. 377

September Term, 1964

JAMES P. PALLACE, SR., et al.

v.

THE INTER CITY LAND COMPANY

Horney,  
Marbury,  
Sybert,  
Oppenheimer,  
Barnes,  
JJ.Opinion by Oppenheimer, J.  
Barnes, J. concurs in the result.

Filed: July 29, 1965

The Inter City Land Company (the applicant) filed a petition before the Zoning Commissioner of Baltimore County, in November, 1961, for the reclassification of three parcels of land in a community known as Harford Park. The area is governed by the original zoning of January, 1945, and each of the three parcels is presently zoned R-6 (residence 1 and 2-family). The applicant sought to have the parcels rezoned to R-A zone (residence, apartments). After a public hearing, the Zoning Commissioner denied the application for reclassification as to all three parcels. The applicant appealed to the County Board of Appeals (the Board). At the hearing before the Board, the applicant deleted one of the parcels from its application, restricting the petition to the two lots referred to as Parcels A and B. After a public hearing at which the applicant, its witnesses and the protestants (the appellants and cross-appellees) were heard, the members of the Board, with the permission of the attorneys for both the applicant and the protestants, personally inspected the site. In an opinion filed December 17, 1963 the Board unanimously found that the applicant had failed to prove that there has been sufficient change in the character of the neighborhood to warrant reclassification and that there was no testimony regarding error in the

zoning map. The petition for reclassification was denied as to both parcels. On appeal, in the Circuit Court for Baltimore County, Judge Menchine found that the question as to whether changes occurring since the original zoning of 1945 and the nature of the topography were reasonably debatable and that there was no basis for reversal of the Board's decision on these grounds. However, as to Parcel B, the judge found that the land involved was not susceptible of any reasonable use within its present zoning and that the existing zoning classification as to this parcel operates as a constitutional confiscation. The judge affirmed the decision of the Board as to Parcel A, and reversed the Board as to Parcel B with directions to reclassify that parcel from R-6 to R-A. The applicant appealed from the affirmation of the Board's decision as to Parcel A. The protestants appealed from the reversal of the Board's decision as to Parcel B.

Harford Park is a large development owned by the applicant, in the ninth election district of Baltimore County, close to the northern boundary line of the City of Baltimore, to the south of Taylor Avenue, east of Osleigh Road and west of Old Harford Road. The two parcels of land involved are located in the middle of this development. Parcel A is a generally flat

unimproved lot consisting of 14.43 acres, approximately 1500 feet in length and 700 feet at its widest point. Parcel B consists of 1.03 acres; it lies slightly northeast of Parcel A, is 650 feet in length, with a maximum width of 155 feet.

The applicant owned the unimproved land, now known as Harford Park, for many years before 1945. Prior to and since that date, the Park has been developed by the applicant with the building of from 700 to 800 one-family homes, in accordance with the R-6 residential classification. Adjacent land has been improved with individual homes by two other builders.

Four exceptions to the original zoning have been granted in the Park. In April, 1946, a plot of ground of about 3 acres at the northern end of Parcel A and southeast of Parcel B was reclassified from A-residential to E-commercial for a proposed shopping center. The shopping center has not as yet been built but the plot has been developed by the applicant as a community membership swimming pool and recreation center with accessory parking. In December, 1947, 3-1/2 acres, about one-half a mile from Parcel B, were reclassified from A-residential to E-commercial. Although proposed for a shopping center, this land is still unimproved. In April, 1948, a lot 100 feet by 120 feet was reclassified from the R-6 to the R-A zone, and in

April, 1949, another small lot was similarly reclassified; a four unit apartment house has been built on each of these lots. All four of these exceptions were granted on the petitions of the applicant.

Outside of Harford Park and on the other side of the applicant's commercial land to the southwest of Parcel A, an unimproved tract was reclassified to B-M (Business-Major) in November, 1955. An apartment structure known as Dutch Village, which has the external appearance of row homes, has been built in Baltimore City, approximately 1000 feet from the southwestern tip of Parcel A, and another apartment structure known as Wellington Gates has been erected in Baltimore City on the far side of Dutch Village over one-half a mile from Parcel A and about a mile from Parcel B.

Herring Run goes through the Harford Park community. The channel of Herring Run was first approved by Baltimore City as a 40 foot storm drain channel but subsequently has been extended to a 100 foot flood reservation. Contracts have recently been awarded for the construction of Perring Parkway through the Park. The parkway will have a width of 180 feet. This Highway almost touches Parcel B at one point and will be removed from Parcel A by only two or three lots.

The applicant contends, as to both Parcels A and B, that the action of the Board in denying the reclassification request was arbitrary and capricious and that, as to Parcel B, the

Board's action in denying the application was an unconstitutional taking of the applicant's property.

I

At the hearing before the Board, the applicant produced as witnesses Mr. L. Allan Evans, a registered surveyor, who is the head of a surveying and engineering company; Mr. William Barnes Hall, the president of the applicant and an experienced builder; and Mr. Frederick P. Klaus, a qualified appraiser and real estate expert.

On the first issue here involved, Mr. Evans testified that he and his predecessor had been engaged in engineering work with the Harford Park development since 1946. Parcel A, in his opinion, could be laid out physically into 45 lots of the R-6 size but it would be necessary to place almost 40,000 cubic yards of fill over the original ground level. As the Board pointed out in its opinion, however, there was conflicting testimony as to the amount of fill needed, its cost, and, indeed, as to whether or not it could be procured without cost. A substantial amount of the required fill, it was shown, was already in place.

Mr. Hall testified as to the changes in the area since the 1945 zoning. Mr. Klaus testified that the highest and best use of both Parcels A and B, under existing circumstances, would be for residential apartments. In his opinion, the erection of

apartment houses in the two parcels would create a good transitional zone between the two commercial properties and the development area in the residential zone. Other testimony of the applicant's witnesses referred to the relationship of the parcels to the Perring Parkway and the storm drainage channel with the ensuing difficulties of installing a street on Parcel A and the development of Parcel B.

We have repeatedly referred to the strong presumption of the correctness of original zoning. MacDonald v. County Board, 233 Md. 549, 559, 210 A.2d 325 (1965) and cases therein cited. To sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or of a substantial change in conditions. Paul v. County Bd. of Appeals, 237 Md. 294, 297, 206 A.2d 245 (1965) and cases therein cited. In this case, there is no contention of mistake. Indubitably, there have been some changes since the original classification both within and beyond the large community of Harford Park. However, there was ample ground for the Board to conclude that the changes in zoning classification which had been permitted upon the requests of the applicant within the Park were minimal in nature. The two small apartment houses, surrounded by one-family homes, may well have been considered comparatively insignificant changes; Mr. Hall admitted that between 200 and 300 individual homes had been erected in the Park since he built the last apartment house.

The swimming pool which has been erected on a plot rezoned as commercial may be regarded as a service to the existing large one-family residential community. The other lot rezoned as commercial is proposed as a shopping center, a use which we have held is consistent with the needs of an existing residential area. See MacDonald v. County Board, supra, at 557. The developments outside of Harford Park, the evidence shows, are not inconsistent with the continuation of the development of that community for one-family residences. Some of the changes referred to by the applicant are a substantial distance away from the Park. The applicant argues that the presumption of the correctness of the original zoning has been eroded by time and the changes which have taken place. However, it is at least fairly arguable from the testimony and exhibits that the predominant development since the original zoning has been the continued building by the applicant of hundreds of one-family residences in the Park itself.

As we have repeatedly emphasized, it is not for the courts to zone or rezone; the courts will not substitute their judgments for that of the expertise of the zoning officials. DePaul v. Board, xxxxxxxxxxxxxxxxxxxxxxxxxxxx 237 Md. 221, 236, 205 A.2d 805 (1965) and cases therein cited.

On a review of all the testimony and the exhibits, we can not say that the action of the Board in refusing to grant the

applications because of changed conditions was arbitrary or capricious in any sense. We agree with Judge Menchine that the question of whether the changes require the requested reclassification of the two parcels is reasonably debatable and that therefore the Board's decision on this issue must be affirmed.

The applicant cites Missouri Realty, Inc. v. Ramer, 216 Md. 442, 140 A.2d 655 (1958) in support of its contention that the action of the Board in refusing to reclassify the parcels was unsupported by substantial evidence. The property involved in that case was in the vicinity of Harford Park to the north of Taylor Avenue and to the east of Oakleigh Road. The Zoning Commissioner determined that the petition to change about 26 acres of land from the R-6 zone (cottage or semi-detached) to R-9 zone (group housing) should be granted upon the grounds that the change of the character of the neighborhood since the original zoning warranted the reclassification. The Board of Zoning Appeals (now the Board of County Appeals) affirmed. The Circuit Court for Baltimore County reversed the action upon the ground that there was not sufficient evidence of a change in the character of the neighborhood to support the Board's finding. We held in that case, as we hold here, that the evidence made the question of reclassification fairly debatable and made it

a matter for the experts comprising the Board, rather than for the court, to consider and determine. The applicant also relies upon Mayor and Council v. Cotler, 230 Md. 335, 187 A.2d 94 (1963) and Board v. Oak Hill Farms, 232 Md. 274, 192 A.2d 761 (1963). In those cases we found there was no evidence to support the order of the zoning authority; in this case, while the protestants put on no expert testimony, the testimony of the witnesses produced by the appellant is to be considered in the light of the facts of the continued development of Harford Park by the applicant as a one-family residential community, the large number of one-family residences surrounding the two parcels involved, and the erection of individual homes by other builders contiguous to the Park. The Board's opinion shows that it considered all the facts involved. Some physical facts are susceptible of varying interpretations. For example, the construction of Perring Parkway may serve the existing one-family community of Harford Park, already consisting of 700 or 800 individual homes, quite apart from whether or not there will be apartment houses to increase its traffic.

We do not intimate that on the evidence the Board did not have the legal authority to grant the petitions for reclassifications, if it had deemed such action proper. We hold only, as we have so often held before, that the facts in each case must be considered on their own bottom; that so considered, the issue

before the Board as to changed conditions was fairly debatable; and that its decision was supported by substantial evidence and was not arbitrary or capricious.

## II

Before the Board and in the court below, the applicant contended that the Board's action constituted a taking of the applicant's property as to both parcels. Before us, the applicant confines its constitutional argument to Parcel B.

As to this parcel, Mr. Evans testified that the lot has grades of 1-1/2 to 1, or 2 to 1, and that cottage construction would require subfoundations in addition to normal cellars which would be economically unfeasible. He also stated that it would be impossible to install individual driveways to provide access for cottages. Mr. Hall further described the problems inherent in the development of this parcel and stated that, in his opinion, cottages could not be built on them. Mr. Klaus was of the opinion that it would not be economically feasible to develop this parcel within the R-6 zone.

In DePaul v. Board, *supra*, at 227-29, we referred to our decisions as to what amounts to an unconstitutional confiscation of property by the action of a zoning board. If an owner affirmatively demonstrates that the zoning action deprives him of all/beneficial use of his property, the action will be held

unconstitutional, but the restriction upon the property imposed by the zoning action must be such that the property can not be used for any purpose to which it is reasonably adapted.

On the same evidence which was before the Board, the court below found that the applicant had met the heavy burden resting upon it of showing that the existing zoning classification, as applied to Parcel B, operated as a constitutional confiscation of property. The facts were undisputed; it is the correctness of the conclusion of law which the Judge reached upon these facts which is before us. While the judgment of a lower court on the evidence will not be set aside unless clearly erroneous, that phrase of the rule is limited to the court's decision on the evidence. Maryland Rule 886. The conclusions of law based upon the facts are reviewable by this Court. Space Aero v. Darling, 238 Md. 93, 106, 208 A.2d 74 (1965).

The testimony of Mr. Hall and his builder as to the physical problems involved in the use of Parcel B was confined almost entirely to the building of individual houses. Mr. Hall testified on cross-examination before the Board that he personally does not like group homes or semi-detached houses and had not given consideration to use of the property for these purposes. It is not the developer's desires with respect to the use of

his property which are controlling on the issue of whether or not there is an unconstitutional taking; the question is whether the property can be used for any reasonable purpose. See MacDonald v. County Board, *supra*, at 596-97.

Mr. Klaus was of the opinion that the cost of erecting individual homes within the existing zoning classification would be prohibitive; his testimony was not supported by specific figures and other evidence to show the costs which would be involved. Unsupported claims of economic unfeasibility are not enough. Pahl v. County Bd. of Appeals, *supra*, at 297, and DePaul v. Board, *supra*, at 227-28.

The individual driveways referred to by Mr. Evans may well be desirable but the testimony does not show they are essential for homes other than cottages permitted by the existing zoning.

We find that the applicant has not sustained the burden which the law imposes on it to show that the Board's action precludes it from using Parcel B for any purpose for which it is reasonably adapted.

ORDER AFFIRMED INsofar AS IT AFFIRMS THE DECISION OF THE BOARD OF APPEALS AS TO PARCEL A, AND REVERSED INsofar AS IT REVERSES THE BOARD'S DECISION AS TO PARCEL B. CASE REMANDED FOR THE PASSAGE OF AN ORDER AFFIRMING THE BOARD'S DECISION AS TO BOTH PARCELS; THE APPELLATE AND CROSS-APPELLATE TO PAY THE COSTS IN THIS COURT AND BELOW.

APPX. M.B. 05-PON  
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| PARCELS  | UNITS | PARKING |
|----------|-------|---------|
| PARCEL A | 235   | 315     |
| PARCEL B | 13    | 28      |

NOTES

| PARCELS  | PRESENT ZONING | PROPOSED ZONING | AREA      | NET DENSITY | EXISTING USE | PROPOSED USE |
|----------|----------------|-----------------|-----------|-------------|--------------|--------------|
| PARCEL A | R-6            | RA              | 18.48 AC. | 16.56       | UNIMPROVED   | RESIDENTIAL  |
| PARCEL B | R-6            | RA              | 1.80 AC.  | 13.85       | UNIMPROVED   | RESIDENTIAL  |
| PARCEL D | R-6            | R-6             | 0.86 AC.  |             | UNIMPROVED   | RESIDENTIAL  |
| PARCEL E | R-6            | BL              | 0.30 AC.  |             | UNIMPROVED   | COMMERCIAL   |

BALTO. COUNTY, MARYLAND, ELEC. DIST. NO. 9

# HARFORD PARK

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