

designation at the present time. The Tanglewood Development, a single family residential group of homes, is located to the north of the subject property. The Short Line Railroad, the small privately owned industrial railroad, tends to pen in the subject property between the Tanglewood Development and the railroad. Most of the land to the south of the subject property has been developed into institutional uses.

In attempting to decide whether an error was made on the 4.7 acres that are the subject of this petition, it is necessary to try to develop the thinking of the County Council in their deliberations. As has been stated before, it is quite obvious to the writer that the County Council completely overlooked the existence of the Mount Ridge Apartments. Therefore, it seems proper to assume that the subject property was not considered by the County Council as a parcel of land located in an area where there existed two hundred and eight apartment units. Had the Council recognized the Mount Ridge Apartments as "R-A", as this writer believes they should have, then the property which is the subject of this petition may have received more careful attention. The fact that the Short Line Railroad effects the subject property in a manner similar to the effect it has on the Mount Ridge Apartments might well have influenced the thinking of the County Council.

Certainly, considerable doubt exists as to the propriety of the present zoning of the subject property. It is difficult to see where apartments on this land would have any adverse effect on the surrounding properties. The Tanglewood Development backs up to the property and certainly apartments would have no effect on these homes. The size of the property, 4.7 acres, would not allow for sufficient apartments to cause a great increase in automobiles to cause any traffic problems. Sewer and water facilities are both available and would cause no problems.

It seems that the fear of most of the protestants is that the granting of this petition would be the opening wedge to many additional petitions for reclassification in the First District, and would open the way for wholesale changes in the Comprehensive Map adopted for this District.

This member of the Board of Appeals is well aware of the importance of recognizing the correctness of Land Use Maps and the presumption that these maps are correct unless there is an abundance of proof to the contrary. He has so held in previous cases involving Land Use Maps that have been before this Board.

In this petition, however, one cannot overlook the obvious error in the zoning of the Mount Ridge Apartments. In addition, other properties located in the general area that should have been zoned for Public Use on the First District Map were zoned for residential development. The similarity of the characteristics of the subject property and that of the Mount Ridge Apartment property, brought about by the Short Line Railroad, seems sufficient to the writer that both had been properly considered by the County

Council it could have resulted in "R-A" zoning for both properties.

It is, therefore, the decision of this member of the Board of Appeals that this petition from "R-6" Zone to an "R-A" Zone should be granted.

William H. Kaplan

DATE: August 16, 1962

1 THE SHALYNOK IMPROVEMENT
2 ASSOCIATION, INCORPORATED,
3 ET AL
4 vs.
5 NATHAN R. KAUFMAN, JR., ET AL,
6 Constituting the County Board of
7 Appeals of Baltimore County
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December 5, 1962

Before: HONORABLE JOHN GRASON TUPPILL, Judge

THE COURT: Gentlemen, it is, of course, conceded by all that there is a strong presumption in favor of the correctness of a land use map. It is also true and conceded by all that there is a presumption in favor of the correctness of a decision of the Board of Appeals. The burden is on the Petitioner to establish error in the land use map. If the Petitioner, before the Board, establishes to the satisfaction of the Board that there was error in the land use map, then, in the proceeding before this Court the

burden shifts to the protestants, and it is incumbent upon them to show, from the record, that the Board acted in an arbitrary, capricious or illegal way.

It is generally the policy of zoning as much as possible to eliminate nonconforming uses. The Court of Appeals has so held, in the adoption of a land use map, that being the policy of zoning, it was certainly incumbent upon the Council to make every reasonable attempt in the adoption of the map to eliminate a nonconforming use.

I agree with Judge Hammond that simply because there is nonconforming use doesn't mean that, ipso facto, the zoning should be changed. But where you find in such a small area and practically adjacent to the subject property and actually, indeed, included in the subject property nonconforming uses to which the Council apparently gave no heed, and where you see by the map itself that certain public properties - I am not sure of institutional - but certain public properties at least are not shown on the map, that it is inescapable that there were errors made in this immediate area.

I cannot, from the record which I have read and

the exhibits which I have studied and the three separate opinions which I have read, I cannot find that the Board did not have before it substantial evidence which it found to be sufficient to draw the conclusion that the Council had erred in the adoption of this map, and from which the Board could draw the conclusion that the Petitioner was entitled to the change in classification prayed for.

The testimony of Mr. Helfrich, Mr. Williams, to cite one portion of it -- indeed, part of Mr. Gavrelis's testimony if accepted by the Board, in my opinion, was substantial testimony from which the Board could draw the conclusion that there was error and the petition should be granted. And, as everyone here knows, I am absolutely limited - I cannot reverse the Board because of what my personal reactions might be - I am limited to finding whether or not there was evidence from which the Board might reasonably have drawn the conclusions which it did. In my opinion, there is evidence in the record sufficient for the Board's action, and the Court will pass the proper order sustaining the action of the Board.

ZONED R6
PRESENT USE APARTMENTS

MAIDEN CHOICE

LANE

ROAD

RESIDENTIAL USE

BIRCHWOOD
ROAD

TANGLEWOOD

ZONED R6

EXISTING
DWELLING



CATONSVILLE

PUBLIC SCHOOL

SHORTLINE

RAILROAD

ZONED R6
RESIDENTIAL USE

R6 RESIDENTIAL USE

PROPERTY LOCATED
IN
1ST DISTRICT BALTO. CO. MD.
4.7 ACRES ±
PRESENT ZONING
PROPOSED ZONING + APARTMENTS



APPROVED FOR FILING
Reviewed By *[Signature]*
Date *10/16/61*

SCALE 1" = 50' OCTOBER 9, 1961
DOLLENBROS BROTHERS
SURVEYORS & CIVIL ENGINEERS
109 WASHINGTON AVE. TOWSON, MD.

COMPILED FROM PLATS AND DEEDS
THIS MAP IS NOT TO BE USED FOR CONVEYANCE PURPOSES

*see also
survey of 10/16/61
width, location*

