

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, the legal owner... of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an... zone to an... zone; for the following reasons:

See Attached Description

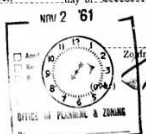
and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for... convalescent home

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above re-classification and/or 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.

Address: 2311 N. Charles Street, Baltimore 18, Maryland

ARMIGER, AGNEW & HENNEGAN
By: John Warfield Armiger
Petitioner's Attorney

Address: 406 Jefferson Building, Towson 4, Maryland
Valley 5-7400
ORDERED By The Zoning Commissioner of Baltimore County, this... day of... 1962, 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 be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the... day of December, 1962, at 10:00 o'clock A.M.



5418-X

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.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this... day of... 1962, that the herein described property or area should be and the same is hereby reclassified; from a... zone to a... zone, and/or a Special Exception for a... should be and the same is granted, from and after the date of this order.

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... there was insufficient testimony before the Zoning Commissioner to grant the requested special exception, therefore...

the above Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this... day of... 1962, that the herein described property or area should be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

IN THE COURT OF APPEALS OF MARYLAND

No. 15

September Term, 1963

F. W. Bonhage, et al.

v.

Elva S. Cruse, et al.

Brune, C. J.,
Henderson,
Prescott,
Harvey,
Marbury,
JJ.

Opinion by Brune, C. J.

Filed: November 12, 1963

#5418-X

Owners of residential properties fronting on both sides of a rather short dead end road, La Paix Lane, which runs west from a main north-south highway, the York Road, appeal from an order of the Circuit Court for Baltimore County which affirmed an order of the County Board of Appeals granting a special exception permitting the use as a convalescent home of a one-acre square tract, zoned as residential, at the southwest corner of these two streets. The Zoning Commissioner denied the application for a special exception, the County Board of Appeals, by a 2-1 vote, granted it, and the Circuit Court affirmed the order of the Board, holding that there was evidence before the Board upon which it could reach its conclusion and hence that its action had to be sustained.

The subject property, which has been improved by an old residence, the protestants' properties and most of the properties in the immediate vicinity of the subject property on both sides of the York Road are zoned as residential, and to a large extent residential use continues, though there is some commercialization, especially at an intersection about 425 feet south on the York Road, where there are several filling stations. Immediately across La Paix Lane north of the subject property is a rather large parking lot belonging to a church which is located diagonally across the York Road and to the northeast of the intersection. Further to the north, on the west side of the York Road, beyond those houses and a part of the property of the Shepard and Pratt Hospital, are two office buildings, one of which contains a cafeteria and drug store. There are also some permitted uses on residentially zoned properties in the neighborhood which are not strictly residential, such as doctors' offices. The same general area here involved was also involved in the case of *Whittle v. Board of Zoning Appeals*, 211 Md. 36, 125 A. 2d 41, and we shall not go into any full description of it here. A large new medical center is now in course of construction not far away and it appears that this development increases the desirability of property in this area for use as a convalescent home.

The York Road is a very heavily traveled highway. La Paix Lane is a little backwater much in keeping with the peaceful atmosphere that its name implies. It is paved only to a width of fifteen feet, and is entered between two brick gateposts on the south and north sides, respectively, and is bordered on each side by a row of trees. The testimony indicates that a fifteen-foot paved road would be inadequate for traffic to and from a convalescent home on the subject property and that an entrance and exit for vehicular traffic on the York Road side would be impractical. It is, therefore, proposed that ingress and egress be on the La Paix Lane side, just as the old residence on this property has been reached by a road entering La Paix Lane and not from the York Road. The testimony also indicated, though the Board's order did not so specify,

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that to accommodate traffic to and from the convalescent home, the paved portion of La Paix Lane should be widened to thirty feet approximately to the depth of the subject property. This, it appears, would require removal of the gate posts and of the rows of trees along the widened part of the street.

The Baltimore County Zoning Regulations permit a convalescent home in a residential area, if a special exception therefore is granted. It is also clear that special exceptions are not to be granted as a matter of course, but that all the items listed as possible special exceptions, though proper uses of land, "have certain aspects which call for special consideration of each proposal." Section 502.1 provides in part that "(b) before any Special Exception shall be granted it must appear that the use for which the Special Exception is requested will not produce any of six results, only two of which call for consideration here. The first (a) is that the use shall not be 'detrimental to the health, safety or general welfare of the locality involved;' and the second (b) is that it shall not '(i) tend to create congestion in roads, streets or alleys therein;'

Section 502.2 of the Regulations directs that the Zoning Commissioner or the Board, in granting any special exception, "shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." The Board did impose restrictions and conditions dealing with the preservation of a green space along the westernmost twenty-foot strip of the subject property and the maintenance and replacement of trees and shrubbery, and requiring that the home be completely air conditioned to prevent noises from emanating therefrom, and that "(a) all site plans for the subject property, including plans for egress and ingress from said property, must be approved by the office of Planning and Zoning."

There was testimony before the Board given by Mr. Frederick P. Klaus, a real estate expert, that "we felt that to apply for a special exception for a nursing home in this location would in no way depreciate or deteriorate the general surrounding neighborhood, due to its location." Mr. Klaus testified as an expert adviser to a Mr. Chew, who at the time of the hearing was the contract purchaser of the subject property, which was then owned by the Cruses. (Not more than about a month after the decision of the Board, Mr. Klaus had apparently taken over Mr. Chew's rights as purchaser, and he intervened in the proceedings in the Circuit Court.) There was strong testimony before the Board, contrary to that of Mr. Klaus, to the effect that the use of this property for a convalescent home would depreciate the value of the neighboring property.

We may assume that Mr. Klaus' testimony was sufficient to warrant the majority of the Board in finding that the granting of the special exception for a convalescent home would not be detrimental to the health, safety or general welfare of the locality involved, at least with the conditions above referred to as to the preservation of trees and shrubbery and the installation of complete air conditioning to prevent the emanation of noise, and that the action of the Board on this phase of the matter should therefore be affirmed. See *Asberry Assn. v. Board of Appeals of Anne Arundel County*, 229 Md. 761, 268, 182 A. 2d 811. (For cases presenting converse situations in which Board action denying a special exception or permit was upheld, see *Crowther, Inc. v. Johnson*, 225 Md. 379, 170 A. 2d 768; *Dorsey Enterprises v. Shpak*, 219 Md. 16, 147 A. 2d 853.)

The majority of the Board did not discuss the traffic problem in its opinion, apparently considering that the evidence was insufficient to call for any such discussion. We note that plans for the proposed convalescent home when the matter was before the Board were exceedingly indefinite. Even the number of beds to be available in the home might have been anywhere between fifty and eighty or possibly a hundred. The uncertainty as to the number of people to be accommodated in the home, of course, tended to render uncertain the number of persons who might be required to staff it, and all of these uncertainties created further

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uncertainties as to the number of vehicles, both passenger cars and delivery trucks, which might have occasion to enter and leave the premises and hence raised doubts as to traffic congestion. The testimony of the engineer called by the applicants is in some respects not very illuminating and it is based to a considerable extent upon anticipated new roads still in a rather indefinite stage of planning and development. He did, however, express the view that no serious traffic problem would be created if La Paix Lane were widened and were used for vehicular traffic to and from the home, and a representative of the Office of Planning of Baltimore County was fairly strong in his opinion that no serious traffic congestion would be created by reason of the establishment of a convalescent home of any of the various capacities suggested. We suppose that the conditions imposed by the Board requiring approval of the site plan and of ingress and egress routes by the Office of Planning and Zoning was designed at least in part to protect against the likelihood of traffic congestion. There would doubtless be some increase in traffic from the establishment of the proposed convalescent home, but this would not necessarily result in creating traffic congestion; we think that the Board could properly have reached the conclusion that if La Paix Lane were to be widened actual congestion would not be created. See *Vestry of St. Mark's, etc. Church v. Doub*, 219 Md. 387, 394-95, 149 A. 2d 779 (a case involving comprehensive rezoning in which a comparable standard was applicable), and cases therein cited. However, we think that the Board could properly reach such a conclusion in the instant case, if, but only if, there were assurance that La Paix Lane would be widened sufficiently to accommodate the increased traffic to which that narrow road would be subjected; and we find no such assurance.

The County Board of Appeals, so far as we are informed, has no power to widen streets or to require them to be widened; nor, so far as we are informed, does the Office of Planning and Zoning. It seems to us clear from the applicants' own evidence before the Board that La Paix Lane as now constructed would be inadequate. Its widening is not a condition which the Board attached to its approval (perhaps because of doubt as to its power to attach it - perhaps because it did not deem it necessary), but without such widening, we think that on the applicants' own showing, condition b of Section 502.1 - that the granting of the special exception would not tend to create traffic congestion - has not been met. Such being the case, we think that the granting of the special exception in this case was unwarranted.

We express no opinion with regard to the Board's right to attach a condition which it might not be able to enforce, but which the applicants might be able and willing to comply with. Nor do we find it necessary at this time to go into the appellants' contention that the proposed convalescent home would, in fact be a hospital and that as such it would violate the density requirements of the Regulations.

In accordance with the view above expressed, that the requirement of sub division b of Section 502.1 of the Zoning Regulations of Baltimore County has not been met, we shall reverse the order appealed from and remand the case to the Circuit Court with instructions to enter an order reversing the order of the Board of Zoning Appeals and reinstating the order of the Zoning Commissioner, which denied the special exception.

ORDER REVERSED AND CASE REMANDED FOR THE ENTRY OF AN ORDER IN ACCORDANCE WITH THIS OPINION; THE COSTS TO BE PAID BY THE APPELLEES.

IN THE MATTER OF
Petition for Special Exception in
B-10 Zone for Convalescent Home,
Southwest Corner of La Paix Lane
and York Road, 9th District,
Baltimore County

BEFORE
THE BOARD OF
APPEALS
FOR
BALTIMORE COUNTY
Case No. 5418-X
5418

MR. CLERK:

Please note an Appeal in the above captioned case.

Armiger, Agnew & Hennegan
406 Jefferson Building
Towson 4, Maryland
Valley 5-7400
Attorneys for Petitioners

F. W. BONHAGE
103 LaPaix Lane
Baltimore 4, Maryland

and

CHARLES DI JULIO
104 LaPaix Lane
Baltimore 4, Maryland

and

THE YORKLEIGH IMPROVEMENT
ASSOCIATION
c/o Mr. F. W. Bonhage
103 LaPaix Lane
Baltimore 4, Maryland
Plaintiffs

vs.

GATHAN H. KAUFMAN,
G. MITCHELL AUSTIN and
CHARLES STEINBOCK, JR.,
Constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Defendants

ORDER FOR APPEAL

Mr. Clerk:

Please note an Appeal on behalf of F. W. Bonhage, Charles DiJulio and the Yorkleigh Improvement Association from the County Board of Appeals of Baltimore County to the Circuit Court for Baltimore County, in the matter of the Petition for a Special Exception for use of the real property at the southwest corner of LaPaix Lane and York Road as a convalescent home, Elva Cruse and Carroll Mitchell being the Petitioners, and the real property being located in the Ninth Election District of Baltimore County. This Appeal is from the majority decision in Appeal No. 5418-X of the County Board of Appeals of Baltimore County, dated August 16, 1962, in which the Petition for Special Exception, as above

set forth, was granted by a majority of said Board.

This Appeal is filed pursuant to the provisions of Maryland Rules 1101b.

W. Lee Thomas
Of Counsel for
Plaintiffs-Protestants

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal was mailed by me this... day of September, 1962, to the County Board of Appeals of Baltimore County, County Office Building, Towson 4, Maryland.

W. Lee Thomas

PROCTOR, RYSTON
AND
MUELLER
CAPITOL BUILDING
TOWSON 4, MD.
VALLEY 5-1800

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RE: PETITION FOR SPECIAL EXCEPTION : BEFORE
for Convalescent Home : COUNTY BOARD OF APPEALS
S/W Corner LaPaix Lane and : OF
York Road - 9th District :
Elm - Case and : BALTIMORE COUNTY
Carroll Mitchell - Petitioners :
No. 5418-X

OPINION

This is a petition for a special exception for a Convalescent Home on the Southwest Corner of LaPaix Lane and York Road in the Ninth District of Baltimore County.

The subject property is located on the Southwest Corner of LaPaix Lane and York Road and has a frontage of 225' on York Road and 225' on LaPaix Lane. In fact, the property is almost exactly 225' square and comprises one acre of land.

In considering the request for a special exception for the subject property, consideration must be given to the uses of adjacent properties in the area. Going some 400 to 450' south, at the intersection of York and Stevenson Roads, we find all four corners zoned Business Local. Three of these corners are occupied by gasoline service stations. Two of these stations are in operation, the third under construction, and the fourth corner, the northwest corner of York and Stevenson Roads, while zoned Business Local, is being used for some office or laboratory use in a residential type building.

Going north on the west side of York Road next to the Business Local property, is property occupied by a church. Then we find a piece of "R-6" property which seems to be about the same size of the subject property on which a rather old but substantial type home is located, and then we come to the subject property.

On the east side of York Road, in a northerly direction from Stevenson Road, we find a service station on the corner under construction, and then, former residential homes now being used by an Optician, a combined Furniture-Drapery and Interior Decorator establishment, and a Beauty Salon.

Going north from LaPaix Lane on the west side of York Road we find a large parking lot which is used by a church diagonally across York Road. Next to the parking lot are two residential type homes used as church houses, and then the property of the Sheppard Pratt Hospital. Next is the Esso Office Building, and just to the north of this office building is another large office building in which there is a large cafeteria type restaurant and a modern drug store.

On the east side of York Road, directly opposite the subject property, are residential homes, some of which are now being used, in part, as doctors' offices. Then

a large modern church, and going still further north, mostly older type residential properties.

It is hard to conceive then anyone would develop properties today north of Stevenson Road and south of the Towson business area, with substantial frontage on York Road, in single family or duplex homes. An examination of uses of property in this area cannot possibly lend one to any other conclusion than that the York Road frontage, when and if it is developed, will be developed for business, office buildings or apartment uses.

The subject property is located at the entrance of a lovely residential lane. Immediately to the west of the subject property, on the south side of LaPaix Lane, is a very substantial home built by Mr. Carl DiJulio some fourteen years ago. Certainly every consideration and protection should be given the residential development on LaPaix Lane. The majority members of the Board cannot possibly see how the granting of a special exception for a Convalescent Home can in any way violate Section 502.1 of the Zoning Regulations. Only the question of general welfare of the locality involved can give any question of doubt. The majority members of the Board are of the opinion that in being able to write restrictions governing the use of the subject property for a Convalescent Home, any doubt is removed that one may have as to any adverse effect that the special exception would have on the general welfare of the locality involved. It is, therefore, the majority opinion that the special exception should be granted subject to the following restrictions:

1. The portion of the property located within an area of 20 feet from the west property line of the subject property, running the entire distance from LaPaix Lane to the southern boundary of the property, may not be used for any other purpose than green spaces.
2. All of the trees, shrubs and bushes now existing in the area described in Restriction #1 must remain as they are on the date of this Order.
3. In the event that any substantial amount of the Shrubby, trees or bushes referred to in Restriction #2 of this Order are destroyed in any way, they shall be replaced in such a manner as to afford similar screening as to that which now exists from the properties to the west.
4. The Convalescent Home must be completely airconditioned so as to avoid any possible noises emanating from said Convalescent Home.
5. All site plans for the subject property, including plans for egress and ingress from said property, must be approved by the office of Planning and Zoning.

2. That the tract of land above described is presently zoned R-6 residential and has located thereon a frame dwelling now vacant.

3. That the Plaintiffs-Protestants, to wit, Messrs. Bonhage and DiJulio and Yorkleigh Improvement Association, were Protestants in this matter before the Zoning Commissioner of Baltimore County and before the County Board of Appeals of Baltimore County.

4. That the Messrs. Bonhage and DiJulio, Plaintiffs-Protestants, are taxpayers and voters of Baltimore County, are property owners therein, and all reside in close proximity to the tract of land for which the Special Exception had been requested and has been granted by the County Board of Appeals and, therefore, these Plaintiffs-Protestants believe that they have sufficient interest in this matter to take such Appeal.

5. That the majority decision of the County Board of Appeals which, in effect, reversed an earlier denial of the requested Special Exception by the Zoning Commissioner of Baltimore County, is erroneous for the following reasons:

(a) That the act of the Board in reclassifying such property was arbitrary and capricious for the following reasons, among others:

(i) That although the Baltimore County Zoning Regulations governing the granting of Special Exceptions in Baltimore County, Maryland, provide in Section 502.1 that

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

a. Be detrimental to the health, safety, or general welfare of the locality involved;

the Petitioners neglected, or were unable, to present any evidence sufficient, either standing alone or by inference therefrom, to establish the lack of claimed detriment to the health, safety and general welfare of the immediate locality.

(ii) Although the above cited Section 502.1 of the Baltimore County Zoning Regulations also provides that the use for which a Special Exception is requested must not

b. Tend to create congestion in roads, streets or alleys therein; * * *

evidence presented by the Petitioners did nothing to negate the assertions by Protestants that such property use would, in fact, create congestion in neighboring roads and streets. The explanations presented by Petitioners were inconclusive, contradictory, and of such a speculative nature that no action or decision of the County Board of Appeals could reasonably or logically be based thereon. For example, the witnesses for the Petitioners were unable to agree or did not know the location of the traffic entrances to the planned installation, had no pertinent evidence of the anticipated number of vehicles, and had no coherent plans for the alleviation of congestion that witnesses for the Protestants cited.

(iii) That other requirements set forth in the above cited Section 502.1 of the Baltimore County Zoning Regulations make it mandatory that the use of property for the Special Exception requested not

c. Create a potential hazard from fire, panic or other dangers; * * *

and

ORDER

For the reasons set forth in the foregoing Opinion, it is this 16th day of August, 1962 by the County Board of Appeals, ORDERED that the special exception petitioned for, be and the same is hereby granted.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 8 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William H. Bonhage
CHAIRMAN
W. Mitchell Austin

F. W. BONHAGE
103 LaPaix Lane
Baltimore 4, Maryland
and
CHARLES DI JULIO
104 LaPaix Lane
Baltimore 4, Maryland
and
THE YORKLEIGH IMPROVEMENT ASSOCIATION
c/o Mr. F. W. Bonhage
103 LaPaix Lane
Baltimore 4, Maryland
Plaintiffs
VS.
NATHAN H. KATHMAN,
G. MITCHELL AUSTIN and
CHARLES PRITCHOCK, JR.,
Constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Defendants

PETITION FOR APPEAL

The Petition of F. W. Bonhage, Charles DiJulio, and The Yorkleigh Improvement Association, by Proctor, Royston & Mueller and W. Lee Thomas, their attorneys, filed pursuant to the provisions of Maryland Rules 1101b, respectfully represents unto your Honor:

1. That this Appeal is from an Order of the County Board of Appeals of Baltimore County passed on August 16, 1962, in Petition No. 5418-X, by which the majority of the members of such County Board of Appeals and thus such County Board of Appeals as a body, granted a Special Exception requested by Elva Crase and Carroll Mitchell, Petitioners, to use real property of the Petitioners located at the southwest corner of LaPaix Lane and York Road, in the Ninth Election District of Baltimore County, for convalescent home purposes.

PROCTOR, ROYSTON
AND
MUELLER
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TOWSON 4, MD.
VALLEY 5-1800

"d. Tend to overcrowd land and cause undue concentration of population;"

The Board was presented with no credible evidence upon which to base a decision concerning the possible or probable violations of these mandates. For example, the witnesses for the Petitioners disagreed as to the size of the contemplated installation, disagreed as to the number of customers expected to reside therein, were unable to testify with accuracy concerning the number of employees necessary to conduct the business for which the Special Exception was requested, and were unable to agree as to the number of visitors, nurses, physicians, other medical personnel, and trades people who would necessarily utilize the subject premises. Further, the witnesses for the Petitioners were unable to, or unwilling to testify with clarity concerning the physical structures to be erected on such real property, or to testify concerning attendant dangers from the above mentioned hazards to the customers therein or the residents located nearby.

(iv) Other requirements of the above cited Section 502.1 of the Baltimore County Zoning Regulations require that the Board be satisfied that the contemplated use of land will not interfere with adequate provisions for water, sewerage, or other public requirements and will not interfere with adequate light and air. Again, although witnesses for the Protestants brought to the Board's attention instances wherein such prohibitions would be violated by the utilization of the subject land as a convalescent home, the Petitioners, either through their

refusal or their inability to present to the Board plans for their proposed convalescent home, failed to negate the evidence presented by Protestants and thusly denied to the Board any facts on which the Board could reasonably grant the requested Special Exception.

(v) The County Board of Appeals, not having had presented to them by the Petitioners any plan or semblance of a plan for the development and use of the subject property, attempted to rectify Petitioners' omission and error by, in effect, attempting to write a developmental plan into the majority Order of the Board. The restrictions contained on page 2 of the majority Opinion provide, in substance, for screening, airconditioning and approval by the Office of Planning and Zoning of site plans. Even the "plan" of the Board fails to accomplish what the Petitioners should have accomplished by their case presentation. In addition, the Protestants, being unaware that the Board, rather than the Petitioners, would attempt to introduce a development plan for the subject real property, were unable to make their views known, to supply to the Board their accumulated and intimate knowledge of the area in question, and to voice and evidence their objections to the proposals advanced.

(vi) The majority Opinion of the Board ignored the complete lack of developmental plan for the installation, by-passed the problems incident to traffic congestion, discounted the problems incident to the general welfare of the locality, failed to consider or comment on

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the fact that the Petitioners' request was so speculative that the proposed operator of the convalescent home was not known, and deprived the Protestants of an opportunity to present evidence concerning the propriety of any developmental plan. For example, in regard to the screening, air conditioning and approval of site plans embodied within the "plan" of the County Board of Appeals, since there had been no precise evidence presented by Petitioners as to these items, the Protestants, quite naturally, were unable to present evidence which might have illustrated the insufficiency of these items.

(vii) Although the Board had presented to it uncontradicted and uncontested evidence concerning vast monetary losses to neighboring property owners if the Special Exception were granted, the majority members of the Board disregarded such evidence and stated: " . . . that in being able to write restrictions governing the use of the subject property for a convalescent home, any doubt is removed that one may have as to any adverse effect that the special exception would have on the general welfare of the locality involved."

All of the above illustrate and evidence the arbitrary, capricious and unreasonable nature of the granting of the requested Special Exception by the majority members of the County Board of Appeals and, therefore, the action of such majority members and the Order emanating therefrom amounts to an abuse of discretion on the part of the Board. This abuse of discretion is vividly illustrated by the contents of the dissenting Opinion

written by the dissenting Board member, Charles Steinbock, Jr., wherein many of the items set forth above and presented to the Board for its consideration are cited, including the problems of traffic congestion, the adverse effect on the general welfare of the community, and the potential overcrowding of land.

WHEREFORE, the Plaintiffs-Protestants pray that this Honorable Court pass an Order reversing the Order of the County Board of Appeals of Baltimore County and directing the zoning authorities of Baltimore County to deny the Special Exception requested by Petitioners.

AND AS IN DUTY BOUND, ETC.

Proctor, Royston & Mueller

W. Lee Thomas

I HEREBY CERTIFY that a copy of the foregoing Petition was mailed by me this 5 day of September, 1962, to the County Board of Appeals of Baltimore County, County Office Building, Towson 4, Maryland.

W. Lee Thomas

RE: PETITION FOR SPECIAL EXCEPTION : BEFORE
for Convalescent Home : COUNTY BOARD OF APPEALS
540 Corner LaPaix Lane and : OF
York Road - 5th District :
Elva Cruse and : BALTIMORE COUNTY
Carroll Mitchell - Petitioners :
No. 5418-X

DISSENTING OPINION

This is a petition for a special exception for a Convalescent Home on the southwest corner of LaPaix Lane and York Road. The subject tract is approximately one acre in size and is occupied by a residence and is now zoned "R-10". If this petition is granted, the petitioner plans to tear down the present structure and erect a two story building with a capacity of fifty (50) beds.

LaPaix Lane is a narrow tree lined road which is dead end. There are fourteen (14) homes on this street and the most recent one was built less than three years ago. There is no traffic light at York Road and residents of LaPaix Lane testified that it was difficult to enter York Road because of the heavy traffic.

In order to use the subject property for a convalescent home, it would be necessary to widen LaPaix Lane to permit visitors and employees cars and service trucks to enter the property. In order to widen the street, the two stone columns at the entrance from York Road and a number of trees would have to be removed. This, in itself, would completely destroy the present character of LaPaix Lane which is uniquely residential in nature and seemingly detached or isolated from surrounding uses on York Road. The present home on the subject tract faces LaPaix Lane and is fairly well removed from the York Road influence by shrubbery and a fairly deep set-back. A residence on "R-10" lane adjoins the property on the south.

Mr. Charles DiJulio, a home builder who lives at 104 LaPaix Lane, the adjoining property on the west, testified that he has \$75,000 invested in his large stone home and that the granting of this special exception would materially depreciate the value of his home. Mr. Hugh Gelston, a realtor, testified that Mr. DiJulio's home would be depreciated 25% to 30% by the erection of a nursing home on the adjoining lot, and that all homes in the area would be adversely affected. He further stated that the subject property could be developed as residential with a fair return to the owner.

The petitioner, in his testimony, quoted from a majority opinion written by the other members of this Board in Case No. 5115-X, viz, " . . . York Road from the City Line to Towson is of a commercial nature and that any future development of

frontage on York Road in this area will of necessity, be that of a commercial nature. . . . This member of the Board objects to the inference that such broad brush treatment of a large area means that all zoning changes requested will automatically be granted.

This member of the Board is of the opinion that the granting of this special exception would not be in conformity with the neighborhood; it would be detrimental to the general welfare of the homes on LaPaix Lane; it would create further congestion at LaPaix Lane and York Road; it would tend to overcrowd the land; and it would interfere with adequate light and air for Mr. DiJulio's property. The uses of the land on the west side of York Road from Stevenson Lane to Burke Avenue appear to be stabilized and further commercialization will only lead to subsequent requests for further zoning changes on both sides of York Road.

For the reasons set forth above, it is the opinion of this member of the Board of Appeals that the special exception petitioned for should be denied.

DATE 9/14/62

Charles Steinbock, Jr.

PROCTOR, ROYSTON
AND
MUELLER
CAMPBELL BUILDING
TOWSON 4, MD.
VALLEY 3-1800

PROCTOR, ROYSTON
AND
MUELLER
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TOWSON 4, MD.
VALLEY 3-1800

TELEPHONE VALLEY 3-3000

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

No. 9776
DATE 12/1/61
5418

To: Arwiler, Agnew and Neenan
405 Jefferson Building
Towson 4, Maryland

BILLED TO: Zoning Department of Baltimore County

DEPOSIT TO ACCOUNT NO. 01622

QUANTITY	DEBIT UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Advertising and posting of property for Mitchell & Cruse	33.00

TOTAL AMOUNT DUE 33.00

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 PUBLICATION

TOWSON, MD., November 17th, 1962

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., as set forth in the advertisement, before the 15th day of November, 1962, the first publication appearing on the 17th day of November, 1962.

THE JEFFERSONIAN,

Manager.

Cost of Advertisement, \$

TELEPHONE VALLEY 3-3000

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

No. 10762
DATE 9/13/62

To: W. Lee Thomas, Esq.
Proctor, Royston & Mueller
Campbell Building
Towson 4, Maryland

BILLED TO: County Board of Appeals

DEPOSIT TO ACCOUNT NO. 01622

QUANTITY	DEBIT UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Cost of Certified Documents for - No. 5418-X Elva S. Cruse and Carroll Mitchell 540 Corner York Road & LaPaix Lane 9th District	\$7.00

TOTAL AMOUNT DUE 7.00

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.

TELEPHONE VALLEY 3-3000

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

No. 9726
DATE 12/22/61

To: Messrs. Arwiler, Agnew & Neenan,
Jefferson Building
Towson 4, Maryland

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

DEPOSIT TO ACCOUNT NO. 01622

QUANTITY	DEBIT UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Cost of appeal to County Board of Appeals No. 5418-X	\$70.00

TOTAL AMOUNT DUE 70.00

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

#5418

District: 9th Date of Posting: 11-15-61

Posted for: Special Exception for Convalescent Home

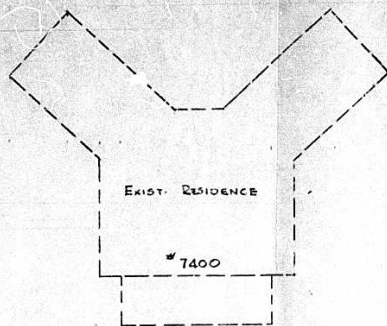
Petitioner: Elva Cruse and Carroll Mitchell

Location of property: 540 Corner of York Rd. and LaPaix Ave.

Location of Signs: Southwest Corner of York Rd. and LaPaix Avenue

Remarks: George R. Hummel

Posted by: Date of return: 11-16-61



ZONING R-10

TABULATION:
 EXISTING ZONING R-10 (USE RESIDENTIAL)
 REQUESTED SPECIAL EXCEPTION
 FOR CONVALECENT HOME (80 BED)
 REQUIRED PARKING 8 CARS
 PROPOSED PARKING 21 CARS
 NET AREA 1 ACRE ±
 EXISTING TREES THUS: (○)
 PROPOSED PLANTING THUS: (●)

PRELIMINARY PLOT PLAN LA PAIX CONVALECENT HOME

YORK ROAD & LA PAIX AVENUE
 9TH ELECTION DISTRICT BALTIMORE COUNTY, MD.,
 SCALE: 1/4" = 20 FT. OCT. 31, 1961

G.W. STEPHENS, JR. & ASSOC. INC.
 ENGINEERS & LANDSCAPE ARCHITECTS
 TOWSON MARYLAND

RESIDENTIAL USE

RESIDENCE WITH
 MD. & DDS OFFICES

RESIDENCE WITH
 DDS OFFICE

ZONING R-6

APPROVED FOR FILING
 Reviewed By *[Signature]*
 Date *11/1/61*

