

PETITION FOR ZONING RE-CLASSIFICATION AND/C! SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY.

I, or we, Ortel Realty, Inc., 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 R-6 zone to an RA-X zone; for the following reasons:

Error in original zoning map and change in the character of the neighborhood

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 to permit elevator apartment buildings.

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.

Contract purchaser
Address: Ortel Realty, Inc. Legal Owner
Address, P. O. Box 6804
Towson 4, Maryland

Petitioner's Attorney
William S. Baldwin
Address: 24 W. Pennsylvania Avenue
Towson 4, Maryland

ORDERED By The Zoning Commissioner of Baltimore County, this 31st day of July, 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 11th day of October, 1962, at 3:00 o'clock P.m.



(over)

Re: Petition of Ortel Realty, Inc.,
For extension of time to Use
Special Exception - W/S
Goucher Boulevard (Pro.)
N. of Knightwood and
Ablett Roads, E. of Country
Club of Maryland, 9th Dist.
Zoning Commissioner
of
Baltimore County
No. 5673

It is this 15th day of March, 1968, by the Zoning Commissioner of Baltimore County, ORDERED that an extension of the special exception granted in the above matter on March 23, 1965, be and the same is hereby extended to April 3, 1969, which is now the final extension.

[Signature]
Zoning Commissioner of
Baltimore County

MATZ, CHILDS & ASSOCIATES, INC.

Engineers - Surveyors - Soil Planners
2129 N. Charles St., Baltimore 18, Maryland
Telephone 2-5180

DESCRIPTION

26.7998 ACRE TRACT TO BE REZONED FROM R-6 TO RA NINTH ELECTION DISTRICT BALTIMORE COUNTY, MD.

Beginning for the same at a point on the east side of Glendale Road, 60 feet wide, said beginning point being at the northernmost corner of Lot 2 Block "E" of Plat Two, Section Two, "Glenmont" as recorded among the Land Records of Baltimore County in Plat Book W.J.R. No. 26, Folio 45, running thence binding on the outlines of said plat, and on the outlines of Plat Three Section Two, "Glenmont", as recorded among said Land Records in Plat Book W.J.R. No. 27, Folio 124 the four following courses and distances, namely (1) northerly by a curve to the left with a radius of 1280.00 feet the distance of 44.43 feet (said arc being subtended by a chord bearing N. 12° 24' 50" E., 44.43 feet), (2) N. 76° 34' 50" W., 143.81 feet, (3) N. 10° 29' 20" W., 310.08 feet and (4) N. 77° 30' 00" W., 51.00 feet to the westernmost outline of the aforementioned Plat Four, Section Two of "Glenmont" thence binding thereon N. 34° 41' 21" E., 1139.92 feet to the northernmost point in the outline of "Glenmont" as shown on Plat Four, Section Two of "Glenmont" and recorded among the Land Records of Baltimore County in Plat Book W.J.R. No. 27, Folio 125, said point of beginning having the designation "72" on said plat, thence running and binding on the northernmost outline of said plat and continuing to bind along the northernmost outline of Plat Three, Section Two of "Glenmont" as recorded among the afore-

Description: 26.7998 Acre Tract to be Re-zoned From R-6 to RA Ninth Election District Baltimore County, Maryland

Land Records in Plat Book W.J.R. No. 27, Folio 124, the three following courses and distances, namely: (1) S. 70° 36' 58" E., 411.36 feet, (2) S. 73° 34' 12" E., 576.70 feet and (3) S. 55° 24' 10" E., 30.02 feet, thence continuing to bind along the easternmost outline of said Plat Three the eight following courses and distances, namely: (1) southerly by a curve to the left with a radius of 480.00 feet the distance of 304.06 feet (said arc being subtended by a chord bearing S. 15° 27' 00" W., 299.00 feet), (2) still southerly by another curve to the left with a radius of 280.00 feet the distance of 117.77 feet (said arc being subtended by a chord bearing S. 14° 44' 48.5" E., 116.91 feet), (3) S. 26° 47' 47" E., 137.04 feet, (4) westerly by a curve to the right with a radius of 210.00 feet the distance of 36.79 feet, (5) S. 87° 47' 00" W., 19.29 feet, (6) S. 02° 13' 00" E., 90.00 feet, (7) S. 06° 48' 00" E., 257.86 feet and (8) S. 13° 55' 40" W., 270.39 feet to the dividing line between the said Plat Three and Plat Two, Section Two of "Glenmont", thence binding along said division line the eleven following courses and distances, namely: (1) N. 73° 50' 20" W., 141.27 feet, (2) northerly by a curve to the left with a radius of 1330.00 feet the distance of 56.05 feet (said arc being subtended by a chord bearing N. 15° 56' 42" E., 56.04 feet), (3) N. 75° 56' 16" W., 181.84 feet, (4) N. 16° 13' 50" E., 41.62 feet, (5) N. 77° 42' 10" W., 38.14 feet, (6) N. 82° 30' 00" W., 183.50 feet, (7) S. 14° 30' 00" W., 21.57 feet, (8) S. 82° 05' 00" W., 43.03 feet, (9) N. 76° 49' 13" W., 150.00 feet, (10)

MATZ, CHILDS & ASSOCIATES, INC.
2129 N. Charles St., Baltimore 18, Maryland
#5673-RX

Description: 26.7998 Acre Tract to be Re-zoned From R-6 to RA Ninth Election District Baltimore County, Maryland

southerly by a curve to the left with a radius of 630.00 feet the distance of 64.90 feet (said arc being subtended by a chord bearing S. 10° 13' 43.5" W., 64.87 feet) and (11) N. 82° 43' 20" W., 145.40 feet to a point common to Plate Two, Three and Four, Section Two of Glenmont, thence binding along the division line between said Plate Two and Four, Section Two of Glenmont the six following courses and distances, namely: (1) S. 02° 00' 00" W., 85.96 feet, (2) S. 85° 46' 50" W., 195.00 feet, (3) southerly by a curve to the left with a radius of 2780.00 feet the distance of 5.02 feet (said arc being subtended by a chord bearing S. 01° 16' 17.5" W., 5.03 feet), (4) N. 85° 38' 20" W., 128.80 feet, (5) N. 11° 51' 40" E., 12.89 feet, (6) N. 76° 35' 30" W., 127.41 feet to the place of beginning.

Containing 26.7998 Acres of land.

Being all of Plat Three and Plat Four, Section Two of "Glenmont" as recorded among the Land Records of Baltimore County in Plat Book W.J.R. No. 27, Folio 124 and 125 respectively.

6/7/62

RWB:abr

J. O. #61177



May 8, 1968

Mr. John A. Kirk, Jr.,
1427 Glendale Road
Baltimore, Maryland 21212

Re. Security Management Corp.,
No. 5673

Dear Mr. Kirk:

I wrote to J. M. Dorsch, III, Esquire, on March 27, 1968 and sent you a copy of my letter together with a copy of Mr. Nolan's letter. I thought you would understand from Mr. Nolan's letter that he is not using his special exception. Neither the Zoning Commissioner nor the County Board of Appeals can lay on restrictions in a matter of zoning only. We can only put restrictions on special exceptions.

Mr. Nolan in his letter of March 25, said that he is not taking advantage of this special exception and I repeat that the portion referring to construction is not enforceable by the Zoning Commissioner.

I would suggest that you contact Mr. Clifford of the Traffic Department direct consulting traffic problems. You might also contact the County Executive Office for assistance in this matter.

Very truly yours

Zoning Commissioner

cc: Mr. Daniel Colosio

John A. Kirk Jr.
1427 Glendale Rd
Baltimore Md 21212

May 7 1968

Mr. John A. Kirk, Jr., Zoning Commissioner
Baltimore County
Re. Glenmont Case 5673-R

Dear Mr. Kirk:
I have just heard from Mr. Clifford
in your letter April 23.

Now have you commented on the
County's responsibility to enforce the zoning
decisions

Yours truly,
John A. Kirk Jr.



March 15, 1968

James D. Nolan, Esq.,
234 West Pennsylvania Avenue
Towson, Maryland 21204

Re: Petition of Ortel Realty, Inc.,
Case No. 5673

Dear Mr. Nolan:

I have today passed my Order
in the above matter in accordance with the attached copy.

Very truly yours

Zoning Commissioner

cc: Mr. Melvin Colvin
Security Management Corp.,
805 Lannerton Road,
Baltimore, Md. 21221

John A. Kirk, Jr.
1427 Glendale Rd.
Baltimore, Md. 21212
April 15, 1968

Mr. John G. Rose, Zoning Commissioner
Towson, Md. 21204

Re: Security Management Corp.
Case No. 5673-R

Dear Mr. Rose:
Reference your letter to me to Mr. Dausch, III, on the above subject, copy of which you sent to me. Illness has delayed these comments.

I am unable to do so, as to my reply or action on the part of Mr. Dausch, III, in addition to being an Attorney is President of the Glendale Assoc., of which I am not a member.

Mr. Nolan's position is clearly stated in his letter to you and I frankly and freely admit to my inexperience in these matters and a discussion with an Attorney of Mr. Nolan's experience in hand and body affairs would be of no avail.

However, I had the distinct impression from my conversation with you last fall, at which time you asked me to advise you as to the if any work was started on this tract, prior to completion of the Goucher Blvd. connection, that you believed this would constitute a violation and I got the impression it was the duty of the proper County authority to enforce its opinion.

The opinion of the Board of the order of the Board and the opinion thereof states and affirms the provision granted by Mr. Nolan as follows:

"Reclassification (Cm. h. t. R.) and special exception (highrise) petition does, be and the same is (sic) hereby granted subject to the aforementioned restrictions. Completion of Goucher Blvd. see, agree, improve."

This interpreted provision clearly negates and discards of no value. The provision quoted by Mr. Nolan. It is only quoted by the Board as evidence of the ambiguity in the order.

The actual passage of commercial traffic in connection with the project, such as trucks, consisting of, among other things, many movements of empty and loaded dump trucks, concrete mixers, cement block trucks, heavy construction trailers loaded with heavy earth moving equipment, trucks, autos, utility trucks, etc., in front of the home and others on this street, creates traffic hazards, loud noises, exhaust fumes, annoyance and otherwise interferes with peaceful and tranquil enjoyment of the homes.

Frankly, I am without the personal powers to contest this before the Board against the project Management and I believe it to be the responsibility of the proper County authorities.

Yours Truly

John A. Kirk, Jr.
1427 Glendale Rd.
Baltimore, Md. 21212

April 23, 1968

Mr. Eugene J. Clifford,
Traffic Engineer
Bureau of Traffic Engineering
Jefferson Building
Towson, Maryland 21204

Dear Mr. Clifford:

We have received a complaint from Mr. John A. Kirk, Jr., 1427 Glendale Road, Baltimore, Md. 21212, stating that the continual passage of commercial vehicles in connection with the building of apartments and prior to the construction of Goucher Boulevard, from Taylor Avenue on the north to its intersection with Loch Raven Boulevard on the southeast, is causing him and other neighbors great discomfort.

It would be appreciated if you could look into this matter in order to see whether or not you may be of some assistance.

Very truly yours

Zoning Commissioner

cc: John A. Kirk, Jr.,
1427 Glendale Road,
Baltimore, Md. 21212

Enclosures are for your information.

March 27, 1968

Michael J. Dausch, III, Esq.,
421 Ritchie Highway
Glenburnie, Maryland

Dear Mr. Dausch:

I am enclosing copy of letter from James D. Nolan, attorney, concerning the Security Management Corporation, successor in interest to Ortel Realty, Inc., Case No. 5673.

I would suggest that you meet with Mr. Nolan to discuss this matter.

Very truly yours

Zoning Commissioner

cc: Mr. John A. Kirk,
1427 Glendale Road,
Baltimore, Md. 21212

JAMES D. NOLAN
204 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

March 25, 1968

John G. Rose,
Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Security Management Corporation
Successor in Interest to Ortel Realty, Inc.
Case No. 5673-R

Dear Mr. Rose:

This is in answer to your letter of March 22, 1968, relative to commencement of construction of the apartment project, for which rezoning was obtained in the above-entitled case.

Further with respect to your letter, I have spoken with Michael J. Dausch, III, attorney for the Glendale-Glenmont Improvement Association, and to a Mr. Kirk, of 1417 Glendale Road.

Your attention is invited to the opinion of the County Board of Appeals, dated March 19, 1963, which opinion was subsequently affirmed by the Circuit Court of Baltimore County, and by the Court of Appeals of the State of Maryland, in the case of Riche v. Baltimore County Board of Appeals for Baltimore County and Ortel Realty, Inc., 234 Md. 259, decided by said Court on April 3, 1964. You will note that the classification granted by the Board, and affirmed by the Court, reclassified the tract of land from R6 zoning to an RA zone, without any contingencies for garden type apartments. It is on these apartments that the work is in progress.

Again referring to the opinion of the Board, as affirmed by the Court, a special exception was granted, subject to several provisions, one of which is as follows:

"No construction work on the property shall begin until the completion of the extension

John G. Rose,
Zoning Commissioner

Page Two
March 25, 1968

of Goucher Boulevard from Taylor Avenue on the north to its intersection with Loch Raven Boulevard on the southeast."

Work is definitely not in progress on the high rise apartments granted by the said special exception, but it is contemplated to commence such work upon the extension of Goucher Boulevard from Taylor Avenue on the north to the intersection with Loch Raven Boulevard on the southeast. The State Roads Commission of Maryland has scheduled the completion of this work for April or May of this year. The contract for the paving has been let to the Campnell Corporation.

It was for this reason that on behalf of my client I pointed out to your office the need for the extension of the special exception which was granted by your order dated March 15, 1968, and provides for the extension of the special exception to April 3, 1969.

I will be happy to meet with you and the protestants or complainants if you desire such meeting.

Sincerely,

James D. Nolan

JDN:n

cc: Security Management Corporation
805 Lammerton Road
Baltimore, Maryland 21221

March 22, 1968

James D. Nolan, Esq.,
204 West Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. Nolan:

I have received several 'phone calls from individuals living in the vicinity of the property considered under zoning petition No. 5673-R, known as the Ortel Realty case.

The complaint is that work is going on prior to the completion of Goucher Boulevard Extension contrary to the requirements of the Board of Appeals' Order in this matter.

Please advise.

Very truly yours

Zoning Commissioner

John A. Kirk, Jr.
1427 Glendale Road
Baltimore, Maryland 21212

Mr. John Rose
Zoning Commissioner

Dear Mr. Rose
Re: Security Management Corp.

Subject: Ortel Realty
Case No. 5673-R

Construction was begun on the property above mentioned on or about March 7 and it is believed that such construction is in violation of the zoning restriction imposed by the zoning exception. Attorney Nolan, representing the owner, was notified by me on or about 2-15. This construction should be terminated until the completion of the Goucher Blvd. Extension.
John A. Kirk, Jr.

PETITION OF ORTEL REALTY, INC.,
For Extension of time to
use Special Exception
W/S Goucher Boulevard (Pro.)
North of Knightswood and
Ablett Roads, East of Country
Club of Maryland, 9th Dist.
BALTIMORE COUNTY
No. 5673-RX

It is this 23rd day of March, 1965, by the
Zoning Commissioner of Baltimore County, ORDERED that the Special
Exception granted in the above matter on March 19, 1963, be and the
same is hereby extended for a period of three(3) years, beginning
March 19, 1965 and ending March 19, 1968.

[Signature]
Zoning Commissioner of
Baltimore County

BEFORE THE ZONING
COMMISSIONER FOR
BALTIMORE COUNTY

IN THE MATTER OF
Case No. 5673 RX
Petition of Ortel
Realty, Inc.

PETITION FOR EXTENSION OF TIME TO
USE SPECIAL EXCEPTION

The Petition of Ortel Realty, Inc. by its attorney,
Edward A. DeWaters, Jr., says:

1. That on March 19, 1963, the Board of Appeals for
Baltimore County granted your petitioner a reclassification and
special exception in case No. 5673 RX. This decision was sub-
sequently affirmed by the Circuit Court of Baltimore County and
the Court of Appeals of Maryland.

2. That as a part of the aforesaid Order, the Board
of Appeals in granting the special exception placed the following
restrictions upon the granting of the special exception:

"1. No construction work on the property
shall begin until the completion of the
extension of Goucher Boulevard from
Taylor Avenue on the north of its in-
tersection with Loch Raven Boulevard
on the southeast"

3. That the Zoning Regulations of Baltimore County,
Section 502.3 says in part:

"A Special Exception which requires any
construction for its utilization shall
be deemed to have been used within its
authorized time if such construction
shall have commenced during the authorized
period, or any extension thereof, pro-
vided said construction is thereafter
pursued to completion with reasonable
diligence."

4. That your petitioner alleges that such an exten-
sion is necessary as the construction hereinbefore mentioned
has not been completed.

5. That the Zoning Regulations of Baltimore County,
Section 502.3 provides that the Zoning Commissioner may extend
the time for utilization of a special exception.

WHEREFORE your petitioner requests that the Zoning
Commissioner pass an Order extending the time for the utilization
of the Special Exception in this case to March 19, 1968.

[Signature]
Edward A. DeWaters, Jr.
Attorney for Petitioner

I HEREBY CERTIFY that a copy of the foregoing Petition
For Extension of Time To Use Special Exception was mailed this
day of March, 1965 to Ernest C. Trimble, Jefferson
Building, Towson, Maryland 21204.

[Signature]
Edward A. DeWaters, Jr.
Attorney for Petitioner

HOWARD H. ROHDE \$ IN THE
and \$
WALTER BAUTRO \$ CIRCUIT COURT
and \$
CHARLES VELTE \$ FOR
and \$
CLETUS D. COFFMAN \$ BALTIMORE COUNTY
VS. \$ Misc. Dkt. 7
NATHAN H. KAUFMAN, \$ Page 250
G. MITCHELL AUSTIN and \$
CHARLES STEINBOCK, JR., \$ Case No. 2750
Constituting the COUNTY
BOARD OF APPEALS FOR
BALTIMORE COUNTY \$

ORDER OF COURT

The above Appeal having been heard in open Court on the
25th day of June, 1963 and arguments presented, it is this
day of June, 1963, by the Circuit Court for Baltimore County,
for reasons given in an oral opinion delivered by the Court,
"ORDERED" that the action of the Baltimore County Board of
Appeals be and is hereby affirmed.

[Signature]
JUDGE



JAMES D. NOLAN

Law Offices
TOWSON, MARYLAND

March 14, 1968

Mr. John G. Rose
Zoning Commissioner for Baltimore County
County Office Building
Towson, Maryland 21204

Re: Petition of Ortel Realty, Inc.
for extension of time to use
Special Exception W/S Goucher
Boulevard (Pro.)
North of Knightswood and
Ablett Roads, East of Country
Club of Maryland, 9th Dist.
Case No. 5673

Dear Mr. Rose:

My client, Security Mortgage Corporation, a body
corporate of the State of Maryland, is the successor in interest
to the property of Ortel Realty, Inc., the petitioner in the above-
referenced matter. Your attention is invited to your file in this
regard, which sets forth an Order by the Zoning Commissioner
of Baltimore County, dated March 23, 1965.

Pursuant to the provisions of Section 502.3, Baltimore
County Zoning Regulations, request is hereby made to the Zoning
Commissioner for an extension for utilization of said special excep-
tion until the maximum time authorized by said Section expires,
or until five (5) years from the date of the decision of the Court of
Appeals in the case of Rohde v. County Board, 234 Md. 259, which,
according to the reports, was decided on April 3, 1964.

Therefore, it is our contention that in all fairness, this
special exception should be extended at least until April 3, 1969,
or for such longer period as the law may allow. Hence, on behalf
of my clients, we respectfully request that the special exception
granted, be extended as set out above; and, as you will know, prompt
action will be necessary, since, by the terms of the Order of March 23,
1965, the exception is presently scheduled to expire on March 19, 1968.

Mr. John G. Rose

March 14, 1968

Thanking you for your attention to this request, I am,

Sincerely,

James D. Nolan

JDN:n

cc - Mr. Melvin Golvin
Security Management Corporation
805 Lannerton Road
Baltimore, Md. 21221

HOWARD H. ROHDE
1100 Epworth Court
Baltimore 34, Maryland
and
WALTER BAUTRO
6833 Queens Ferry Road
Baltimore 12, Maryland
and
CHARLES VELTE
6627 Queens Ferry Road
Baltimore 12, Maryland
and
CLETUS D. COFFMAN
615 Hillen Road
Towson 4, Maryland

VS.

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

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Misc. Dkt. _____
Page No. _____
Case No. _____

ORDER FOR APPEAL

MR. CLERK:

Please enter an Appeal in the above entitled matter on behalf of Howard
H. Rohde, Walter Bautro, Charles Velte and Cletus D. Coffman, Petitioners
and Appellants, who were protestants and parties of record before the County
Board of Appeals, to the Circuit Court for Baltimore County from the majority
opinion and Order dated March 19, 1963, of said County Board of Appeals,
entered in case No. 5673 RX, being the application by Ortel Realty Company,
for a reclassification of 37 acres approximately on the Southwest corner of
Loch Raven Boulevard and Taylor Avenue from R-6 to RA and a special
exception for elevator apartment buildings in the 9th Election District of
Baltimore County, said majority opinion and Order granting both the reclassi-
fication from R-6 to RA and the special exception in said case.

Ernest C. Trimble
Trimble and Alderman
Attorneys for Petitioners-Appellants

I HEREBY CERTIFY that on this 14th day of March, 1963, a copy
of the foregoing Order for Appeal was delivered to the County Board of
Appeals, County Office Building, Towson 4, Maryland.

Ernest C. Trimble

BALTIMORE COUNTY MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: October 5, 1962

FROM: Mr. George E. Goyvelis, Deputy Director

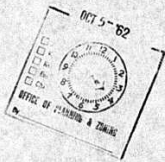
SUBJECT: #5673-RX. R-6 to R-A and Special Exception for Elevator Apartment Buildings. West side of Goucher Boulevard (proposed), north of Knightwood and Ablett Roads, East of Country Club of Maryland. Being property of Ortel Realty Incorporated.

9th District

HEARING: Wednesday, October 17, 1962 (3:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-6 to R-A zoning and has the following advisory comments to make with respect to pertinent planning factors:

1. The subject property is situated immediately adjacent to an extensive commercial complex aggregating approximately 70 acres in area. This commercial complex provides for a variety of shopping needs and acts as a central place for the Loch Raven Boulevard area. The subject property also is in close proximity to Loch Raven Boulevard - a major radial route from Baltimore City and will be adjacent to Goucher Boulevard.
2. The location of the subject property is such that it meets the requirements for a "prime" apartment site established by the Planning Board. The Planning staff considers apartment zoning here to be appropriate and offers no adverse comment on either the reclassification or the special exception.
3. If granted, the granting should be conditioned upon final approval of site plans and access by the appropriate State and County agencies.

STATE OF MARYLAND
STATE ROADS COMMISSION

October 15, 1962

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

Dear John:

In regard to Goucher Boulevard, please be advised that the Commission has indicated its willingness to accept into the State system this proposed section of highway.

The Commission has further instructed the Division of Planning and Programming to include this construction in the current Needs Study as a part of its requirement for Baltimore County and to furthermore make application to the Bureau of Public Roads for inclusion of Goucher Boulevard in the Federal Aid Highway System.

With kindest regards, I remain

Sincerely yours,
JOHN B. FUNK
Chairman-Director

JBF:vp

STATE OF MARYLAND
STATE ROADS COMMISSION

October 15, 1962

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

Dear John:

In regard to Goucher Boulevard, please be advised that the Commission has indicated its willingness to accept into the State system this proposed section of highway.

The Commission has further instructed the Division of Planning and Programming to include this construction in the current Needs Study as a part of its requirement for Baltimore County and to furthermore make application to the Bureau of Public Roads for inclusion of Goucher Boulevard in the Federal Aid Highway System.

With kindest regards, I remain

Sincerely yours,
JOHN B. FUNK
Chairman-Director

JBF:vp

WILLIAM M. BALDWIN
ATTORNEY AT LAW
14 WEST PENNSYLVANIA AVE.
TOWSON, MARYLAND 21204
VALLEY 3-0260

October 30, 1962

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

Re: Petition of Ortel Realty
No. 5673-RX

Dear Mr. Rose:

Please enter an appeal on the behalf of the petitioner in the above captioned case from your decision dated October 29, 1962 to the Board of Appeals for Baltimore County. Enclosed please find my check in the amount of \$70.00 to cover the cost of the appeal.

Very truly yours,
William S. Baldwin
William S. Baldwin

WSB:rw
Encl.

CC: Ernest C. Trimble, Esq.

RE: PETITION FOR RECLASSIFICATION
from an "R-6" Zone to an "R-A" Zone,
and Special Exception for Elevator
Apartment Buildings
W/S Goucher Boulevard (proposed)
north of Knightwood and Ablett Roads,
east of Country Club of Maryland
9th District
Ortel Realty Company,
Petitioner

DISSENTING
OPINION

This petitioner herein seeks a reclassification of a tract of land of approximately 37 acre north of Knightwood Road and Ablett Road, east of the Country Club of Maryland. The land is presently zoned "R-6". The petitioner also seeks a special exception for elevator apartment buildings. The petitioner's plans call for the erection of two 13 story buildings, one 8 story building, two 5 story buildings, and thirteen garden type apartment buildings of from 2 to 4 stories. The entire complex would provide 832 apartment units.

The adjoining land to the north is zoned "R-10" and "R-20" and is developed with substantial homes in Fellowship Forest and Ridgewood. The land to the south is zoned "R-6" and includes the developments known as Glenmont and Glendale. The land on the west side is zoned "R-10" and "R-6" and consists principally of the site of the Country Club of Maryland. The land to the west is zoned "R-6" and is a relatively narrow strip along a stream and flood plain and lies between the subject property and the "B-L" zoning along Loch Raven Boulevard.

The petitioner contends that there was an error in the original zoning of the subject property when the map was adopted in 1955. Mr. George E. Goyvelis, Deputy Director of Planning, testified that he felt an error was made in the map because the map did not make adequate provision for rental housing and further stated that "R-6" classification was not proper planning for this tract of land. He did admit, however, that the land could be developed as "R-6" and that he would not be in favor of apartment if Goucher Boulevard was not built to provide access.

It is the opinion of this member of the Board that there must be more than a mere change of mind of governmental authorities to justify rezoning on the basis that an error was made. It is reasonable to presume that an area the size of the subject tract would be given adequate consideration when a land use map is being prepared.

In Renz et al v Bonfield Holding Co., 223 Md. 34, the Maryland Court of Appeals held that:

"If a landowner is not deprived of any reasonable use of the

land, the fact that some other classification would make the property more valuable, does not require reclassification.

The 9th Election District Rezoning Map of 1955 was part of a comprehensive plan and the evidence shows that it had been on the whole, carefully worked out."

The above zoning case involved a tract of land in the general area of the subject petition.

In *Muhly v County Council of Montgomery County*, 218 Md. 543 and *White v County Board of Appeals*, 219 Md. 136, the Maryland Court of Appeals said "We have often stressed the presumption that the original zoning was well planned and intended to be permanent."

Mr. Lester Matz, Engineer, testified that the land was not suitable for "R-6" development because of its hilly topography and rock subsoil. He admitted, however, that cottages could be built on the land and that a plot had been filed two years ago for development of the property as "R-6". Topography and soil conditions are the same today as they were two years ago. The topography and soil of the subject tract is quite similar to the adjoining developments of Glendale and Glenmont.

The petitioner contended that use of the subject tract as "R-A" would provide a transition zone between the "R-6" and "R-10" land and the "B-L" zones on Loch Raven Boulevard and Taylor Avenue. In the opinion of this member of the Board, this would be an artificial and arbitrary transitional zone since the subject tract has a natural affinity and continuity with the "R-6" land on the north, west and south and is on the same elevation whereas it is separated from the "B-L" zone by a stream and flood plain which provide a natural buffer zone.

Protestants, who live in the surrounding communities of Fellowship Forest, Glenmont and Glendale, objected on the grounds that the value of their properties would be adversely affected; that high rise apartment buildings could cut off light and air; that a reclassification would open the door to future petitions for reclassification in the area; and that 832 apartment units on the land would aggravate traffic congestion.

In connection with the last point raised by the protestants, the majority decision of this Board in granting the reclassification and special exception stipulate that the apartment buildings should not be built until the extension of Goucher Boulevard is completed. Miss Marian J. McCoy, Chief, Bureau of Planning of the State Roads Commission, stated that road is now in a "needs" study and admitted that the County has taken no action with regard to the road and that the State Roads Commission has had no communication with the County Executive or County Council on the matter. She stated

that the State Roads Commission is willing to build the road "if other conditions are met". In petition No. 5282-X for a special exception for a gasoline service station on Rolling Road, south of Baltimore National Pike, the Baltimore County Circuit Court, in reversing the majority opinion of this Board said "that the Board in their majority opinion were 'putting the cart before the horse' in permitting the special exception for a gasoline service station before the road was actually widened."

In my opinion, the petitioner failed to prove that Goucher Boulevard even if and when completed, would serve the needs of the proposed apartment development.

It seems to this member of the Board that to grant this special exception subject to the extension of Goucher Boulevard when the construction date, exact route and grade alignment are indefinite is again "putting the cart before the horse".

It was testified that the maximum number of homes that could be built on the subject tract under existing zoning was 204 semi-detached homes. To permit a reclassification which would more than quadruple the number of housing units on the land would, in the opinion of this member, tend to create traffic congestion.

Before any Special Exception is granted, the petitioner must prove that it will not conflict with any of the provisions of Section 502.1 of the Baltimore County Zoning Regulations. The petitioner presented no testimony as to the effect of the high-rise apartment on the provisions of Section 502.1.

After considering the testimony in this case and personally inspecting the site and surrounding neighborhood, this member of the Board is of the opinion that the reclassification and special exception petitioned for should be denied. As the subject tract is entirely surrounded by "R-6" or "R-10" property the granting of this reclassification would constitute "spot zoning" in that it is not in accordance with an overall plan for the community. The petitioner has not shown any changes in the neighborhood to warrant reclassification and in my opinion, the testimony as to error in original zoning was inconclusive. I also feel that the granting of the special exception would not meet the conditions set forth in Section 502.1 of the Baltimore County Zoning Regulations.

DATE: March 12, 1963

PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND

IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

NO. 14234 DATE 10/31/62

TO: William S. Baldwin, Esq., 24 W. Pennsylvania Ave., Towson 4, Md.

RE: City of Baltimore, Petitioner vs. Ortel Realty Company, Inc., Respondent

OFFICE OF FINANCE BALTIMORE COUNTY, MARYLAND

INVOICE

AMOUNT \$70.00

DATE 10/31/62

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#5673

Date of Posting: 9-26-62

District: 9th

Posted for: [Signature]

Petitioner: Ortel Realty Co.

Location of property: W/S of Goucher Blvd (proposed), N. of Knightwood & Ablett Roads, E. of Country Club of Maryland

Location of Signs: [Signature]

Remarks: [Signature]

Posted by: [Signature]

Date of return: 9-27-62

Ortel 5673
entA

Neighboring property owners appeal from an order of the Circuit Court for Baltimore County affirming the action of the County Board of Appeals (the Board) in reclassifying a tract of approximately 37 acres of undeveloped land from R-6 (residence, one or two family) to R-A (residence, apartment) and in granting a special exception permitting two high rise, or elevator, apartment buildings. One of the appellees is the Board; the other is the applicant for the rezoning and special exception, Ortel Realty, Inc. (Ortel). The Zoning Commissioners denied both applications; the Board, by a 2-1 vote, granted both, with conditions attached to the special exception.

The property in question is very near the intersection of two major roads a little north of the Baltimore City line. These roads are Loch Raven Boulevard, running north and south, and Taylor Avenue, running east and west. This tract is near that involved in Renz v. Bonfield Holding Co., 223 Md. 34, 158 A. 2d 611, but lies on the other side of Loch Raven Boulevard and a little to the north of the Bonfield property. The intersection is heavily commercialized on all four corners, the total area so used being about 70 acres. The Ortel tract consists of slightly less than 37 acres, is wholly undeveloped, and lies to the south of Taylor Avenue and west of Loch Raven Boulevard. It does not actually abut the commercial property at the south-west corner of the intersection, and is presently surrounded by property zoned R-6, R-10 or R-20, each of the last two being

2.

a one family, residential classification. To the west of the Ortel land lies a part of the golf course of the Maryland Country Club. There are several residential developments in the immediate vicinity, and present access to the Ortel tract is through the Glendale-Glenmont developments. The present zoning was effected in 1955, when a comprehensive map for the 9th District was adopted.

There is a proposal, which has been pending for some time, to extend a substantial highway known as Goucher Boulevard so as to run southeast from Taylor Avenue and connect with Loch Raven Boulevard. As planned, it would pass close to the northeast side of the Ortel land, but would not actually touch that tract. A small strip of land, now zoned R-6, would be left between, but would be useless for development purposes. The testimony indicates that the full, proposed apartment use, involving 832 dwelling units, would generate considerable additional traffic for which existing roads would probably not be adequate. The present R-6 zoning would permit 264 residence units, reclassification to R-A would allow 592 units, and the special exception would add 260 more. The opinion of the majority of the Board states that the special exception is granted subject to three conditions: (1) that "[n]o construction work on the property shall begin until the completion of the extension of Goucher Boulevard from Taylor Avenue to ... Loch Raven Boulevard"; (2) approval of all site plans by the County Office of Planning and Zoning; and (3) "egress and ingress from the subject property must be approved by the proper State and County authorities." The order implementing

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the opinion refers to the opinion and states that the "reclassification and special exception petitioned for, be and the same is [sic] hereby granted subject to the aforementioned restrictions." Despite some possible ambiguity in the order, it is not directly attacked as being conditioned with regard to the reclassification from one zone to another upon Goucher Boulevard being extended or upon either of the other conditions.

Among the grounds of attack are, however, uncertainty as to whether Goucher Boulevard will be extended and as to whether, even if it is, the Ortel tract will have access to it; and the appellants urge strongly that there is no showing that without the extension of Goucher Boulevard and without direct access to it, serious traffic difficulties and hazards will not develop from R-A development of 592 new units, even without the additional 260 to be contained in the high rise apartments to be built under the special exception.

There was testimony that the State Roads Commission was willing to build the proposed extension of Goucher Boulevard, if duly requested by the County to do so, and that the County would make such a formal request in writing. Though there was some question as to just how soon the Commission could or would act, we think that the evidence was sufficient to show that this extension was "reasonably probable of fruition in the foreseeable future." The Board was, accordingly entitled to consider it in determining the proper classification of the subject property. Trustees of McDonogh Educational Fund and Institute v. Baltimore

County, 221 Md. 550, 570-71, 158 A. 2d 637.

4.

It is obvious to us, and it must have been equally obvious to the Board, that the extension of Goucher Boulevard would do nothing to alleviate any traffic problems growing out of the use of the Ortel tract for apartments, unless some means of ingress and egress between that tract and the extended highway were provided. We infer that it was in the expectation that when the extension should be made such access would be provided, that the Board granted the reclassification. We cannot say on the record before us, where the protestants show only uncertainty as to this matter, that the Board was unreasonable or arbitrary in holding such a view; and we think that it might take this prospect into consideration in deciding the question of reclassification. Also, although R-A development of the tract, even without the special exception would undoubtedly produce a greater volume of traffic than would R-6 development, we do not think that the evidence establishes that traffic congestion would necessarily result from R-A reclassification alone; Ventry of St. Mark's Church v. Doub, 219 Md. 387, 395, 149 A. 2d 779; Southland Hills Improvement Assn. v. Raine, 220 Md. 213, 218, 151 A. 2d 734; Bonhage v. Cruise, 233 Md. 10, 15, 194 A. 2d 803. See also Missouri Realty Co. v. Ramer, 216 Md. 442, 450-51, 140 A. 2d 655, which emphasizes the importance of the finding of the Board with regard to traffic congestion, where there is evidence to support its conclusion.

5.

The problem with regard to the special exception and traffic congestion is somewhat different. As to this, under Sec. 502.1 b of the Baltimore County Zoning Regulations, it must appear that traffic congestion will not result from the granting of the special exception. The testimony, particularly that of Mr. Garrellis, the Deputy Director of Planning for the County, makes it clear, we think, that the extension of Goucher Boulevard and direct ingress and egress between it and the Ortel property were considered necessary to produce a satisfactory situation from a traffic point of view. The site plan submitted by the applicant contemplates such access, and the Board, evidently deeming it necessary when it inserted conditions requiring that the extension of Goucher Boulevard should be made before construction should begin, that site plans be approved by the Office of Planning and Zoning, and that egress and ingress be approved by proper State and County authorities. These conditions seem to smack strongly of reclassification upon conditions, not merely of the granting of a special exception upon conditions; but as we have pointed out, that is not a ground of attack. (See Haylis v. Baltimore, 219 Md. 168, 148 A. 2d 429; Rose v. Paape, 221 Md. 369, 157 A. 2d 618; Carole Highlands Citizens Ass'n. v. Board, etc., Prince George's County, 222 Md. 44, 158 A. 2d 663, in which conditional zoning was held invalid.) The conditions are clearly applicable to the special exception. Though they do not expressly require that the Ortel tract have access to the extension of Goucher Boulevard, we think

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that the evidence would permit the Board to find that the requirements of Sec. 502.1 b were met.

In reaching this conclusion, we have not overlooked Bonhage v. Cruise, supra, which involved the same provision of the Baltimore County Zoning Regulations. There, we found that there was no assurance that a sidewalk which led into a development behind the subject property would be widened, and that unless this street were widened it could not be shown that congestion would not result. Consequently Sec. 502.1 b was not satisfied. The situation here presented is different in that the extension of Goucher Boulevard is required as a condition precedent to construction and access to that new road is implicitly required, so that we think the Board could find that with the new road built and with access to it provided, it appeared that traffic congestion would not result from the grant of the exception.

The appellants urge that other requirements (subdivisions a, c, d, e and f) of Sec. 502.1 have not been met because it has not been affirmatively shown that the granting of the special exception would not: (a) be detrimental to the health, safety or general welfare of the locality; (c) create a hazard from fire, panic or other dangers; (d) tend to overcrowd land and cause an undue concentration of population; (e) interfere with adequate provisions for schools, parks, water, sewerage, transportation, etc.; or (f) interfere with adequate light and air. There was general testimony from experts that none of these things would

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happen. It is often difficult to be specific in proof of a negative. There was, however, testimony that the proposed apartments would serve as a desirable buffer between the commercial zone and the existing residential developments. There was also testimony to the effect that apartment dwellers were not likely to have so many children of school age as persons living in their own houses of the R-6 type, so that the change in classification would not provide an increase in school population proportionate to the number of residence units, and there was evidence as to the adequacy of sewerage facilities. So far as interference with light and air is concerned, this seems to be mainly a matter of interference by the high rise apartments with a distant view now enjoyed by some of the neighbors, which we think is not within the scope of subdivision f. We think that the Board had evidence before it from which it could find that these other requirements of Sec. 502.1 were met.

The appellants also charge that the rezoning is bad as spot zoning and that there was no sufficient evidence of mistake in original zoning or of change in conditions as to warrant reclassification. They also lay stress on the fact, which is conceded, that the property can be used under its R-6 classification. That alone is not, however, an absolute bar to reclassification. Zoning is not static. Missouri Realty, Inc. v. Ramer, supra, 216 Md. at 447. It is, nevertheless, necessary to show error

8.

in original zoning or in its equivalent, comprehensive rezoning, or a subsequent change in conditions, although the change in classification be from one residential use to another (Rose v. Mandel, 224 Md. 121, 167 A. 2d 111; Lavy v. Seven Slade, Inc., No. 221, This Term, Md. , A. 2d), unless the Legislature has indicated that the new classification and the classification of neighboring property are comparable. See Huff v. Board of Zoning Appeals, 214 Md. 469, 57, 133 A. 2d 63, where such a new classification was analogized to a special exception, and Costello v. Stelling, 223 Md. 24, 161 A. 2d 824, where a new classification of a residential nature was superimposed upon existing residential classifications and Huff was followed; and see the comment on these cases in Overton v. Board of County Comrs. of Prince George's County, 223 Md. 141, 150, 162 A. 2d 457.

In approaching these other questions, which are here so closely related that we shall treat them together, we must bear in mind the limited scope of our review, which has been frequently stated and restated. Suffice it to say that the court is not to substitute its judgment for that of the Board; and if there was evidence upon which it could fairly reach its conclusions of fact, they are not to be disturbed. Offutt v. Board of Zoning Appeals, 204 Md. 551, 562, 105 A. 2d 219; White v. Board of Appeals, 219 Md. 136, 148 A. 2d 429.

The County adopted a comprehensive zoning map in 1955 covering the 9th District in which the Ortel tract lies. This

TELEPHONE
VALLEY 3-3000

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

No. 14199
DATE 10/9/62

TO: William S. Baldwin, Esq.
24 N. Penna. Ave.
Towson 4, Md.

BILLED TO: Zoning Department of
Baltimore County

DEPOSIT TO ACCOUNT NO. 01622

QUANTITY

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

Advertising and posting of property for Ortel Realty

TOTAL AMOUNT \$78.00
COST

78.00

13-742 1034 * * * 111- 7800

3

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

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9th #5673
Date of Posting 1-23-63

Posted for: Zoning Planning

Petitioner: Ortel Realty, Inc.

Location of property: 24 N. Penna. Ave., Towson 4, Md.

Location of Signatures: William S. Baldwin, Esq., 24 N. Penna. Ave., Towson 4, Md.

Remarks: Zoning is not static. Missouri Realty, Inc. v. Ramer, supra, 216 Md. at 447. It is, nevertheless, necessary to show error

Posted by: [Signature] Date of return 1-24-63

9.

was a comprehensive rezoning which is entitled to the same presumption of correctness as an original comprehensive zoning. To warrant piecemeal rezoning, there must be a showing of error in the comprehensive rezoning when made or a subsequent change of conditions, or both. It is sometimes difficult to say whether some evidence shows original error or a change in conditions, and it may not be necessary to resolve the question. Pressman v. City of Baltimore, supra. That, we think, is the situation here. The applicant produced considerable expert testimony to show that either as a result of lack of anticipation of trends of development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing. The trend has been towards apartments and, particularly in areas close to the City of Baltimore, towards high rise apartments. The need and demand for such rental accommodations have increased greatly over the last several years, and the subject property is described as a prime site for apartment development, including high rise apartments. The testimony here is far more explicit and far more localized as to the need for such development than it was in Shadynook Improvement Ass'n v. Molloy, 232 Md. 265, 192 A. 2d 502. There was, as already noted, evidence to the effect that this apartment development would serve as a buffer zone to prevent the spread and encroachment of the highly commercialized area at the Taylor Avenue-Loch Raven Boulevard intersection into the residential area.

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where the protestants have their homes. It was also shown that the sewerage facilities in this area had been materially increased since the 1955 rezoning.

On the above evidence we cannot say that the action of the Board was arbitrary or unreasonable, or that it involved spot zoning of the invidious type. Huff v. Board of Zoning Appeals, supra. The matter was at least within the realm of the fairly debatable, and the action of the Board must, therefore, be upheld. White v. Board of Appeals; Missouri Realty Co. v. Pomeroy, both cited above. The situation here presented is the reverse of that in the Renz and Reese cases in that here the Board has approved the reclassification, but there it disapproved reclassification. In each case its action was fairly debatable and was therefore upheld. The distinction between the present case and Shadynook turns upon whether there was or was not enough to bring the question of mistake or change within the realm of the fairly debatable. In Shadynook no one of the five grounds urged as showing mistake nor all of them together were sufficient to raise the issue to the level of the fairly debatable.

JUDGMENT AFFIRMED, THE APPELLANTS
TO PAY THE COSTS.

IN THE COURT OF APPEALS OF MARYLAND
No. 198
September Term, 1964
HOWARD H. RHODES, et al.
v.
COUNTY BOARD OF APPEALS FOR
BALTIMORE COUNTY AND ORTEL
REALTY, INC.
Brune, C.J.
Henderson
Prescott
Horney
Sybert,
JJ.
Opinion by Brune, C.J.
Filed: April 3, 1964

RE: PETITION FOR RECLASSIFICATION
from an "R-6" Zone to an "R-A" Zone,
and special exception for Elevator
Apartment Buildings,
W/S Goucher Blvd. (proposed) north
of Knightswood and Ablett Roads,
east of Country Club of Maryland,
9th District
Ortel Realty Company,
Petitioners
BEFORE #5673 RX
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5673-RX
MAP
#9
SEC. 3-C
RAXA
OPINION

This is a petition for reclassification from an "R-6" Zone to an "R-A" Zone, and a special exception for Elevator Apartment Buildings on the west side of Goucher Boulevard (proposed) north of Knightswood and Ablett Roads, east of the Country Club of Maryland in the Ninth District of Baltimore County. The property contains 36.8 acres more or less.

The testimony in this case was quite voluminous and has been given a tremendous amount of thought by the majority members of the Board. First of all, it is quite important to consider the surrounding uses of land in the immediate neighborhood. A large proportion of the property overlooks the intersection of Loch Raven Boulevard and Taylor Avenue.

On the northwest corner of this intersection we find a shopping center containing a large Giant supermarket and some six or more subsidiary stores. In the large adjacent parking areas between the shopping center and the intersection itself is a gasoline service station, and to the west of this service station on Taylor Avenue, we find two additional gas stations as well as a miniature golf course.

On the northeast corner of the Loch Raven and Taylor intersection, we find what is known as the Pleasant Plains Shopping Center housing another large food market as well as approximately fifteen or more retail stores. Again we find a large parking area in the front of this shopping area.

Crossing Taylor Avenue on the southeast corner of the intersection, we find the Hillendale Shopping Center with another large food center and approximately twenty or more retail outlets with large parking areas both in front and in back of this shopping center.

On the southwest corner is a drive-in food restaurant operation designed not only for service in the restaurant itself, but with provisions for car-hop service for some 25 or 30 cars. Directly behind the restaurant is the property lying between the restaurant on the east and the future Goucher Boulevard extension on the west. This property is

zoned "Business Local", and the Board heard testimony that plans are in the process for it to be developed into commercial uses and it will contain another large food market.

All of these commercial properties, totaling some 70 acres, were on the Ninth District Land Use Map when it was adopted on November 14, 1955. It seems inconceivable that, at the time of the adoption of this map, the Planners and Zoners did not contemplate high density use for surrounding properties. Certainly there would be no demand for such a large amount of commercial zoning unless this had been the thinking of the Planners and Zoners. The Ninth District Zoning Map was the first comprehensive map to be developed in Baltimore County.

The testimony of Mr. George E. Gavrelis, Deputy Director of the Office of Planning and Zoning of Baltimore County, was to the fact that, in his opinion, today we find a different set of factors than we did in 1955. In 1955 the Planners were striving to create a comprehensive map to control developments and at that time the emphasis was for single or semi-detached type housing. There was little thought and no demand for apartment houses. Furthermore, at that time there was little, if any, financial help available for large apartment house projects which was only natural when one realizes that there was no demand for apartment type housing. As Mr. Gavrelis stated at the hearing, the location of the subject property meets today's requirements for a (prime) apartment site as established by the Planning Board, and that the Planning Staff considers apartment zoning here to be appropriate and offers no adverse comment on either the reclassification or the special exception.

Mr. Gavrelis also pointed out the extensive commercial complex aggregating approximately 70 acres situated almost immediately adjacent to the subject property. He also pointed out the close proximity of the property to Loch Raven Boulevard which in his words "is a major radial route from Baltimore City", and he further stated that the subject property will be adjacent to Goucher Boulevard. He also thought that the establishment of these some 37 acres next to commercial zoning would act as an ideal transitional zone between the commercial zone and the "R-6" properties to the west, as well as the "R-10" properties to the south and the "R-20" properties located in the Fellowship Forest development. Mr. Gavrelis pointed out that he felt a reclassification from "R-6" to "R-A" would actually protect the single family Glendale development on the south as well as the semi-detached development of Glenmont on the north. With the use of this property for apartments it would provide both of these developments with ingress and egress through a required 70 foot right-of-way on the south that would lead to Goucher Boulevard and to Loch Raven Boulevard.

He pointed out further that no provisions for rental housing were made at the time the Ninth District Zoning Map was developed and stated that, in his opinion, Baltimore County is no different than most metropolitan areas in the United States today

in that there has developed a great demand for apartment house zoning. While it is true that there are 832 apartments planned for the subject property if the reclassification and special exception is granted, Mr. Gavrelis pointed out that the school yield would not be four times as great from the apartments as it would from the "R-6" type development, as the yield of school age children would be approximately 2.2 in apartments as against a 3.6 yield in single family or semi-detached residences.

He also stated, under cross-examination, something that seems to us to be most important and that is, that "R-6" zoning does not put the appropriate needs of the County where they belong. There is really no other location in Baltimore County at the present time that is so logical for such a development, due to the roads leading to it and the commercial areas that surround it, as is the subject property. At no other intersection in Baltimore County do we find the shopping conveniences already existing to adequately serve such a large development.

Mr. Gavrelis' testimony was also supported by Mr. J. Walter Jones, a real estate consultant and appraiser, with regard to the change in the use of land since 1955 and the desired needs for additional apartment zoning today.

Mr. Lester Matz, a consulting engineer of the firm of Matz & Childs Associates, spoke of the very steep grades and extensive rock that underlines the subject property. He testified that one-third of the subject property has a grade of over 20%, one-third of the property a grade of 10% to 20%, and the balance of the property grades varying from 3% to 9%. He stated that he had discussed in detail the development of this property with the owners and because of the excessive rock, the steep grades, and the fact that water underlays part of the subject property, he had recommended to them that they seek "R-A" zoning for the subject property. It was his opinion that the development costs would be 40% to 50% higher than normal developments costs, due to the unusual and unique rock strata, if this subject property was developed in its present "R-6" classification.

Mr. Bernard Willemain, a qualified witness in the field of Planning and Zoning, supported Mr. Matz's testimony with regard to the steep grades and rock. He also pointed out that while there would be a small strip of "R-6" between the subject property and the "B-1" property to the east, in reality there was no "R-6" property that could be developed, as through most of this strip there is a small stream and the balance of the strip would be reserved for flood plains. Mr. Willemain talked at great length of the properties in Fellowship Forest to the north, developed on "R-20" lots in a wooded area. He pointed out that a ravine separates the subject property from the Fellowship Forest development and that there would be no interchange of vehicular traffic from this "R-20" development and the proposed "R-A" properties. He pointed out further that on the west the "R-A" property would have a common line with what is now the Country Club of Maryland golf course, most of which is zoned "R-6", and he too supported Mr. Gavrelis'

opinion that the apartment zoning would be an ideal transitional zone between the commercial areas on the east and the "R-6" on the west.

Mr. Willemain also pointed out that at the time of the adoption of the Land Use Map in 1955 no census data had been obtained. Therefore, there was no correlation between the census and the Land Use Maps at the time of its adoption. He further supported the testimony of previous witnesses by saying that he thought that the Land Use Map had been in error because the County had overlooked the ideal road patterns; had failed to recognize existing commercial areas; and had failed to provide a transitional zone between the commercial on the east and the residential on the west. Mr. Willemain testified further that in 1955 the subject property was served for its sewerage needs by Morris Run and Herring Run on the east and Jones Falls on the west, providing inefficient capacity at that time. He stated that there were actual County restrictions in effect in 1955 that would not have allowed for the use of the subject property for apartments. One year after the adoption of the Land Use Map a report was published on the sewerage conditions. Contracts were awarded through the 1957 to 1959 period for the Mine Bank development to serve the sewerage needs on the west side of Towson. The Herring Run and Morris Run sewerage units were increased between the years of 1955 and 1960, providing the subject tract with adequate sewerage at this time, something that was not available at the time of the adoption of the Ninth District Land Use Map. Under cross-examination, Mr. Willemain stated that there was no other acreage in the general vicinity that would be proper and suitable for such a project.

The majority members of the Board are of the opinion that the reclassification from "R-6" Zone to an "R-A" Zone should be granted.

The testimony of the protestants, all of whom were residents of the surrounding Glendale, Glenmont and Fellowship Forest developments, was basically that they should be able to have confidence in the Land Use Maps as adopted and should know that when they buy their homes that these maps offer suitable protection. Further, that by increasing to almost four times the number of families that could live on the subject property, an already congested traffic problem would be aggravated.

Mr. Ernest Trimble, lawyer representing the protestants, in his closing argument to the Board referred to the Bonfield decision (a decision affecting land in the immediate area of the subject petition) - Renz vs. Bonfield Holding Company, 158 Atlantic 2d 611. In reviewing the decision of the Court of Appeals in the above case we find that this was not a petition of reclassification from "R-6" to "R-A", but rather from "R-6" to "R-G". The Court referred to testimony that the increasing of the density in that particular case would cause overcrowding in schools, roads, sewerage and water, and placed great weight on testimony from the County Board of Education who told of the aggravated school conditions; the Deputy Director of Public Works who spoke of the in-

adequate water and sewerage; and the County Traffic Engineer who spoke on traffic problems.

As stated before, in the instant case, we have no testimony that shows that any of these conditions exist in the mind of the County experts, or even in the minds of the protestants themselves. Only the traffic problem was mentioned.

The Court, in the Bonfield case, also placed great emphasis on the testimony of Mr. Gavrelis who was then, as he is now, Deputy Director of Planning for Baltimore County. Mr. Gavrelis opposed the reclassification of the Bonfield property mainly because he felt that "R-6" and "R-G" are incompatible. Under cross-examination in the Bonfield case, he stated that "R-6" and "R-A" are compatible, and that if the property owner in the Bonfield case had actually asked for "R-A" instead of "R-G" reclassification, he would have been in favor of such reclassification.

We find it hard to find anything in the Renz vs. Bonfield Holding Company that would alter our opinion that this reclassification should be granted. We would like to refer to the Pressman vs. City of Baltimore, 222 Md. which was a case involving reclassification of property on the Reisterstown Road from "Residential" to "Commercial" for the use of a very large regional shopping center including two major department stores. The Court of Appeals said in this case that the case illustrates, and we quote:

".....that shopping centers were not thought of when zoning regulations were first adopted for a number of the sub-divisions of this State."

It went on further to say, and we quote:

"Popular desire or need for large shopping areas and the necessity of adequate off-street parking facilities in connection therewith now seems to be generally recognized."

And still further:

"Whether this should be regarded as an error in original zoning or the result of changed conditions may be a matter of a choice of words or of approach."

The Court also referred to the appellant's contention that the rezoning was invalid because it was spot zoning solely for the benefit of the proponents and hence is not in accordance with a comprehensive zoning plan. In answer to this the Court said:

"Doubtless the proponents deemed it to their advantage to seek and obtain the rezoning, and it may very well be. Certainly, they would be unlikely to venture the large amounts of money required for the establishment of shopping centers unless they so believed. However, the very basis of their belief to study and research to satisfy themselves that a public demand for the shopping facilities which they propose to offer exists in the area in question."

The subject case seems to us to be similar to that of Presman vs. City of Baltimore. This case clearly illustrates that at the time of the adoption of the Land Use Map for the Ninth District of Baltimore County on November 14, 1955 apartment zoning, especially high-rise type apartment zoning, was given no thought whatsoever. We believe today that there is a desire and a need for apartment house zoning. Also the fact that the Orel Realty Company, a wholly owned subsidiary of All-States, Inc., would certainly not invest the amount of money such a project must cost unless their research satisfied them that there was a public demand for such housing facilities.

It goes without saying that the subject property could be developed in its present "R-6" category. This seems to be of little consequence in itself for with few exceptions one will find properties zoned "R-G", "R-A", "R-6", "R-10" or "R-20" could have, to a great extent, been developed as "R-40" properties. It seems to us that the real test is to the proper residential classification placed on a piece of property is the needed facilities of the County, and once this is determined, the necessity for locating such a need in the most advantageous location.

During the past seven years the habits of people have changed. A different generation, a different type of young married couples seek adequate housing facilities. Older persons, a great many who formerly would have remained in homes, find the problem of domestic help an ever increasing one and have found great pleasure in apartment house living. All we need do is to look around any metropolitan area, not only in our own city, but in practically every metropolitan city in the United States, to find a trend to higher density living accomplished through projects such as proposed in this petition. As the Court said in the Presman vs. City of Baltimore, "Whether this should be regarded as an error in original zoning or the result of changed conditions may be a matter of a choice of words or of approach," certainly is true again in this particular case. Whether the County Commissioners erred in not being able to see the need for apartments in the future; whether they erred in not recognizing that more suitable sewerage facilities would become available for the subject property; whether they failed to recognize the real value for higher density living that the 70 acres of commercial property afforded to the subject property; whether they failed to take into consideration the type of rock structure and the water conditions on the subject property; whether these overights should be termed error in zoning or a change in condition is merely a matter of a choice of words. Certainly, in our opinion, there is ample justification contained in the evidence presented to this Board to warrant the reclassification from "R-6" to "R-A".

With regard to the special exception which would allow for the construction of two high-rise apartments connected by a pedestrian corridor and having a common lobby; each of these high-rise to be 12 stories high, plus a penthouse; one-eight story

This general area of the 9th District Map adopted November 14, 1955 has been the subject of other zoning hearings. The Bonfield Holding Company requested a reclassification from an "R-6" Zone to an "R-6" Zone at the north boundary of the Bureau of Parks and east of Hillen Road. Two members of the Board of Appeals said in their joint opinion:

"Clearly, in the opinion of the majority members of the Board, no error in original zoning has been proven, nor has a substantial change in the neighborhood been shown. However, the existing high density in the area, resulting from a phenomenal rate of recent growth, has placed a severe burden upon school, sewer and traffic facilities, making this reclassification detrimental to the public health, safety and general welfare."

The petition was denied.

Nathan H. Kaufman, Jr., the dissenting Board of Appeals member, who recommended the reclassification said:

"Had the recommendation of the Department of Planning been recognized and all the property in the area had been left in 'R-6' or higher restrictive zoning classification, then the present zoning of 'R-6' would certainly be proper. However, the existence of existing 'R-6' zone places this petition in an entirely different light."

In the present petition the property in the area is "R-6" or higher.

The Bonfield matter went to the Court of Appeals, Bernard G. Bess, et al, vs. Bonfield Holding Company, et al, 223 Md.34.

The Court in its opinion noted at Page 141:

"The 9th Election Resoning Map of 1955 was part of a comprehensive plan and the evidence shows that it had been, on the whole, carefully worked out. The last minute change which restored an apartment reclassification previously allowed just north of the Bonfield tract, to some extent varied the 'R-6' zoning for a fairly large area in this immediate vicinity which had been worked out by the Planning Commission staff, approved by that Commission and approved by the Zoning Commissioner, and recommended by the latter to the County Commissioners. If the last minute restoration of the previous apartment classification is now to serve as a basis for upsetting the adjacent Bonfield 'R-6' zoning and replacing it with 'R-6', the way is paved for planning changed conditions as the basis for further extensions of 'R-6' reclassification in the larger adjacent area presently zoned as 'R-6'. (No basis at all is shown in this record for saying that the 1955 zoning of this nearby property as 'R-6' was in error.

apartment building; two-five story apartment buildings; and thirteen garden type buildings of approximately two stories depending on the grade of the property and the particular location of the buildings; a total of some eighteen buildings; plus locker room facilities for the swimming pool and tennis court, would certainly, in our opinion, not violate Section 502.1 of the Zoning Regulations. The granting of the "R-A" reclassification without any special exception would allow for 592 apartment units and we do not feel that the 240 additional units that this special exception is granting produces any adverse effect. We do not believe that the special exception will be detrimental to the health, safety or general welfare of the locality involved. We do not believe that it will tend to create any congestion in the roads, streets or alleys therein. We have made as part of our Order the necessity for the construction of Goucher Boulevard from Taylor Avenue to Loch Raven Boulevard, and we feel that this will more than adequately take care of the additional 240 units that this special exception allows. Certainly this special exception does not create a potential hazard from fire, panic or other dangers; and we do not believe that this modern trend of high-rise apartments tends to overcrowd the land and cause undue concentration of population. Actually there will be more open spaces with the property developed in this manner than if it was developed in semi-detached homes as allowed under "R-6" classification.

With regard to adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements, nothing has been brought before the Board that would violate this section of the regulations with regard to interfering with adequate light and air. While some protestants brought out the fact that 12 and 8 story buildings could possibly shut off some of their light and air, we find it difficult to believe that these are adequate objections to deny the special exception. As stated before, this was purely the conjecture of a few residents of the surrounding communities, not the opinion of a qualified expert witness.

In granting the special exception as requested in this application, it is the feeling of the majority members of the Board that this special exception will benefit the majority of the taxpayers of our County and in the long-run cause very little, if any, inconvenience to the surrounding property owners. This special exception is hereby granted subject to the following provisions:

1. No construction work on the property shall begin until the completion of the extension of Goucher Boulevard from Taylor Avenue on the north to its intersection with Loch Raven Boulevard on the southeast
2. The granting of this special exception is conditioned upon the approval of all site plans by the Office of Planning and Zoning of Baltimore County
3. Egress and ingress from the subject property must be approved by the proper State and County authorities

This would lead to the undermining of zoning in this larger area. Cf. County Comrs of Talbot County vs. Foxhall, 211 Md. 335, 132 Md. 2d 345. A similar danger has been recognized by this Court with regard to special exceptions in Master v. City of Baltimore, 195 Md. 395, 400-401, 73 A. 2d 491, and in Marino v. City of Baltimore, 215 Md. 205, 209, 137 A. 2d 129. See also Park Shopping Center, Inc. vs. Lexington Park Theatre Co., 216 Md. 271, 276, 139 A. 2d 813; Dorsey Enterprises, Inc. v. Shpak, 219 Md. 15, 21, 147 A. 2d 853. A like problem also arises in connection with spot zoning in its operative sense. As was said in Canal v. City of Baltimore, 195 Md. 385, 395, 73 A. 2d 486; "we increase in 'spot zoning' in course of time would subvert the original purposes of the comprehensive plan and tend to produce conditions almost as chaotic as existed before zoning".

The Court also said at Page 141:

"Since 'R-6' and 'R-6' are different classifications, an alleged error in not classifying property as one would seem very weak evidence, if any evidence at all, of error in not classifying it as the other. The requested classification here is, we repeat, from 'R-6' to 'R-6'. The evidence impresses us as weak to establish any error at all in the comprehensive rezoning, which is what we think the adoption of the 1955 map actually was but even if there were some substantial evidence of error to support the requested reclassification, we think that the matter was at least debatable. Under such circumstances, the courts are not authorized to overturn the action of the Board and to substitute their judgment for that of the Board. Goucher v. Board of Zoning Appeals, 204 Md. 521, 105 A. 2d 219; Temink v. Board of Zoning Appeals, 205 Md. 189, 106 A. 2d 85; Board of Zoning Appeals of Howard County v. Hays, 207 Md. 389, 118 A. 2d 656; Kroen v. Board of Zoning Appeals, 209 Md. 420, 126-7, 121 A. 2d 181; Hites v. County Comrs of Howard County, 212 Md. 371, 129 A. 2d 136; Dorsey Enterprises, Inc. v. Shpak, supra; Quinn v. Telle, 217 Md. 641, 113 A. 2d 481; Hubly v. County Council of Montgomery County, 218 Md. 513, 117 A. 2d 735; White v. County Board of Appeals, 219 Md. 136-140, 2d 140. This is by no means an exhaustive list of authorities on this point."

The Court of Appeals reversed the Circuit Court for Baltimore County and affirmed the denial of the reclassification by two members of the Board of Appeals.

A petition requested a reclassification from "B-1" to "B-1" on the southwest corner of Loch Raven Boulevard and Taylor Avenue.

On December 22, 1959 two members of the County Board of Appeals in their opinion concerning the Loch Raven/Taylor Avenue matter had the following to say:

ORDER

For the reasons set forth in the foregoing Opinion, it is this 19th day of March, 1963 by the County Board of Appeals, ORDERED that the reclassification and special exception petitioned for, be and the same is hereby granted subject to the aforementioned restrictions.

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

CHAIRMAN

A. Mitchell Austin

RE: Petition for Reclassification from an "R-6" Zone to an "R-A" Zone and Special Exception for Elevator Apartment Buildings at Goucher Boulevard (Proposed) W. S. Goucher Boulevard (Proposed) East of Country Club Maryland, 9th District - Orel Realty Co., Petitioner

BEFORE: ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 5673-RX

The Orel Realty, Inc., petitioned for a change in classification from "R-6" Zone to an "R-A" Zone. The property contains 36.7998 acres of land, being all of Plat Three and Plat Four, Section Two of "Glenmont". The plat filed with the Zoning Commissioner indicates Fellowship Forest Zone "R-10" was residentially developed, and Ridgewood Zone "R-10" was residentially developed to the north. Country Club of Maryland Zone "R-6" was undeveloped to the west. Plat Two, Section Two, "Glenmont" Zone "R-6" residential use, semi-detached dwellings to the south.

The Zoning Map of November 14, 1955 indicates a large "B-1" and "R-6" area to the east.

This property is oriented to Loch Raven Boulevard and Taylor Avenue and Loch Raven Boulevard and the Baltimore City Line.

The streets serving the area lead into Glenale Road which leads to the Loch Raven Boulevard.

The State Roads Commission is willing to accept Goucher Boulevard into the State system. Goucher Boulevard may be extended into the proposed "B-1" (residence apartment) site.

PETITION FOR RECLASSIFICATION AND SPECIAL EXCEPTION—WITH BEING
Petition for Special Exception for Elevator Apartment Buildings at Goucher Boulevard (Proposed) W. S. Goucher Boulevard (Proposed) East of Country Club Maryland, 9th District - Orel Realty Co., Petitioner

DATE AND TIME: Wednesday, October 11, 1962 at 2:00 P.M.
PUBLIC HEARING: Room 208, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and the Board of Appeals of Baltimore County, do hereby certify that the following is a true and correct copy of the petition for reclassification and special exception as shown on Plat Three, Section Two of "Glenmont" as recorded among the Land Records of Baltimore County in Plat Book W.J.R. No. 24, Folio 121 and 122 respectively.

Four. Section Two of "Glenmont" as recorded among the Land Records of Baltimore County in Plat Book W.J.R. No. 24, Folio 121 and 122 respectively.

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CERTIFICATE OF PUBLICATION

TOWSON, MD. September 27, 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., once in each of successive weeks before the day of the month of September, 1962, the first publication appearing on the day of the month of September, 1962.

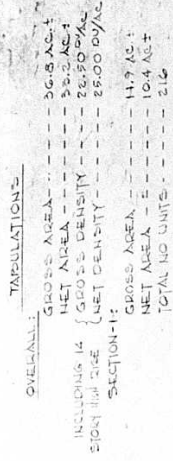
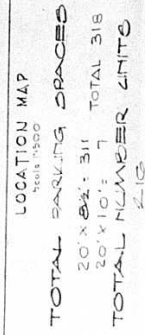
THE JEFFERSONIAN,

Cost of Advertisement, \$

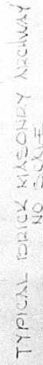
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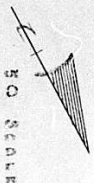




BUILDING PERMIT PLAN
SECTION ONE
GLENMONT APTS.
BALTO COMD
SCALE 1/32"
ELECT DIST-G
FEB 16, 1963



BRIDRWOOD APARTMENTS AT TOWSON, MD.

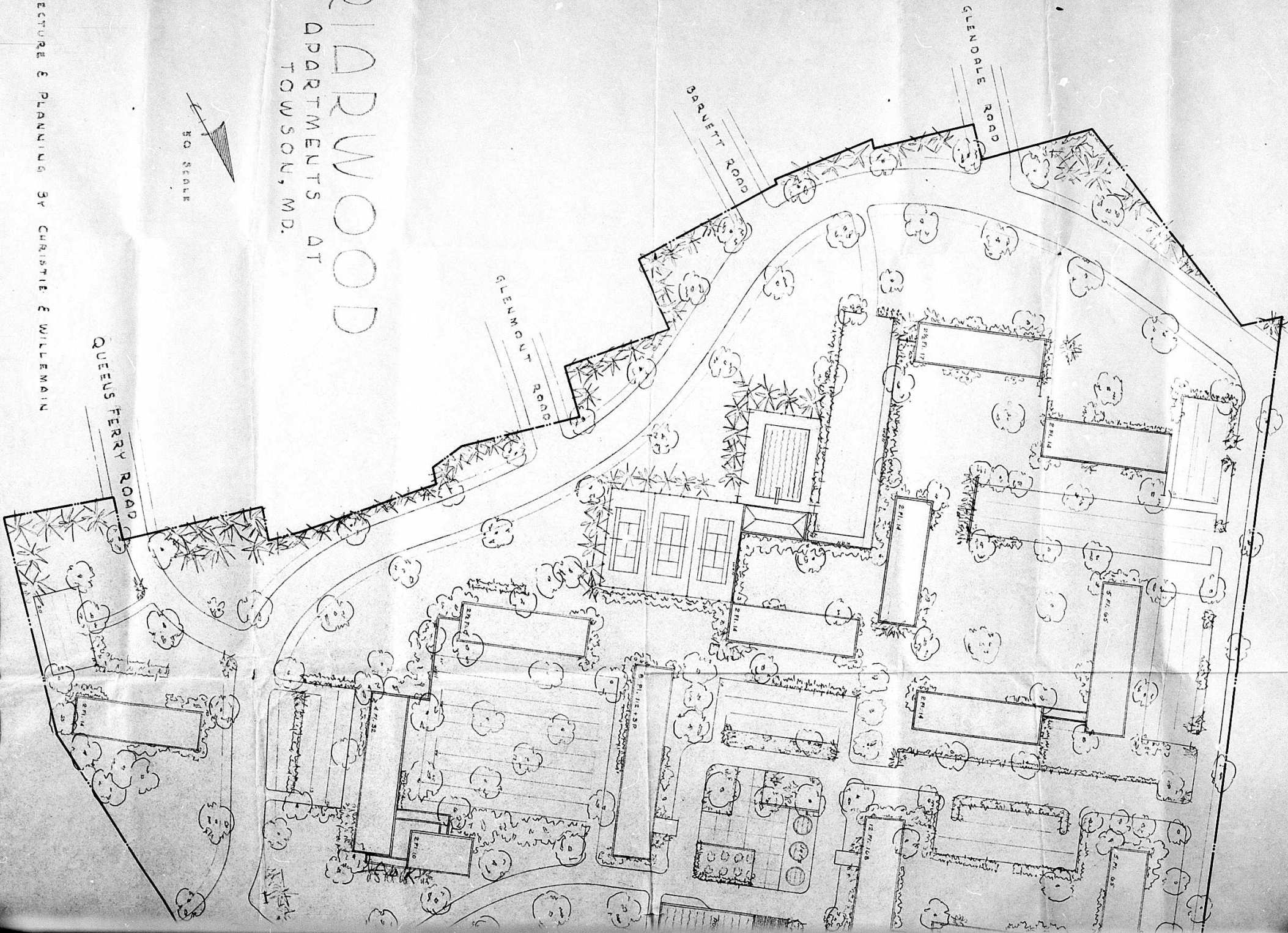


QUEENS FERRY ROAD

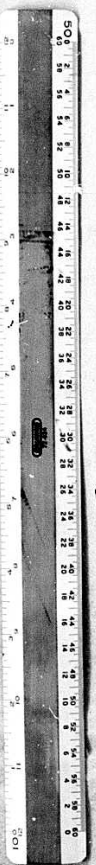
BARNETT ROAD

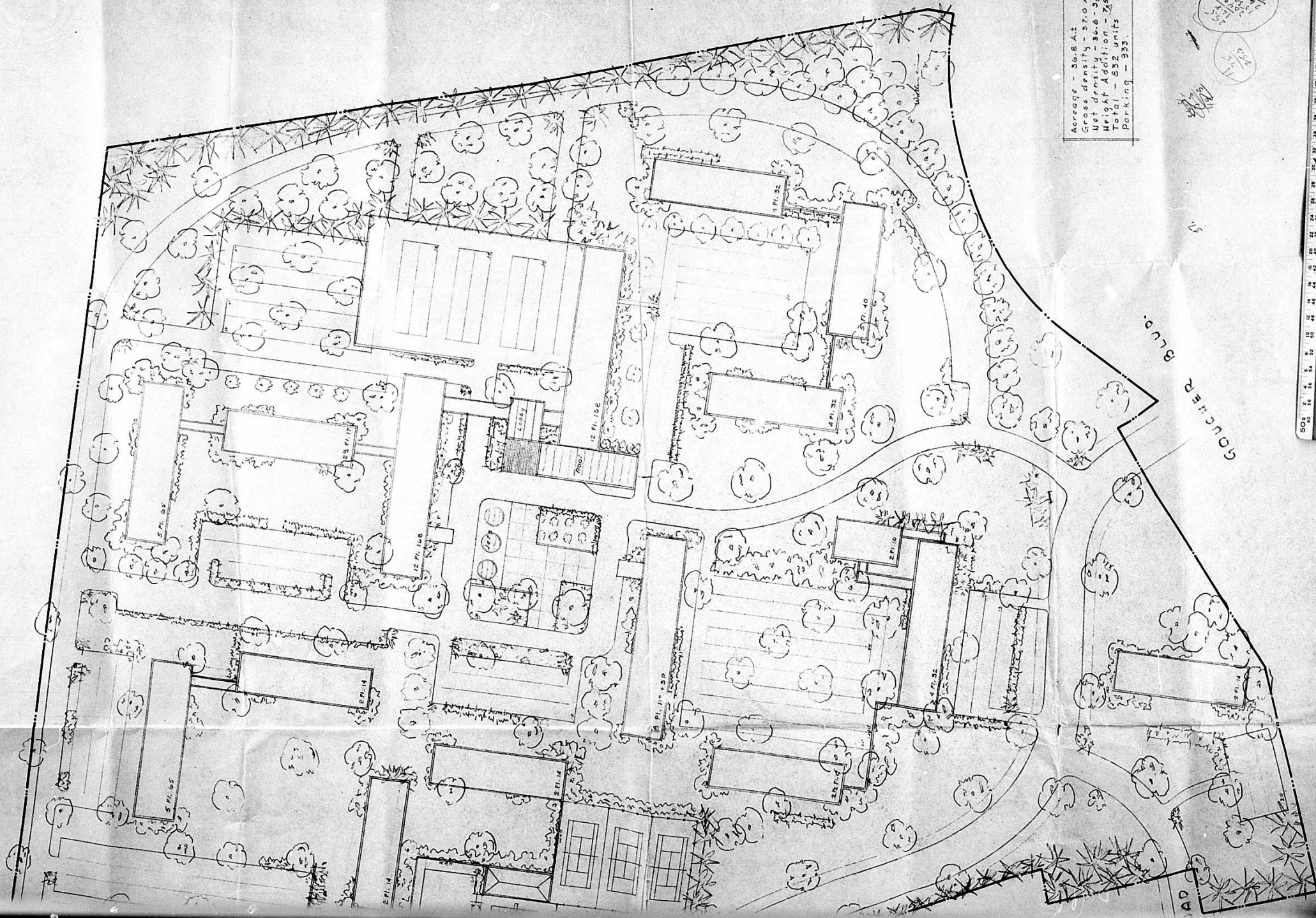
GLENDALE ROAD

GLENDALE ROAD



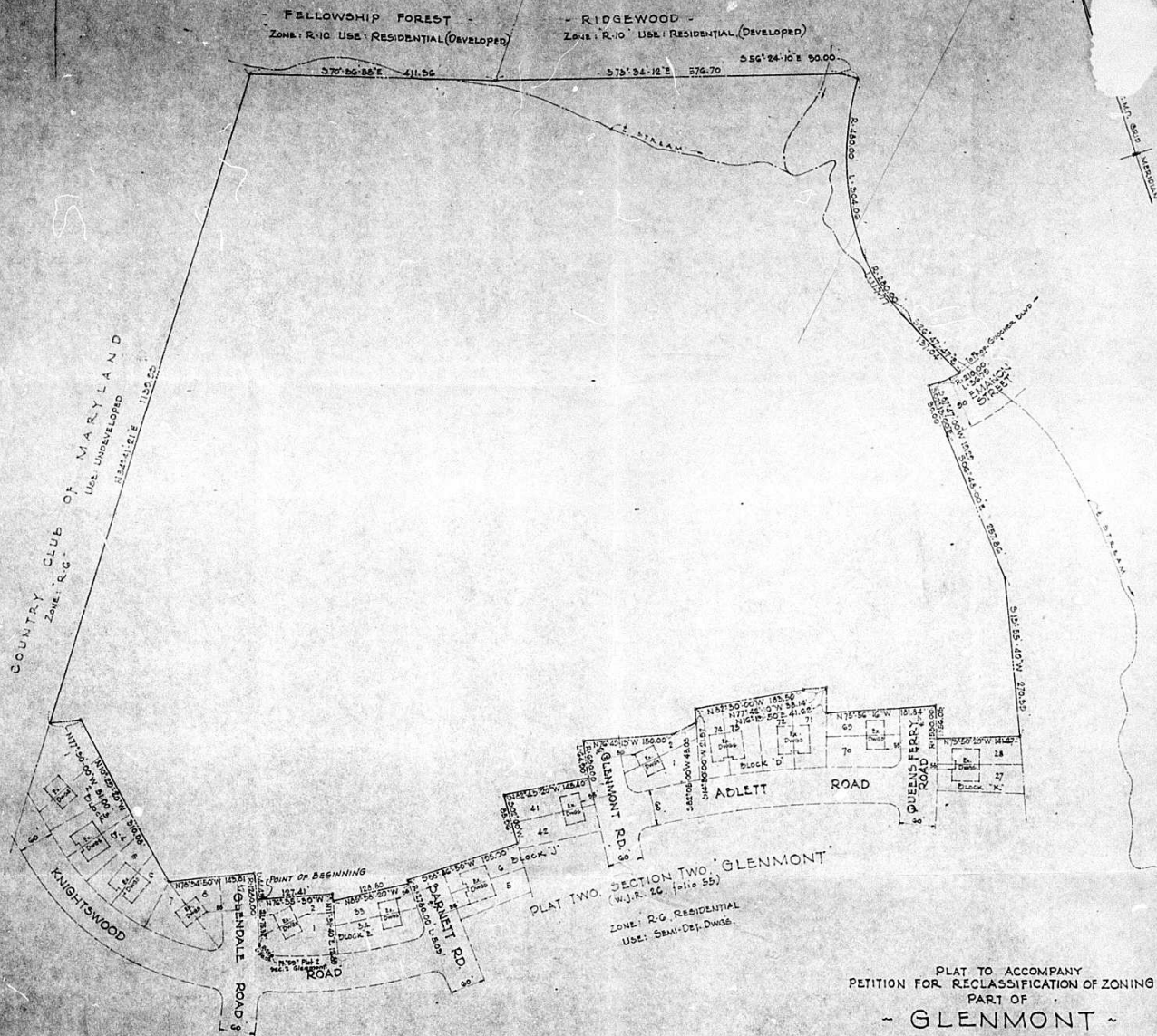
ARCHITECTURE & PLANNING BY CHRISTIE & WILLEMAIN





Acreage - 36.8 A.
 Gross density - $37.0 \times 16 = 592$
 Net density - $36.8 - 34 \times 18 = 602$
 Weight Addition - $7.5 \times 36.8 = 240$
 Total - 832 units
 Parking - 933.

MICROFILMED



PLAT TO ACCOMPANY
PETITION FOR RECLASSIFICATION OF ZONING
PART OF

GLENMONT

ELECT. DIST. 2 BALTIMORE CO., MD.
SCALE: 1"=100' JUNE 9, 1962

DEVELOPER:
ORTEL REALTY, INC.
24 W. PENNSYLVANIA AVE.
TOWSON, MD.

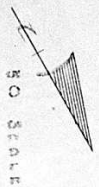
AREA OF PROPERTY: 56.7998 ACRES
EXISTING USE: SEMI-DETACHED DWELLINGS - UNDEVELOPED
PROPOSED USE: RESIDENTIAL - APARTMENTS
PRESENT ZONING: "R-6"
PROPOSED ZONING: "R-A"
NUMBER OF UNITS:
NUMBER OF PARKING SPACES:



MATZ CHILDS & ASSOCIATES
2129 N. CHARLES ST.
BALTIMORE 18, MD.



BRIDLEWOOD APARTMENTS AT TOWSON, MD.



ARCHITECTURE & PLANNING BY CHRISTIE & WILLEMAIN

QUEEN'S FERRY ROAD

BARNETT ROAD

GLENDALE ROAD

GLENN ROAD

