

**PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION**

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:  
 TONEY SCHLOSS PROPERTIES CORPORATION  
 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 reclassified, pursuant to the Zoning Law of Baltimore County, from an R-40 zone to an R-20 zone, for the following reasons: That access from the subject property is through R-20 land due to the construction of the Baltimore Beltway which beltway serves as a logical barrier between R-20 land and R-40 land and for such other reasons that may be assigned at the hearing.

See Attached Description

and its for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for:

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc. upon filing of this petition, and further agree to and accept to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law of Baltimore County.

TONEY SCHLOSS PROPERTIES CORPORATION  
 By *Robert M. Gajdman*  
 Robert M. Gajdman, Secretary-Treasurer

Contract purchaser: SMITH AND HARRISON  
 Legal Owner: *John G. Rose*  
 W. Lee Harrison, Attorney  
 Address: The Jefferson Bldg., Towson 4, Md. Valley 3-6200

ORDERED BY The Zoning Commissioner of Baltimore County, this 23rd day of August, 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 24th day of October, 1962, at 10:30 o'clock A.M.



TONEY SCHLOSS PROPERTIES CORPORATION  
 R. of Park Heights Ave., (3rd District)  
 Baltimore, Md.

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.

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of... the area in question is a very definite part of the existing "R-40" development. Access to Maple Drive is not a mandatory requirement, the stream joins rather than separates the "R-40" uses. The original map is not in accord. For the above reasons, the reclassification should NOT be had. ~~Access to Maple Drive is not a mandatory requirement, the stream joins rather than separates the "R-40" uses. The original map is not in accord.~~

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 24th day of November, 1962, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain as an "R-40" zone, and/or a Special Exception for a... should be and the same is granted, from... and after the date of this order.

MATTHEW HILLIS & ASSOCIATES, INC.  
 2129 N. Charles Street - Baltimore 18, Maryland

Description: Parcel to be Re-zoned From R-40 to R-20 Stevenson Ridge  
 Third Election District Baltimore County, Maryland

(1) S. 02° 00' 30" E., 115.00 feet, (2) S. 32° 20' 30" E., 157.50 feet, (3) S. 44° 15' 30" E., 230.00 feet, (4) S. 37° 32' 30" E., 190.00 feet, (5) S. 01° 50' 00" E., 110.00 feet, and (6) S. 09° 50' 00" E., 358.29 feet to a point in the N. 86° 28' 10" W., 801.20 foot line of the land first herein referred to, thence S. 05° 07' 10" E., 146.27 feet to intersect the northern Right-of-Way Line of the Baltimore Beltway as shown on the State Roads Commission of Maryland Plat No. 17801, Contract No. B 635-17-420, thence binding on the Right-of-Way Line of the Baltimore Beltway as shown on Plats No. 17800 and No. 17801 the three following courses and distances (1) S. 84° 52' 50" W., 171.12 feet, (2) S. 70° 40' 50" W., 360.35 feet and (3) S. 77° 18' 40" W., 304.29 feet, thence leaving the said Right-of-Way Line N. 06° 27' 20" W., 206.71 feet to the beginning of the last line of the land first herein referred to, thence binding thereon N. 06° 27' 20" W., 650.57 feet to the place of beginning.

Containing 21.1534 Acres of land.

EHS:abr 7/17/62  
 J. O. #62153



Letter Map  
 J. Lee Harrison  
 George W. Ball  
 Robert W. Gajdman  
 Leonard M. Glass  
 Norman F. Harrison  
 Paul L. ...  
 Paul S. ...

**DESCRIPTION**  
 PARCEL TO BE RE-ZONED FROM R-40 TO R-20  
 STEVENSON RIDGE THIRD ELECTION DISTRICT  
 BALTIMORE COUNTY, MARYLAND

Beginning for the same at the beginning point of the parcel of land which by deed dated June 30, 1952 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2134, Folio 410 was conveyed by the Danmore Realty Company to Dan Schloss and others, thence binding on part of the first line of said deed, as now surveyed, N. 03° 13' 10" W., 636.33 feet to the southwest corner of Section 2, Stevenson Ridge, as shown on a plat recorded among the aforesaid Land Records in Plat Book G.L.B. No. 25, Folio 14, said point having the designation "R 80" on said plat, thence binding on part of the outline of said plat the four following courses and distances (1) S. 70° 20' 00" L., 260.81 feet, (2) S. 09° 58' 22" E., 160.22 feet, (3) easterly by a line curving to the right with a radius of 50.00 feet the distance of 52.27 feet (said arc being subtended by a chord bearing S. 70° 01' 26" E., 49.92 feet) and (4) N. 49° 55' 30" E., 231.13 feet to a point in the western outline of Section 4, Stevenson Ridge, as shown on a plat recorded among the aforesaid Land Records in Plat Book W.J.R. No. 26, Folio 5, said point having the designation "R 85" on said last mentioned plat, thence binding on part of the outline of said last mentioned plat the six following courses and distances

MAP #3 SEC 2-C R-20 10/18/62

NYBURG, GOLDMAN & WALTER  
 1100 N. ...  
 November 15, 1962

Office of the Zoning Commissioner of Baltimore County  
 Room 119 County Office Building  
 Towson 4, Maryland  
 Attention: Miss Harris  
 Re: Toney Schloss Properties Corporation - Appeal No. 5675

Dear Miss Harris:  
 I believe that W. Lee Harrison, Esquire has filed a notice of appeal from the decision of the Zoning Commissioner in the above entitled matter, on behalf of our client, Toney Schloss Properties Corporation.  
 Enclosed please find our check in the amount of \$70., covering the cost of filing said appeal to the County Board of Appeals.  
 If you have any questions concerning this matter, kindly contact the undersigned or Mr. Harrison.  
 Very truly yours,  
 NYBURG, GOLDMAN & WALTER  
 By *David M. Blum*  
 David M. Blum

cc: W. Lee Harrison, Esquire

SMITH AND HARRISON  
 THE JEFFERSON BLDG  
 TOWSON 4, MARYLAND  
 November 9, 1962

John G. Rose, Zoning Commissioner  
 Baltimore County Office of Planning and Zoning  
 County Office Building  
 Towson 4, Maryland

Re: Petition for Reclassification from an "R-40" Zone to an "R-20" Zone - East end of Proposed Road (Split Rock Court) E. of Park Heights Ave., 3rd District - Toney Schloss Properties Corp., Petitioner - No. 5675  
 Dear Mr. Rose:  
 Please enter an appeal on the above captioned case on behalf of the Applicant.  
 Very truly yours,  
 SMITH AND HARRISON  
 By *W. Lee Harrison*  
 W. Lee Harrison

WLR:l

RE: PETITION FOR RECLASSIFICATION : BEFORE  
 from an "R-40" Zone to an "R-20" : COUNTY BOARD OF APPEALS  
 Zone, East end of Proposed Road : OF  
 (Split Rock Court) east of Park Heights : BALTIMORE COUNTY  
 Avenue - 3rd District :  
 Toney Schloss Properties Corp., :  
 Petitioner : No. 5675

**OPINION**

This is a petition of the Toney Schloss Properties Corp. for reclassification from an "R-40" Zone to an "R-20" Zone on a property located at the east end of proposed Split Rock Court Road, east of Park Heights Avenue in the Third District of Baltimore County. The property is approximately 21 acres in size and is zoned "R-40" at the present time.

The east and north of the property is contiguous to the Stevenson Ridge Development except that the eastern boundary of the property is actually separated from the Stevenson Ridge Development by a ravine and stream which acts as a flood control area. This ravine, according to the testimony of Mr. George E. Gavrellis, Deputy Director of the Office of Planning for Baltimore County, varies from 50 to 100 feet wide and from 40 to 57 feet deep. This particular parcel is land-locked on all sides except on the west. At the present time it is impossible to reach the subject property by automobile even from the west as this "R-20" property still remains undeveloped. The contiguous property to the west is part of the Long Meadow Development all of which is zoned "R-20" to the east of Park Heights Avenue to where it abuts the subject property. Testimony was to the effect that the property could only be zoned for nine "R-40" lots due to its terrain and that if it was allowed to be reclassified to "R-20" it could be developed into thirteen lots, still far less density than the normal yield for "R-20" property. When one looks at the Third District Land Use Map adopted on January 16, 1957, one finds that the dividing line between "R-20" property and "R-40" property to the east of Park Heights Avenue is in a straight line.

The Board is unanimous in its opinion that the granting of this reclassification would be logical for it is a continuation of the present Long Meadow Development which, as stated before, is completely zoned "R-20", and it seems logical that a flood plain area 50 to 100 feet wide and 40 to 57 feet in depth is a far more natural boundary for a division of "R-20" and "R-40" than was the straight line drawn by the Planners in 1957. As explained by Mr. George E. Gavrellis, the Deputy Director of Planning, comprehensive zoning maps are drawn with a broad brush, and it becomes almost impossible to have a minute examination of each specific piece of property. Property lines

are usually used as boundary lines with little thought of road patterns or other minute details being considered.

The Board does not feel that the granting of this particular reclassification can be harmful in itself. However, it grants the reclassification with "tongue-in-cheek" for fear that others may seek to reclassify other properties on this Land Use Map using this particular reclassification as a basis for their desired reclassification. Certainly there have been no changes in the neighborhood to warrant reclassifications, and the Board does not feel that it is creating any change whatsoever in granting the reclassification. The Board feels that this small parcel of land is a logical extension of the "R-20" zone that now exists. Further, the Board has given no consideration in its decision to the development of the Baltimore County Beltway. The knowledge of its location and the probable effect that it would have on adjacent properties was well known to the Planners and the County Council at the time of the adoption of the Land Use Map. Little thought whatsoever was given to the fact that one had to enter this property through "R-20" properties. Simply because a piece of ground must be reached by driving through another zoning classification is certainly not sufficient reason to reclassify the land-locked parcel to the same classification as the property that has been used to gain entrance.

The Board fully realizes the importance and necessity of protecting the Land Use Maps of Baltimore County and feels that there must be strong evidence that an error exists before granting a reclassification. The testimony of Mr. Gavrellis that the stream and ravine is the natural boundary line, and the fact that there can be no ingress and egress to the subject property from the "R-40" properties on the east and on the north, are the paramount reasons for the Board granting the subject reclassification. Therefore, the Board grants the reclassification of the subject property from an "R-40" Zone to an "R-20" Zone for the above reasons each independent of the other and neither relying on the other.

**ORDER**

For the reasons set forth in the foregoing Opinion, it is this 16th day of February, 1963 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby granted.

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

*W. Lee Harrison*  
 CHAIRMAN  
*George E. Gavrellis*

Note: Mr. Austin did not sit at this hearing.

STANLEY GREENBLATT, et al.  
v.  
TONEY SCHLOSS PROPERTIES CORP.

Bruno C. J.  
Hammond  
Harvey  
Marbury  
Sybert,  
JJ.

Opinion by Hammond, J.

Filed: May 6, 1964

The Zoning Commissioner of Baltimore County refused to reclassify some twenty-one acres of land east of Stevenson Road between the Beltway on the south and Keyser Road on the north from R. 40 to R. 20. The Board of Appeals, only two members sitting, granted the reclassification and the Circuit Court affirmed. The protesting neighbors appealed to this Court.

When the area underwent a comprehensive rezoning in 1957, the tract in question was part of a larger holding of some ninety acres. The western boundary line of the larger tract was made a dividing line between R. 40 zoning and R. 20 zoning almost all, if not all, of the land between that boundary line and Stevenson Road to the west was put in the R. 20 classification and almost all, if not all, of the land to the east of that boundary line to Greenspring Avenue was zoned R. 40. The owner of the ninety acres sold it after the comprehensive rezoning to a developer who built houses on lots of at least forty thousand square feet, as required by the R. 40 zoning, to the north, east and south of the tract here involved. The developer platted the twenty-one acres into nine lots, each containing forty thousand square feet, or more, and reproduced the plat in a sales brochure used to sell lots

R. 40 and R. 20 zones differ only in respect to the size of the lot, R. 40 requiring a minimum of 40,000 square feet, and R. 20 a minimum of 20,000 square feet. Each is a single family dwelling classification. Some of the homes recently constructed on R. 20 lots near the subject property cost \$70,000 to build.

under the legend "one acre homestead." None of the nine lots was sold or built on by the developer.

The original owner found it necessary to foreclose a purchase money mortgage which the developer had given and requested the twenty-one acres here in question at the foreclosure sale. It has been unsuccessful in selling the land again and, believing it could sell it to a owner of the land to the west for development in half-acre lots, sought to have it reclassified to an R. 20 zone.

In its application to the Zoning Commissioner, the owner justified the rezoning sought on the ground that "access from the subject property is through R. 20 land due to the construction of the Baltimore railway which beltway serves as a logical barrier between R. 20 land and R. 20 land \* \* \*." The Zoning Commissioner's denial of reclassification was because, in his opinion, "the petitioner's land rightfully belongs in the 'R. 40' Zone. The area in question is a very definite part of the existing 'R. 40' development. \* \* \* The original map is not in error."

On appeal the Board, the change from R. 40 to R. 20 was sought to be justified on the ground that the 1957 map was in error.

The testimony that there had been error in zoning the twenty-one acres R. 40 in the 1957 comprehensive rezoning came from the Deputy Director of Planning of Baltimore County. His opinion, however, was entitled to no more force and effect than the reasons he said underlay it. On direct examination he testified only that because there was no access by road to the property except through a development of R. 20 houses and because a difference in topography and a drainage course separate the property from the larger R. 40 area to the east, it was error in 1957 to have zoned the tract other than R. 20. On cross-examination, he said that in 1957 the Planning Board had thought the property line to be an appropriate division between the R. 20 zoning to the west and the R. 40 zoning to the east, but that the manner in which street and lot patterns had been worked out in actuality "now leaves the subject property, related more specifically to the area that is zoned R. 20 than it is to the area that is zoned R. 40." The witness admitted frankly that the land could be developed for either R. 20 use or R. 40 use (as was contemplated when it was zoned), as well as that "it is a fairly normal thing to go (speaking of access) from smaller lots to larger lots," that this type of access is quite frequent, and that this situation would not of itself create an error in the map.

The Board of Appeals in its opinion said the reclassification would be "logical" since the drainage course "is a far more natural boundary" than the straight property line used in 1957. The Board went on to point out that it was conceded there had been no change in the neighborhood and said it did not feel "that the granting of this particular reclassification can be harmful in itself" - but that "it grants the reclassification with 'longue-in-cheek' for fear that others may seek to reclassify other properties on this land

Use Map using this particular reclassification as a basis for their desired reclassification" The Board said, entirely rightly we think, that "if/ imply because a piece of ground must be reached by driving through another zoning classification is certainly not sufficient reason to reclassify the landlocked parcel to the same classification as the property that has been used to gain entrance" and he, almost immediately thereafter, concluded:

"The testimony of Mr. Carvella that the stream and ravine is the natural boundary line, and the fact that there can be no access to the subject property from the 'R. 40' properties on the east end on the north, are the paramount reasons for the Board granting the subject reclassification."

It is our opinion that under the controlling standards the Board had no right to grant the reclassification. As both sides agree, the well-established rule in Maryland is that "there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning or else of a substantial change in condition." *Shadybrook Imp. Assn. v. Mallory*, 232 Md. 265, 269-270, and cases cited. They also agree that there has been no change in conditions in the area. In our view, no probative evidence of error in the zoning of the property in 1957 was presented to the Board. The map that the applicant for change showed and all that the Board decided was that the drainage course would be a logical place to draw the line because the actual development of the R. 20 and R. 40 areas nearest the property had been such as to make the tract in question more compatible with its neighboring land to the west than with the land to the east. Assuming this to be true, it does not show original error. It was logical and appropriate to use the property line as a boundary in 1957. Perhaps ideal or even more nearly ideal planning in 1957 would have foreseen the way in which the developers would put in streets and lots and have enabled the zoning legislators to use the drainage course as a preferable boundary, but this does not mean that it was then error in a legal sense to have used the property line. "It hardly needs to be said again that in zoning a line of demarcation must be drawn somewhere," (*Shadybrook*, *supra*, at p. 272 of 232 Md.), and the use in 1957 of a property line which was then proper and appropriate (as is shown by the fact that in 1964, as has been true from 1957 on, the property can be as well developed for R. 40 use as for R. 20 use, according to the uncontested testimony) was not error simply because it is now revealed that subsequent events (the manner of development of contiguous lands) have made it more logical or desirable or economically profitable that the division line be at a natural contour line.

In rough topography will limit the number of lots into which the tract can be divided whether it remains R. 40 or is reclassified to R. 20. Only nine one acre lots or thirteen half-acre lots can be carved from the twenty-one acres. The owners urge that it will be economically more profitable to them and, as a practical matter, more feasible

to sell the land for R. 20 use. This offers no basis in law for a change in zoning status. No more do the mere facts that it would be logical or do no harm to grant the change. The case law requires strong evidence of original error or substantial change in conditions to justify piecemeal reclassification. The owners could not go far enough in this case towards meeting that heavy burden even to establish a question or basis for debate. The testimony they adduced was legally insufficient to support a finding of error by the Board of Appeals, and the case is controlled by *Shadybrook* where five alleged reasons given to show original error persuaded the Board of the Circuit Court of original error but were held by this Court to be unsubstantial as to be legally without force.

The Appellees rely on *Overton v. Co. Commissioners*, 235 Md. 212, in which a reclassification was upheld on an attorney and facter which bore a superficial resemblance to those in the case at bar. In *Overton*, however, the evidence as to the complete unsuitability of the land for the use for which it was zoned originally had definite probative force and made the matter to be decided by the zoning authorities at least fairly debatable. Here we think that, as in *Shadybrook*, there was nothing to debate.

ORDER REVERSED, WITH COSTS.

TONEY SCHLOSS PROPERTIES

STANLEY GREENBLATT,  
LESTER FRIEDENBERG,  
DR. MELVIN H. BULMASH,  
BERNARD V. SCHLOSS and  
SOL C. BERENHOLTZ  
Plaintiffs

IN THE  
CIRCUIT COURT

v.

FOR

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

BALTIMORE COUNTY

ORDER

The above entitled matter having come on for hearing on September 26, 1963, it is hereby ORDERED on this 27th day of October, 1963, by the Circuit Court for Baltimore County that the decision and order of the County Board of Appeals be and the same is hereby affirmed.

Judge  
Judge

STANLEY GREENBLATT,  
LESTER FRIEDENBERG,  
DR. MELVIN H. BULMASH,  
BERNARD V. SCHLOSS and  
SOL C. BERENHOLTZ  
Plaintiffs

IN THE  
CIRCUIT COURT

vs.

FOR

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

BALTIMORE COUNTY

PETITION OF APPEAL

STANLEY GREENBLATT, LESTER FRIEDENBERG, DR. MELVIN H. BULMASH, BERNARD V. SCHLOSS and SOL C. BERENHOLTZ, Protestants, by their attorneys, Sol C. Berenholtz and William H. Engelman, allege:

1. That a hearing was held before the County Board of Appeals of Baltimore County on February 21, 1963 on the Petition of the Toney Schloss Properties Corp. for the reclassification of approximately twenty-one (21) acres of land from a "R-40" zone to a "R-20" zone on property located at the east end of proposed Split Rock Court, east of Park Heights Avenue in the Third District of Baltimore County.

2. That the County Board of Appeals of Baltimore County, by its Order dated February 26, 1963, ordered that the reclassification Petition should be granted.

3. That the County Board of Appeals of Baltimore County was in error in deciding that on the evidence presented by the petitioner that the reclassification should be granted in that the evidence was legally insufficient to indicate that the original zoning of the property was erroneous.

WHEREFORE, the Protestants respectfully pray:

(a) That the Petitioner be directed to file an answer to this Petition and

b. That this Honorable Court review the decision of the County Board of Appeals of Baltimore County to determine if the Board has misconstrued the facts and the law applicable thereto.

Sol C. Berenholtz  
Sol C. Berenholtz

William H. Engelman  
1209 Court Square Bldg.  
Baltimore 2, Maryland  
LE 9-6967  
Attorneys for Protestants

I HEREBY CERTIFY that copy of the foregoing Petition of Appeal has been served on the County Board of Appeals for Baltimore County in compliance with Chapter 1100, Rule B2(e) of the Maryland Rules of Procedure, and further that copy of the foregoing Petition of Appeal has been served on W. Lee Harrison, Attorney for Petitioner, Jefferson Building, Tower 4, Maryland, this day of March, 1963.

W. Lee Harrison

STANLEY GREENBLATT,  
LESTER FRIEDENBERG,  
DR. MELVIN H. BULMASH,  
BERNARD V. SCHLOSS and  
SOL C. BERENHOLTZ  
Plaintiffs

IN THE  
CIRCUIT COURT

vs.

FOR

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

BALTIMORE COUNTY

ORDER FOR APPEAL

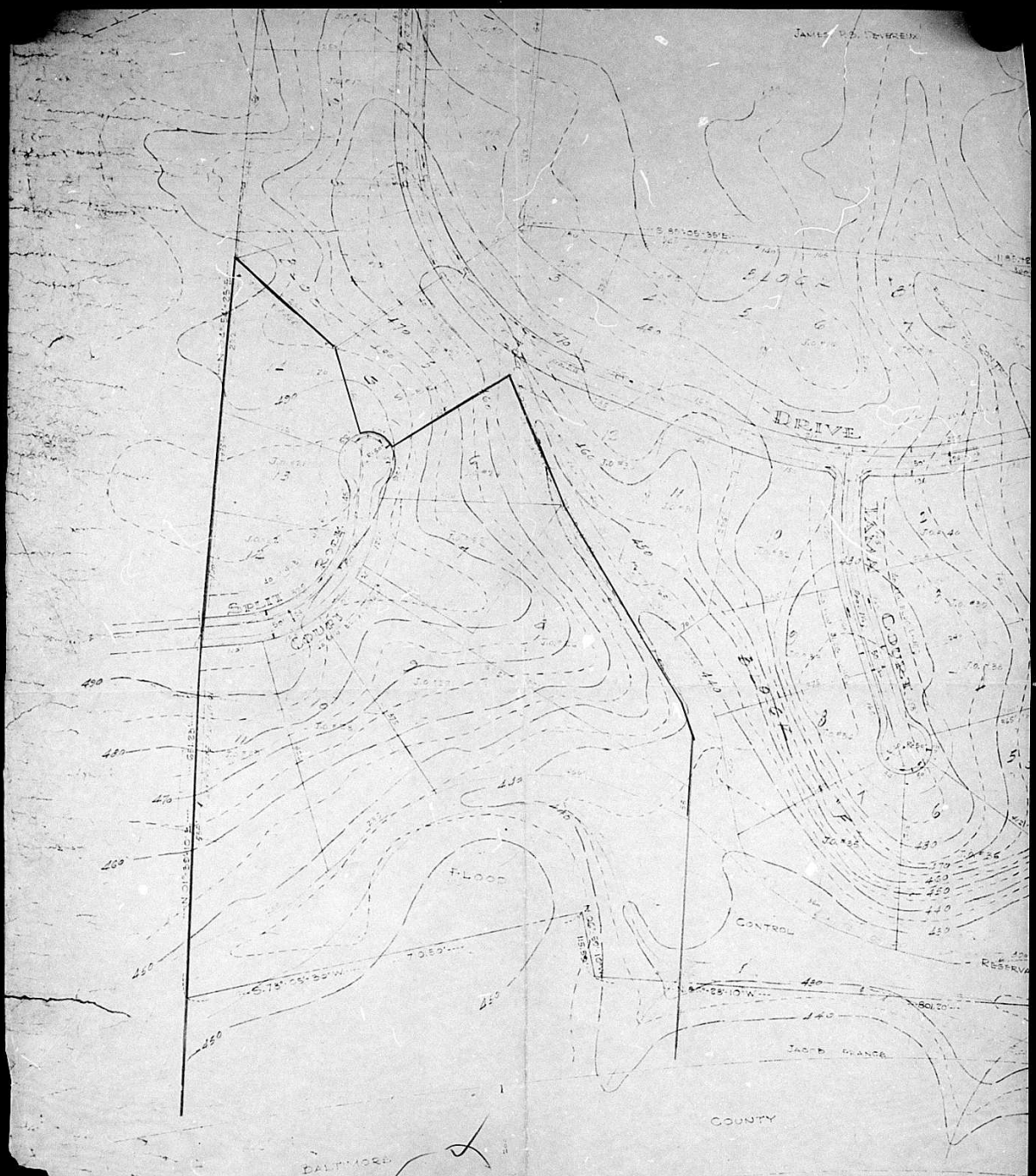
MR. CLERK: Please enter an Appeal in the above entitled case on behalf of STANLEY GREENBLATT, LESTER FRIEDENBERG, DR. MELVIN H. BULMASH, BERNARD V. SCHLOSS and SOL C. BERENHOLTZ, Protestants, from the Order of the County Board of Appeals of Baltimore County dated February 26, 1963.

Sol C. Berenholtz  
Sol C. Berenholtz  
William H. Engelman  
1209 Court Square Bldg.  
Baltimore 2, Maryland  
LE 9-6967  
Attorneys for Protestants

I HEREBY CERTIFY that a copy of the above Order for Appeal has been served on the County Board of Appeals of Baltimore County on this 27th day of March, 1963 in compliance with Chapter 1100, Rule B2(c) of the Maryland Rules of Procedure.

Service of the foregoing Order for Appeal acknowledged this 27th day of March, 1963 on behalf of the County Board of Appeals of Baltimore County.





#5675  
 MAP  
 #3  
 SEC. 2-6

TOWER SCLOSS PROPPING,  
 3RD DIST.  
 RELEASE, R40 TO R20  
FILE COPY