

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

Dear Mr. Commissioner:

Re: Petition for Reclassification from an
"B-6" Zone to an "R-A" Zone - S. E.
side Loch Raven Boulevard and N.E. side
of Hillen Road, 9th District-Loch Crest
Development Co., Inc., Petitioner.
No. 5743

Please enter an appeal by Loch Crest Development Co.,
Inc., petitioner in the above entitled case, to the County
Board of Appeals from the decision of the Zoning Commissioner
dated February 4, 1963, refusing to grant the reclassification.

I enclose check in the amount of \$70.00 for costs.

Very truly yours,

Holan P. Chipman

NPC:RES
Enc.

LOCH CREST DEVELOPMENT CO., INC.
SE 1/4 of Loch Raven Blvd. & N.E. of
Hillen Rd.
Towson 4, Md.
9th

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RE: PETITION FOR RECLASSIFICATION
from an "R-A" Zone to an "R-A" Zone,
SE 1/4 Loch Raven Boulevard and
NE 1/4 of Hillen Road
9th District
Loch Crest Development Co.,
Petitioner
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5743

OPINION

This is a petition of the Loch Crest Development Company for reclassification
from an "R-A" Zone to an "R-A" Zone on property located on the southeast side of Loch
Raven Boulevard and the northeast side of Hillen Road in the Ninth District of Baltimore
County.

The testimony of Mr. George E. Gavrillo, Deputy Director, Office of
Planning and Zoning of Baltimore County, was to the effect that at the time of the adoption
of the Ninth District zoning map on November 14, 1955 the Planning Department had
recommended "R-6" zoning for the subject property, as well as for the property to the north
now developed in apartments and known as the Hillendale Gate Apartments. However,
the County Commissioners in adopting the land use map zoned the Hillendale Gate Apartment
property in an "R-A" classification, and left the subject property in an "R-6" classification.

In a previous zoning petition seeking "R-G" for the subject property, which
case was ultimately determined in the Court of Appeals of Maryland, the Planning staff
opposed the "R-G" classification that was being asked for, and in Mr. Gavrillo's own
words - "...the Planning staff firmly went on record as favoring apartment zoning for
this tract. Our recommendation for "R-A" zoning is based on the fact that apartment
zoning is the most logical and appropriate use for the subject property."

Mr. Lester Metz, a qualified civil engineer, testified that water and sewer
are available to the property and that proper storm drainage does exist.

Mr. Bernard Villemin, a qualified witness in the field of planning and
zoning, testified that, in his opinion, there was an error in the original zoning for the
County Commissioners failed to recognize the anticipated needs for future apartment de-
velopment, and concurred in Mr. Gavrillo's testimony that the County Commissioners erred
in not zoning the subject property "R-A" in view of the "R-A" classification given to the
Hillendale Gate Apartment property.

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

WE, LOCH CREST DEVELOPMENT CO., INC., are 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-6 zone to an R-A zone; and for the following reasons:

The original zoning of this property was in error and
there has been a substantial change in the neighborhood since such
original zoning and R-A zoning is a reasonable zoning for this
property and for other reasons to be shown at the hearing thereof.

See Attached Descriptions

and (2) 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 are to be bound by the zoning
regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore
County.

Address: 1023 N. Calvert Street
Baltimore 2, Maryland
Holan P. Chipman
408 Jefferson Bldg., Towson 4,
Petitioner's Attorney Md.

ORDERED By The Zoning Commissioner of Baltimore County, this 23rd day
of October, 1963, that the subject matter of this petition be advertised, as
required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-
out 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 23rd day of January, 1964, at 2:00 o'clock.



(over)

- 2 -

It was further testified that the Herring Run interceptor system has been
increased since the adoption of the land use map, and that by 1960 its capacity had been
almost doubled.

It is the unanimous opinion of the Board of Appeals, from the testimony
presented, that there can be no doubt that the County Commissioners erred in not zoning
the subject property in an "R-A" classification. The Hillendale Gate Apartments on the
north; the flood plains, a branch of Herring Run, on the east; the Mt. Pleasant Golf
Course on the south and a major traffic artery, Loch Raven Boulevard, on the west makes
the use of this property for "R-A" a most desirable one.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day
of September, 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

Chairman

NOTE: Mr. Steinbock did not sit at this hearing.

MAZ, CHILDS & ASSOCIATES, INC.
Engineers - Surveyors - Site Planners
2129 N. Charles St., Baltimore 18, Maryland
HO 4-1500
DESCRIPTION
FOR REZONING OF PROPERTY AT THE VICINITY OF
LOCH RAVEN BOULEVARD AND HILLEN ROAD NINTH
ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND
Present Zoning: R-6
Proposed Zoning: R-A

Beginning for the same at the intersection of the southeast side
of Loch Raven Boulevard and the northeast side of Hillen Road thence
leaving the southeast side of Loch Raven Boulevard and binding on the
northeast side of Hillen Road the two following courses and distances: (1)
S. 03° 43' 10" E., 22.26 feet (2) by a curve to the left with a radius of 160.00
feet for a distance of 108.14 feet thence leaving the northeast side of Hillen
Road S. 47° 33' 20" W., 20.01 feet to the center line of Hillen Road thence
running and binding on or near the center line of Hillen Road the three follow-
ing courses and distances (1) S. 43° 35' 40" E., 61.00 feet (2) S. 38° 50' 40" E.,
66.00 feet (3) S. 22° 35' 40" E., 43.14 feet thence leaving the center line of
Hillen Road and binding on part of the property outline of the Mayor and City
Council of Baltimore City S. 85° 20' 40" E., 157.00 feet thence leaving the
aforesaid outline and running for the ten following courses and distances (1)
N. 22° 10' 36" W., 356.22 feet (2) N. 04° 49' 15" E., 83.29 feet (3)
N. 13° 37' 37" W., 67.91 feet (4) N. 04° 14' 10" W., 81.22 feet (5)

N. 32° 11' 45" W., 95.72 feet (6) N. 47° 57' 03" W., 68.68 feet (7)
N. 59° 46' 10" W., 133.41 feet (8) S. 70° 37' 56" W., 34.00 feet (9)
S. 75° 02' 44" W., 176.05 feet (10) S. 75° 01' 22" W., 1164.84 feet to
the point of beginning
Containing 18.576 acres of land more or less.

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... 1963, that the herein described property or area should be and
the same is hereby reclassified, from a... zone to a... zone, and/or a Special Exception for a... should be and the same is
granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition
and it appearing that by reason of... the subject property or that sufficient change has taken place in the area to
warrant the change...

the above re-classification should NOT BE HAD, and no Special Exception should be granted...

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 4th day
of February, 1963, 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 a... zone...

Zoning Commissioner of Baltimore County

MICROFILMED

RE: Petition for Reclassification from an "R-6" Zone to an "R-4" Zone and Special Exception for Elevator Apartment Buildings - W.S. Goucher Boulevard (proposed) North of Lightwood and Abiet Roads, East of Country Club of Maryland, 9th District - Ortel Realty Co., Petitioner

BEFORE ZONING COMMISSIONER OF BALTIMORE COUNTY No. 5673-HX

The Ortel Realty, Inc., petitioned for a change in classification from "R-6" Zone to an "R-4" Zone. The property contains 36,799.8 acres of land, being all of Plat Three and Plat Four, Section Two of "Gilemont". The plat filed with the Zoning Commissioner indicates Fellowship Forest Zone "R-10" use residential developed, and Ridgewood Zone "R-10" use residential developed to the north. Country Club of Maryland Zone "R-6" use undeveloped to the west. Plat Two, Section Two, "Gilemont" Zone "R-6" residential use semi-detached dwellings to the south.

The Zoning Map of November 14, 1955 indicates a large "R-4" 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 Glendale 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 near the proposed "R-4" (residence apartment) site.

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-4" 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. Moreover, 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 granting of existing 'R-4' does 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. Ratz, et al. vs. Bonfield Holding Company, et al., 223 Md. 34. The Court in its opinion noted at Page 41:

"The 9th Election 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 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 and 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 use classification is now to serve as a basis for upsetting the present zoning of 'R-6' and replacing it with 'R-4', the way adjacent Bonfield 'R-6' zoning and replacing it with 'R-4', the way is paved for pleading changed conditions as the basis for further extensions of 'R-6' reclassification in the larger adjacent area presently zoned as 'R-6'. (i) basis at all is shown in this record for saying that the 1955 zoning of this nearby property as 'R-6' was in error."

This would lead to the undermining of zoning in this large area. Cf. County Comrs. of Talbot County vs. Trowell, 211 Md. 138, 137 A. 2d 845. A similar danger has been recognized by this Court with regard to special exceptions in Easter v. City of Baltimore, 195 Md. 395, 100 Md. 73 A. 2d 101, and in Martin v. City of Baltimore, 215 Md. 206, 220, 137 A. 2d 198. 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 Md. 2d 553. A like problem also arises in connection with spot zoning in its obnoxious sense. As was said in Cassel v. City of Baltimore, 195 Md. 348, 355, 73 A. 2d 186; "see increase in 'spot zoning' in course of time would subvert the original soundness of the comprehensive plan and tend to produce conditions almost as chaotic as existed before zoning".

The Court also said at Page 41:

"Since 'R-4' 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-4'. 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 says 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. Ortel v. Board of Zoning Appeals, 204 Md. 397, 108 A. 2d 568; Ortel v. Board of Zoning Appeals, 204 Md. 551, 105 A. 2d 353; Trowell v. Board of Zoning Appeals, 205 Md. 489, 109 A. 2d 851; Board of Zoning Appeals of Howard County v. Meyer, 207 Md. 389, 114 A. 2d 626; Kroen v. Board of Zoning Appeals, 209 Md. 420, 126-7, 121 A. 2d 181; Native v. County Comrs. of Howard County, 212 Md. 351, 129 A. 2d 1361; Dorsey Enterprises, Inc. v. Shpak, supra; Quinn v. Tolla, 217 Md. 613, 113 A. 2d 181; Mahly v. County Council of Montgomery County, 218 Md. 513, 117 A. 2d 135; White v. County Board of Appeals, 219 Md. 136 148 A. 2d 420. 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 "R-4" to "R-6" 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 Boulevard and Taylor Avenue matter had the following to say:

"There is a strong presumption in favor of the validity of the existing zoning. To justify reclassification, it must be shown that the original zoning is in error or that there has been a substantial change in the neighborhood. Without doubt, the neighborhood has not changed other than to develop in the orderly way anticipated by theappers."

As to error, we find no such saturation as the petitioners allege. Although the area is admittedly heavily developed with local businesses, there are several categories as yet unfilled. Moreover, the subject property is currently, and apparently productively being used as a drive-in restaurant as permitted under the existing zoning.

The Board believes that the granting of this reclassification would amount to "spot-zoning" of the worst character.

For the reasons set forth above the petition is being denied. Judge Turnbull affirmed the decision.

There is much less reason for rescinding the Ortel Realty's property than there was for the other properties mentioned above.

In the Bonfield Holding Company matter error in the 1955 zoning was the basis of the dissenting opinion in the Board and the holding of the trial judge in the Circuit Court. Chief Justice Brune of the Court of Appeals commented that "the evidence to support it was slim".

The granting of this reclassification would be detrimental to the public health, safety and the general welfare.

It is this 29th day of October, 1962, by the Zoning Commissioner of Baltimore County, ORDERED that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is continued as an "R-6" Zone; and the special exception for Elevator Apartment Buildings be and the same is hereby DENIED.

John P. Chipman
Zoning Commissioner of Baltimore County

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: *9th* Date of Posting: *12-27-62*

Posted for: *James C. Goucher, Jr., Petitioner*

Petitioner: *Loch Raven Development Co., Inc.*

Location of property: *SE 1/4 of Lot 1, Block 1, Subdivision of Hillen Road, 9th District*

Location of Signs: *On property at intersection of Hillen Road and Abiet Road, 9th District*

Remarks: *None*

Posted by: *James C. Goucher, Jr.* Date of return: *12-27-62*

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: *9th* Date of Posting: *5/17/63*

Posted for: *HEARING Tuesday, June 18, 1963, 10:00 AM*

Petitioner: *Loch Raven Development Co., Inc.*

Location of property: *SE 1/4 of Lot 1, Block 1, Subdivision of Hillen Road, 9th District*

Location of Signs: *On property at intersection of Hillen Road and Abiet Road, 9th District*

Remarks: *None*

Posted by: *James C. Goucher, Jr.* Date of return: *5/22/63*

CERTIFICATE OF PUBLICATION
TOWSON, MD., December 22, 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-onech *11* times *11* consecutive weeks before the *16th* day of *January*, 1963, the next publication appearing on the *16th* day of *December*, 1962.

THE JEFFERSONIAN
Frank Smith Manager

Cost of Advertisement, \$.....

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

TO: *James C. Goucher, Jr., Petitioner*

DEPOSIT TO ACCOUNT NO. *01.712*

QUANTITY: *1*

COST: *\$8.00*

Cost of Certified Documents = *No. 5743*

Loch Raven Development Co.,
SE 1/4 of Lot 1, Block 1, Subdivision of Hillen Road,
9th District

1-1564 825 • 20808 • 11P- 8.00

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

TO: *Nolan P. Chipman, Esq., Jefferson Building, Towson 4, Md.*

DEPOSIT TO ACCOUNT NO. *01.622*

QUANTITY: *1*

COST: *\$6.59*

Advertising and posting of property for Loch Crest Development

1-1743 449 • • • 11L- 6.59

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

TO: *Nolan P. Chipman, Esq., 108 Jefferson Building, Towson 4, Md.*

DEPOSIT TO ACCOUNT NO. *01.622*

QUANTITY: *1*

COST: *\$50.00*

Petition for Reclassification for Loch Crest Development

1-1564 1460 • • • 11L- 50.00

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

TO: *Nolan P. Chipman, Esq., Jefferson Building, Towson 4, Maryland*

DEPOSIT TO ACCOUNT NO. *01.622*

QUANTITY: *1*

COST: *\$70.00*

Cost of appeal in matter of petition of Loch-Crest Dev. Co.

1-1563 972 • • • 11L • 70.00

