

IN THE COURT OF APPEALS OF MARYLAND

No. 129

September Term, 1964

FREDERICK F. PAUL, et al.

v.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY, et al.

Hammond
Burrey
Marbury
Sybert
Oppenheimer,

JJ.

Opinion by Marbury, J.

Filed: January 7, 1965

PAUL v. BOARD
129 September Term 1964

In this case, neighboring property owners appealed from an order of the Circuit Court for Baltimore County affirming the action of the County Board of Appeals in granting an application for the rezoning of a tract of approximately eleven acres of land in the Liberty Road area of the Second Election District of Baltimore County from R-6 to R-A. The R-6 zone in Baltimore County is for one or two-family residential use, with an area of 6,000 square feet for a one-family dwelling and of 10,000 square feet for a two-family dwelling. The R-A zone is for residential use as apartments.

The original application for reclassification of the subject tract was filed August 23, 1962, which alleged as the sole ground for reclassification error in the comprehensive zoning map. This application was denied by the Zoning Commissioner who found that there was no showing of error committed by the Baltimore County Council in the adoption of the zoning map. From this order, an appeal was taken to the County Board of Appeals of Baltimore County; and on August 13, 1963, the Board, with two members sitting, granted the reclassification. On September 6, 1963, a petition and order for appeal was filed by the protestants in the Circuit Court for Baltimore County. Thereafter, on September 11, the Board notified all parties of the filing of this petition and order, but no answer or petition

to intervene was filed by the applicants. The case was heard by Judge Turnbull on April 9, 1964, where objection was made by counsel for the protestants to hearing argument. This objection was overruled and the court below affirmed the order of the County Board of Appeals.

The property here in question is roughly rectangular in shape. Using Liberty Road as a true east-west thoroughfare, the tract lies to the north of Hilmar Road at a distance of some 1330 feet north of Liberty Road. Hilmar Road to the south of the subject tract (where some of the protestants own property) is developed on both sides with individual houses ranging in value from \$15,000 to \$25,000. To the west of the property in question, there is a similar neighborhood street known as Clifmar Road. Approximately 300 feet to the north of the subject property is undeveloped land zoned R-6 which is traversed by a stream known as the Scotts Level Branch and where is located a Baltimore County flood control area. To the east of the property is undeveloped land zoned R-A at the time of the adoption of the comprehensive zoning map by the County Council on November 15, 1962. Prior to the adoption of this zoning map, both the subject property and the tract to the east had been recommended for R-6 zoning by the Planning Department of Baltimore County. However, the Baltimore County Council rejected this recommendation for the tract to the east. It is significant

to note here that from an examination of the record, the planning staff was aware of this change in zoning but did not feel that this was a legitimate reason to change the classification of the subject property.

The appellants on this appeal contend that the applicants in seeking reclassification did not meet the heavy burden of proof required of them to establish that the comprehensive zoning map was erroneous. We agree. Under the well established rule in Maryland, " * * * 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 conditions." Shadybrook Imp. Assn. v. Molloy, 232 Md. 265, 269-70, 192 A.2d 5-2. See also Greenblatt v. Toney Seniors, 235 Md. 5, 200 A.2d 70.

In the case before us, three witnesses were produced below to support the claim of error. The property owner, Carl Julio, and a surveyor, Allan Evans, who was not an engineer, testified that the development of the property within the R-6 classification was not economically feasible by reason of its topography and rock content even though they admitted no test borings had been made. We have held that unsupported general claims of economic unfeasibility of existing zoning will not require a change in zoning status. DePaul v. Board of County Commrs. for Prince Georges County, No. 1-3, This Term, just decided. Other claims of error

4. In the zoning of this land rest upon the testimony of a real estate broker, J. Walter Jones, who testified: (a) that it is more logical to continue the zoning line to the improved areas; (b) that there is no reason that a zoning line should be a property line; (c) that there is a need for apartment zoning within the area covered by this comprehensive zoning map, and that the required change would not adversely affect the surrounding property; and (d) that the Baltimore County Council zoned the land adjacent to the east and then made no further study of the applicants' property.

The first two elements of Jones' testimony are similar and will be considered together. If we accept his argument that it is more logical to continue the zoning line to the improved areas and that there is no reason that such line should be a property line, we would countenance terminating a classification only where it abutted existing improvements. However, we think that these are only some of the elements to be considered and that it is more logical that such a zoning line be placed after considering topography and other zoning factors. We have held in the past and repeat that in zoning a line of demarcation must be drawn somewhere. Greenblatt v. Toney Seniors, supra; Shadybrook Imp. Assn. v. Molloy, supra.

The claim that there is a need for additional apartments in this area (which is disputed) fails to show anything more than that an R-A use would be more profitable than an R-6 use. The R-A

5. land to the east of the subject property has not been built on. The mere fact that a property owner can make a greater profit by developing in one classification than in another does not in and of itself deprive him of the reasonable use of his land in the constitutional sense. DePaul v. Board of County Commrs. for Prince Georges County, supra, and cases therein cited.

Apparently the main reliance by the Board in its opinion was the testimony of Mr. Jones to the effect that the County Council, after zoning the property to the east of the subject tract in the R-A classification, did not carry the zoning over to include this property and gave no further consideration to the property in question. The record is not clear that the Baltimore County Council failed to consider the zoning of the subject property when the tract to the east was zoned, but assuming that this was true, it does not follow that the zoning of the property to the east made it mandatory to zone that here concerned to R-A. Shadybrook Imp. Assn. v. Molloy, supra; Ross v. Benfield Holding Co., 223 Md. 34, 198 A.2d 611.

We held that the burden resting upon the applicants to show error on the part of the legislative body, the County Council, in the comprehensive rezoning applicable to the property here involved has not been met, so that on this ground we must reverse the order of the Circuit Court, and remand the case with directions to reverse the action of the Board of Appeals and to reinstate the action of the Zoning Commissioner, which denied the applicants' application for reclassification.

6. Finally, the appellants claim that the trial court erred in permitting oral argument by counsel for the applicants where no answer to the petition for appeal or no petition to intervene had been filed on behalf of the applicants prior to the argument in the court below pursuant to Maryland Rule 29. While we do not condone the practice followed in the trial court and the overruling of the appellants' objection to hearing oral argument without compliance with this procedural rule, since the appellants concede that no prejudice resulted we see no need to further pursue the matter.

ORDER REVERSED AND CASE REMANDED
FOR FURTHER PROCEEDINGS IN
ACCORDANCE WITH THIS OPINION;
THE COSTS TO BE PAID BY THE
APPLICANTS CARL AND EDWARD JULIO.

LAW OFFICES
A. OWEN HENNEGAN, JR.
SAMUEL KIMMEL
AND OFFENSE BUILDING
TOWSON 4, MARYLAND
January 30, 1963

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

Re: Petition for Reclassification from
R-6 Zone to R-A Zone - S.E. Side
Hilmar Road 1330 ft. N.E. of Liberty
Road, 2nd Dist., Carl Julio and
Edward Julio, Petitioners -
No. 5763

Mr. Commissioner:

Please enter an Appeal to the County Board of Appeals from your Order of January 29, 1963, denying the Petition for reclassification in the above matter.

Attached hereto is check in the amount of \$70.00 to cover costs of same.

Very truly yours,

A. Owen Hennegan, Jr.
A. Owen Hennegan, Jr.

AOHJ:rmf
Encl.

RE: PETITION FOR RECLASSIFICATION :
from an "R-6" Zone to an "R-A" Zone,
SE/5 Hilmar Road, 1330' NE of
Liberty Road
Second District
Carl and Edward Julio,
Petitioners
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 5763

OPINION

This is a petition for reclassification of property located on the southeast side of Hilmar Road, 1330 feet northeast of Liberty Road in the Second District of Baltimore County. The property was acquired by the petitioner in September of 1962 and is presently zoned "R-6", as it was at the time of purchase.

To the east of the subject property is undeveloped land zoned "R-A", to the west is a development of individual homes zoned "R-6", to the south is the Scotts Level Stream flood plain area, and to the south are individual cottage homes extending to the north side of Liberty Road.

Testimony was to the effect that the topography of the land shows that it slopes to the east and that the ground is of very rocky character. The flood control area separating the subject property and the Court Haven development to the north varies from 200 to 500 feet.

Mr. J. Walter Jones, a qualified realtor and appraiser, testified that, in his opinion, the County Council erred in adopting the Second District land use map on November 15, 1962 in placing the subject property in an "R-A" classification. It was his opinion that the development of the property to the east in "R-A" made it mandatory that the property to the west; that is, the subject property, should have been zoned "R-A" to the existing cottage developments on Hilmar Road. To leave this undeveloped property in an "R-6" classification, considering the topography, soil content and its zoning to the east, left the petitioner with land that could not be used to its highest and best use.

It was further testified by Mr. Jones, that while the Planning Department did recommend "R-6" classification for the now zoned "R-A" tract to the east, that the County Council changed its classification to its present "R-A" and in doing so gave no further consideration to the subject property. He also testified that the development of this land in an "R-A" classification would have no adverse effect on surrounding properties.

MICROFILMED

It is the unanimous opinion of the Board of Appeals that sufficient testimony was presented to indicate that the subject property should have been placed in an "R-A" classification as was the property to the east, and not having done so constitutes an error by the County Council.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 12th day of August, 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

William H. Kaufman
CHAIRMAN

W. Mitchell Austin

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

MICROFILMED

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

We, *Carl and Edward Julio*, owners 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 hereinafter described property be reclassified pursuant to the Zoning Law of Baltimore County, from an *R-6* zone to an *R-A* zone; for the following reasons:

Error in original map

See Attached Description

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

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.

Contract purchaser

Address *3024 Spaulding Ave.*

Legal Owner

Address *3024 Spaulding Ave.*

Petitioner's Attorney

Address *401 Jefferson Bldg.*

Protestant's Attorney

Address *3700 Wilshire Ave.*

ORDERED By The Zoning Commissioner of Baltimore County, this 23rd day of August, 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 throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 100, County Office Building in Towson, Baltimore County, on the 28th day of January, 1964, at 1:00 o'clock.



W. Mitchell Austin
Zoning Commissioner of Baltimore County.

MICROFILMED

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND
No. 16431
DATE 2/14/63

TO: A. Glen Hennegan, Jr., Esq.
Jefferson Building
Towson 4, Maryland

REPORT TO ACCOUNT NO. 01.622

QUANTITY	REMARKS	TOTAL AMOUNT
1	Cost of appeal in the matter of petition of Carl & Edw. Julio No. 5763	\$70.00
1	Advertising and posting of your property #5763	36.00
1	Cost of Certified Documents for No. 5763 Carl & Edward Julio SE/5 Hilmar Road, 1330' NE of Liberty Road 2nd District Baltimore County, Md. - Office of Finance	\$4.00

6-1265 3070 * * * TEL *

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

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND
No. 15481
DATE 2/28/63

TO: Aracida Construction Co., Inc.
3024 Spaulding Ave.
Baltimore 15, Md.

REPORT TO ACCOUNT NO. 01.622

QUANTITY	REMARKS	TOTAL AMOUNT
1	Advertising and posting of your property #5763	36.00
1	Cost of Certified Documents for No. 5763 Carl & Edward Julio SE/5 Hilmar Road, 1330' NE of Liberty Road 2nd District Baltimore County, Md. - Office of Finance	\$4.00

6-1265 3070 * * * TEL *

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

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 January, 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 location and that the testimony presented at the hearing did not indicate an error in the Western Area Planning Map adopted by the County Council,

the above reclassification should NOT BE HAD, and the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 29th day of January, 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 to remain a zone.

Zoning Commissioner of Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: George A. Baker
FROM: William H. Kaufman
SUBJECT: Water Comments for Apartments
Clifford and Hilmar Roads
Election District 2

Date: January 23, 1963

JAN 25 63

OFFICE OF PLANNING & ZONING

In accordance with your recent request, a review has been made of the adequacy of public water at the above proposed apartment site.

A 6-inch water main exists in Hilmar Road near the west property line, an 8-inch main exists in Clifford Road near the north property line. These mains should be extended to eliminate the present three dead-end conditions and to furnish an adequate supply to the proposed 130 apartment project.

This location is with Area No. 1-4 and is subject to an area connection charge of \$100.00 per equivalent housing unit.

William H. Kaufman
WILLIAM H. KAUFMAN, Chief
Bureau of Engineering

EDJ:JLW:b
cc: J. F. Lopez

RECEIVED
JAN 25 1963
BUREAU OF LAND DEVELOPMENT

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mrs. John O. Rose, Zoning Commissioner
FROM: Mrs. George E. Gavrilis, Deputy Director
SUBJECT: #5763. P-6 to P-4. Southeast side of Hilmar Road 1330 feet Northeast of Liberty Road. Being property of Carl Julio.

Date: January 28, 1963

2nd District

HEARING: Monday, January 28, 1963 (1:00 P.M.)

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

- While this proposal for R-A shows land recently approved by the County Council in its deliberations on the Western Planning Area Map, the site does not fit into a logical extension of the adjoining R-A zone.
 - It is too far (1300') from Liberty Road to be considered a "prime" site.
 - Its major access road is built up with existing cottage dwellings which would suffer from the introduction of high density apartments as proposed by the developer, and
 - The site does not fit well topographically with the R-A to its east.
- Further the Western Planning Area Map as recently adopted by the Council should be upheld as far as this request goes.

ODJ
LW:b

MICROFILMED

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND
No. 20801
DATE 10/14/63

TO: Harry S. Sweetenshield, Jr., Esq.
3700 Wilshire Avenue
Baltimore 7, Maryland

REPORT TO ACCOUNT NO. 01.712

QUANTITY	REMARKS	TOTAL AMOUNT
1	Cost of Certified Documents for No. 5763 Carl & Edward Julio SE/5 Hilmar Road, 1330' NE of Liberty Road 2nd District Baltimore County, Md. - Office of Finance	\$4.00
1	Advertising and posting of your property #5763	36.00

6-1265 3070 * * * TEL *

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

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 2nd
Posted for: *Carl & Edward Julio*
Petitioner: *Carl & Edward Julio*
Location of property: *SE/5 Hilmar Road, 1330' NE of Liberty Road, 2nd District*
Location of signposts: *posted at the end of Hilmar Road and at the end of Clippens Road*
Remarks: *None*
Posted by: *George R. Henneman*
Date of return: *1-16-63*

MICROFILMED

PETITION FOR ZONING
RECLASSIFICATION
2nd District

ZONING: From R-6 to R-A Zone
LOCATION: Southeast side of
Hilmar Road 1330 feet Northeast
of Liberty Road.

DATE & TIME: MONDAY, JAN-
UARY 28, 1963 at 1:00 P.M.

PUBLIC HEARING: Room 108,
County Office Building, 111 W
Chesapeake Avenue, Towson
Maryland.

The Zoning Commissioner of
Baltimore County, by authority
of the Zoning Act and Regulations
of Baltimore County, will hold a
public hearing:

Concerning all that parcel of
land in the Second District of
Baltimore County.

BEGINNING for the same at
a point on the southeast side of
Hilmar Road, 30 feet wide as
laid out and shown on the Plat
of Hilmar recorded among the
Land Records of Baltimore County
in Plat Book L.Mc.L.M.No. 10
folio 28, said point being situate
1330 feet, more or less, measured
northeasterly along said south-
east side of Hilmar Road from its
intersection with the east side of
Liberty Road, thence leaving said
place of beginning and running
southeasterly 257 feet, more or
less, thence North 47 degrees
07 minutes East 932 feet, more
or less, thence North 41 degrees
15 minutes West 772.3 feet, thence
South 47 degrees 33 minutes West
214 feet, more or less, Thence
southeasterly 322.9 feet, thence
South 47 degrees 07 minutes
West 690.0 feet, thence south-
easterly 178.8 feet to the center
of said Hilmar Road, thence run-
ning and binding on the center line
of said Hilmar Road South 47
degrees 07 minutes West 51 feet,
more or less, thence leaving
said center line and running south-
easterly 15 feet to the place of
beginning.

Being the property of Carl Jullo
and Edward Jullo as shown on
plat plan filed with the Zoning
Department.

BY ORDER OF

JOHN G. ROSE,

ZONING COMMISSIONER
OF BALTIMORE COUNTY

Jan. 11.

OFFICE OF
THE BALTIMORE COUNTIAN

THE COMMUNITY NEWS
Reisterstown, Md

THE COMMUNITY PRESS
Baltimore, Md

THE HERALD - ARGUS
Catonsville, Md.

No. 1 Newburg Avenue

CATONSVILLE, MD.

January 14, 1963.

THIS IS TO CERTIFY, that the annexed advertisement of
John G. Rose, Zoning Commissioner of
Baltimore County

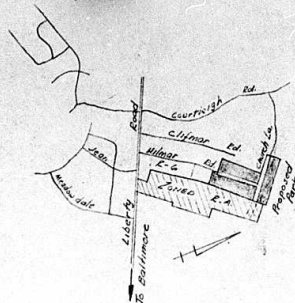
was inserted in THE BALTIMORE COUNTIAN, a group of
three weekly newspapers published in Baltimore County, Mary-
land, once a week for One Week ~~SEVEN WEEKS~~ before
the 14th day of January, 1963, that is to say
the same was inserted in the issues of

January 11, 1963.

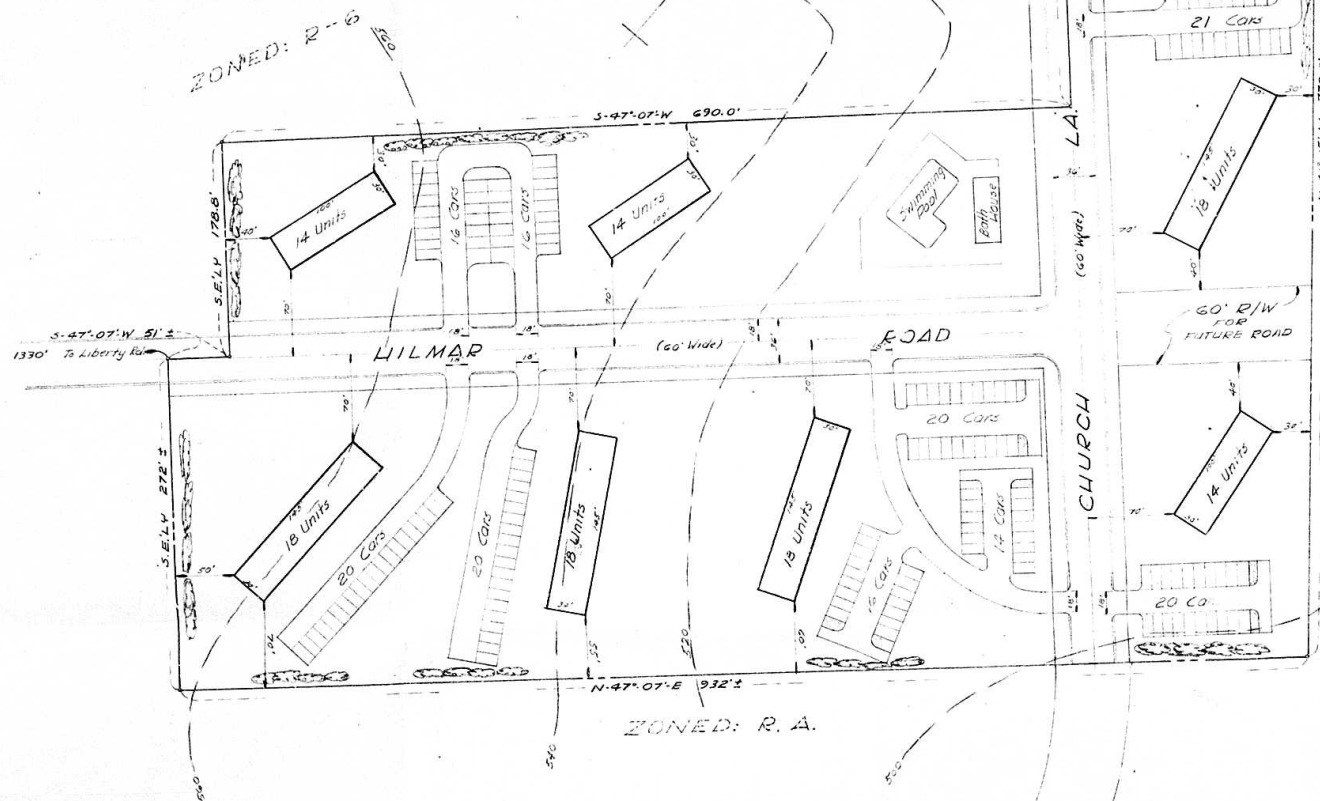
THE BALTIMORE COUNTIAN

By Paul J. Morgan
Editor and Manager

MICROFILMED



LOCATION Map Scale: 1" = 1000'



NOTE: All parking spaces 9'x18'

Election District: 254
Area of Property: 11 A² ±
Existing Use: Vacant-Woods
Proposed Use: Apartments
Present Zoning: R-6
Proposed Zoning: R-A.

Total N² Units: 130
Total Parking Spaces: 184

#5763



L. Alan Evans
Surveyors & Civil Engineers
4200 Elmore Ave. #214
Baltimore 14, Maryland
Scale: 1" = 50' Oct 2, 1962

