| <br>COMMERCIA | nek of I | ALTIMORE. | COUNTY: |
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ion of the Mestern Area Land Use Map.

| THE BORING COMMISSIONER OF BALTIMORE COUNTY:  | 150     | TERM  |
|---|---------|-------|
| <ol> <li>THE MODELS COMMISSIONER OF BALTIMORIE COUNTY:</li> <li>General Albert's Abrahama.</li> <li>Instance and past attached hereto and made a part attached hereto and made a part position (s) that the suning status of the herein described property he re-classified, p</li> </ol> |         | PESCA |
| unity and which is described in the description and plat attached hereto and made a part  | hereod, | MAB   |
| toph bettern (1) aper aper assert states of any percent described hashard an accommunic h   |         |       |
| the Senior Low of Bultimore County, from an   | -       | 26    |

1400 Because of error in the Classification of this property

ting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning

MALERIA AND HARRISON

The Jefferson Building (4

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#5802

IN THE COURT OF APPEALS OF MARYLAND

No. 320

September Term 1964

BERNARD H. MILLER, et al

ALBERT ABRAHAMS

Prescott, C.J. Horney Marbury Oppenheimer Barnes,

Dissenting opinion by Barnes, J.

Piled: June 23, 1965

The majority opinion illustrates to my mind the essential unsoundness of the "mistake in original zoningchange in physical conditions" rule which we have applied in rezoning cases since the decision of this Court in wakefield v. Kraft, 202 Md. 136, 96 A. 2d 27 (1953). I pointed out, at some length, in Part III of my dissenting opinion in Mac-Donald v. Board of County Commissioners of Prince George's 549 at page County, 238 Md./ 557, 576-601, A. 2d , No. 427 September Term 1964, decided May 5, 1965, the unfortunate entry of this doctrine into the Maryland law and its rapid and unhealthy growth. The MicDonald case, however, involved the "change in physical conditions" portion of the rule; the case at bar involves "mistake in original zoning", the remaining part of the rule. The comments in Part III of the dissenting opinion in MucDonald are generally applicable in this case, and need not be repeated here. There are additional observations with particular reference to the "mistake" portion of the rule which

In the majority opinion it is stated that for the petitioner to prevail, he must "meet the heavy burden placed upon him" to show the original mistake. 'In MacDonald the majority stated that the rezoning could only be sustained when there is "strong evidence of mistake" in the original

zoning or when there is "a substantial change in conditions" in the neighborhood. In some of our prior cases we have indicated that there is a strong presumption of the reasonableness of a zoning ordinance but this presumption of reasonableness does not apply with the same weight or "with as great force" to a rezoning ordinance. See Mettee v. County Commissioners of Howard County, 212 Mr. 357, 366, 129 A. 2d 136, (1957) and cases cited in that orinion.

As all of the cases agree that both zoning and rezoning ordinances involve the exercise of legislative power, why is it that the exercise of legislative power at a later. time does not have at least equal force or an equal presumption of validity as does the prior exercise of legislative power? Apart from rezoning legislation, we have consistently, vigorously and, to my mind, quite properly held that one legislative body may not prevent contrary action by the legislative body acting at a later date, however emphatically it attempts to do this. Montgomery County v. Bigelow, 196 Md. 413, 423, 77 A. 2d 164 (1950); see also State v. Fisher, 204 Md. 307, 315, 104 A. 2d 403 (1954); Prince George's County v. Donohoe, 220 Md. 362, 367, 152 A. 2d 555 (1959). In my opinion, there should be no "heavy burden" upon the petitioner or the requirement of "atrong evidence of mistake" in the original zoning. As stated by the Court in Bartlett v.

Middletown Township, 51 N.J. Super. 261, quoted in 1 Rathkopf, The Law of Zoning and Planning, 27-14 (n. 22):

"." " the presumption of validity attending the original ordinance must give may be the presumption of the original ordinance. The Logislature not only conferred upon municipalities the power to adopt zoning originance but also the power to among contances but also the power to among contances but also the power to among contances and the second change, modify or repeal them \* \*\* "."

I fear that our present rule is justly subject to the observation by Rathkopf when he stated:

"The Maryland rule would appear to be a limitation upon the power of the legislative body to rezone rather than a strict rule of presumption." [Id., p. 27-16].

We should return to more orthodox doctrine. If we are not able to do this because of the doctrine of stare decisis, I again suggest, with great respect, as I did in the dissent in MacDonald, that the Legislative Council and ultimately the Ceneral Assembly give serious thought to a change of the present rule by appropriate legislation.

In my opinion the "mistake in original soning portion of this rule - assuming arguendo its validity - has been misapplied by the majority in the case at bar. While the facts are rather fully stated in the majority opinion, they some further amplification.

Mr. Gavrelia, the Deputy Director of Planning for Baltimore County for six years and the Acting Director of the

Office of Planning and Zoning, was with the Department of Planning in 1955 or 1956 when the Department of Planning originally processed the subdivision plans for the 5.2 acre purcel involved in this case. The prior studies culminated with the recommendation in connection with the adoption of the Western Planning Area Zoning Map. It is undisputed that the Department of Planning recommended to the Planning Board that the subject property be zoned B-2 (Business-Local). Mr. Gavrelis gave in some detail the factors which led the Planning staff to recommend that the subject property be given commercial zoning. These factors were:

- 1. The fact that Old Court Road was proposed to be relocated so as to eliminate the 90-degree turn at the present intersection of Old Court Road with Marriott's Lane.
- 2. The plans of the Planning staff called for the ultimate extension of Rolling Road northerly from Liberty Road across Scott's Level Branch to intersect Old Court Road as relocated opposite the middle of the subject tract.
- 4. The concept of a small shopping area for meighborhood carries areas seemed logical to the Planning staff as the subject property was approximately halfway bet

commercial areas, and there were no other shopping facilities for this newly-developed area other than at Reisterstown Road or at Liberty Road. The Planning staff felt there was a need, based on its general studies / that the small commercial area on the subject property was appropriate.

It is uncontradicted that the Department of Planning prior to 1960, and as early as 1956, approved preliminary site plans for the subject property indicating a proposed shopping center on this site.

It is also undisputed that the B-L zoning for the subject property as recommended was placed on the Master Plan and remains at the present time on the Master Plan.

On the documents of both the Department of Planning and the Planning Board when the Planning Board presented its recommendations to the County Council on October 16, 1961, it clearly appeared that the Planning Board's recommendation was for B-L zoning for the subject property and was not for R-6 zoning. There was no other recommendation by the Planning Board. It is entirely clear from the testimony of Mr. Gavrelia that there was absolutely no basis for any other recommendation. The motion made at the meeting of the County Council on October 16, 1961 was "to accept the Planning Board's recommendation of R-6 soning" and this motion "carried unanimously." (Emphasis supplied). The intent of the County Council was clearly to

The majority opinion indicates that Item 21 does not show a mistake in original zoning because (1) the question is "whether or not the Council made a basic and actual 'mistake' as that term is used in zoning law, at the time when it classified the property R-6" and (2) the other items on the agenda of the County Council's meeting of October 16,

4. He obtained copies of the published reports accompanying the Planning Commission's recommendations to the County Council; he had read the relevant minutes.

10.

5. Before the map was adopted, he discussed the land uses on the paper prepared by the Planning staff before they were presented to the Board.

6. He considered the contemplated changes in the various highways and the proposed engineering plans as well as the various factors of location.

Mr. Willemain also indicated that there was a need for the proposed local shopping center and that the B-L soming would have no adverse affect on any of the adjoining properties or lead to further reclassification in the immediate neighbor

William B. Purdum, a consulting engineer, testified that he prepared the layout for the 5.2/percel, that canitary facilities and water were available and that in view of the location of the subject property, its triangular shape and small size, he did not think "it would be commenceally from to develop in detuched homes." He also testified that there would be no traffic hazard resulting from the reclassification to B-L zoning.

In the unjority epinion it is suggested that part the testimony mentioned above was per

1961 with the explanation by Mrs. Boone and with comments by Mr. Dill. Director of Planning and Zoning, Mr. Graef and Mr. Gould, assistants to Mr. Dill, in which certain requested changes were granted or denied, indicate that the "likelihood that the Council was acting under the misapprehension that it was adopting the Planning Board's recommendation . . . is quite remote." These reasons do not appeal to me as weakening the showing by Item 21 that a mistake was made. As indicated in the majority opinion, the meeting of the County Council of October 16, 1961 was not coen to the public and no persons other than the members of the Council and the Planning Officials were present. The B-L zoning recommended to the Planning Board by the Planning Staff (Mr. Dill, Mr. Graef and Mr. Gould were part of that staff) and by the Board to the Council was the result of the studies and past action by the Planning staff. The B-L zoning was at that time and still in on the Master Plan. There is no suggestion in the Minutes of the Council that any one presented any evidence or arguments against the recommended B-L zoning. Under the circumstances. It is almost inconceivable that any such testimony or arguments were presented. Item 21 indicates the contrary, It states that the Council unanimously accepted the Planning Porrd's recommendation. It would seem apparent that if the Council had not intended to accept the recommendation, it

tense rather than in the past tense, the inference being that this testimony is of limited value in determining whether there has been a mistake in the original zoning. I do not think this inference is justified in that, in my opinion, the basic factual situation in regard to the subject property and the surrounding area was substantially the same at the time the testimony was given at the reclassification hearing as it was on October 16. 1961 and when the zoning map was adopted by the County Council. even though the issue in regard to "change in the character of the neighborhood" was not before the Zoning Commissioner in this application because the two year period from the date of the adoption of the soning map provided for in Scotion 500.3 b of the Baltimore County Zoning Regulations had not expired prior to the filing of the application

These additional facts, to my mind emphasize the actual and basic mistake in the original soning. The Planning staff and the Planning Board found that there was a community need for this local shopping center prior to the original sening The same need continues to exist. B-L soning was recommended to satisfy this community need. The satisfaction of this need will not injure the surrounding properties or bring in new reclassifications. The R-6 soning did not satisfy this ecomunity need in 1961 and does not satisfy it now. The R-6 sening will result in an uneconomic use of the subject property. This was

would have stated this and the motion would have been . . . motion to reject the recommendation of the Planning Board for B-L zoning and in lieu thereof, to establish R-6 soning." or language to that effect. No reasonsor racts justifying R-6 zoning appear in the Minutes of the Council. All of the evidence is to the contrary. It seems to me that it might be assumed that the Council acted reasonably and in accordance with the only evidence apparently before it and in fact intended to do what it said it intended to do, i.e., "accept the Planning Board's recommendation." The inclusion of R-6 zoning, which was not recommended by the Planning Board was a mistake in original zoning both "actual" and "basic" in my opinion. At least the Board of Appeals could so find (as it did); and the matter was fairly debatable, as Judge Jenifer

But there are other facts to be considered. The Planning staff had approved the preliminary site plans for the subject property prior to 1961. The signs for sales promotion placed on the subject property prior to 1961 indicated that a shopping center would be erected on the subject property. The advertising for sales of lots indicated the same thing. Two of the propercy owners who testified before the Council in opposition at the hearing on April 8, 1964 before the Board of Appeals, which granted the re-classification to B-L zuning, admitted that they knew of this

proposed use when they purchased their property. In short, the community was put on notice before the purchase of letof the erection of the proposed shopping center.

Bernard M. Willemain, an expert with unusually high qualifications testified that after having made a study of the subject property, he had an opinion "as to the correctness of the R-6 zoning imposed upon this property by the adoption of the map." This opinion was "that the present R-6 zoning of the property is in error and that the proper mening for the property is the B-L classification requested by the petitioner today." In giving his reasons for his opinion, Mr. Willemain indicated that:

- 1. He visited the subject property five or eix times after employment to testify as an expert.
- 2. He reviewed the zoning and planning files to add to his personal knowledge of the history of the particular proposal and the specifics of the property itself.
  - 3. He was present at the public hearings.

1. B.S. in Civil Engineering and Landscape Architecture, University of Mussachusetts; Master of City Planning, Mass achusetts Institute of Technology Deputy Director of the Baltimore County Flanning Commission for 5 years Baltimore county Yakhing Lowellssion for J years; drarest the present Ealtimore County Zoning Code; he has done con-sultitive work in three states and the District of Columbia his clients have included the State Roads Commission of Maryland, Ealtimore and Montgomery Counties, City of College Rary, Baltimore Urban Renewal Agency, the Baltimore Transit

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## OFFICE OF FINANCE

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the situation in 1961. It is apparent to me that the Cov oil, without evidence, without argument and against the recommendation of the Planning Board and the Planning staff made an actual and basic "mistake" in zoning the subject property "R-6" instead "B-L" The majority indicates that the case at bar is readily

distinguishable from the holding in Jouer Corp. v. Rodgers Fores Community Ass'n., 236 Md. 106, 202 A. 24 612 (1964). In my opinion, the case at bar is a far stronger case for a holding that there was a mistake in original zoning than was presented by the facts in Jobar. I cannot agree that "Willeasin did not state the situation of the critical area and the conditions surrounding it at the time of the adoption of the map, including the projects, improvements and developments which were reas probable of fruition in the foreceable future." Not only did Mr. Willemain indicate his consideration of the studies of the Planning staff prior to 1961 which included these factore, but the testimony of the other witnesses presented these matters as well. It seems clear to me that the reclassification to B-L soning by the Board of Appeals was properly sustained and that Judge Jonifer's order should be affirmed.

### MEMORANDUM OPINION

IN THE CIRCUIT COURT

This matter involves an appeal from the County Board of Appeals of Baltimore County (hereinafter referred to as the Board) which by its Order dated May 6, 1964, reclassified the parcel of ground described in these proceedings containing 5 acres of land, more or less, from a "R-6" zone to a "B-L" zone. The applicant upon which the Petition for reclassification was granted was Albert Abrahams, legal owner of said property. The Board based the reclassification on an error or as stated in its language "a clear case of a mistake in the zaning".

The transcript of record before the Board is composed of 171 pages of typewritten testiony plus several exhibits. The two exhibits which the Court feels are portinent are first being the master plan map adopted by the Planning Board of Baltimore County under date of February 28, 1961, and filed as Petitioners' Exhibit No. 7 and the second being the Minutes of the County Council of Baltimore County held October 16, 1961, and filed as Petitioners' Exhibit

In connection with the Pionning Board's master plan and recommendations as shown thereon, the testimony of Mr. Gavralis at pages 70-71 of the transcript is pertinent. This testimony is as follows:

- Q. Will you read what reference it makes to this property?
- These are excessis from the minutes of the January 12, 1961, minutes. They appeared in our minutes originally, I believe, on Page 3, Item 'u', and appearing together on Page 13. (Reads)

'Autumnwood Subdivision and Belle Farm Estates Commercial property: North side of Old Court Road, the former near the intersection of Scotts Level Road and the latter at the existing share band in Old Court Road to the west of Scotts Level Road. Community improvement group criticism was received regarding both these projects. In objecting to the R-6 semi-detached development the neighboring properties were properly concerned with the lack of an area of lot size transition between some adjoining larger-than R-10 lots and the semi-detached units. While the Board requested the staff to search for a better zoning are wer in such future cases nothing could be done here now other than to adopt good site planning practices so as to minimize the distinctness of the lot size difference. This has been done in the normal subdivision process.

## BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Mr. John C. Rose, Zoning Commissioner Date. March 8, 1963

FROM Mr. George E. Gavrelis, Deputy Director

SURJECT #5802. R-6 to B-L. North side of Old Court [relocated] 579,12 feet Southeast of Three Oaks Road. Being property of Albert Abrahams.

#### 2nd District

HEARING: Wednesday, March 20, 1963 (2:00 PaMa)

The staff of the Office of Flanning and Zoning has reviewed the subject application for reclassification from 8-6 to 8-g coming and has the following advisory comments to make with respect to pertament planning factors

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  Planning Board

  proposed in its Neater Plan for the Western Planning

  from that the subject property be sound but. [This proproposed to be relocated in the samer shown on the

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'The B-L commercial zoning was reaffirmed by the Soard bear adated in the subdivision plans for the immediate vicinity without interfering with residential properties or detracting from their values. Mr. Steinberg a visitor to the meeting, appeared as an interested party favoring the B-L zoning."

"This is what the Planning Board minutes say about the subject property.

The pertinent part of the Minutes of the County Council dated October 16, 1961, applying to the property in question reads as follows:

The Autumoward Subdivision and Bella Form Estates Commercia property located on the north side of Old Court Road, the former, near the intersection of Scotts Level Road and the latter of the existing sharp rend in Old Court Road to the west of Scotts Level Road, Mes. Banne seconded by Mr. Dignon, moved to accept the Planning Board's recommendation of R-6 zoning. Carried unanimously.

It is apparent from the above exhibits that the County Council Intended to accept the tion as to the zoning of the subject parcel of ground. The Minutes of the County Council assumed that the Planning Board's recommendation was for "R-5" zoning when in fact it was for "B-L" zoning.

In the grayment of the case, coursel for the Appellants relied upon the case of Shadynook lin. Ass. v. Molloy, 232 Md. 265 and Greenblatt v. Taney Schloss, 235 Md. 9. The Court is aware of the rule laid down in these cases that the law requires strong evidence of original error in zoning in order to justify a zoning reclassification. The Court, however, is influenced by the language of the Court of Appeals of Maryland in the more recent case of The Johan Corporation et al, v. Radgers Forge Community Association, Inc. et al. (No. 433 September term 1963) decided July 24, 1964. The Court quotes from portions of that Opinion as follows:

Our previous decisions do not sustain such a conclusion. Of course, by previous occurring on not reasons such a conclusion. Of course, the comprehensive zoning map of 1955 was entitled to a presumption of correctness, and the burden was upon the applicants for reclassification to show an error in the map or a change of conditions in the neighborhood, or both, if they were to the map or a change of conditions in the neighborhood, or born, 11 may were to be successful. But in order to show a change in conditions, as was started by Chief Judge Brune in Robele v. County Board, 224 Md, 259, when quoting from Trustees of McDonough, stc. v. Bel'linare County, 221 Md, 50, the board was entitled to consider (and therefore the applicants for reclossification were entitled to present) projects that were " 'reasonable probable of fruition in the foreseeable future.' " And the same rule applies, we think, when an applicant ats to acree on error in original zoning. . . .

It is obvious that the Board could have been more specific and definite It is devices that the Board could have been more specific and definite in It findings of Bott however, it is coursin that the Board found that there had been changes in the neighborhood oned error in the original aconing sufficient to be part of the second of the sec ling officials. It is only where there is no room ter reasonates adder or where the recent is devoided or substantial, supporting facts that the decoration or justifies in revertile a decision of the board, or decisions 211 Med. 307, Termite's v., Board, 227 Med. 4, 600, for the reversible of the supporting that the support of the sup

#### DESCRIPTION

PROPERTY LOCATED ON NORTH SIDE OF 60 FEET WIDE PROPOSED ROAD (PROPOSED RELOCATION OF OLD COURT RD.) 2nd ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND



BEGINNING for the same at a point on the northernmost line of Old Court #5802 being recorded among the Land Records of Baltimore County, Maryland in Plat Bookset. W.J.R. 26 at Folio 123, said point being the southeast corner of Lot No. 1, Block H. of the aforesaid Plat of Plat 2. Section 3. Belle Farm Estates, said point being also the beginning of the tenth or North 350 24' 00" East 411.96 feet line of that parcel of land which by deed dated March 30, 1962, recorded among the aforesaid Land Records in Liber W. L.R. 3974 at Folio 214 was conveyed by Edward Pierson, Trustee, to Albert Abrahams, and running thence binding along the southeast outlines of Lot Nos. 1, 19, 20, 21, 22, 23, 24, and 25, Block H of the aforesaid Plat of Belle Farm Estates and along the Tenth and Eleventh Lines of the above mentioned parcel of land the two following courses and distances, viz.:

- (1) North 35° 24' 00" East 411.96 feet, and
- (2) North 39° 00' 00' East 240.58 feet to the beginning of the above mentioned parcel of land, thence binding along the First Line and along part of the Second Line of the above mentioned parcel of land the two following courses and
  - (1) South 37° 12' 10" East 504.41 feet, an
- (2) South 28° 57' 53" East 135 feet more or less to the northernmost line of a 60 feet wide proposed road, thence binding along the northernmost line of said 60 feet wide proposed road South 82° 43' 30" West 350 feet more or less to a point of curvature, thence binding along said 60 feet wide proposed road in a northwesterly direction along the arc of a curve to the right having a radius of 970 feet for a distance of 415 feet more or less to the place of beginning. (containing 5.2 acres of land more or less.)

  BRING part of that parcel of land which by deed dated March 30, 1962
  Said point of beginning 5-79.42° SE of Three Cake Road.

PURDUM AND JESCHKE, ENGINEERS

January 7, 1963

We turn to the question of error in the original zoning. Again we start off with the same presumption of validity. The Deputy Director of Planning did not consider the Archange of the notion profession of the shelper property in 1923 to be an error in original zoning, officuous in van "suspect" and "maybe" considered to Mr. Willemois stated that it was Ma "considered opinion". that the R-6 zoning was error in the original zoning, and gave his reasons fee reaching that conclusion (again we do not recent than hern). Although the above may constitute some conflict in the testimony relative to origin zoning, we are unable to conclude that this left the record barren of substantial, supporting facts relative thereto. The Board stated that it was "lapressed with the testimony of Mr. Willemain regarding the on or" in original zoning, and if it decided to accept his opinion for the reasons given by him, we cannot, water or accept his opinion for the rescue given by him, we cannot, water our previous holdings, reverse the Board cation, in the absence of a showing that the acceptance of the opinion we arbitrary and copyricious in a logal sense. Cf. Robde v. County Board, supra. Consequently, we hold that the question of error in the original zonling was fairly debatable.

-3- ---

Both George E. Gavrells, Deputy Director of Planning in Baltimore County, (subsequently Acting Director) and Bernard M. Willemain, former Deputy Director of Planning in Baltimore County, and subsequently a planning consultant, testified in the Jobar case and in the case at bar. Without discussing their testimony in detail, the Court feels that the evidence given by them in the present case is of a more substantial, positive and affirmative nature as to error in the original zoning than in the Jobar case. If the testimony of these witnesses was given legal recognition by the Court of Appeals in that case, this Court believes that it is compelled to give such evidence similar and equal recognition in the instant case.

Although not in agreement with all of the reasons assigned by the Board, this Court is nstrained to hold that there were substantial and supporting facts of a probative nature before the board which would justify its holding that the original zoning of the subject property by the County Council was in error or at least this question was fairly debatable under the evidence presented. In addition thereto, there was substantial and legally sufficient testimony before the Board to show a need for the use of this property as a neighborhood shopping center. The Court does not feel that, under the proof in this case, it should substitute its judgment for that of the

For the reasons stated, the Court will dismiss the appeal from the decision of the County Board of Appeals of Baltimore County, and the decision of said Board will be affirmed.

(s) Walter M. Jenifer

Dated: August 25, 1964.

DESCRIPTION

PROPERTY LOCATED ON NORTH SIDE OF 60 FEET WIDE PROPOSED ROAD (PROPOSED RELOCATION OF OLD COURT RD.)
2nd ELECTION DISTRICT



recorded among the aforesaid Land Records in Liber W.J.R. 3974 at Folio 214 #5802 was conveyed by Edward Pierson, Trustee, to Albert Abrahams

RE: PETITION FOR RECLASSIFICATION from "R-6" Zone to "BWL" Zone N. S. Old Court Road 579.k2' S. E. Three Oaks Road, 3rd Dist.,

BEFORE ZONTING COMPRISTONER

> Œ BALTIMORE COUNTY No. 5802

#### .............

The petitioner in the above matter seeks the reclassification of property in the Third District of Baltimore County, on the north side of Old Court Road 579.42 feet southeast of Three Caks Road, from an "R-6"

From the facts presented in the case the only real point the retitioner had was that there was a nessibility of error in the present Western Area Land Use Map in that the Office of Planning and the Planning Board had recommended business local zoning for the subject property in its recommendation to the County Council of Baltimore County. The County Council did not act upon that recommendation.

It is inconceivable that would be changing the morning map in any instance simply because the Planning Board's recommendations and the County Council's action did not coincide. The authority for coming in Baltimore County is lawfully that of the Baltimore County Council.

For the & ove reasons the reclassification should be

157 day of April, 1963, by the Zoning Commissioner of Baltimore County, CRDERED 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 an "R-6" Zone.

Zoring Comissioner of Baltimore County

> - 100 22 163 4 -(F)

TOWSON 4. MARY AND

IND UEPARTMENT

LAW OFFICES SMITH AND HARRISON

April 22, 1963

John G. Rose, Zoning Commissioner Baltimore County Office of Planning County Office Building

Re: Petition for Reclassification from "R-6" Zone to "B-L" Zone - N. S. Old Court Road 579.42' S. E. Three Oaks Road, 3rd Dist., Albert Abrahams, Petitioner - No. 5802

Dear Mr. Rose:

Towson 4, Maryland

Please enter an appeal from yourOrder dated April 15, 1963 denying the application in the above captioned case.

Enclosed you will find a check in the amount of \$70.00 to cover the cost of said appeal.

Very truly yours,

SMITH AND HARRISON

By Gow C. Ricks

EGR: a

PURDUM AND JESCHKE, ENGINEERS 2415 Marriano Avenut, Baltimone 18, Marriano RE. BETITION EOR RECLASSISICATION from on "R-6" Zone to a "8-L" Zone N/S Old Court Road, 579,42' S.E. COUNTY ROARD OF APPEALS of Three Oaks Road Third District BALTIMORE COUNTY No 5802 

#### OPINION

The petitioner in this case requests a reclassification of a small tract of land (approximately five (5) acres) on the north side of Old Court Road near Three Oaks Road in the Third District of Baltimore County, from an "R-6" Zone to a "B-L" Zone.

This property was zoned on the district zoning map which was adopted by the County Council on November 15, 1962, and this particular piece of property was astensibly zoned by the County Council at its meeting of October 16, 1961. The minutes of the County Council for that day (Item 21 on their goenda) states as follows:

> "The Autumnwood Subdivision and Belle Farm Estates Commercial property located on the north side of Old Court Road, the former, near the intersection of Scotts Level Road and the latter at the existing sharp bend in Old Court Road to the west of Scotts Level Road. Mrs. Boons seconded by Mr. Dignan, moved to accept the Planning Board's recommendation of R-6 zoning. Carried

This action, in the Board's opinion, is a clear case of a mistake in the original zoning for the following reasons. The original plat of the property prepared for sales purposes indicates this tract of land as "proposed shopping center" and it was testified by the original owner of the property that there was never at any time any intention to develop this tract for any other purpose. This plat dates back to March 25, 1958 and there are also in evidence two plats dated April 24, 1956 "Belle Farms" showing the same proposed land use. These plats were presented to the Planning Board with no objections at the time, and the same plats were used in the sale of lots to prospective purchasers for development purposes.

There is in evidence newspaper advertising presented by the "Belle Form Estates" which clearly states "proposed shopping center on site", and there is further in evidence an actual sign which was posted on the property at the time the lots were sold to home builders which stated "proposed shapping center". Furthermore, some of the protestants themselves testified that they knew that such a shopping center was planned at this location at the time that they purchased their lots.

The testimony of Mr. George E. Gavrelis, Acting Planning Director of the County, indicates that his department, as well as the Planning Board, not only were aware of this planned use of the property but had affirmatively recommended that this tract be

No. 24728

DATE 4/30/64

TOT \$ 7.38"

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700

TELEPHONE

zoned "B-L" for a small neighburhood shopping center to serve the community. Mr. Gavrel is produced as an exhibit the master plan plat of the Planning Board dated February 28. 1961 which shows that this area has always been considered as proper for "B-L" zoning by

It was further testified that the County will relocate, at the expense of the developer, Old Court Road so as to eliminate a sharp right angle turn near this property which will result in the shopping center being served by a sixty (60) foot right-of-way in a more or less straight line which should tend to greatly improve traffic conditions in the immediate area, and that the area proposed for reclassification is confined to that portion of it north of the relocated Old Court Road and abutting thereon. There was further testimony that in the future Rolling Road will be extended from Liberty Road to Old Court Road meeting it at a "T" intersection immediately in front of the subject property, and that there is a definite need for a small shopping center of the neighborhood variety in this area which is approximately two miles from the nearest large commercial development.

Mr. Gilbert S. Benson of the County Roads Engineering Department, testified that the builder will be required to dedicate the land and pave the road on the sixty foot right-of-way referred to above, and he further testified that such a development was planned by the County as early as 1958.

There was further testimony by experts that the development of this tract in accordance with plans presented to the Board would have no adverse effect on the surrounding residential property, and would have no depreciating effect upon said property.

The protestants' testimony constituted mostly of expressed fears as to what might happen in the future in the operation of the shapping center and the Board can find no basis in such testimony to warrant any dire predictions as to the future.

For the foregoing reasons we are of the opinion that there was an error in the original zoning by the County Council, and that the situation has not been changed by any developments since that time. Therefore, for these reasons, all independent of each other and none relying on the other, the order of the Zoning Commissioner in this case is reversed and the zoning of the property from an "R-6" Zone to a "B-L" Zone is hereby granted.

#### ORDER

For the reasons set forth in the aforegoing Opinion, it is this day of May, 1964 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby aranted.

BALTY TORE COUNTY, MAR LAND

OFFICE OF FINANCE

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

G. Mitchell austr

PETITION FOR ZONING RECLASSIFICATION 2nd District CONING: From R-6 to B.L. LOCATION: North side of Old Court Road (Relocated) 579,42 feet Southeast of Three Oaks NING for the same at

on the northerentest time and Court Road, as shown on the 4 2, Section 3, Belle Parm nates, said Platheing records Bacords of Ball dated March 30, 1902, record among the aforesaid Land Record in Liber W.J.R. 3974 at Fol

By Paul I Morgany Editor and Manager &

land, once a week for One Week

the same was inserted in the issues of

and day of Murch.

No. ! Newburg Avenue

TELEPHONE BALTI 'ORE COUNTY, MARY AND No. 16506 OFFICE OF FINANCE DATE 3/15/63 Division of Collection and Receipts
COURT HOUSE BILLED Sening Department of Baltimore County Southway Realty Co. 2135 N. Fulton Ave. Baltimore 17, Md. \$51.00 Advertising and posting of preparty for Albert Abrebe 51.00 3-12-63 0345 0 0 . TXL-1.00

Division of Collection and Receipts
COURT HOUSE TOWSON 4, MARYLAND Office of Planning & Zening 119 County Office Bldges DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE Cost of appeal in matter of reclassification of property of Albert Absolute a No. Ches. \$70,00

-2963 7601 · · · IXL--

IMPORTANTI 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 DEPARTMENT OF BALTIMORE COUNTY

Date of Postine 3 -// abut abshame NS old Court Rd of Siene JW Comes of mounts on red Come to replace sign J.Come

H 5802

DUPLICATE

CATONSVILLE, MD.

1963.

suggestive weeks before

19 63 that is to say

March 2.

OFFICE OF

THE BALTIMORE COUNTIAN

THE HERALD - ARGUS

THIS IS TO CERTIFY, that the annexed advertisement of

inserted in THE BALTIMORE COUNTIAN, a group of

John C. Rose, Zoning Commissioner of Bultimore County

three weekly newspapers published in Baltimore County, Mery-

THE BALTIMORE COUNTIAN

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.

BALTIM RE COUNTY, MARYI ND

OFFICE OF FINANCE

Division of Collection and Receipts

TOWSON 4, MARYLAND

N/S Old Court Read, 577.42

0-3064 3 9 1 4 · 21/728 TIP-

6-30-54 3 9 1 4 . 24729 TIP-

ELEPHONE 823-3000

DEPOSIT TO ACCOUNT NO. 01.712

No. 17710

DATE 4/23/63

000

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.

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

hiscellaneous Docket 7

Folio 366, Case No. 3026

AT LAW

ALLAN J. HALESTER

SULLIVAN AND PITTLER

I HEREBY CERTIFY, that on this 2/dday of September,

1964, a copy of the aforegoing was mailed to W. Lee Harrison,

Esquire, Loyola Building, Towson, Haryland 21204, and County

Board of Appeals of Baltimore County, County Office Building,

Attorneys for Appellants

1410 Court Square Building

Baltimore, Maryland 21202 PLaza 2-1122

of Counsel for Appellants

Please enter an Appeal to the Court of Appeals of

Maryland from the Green rendered by the Circuit Court for

Saltimore county, At Law, on August 25, 1964, in the above

ALBERT ABRAHAMS - ZONING FILE NO. 5802

Ben anderson ...

BERNAKO H. MILLER.

TOBY EHELICH, and

vs.

C. MITCHELL AUSTIN

and W. GILES PARKER.

pourd of Appeals of

Raltimore County

captioned Appear.

Towson, Maryland, 21204.

AJM: ems

9/21/64

Mt. . LETE:

constituting the County

SAMUEL IL CRODNITSKY

# APPEALS SCHEDULED

10 20

10 22

10 27 "

11 10 10:00 am

11/12 "

1. 11/17 "

10 B 10:00 am Isreal & Jos. W. Shapira

250' from E. S. Cowpens Ave. R-40 to R-20

N. S (SHE) Court Road

Chas, J. McLennan

William R. Eppler

Frederick Diehlman

Mary F. Mack

11:00 am The Holiday Inn

1 30 pm Harold F. Comes

10 29 10:00 am John F. Miller

& Beltway

NW cor. Rolling & Powers

NE'S Maiden Choice Lane

254' from SE S Highview

Federal Motors Inns. Inc.

652.32' to R W of Beltway

SE carner Reisterstown Rd.

7229 Golden Ring Road

W. S Rolling Road, 850'

5. of Collinsway Road

Texaco Service Station

SW cor. Liberty Road &

Milford Mill Road

Gustov Lachnit, Jr.

SW cor. Kenwood &

Golden Ring Road

Frances Mansfield

SW S York Road &

G. Clyde Andrew

Louis J. Glass

SE/S Westbury Road

N. S Bellona Avenue 660'

NE corner Smith Avenue

& Timber Ridge Road

W. of Clarke Avenue

E S Reisterstown Road.

opp. Concordia Avenue

Valley & North Roads

3957' East of Stevenson

R-40 & R-20

to 8-A

Building

CONTINUED

Nursing Home

R-10, R-6 &

Var. 413.5 (d)

Flashing Sign

comm, uses

R-20 to R-10

Storing trucks,

excessive number

Service Garage Bohlen

8 R-6

of signs

R-6 to B-L

R-10 to B-L

R-10 to B-R

R-10 & R-20

Storing trucks & \*Maslan

R-A to B-L

63-90-RX 3 19/29/6" Blum

(Shriver

McLean

Siskind

\*Kenney

(Hessey, IV

Singer

\*Kaufman

Feinberg

\*Kaufman

Feinbero

Vadala

\*Adelson

(Doherty

(Neuberger

\*Romadka

\*Mansfield

Muffolett

\*Proctor

Murray

Proctor

Conomis

(Rothbloom (\*Sullivan (Kramer (Hask in

(Feeley

\*Lev

October 7, 1964

63-60

APPEALS SCHEDULED

B-L to R-A

Business Sign

Studio in R-G Zone

\*Kimmel

(Kenney

(Adams

(Lemmon

Maguire

\*Vadala

\*Armiger

Operating Music \*Fuentealba 64-40-V 15 5/7/64

Stengel

15. 11 19 10:00 am Lighthouse Enterprises, Inc. R-6 to R-A

A. V. Williams

W/S Rolling Road, 900 S.

NE S Martin Blvd. 783.82

from E. S. Compass Road

Mrs. Salvatore Manteana

2160 Vailthorn Road

Whyar Corporation

1015 York Road

of Baltimore National

-2-

64 79-R 1 4.7.64

64-74-R 15 4/15 64

64-103-SPH 9 4/16/64

16. 11 24 "

7, 12 1 10:00 am

1:30 pm

5791-X 3 4/4/63

64-82-R 1 5 4 64

63-97-RX 13 12 3 63

63-123-V 3 12 18 65

64-5-V 3 3 10 64

688-ZV 15 5 26 64

63-144-R 1 12/5/63

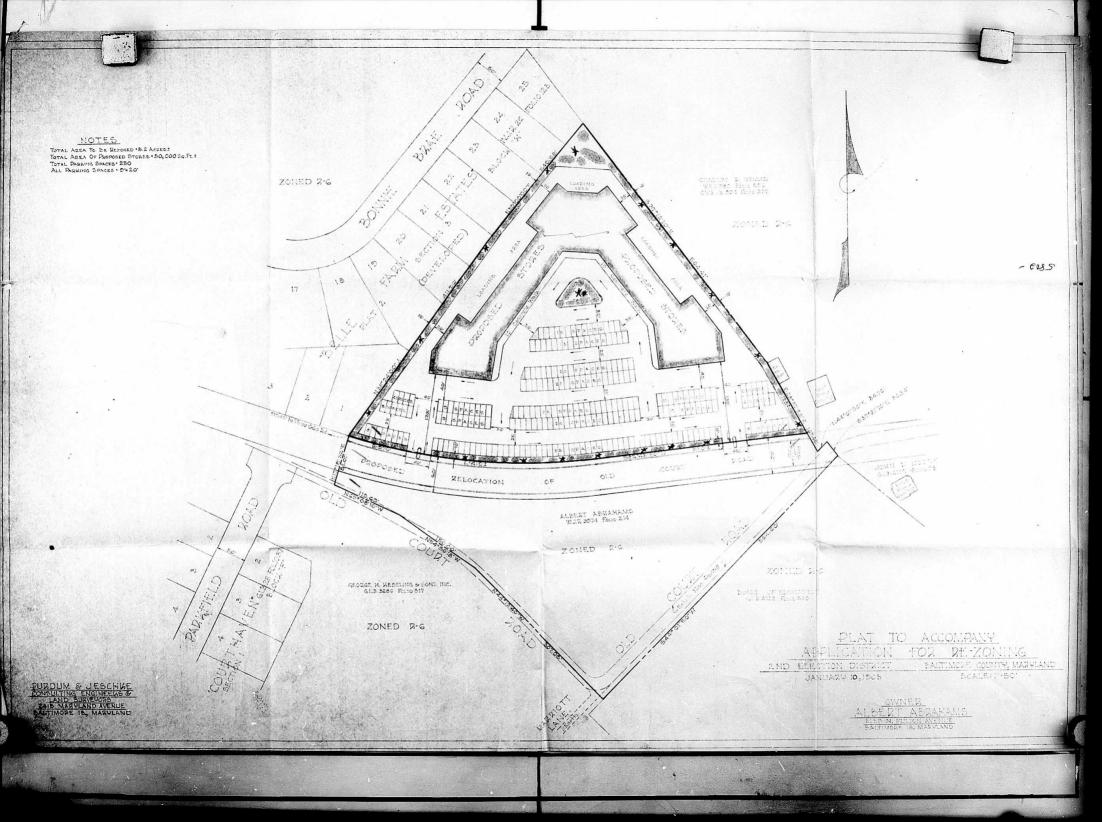
64-36-V 2 5/11/64

65-33-RX 14 3 17/64

64-31-R 9 2 26/64

64-60-R 8 3 13 64

64-41-R 3 3/18.64



Gavrolis, when asked if he had an opinion as to whether or not error had usen committed in the classification of the subject property by the adoption of the map, replied, "No." Surely, if reasons given by an expert are insufficient grounds for the expert to formulate an opinion, they can scarcely be soundly held to be clear and satisfactory evidence to evercome the heavy burden created by the presumptive validity, mentioned above; so we proceed to Willerain's reasons. When carefully scrutinized, the cruz of his grounds for believing that a mistake had been made was the "stragetie" location of the property in relation to "proposed" new roads and "proposed" improvements to old ones, supplemented by the weight he placed upon 1ton 21, and his helief of no adverse effect upon other properties and/the location of existing shopping centers/ inconvenienced the public in going to and from them; although, at the same time, stating that it is always difficult to locate these small shopping areas because of the possible ranifications of the that the reasons given by those experts were sufficient to make the issue of mistake (and bear in mind that we are only dealing with that question in this case) fairly debstable.

We are cited the case of Johar Corp. v. Rodgers Force, 236 Md. 106, in support of applicant's position. That case involved questions of both mistake and change in neighborhood. We limit our present discussion to the issue of mistake. The same two experts testified in that case as in the instant one, and its citation here affords an opportunity to point up the holding of the majority in Rogers Forge, where the Court was divided 4 to 3.

The majority in that case took considerable trouble to set forth in quite some detail the reasons assigned by Millemain to support his opinion that an error had been committed (these reasons are stated in 236 Md. pp. 116-118 and consume about 2 pages of the printed report). These reasons set forth, at some length, the situation a 1 condition of the subject property in that case and the surrounding properties at the time of the adoption of the map involved therein. They then went on to state the needs and potentials of the area and the projects that were "reasonably probable of fruition in the foreseeable future" (Trustees v. Baltimore County, supra) which, in Willemain's opinion, the County Commissioners (now the County Council) failed to take into account, when the map was adopted. The reasons were supported, in the reasoning of a majority of the Court, by exhibits and other evidence. The Board of Appeals, after a consideration of all of the evidence, accepted the expert's opinion and stated that a mistake had been made, and this Court upheld the action of the Board of Appeals, on the ground

that the issue was, at least, fairly debatable. But in upholding the said Board's right to accept Willemain's opinion, wa wore careful to point out that if "it [the Board] decided to accept his opinion for the reasons given by him, we cannot, under our previous holdings, reverse the Board's action, in the absence of a showing that the acceptance of the opinion was arbitrary and capricious in a legal sense." In other words, the reasons presented by an export to support his opinion cannot be immaterial or frivolous in character, but must be sound and substantial ones. In the case at bar, Willemain did not state the situation of the critical area and the conditions surrounding it at the time of the adoption of the map, including the projects, improvements and developments which were reasonably probable of fruition in the foresecable future. Hor did he state anything of a substantial nature which should have been reasonably foreseen by the Council, but was ignored by it. From the above, it is seen that Joser Corp. is easily and readily distinguished from theinstant case.

We do not deem it is necessary to discuss further the evidence relative to "proposed" plans relative to reads.

We have said several times above, in considering the testimony relative to the individual factors involved, that the evidence/relative to that individual factor, alone, was insufficient to make the issue of mistake fairly debatable. Nor are we

asls to conclude that an examination of the evidence pertaining to all of the factors considered as a whole raises the issue into the realm of fair debatability. Our conclusion is metaphorically illustrated by the simple arithmetical computation that sero plus any number of additional zeros still equals zero. As the evidence before the Board was too thin to make the issue of mistake fairly

debatable, it rendered its action arbitrary and capricious in a

legal sense; consequently the court's order affirming the Board

must be roversed.

ORDER REVIEWSED, AND CASE REMANDED FOR THE ENTRY OF AN ORDER IN ACCORDANCE WITH THIS OPINION; APPELLER TO PAY THE COSTS IN THIS COURT AND BELLOW.

The destination of the Board who sat in this case are both of high standing and reputation, and we make no intimation that either of them, intentionally, was arbitrary or capricious.