

LUTHERVILLE COMMUNITY  
ASSOCIATION, INC.  
A Body Corporate  
And  
PETER J. KARWOWSKI  
Appellants  
Vs.  
NATHAN H. KAUFMAN,  
G. MITCHELL AUSTIN and  
CHARLES STEINBOCK, JR.,  
constituting the County Board  
of Appeals of Baltimore County

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY

Misc. Docket 7  
Folio 369  
Case No. 2988

#### ORDER OF APPEAL

Please enter the Appeal of PETER J. KARWOWSKI and LUTHERVILLE COMMUNITY ASSOCIATION, INC., A Body Corporate, to the Court of Appeals of Maryland from the Order of the Circuit Court of Baltimore County entered in the above case on August 4, 1964.

POWER AND HORNER

BY:

GORDON G. POWER  
Attorneys for Appellants  
14 West Chesapeake Avenue  
Towson, Maryland 21204  
Valley 3-1250

IN THE COURT OF APPEALS OF MARYLAND

No. 896

September Term, 1965

LUTHERVILLE COMMUNITY ASSN., INC.,  
et al

ROBERT A. WINGARD, et ux  
and  
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

Prescott, J.J.  
Hammond  
Hornsey  
Cybert  
Spennelmer

Opinion by FORNEY, J.

Filed: June 2, 1965

ZONING FILE NO. 5826-4XV

This is an appeal from an order of the Circuit Court for Baltimore County affirming the action of the County Board of Appeals in reclassifying from R-10 (residence, one family) to R-A (residence, apartments) all but a one hundred foot strip of land along the northern property line on Lincoln Avenue of a 3.97 acre tract of land in Lutherville. On cross-appeals to it from the Zoning Commissioner, the Board granted the requested reclassification after the withdrawal of a request for a special exception to construct a high-rise apartment. The individual appellants, Peter J. Karwowski, is one of a large group of protestants who appeared individually and as members of the Lutherville Community Association, the corporate appellant. The individual appellees, Robert A. Wingard and Elizabeth W. Wingard, are the owners of the tract reclassified for garden apartment use.

Lying north of the Baltimore Beltway, the Wingard property is on the southern side of Lincoln Avenue, a twenty-four foot street of which nineteen feet is paved, and abuts (for about fifty feet) the western side of Charles Street Avenue extended (also known as Lutherville Road or Avenue), the paved portion of which terminates approximately seventy-five feet from the property in question. To the north (along Lincoln Avenue) and to the east and south on both sides of Charles Street Avenue extended, there are a number of one

1 There is nothing in the record to show that the community classification had any standing to appeal. If there were not proper individual appellants the appeal would be subject to dismissal. *Shadybrook Imp. Assn. v. Meloy*, 230 Md. 589.

family dwellings. To the southwest, adjacent to the Belknap Avenue ramp leading to the Beltway, there is a 3.53 acre tract of land zoned R-8 (business, roadside), which, although it is not contiguous to the subject property is, at one point, less than two hundred feet from it. Topographically, the Wingard tract rises from Lincoln Avenue to a crest and then falls sharply off to the south in the direction of Belknap Avenue and the Beltway.

When the comprehensive rezoning map was adopted in 1956, all of the properties (except existing non-conforming uses), surrounding the Wingard tract, as well as that tract, were zoned R-10. No R-A classifications were provided for, nor have any reclassifications for such use been granted in the vicinity of Lutherville north of the Beltway since the adoption of the present land use map. But in 1957, based on a mistake in the comprehensive rezoning, the land now zoned R-8 was reclassified from R-10 to permit the erection thereon of commercial buildings for the use of the Sherry Hand Company and the Minnesota Mining and Manufacturing Company.

At the hearing before the Board, the protestants presented testimony to the effect that the land sought to be reclassified was topographically suitable for one family dwellings. But there was also testimony on behalf of the others to the effect that the property was particularly suitable for apartments because of its accessibility to the Beltway and the extension of Charles

Street Avenue. Other witnesses testified that the development of the tract as planned would constitute a buffer zone between the commercial property and non-conforming uses to the south and west and the R-10 land to the north and east.

There was also evidence tending to show that since there were no present plans for the future extension of Charles Street or Lutherville Avenue, ingress and egress to and from the Wingard tract would have to be by way of Lincoln Avenue and that the building of apartments on the property would necessarily increase the flow of traffic on that narrowly paved street. But there was other evidence to the effect that Charles Street or Lutherville Avenue would be extended in the near future, and that even if it were not, Lincoln Avenue was capable of accommodating the resulting increase of traffic, and that traveling thereon would not be hazardous.

With respect to the use of the Wingard tract, the Board, finding that the prior reclassification of the tract situated to the south and west constituted a major change in the immediate area which affected the character of a part (though not all) of the subject property and that the topographical features of the land made it feasible to permit development of garden apartments, ordered that the part oriented on the Beltway should be reclassified to R-A and that the part (the one hundred foot strip) fronting on Lincoln Avenue should remain classified as R-10.

With respect to the means of access to and from the property in question, the Board, although it was then unable to

determine what effect the future extension of Charles Street or Lutherville Avenue (which it was believed would eventually take place) might have on the subject property, was evidently satisfied that a reclassification to R-A would not create a traffic problem in the area at this time.

On the appeal to the circuit court the decision of the Board was affirmed on the basis that the issue presented was fairly debatable and that the action of the Board was not arbitrary, capricious or illegal. On the appeal to us, since the appellees concede there had not been a mistake in the comprehensive rezoning of this property, the only question for us to decide is whether those seeking reclassification met the burden of showing that there had been a change in the character of the neighborhood. As to this, the contention of the appellants that the reclassification of a part of the Wingard property for apartment use, on the ground that there had been a change, was improper in that it was erroneously predicated on the reclassification of the nearby tract for commercial use which was based on a mistake in the comprehensive rezoning, raises an interesting question.

Although there had been only one substantial change -- i.e., the correction of a mistake in the comprehensive rezoning -- since the adoption of the present land use map, we think the prior reclassification of the nearby tract from a one family residential use to a commercial use, coupled with other facts, such as the topographical features of the land, the proximity of the tract to

the intersection of important arterial highways, the suitability of the site for garden apartments and the practicality of the apartments as a buffer between the commercial and low density residential zones, was enough, under the authority of *Bishop v. Board of County Commissioners*, 230 Md. 494, 187 A.2d 851 (1963), to warrant the granting of the reclassification of most of the subject property. In Bishop, where the situation was quite similar to the conditions and circumstances in the present case, it was held that it was proper for the zoning authority, in determining whether a reclassification from a single family use to a multiple family use should have been granted, to take into consideration its prior action in rezoning a nearby tract from residential to commercial as having constituted a change in the surrounding area. If this could not be done in a case such as this, the ignoring of physical changes which are visible to the owners of the reclassified land but cannot be seen by the protestants who reside to the north and east, would defeat the very purpose of the rule allowing a zoning board to grant a reclassification based on changes in the character of the neighborhood.

In *Levy v. Seven Blads*, 234 Md. 145, 198 A.2d 267 (1964), where the reference was to an already reclassified tract and not the one as to which the rezoning was sought, we recognized the fact that apartment zoning may constitute a buffer between commercial and residential zones.

Where, as here, there was sufficient evidence of change

in the character of the neighborhood to raise a debatable issue, we cannot say that the expertise of the zoning authority was not properly applied in granting the reclassification. *DeVries v. Board of County Commissioners*, 237 Md. 221, 305 A.2d 805 (1965). As we recently stated in *Del Pino v. Board of County Commissioners*, 236 Md. 333, 309 A.2d 62 (1965), "it is not the function of the courts to second-guess, or to substitute their judgments for that of the expertise of the zoning officials."

ORDER AFFIRMED; THE APPELLANTS  
TO PAY THE COSTS.

RE: PETITION FOR RECLASSIFICATION  
from "R-10" Zone to an "R-A" Zone,  
SPECIAL EXCEPTION for Elevator  
Apartment Building, VARIANCES to  
Sections 216 and 217.7 of the Zoning  
Regulations  
S/S Lincoln Avenue &  
W/S Lutherville Road  
8th District  
Robert A. Wingard, et al,  
Petitioners

BEFORE  
COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY  
No. 5326-RXV

#### OPINION

This is a petition for reclassification from an "R-10" Zone to an "R-A" Zone, a special exception for elevator apartment building and variance to Sections 216 and 217.7 of the Zoning Regulations on property located on the south side of Lincoln Avenue and the west side of Lutherville Road in the Eighth District of Baltimore County.

At the outset of the hearing held on February 4, 1964 lawyers for the petitioner asked that the special exception for an elevator apartment building and the variances to Sections 216 and 217.7 be deleted from the petition and such motion was unanimously granted by the Board.

The property is located on approximately 3.97 acres and lies between Bellona Avenue on the south and Lincoln Avenue on the north. To the east of the subject property is Lutherville Road also known as Charles Street Extended, and to the west is additional "R-10" property. To the west and south of the subject property a reclassification from "R-10" to Business Roadside was granted some 200 feet from the subject property which is being developed at the present time for the use of the Sperry Rand Company and the Minnesota Mining Company. Bellona Avenue to the south of the subject property amounts to an access road to the Baltimore County Beltway and also provides ingress and egress to the "R-8" property mentioned above. Lincoln Avenue is a quiet residential road some 24 feet in width. The homes opposite the subject property on the north side of Lincoln Avenue in an easterly direction are single family cottages of a modern nature and are well maintained residences. The property on the south side of Lincoln Avenue to the east and west are of the older variety with larger lots surrounding the homes.

There was an abundance of testimony that Charles Street would be extended in a northerly direction and that this would have a great deal of effect on the subject property. Any extension of Charles Street Avenue would be in the future and the effect it would have on the subject property certainly could not be determined at this time.

The topography of the land is such that the property rises from Lincoln Avenue to a crest and then falls off sharply to the south toward Bellona Avenue and the Baltimore County Beltway. The reclassification of the land some 200 feet to the south

and west from "R-10" to "R-A" constitutes a major change in the character of a part of the subject property. However, due to the topography that exists on the subject property, this change does not affect the subject property in its entirety as it has no effect on the property fronting on Lincoln Avenue due to the existing topography.

It is the unanimous opinion of the Board of Appeals that all of the property affected by the development of the "R-8" property, that property which is oriented to the Beltway, should be reclassified. However, the properties that front on Lincoln Avenue and face the homes on the north side of Lincoln Avenue should remain in an "R-10" classification. This would allow for fair and just use of the petitioners' property in that it will allow apartment development for that part which is oriented to the Beltway, and will allow for the continued and orderly development of that property which is oriented to homes on the north side of Lincoln Avenue.

For the above reasons the reclassification of the above property is granted for all of the subject property other than for a depth of 100 feet from the property line on Lincoln Avenue. This 100 foot buffer zone shall extend for the entire width of the property adjacent to Lincoln Avenue.

#### ORDER

For the reasons set forth in the foregoing Opinion, it is this 3rd day of March, 1964 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby granted for all of the subject property other than for a depth of 100 feet from the property line on Lincoln Avenue.

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

*Robert A. Wingard*  
*Elizabeth W. Wingard*  
*John Warfield Armiger*

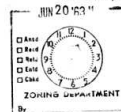
RE: PETITION FOR RECLASSIFICATION  
from "R-10" to "R-A" Zone,  
Special Exception for Elevator  
Apartment Building and Variances  
to Sections 216; and 217.7 of  
Zoning Regulations - Robt. A.  
Wingard and Elizabeth W. Wingard,  
Petitioners

BEFORE  
ZONING COMMISSIONER  
OF  
BALTIMORE COUNTY  
No. 5826-RXV

#### ORDER OF APPEAL

MR. CLERK:

Please enter an Appeal in the above-entitled cause to the County Board of Appeals.



*John Warfield Armiger*  
John Warfield Armiger  
406 Jefferson Building  
Towson 4, Maryland  
Valley 5-7666

I HEREBY CERTIFY that copy of the foregoing

Order of Appeal was mailed this 20th day of June, 1963, to Edward C. Mackie, Esq. and W. Giles Parker, Esq., Attorneys for the Petitioners, 717 Title Building, Baltimore 2, Maryland.

*John Warfield Armiger*  
John Warfield Armiger

RE: PETITION FOR RECLASSIFICATION  
from "R-10" to "R-A" Zone,  
Special Exception for Elevator  
Apartment Building and Variances  
to Sections 216; and 217.7 of  
Zoning Regulations - Robt. A.  
Wingard and Elizabeth W. Wingard,  
Petitioners

BEFORE  
ZONING COMMISSIONER  
OF  
BALTIMORE COUNTY  
No. 5826-RXV

#### NOTICE OF APPEAL

MR. CLERK:

Please enter an Appeal in the above-entitled cause to the County Board of Appeals.



*John Warfield Armiger*  
John Warfield Armiger  
406 Jefferson Building  
Towson 4, Maryland  
Valley 5-7666

I HEREBY CERTIFY that copy of the foregoing Notice of Appeal was mailed this 18 day of June, 1963, to J. Warfield Armiger, Esq., Jefferson Building, Towson 4, Maryland.

*John Warfield Armiger*  
John Warfield Armiger

RE: PETITION FOR RECLASSIFICATION  
from "R-10" to "R-A" Zone,  
Special Exception for Elevator  
Apartment Building and Variances  
to Sections 216; and 217.7 of  
Zoning Regulations - Robt. A.  
Wingard and Elizabeth W. Wingard,  
Petitioners

BEFORE  
ZONING COMMISSIONER  
OF  
BALTIMORE COUNTY  
No. 5826-RXV

The petitioners in the above entitled matter seek reclassification of the property on the south side of Lincoln Avenue and the west side of Lutherville Road, in the Eighth District of Baltimore County, from an "R-10" Zone to an "R-A" Zone; a special exception for an elevator apartment building and variances to Sections 216 and 217.7 of the Baltimore County Zoning Regulations.

From an examination of the property it is well oriented to the Beltway pattern and Charles Street Avenue. Also the road known as Lutherville Road extends to and stops at the subject property. The property also lends itself to well designed garden type apartments.

The request for a special exception for an elevator apartment building should be denied.

The variances requested from Sections 216 and 217.7 of the Zoning Regulations should also be denied.

It is this 20th day of May, 1963, by the Zoning Commissioner of Baltimore County, ORDERED that the herein described property or area should be and the same is hereby reclassified from an "R-10" Zone to an "R-A" Zone, subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

It is further ORDERED that the special exception for an Elevator Apartment Building be and the same is hereby denied.

Also the variances requested be and the same are hereby denied.

*John Warfield Armiger*  
John Warfield Armiger

#### PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION - Variance

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Robert A. Wingard and Elizabeth W. Wingard, legal 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 herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an "R-10" zone to an "R-A" zone; for the following reasons:

a) Change in neighborhood since adoption of Ninth District Comprehensive Land Use Map

Variance to Section 216 (height) to allow a height at the front set-back of 128' instead of the permitted 110' at the rear building set-back line of 130' instead of the permitted 106' at the side set-back line heights of 123' and 129' instead of the permitted 114' and 108' and from Section 217.7 to allow a density of 196' FU instead of the permitted 86' FU

a) Topography of the land presents builder-developer with hardship and practical difficulty in using this land unless variances are granted.

b) Irregularity of tract caused by taking of roadbed of Lutherville Road necessitates proposed layout for site and height.

c) For a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for an elevator apartment building.

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

*Robert A. Wingard*  
Robert A. Wingard  
Elizabeth W. Wingard  
303 Lincoln Avenue  
Lutherville, Maryland  
717 Title Bldg.  
Baltimore 2, Md.

Address: 303 Lincoln Avenue  
Lutherville, Maryland  
717 Title Bldg.  
Baltimore 2, Md.

Address: 406 Jefferson Building, (4)  
Valley 5-7666

ORDERED By The Zoning Commissioner of Baltimore County, this 7th day of February, 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 held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of April, 1963, at 10:00 o'clock.

As M.

*John Warfield Armiger*  
John Warfield Armiger

Address: 406 Jefferson Building, (4)  
Valley 5-7666

ORDERED By The Zoning Commissioner of Baltimore County, this 7th day of February, 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 held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of April, 1963, at 10:00 o'clock.

As M.

*John Warfield Armiger*  
John Warfield Armiger

Address: 406 Jefferson Building, (4)  
Valley 5-7666

#### PETITION FOR ZONING VARIANCE FROM AREA AND HEIGHT REGULATIONS

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Robert A. Wingard and Elizabeth W. Wingard, legal 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 for a Variance from Section 216 (height) to allow a height at the front set-back of 128' instead of the permitted 110' at the rear building set-back line of 130' instead of the permitted 106' at the side set-back line heights of 123' and 129' instead of the permitted 114' and 108' and from Section 217.7 to allow a density of 196' FU instead of the permitted 86' FU

a) Topography of the land presents builder-developer with hardship and practical difficulty in using this land unless variances are granted.

b) Irregularity of tract caused by taking of roadbed of Lutherville Road necessitates proposed layout for site and height.

c) For a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for an elevator apartment building.

Property is to be posted and advertised as prescribed by Zoning Regulations. I or we, agree to pay expenses of above Variance 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.

*Robert A. Wingard*  
Robert A. Wingard  
Elizabeth W. Wingard  
303 Lincoln Avenue  
Lutherville, Maryland  
717 Title Bldg.  
Baltimore 2, Md.

Address: 303 Lincoln Avenue  
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As M.

*John Warfield Armiger*  
John Warfield Armiger

Address: 406 Jefferson Building, (4)  
Valley 5-7666

#### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner (date: April 5, 1963)

FROM: Mr. George E. Garrelis, Deputy Director

SUBJECT: #5826-RXV. R-10 to R-A, Special Exception for Elevator Apartment Building, and Variance to permit a height at the front set-back of 128 feet instead of the permitted 110 feet; at the rear building set-back of 130 feet instead of the permitted 106 feet; at the side set-back line heights of 123 feet and 129 feet instead of the required 114 feet and 108 feet; to permit density of 196 family unit instead of the permitted 86. South side of Lincoln Avenue and West side of Lutherville Road. Being property of Robert Wingard.

8th District  
HEARING: Wednesday, April 17, 1963 (10:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification to apartment zoning together with a special exception for elevator apartments and variances. It has the following advisory comments to make with respect to pertinent planning factors:

- The subject property is located on the south side of Lincoln Avenue immediately adjacent to the proposed extension of Charles Street (Lutherville Road) from the Beltway northward to York Road. Although that portion of Charles Street adjacent to the subject property would be improved in connection with development, within the current Capital Budget and the 1963-1968 Capital Program as approved by the Council makes no provision for the overall extension of Charles Street during those years. It is to be noted, that the subject property is not immediately contiguous to Bellona Avenue and that single family residential use or zoning about the property on all sides.
- From a planning viewpoint, there is a vast difference between the area reclassified to apartment zoning on the south side of the Beltway adjacent to the Charles Street and the subject property. Those properties directly about the Beltway, or have the ability to have access to Charles Street without impeding the single family residential area. The subject property, as noted before, is surrounded by single family residential use and zoning. These uses separate it from direct visual contact with the Beltway and intervene to provide an illogical sequence of land uses. Creation of apartment zoning on the subject property would result in land use potentials not in conformity with those of adjacent properties.
- With respect to the special exception for elevator apartments and the variances, the Planning staff is of the opinion that an elevator structure here would increase the harsh contrast between apartment and single family residences and would not comply with the standards set forth by Section 502.1 of the Zoning Regulations. The fact that variances also are being sought indicates that the petitioner is seeking to create by variance special zoning which is not within the spirit and intent of the Regulations as they exist desirably should be applied to this area.

Beginning for the same at the intersection formed by the South side of Lincoln Avenue as widened to 50 feet and the West side of Lutherville Road extended Northerly and running thence binding on the West side of said Lutherville Road extended Northerly South 11° 41' East 237 feet of said Lutherville Road extended Northerly road 18 feet wide and to intersect the second or South 79° 19' West 618.6 foot line of that parcel of land described in a deed dated July 1, 1958, from Leita T. Thompson to Robert A. Wingard and wife and filed among the Land Records of Baltimore County in Liber G.L.B. 3391, folio 497 at a distance of 224 feet more or less from the beginning thereof and running thence binding on said second line and on the West side of said 18 feet private road South said second line and on the West side of said 18 feet private road South 22° 19' West 230 feet thence binding reversely on the last line of that parcel of land described in a deed dated May 30, 1958, from Leita T. Thompson to G. Clyde Andreae and wife and recorded among the Land Records of Baltimore County in Liber G.L.B. 3356 folio 194 North 68° 29' 50" West 376.98 feet to intersect the last line of the above first mentioned deed at a distance of 198.93 feet from the beginning thereof, thence binding on part of said last line North 21° 15' East 429 feet more or less to the South side of the above mentioned Lincoln Avenue, thence binding on the South side of the above mentioned Lincoln Avenue as widened South 68° 30' East 254 feet more or less to the place of beginning.

Containing 3.45 acres of land more or less.

Being part of that parcel of land described in a deed dated July 1, 1958, from Leita T. Thompson to Robert A. Wingard and wife and filed among the Land Records of Baltimore County in Liber G.L.B. 3391, folio 497.

**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
**Towson, Maryland**

District: 874 Date of Posting: 7-24-63

Posted to: Letter for Deland from 2-15 to 2-A

Pettitioner: Robert A. Klaggard

Location of property: 315 of Florida Ave. & the 24th of Listerville

Location of Signs: See Listerville file - signs

Remarks: 8/6/63

Posted by: [Signature] Date of return: 7-24-63

|                                                                                                                                                       |                                                                                                                                           |  |                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------|
| TELEPHONE<br>VALLEY 3-3000                                                                                                                            | BALTIMORE COUNTY, MARYLAND<br><b>OFFICE OF FINANCE</b><br><i>Division of Collection and Receipts</i><br>COURT HOUSE<br>TOWNSON & MARYLAND |  | No. 16421<br>DATE 2/11/43 |
| <br>TO: John W. Amisger, Esq.<br>Jefferson Building<br>Towson 4, Md. | BILLED BY: _____<br>Zoning Department of<br>Baltimore County                                                                              |  | 190.00<br>50.00<br>50.00  |
| REPORT TO ACCOUNT NO. 01622                                                                                                                           |                                                                                                                                           |  |                           |
| DETACH UPPER LEFT-HAND AND RETURN WITH YOUR REMITTANCE                                                                                                |                                                                                                                                           |  |                           |
| QUANTITY                                                                                                                                              | Petition for Declassification for Mr. Singard                                                                                             |  | COST<br>50.00             |
| 2-1163 5-19 * * * TIL --                                                                                                                              |                                                                                                                                           |  | 50.00                     |
| 8                                                                                                                                                     |                                                                                                                                           |  |                           |

|                                                                                                                                          |  |                                                                                                                                                         |  |                                     |  |
|------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------|--|
| TELEPHONE<br>823-3000                                                                                                                    |  | INVOICE<br><b>BALTIMORE COUNTY, MARYLAND</b><br><b>OFFICE OF FINANCE</b><br><i>Division of Individual Receipts</i><br>COURT HOUSE<br>TOWSON 4, MARYLAND |  | No. 02821                           |  |
| To: <b>Power &amp; Mosser</b><br><b>34 W. Chesapeake Ave</b><br><b>Towson, Md. 21204</b>                                                 |  | BILLED<br>DATE<br><b>5/4/64</b>                                                                                                                         |  | County Board of Appeals<br>(Zoning) |  |
| DEPOSIT TO ACCOUNT NO. <b>01712</b>                                                                                                      |  | TOTAL AMOUNT<br><b>\$9.00</b>                                                                                                                           |  | COST<br><b>\$9.00</b>               |  |
| QUANTITY                                                                                                                                 |  | DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE                                                                                                    |  |                                     |  |
| Cost of Certified Documents - No. 3826-8XV<br>Robert A. Wile grand, et al<br>5/2 Lincoln Avenue S.W.<br>Lakelandville Road, 8th District |  | 0                                                                                                                                                       |  |                                     |  |
| 3-454 3254 x 20821 TIP-                                                                                                                  |  | 900                                                                                                                                                     |  |                                     |  |
| FRIED — Baltimore County, Md. — Clerk of Court                                                                                           |  |                                                                                                                                                         |  |                                     |  |

[illegible]

CERTIFICATE OF PUBLICATION

TOWSON, MD. March 29, 1963

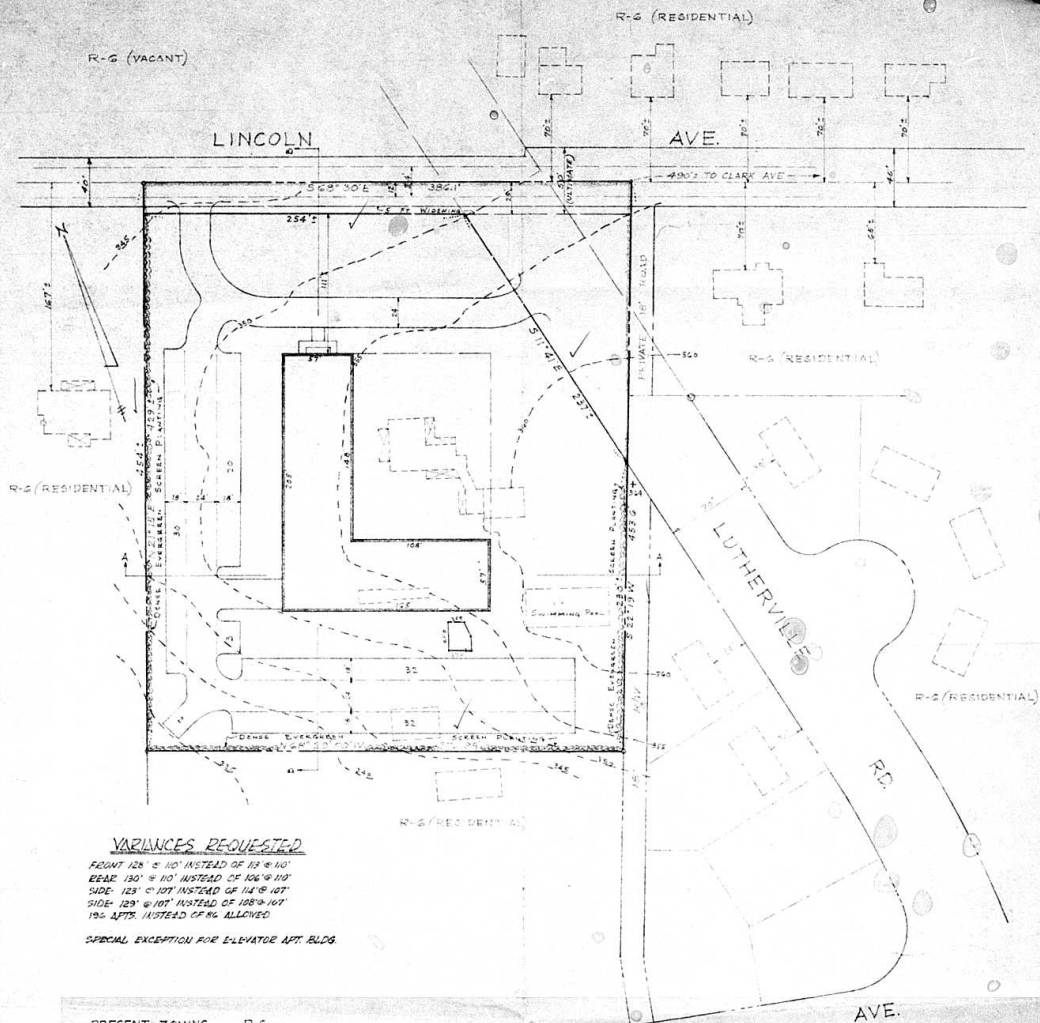
THIS IS TO CERTIFY that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md. ~~between~~ on 1 time ~~between~~ on 17th day of April 1963, the 58th publication appearing on the 29th day of March 1963.

THE JEFFERSONIAN,  
*Frank Mueller* Manager

|                                                                                                                                                                                                                                                                         |  |                                                                                                                                                    |  |                           |         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------|---------|
| TELEPHONE CALL<br>VALLEY 3-3000                                                                                                                                                                                                                                         |  | INVOICE<br>BALTIMORE COUNTY, MARYLAND<br><b>OFFICE OF FINANCE</b><br><i>Division of Collection and Receipts</i><br>COURT HOUSE<br>TOWSON, MARYLAND |  | No. 18434<br>DATE 6/24/53 |         |
| TO:<br><br>W. Gibbs Parker, Esq.,<br>717 Little Building<br>Baltimore 2, Md.                                                                                                                                                                                            |  | BALCO Office of Planning & Sinking<br>119 County Office Bldg.,<br>Towson 14, Md.                                                                   |  |                           |         |
| EXP. TO ACCOUNT NO. 01.622                                                                                                                                                                                                                                              |  | BAL. AMOUNT                                                                                                                                        |  |                           |         |
| QUANTITY                                                                                                                                                                                                                                                                |  | DETAILS UPPER SECTION AND REMITTANCE WITH YOUR REMITTANCE                                                                                          |  |                           | COST    |
| Cost of appeal - property of Robert A. Wiegand, et al                                                                                                                                                                                                                   |  |                                                                                                                                                    |  |                           | \$70.00 |
| No. 526-RTV                                                                                                                                                                                                                                                             |  | P&S - balance Contribution - Criminal Division                                                                                                     |  |                           |         |
| 6-563 632 * * * TIL -                                                                                                                                                                                                                                                   |  |                                                                                                                                                    |  |                           | 0.00    |
| <div style="border: 1px solid black; padding: 2px;"> <b>IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND</b><br/> MAIL TO DIVISION OF COLLECTION &amp; RECEIPTS, COURT HOUSE, TOWSON, MARYLAND<br/> UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE. </div> |  |                                                                                                                                                    |  |                           |         |

|                                                                       |                                                                                                                                                    |                                                  |
|-----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| TELEPHONE<br>VALLEY 3-3000                                            | INVOICE<br>BALTORE COUNTY, MARYLAND<br><b>OFFICE OF FINANCE</b><br><i>Division of Collection and Receipts</i><br>COURT HOUSE<br>TOWSON 4, MARYLAND | No. 16595<br>DATE 4/17/63                        |
| TO: John Warfield Amiger, Esq.<br>Jefferson Building<br>Towson 4, Md. |                                                                                                                                                    | BILLING Zoning Department of<br>Baltimore County |
| 03-622                                                                |                                                                                                                                                    | 556-1611-0000                                    |
| DEPOSIT TO ACCOUNT NO.                                                |                                                                                                                                                    |                                                  |
| QUANTITY                                                              | DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE                                                                                               | COST                                             |
| Advertising and posting of property for Robert Winard<br>#5826-2AY    | 4-1863 7331 0 * TEL--                                                                                                                              | 54.46<br>56.46                                   |

|                                                                                                                                                                                                                |                                                                       |                                                                                                                                                    |  |                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------|
| TELEPHONE<br>VALLEY 3-3000                                                                                                                                                                                     |                                                                       | INVOICE<br>BALTIMORE COUNTY, MARYLAND<br><b>OFFICE OF FINANCE</b><br><i>Division of Collection and Receipts</i><br>COURT HOUSE<br>TOWSON, MARYLAND |  | No. 18444<br>DATE 7/6/53 |
| TO: John Warfield Armiger, Esq.,<br>Jefferson Building<br>Towson 4, Maryland                                                                                                                                   |                                                                       | BILLED BY: Office of Planning & Zoning<br>129 County Office Bldg.,<br>Towson 4, Md.                                                                |  |                          |
| DEPOSIT TO ACCOUNT NO. <u>01.602</u>                                                                                                                                                                           |                                                                       |                                                                                                                                                    |  |                          |
| QUANTITY                                                                                                                                                                                                       | DETACH AFTER SECTION AND RETURN WITH YOUR REMITTANCE                  |                                                                                                                                                    |  | TOTAL AMOUNT             |
| —                                                                                                                                                                                                              | Cost of appeal — Village and property<br><i>500.00</i><br>No. 586-KIV |                                                                                                                                                    |  | \$70.00                  |
| 1-963 1090 * * * 711-                                                                                                                                                                                          |                                                                       |                                                                                                                                                    |  | 70.00                    |
| (IMPORTANT) MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND<br>MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND.<br>PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE. |                                                                       |                                                                                                                                                    |  |                          |



# VARIANCES REQUESTED

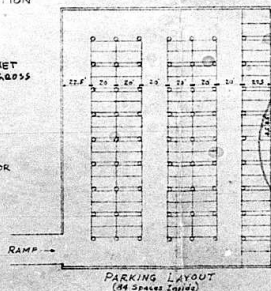
FRONT 128' ± 10' INSTEAD OF 113' ± 10'  
 REAR 130' ± 10' INSTEAD OF 106' ± 10'  
 SIDE 128' ± 10' INSTEAD OF 114' ± 10'  
 SIDE 128' ± 10' INSTEAD OF 108' ± 10'  
 192 LFTR. INSTEAD OF 166 ALLOWED

SPECIAL EXCEPTION FOR ELEVATOR APT BLDG.

|                   |                      |
|-------------------|----------------------|
| PRESENT ZONING    | R-6                  |
| PROPOSED ZONING   | R.A. SPEC. EXCEPTION |
| AREA OF PROPERTY  | 3.97 AC. ±           |
| ULTIMATE NET AREA | 3.63 AC. ±           |

PROPOSED: 56.8  $\frac{7}{8}$  NET  
 TOTAL APT UNITS: 196 29.4  $\frac{7}{8}$  GROSS  
 TOTAL NO. PARKING REQUIRED: 196  
 TOTAL PARKING PROVIDED: 203

DENSITY CALCULATION  
 NET AREA = 18 ± 1/2 FAMILY/ACRE/FLOOR  
 3.45 × 18 ± 24 ± 82 UNITS ALLOWED  
 GROSS AREA = 16 ± 1/2 FAMILY/ACRE/FLOOR  
 3.97 × 16 ± 28 ± 92 UNITS ALLOWED



BELLONA AVE.

#5726 RXV

MAP  
 #9  
 SEC. 3-C

PLAT TO ACCOMPANY  
 ZONING PETITION  
 WINGARD PROPERTY

BALTA COUNTY, MD.  
 SCALE: 1" = 50'

ELECT. DIST. # 9  
 FEB. 1, 1963

George William Standens, Jr.  
 and Associates, Inc.  
 Engineers  
 5 McCurdy Avenue,  
 Gaithersburg, Maryland



LUTHERVILLE COMMUNITY ASSOCIATION, INC., w/b/s/ and  
PETER J. KARNOSKI

vs.

NATHAN H. KAUFMAN, ET AL,  
Constituting the COUNTY BOARD OF  
APPEALS OF BALTIMORE COUNTY

ROBERT A. WINOARD and  
ELIZABETH W. WINOARD  
(Intervenor)

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
AT LAW  
File No. 2988  
Docket Misc. 7  
Folio 369  
August 14, 1964

Before: HONORABLE JOHN GRASON TURNBULL, Judge.

(Counsel made opening statements to the Court.)

THE COURT: Of course, the difficulties are twofold; first, that if additional evidence is permitted at this level, then the Court is deciding a case which was not heard by the Board of Appeals. And the Court of Appeals very recently has rebuked me for deciding a case in a situation where one member of the Board of Appeals disqualified himself and the other two members divided one to one and I decided it on the record. The Court of Appeals,

very strongly, as I say, rebuked me for doing so and said that it should have been decided on the record before the Zoning Commissioner, although the Court of Appeals didn't know there is no record made before the Zoning Commissioner.

The second problem is that the power to remand, unquestionably, is present, but that could lead into a never-ending battle of delaying tactics, because a party, either the applicant or the protestant, could offer additional evidence at this level, have it remanded, the Board hear it again, on the basis of the additional evidence bring it back up here, offer additional evidence, be remanded again. So that the power to remand, in my opinion, is one which should not be lightly used.

Under those circumstances, gentlemen, unless the proffer is one which is absolutely vital to the protestant's case, the Court will sustain the objection to the proffer.

MR. POWER: If it please the Court, I do not believe the proffer is necessary. We withdraw the proffer.

(Counsel made further argument to the Court.)

THE COURT: It is stipulated that the adoption of the zoning map covering the area involved was November 14, 1955.

MR. ARMIGER: Your Honor, the only cause for delay -- I questioned the date. It seems that Mr. Power's date is the date on the map, and possibly the transcript's in error. One of the witnesses testified that the 8th District map of which we are speaking was adopted April 12, 1956. It is not too material, as far as the Appellees are concerned.

THE COURT: Well, it would have effect only in the event there was any change between November '55 and April '56.

MR. ARMIGER: It doesn't seem to be a highly significant date from our standpoint.

MR. POWER: By way of clarification, the opinion read into the record refers to the adoption of the 8th District map on April 12, 1956, and that is when the 8th District map was adopted, all but that part of the 8th District lying to the south of Seminary Avenue, which was adopted as a part of the 9th District map on November 14, 1955. But the difference in those two dates is of no significance

in that there are no changes.

I wonder if we could also further stipulate this map shows the Wincard property being zoned R10 as of that date?

MR. ARMIGER: Certainly.

(Counsel made further argument to the Court.)

THE COURT: I don't think it is necessary to file a reply brief, Mr. Power. Mr. Armiger's memorandum largely simply points up what he said in his oral argument, and I am confident that that is what would be done if you filed a brief.

It has been said many times in Baltimore County that the Circuit Court in a zoning case is simply a whistle stop on the way to the Court of Appeals, and I guess that will be the situation in this one too.

The Court of Appeals has many, many, many times said that unless the ruling of the Board is arbitrary, illegal, capricious or fraudulent, and unless there is no evidence upon which a reasonably debatable decision could be based, that then the Court should not interfere with the

ruling of the Board.

In this case you have a substantial change of approximately three and a half acres, from R 10 to a commercial classification, within a very short distance of this subject property. You also have affirmative testimony that if and when this property is developed, under Baltimore County regulations the developer will be required to widen Charles Street extended or that he will not get his building permits. And there is substantial evidence that all utilities are available.

Under the state of the record as I read it I cannot come to the conclusion that the Board's action was arbitrary, capricious, illegal or fraudulent, even though, frankly, if I were sitting as the Zoning Board I would have been inclined to deny the application. But the law is that I am not permitted to substitute my judgment for the judgment of the Board of Appeals.

For those brief reasons, gentlemen, the Court will sign an order affirming the action of the Board of Appeals.