

RE: PETITION FOR RECLASSIFICATION
from an "R-6" Zone to an "R-A" Zone,
SPECIAL EXCEPTION FOR AN ELEVATOR
APARTMENT BUILDING, AND VARIANCES
to Sections 216 and 217.7 of the
Zoning Regulations,
S.E. Corner of York Road and
Hillside Avenue - 9th District
The Yorkdale Corporation,
Petitioners

OPINION

This is a petition for reclassification from an "R-6" Zone to an "R-A" Zone, a special exception for an elevator apartment building, and variances to Sections 216 and 217.7 of the Zoning Regulations of Baltimore County on land located on the southeast corner of York Road and Hillside Avenue in the Ninth District of Baltimore County.

This property, once the location of the Towson Nurseries, has been the subject of zoning petitions in the past and attempts to zone the property for hotel use and for office building use have been vigorously opposed by community protest. The use of the property for elevator apartment has found the support of all but a few of the former protestants.

There are actually four separate requests in this petition; the reclassification, the special exception and the two variances. We shall discuss each separately and our order shall cover all four.

There have been a number of changes in the immediate area since the adoption of the land use map for the Ninth District on November 14, 1955. Most of these changes have been on the west side of York Road. However, they have brought large office buildings almost directly across from the subject property and have had an effect on the subject property. Also, a reclassification on the east side of York Road to the south in the same block as the subject property has been granted except for a 40 foot buffer strip on the side along Cedar Avenue. Mr. Harry U. Riepe, Real Estate expert for the petitioner, pointed out that out of the 4,848 acres which makes up the entire subject tract, 3.8 acres were zoned "R-A", leaving just a little more than one acre in an "R-6" classification. This, in his opinion, was an error. The Board is unanimous in its opinion that there have been sufficient changes in the area to warrant a reclassification. It is desirous of maintaining a buffer strip on Cedar Avenue but inasmuch as 30 feet are required for a rear yard setback, sees no danger in allowing the entire reclassification requested.

With regard to the special exception for an elevator apartment building, the Board is again unanimous that it should be granted subject to the following restrictions:

1. There may be no more than 250 living units in the building
2. There shall be no ingress or egress from Cedar Avenue or Hillside Avenue
3. There shall be no ingress from York Road except that provisions may be made that cars coming from the south on York Road may make a right turn movement into the subject property. It must be so constructed that it is impossible for all intent and purpose to make a left turn into the subject property by cars going in a southerly direction on York Road
4. There shall be no egress from the subject property into York Road except that a lane shall be provided allowing cars leaving the subject property to make a right hand turn into York Road in a northerly direction
5. Terrace Dale Road shall be so widened as to provide adequate ingress and egress to and from the subject property. It shall also be aligned to the present entrances on the west side of York Road to the Blue Cross, Humble Oil, apartment complex to allow, if necessary, one traffic signal to control both the east and west sides of York Road at this point
6. Every effort be made in the design of the building to do away with straight line appearance of a brick mass. Use of balconies, indentations, etc. could add greatly to the appearance and the character of the building
7. Screening and planting shall be provided on the perimeter of the entire property to adequately screen parking lot and add beauty and atmosphere to the completed project
8. A minimum parking facility for 300 cars
9. All interior parking must be so designed that cars will not be parked below or above one another. This is to say that all cars must be on one level of parking, but the levels may be of different floor level in different sections of the building
10. No use other than open spaces may be made of the property on the eastern boundary of the property within 40 feet of Cedar Avenue
11. Paragraphs 3, 4, 5 and 7 must be approved by the Office of Planning and Zoning of Baltimore County. With regard to paragraph 6, after finished and complete plans are made of the proposed exterior, these plans must be approved with regard to the exterior design only, by the Office of Planning and Zoning of Baltimore County

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Zoning Regulations - S. E. Cor.
York Road and Hillside Avenue,
9th District, The Yorkdale Corp.,
Petitioner

NOTICE OF APPEAL

Please enter an appeal on behalf of petitioner to the County Board of Appeals from so much of the Zoning Commissioner's Order of May 17, 1963, that denied petitioner a variance to the Zoning Regulations to construct 325 units on the subject property. No appeal is taken from any other portions of said Order.

POWER AND MONROE

BY: *William F. Monroe*
WILLIAM F. MONROE
Attorneys for Petitioner
June 14, 1963

I HEREBY CERTIFY that copies of the foregoing Notice of Appeal were mailed to the Zoning Commissioner of Baltimore County, Court House, Towson 4, Maryland, Board of Appeals of Baltimore County, Court House, Towson 4, Maryland, and to ERNEST TRIMBLE, ESQUIRE, Attorney for Protestants, Jefferson Building, Towson 4, Maryland.

William F. Monroe
WILLIAM F. MONROE



LAW OFFICE
POWER AND MONROE
14 W. CHESAPEAKE AVENUE
TOWSON 4, MD.

In considering Section 502.1 of the Zoning Regulations the Board can see no way in which this petition for special exception could have an adverse effect.

Sections A, C and E leave no question to be discussed.

Section B - dealing with traffic - seems to offer no problem. While York Road is heavily travelled at the present time, the existence of 250 apartment units on the subject tract would add only a small fraction to the present traffic. In addition, the construction of Burke Avenue and Stevenson Lane from York Road to Charles Street, and the construction of St. Joseph Road from Stevenson Lane north will reduce York Road traffic in the near future.

Section D - overcrowding of land and undue concentration of population has been raised as an objection due to the density variance requested. This Board does not feel that 250 families living on the subject property would cause any undue hardship and the actual buildings would cover only 19% of the land.

Section F - dealing with light and air has been mentioned as an objection. The variance requesting the allowable height is being denied and the height of the building will be only that allowed in the Zoning Regulations. Certainly this will not cause interference with adequate light and air.

With regard to the variance to Section 216 asking for additional height for the building, the Board is unanimous in denying this request. A building higher than that allowed by the Regulations would be completely out of character to the remainder of the area and could cause hardship to neighbors in regard to light and air.

With regard to the variance to Section 217.7 for an increase in density to 325 living units, the Board is unanimous that this would exceed the practical capacity of the property. We feel that strict compliance with the Zoning Regulations with regard to density would result in practical difficulty and unreasonable hardship, and that in granting relief any variance should be in strict harmony with the spirit and intent of the Regulations. Therefore, we grant a variance for 250 living units. We cannot see where any injury to the public health, safety, and general welfare would occur from this variance.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of September, 1963 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby granted; that the special exception petitioned for, be and the same is hereby granted subject to the eleven (11) restrictions outlined in

this Order; that the Variance to Section 216 is hereby denied; and the Variance to Section 217.7 for 250 units is hereby granted.

Any appeal from this decision must be in accordance with Chapter 1100, Subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William F. Monroe
CHAIRMAN
John H. Dyer

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

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York Road and Hillside Avenue,
9th Dist., The Yorkdale Corp.,
Petitioner

BALTIMORE COUNTY
No. 5831-RXV

The petitioner in the above entitled matter seeks a reclassification from an "R-6" Zone to an "R-A" Zone for a portion of the property; a special exception for an elevator apartment building, and a variance to Sections 216 and 217.7 of the Baltimore County Zoning Regulations. The reclassification requested is a reasonable request and is in line with other existing "R-A" zoning now owned by the petitioner.

In addition, the petitioner requests a variance from an allowable height of 67 feet at a setback of 55 feet to a proposed height of 93 feet. The actual variance requested is small and it would be a hardship in denying the building job to permit the variance requested.

It was also requested that a variance be granted from Section 217.7 in that it would be impractical to erect this elevator apartment building at the allowable 110-125 units and that it would be practical only if 250 units are permitted.

The subject property has been subject to zoning considerations at some length and it seems definite that the allowable number of units is not consistent with the size of the lot and the type of building that could be erected on this property. However, 325 units are in excess of the maximum which should be allowed and after such consideration, examination of the property and examination of the plans, it is considered that the maximum allowed should be 250 units.

For the above reasons the reclassification should be granted, also the special exception for the elevator apartment building and the requested variances as limited herein.

It is this 17th day of May, 1963, by the Zoning Commissioner of Baltimore County, ORDERED that a portion of the property owned "R-6" should be and the same is hereby reclassified from an "R-6" Zone to an "R-A" Zone and a special exception for an elevator apartment building should be and the same is granted, from and after the date of this Order.

It is further ORDERED that a variance to Section 217.7 to permit 250 units instead of the requested 325 units is hereby granted, also the variance to section 216 to permit a height of 93 feet instead of the allowable 67 feet.

The granting of the reclassification, the special exception and variances, is subject to approval of the site plan by the State Roads Commission, Bureau of Public Works and the Office of Planning and Zoning.

John H. Dyer
Zoning Commissioner of
Baltimore County

Messrs. Power and Monroe
31 W. Chesapeake Avenue
Towson 4, Maryland
Attn: William F. Monroe

Re: Petition for The Yorkdale Corporation,
for Elevator Apartment Building, including
necessary business uses for tenants

Gentlemen:

The Zoning Advisory Committee have reviewed the subject petition and have the following comments to make:

1. Density calculations should be indicated on the plan as follows:
Gross Acreage =
Net Acreage =
Number of dwelling units per acre Gross =
Number of dwelling units per acre Net =
2. Parking data should also be indicated on the plan as follows:
Total number of parking spaces required for dwelling units. (One space for each unit).
Total number of parking spaces required for retail sales area. (One space for each 200 sq. ft. of commercial floor area).
3. The interior parking layout should be indicated on the plan.
If I can be of any assistance, please do not hesitate to contact me.

Yours very truly,

JAMES E. DYER

JED/ha

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to E-A.

I, we, THE WOODKALE CORPORATION legal owner... of the property situate in Baltimore, Maryland 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 re-classified, pursuant to the Zoning Law of Baltimore City, from an R-6 zone to an SEF-3-C zone; for the following reason:

R-6

The bulk of the property described on the attached Plats is R-6-A, but a small portion thereof is R-6-B and the entire acreage is properly classifiable as R-6-A. The applicant wishes to reclassify only the R-6 portion to R-6-A.

✓
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RA-XV
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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 COURT OF APPEALS OF MARYLAND

No. 353
September Term, 1963

YORKDALE CORPORATION

v.

EDWIN E. POWELL

Henderson, C. J.
Hammond
Frederick
Horney
Marbury
Sylvester
Oppenheimer, JJ.

Opinion by Hammond, J.
Frederick, Horney and
Marbury, JJ. dissent.

Filed: December 7, 1964

Yorkdale Corporation, the appellant, which in 1960 acquired some five acres of land on the east side of York Road about a mile south of Towson (all but about an acre, which was zoned for one or two-family residential use, was zoned for apartment use), asked the Zoning Commissioner of Baltimore County in 1963 to reclassify the residentially zoned acre to apartment use, to grant a special exception for an elevator apartment, to grant a variance allowing an additional twenty-three feet in height for the proposed building, and to grant a density variance permitting the apartment house to embrace three hundred twenty-five living units. Edwin E. Powell, the appellee, a nearby property owner, protested. The zoning commissioner granted Yorkdale's requests with the exception of the number of living units which was cut to two hundred eighty-five. Powell appealed to the Board of Zoning Appeals which denied the height increase, further reduced the number of living units to two hundred fifty and otherwise affirmed the commissioner. Powell appealed to the circuit court where, by agreement, the case was heard and decided on the question of whether the zoning ordinances of Baltimore County gave the zoning officials power to grant a variance as to density.

The case was argued before Judge Berry on November 13, 1963, and on December 4 he held that Art. 3, Sec. 307 of the zoning

regulations of Baltimore County entitled "Variances" ("The Zoning Commissioner of Baltimore County and the Board of Zoning Appeals, upon appeal, shall have and are hereby given the power to grant variances from area and height regulations . . . where strict compliance with the law would result in 'practical difficulty or unreasonable hardship'"), read with Art. 2, Sec. 217.7 of those regulations (which defines permissible densities), did not authorize a variance in density.

Yorkdale appealed to this Court and the case was argued on April 28, 1964. While a decision was under consideration, we were informed that the Baltimore County Council had on December 2, 1963, passed Bill 107, which became effective January 20, 1964, to amend Art. 3, Sec. 307, so as to spell out that "no increase in residential density beyond that otherwise allowable by the Zoning Regulations [Sec. 217.7] shall be permitted as a result of any such grant of a variance from height or area regulations."

Feeling that the amendment might have made the main issue moot, we set the case down for reargument, Md. Rule 835 a, 2, and the point was briefed and argued.

Maryland consistently has followed the rule that "an appellate court is bound to decide a case according to existing laws, even though a judgment rightful when rendered by the court below should be reversed as a consequence," as Judge Parkell, for the Court, reiterated in *Koman's Club v. State Tax Comm.*, 195 Md. 16, 42 (20), it may be noted, even when a judgment wrong, when

rendered is made right by the change in the law). See also for this proposition that a change in the law after a decision below and before final decision by the appellate court will be applied by that court unless vested or accrued substantive rights would be disturbed or unless the legislature shows a contrary intent, *Keller v. State*, 12 Md. 322; *Day v. Day*, 22 Md. 530; *Gordy v. Prince*, 175 Md. 689; *Comarhan v. Children's Society*, 185 Md. 97; and *Tudor Arva Apts. v. Shaffer*, 191 Md. 342.

The rule has been applied in zoning cases. In *Banner v. Home Sales Company*, 201 Md. 429, a property owner on November 27, 1947, sought a change of proposed zoning of five acres as "Cottage Residential" to a group housing classification, so that he could proceed with his housing projects on which he had spent a large amount of money. The Board of County Commissioners of Anne Arundel County granted the request on December 2, 1947, and classified the five acres as "Group Housing." On December 19, 1951, the owner applied for permits to build seventy-three group houses. On March 6, 1952, before construction of the houses had begun, protestors filed a petition for a change in the zoning of the five acres from "Group Housing" to "Cottage Residential." While the petition for a change was being considered, the owner began to build the foundations for the seventy-three group houses. Anne Arundel County had no provision for zoning appeals and the protestors filed a bill in equity, alleging that the change in 1947 to "Group Housing" was arbitrary, discriminatory and illegal, and praying a declaration that such

zoning be declared invalid and void and that construction be enjoined until the zoning commissioner and the Board act on the petition for rezoning.

The chancellor held that the change to "Group Housing" zoning was valid, and the protestors appealed. At the argument before us, it was agreed that since the passage of the decree appealed from, the property had been rezoned by the Anne Arundel County officials back to "Cottage Residential." This Court said (p. 428): "The case before us has therefore become moot. . . . The zoning contested in the case before this Court has been superseded by the zoning authorities."

There was a similar holding in *Lake Pl. Assn. v. Bd. of Zoning Appeals*, 209 Md. 561. The circuit court, on September 15, 1955, affirmed the Board of Zoning Appeals in its action in rezoning a piece of ground from residential to "B" Commercial. The protestors appealed to this Court and, thereafter, on November 8, 1955, a new land use map for the area was adopted which zoned the property "Business Local." It was stipulated at the argument here that the uses permitted under "Business Local" are not the same as were permitted under "B" Commercial and that the commercial uses under the former are more restricted than they were under the latter. This Court said (p. 565):

"In the *Banner* case the ultimate change in zoning of the property satisfied the purposes of the appellants, whereas, in the present case, it is assumed that the new Land Use Ordinance will satisfy the appellants. But, in both cases, the cause of action, i. e., the zoning classification that was the subject of litigation, was extinguished by repeal."

In *Gray v. Board of Zoning Appeals*, 210 Md. 129, the circuit court had affirmed the Board in the reclassification of two lots at the northwest corner of Loch Haven Boulevard and Russula Road in Baltimore County from "B" (Semi-detached Residential) to "E" Commercial. The Board's action was on July 17, 1955, the circuit court's on June 24, 1955. The protestors appealed to this Court. On November 14, 1955, the County Commissioners adopted a new zoning map for the area and zoned the lots R 6 (residential one and two families) on the new map. This Court held the case moot " . . . because the reclassification ordered by the Board of Zoning Appeals . . . has been superseded by the County Commissioners."

It would seem to follow from the decisions in *Banner*, *Lake Falls* and *Gray* that an applicant for rezoning to a more intense use of his property, who has been successful before the zoning authorities and the circuit court does not acquire a vested or substantive right which may not be wiped out by legislation which takes effect during the pendency in this Court of the appeal from the actions below.

The decisions in these zoning cases are consistent with decisions in other areas of administrative law. See *Beachwood Coal Co. v. Lucas*, 215 Md. 248. There, the law in effect when the industrial accident happened made the findings of the Medical Board binding on the Commission if there was any evidence to support them. The Legislature deleted this provision effective June 1. This Court upheld the right of the Commission to review and disturb the findings of the Medical Board since the case was

heard by the Commission after the change in the law. Chief Judge Byrne, for the Court, said (p. 254):

" . . . where the effect of the new statute is not to impair existing substantive rights but only to alter the procedural machinery involved in the enforcement of those rights, such legislation is merely a modification of procedure, and proceedings instituted after its passage, whether the right acquired before or after that date."

Held on was *Thomas v. Penna*, 107 Md. 509, where a new law which did away with witnesses and the *de novo* theory on appeals from the Compensation Commission's action and required the court review to be confined to the record before the Commission, was held to be applicable to an appeal entered before the amendment to the law. Also relied on were *State v. Jones*, 21 Md. 432 (statute shortening period of limitations upheld), and *Elliot v. Elliott*, 38 Md. 357 (new statute authorized court to restrict remarriage of offending party). Judge Byrne, for the Court, said further in *Beachwood* (pp. 256-257):

"Our views are reinforced by the special rule of statutory construction that rights which are of purely statutory origin and have no basis at common law are wiped out when the statutory provision creating them is repealed, regardless of the time of their accrual, unless the rights concerned are vested. . . . It is difficult to perceive how a 'right' to have the Medical Board's findings in an undisturbed case conclusively presumed to be correct can be deemed a vested right. . . ."

See also *Ireland v. Shipley*, 165 Md. 90; *Richardson v. Richardson*, 247 Md. 310; *Alfrin v. United States*, 318 U. S. 73, 79, 87 U. S. 621 (Supreme Court held that since "a change in the law between a nisi prius and an appellate decision requires the appellate court to apply the changed law" a change in the law as to motor

carrier permits which became effective after the application to and the hearing before the Commission but before its decision must be followed by the Commission) and *Burlington Truck Lines v. United States*, 371 U. S. 150, 9 L. Ed. 2d 207 (a change in the law applicable to an administrative application which became effective administrative law four months after the Commission decided a case and before the District Court heard the appeal, required the reviewing court to remand for consideration in light of the change in the law). See also 82 C. J. S. *Statute* Sec. 421, p. 996. Yorkdale urges that even if the usual rule would otherwise govern and be applicable here to make Judge Berry's decision correct, whether it was or not when he rendered it, the always paramount consideration is the intention of the legislative body which changed the law and, if it did not intend the change to apply to pending proceedings, the court will not so apply it. Yorkdale finds evidence that the Baltimore County Council did not intend to make the density variance change apply to pending cases in the fact that the amendatory law, according to its terms, was to take effect "forty-five days after its enactment."

The minutes of the County Council show that at the council meeting on December 2, 1963, Bill No. 107 was called for final reading and vote. The chairman suggested an amendment that would make the bill an emergency measure. Mr. Rose, the zoning commissioner, spoke to the Council, advising the members that the zoning department favored the principle of the bill but opposed the bill

8.
as drawn, and suggesting a 180-day moratorium on the allowance of "high-rise apartment" zoning during which all those interested would prepare a new set of regulations pertaining to the field of apartment zoning. Mr. Hill, Director of Planning, then advised the Council that he strongly favored new high-rise zones and that he favored passage of Bill 107 as an interim measure. A motion to postpone action on the bill was made and, after discussion, withdrawn. The motion of the chairman to make Bill 107 an emergency measure failed, and the bill was passed to take effect forty-five days after its enactment.

Yorkdale's contention that the Council did not intend Bill 107 to apply to pending proceedings would seem to be based on these arguments: (a) the failure of the Council to make the bill effective as an emergency measure the day the County Executive signed it (when under Art. 3, Sec. 308 (g) of the Charter of Baltimore County it would become law)¹ and its action in passing it as an ordinary law which would become effective forty-five days after the executive signed it, shows that the Council wanted the zoning authorities to continue to have power to grant density variance until the effective date of the new law; and (b) because

¹ Upon the passage of any legislation " * * * the same shall be presented * * * to the County Executive for his approval or disapproval and within ten days * * * he shall return any such legislation to the County Council with his approval endorsed thereon or with a statement in writing of his reasons for not approving the same. Upon approval by the County Executive any such legislation shall stand enacted."

9.
the Council continued the status quo as to new applications during that period it meant the old law to continue to apply to and control applications which had been made before the effective date of the new law, even though such applications had not yet been finally acted on, either by the zoning authorities or the courts.

We cannot ascribe to the Council the intent Yorkdale argues for. Almost every bill passed by the Council takes effect forty-five days after its enactment just as almost every bill passed by the State Legislature takes effect on June 1 (under Art. III, Sec. 31, and Art. XVI, Sec. 2, of the Constitution of Maryland), even though it was passed by the Legislature and approved by the Governor months before. Art. 3, Sec. 308 (f) of the Charter of Baltimore County provides that:

"All public local laws and ordinances enacted by the County Council shall take effect forty-five days after their enactment, unless by the affirmative vote of five members of the County Council any such law or ordinance shall be declared to be effective on a later date, or declared an emergency measure affecting the public health, safety or welfare, in which latter event the same shall take effect from the date of its enactment."

The Notes to the Baltimore County Home Rule Charter of Arthur S. Machen, Jr., Reporter to the Charter Board of Baltimore County, found in Baltimore County Charter, 1955, at p. 79, constitute, according to the Reporter, " * * * contemporaneous comment" in that they are derived from the official records of the Charter Board assembled during the period when the Charter was being drafted and were intended to serve three purposes:

15.
the so-called usual rule be applied. This Court has not so interpreted the legislative intent. The Act of the General Assembly that changed the workmen's compensation law, dealt with in the *Beschwood* case, was approved by the Governor on March 8, 1931, although under Art. III, Sec. 31, of the State Constitution, like almost every other State law, it was not to and did not become effective until June 1. The *Beschwood* opinion found no significance in the fact that sixty-eight days had elapsed between the time the bill was enacted and when it became effective - during which the findings of the Medical Board would continue to be conclusive and not subject to review by the Compensation Commission if there was legal evidence to support them. Instead, this Court said (speaking through Chief Judge Brune at p. 356):

"In this case, as in the *Thomas* case, the repealing statute contains no saving clause respecting existing appeals. Judge Bond there said (102 Md. 513): 'The words of the amended statute are comprehensive and admit of no exception. They constitute the only provision for appeals now in force, the former provision having been repealed in the enactment of this one. Without any saving clause respecting existing appeals, and the appellant can have only the existing law applied to govern her appeal.'"

In the *Thomas* case, *supra*, the amending act was approved by the Governor on April 17, 1931, and the new law became effective June 1, 1931 - forty-five days later. The Court in the *Thomas* found no more significance in this than did we in *Beschwood*. Indeed, Chief Judge Bond there said (p. 512):

"The appellant denies the propriety of construing the act to have a retrospective operation, so that it should apply to prevent the production of the witnesses again on an appeal which had been taken before the passage of the act and the date of its effectiveness. And the argument is

14.
based on the principles that the Legislature must, if the language and operation of the statute permit it, be presumed to have intended not to cut off rights already attached, by removing grounds of pending appeals, or changing the existing procedure to the disadvantage of litigants, and in workmen's compensation cases not to depart from the liberal attitude required to accomplish the purpose of the Workmen's Compensation Act. * * * But we see no escape from construing the restriction to apply to the previous appeal."

No added significance sought by Yorkdale can with certainty or accuracy be attached to the fact that the County Council did not about the amendment to make Bill 107 an emergency measure. To do this in any case the Council, like the State Legislature, must find by a substantial majority that the public health or safety will be adversely affected unless legislation is made immediately effective. Failure to pass a bill as an emergency measure ordinarily would mean no more than that not enough members thought the public interest required immediate emergency aid, not that the legislative body intended to do away with the usual rules as to the application and effect of new or changed laws. This proposition would not be altered because a motion to make a bill an emergency measure failed before the vote which passed the bill took place. Both the State Legislature, under the Constitution, and the Council, under the Charter, ~~xxxxxxxxxxxx~~ can pass almost any bill as an emergency measure and because they do not do so, in any given instance, whether they in fact vote against so doing or merely fail to act at all on the proposition, should not be accorded significance as an indication that they intended the bill they pass as an ordinary measure should not be subject to the usual rules.

10.
(a) to guide the voters who would adopt or reject the proposed Charter at the 1956 election; (b) to help the first County Council and officials; and (c) in appropriate instances to serve "the Bench and Bar in construing the Charter itself." The Notes remove any doubt, if the Charter provisions themselves left any, that the end of the forty-five day period was to be the equivalent of June 1 in the State legislative plan and that the Council was to have the same right as the State Legislature to postpone the effective date or, in any emergency "necessary for the immediate preservation of the public health or safety" (Constitution of Maryland, Art. XVI, Sec. 2) to make a law immediately effective, provided a specified number of legislators, greater than the number required to pass an ordinary bill (three-fifths of the State Legislature; five of seven of the Council) concurred in the bulier of emergency.²

² See p. 93 of the Reporter's Notes, Baltimore County Charter, 1955, where it is said:

"(f) Effective Date of Laws; Emergency Measures. Bearing in mind the possibility that the Constitutional amendment proposed by the Acts of 1955, Chapter 257 may be Section 208 (a), *supra*, the Charter Board has not provided for any particular calendar day, but rather that they shall take effect 45 days after their enactment. However, by a resolution which was made in the tentative draft of this section, effective on a date beyond the 45-day period. The Council also has the power to declare any measure 'an emergency measure' to take effect from the date of its enactment. In this latter respect, the privilege of declaring legislation 'an emergency' so as to advance its effective date is the same

18.
In the case before us, the Council may well have thought that no difference in result would follow, as far as the application of the law to pending cases was concerned, whether the law was an emergency or an ordinary measure. The attitude of the zoning commissioner, as revealed to the Council, was that he wanted a moratorium on density variances and special exceptions for apartments for 180 days, and the Council might have anticipated that no new variances would be granted during the forty-five days from enactment to effective date. There was a real and serious question whether Sec. 307 of the County zoning regulations which was amended by Bill 107 did not, as it existed, already mean what the amendment made by Bill 107 said it was to mean. The protestants in the case then before Judge Berry had so contended and argued on November 13 and the decision was under consideration when the Council passed Bill 107 and sent it to the Executive. It did not. The bill was not enacted and ~~xxxx~~ became a law until December 5, 1963, when the County Executive signed it. Judge Berry's decision holding that the old law meant what the new law provided for was filed December 8, 1963, so that when Bill 107 became law, the only judicial decision extant was that no density variances could be granted, either in the case before us or to any one else. On this state of the facts, even on Yorkdale's theory no difference in result would follow whether the bill was an emergency measure or an ordinary bill.

We can find no sufficient evidence of legislative intent that Bill 107 was not to be subject to the usual rules, and hold

11.
Attorney General Ritchie suggested in 1 Op. A. C. 206 that it would be wise for the State Legislature to add to every ordinary bill a section stating that this Act shall take effect June 1 and since this opinion the practice has been customary. *Thomas v. Police Commissioner*, 211 Md. 357, 361. The Baltimore County Council seemingly has followed the same practice, customarily adding to bills not to take effect until later than forty-five days after enactment, or not emergency; bills, the express direction that the ordinance shall take effect forty-five days after its enactment.

It would seem to follow that if the customary postponement of the effective date of a law, either under the State constitutional provisions or the Baltimore County Charter provisions meant, without more, a legislative intent that the usual rule that the law in effect when a case is finally decided controls, even though it has been changed since the decision below, was not to apply to pending proceedings, hardly ever, if ever, would

2 (cont'd). Procedure followed on the state level in Article XVI, Section 2 of the State Constitution.

(The change proposed by Ch. 557 of the laws of 1955 was approved at the 1956 election and amended Art. XI-A, Sec. 3, of the Constitution to provide as follows:

" * * * the charters of the various Counties shall specify the number of days, not to exceed forty-five, which may but need not, elapse in each year for the purpose of enacting legislation in such Counties * * * .")

15.
therefore that since the amended law came into effect while the case was pending before us, the case is moot. The appeal will be dismissed.

APPEAL DISMISSED, WITH COSTS.

#5831-RX
MAP
#9
SEC. 3-C
Folio 314 RA-X

This appeal from the County Board of Appeals in a zoning matter presents an interesting question of construction of the zoning regulations and one which has never before been passed on by the Courts.

The Board of Appeals granted a variance pursuant to Section 307 from the density requirements as set forth in Section 217.7 of the Regulations in connection with a reclassification to an RA Zone for a high rise apartment.

In this case the Board refused a request for a variance in density to 325 living units but granted a variance for 250 living units.

The tract reclassified contains about five acres net density which under Section 217.7 would allow not more than 18 families per acre, or 90 families.

While the Board's opinion does not make it clear in what respect compliance with the density provisions established by the Regulations would result in "practical difficulty or unreasonable hardship" the legality of its action as to its being arbitrary or unreasonable is not now before the Court but only the question of the power of the Board to grant the variance at all.

The Appellants were Protestants before the Board and contend here that the Zoning Regulations do not authorize the Zoning Commissioner or the Board of Appeals to grant a variance with respect to density regulations since Section 307 grants the "power to grant variances from area and height regulations (italics supplied) where strict compliance . . . would result in practical difficulty or unreasonable hardship," but does not mention density regulations.

The question appears to resolve itself into whether the "density" regulation in Section 217.7 is included in "area and height" regulations so as to be subject to a variance under Section 206, in other words, is "density" area or height?

ice under Section 307,
FILED
1966 DEC -5 PM 3:04
CLERK OF CIRCUIT
COURT, BALTO. CO.

45831 RXV

District 9^{OK} Date of Posting 4/6/63

Posted for Hearing MON APRIL 22nd 1963 at 1000 PM

Petitioner: The YORKDALE Corp.

Location of property 7 1/2 ac York Rd - bet S/S of H.H. State Ave

Map
Location of Property Hillside Ave 7th East Cross - 10th from Blg. -
7 1/2 ac - Planning E.S.M. W.S. SA SIGNA 3E1 AGRZD - 2 POLINE TRAC RD
SIDE 500' FROM PROPOSED 500' R/W FARM ROAD EXIST. HIGHWAY 100
POSTED BY
Signed by [Signature] Date of return 4/11/63

Posted by Robert L. Bell Date of return: 4/11/63
Signature

Black's Law Dictionary (3rd Edition) at page 136 defines area as follows: "The word 'area' has a somewhat elastic meaning. Originally it meant a broad piece of level ground, but in modern use it can mean any plane surface, the enclosed space on which a building stands . . . a particular extent of surface."

The word "height" has a commonly accepted meaning and to this Court clearly does not include "density".

The Petitioner argues that "density" was intended to be included in Area because it is contained in Section 217 entitled "Area Regulations", but this Court does not find this controlling since it may well have been inserted there it is simply for lack of a more appropriate location for it.

Its other argument is that since the administrative agencies have long assumed the power to grant variances from "density" their interpretation should be given great weight by the Courts.

While the Court recognizes this principle it thinks it should be applied only when there is some ambiguity or doubt in the law or regulation which the Court does not find to be present here. See Berman vs. Rogers, 228 Md. 271, 279.

The real difficulty with the Petitioner's argument is that Section 307 simply does not mention "density" as being subject to a variance and if it was intended that "density" should be included it would have been quite simple to have Section 307 include the word, and the fact that it was not included is certainly some evidence that it was not intended to be included.

It may well be that it would be desirable to make "density" the subject of a variance, or even that it was an oversight in the adoption of the Regulations, but in either event this Court feels obligated to take the language as it finds it and not to legislate by means of a strained judicial construction. In other words, if the power to grant variances in "density" cases is desirable it should be done by the legislative, not the judicial, branch of government.

Upon careful consideration this Court is forced to conclude that the Zoning Regulations do not provide for the granting of a variance from density regulations and that the County Board of Appeals had no power to grant the vari-

- 2

ance from which this appeal is taken

This case is remanded to the Board for the passage of such Order as it may find appropriate but not to include any variance from density regulations.

December 4, 1963

CERTIFICATE OF PUBLICATION

TOWSON, MD, 4th April 1963.

THIS IS TO CERTIFY, That the annexed advertisement was published in THE COUNTY NEWS WEEK, a weekly newspaper printed and published in Towson, Baltimore County Md., once in each of 000 successive weeks before the 22nd day of April 19 65, the first publication appearing on the 5th day of April 19 65.

THE COUNTY NEWS WEEK

W. J. Foyen
Manager

PETITION FOR DENIAL
 DECLASSIFICATION,
 SPECIAL EXCEPTION &
 VARIANCES
 201 12/1/2014

CERTIFICATE OF PUBLICATION

TOWSON, MD. 4th April 1963

THIS IS TO CERTIFY, That the annexed advertisement was published in THE COUNTY NEWS WEEK, a weekly newspaper printed and published in Towson, Baltimore County Md., once in each of one successive weeks before the 22nd day of April 19 63, the first publication appearing on the 4th day of April 19 63.

THE COUNTY NEWS WEEK

W. J. Meyer

Section 217.3 — Density—trees and net deposition, shall not exceed respectively 10 and 10 families per acre.
Section 218 — Minimum building height—20 feet.

September Term, 1963

YORDEALE CORPORATION

v.

EDWIN R. POWELL

Henderson, C.J.
Hammond
Prescott
Horney
Mortury
Sybert
Oppenheimer, JJ.Dissenting Opinion by Prescott, J.
concurring in Horney & Mortury, JJ.

Filed: December 7, 1964

I find myself in complete accord with the majority as to the law which controls the decision herein (although not in full agreement as to the manner in which all of the law mentioned therein is expressed); but, it frequently occurs that the proper application thereof is as difficult as determining the applicable law.

It must be borne in mind that the single question involved is the granting of a density variance, and the case turns entirely upon presumptions and rules of statutory construction; and our attention should not be drawn away from this fact by the first part of the majority opinion, where four or five cases are cited with little, if any, emphasis on the questions of presumptions, or of legislative intent. (It is the writer's belief that the County Council of Baltimore County evinced a clear and unmistakable intention that Bill 107 should not apply to pending litigation, and that intention will be shown by the minutes of the council's meeting after a statement of the Maryland law.) In a similar situation as ours, it was stated by Chief Justice Maltbie in Dunne v. Zoning Comm., 59 A. 2d 293 (Conn.), "the matter becomes one of presumed intent [of the legislative body]." (Emphasis added.) And Chief Judge Lehman, for the New York Court of Appeals, in Shielorant v. Moffett, 61 N.E. 2d 435, said:

Such intent with greater certainty." (Italics added.) Van Antwerp v. State, 55 N.W. 2d (Mich.); Romanchuk v. Flothin, 9 N.W. 2d 421 (Minn.). And this rule applies to all statutes, whether they relate merely to remedies, procedure to enforce remedies, or otherwise; and it also applies to the effect that a statute has upon pending actions and proceedings. 82 C.J.S., Statutes, § 416, "pending actions and proceedings."

I will not attempt to determine whether the ordinance here involved is purely "remedial" in nature, as the majority make no specific ruling thereon, and I think the legislative body which enacted the same manifested a clear intention as to whether it should be applied prospectively or retrospectively, and as to whether it should affect pending cases. There can be no doubt that a legislative body, when no constitutional proscriptions are violated, may exclude legislation from affecting pending cases. See, for example, § 3, Chapter 94, Acts of 1957 (The Administrative Procedure Act), wherein it is provided that certain repeals "shall not affect pending proceedings." See also Article 66 1/2, Section 1.

The majority opinion makes no claim that the legislative intent as to whether or not Bill 107 should affect pending proceedings is ascertained or arrived at by any language in the Bill itself, but turns the case entirely upon general presumptions and general rules of statutory construction. This is an important phase of the case.

"General principles may serve as guides in the search for the intention of the Legislature in a particular case but only where better guides are not available. We have said that they 'govern in default of the disclosure by the Legislature of a different intent. . . . In the end, it is in consideration of good sense and justice that the solution must be found.'" (Italics added.) These statements seem to be in full accord with the Maryland law, which will now be set forth; and it will be noted that nearly all of the Maryland cases cited by the majority are included therein. It will also be noted that in none of the cases cited by the majority was the question of legislative intent raised by extrinsic evidence; they were all decided on general presumptions and rules of statutory construction. Bill No. 107 did not change the classification of zoning of any property, nor did it eliminate any classification of zoning; it was an "ordinance" to amend former Section 307, so that after the effective date of the amendment (forty-five days after December 5, 1963) "no increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations."

This Court, in Higgins v. City of Balto., 206 Md. 89, held that zoning ordinances are usually prospective in nature. And this seems peculiarly appropriate when the ordinance is pro-

mulgated by a legislative body such as the Council in a charter county. There can be little doubt that laws, generally, are enacted to regulate future conduct; in other words, they, ordinarily, are prospective in nature. And "a statute will not be given a retrospective operation, unless its words are so clear, strong and imperative in their retrospective expression that no other meaning can be attached to them, or unless the manifest intention of the Legislature could not otherwise be gratified" (emphasis added). Tax Comm. v. Power Company, 182 Md. 111, 117. See also Taggart v. Mills, 180 Md. 302; Anne Arundel County v. Snyder, 186 Md. 342. And an amendatory Act such as that here involved takes effect, like other legislative enactments, only from its effective date, unless an intent to the contrary is expressed in the Act, or may be clearly implied from its provisions. Tax Comm. v. Power Company, supra.

To this well-established rule of statutory construction must be added the qualification that statutes which merely affect a remedy or law of procedure, ordinarily, apply to actions begun after their passage, whether the right of action accrued before or after the change in the law. Ireland v. Shipley, 165 Md. 90; Kelch v. Keen, 183 Md. 140; Seeshwood Coal Co. v. Lucas, 215 Md. 288; Richardson v. Richardson, 217 Md. 316; Dunne v. Zoning Commission etc. et al., supra; 50 Am. Jur., Statutes § 482; 82 C.J.S. Statutes § 416. In Richardson, supra, Chief Judge

There can be little doubt that, under proper circumstances, the Courts may resort to the legislative history of a statute when seeking to learn the legislative intent which motivated its enactment. Balto. Transit Co. v. MTA, supra; Pressman v. Barnes, 209 Md. 544; Nelson v. Westland Oil Co., 96 F. Supp. 656 (D.C., N.D.) 2 Sutherland Statutory Construction (3rd ed.), § 4505. The learned author, in the work last cited, states the rule thus:

"Before the true meaning of the statute may be determined consideration must be given to the problem in society to which the legislative intent which motivated prior legislative consideration addressed itself, legislative history of the statute under litigation, and to the operation and administration of the statute prior to litigation."

Under the Baltimore County Charter, a Bill enacted by the County Council may take effect as an emergency measure from the date of its passage, forty-five days after its enactment where no effective date is named in the Bill, or from a specific date named therein later than forty-five days. In the absence of constitutional or statutory proscriptions, the latter is permissible. Cf. Thomas v. Police Commissioner, 211 Md. 357; 82 C.J.S., Statutes, § 400.

At a meeting of the Council on December 2, 1963, Bill No. 106 was called for final reading and vote. It was passed as an emergency measure, to take effect from that date, which shows

that the Council was keenly alert as to the difference between emergency and ordinary Bills. Immediately thereafter, Bill No. 107 was likewise called for final reading and vote. The preamble states that Sections 23-20 and 23-21, which require at least one public hearing by the Director of Planning and at least one such hearing by the Council before adopting a zoning regulation, were complied with; so the Bill was being considered only after previous deliberation thereon. This Bill, as drawn, called for an effective date of forty-five days after its enactment. Whereupon, as shown by the minutes of the meeting, the following occurred:

"BILL NO. 107 was called and the Chairman stated that he had an amendment that would make this bill an emergency measure. Mr. John D. Rose, Zoning Commissioner, then appeared before the Council and explained the reasons of the Zoning Department for favoring a such and he suggested a 180 day period during which no of the persons involved would prepare a new set of regulations pertaining to the field of apartment zoning. Mr. Rose answered questions of members of the Council pertaining to the bill and also to the proposed 180 day moratorium."

"Mr. Malcolm Hill, Director of Planning, appeared before the Council and stated that he, too, strongly favored a new 'high-rise zone.' He stated, also, that he favored passage of Bill No. 107 as an interim measure at this time. Mr. Schield then stated that in light of the various views expressed both by Mr. Hill and Mr. Rose, he would offer a motion to postpone action on this bill pending further study. Mr. Schield withdrew this motion at the request of Mr. Anderson. There then followed more discussion among members of the Council. The Chairman then called on Mr. Edmund Carey, representing the Chatter-leigh Association, who spoke in favor of the passage of

Bill No. 107 stating the fears of many residents because of an extremely rapid growth of high-rise apartments. The Chairman then called on Mr. Andrew Bristow, at the request of Councilman Anderson, who also stated reasons in favor of the passage of Bill No. 107 at this time. Mr. Bristow stated further that as a member of the Zoning Revision Committee he felt an adequate bill could be presented in 180 days establishing proper high-rise and other type apartment zones. The Chairman then stated that he favored passage of the bill as an emergency measure, and he made the following motion to amend: "a a a."

There followed a motion to amend the Bill so as to make it an emergency ordinance. The Council refused to amend the Bill as an emergency measure, the motion for amendment being defeated. The Bill was then enacted as originally presented to "take effect forty-five days after its enactment." In other words, the Council explicitly wanted the zoning authorities to have the power to grant "residential density" variances under Section 307 (a power they had exercised for years) for a period of forty-five days after December 5, 1963. Thereafter, this power should cease, and the question of the future granting of such variances should depend upon subsequent ordinances. This was a clear manifestation that the legislative body enacting Bill 107 did not intend it to have a retrospective effect, or that it was to affect pending litigation under Section 307 challenging the authority of the zoning officials to grant variances thereunder. A holding to the contrary, in effect, renders Bill 107 an emergency measure taking effect from the date of its passage (which the Council flatly refused to do), for, if the Bill affects pending appeals, in the ordinary course of events, an appeal to the trial court from the granting of any vari-

ance within forty-five days after December 5, 1963, would not likely be heard, and a subsequent appeal to this Court certainly would not be heard, until after the effective date of Bill 107.

As I read the minutes, there was no thought by the Council that, in the passage of Bill 107, it was permanently doing away with variances ~~xxxxxxxxxxxx~~ high-rise apartments, but, by its passage, after forty-five days, there would be a moratorium thereon until a new comprehensive ordinance relative thereto should be formulated and enacted. The holding of the majority produces this unusual, if indeed not incongruous, result. It cannot be doubted (and it is not questioned) that the zoning authorities had the power to grant variances such as that involved for a period of forty-five days after December 5, 1963; therefore, if a half a dozen such variances were granted after December 5th, but before the expiration of forty-five days and no appeal were taken from their granting, they would be good and valid variances, while that of appellant would be voided (even though granted prior to the later variances) simply because an appeal had been noted. I am unable to attribute to the Council an intention to accomplish such an unfortunate result.

On the contrary, when the Council flatly refused to pass the Bill as an emergency measure, which, if passed as such, would have taken away the power of the zoning officials to grant variances

for high-rise apartments from the date of its enactment and left little doubt that (upon applying the general presumptions and rules of statutory construction) the Bill was intended to affect pending litigation, the Council deliberately did not intend it to take effect as an emergency measure nor intend it to affect pending cases. In the Nelson case, supra, there was deleted from a statute, during the course of its enactment, a provision that would have made it retroactive. The plaintiff argued that the deletion was made because it was merely surplusage, but Judge Vogel stated: "By deleting that part which would have given it a retroactive effect, the Legislature was saying that it should not have such effect. It seems to me that conclusion is inescapable." To me, it is likewise inescapable that when the Council refused to enact Bill 107 as an emergency measure, it was saying that the Bill should not be an emergency measure, in fact or in effect.

In Black, Interpretation of Laws (2nd Ed.), p. 389, the learned author states the rule thus:

"It is said that, in the absence of any express declaration in the act, the question whether it is meant to be prospective or retrospective is one of construction upon the statute, considered per se and in connection with the subject-matter. And the occasion of assist in determining its character as retroactive or prospective. It has also been said that when the Legislature uses a future tense for the statute to go into effect, it thereby plainly shows that it is intended to be prospective only." (Italics added.)

See also McGovern v. Connell, 43 N.J. Law 106; Dewart v. Purdy, 29 Pa. 113; Jackson v. Inhabitants of Garland, 64 Me. 133; Reis v. Graff, 51 Cal. 86. Cf. Lydecker v. Babcock, 26 Atl. 905 (N.J.).

The same author, op. cit., pp. 584 and 585, states: "An amendatory statute, like other legislative acts, takes effect only from its passage, and will not be construed as retroactive, or as applying to prior facts or transactions, or as having retroactive effect, unless a contrary intention is expressly stated or necessarily implied. . . . And where an amendatory act contains a provision that it shall not take effect until a future date, the old law remains in full force until the amendment goes into operation." (Italics added.)

This Court, through Chief Judge McSherry, in Roland Park Co. v. State, 80 Md. 453, stated: "The result which may follow from one construction, or another, of a statute, is always a potent factor, and is sometimes, in and of itself, conclusive as to the correct solution of its meaning." See also Phillips v. Balto. City, 110 Md. 431; Cyrus v. Balto. City, 215 Md. 135; Height v. State, supra. It seems that the unfortunate results pointed out above should weigh heavily towards a conclusion that the Council did not intend Bill 107 to affect pending cases, especially since that intention is derived from no language in the Bill itself, but entirely from general presumptions and rules of construction. I think the case is not moot, and it should be decided in accordance with the law as it was when the variance was granted.

(which was as it had been interpreted by the county officials for years).

Although not basing this dissent upon what follows, it seems appropriate to make one or two observations relative to the majority opinion. It states, "Maryland consistently has followed the rule that an appellate court is bound to decide a case according to existing law." There can be little doubt that this is the general rule, as pointed out above herein, but the quotation is so broad that it is hard to square with such cases as Appeal Tax Court v. W.M.R.R. Co., 50 Md. 274. There, petitions of the appellees under an 1876 law were pending in the court below when the Act of 1878, Ch. 413, became a law. This latter Act repealed the 1876 law. On appeal, it was held that the Act of 1876 was not retrospective, and what had been done under the previous law, although it had been repealed at the time of the hearing of the appeal, was not rendered ineffectual or nugatory. Shepard shows that this case has been followed many times.

Again, in Big Savage Ref. Corp. v. Geary, 209 Md. 360, the trial judge was reversed for applying existing law at the time he heard the case. This Court stated: "The learned trial judge . . . decided that Chapter 82, of the Acts of 1955, supra, effective June 1, 1955, governed the action of the Commission [Workmen's Compensation Commission] in this case. However, the

review of the court is limited to a review of the evidence before the Commission based upon the law in effect at that time. . . . It [Chapter 82] in no way governed the review by the Commission on May 3, 1955, when it passed its order because it was not in effect at that time [italics added].¹ And this was the holding even though Chapter 82 related purely to "procedural" matters (See Peachwood Coal Co. v. Lucas, 215 Md. 248, where the language quoted from Big Savage was repeated. It is cited in the majority opinion with no mention made of this aspect of the case), which, ordinarily, would call for a retrospective application thereof and its application to pending appeals. See the authorities cited above to that effect and those cited in the majority opinion.

Two further observations will be made before concluding. The majority opinion cites the Banner, Lake Falls and Gruen cases, wherein it was held that the issues involved had become moot. In each of those cases, the zoning authorities had changed the zoning classification or done away with the classification altogether. The Court, in Lake Falls, succinctly states the reason for its rulings: "The cause of action, i.e., the zoning classification that was the subject of litigation was extinguished by repeal."

In this case and the language quoted were cited by the appellant. It seems that the majority opinion should answer the quotation, but no mention is made thereof.

In the instant case, there was no reclassification of the property or extinguishment of its former classification, but Bill No. 107 merely took away the power of the zoning officials, after a day certain, to grant density variances. In the Thomas case, 162 Md. 509, cited by the majority, the Legislature, during the pendency of litigation, repealed entirely the former method of appeal in Workmen's Compensation cases and adopted a new one. On the grounds that the new law was purely procedural in nature and, if it did not apply, no appeal whatsoever would be available, it was held that the new law was retrospective in effect. It has little, if any, analogy to the case at bar.

230-250-8



PET Ex 4

BY J.S.S.

SHEET 1 OF 1

DATE 5-10-60

Description of Yorkdale Corp. Property

FILE

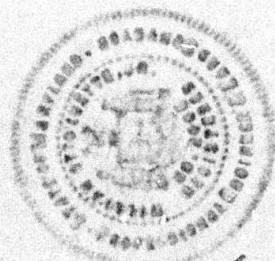
#5831

MAP ✓
#9
SEC. 3-C
RA-XV
4/11/63

BEGINNING for the same at the intersection formed by the east side of York Road and the south side of Hillside Avenue and running thence along the south side of Hillside Avenue, S. $79^{\circ} 23' 20''$ E. 385 feet and by a curve to the right the distance of 303 feet, more or less, to the west side of Cedar Avenue, thence binding on the west side of Cedar Avenue S. $50^{\circ} 43' 20''$ W. 203.00 feet, thence leaving the west side of Cedar Avenue N. $66^{\circ} 02' 40''$ W. 224.50 feet, S. $21^{\circ} 24' 20''$ W. 181.80 feet, S. $68^{\circ} 05' 40''$ E. 54.00 feet, S. $37^{\circ} 38' 20''$ W. 55.30 feet, S. $65^{\circ} 27' 40''$ E. 5.30 feet and S. $41^{\circ} 28' 20''$ W. 55.00 feet to the center line of Terrace Dale, thence binding on the center line of Terrace Dale the five following courses and distances: N. $64^{\circ} 41' 40''$ W. 54.00 feet, N. $68^{\circ} 38' 00''$ W. 65.49 feet, N. $26^{\circ} 06' 40''$ W. 52.20 feet, N. $63^{\circ} 01' 40''$ W. 34.50 feet and N. $71^{\circ} 27' 40''$ W. 165.30 feet to the center line of York Road, thence binding on the center line of York Road N. $12^{\circ} 19' 40''$ E. 273.50 feet, thence S. $66^{\circ} 02' 40''$ E. 45.86 feet to the east side of York Road, thence binding on the east side of York Road N. $12^{\circ} 19' 40''$ E. 129.90 feet to the place of beginning.

CONTAINING 4.9 acres of land, more or less.

Saving and excepting from the reclassification that portion now zoned R-1



Wm. O. Luetkef. No. 2005