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PETITION FO	OR ZONIN	G RE-CLA	ASSIFICAT PTION	ION #5859	
The Bern-Gar Company and which is described petition (1) that the zon	NER OF BALTIMO Development in the description aing status of the h	RE COUNTY: legal owner of and plat attache erein described p	the property situal ed hereto and made property be re-class	I WE	,
Zoning Law of Baltimo				zone to an AP	PA
K-A	zone; for the fo	llowing reasons:			RA
Error in map				1	14/6
	See Attached D	escription			
			in the second		
) for a Special Exception			Zoning Regulation:	of Baltimore	
y, to use the herein des	cribed property, for	r			
roperty is to be posted or we, agree to pay exp g, etc., upon filing of the ations and restrictions of	penses of above re-	lassification and rther agree to a	or Special Excepti nd are to be bound	by the zining	
y.		THE BERN	GAR DEVELO	MENT COMPA	YY
		By: The	lys Glu	le Sundi	of
Contr	ract purchaser	Ву:	и	gal Owner	
255		Address			
/1					
wen Wen	N. C. Gom.	k			
ennegan, Jr. Petit	ioner's Attorney		Protesta	nt's Attorney	
VAlley 5-7500					
ORDERED By The Zonia	ng Commissioner of				
rch	, 196_3_, that the s	ubject matter e	of this petition be	advertised, as	
red by the Zoning Law saltimere County, that p	roperty be posted, a	ind that the publ	pers of general circ ic hearing be had be a Building in Tox	efore the Zoning	

to the

Coun

regu hwen I of M , 1963 ... all 100 ... o'clock County, on the ____ 440 22 631 __

RE: PETITION FOR RECLASSIFICATION retition FOR RECLASSIFICATION from an R-6 zone to an R-A zone, SW corner Old Court Road and Scoth Level Road, 2nd District
The Bern-Gar Development Co.,

BEFORE COUNTY BOARD OF APPEALS THE HEN-GAR SE/cor. of Roads

AR DEVELOPMENT CO. #5859 f Old Court & Scottlinger 2nd

OF BALTIMORE COUNTY

No. 5859

OPINION

This case comes before the Board of Appeals on the appeal of The Bern-Gar velopment Company who seeks reclassification from an R-6 zone to an R-A zone of 14.60 acres of unimproved land located at the southwest corner of Old Court and Scotts Level Roads in the Second Election District of Baltimore County. This land is located on the Western Area land use map which was adopted by the Baltimore County Council, effective November 16, 1962,

The subject property is bounded on the north by a small residential developent, on the south by ten to fifteen old homes, most of which are in a dilapidated condition n the east (and across Scotts Level Road) by several homes estimated to be in the \$15,000 category, and on the west by the Calonial Baptist Church and a new junior high school. These buildings are located near the Old Court side of the land bordering to the west of subject property. The property on the west, (south of the aforesaid church and school) is all wooded land. Also to the south of subject property (approximately 700 feet from its outhernmost property line and about 1500 feet south, along the Scatts Level Road) is the thirty-five acre parcel owned by Leon A. Crane which was recently reclassified from R-6 to R-A, said reclassification being affirmed by the Court of Appeals in DuBay, et al vs. Crane, Case No. 422, September Term, 1964.

The petitioning developer in this case relies primarily on "error" in the exist ing 1962 Western Area land use map to substantiate his request for reclassification. Both Bernard Willemain, an expert land planner who was called as a witness by the petitioners, and George Gayrelis, the Director of Planning for Baltimore County, who was called as a vitness by the protestants, indicate by their testimony that more land for apartment use should have been provided on the aforesaid 1962 Western Area map. This Western Area planning map consists primarily of the rapidly growing Second Election District of Boltimor County. Although the Second District's population in 1960 was approximately 27,500 persons, the testimony showed that a rapid increase is expected so as to result in a population. by 1990, of 79,000 persons. It was indicated that, upon adoption of the map. imately 15% of the coculation in the Western planning area could have been accomtments. Mr. Willemain testified that in an area such as this, provision ould have been made for accommodating 33-1/3% of the families in rental housing, and Mr. Gavrelis conceded that he felt the area should have provided sufficient apartm

ant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of ification should be had; and it further appearing that by reason of... a Special Exception for a... should be granted. IT IS ORDERED by the Zoning Commissioner of Baltimore County this., 19d..., that the herein described property or area should be and the same is hereby reclassified; from a.... __zone to a___ zone, and/or a Special Exception for a should be and the same is granted, from and after the date of this order. Zoning Commissioner of Baltimore County Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of location and that the testimony did not indicate ... sufficient reason to prove error in soning, the above re-classification should NOT BE HAD was IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 2204 May 1966 that the above re-classification be and the same is berein DENIED and that the above described property or area be and the same is hereby continued as and to remain a n "R-6"

Bern-Gar Development - #5859

potential to accommodate 20% of the families. It seems that the Planning Board used, as one of its reasons for not recommending any property in the vicinity of subject property for tment zoning, the fact that an overload on sewer and water facilities would result. The Board finds, however, that this should not have been a factor. It might also be well to note that one of the criteria used by the Planning Board and Planning Staff in recommend ing proposed R-A zoning on the 1962 map was "lo ation along a major arterial highway". Although the Planning Board did not consider Old Court Road as an appropriate artery for the location of apartments at the time it made its recommendation of apartments, we should note that this recommendation was made prior to the opening of the Baltimore County Beltway, and the testimony in this case shows that the traffic along Old Court Road was greatly reduced subsequent to the opening of the Beltway. This fact, coupled with the scheduled widening of Old Court Road, would make subject property an ideal location for apartment

-2-

It is, therefore, the pointion of the Board that there was "error" in the doction of the 1962 Western Area planning map because of the failure to adequately provide for rental housing in this area and failure to give due weight to traffic and highway velopments (particularly the effect of the Beltway opening) in determining locational criteria as applied to the subject property and its use for apartment development.

It is also the feeling of the Board, from the testimony of Mr. W. Worthington Ewell, a recognized traffic expert, that the Old Court Road has a capacity for carrying traffic considerably in excess of its present traffic load. We further agree with Mr. Ewell in his opinion that no traffic safety hazard will be created by the development of 232 apart ment units on the subject property. Mr. William B. Guy, Jr., a well qualified real estate broker, testified that the building of apartments on the subject property would in no way decrease the property values of any single-family residences in the vicinity. He further testified, as a mortgage financing broker, that his company would be willing to undertake the financing of an apartment development such as the one proposed for the subject

For the foregoing reasons, the Board feels there was error in zoning the subject property R-6 on the Western Area land use map, and the reclassification to R-A is hereby granted

MATZ, CHILDS & ASSOCIATES, INC Sources Drawner Highware Sources Developmen Assoriates George W. Beakly Robert W. Crabos Engineera - Serverara - Site Planners 212" N. Charles St. - Baltimore 18, Maryland Robert W. Crahan Laurend M. Glass Norran P. Herran Paul Lee Paul S. Sueton HOpline 7-5700 Reports DESCRIPTION TRACT AT SOUTHERNMOST CORNER OF OLD COURT ROAD 35859 AND SCOTTS LEVEL ROAD, SECOND ELECTION DISTRICT, MAP BALTIMORE COUNTY, MARYLAND 5EL.2-C Present Zoning: R-6 Proposed Zoning: R-A w estern Beginning for the same at a point on the southeast side of Old Court Road as described in the deed from Vernal W. Bell and wife to W. Clarence Such and wife, dated November 19, 1953 and recorded among the Land Records of Baltimore County in Liber J. L. B. No. 2392, Folio 274, at the beginning of the third line of said deed, said point of beginning being in the bed of Scotts Level Road, as the same is now constructed and used, and running thence. binding on the southeast side of said Old Court Road and on a part of said third line, and referring the courses of this description to the Grid Meridian established in the Baltimore County Metropolitan District, (1) S. 73° 31' 18" W., 739. 03 feet to the end of the third line of the land which by deed dated Sentember 26, 1940 and recorded among said Land Records in Liber C. W. B. Jr. No. 1128, Folio 216 was conveyed by M. Constance Bentley to C. Howard Scheid and wife, thence binding reversely on the third and second lines of said last mentioned land, (2) S. 40° 46' 35" E., 527.90 feet, and (3)

S. 77* 40' 40" W., 90,00 feet to a point in the four h line of the land first

herein mentioned, thence binding on a part of said last mentioned line, (4)

MATZ, CHILDS & ASSOCIATES, INC. 129 S. Charles St. . Balances 15, Maryland Page Two

+5859 40° 46' 35" E., 456.86 feet, thence binding on the fifth line of said I rat sentioned land, and to and along the northwest outline of the land which by SEC. 2-C leed dated August 25, 1891 and recorded among said Land Records in Liber # estead M. B. No. 193, Folio 508 was leased by George E. Lynch and wife to and passing over the stone heretofore set at the westernmost ner of said last mentioned land, in all, (5) N. 59* 59' 45" E., 844.47 feet 5/14/63 to the end of the fifth line of said first mentioned land and to the southwest side of Scotts Level Road as referred to in said deed from Lynch to Brown, thence binding on the first and second lines of said first mentioned land, said lines being in or near the bed of Scotts Level Road, as the same is now constructed and used, the two following courses and distances: (6) N. 49° 48° 40° W.,

589.04 feet, and (7) N. 36° 36' 20" W., 214.45 feet to the place of beginning.

HGW-shr

Containing 14.5994 acres of land.

MAP

AREA

J. O. #60017

3/4/63



Bern-Gar Development - \$5859

For the reasons set forth in the aforegoing Opinion, it is this of November, 1965 by the County Board of Appeals, OR DERED that the reclassification petitioned for, be and the same is hereby GRANTED.

- 3 -

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

COUNTY BOAR D OF APPEALS

OF BALTIMORE COUNTY

Baltimore County Department Of Public Borke

COUNTY OFFICE BUILDING

BUT ARE REZITAVE

1PTZONE 2nd District

These comments are furnished in commection with the tof the tentative plan on the subject plat.

CETTICE OF PLANNING CONSENTS:

Prior to the preparation of a record plat, the r should centest the adjacent church to work out an of property resulting in a complete lotting plan and g the full rigit-of-way for Jamite Read.

BUREAU OF ENGINEERING CO-OFENTS.

The following comments are supplementary to our original dated May 11, 1960.

Highway Commetes

Because of the alignment problems with forthe Leval head and GLE Geart Read which here arisen in connection with this subdivision and the subdivision of Christell, the Duveloper's Regimer shall be required to Fernish road construction drawings for those reads prior to recording the final plat.

DIVISION OF LAND DEVELOPMENT COMMENTS.

Compliance with the foregoing comments is messassary prior rebedsedom of final check prints.

Yeary truly yours.

J. Fred affet (MER)

J. FRED OFFUTT, Chief Bureau of Public Services

.. 2129 North Charles Street, Baltimero 18, Md. Nr. Gilbert S. Resem - Engineering - Developers Approval Nr. Timethy Margarum - Realth Disartment

Be: SCOTTS LEVEL ACRES

This is to adrise that the preliminary plan of the sub-ject subdivision has been reviewed and the following comments are furnished investit for the information and guidence of you and your

These comments are based on such information as shown on the preliminary plan and are subject to change anxiors addition with substitution of a new computer plan. They shall not be committed to institute teststire approval, which is sibalized only well-the sign-matures of authorised Committy officiation on the plan stairly

OFFICE OF PLANSING

In eroor that better access and circulation may be provided for GMA Court Junior school and properties to the certificity a re-vised rood and lutting place has been indicated on the publishery plan and should be incorporated on the tentative plan prior to sub-mitting it for ensumit.

It appears that an exchange of properties between the heveloper and the adjacent church will be necessary to obtain the host possible lexiting layest. The Reveloper should contact the church authorities regarding this matter.

Mondow Spring Road should be renamed as Jaunita Road.

Present and proposed soming should be indicated on all future preliminary plans.

STREET MANINO RECOMMENTATIONS:

Spring Court is a duplication.

BURGAU OF ENGINEERING:

The following comments are based on the plat entitled my Subdivision of Scotts Level Acres," District 2, dated

PERSON OF RECOMMEND CONT'D.

Street 23, 1960, with line revisions of street alignment designed to Office of Finning.

-1-

Ney 11, 1960

Ped Plottim District

All others in this subdivision, with the masspine of Old Court Reed and Section Lovel Reed shall be improved with a 3% eco-bination own and gather and monothe proving sections on a 60' right-of-way and shall be the Davaleper's full responsibility.

Cld Court hand is an orising road which shall altimately be improved which a let combination each and grater and meaches paving order to the combination with and grater and meaches paving order to the combination of the combination of the meritae with the production of the combination of the com-nexity of the combination of the combination of the combination of a statement of the combination of all greatest and grate of the combination of the co

The Developer's responsibilities for Old Court hoad and Sootie Level Road shall be as fellows:

- a. The submission of detailed construction drawings to extend a minimum distance of 200° each side of the subdivision or as may be required to establish lise and grade.
- b. The submission of cross-sections.
- o. The dedication of the widening at no cost to the County.
- d. If off-site rend rights-of-may are required to make the mecessary improvements, the Developer's segiment shall french the right-of-may plate and the County will attempt to acquire the right-of-may.

orpartment (Of Bublic Mork

BUREAU OF ENGINEERING Inter-Office Corresponde

Arrit 20, 1955

Elloworth ", Liver J. Fred Cffett Subject SCOTTS LAYER IS S Election District 1 2

BURGAT OF ENGINEERING COTTENTS:

the following comments are bound on the plat plan district 2, dated February Subdivision of Sectio Level Across district 2, dated February S3, 1960, with red line revisions of street alignment desired by the followed Planning.

All streets in the subdivision, with the execution of that fourt Read and fooths have been subdivision of the combination when the subdivision and article street and state a 60° right-of-way and shall be the treetperholder in combinity.

Scotts level Road is an existing read which that!

It is a proposal with a 25 containtion cuch and ratter
and meaning the improves with a 25 containtion cuch and ratter
and reaction with this middle-field proposal and
and ratter and a mindown of 25 of reaction power level the
and ratter and a mindown of 25 of reaction power points the
frontings of the subdivision. The Developer's unploser shall be
foreign to the subdivision. The Developer's unploser shall be
lavel Road thanks engineering thes with that part of Scotte
lavel Road thanks are described by the Government of Chartwell for

And fourt head is an exterior root which shall obtunately be approved with a 12° continuation card and internate increase parting roots and the state of the state of the progressions in commention with this subdividuo metal-new, language in the and a richture of 20 of macedas parting along the frontage of the subdivision. The Developer's informer shall the with Pollar Parts lattice to the west and Chartwell to the northeast of statistics of the state of the state of the state of the continuation of allowers and grade of Old Court Dool,

The Developer's responsibilities for Old Court Ros and Scotts Level Road shall be as follows:

- a. The subminsion of detailed construction drawings to extend a minimu distance of 200° each wide of the subdivision or as may be required to establish line and grade.
- b. The submission of cross-sections.

South Level Action

New 11, 1960

Beller Committe Cont'd:

o. The grading of the widening and origing read to the outablished grads. More adjacent properties and describly affected by the improvements, the foreign shall be financially responsibly for measury repairs to those projection.

-1-

- The communication of combination curb and gutter in its ultimate lengthm and a muriam of 16% of meadan paring adja-cent thereto along the frontage of the
- c. there existing utilities or poles meet be releasted due to read improvements, the leveloper shall be financially responsible for this work.

The enl-de-sac shall be improved with [0] parint reduce with combination care and guilary and sacodan paring on a 100' tilember right-of-may and shall be the Dreal spar's full responsibility.

Mandew Spring Road will extend beyond the limits of the subdivision line an underwipped area, therefore, the investment of engineers the substitution of the substitution for Southern to Sprynd the linit of substitution for Southern to see the substitution of the sub

Sidemika are required throughout bits development. The sealing shall be it wide and installed to conform with the increase (musty be made by the property by places the back clay of the statewalk claimer (county the property by places the back clay of the statewalk claimer of the property shall be seastwarded in secondary with haltimers (county shadows with the seastward depressed owth and research of the seastward depressed out and the statewalks and derivery construction are unabset.)

This plat has been referred to the Sti. a Rends Commission for their comments and approval. An assure has been received and they here no economit.

Stora Brain Commete:

An existing scale treasures the continues corner of the property. The property checks he so graded or other adequate designed facilities product of climate any accumulation of vertee unter-

SCOTTS LEVEL ACRES

May 11, 1960

Storm Drain Comments Cont'd:

The proposed sterm drain in Soctia Lavel Road is shown to continue to an existing drain erossing Scetta Lavel Road. The Developer shall be responsible for the offsite engineering to extend the drain to the exising indicated 30° drain. The drain in both Old Court Road and Scotte Level Road shall be designed for

. . .

The proposed realignment of the subdivision, as shown in red, shall messesitate appropriate revisions in storm drains and easement area.

The Developer shall be responsible for the cost of ten-purary structures and measures required due to sectional development.

A grading plan shall be required for precessing construction

Construction drawings are required. These drawings shall be designed in accordance with Faltimore County Standards and Specifications, and shall be substited for review and approval by the Baltimore County Purers of Engineering. Construction shall be accomplished under a County contract and impression.

The Daveloper shall provide necessary drainings facilities, temporary or otherwise, to prevent creating any nulsances or damages to adjacent properties, especially by the concentration of surface

into of this meditriates shall be entert to desirang assuments. The exect of pira in place up to and including MS diameter within the development, including benefity attents for the listic of the property, shall be paid for by grainger assessment parting costs. The Davidoper is also responsible for the difference in cost of including the parting of the difference in cost of including the parting of the property of the difference in cost of including the parting of the property of the difference in cost of including the parting of the property of the pr responsible for all engineering costs of the system both within and outside the development measurer to provide the proper storm drain

Sanitary Sever Comments:

Sanitary Sever is svallable. The subdivision vill sever into the Geynne Falls Interceptor. An extension of approximately 2,500 of seasoniary sever vill be required. Nevers, the possibility exists that the sever say he extended from the existing sever in the assemblate of the subdivision of Scott kill, adjacent to the posed Baltimere County Beltumy, shown on Drawing No. 57-784, A-10.

SCOTTS LEVEL AGES.

Sand terr Sour Comments, Cont'd:

furniceion to crees the Belinsy mest be obtained from the State Reads Descionies and sequinities of rights-of-way may be required.

-5-

The Brookspar will be responsible for the full east of all more messessary to corre the scholaristics, and for the preparation construction and rights-of-way durnings.

Sower Area Semmetion Charges will not be applicable to the subdivision.

A proliminary print of this subdivision has been referred to haltimere City, Bureau of thier Jupply, for review and commute in regard to adequacy of unter-presents in this development. Further commute concerning enter shall be forthcoming after a reply from

This divelopment is in th) Pilesville Fourth Ecos of votor service and Commertion Area b-W. There will be a Commertion Charg-of \$170,00 per let in addition to the regular front fert assessment.

The Daveloper must expecte a Public Works Assessment for

DIVIDIOS OF LAST DEVELOPMENT CONSTRUCTS:

Upon compliance with the foregoing comments the plan may be submitted for tentative approval.

Very truly yours, J. Fred Offatt (W.E.A.)

J. PRED OFFUTT, Chief,

JPD-188-318-3e

Hate, Childe & Assoc., SLEY N. Charles St., Balto, 15, Kd. Nr. Omesio, Office of Florning St. Broman, Bulkering - Developmen' Design Nr. Brogerma, Balth Department

SCOTTS LEVEL ACRES Page 2

- The dedication of the widening at no cost to the Country.
- d. If off-site road rights-of-way are acquired to make the necessary improvements, the Bershoper's Engineer shell furnish the right-of-way plate and the County will attempt to acquire the right-of-way.
- e. The grading of the widening and existing road to the established grade. Where adjacent properties are adversely affected by the improvements, the Developer shall be financially responsible for necessary repairs to these properties.
- The construction of combination curb and gutter in its ultimate location and a maximum of 16% of meaning paying adjacent thereto along the frontage of the property.
- 5. Where existing utilities or poles must be relocated due to road improvements, the Developer shall be fine-willy responsible for this work.

The cul-de-eac shall be improved with h0' paving radius with combination curb and sutter and mace into paving on a 100' dissector right-cf-way and shall be the Developer's full responsibility.

Headow Spring Road will extend beyond the limits of the subdivision into an underwloped area, therefore, the Beveloper's Regineer shall be responsible to substit profile for Spri or norm beyond the limits of the subdivision or se may be required to establish road greak for these streets within this portion of the

Sidewalts are required throughout this loves longers. The sults shall be 1/4 used and treatable to exceed must hall be supported from the Baltimer County Standards, which places the back edge of the sidewalt one flow off the property line. Durways shall be constructed in assessment with Baltimer County Standards with standard depressed such and 70 countered approx within the right-drawy. Finite of

This plet has been referred to the State Roads Cownission for their convents and approval. An assuer has been received and they have no comment.

Storm Drain Comments:

in existing smale traverses the southwest corner of the property. The property should be so graded or other adequate irainage familities provided to eliminate any accumulation of surface unter doe to this smale.

SCOTTS LEVEL ACRES

Storm Drain Commente: (Cont'd.)

The prepared ricry drain in Sectia Loval Road is about to continue to an existing drain excepting Scotic Loval Road. The Developer shall be responsible for early first the Certain the Arian to the existing indicated by drain. The drain in both GLE Court Road and Scotic Loval Road shall be designed for ultimate development.

The proposed realigment of the subdivision, as shown in red, shall necessitate appropriate revisions in stems drains and ent erees.

The Developer shall be responsible for the cost of spercry structures and measures required due to enctional

A grading plan shall be required for precessing construction

Construction drawings are required. These drawings shall be designed in accordance with Raltimore County Standards and Specifications, and shall be substituted for review and approval by the Raltimore County Burses of Engineering. Construction shall be accomplished under a County contract and impaction.

The Developer shall provide necessity drainage facilities (temporary or otherwise) to prevent creating any mulasances or damages to adjacent properties, especially by the concentration

Lote of this subdivision shall be subject to drainage assessment. Lot of pipe in these us to say including his dissection of the latter of the latter of the latter of the property, shall be paid for by drainage assessment previding the cost thereof does not social 2/3 the Devaloper's road previde costs. The Devaloper is also respectable for the difference surface, and the state of the latter of the difference to the latter of the latter of the difference to the latter of th

Sanitary Separ Com enter

Sanitary sever is evaluable. The substriction will sever into the Saymer Falls Interceptor. An attention of approximately 2000 feet the Saymer Falls Interceptor. An attention of approximately 2000 feet the Saymer Saymer

Senitary Sour Coments: (Cont'd.)

The Developer will be responsible for the full east of all severs messacry to serve the subdivision, and for the proparation of construction and rights-of-way drawings.

Sever Area Connection Charges will not be applicable to the subdivision.

Water Comments

A preliminary print of this subdivision has been referred in regard to decease of texter Duply, for revise and comments in regard to decease of unterpresents in this development. Purther comments concerning water shall be forthcoming after a reply from Salinders City has been reserved.

This divelopment is in the Pikneville hth Ione of unter service and summertion area hav. There will be a summertion charge of \$170.00 per lat in addition to the regular front foot necessors.

The Developer must execute a Public Works Agreement for the above mentioned improvements.

Geam to Diver

BED: ECP: SEC: SAB: RANtruck Bass: (1) Print OC: Nr. Walter X. Oross Nr. Ocerys Lewin Nr. John A. Semeru File

-3-

failed to meet the besic statistical needs for rental housing in this area compatible with the population. In his opinion, a third of the population in an urbanised area such as this should be placed to rental housing areas. The proposed coning map provides rental units for a maximum of 5 or 6%. He further expressed the opinion that he thought it was error in the thinking of the planning stoff of Salitimore County to limit apartment soning to primary arterial or radial highways provided the location of such soning on secondary highways tid not overload the scalitties for water supply, sewence, school facilities or trafficeweys.

Mr. Willemain summarized his opinion at pages 77-73 of the transcript in the following language:

A It is my opinion that this soning map has to be based upon a reasonable comprehensive plan, that the only comprehensive plan that the only comprehensive plan this soning map is based upon is the one recommended by the Planning Office. The Planning Office has no record of having made any estatistical study of population need for apartments, and any attempts to relate their recommendations to his community, or this neighborhood, or to the entire stres, it my opinion, show inadequacy reserver.

Mr. Guy testified that the use of the subject tract for optriment development did not in any manner decrease the value of other residential properties in the assiphormood and that an apartment development for the subject property would be economically sound. Dr. Ewell testified as to the traffic pattern in the area and the to traffic safety hazard would result from the development of the subject property in the number of apartment units specified.

The Protestants produced, in addition to their own testimony in opposition to the proposed real-satisfaction, George E. Gavrells. Director of Flanning in the Salitinore County Office of Flanning and Soning. Mr. Gavrells admitted that the ratio figure of 15% of rantal housing as compared to population was the figure used by the planning staff at the time of the adoption of the rooting map (transcript, page 159) and that 30 to 25% would be the "absolute high" simindard (transcript, page 170). Mr. Gavrells did state that, in his opinion, there was insufficient parameter land provided for on the zoning map in November, 1952. His testiatory at pages 151-167 of the transcript is as follows:

BALLIMORE COUNTY, MARYLAND

#5859

INTER-OFFICE CORRESPONDIUNCE

TO Mr. John G. Rose, Zoning Commissioner Date. May 10, 1963

FROM Mr. George E. Gavrelis, Deputy Director

SUBJECT. #5859. R-6 and R-a. Southeast corner of Old Court Road and Scotts Level Saad. Being preperty of The Bern-Oar Development Company.

2nd Distric

HEARING: Wednesday, May 22, 1963 (1:00 P.M.)

The staff of the Office of Planning and Zoning has rev eved the subject petition for reclassification from R-6 to R-4. It has the following advisory comment to make with respect to pertinent planning factors:

1. The Planning staff expressed its viewpoint and attitude, concerning the validity of apartsent soning in this area, previously in connection with two petitions for soning reclassification along Scotta Level Road. One was granted and smealed: the other was dented.

CEG:bms

"Q So then, my quastion would be directed to you from the Planning staff viewpoint. Wasn't there, in ract, not enough

A I would say, as Director of Planning, that the trends of events since the adoption of the map has indicated that cortainly from a developer's and a market viewpoint there should have been more apartment zoning created on

apartment land placed on the map when it was adopted?

He did further qualify his answer, however, to the effect that he thought the additional epartment land should have been provided along the Liberty Road corridor in close proximity to services and public transportation. This think is was not, however, followed by the County Council in its adoption of the soning map for this area since it did is provide apartment soning on roadways not considered to qualify as being in the arternal highway category.

The Board considered all of the evidence before it and concludes that there was error in the zoning map adopted November 15, 1962, and in the course of its opinion, stated as follows:

"It is, therefore, the opinion of the Foard that there was 'error' in the adoption of the 1962 Western Area planning map because of the Salure to adecuately provide for rental bousing in this area and failure to give due weight to traffic and highway developments, particularly the effect of the Salurey opening) in determing locational orderies as applied to the subject property and its use for partnessed evelopment."

One of the exhibits filed at the hearing before the Board, namely Protestants' Exhibit "A", was an inter-office communication dated May 10, 1983, from Mr. Gavrelis then Deputy Director of Planning, to Mr. Rose, Zoning Commissioner, relating to the subject property. This communication reads as follows:

"The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-5 to R-A. It has the following advisory comment to make with respect to pertinent planning factors:

*1. The Planning staff expressed its viewpoint and attitude, concerning the validity of apartment scoting in this area, previously in connection with two petitions for scoting reclassification along Scotts Level Road. One was granted and appealed;

Both of the percels of ground referred to in the above quoted

JULIUS SOEMERAG AND

VA. IN THE CIRCUIT COURT

VWILLIAM S. BALDWIN. FOR BALTIMORE COUNTY

W. CILES PARKER and A. REUCE ALDERMAN

Constituting the County and Appeals

Of Baltimort County

EXECUTE ALDERMAN

Constitution of County

Constitution of County

Constitution of County

Case No. 3417

Case No. 3417

MEMORANDUM OPINION AND ORDER OF COURT

This case involves an appeal from the County scard of Appeals of Baltimore County (hereinafter referred to as the "Board") which by its Order dated November 8, 1965, granted a reclassification of the property described in this proceeding from an Re-E Zone (Residence, 1 and 2 Family) to an R.A. Zone (Residence, Apartments). The Zoning Commissioner of Baltimore County by his Order dated May 22, 1963, had desided the reclassification for the reason that, in his opinion, the testimony produced before him was insufficient to prove error in the original zoning. The Board found that the evidence before it was sufficient to substantiate a finding of error and, consequently, granted the reclassification.

The Petitioner in the application for reclassification is The Bera-Gar Development Company, legal owner of the tract of land in question. The property contains 14.5 acres of land, more or less, and is unimproved. The shape of the property is roughly that of a parallelogram situate on the southerly side of Old Court Koad and the Easterly side of Scotts Level Road in the Second Election District of Baltimore County, Maryland. The property has a frontage on Old Court Road of 735.03 feet and a frontage on Scotts Level Road of approximately 700 feet, and the northesserry portion of the tract encompasses the roadbed of Scotts Level Road. On the north side of Old Court Road is a development known as

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inter-office memorandum are shown on the Western Area Zoning Map which is involved in the case at bar. Both of these properties were originally zoned R-5 and were rezoned for apartment use on said map by the County Board of Appeals of Baltimore County which reclassifications have become final and both of which reclassifications were based on error in said zoning map. One of these properties is a parcel of land containing 35 acres, more or less, situate on the east side of Scotts Level Road approximately 450 feet south of the subject property. The other of said properties is a parcel containing 11.3 acres of land, more or less, situate between the east side of Scotts Level Road and the Baltimore County Beltway approximately 100 feet south of the southeast corner of the subject property. The reclessification on the 35-acre tract was granted by the County Board of Appeals of Baltimore County by Order dated February 4, 1964, and the reclassification on the 11.3acre tract was granted by the Board under date of Pebruary 27, 1964. These reclassifications are not cited to show any change of conditions in the neighbor hood since the Petitioner in the instant case relies on original error only. They are merely referred to as evidence of the fact that final reclassifications are now in effect in close proximity to the subject property and which reclassifications were the result of a finding of original error in the very same comprehensive zoning map ar is before the Court in the instant case. Both of these cases were appealed to the Circuit Court and subsequently to the Court of Appeals of Maryland (See DuBay v. Crane, 240 Md. 180, decided October 14, 1965, and Wilkinson v. Atkinson, 242 Md. 231, decided April 13, 1966.) It should be observed that both of these cases were not decided on the merits of the respective reclassifications but that the appeals were dismissed on the grounds that the Protestant-Appellants did not fall within the category of "aggrieved parties" in order to be in a position to successfully maintain their respective appeals.

The Appellants principally rely upon the cases of <u>MacDonald v.</u>

<u>County Board</u>, 238 Md. 549 (decided May 5, 1963) and <u>Miller v. Abrahams</u>, 229

Md. 263 (decided June 23, 1968) as authority for the general proposition that there

Authanwood constaints approximately 100 semi-deteched homes which extend on both the west and east sides of Scotts Leval Road. On the south side of Old Court Road extending easterly from Scotts Leval Road to the Baltimore County Baltway are 10 individual one-family residences, some on Re-1 land and some on Re-10 land. The Baltway is 20 individual cone-family residences, some on Re-10 land and some on Re-10 land. The Baltway is approximately 300 feet by way of Old Court Road from the subject property, but by air line is only approximately 400 feet from the southest corner of the property. Adjoining the parcel on the west is the Colonial Baptist Church and then the Old Court Junior High Schoot. Adjoining on the south on the westerly side of Scotts Level Road are several individual home. Of inaxpensive construction which have been in existence for societies and entrance to which is provided by a deed end dirt road, Chickory Hill Lene. The 2 protectants appearing before the Roard were Mr. Julius Rosenhing who resides in one of the semi-datached homes on the north side of Old Court Road, and Mrs. Margaret Resignator who resides in an individual home situate at the southeast corner of Old Court Road and Scotts Level Road.

The subject property was zoned R-S (Residence, 1 and 2 Pamily) on the Western Area Comprehensive Zoning Map adopted by the County Council of Baltimore County on Riovember 18, 1952; The Patitioner in this case claims that there was "error" in the classification of this property as shown on said zoning map. To substantiate this contention, it produced the following witnesses at the hearing before the Board on June 8, 1953; Philip Talles, President of the componets owner of the property; Bernard M. Willemain, an engineer and planning consultant and former Doputy Director of the Baltimore County Planning Commissions William B. Guy, Jr., a realtor, and Walter Worthington Ewell, a Consulting Engineer in Highway Design and Highway Traffic Problems.

Mr. Talles testified that he planned to develop the subject tract in garden type apartnents comprising approximately 232 units. He also stated that water and sewer facilities are available and adequate for this proposed use of the property and this fact is conceded. Mr. Willessain testified that, in his opinion, there was error in the Comprehensive Zoning Map chiefly because it.

is a strong presumption of the correctness of original zoning, or comprehensiv rezoning, and that to sustain a piecemeal change therefrom there must be strong evidence of mistake or a substantial change in conditions. There is no question concerning the existence of the "mistake-change" rule in Maryland. The Appellants also cite Miller v. Abrahams, supra in support of the prevailing general rule that an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant. There can be no quarrel as to the existence of this general rule and its application to all expert testimony in any litigation including zoning cases. It is in the application of these rules to the facts and evidence in each particular case wherein "lies the rub". The crux of the matter is to determine whether or not an expert's reasons in support of his conclusion are of such a substantial nature as to logically appeal to a reasoning mind. In Miller v. Abrahar s., supra, the Court of Appeals concluded that the reasons given by Messrs. Gavrelis and Willemain were not of a substantial nature on the question of original error. In the earlier case of lobar Corp. v. Rodgers Forge. 236 Md. 106 (decided July 24, 1964), the Court of

We turn to the question of error in the original coning, Again, we start off with the same presumption of validity. The Depthy Director of Flanning did not consider the R-6 scoling of the subject property in 1855 to be a nerror in original zoning, although it was "suspect" and "naybe" erroseous them. Mr. Willemain tokend that it was his "considered opinion" that the Willemain tokend that it was his "considered opinion" that the research for reaching that conclusion (grant we do not present them here). Although the above may constitute some conflict to the testimony relative to original soning, we are unable to monoiside that this left the record barren of substantial, supporting facts relative thereto. The Board stated that it was "impressed with the testimony of Mr. Willemain regarding the impression of the testimony of Mr. Willemain regarding the previous holdings, reverse the Board's action, in the absence of a showing that the evcoptance of the opinion was arbitrary and capricious in a legal sense. Cf. Robdet v. County Board, supra. Consequently, we hold that the cursation of content was the original souther was high the original souther was high the babelse.

Appeals concluded otherwise. At pages 121-122, the Court said:

It is not the province of the Court, however, or resolve the various conflicts in the evidence before the Board if there is, in fact, any evidence of a substantial nature supporting the Board's action. In Mothershead v. Ed. of Comm'rs, 240 Md. 365 (decided November 18, 1965), the Court in quoting from Judge Hammond's opinion in Board v. Oak Hill Farms. 232 Md. 274 p. 283 stated at pages 371-372 as follows:

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*** * * the courts have exercised restraint so as not to substitute their judgments for that of the apency and not to choose between equally persistable inferences or make independent obsernations of fact, because to do so would be exercising a non-judicial role. Rather, they have attempted to decide whether is rescoring main could resecoubly have suched the result the agency resched upon a little confidention of the face judicial paties.

"In the cases dealing with consideration of the weight of the evidence, the natter seems to have come down to whether, all that was hefore the aquency considered, its action was clearly erroneous or, to use the phrase which has become standard in Maryland zoning cases, not fairly debatable.

See also the following recent cases: Finney v. Halle, 241 Md 224 (decided February 2, 1986); Dill v. The John Corp. 242 Md. 18 (decided March 15, 1956); Bonnie View Club v. Glass. 242 Md. 46 (decided March 22, 1955); Beth Tfiloh v. Blum, 242 Md. 84 (decided March 29, 1955); Board v. Parr. 242 Md. 351 (decided April 26, 1966); and Vogel v. McCosh, 242 Md. 371 (decided April 28, 1956).

The Petitioner in the instant roning case does not suggest that the existing zoning would result in confiscation and thus require rezoning, but the element of confiscation need not be present to support po the finding of original error by the County Board of Appeals of Baltimore County, the designated agency. As was stated by the Court of Appeals in Dill v. The Jobar Corporation, supra at

"Even though the existing zoning does not result in confiscation and thus require rezoning, original error may permit the agency to which the controlling legislative body has entrusted individual rezoning properly to change a classification, Overton v. Co. Commissioners, 225 Md. 212, if it does so on evidence before it which is substantial enough to permit reasoning minds reasonably to conclude that the strong presumption of the correctness of the original zoning or comprehensive rezoning has been overcome."

The Court continued in the concluding paragraph of the opinion in this case as follows:

"In the case before us there is no need to consider whether as a matter of law the residential rescoting was conficiently and compelled rescoting and we do not do not work to the president of The Dober Control and the state of the president of the post of the president of the pres

The situation of the trial Court in passing on appeals in zoning cases is somewhat analogous to its function in the trial of an automobile negligance case before a Jury. If there is legally sufficient evidence of negligence on the part of a Defendant, the Court is required to submit this issue to the Jury's determination. It may not always be in agreement with the Jury's verdict on such issue. If a trial Judge had been sitting in the instant case with the three members of the County Board of Appeals, acting in the capacity of a Jury, the question is posed as to whether or not there was legally sufficient evidence presented to require the Judge to submit the issue of original error to the Board for its determination as a Jury and upon which it could base a verdict. The Court is of the opinion that it would have been required to do so and would not have been entitled to withdraw the case from the consideration of the Board as Jury because of the lack of legally sufficient evidence on this issue. It is undoubtedly true if such were the practice there would be occasions when the trial Judge would disagree with the Board's verdict or finding as a Jury, the same disagreement as is prevalent in the trial of negligence cases. Once a Jury's verdict is returned, however, it is not within the province of the trial Judge to substitute his judgment for that of the Jury in ruling on a motion for new trial or judgment N.O.V. provided there was a legal basis for the Jury's decision.

In a zoning appeal case such as the one at bar, the Court, in its limited function of judicial review, may not substitute its judgment for that of the Board; and if the evidence supporting the decision of the Board is substantial and reters the question of its action fairly debatable, the Board must be affirmed.

The Court is of the opinion that, considering the entire record before the Board, the Board's action was not clearly erroneous and was not arbitrary or capricious or illegal, but on the other hand was fairly debatable. Having determined this, the Court has fulfilled and exhausted its limited judicial function in Leviewing a zoning appeal.

For the reasons stated and in conformity with the foregoing opinion, it is this 27th day of July, 1966, by the Circuit Court for Baltimore County ORLERED that t. e Order of the County Board of Appeals of Baltimore County dated November 8, 1965, be and the same is hereby affirmed.

> /a/ Walter M. Jenifer Walter M. Jenifer JUDGE

JULI US ROSENBERG IN THE CIRCUIT COURT MARGARET RENGHORES FOR BALTIMORE COUNTY WILLIAM S. BALDWIN, W. GILES PARKER and R. BRUCE ALDERMAN, AT LAW Mire. Docket No. COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY 40 3427

CERTIFICATE OF NOTICE

oning File 15859 - Bar Gar Developer

Pursuant to the provisions of Rule 1101-8 (4) of the Maryland Rules of Preand any William S. Boldwin, W. Giles Perker and R. Bruce Alderson, constituting the County Board of Appeals of Boltimore County, has given notice by mail of the filling of the Appeal to the representative of every party to the proceeding before it; namely, A. Owen Hennegen, Jr., Esq., Jefferson Bullding, Tawson, Maryland 21204, Attorney for the Petitioner, and Walter 1. Self, Esq., 1400 Court Square Building, Baltimore, Maryland 21202 and Bertram M. Goldstein, Eq., 712 Garrett Building, Baltimore, Maryland 21202, Attornays for the Protestante, a copy of which notice is attached hersto and prayed that It may be made a part thereof.

I hereby certify that a copy of the aforegoing Certificate of Notice has been A. Owen Hennegen, Jr., Esq., Jefferson Sullding, Towson, Maryland 21204, Attorney for the Petitioner, and Walter I. Self, Esq., 1400 Court Square Building, Beltimore, Maryland 21202 and Bortrom M. Goldstein, Esq., 712 Garrett Building, Beltimore Maryland 21202, Attorneys for the Protestants, on this 6th day of Documber, 1965.

Edith To Elsenhert, Secretary County Board of Appeals of Beltimore County

JULIUS ROSENBERG and MARGARET RENGHOPER IN THE CIRCUIT COURT FOR vs. WILLIAM S. BALDWIN, BALTIMORE COUNTY W. GILES PARKER and R. BRUCE ALDERMAN AT TAW Constituting the Cou Defendants

ORDER FOR APPEAL

Mr. Clerks

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Please note an Appeal on behalf of Julius Rosenberg and Margaret Renghofer, from the County Board of Appeals of Baltimore County to the Circuit Court for Baltimore County, in the matter of a Petition for Reclassification from an "R-6" Zone to an "R-A" Zone, located on the southwest corner of Old Court Road and Scotts Level Road, in the 2nd Election District. This Appeal is from the decision of Petition No. 5859, of the County Board of Appeals of Baltimore County, dated November 8, 1965, granting the request for Reclassification. This Appeal is filed pursuant to the provisions of Maryland Rules

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TO HE AND MARKET

WALTER I. SEIF, JR.

WALTER I. SEP. IR. Attorney for Petitio

I HERETY CERTIFY that on this 3 rd day of Desember 145 Require, Bertram M. Goldstein, Esquire, and to the County Board of Appeal

JULIUS ROSENBERG MARGARET RENGHOFER Petitioners

IN THE CIRCUIT COURT

BALTIMORE COUNTY Misc. Docket

8/40/3427

V. GILES PARKER and BRUCE ALDERMAN Defendante

netituting the Board of Appeals of

WILLIAM S. BALDWIN,

. PETITION TO INTERVENE

The Petition of the Bern-Gar Development Company, by A. Owen Hennegan, its attorney, respectfully shows:

- 1. That on May 22, 1963, a hearing was held before the Zoning Com missioner on the Petition for Reclassification from R-6 to R-A on the property owned by the Bern-Gar Development Company, said property being on the southeast corner of Old Court Road, and Scotts Level Road, Second Election District, which Petition was denied by Order of the Zoning Commissioner, dated May 22, 1963.
- 2. That subsequent thereto, an Appeal was filed with the Baltimore County Board of Appeals by the Bern-Gar Development Company
- 3. That on June 8, 1965 and July 27, 1965, hearings were held before the Baltimore County Board of Appeals; that on November 8, 1965, the Board issued its Order and Opinion, reversing the decision of the Zoning Commissioner of Baltimore County, that the Reclassification from R-6 to R-A be desied, and therewith granted same
- appeal from the decision of the circuit Court for Baltimore County, and a copy of the Order to Appeal and Petition thereon was served on your Petitioner, through its council of Petition thereon was served on your Petitioner, through its council of Petition thereon was served on your Petitioner, through its council of Petition through the council of Petition through through the council of Petition through through through the council of Petition through the council of Petitio

fore prays the Court to pass an Order:

a) Granting it leave to intervene in these proceedings as Party-Defendant

b) Granting it leave to file an Answer to the Petition filed

A. Owen Hennegan 406 Jefferson Building Towson, Maryland - 21204 VAlley 5-7500 Attorney for Petitioners

ORDER OF COURT

. 1965. by The

Circuit Court for Bultimore County.

IT IS THIS

ORDERED, that leave be granted as prayed.

John E. Ramedo JUDGE

I HEREBY GERTIFY, that on this day of Merenter, 1965, a copy of the foregoing Petition to Intervene and Order thereon was mailed to:

14 day of Mumber

Walter I. Seif, Jr., Esq., 1605 Court Square Building, Baltimore, Maryland 21202, Attorney for Appellants; Bertram M. Goldstein, Esq., 712 Garrett Building, ore, Maryland - 21202, Attorney for Appellants; and The Baltimore County Board of Appeals, County Office Building, Towson, Maryland - 21204.

A. Owen Hennegan



Location of Signe SE Car Med Court Red & Scotts Level Rea

