

HARRY GARDNER
Appellant
vs
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
Appellee
LEE C. HANDELMAN et al
Intervening Appellee

THE CIRCUIT COURT
NO. ALTIMORE COUNTY

MEMORANDUM OPINION

Harry Glardine, legal owner of the property which is the subject of this case, filed a petition for zoning reclassification on May 7, 1962, with the Zoning Commissioner of Baltimore County. By a written opinion dated September 27, 1962, the Deputy Zoning Commissioner granted the petition to change the classification from an "R-4" zone to an "R-A" zone. Lee C. Handelman and other residents of the neighborhood appealed to the County Board of Appeals to prevent the reclassification. On March 3, 1964, the Board of Appeals reversed the action of the Commissioner and denied the petition. From the Board's decision Mr. Glardine appeals to this Court.

The subject tract of 6.84 acres lies in the Lutherville area of the Eighth Election District of Baltimore County. It sits on the southwest side of Spring Avenue, is cut by East Park Drive and West Park Drive, and lies near to Monte Avenue on the west and Ridgewood-Lutherville Drive (now a paper street) on the south. The testimony indicates that the land is presently unimproved, that its topography is generally flat, and that rather dense vegetation exists in several sections. Residential developments exist to the north, south, east, and west of the subject property; the houses in the surrounding neighborhood are single-story cottages having a current market value of \$15,000 to \$18,000 each. The major impediment to converting the Glardine tract to residential uses appears

TELEPHONE 632-3000		INVOICE	
BALTIMORE COUNTY, MARYLAND		No. 20819	
OFFICE OF FINANCE		DATE	
Division of Collection and Receipts		COUNTY BOARD OF APPEALS	
COURT HOUSE		(Zoning)	
TOWSON 4, MARYLAND			
To: Frank E. Clesse 121 W. Susquehanna Avenue Towson 4, Maryland		County Board of Appeals	
EXPENDITURE TO ACCOUNT NO. 01-712		QUANTITY	
DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE		COST	
Cost of Certified Documents - No. 63-72 Harry Glardine 28/5 East Park Avenue 28/5 Spring Avenue 8th District		\$ 7.00	
4-1064 2272 = 20819-71P-		700	
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.			

Board was of the unanimous opinion... that this tract only failed to prove that the County Council was in error in the adoption of the Eighth District land use map... by placing this parcel of land in the R-4 classification. "and that the subject tract would be developed under its present R-4 classification. (Opinion of the Board of March 3, 1964). However, it is the legality of the decision of the Board of Appeals which is the subject of judicial review; and the issues of fact which produced such divergent opinions below are not being tried in this Court. The present proceeding is an appeal and as the Court of Appeals has said many times, the scope of appellate review is narrow indeed. In *Johnson v. Board of Zoning Appeals*, 212 Md. 286 (1957), at page 294, the Court stated its views on this subject in a passage which has been quoted many times since:

"Of course, it has been stated many times by this Court that the Courts will not substitute their judgment for that of the Board, the legislative body. If the question decided was fairly debatable. It is not the function or right of the Courts to pass or reason but only to determine whether the legislative body has properly applied the governing law to the facts. If there is room for reasonable debate as to whether the facts justify the action of the Board, such action must be upheld. It is only where there is no room for a reasonable debate or the record is barren of supporting facts that the Courts can declare the legislative action of the Board arbitrary, capricious, discriminatory or an unequal application of the law. If there are substantial facts to justify the action of the Board the Courts must affirm the action. The review by the Courts is very narrow in scope and even though the Courts may not feel the decision of the Board was the best that could be rendered under the circumstances, nevertheless the Courts will not set aside the Board's view of the matter if there is substantial evidence to justify its findings and its action is not arbitrary, capricious or discriminatory."

II.

Richard I. Smith, petitioner's first witness, is an assistant project engineer with the firm of Metz, Childs and Associates, civil engineers and surveyors. He testified that, the present culvert being inadequate, some \$377,000 would have to be expended for storm drainage (see page 27, trans.).

through the entire length of the subdivision. Mr. Lee's was a split road, with a flood plain in the center, a graded flood plain.

I have approached it one way, and that is to slide the water subdivision to the west, or the northeast, and carry the storm drainage through on the east property line.

After several pages of developing his estimates (pages 111-119), the witness arrived at a cost-per-lot of \$2,921:

Q. In your opinion, based on your involvement with the planning of developments in the adjacent area is the development cost that you have arrived at accurate?

A. No. It is a little higher than what I consider is a good figure and in today's market usually you are your estimating cost on a Public Works Agreement basis in a cottage lot development, are running in the area of \$2,500. When it goes over \$2,500 we look twice. If it is under \$2,500, it is not too far out of range. I have some that are over \$2,000 and they are still going ahead and making money.

His projected cost per lot for semi-detached houses, permissible under R-6 category, was \$2,675.

Testimony from Dr. Walter Swell, a professional traffic consultant, indicated that the projected 88 apartments would generate only 22 vehicles more per hour on either GreenSpring Avenue or Ridgewood Drive, and that, consequently, there would be no danger of congestion on either street. Offsetting this testimony, however, was the testimony of several of the protestants, who pointed out the narrowness of the existing streets, the lack of paving, the poor drainage, and the sharp curves in the area's roadways.

Further review of the transcript is unnecessary and would be unproductive for present purposes; it seems clear that the prime questions in this case are factual, not legal. It is the function of the Board to see and hear the witnesses and to evaluate the reasons upon which their conclusions are based. After consideration of the record of this case, applying the tests laid down by the Court of Appeals in the *Johnson* case, and remembering that loss of personal profit, even if serious, will not justify otherwise impermissible

Board was of the unanimous opinion... that this tract only failed to prove that the County Council was in error in the adoption of the Eighth District land use map... by placing this parcel of land in the R-4 classification. "and that the subject tract would be developed under its present R-4 classification." (Opinion of the Board of March 3, 1964). However, it is the legality of the decision of the Board of Appeals which is the subject of judicial review; and the issues of fact which produced such divergent opinions below are not being tried in this Court. The present proceeding is an appeal and as the Court of Appeals has said many times, the scope of appellate review is narrow indeed. In *Johnson v. Board of Zoning Appeals*, 212 Md. 286 (1957), at page 294, the Court stated its views on this subject in a passage which has been quoted many times since:

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spot zoning, this Court cannot say that the County Board of Appeals acted arbitrarily, capriciously, or abused its powers in concluding that the Glardine tract can be developed under its present residential classification. The appellant contends that Mr. Handelman assumed certain attitudes of Baltimore County, relating to his opinion and plan of the development of the tract of land in question. Mr. Handelman based his assumptions on his general knowledge and past experience in related problems with the County, and to some extent to discussions with officials of the County on the problems in this case. The appellant offered no evidence to contradict the testimony of Mr. Handelman on these matters.

The law is well settled that the zoning classification established by the zoning map, adopted by the legislative authority, is presumed to be correct, well planned and intended to be permanent, and the burden rests upon the owners of the property to show that such classification was erroneous. It also seems to the Court that it was incumbent upon the property owner to offer testimony to show that Mr. Handelman's assumptions were erroneous. The Court cannot take judicial notice of the rules, regulations and policies of the Department of Public Works and other county authorities. The decision of the Board is affirmed.

November 12, 1964

Walter I. Barrett, Judge

Adding to house construction charges, area assessments, and road costs, the total investment would equal \$414,000, or \$15,934 per lot to develop, not including engineering and inspection fees, grading fees, and the initial cost of the land itself. The Board Glardine's initial outlay for apartment development would be slightly higher, a total of \$415,000, but that, requiring 18 garden type units, this would involve only \$4,800 per apartment unit. Under cross-examination Smith stated that he had not investigated the economic feasibility of semi-detached houses.

Paul Lee, petitioner's second witness, also an engineer with Metz, Childs and Associates, while agreeing with Mr. Smith's estimates, proposed an open channel rather than a box culvert as a means of controlling the stream. The proposed channel would be 102 feet wide, running the length of the property for approximately 750 feet, and cut to a depth of a foot and a half. Projecting a total cost of \$153,000 by using this method, the cost per lot would be reduced to \$7,100. Mr. Lee, too, recommended apartment development, as shown under his interpretation of Baltimore County planning requirements, "the width of the channel could be reduced considerably, if we went to apartments." (page 81).

John Hochader, Jr., one of petitioner's main witnesses, is an associate member of the firm of C.V. Stephens, Jr. & Associates, a firm of surveyors, engineers, and landscape architects. As an alternative to either the box-culvert method proposed by Mr. Smith or the open-channel method proposed by Mr. Lee, Mr. Hochader submitted a plan in which the course of the stream itself is changed. Rather than attempting to cope with the stream as it flows through the middle of the tract, Mr. Hochader would alter the stream bed and carry the stream flow to the edge of the eastern property line. On page 106 he explained:

Well, the cost on my particular study is one that, it is a study that has not been brought forth in testimony as yet. Mr. Smith's testimony was for piping the drainage

**BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS
BUREAU OF PUBLIC SERVICES
Inter-Office Correspondence**

63-72

From: George A. Heller
To: John G. Reese
Subject: Harry Glardine Property
Reclassification from R-4 to R-A Zone
Located on S/E side of East Park Drive and
S/W side of Spring Avenue
District 8

Attention: James Dyer

The reclassification of the captioned site should be subject to an approved drainage study by the Bureau of Engineering and the Bureau of Public Services.

George A. Heller
George A. Heller
Assistant Chief
Bureau of Public Services

GAL:rb

[illegible]

THE JEFFERSONIAN,
Samuel S. Smith
 Manager.
 Cost of Advertisement, \$.....

By Frank E. Ciccone
121 W. Susquehanna Avenue
Towson 4, Maryland
Valley 3-6763

I hereby certify that on this _____ day of March, 1964, copy of the foregoing Order for Appeal sent to the County Board of Appeals by personally delivering the same to the Secretary of said Board at its offices, County Office Building, Towson 4, Maryland.

Frank E. Ciccone

Signature of Harry Giardina respectfully represents

1. That he was the applicant in zoning case 65-72 before the County Board of Appeals, said application seeking a reclassification of a parcel of land therein described from an "B-6" zoning classification to an "B-1" zoning classification.

2. That a hearing was held on said application before said County Board of Appeals following which hearing the said County Board of Appeals rendered its Opinion and Order dated the 3rd day of March, 1964 denying the reclassification applied for.

3. That the action of the County Board of Appeals in denying the reclassification applied for was erroneous in the following respects:

- a. That the action of said Board was arbitrary.
- b. That the action of said Board was against the evidence.
- c. That the action of said Board is not supported by any substantial testimony in the record herein.
- d. That the said Board misconstrued and misinterpreted the evidence we before it.
- e. That the Board erred in the admission of testimony.
- f. That it is apparent from the Opinion of said Board that it relied upon matters and facts beyond the record in this case.
- g. That it is apparent from the Opinion of said Board that it was confused, misinformed and had an inaccurate recollection of the evidence.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

12
 Date of Posting: Aug 30, 1963
 Posted for: Harvey Shust Sept. 13, 1963, at 1:20 PM. Release for: John R. G. to A. B.
 Location: North Arlington
 Potition of property: 1/2 of E. Park Dr. & S.W. 1/2 of Spring Ave.
 Location of Sign: 1 sign on Morris Ave. & Stream South Cor. of Arlington
1 sign Intersection Green Spring St. & North Morris Ave. Along the
side and one of the same on Hwy
 Name: J. B. Rose
 Date of return: Sept. 6, 1963
 Posted by: J. B. Rose Signature
 2 signs

[illegible]

h. That the record in this case shows that there has been a genuine change in conditions since the time that the Petitioner's property was originally seized and the conclusion of the Board to the contrary is not supported by any substantial evidence.

i. That the Petitioner herein is unable to develop his property economically in accordance with the present zoning and the conclusion of the Board to the contrary is not supported by any substantial evidence.

WHEREFORE, your Petitioner prays:

1. That this Honorable Court may reverse the action of the County Board of Appeals herein.
2. In the alternative that this Honorable Court may remand the case to the County Board of Appeals for additional testimony and consideration.
3. And for such other and further relief may be appropriate.

By _____
Frank E. Cicone
121 W. Susquehanna Avenue
Towson 4, Maryland
Wally 5-6765

I hereby certify that on this _____ day of March, 1964, copy of the
aforegoing Petition accompanying Order for Appeal was sent to the
County Board of Appeals by personally delivering the same to the
Secretary of said Board at its offices, County Office Building,
Towson 4, Maryland.

Frank E. Cleone

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts
COUNTY HOUSE
TOWNSON A, MARYLAND

No. 196963
DATE 10/50/83

To: W. Gilson Parker, Esq.,
717 11th Building
Baltimore 2, Md.

SUBJECT: Office of Planning & Zoning
119 County Office Bldg.
Townson 2, Md.

QUANTITY	DESCRIPTION TO ACCOUNT NO.	TOTAL AMOUNT
	APPROXIMATE UPPER SECTION AND RETURN WITH FOUR (4) INCHES	COST
	Apparel Cook - Property of Harry Glardina - No. G-72	\$70.00
	FBI - Baltimore County Jail - Civil All Funds	
	10 5143 3917 * * * TEL *	0.00

(3)

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

RE: PETITION FOR RECLASSIFICATION
from an "R-4" Zone to an "R-A" Zone,
SE/5 of East Park Drive and
SW/5 of Spring Avenue
8th District
Harry Girdiano, Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 63-72

OPINION

This is a petition for reclassification from an "R-4" Zone to an "R-A" Zone on the southeast side of East Park Drive and the southwest side of Spring Avenue in the Lutherville area. The subject tract is approximately 6.8 acres in area and is presently unimproved.

The petitioner laid great stress on the fact that a stream runs through the property and would thereby result in such high outlays for storm drains, etc., to control this stream so as to make it economically unfeasible to use the land for "R-4" development. However, witnesses for the petitioner produced greatly varying amounts as to their estimates for such storm drains. Mr. John Hochstetler, surveyor and engineer who testified for the petitioner, submitted a revised plot in which the stream had been carried to the edge of the property.

It was testified that 30 "R-4" homes could be built on the property as compared to 80 garden-type apartment units.

Residents in the area objected to the proposed reclassification on the grounds that it would adversely affect the value of their homes and would create traffic hazards in the surrounding narrow streets which have no sidewalks.

In reviewing the testimony presented to the Board of Appeals, it is the unanimous opinion of the Board that this testimony failed to prove that the County Council was in error in the adoption of the Eighth District land use map in November, 1962 by placing this parcel of land in the "R-4" classification. There have been no changes in the map in the area of the subject property. The Board is of the opinion that the subject tract could be developed under its present "R-4" classification and, therefore, that this petition for reclassification be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 3rd day of March, 1964 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby denied.

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

ACTING CHAIRMAN

Notes: Mr. Kaufman did not sit at this hearing.

PETITION FOR ZONING RE-CLASSIFICATION #63-72 AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Harry Girdiano, legal owner, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof hereby petition (1) that the zoning status of the hereto described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an R-4 zone to an R-A zone; for the following reasons:

See Attached Description

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

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above reclassification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract purchaser
Address: Harry Girdiano
Legal Owner
Address: 1112 Park Avenue
Petitioner's Attorney
Address: Charles S. Mack
Protestant's Attorney
Address: W. T. Kelly

ORDERED BY The Zoning Commissioner of Baltimore County, this 7th day of May, 1964, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 7th day of September, 1964, at 10:00 o'clock P.M.



MATZ, CHILDS & ASSOCIATES, INC.
2129 N. Charles Street - Baltimore 18, Maryland
Page Three

to the southeast side of said alley, thence binding thereon Northeasterly 36.75 feet, thence leaving said alley and binding on the rear lines of Lots No. 3 and No. 2, Section C, Southeasterly 120 feet, thence binding on the dividing line between Lots No. 1 and No. 2, Section C, Southeasterly 138.75 feet to the northeast side of Spring Avenue, heretofore mentioned, thence binding thereon Northwesterly 160.82 feet to the place of beginning.

Saving and excepting that portion of the 10 foot alley located between Lots No. 3 and No. 4, Section C, as shown on the said plat of Luther-Villa. Being all of Lots No. 2, No. 3 and No. 4 Section C as shown on Plat No. 2, Luther-Villa as recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 8, Folio 13.



RE: PETITION FOR RE-CLASSIFICATION
from an "R-4" Zone to an "R-A" Zone,
SE/5 of East Park Drive and
SW/5 of Spring Avenue-8th Dist.
Harry Girdiano-Petitioner

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
Case No. 63-72

The petitioner has requested a reclassification from an "R-4" Zone to an "R-A" Zone of subject tract of land consisting of approximately 6.8 acres. The property is literally bisected by a stream. The petitioner desires to erect five garden type buildings consisting of eight-eight units. There would be 40 direct parking for 100 cars.

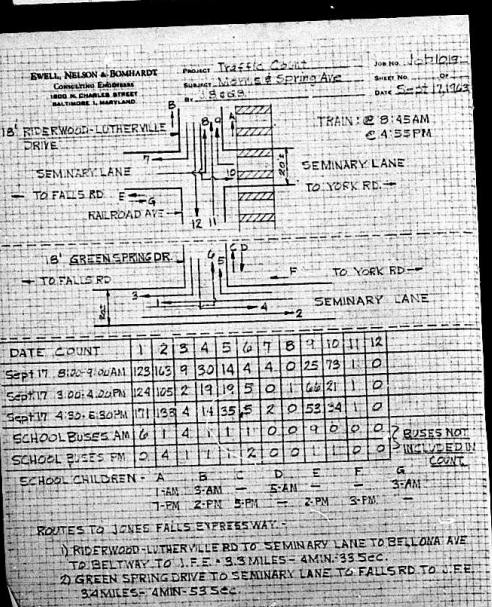
Mr. Richard L. Gethy, Assistant Project Engineer, testified on behalf of the petitioner. He stated that he has made an exhaustive study in connection with the development of subject tract for an R-4 development and came to the conclusion that it would cost approximately \$107,000.00 to provide the necessary utilities and storm drain for an R-4 development. It was his opinion that if the land were developed for R-4 purposes, a total of 26 homes could be constructed and the cost \$15,000.00 per lot. It was his professional opinion that it would not be economically feasible to develop subject tract for R-4 purposes and the logical use of the land would be for garden type apartments.

Mr. Walter Beall, a qualified traffic expert, was engaged by the petitioner to make a traffic study in connection with the proposed use of the land for garden type apartments. Mr. Beall testified that the bulk of the traffic from the apartment project would be by way of Green Spring Drive and Ridgewood-Lutherville Road to Seminary Avenue. He felt that on the basis of 60 dwelling units, there would be no more than 23 cars per hour during the two morning peak hours on Green Spring Drive and on the Ridgewood-Lutherville Road. Testimony revealed that Green Spring Drive and Ridgewood-Lutherville Road are 104' wide and that Morris Avenue which borders subject tract on the west side has a paved portion of some 31'. It was Mr. Beall's professional opinion a paved portion of some 31'. It was Mr. Beall's professional opinion that if the proposed zoning for apartments was granted, there would be no traffic hazard so far as the immediate neighborhood is concerned.

It is the opinion of the Deputy Zoning Commissioner, the petitioner have shown conclusive testimony that subject tract is unfit for R-4 development and that has shown error in the official zoning. It is felt the most logical use of the land would be for an R-A development.

It is recommended by the Deputy Zoning Commissioner this 27th day of September, 1963, that the subject property should be and the same is hereby reclassified from an R-4 zone to an R-A Zone, subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

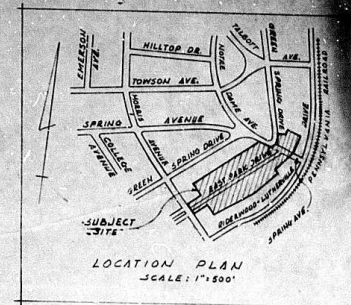
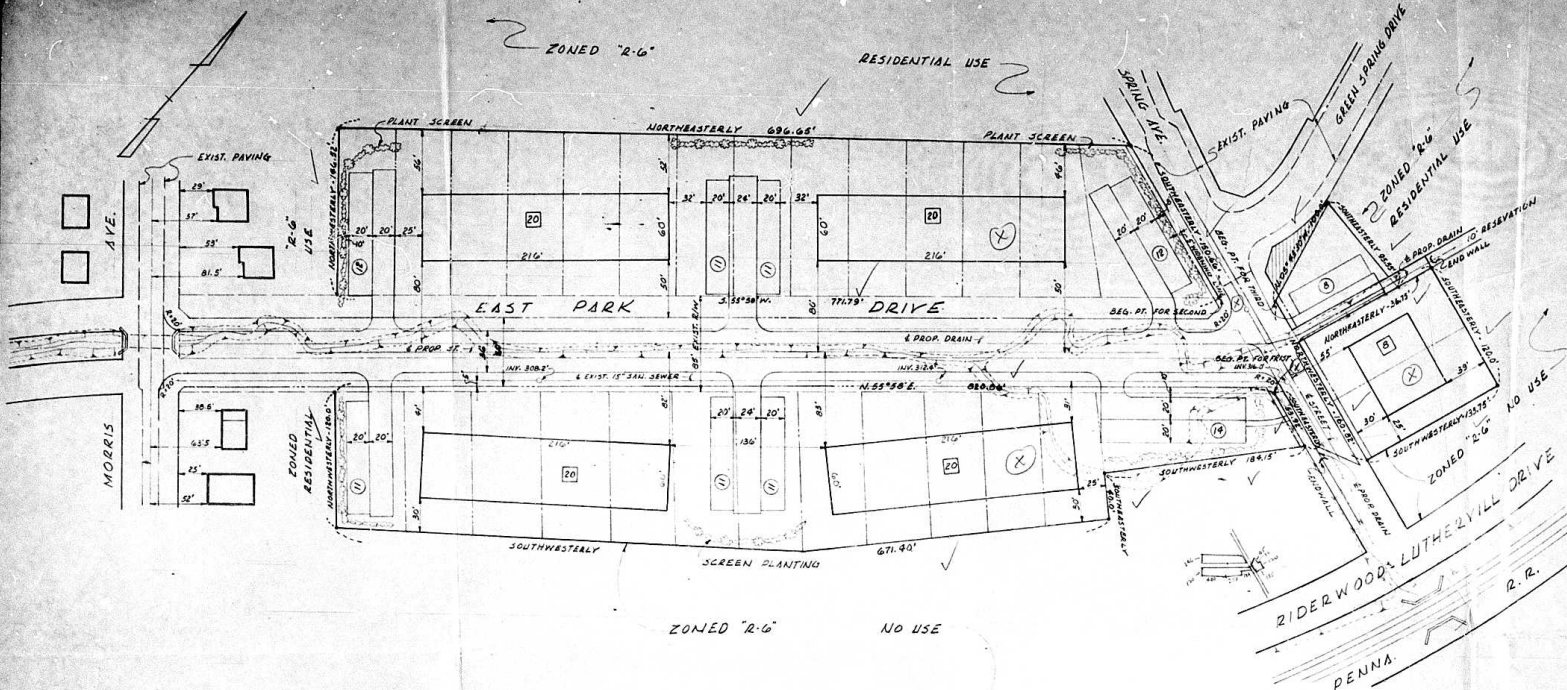
Edward D. Hubert
Deputy Zoning Commissioner of
Baltimore County



DATE	COUNT	1	2	3	4	5	6	7	8	9	10	11	12
Sept 17 8:00-9:00 AM	123	103	9	30	14	4	0	25	73	1	0		
Sept 17 3:00-4:00 PM	124	105	2	13	19	5	0	1	68	21	1	0	
Sept 17 4:30-5:30 PM	11	138	4	14	35	5	2	0	58	34	1	0	
SCHOOL BUSES AM	6	1	4	1	1	1	0	0	0	0	0	0	
SCHOOL BUSES PM	0	4	1	1	1	2	0	0	1	1	0	0	
SCHOOL CHILDREN	A	B	C	D	E	F	G						
	1 AM	3 AM	5 AM	5 AM	5 AM	5 AM	5 AM						
	7 PM	2 PM	2 PM	2 PM	2 PM	2 PM	2 PM						

ROUTES TO JONES FALLS EXPRESSWAY:

- 1) RIDGEWOOD-LUTHERVILLE RD TO SEMINARY LANE TO BELLONA AVE TO BELTWAY TO I-67 E 3.5 MILES - AMIN-33 SEC.
- 2) GREEN SPRING DRIVE TO SEMINARY LANE TO FALLS RD TO I-67 E 3.4 MILES - AMIN-55 SEC.



#63-72
MAP
#4
SEC 3-C
RA

GENERAL NOTES

1. PRESENT ZONING OF PROPERTY	R-6
2. PRESENT USE OF PROPERTY	NONE
3. PROPOSED ZONING OF PROPERTY	R-4
4. PROPOSED USE OF PROPERTY	APARTMENT DEVELOPMENT
5. EXISTING 85' R/W AS SHOWN ON RECORD PLATS PROPOSED TO BE 60' R/W. EXISTING STREAM TO BE RIPPED	
6. GROSS ACREAGE OF TRACT	6.8933±
7. GROSS NUMBER OF APARTMENTS ALLOWED (16x6.8933)	109 UNITS
8. NET ACREAGE OF TRACT	5.4335
9. NET NUMBER OF APARTMENTS ALLOWED (18x5.4335)	91 UNITS
10. NUMBER OF APARTMENT UNITS PROPOSED	91
11. NUMBER OF PARKING UNITS REQUIRED (9'x20')	88
12. NUMBER OF PARKING UNITS PROPOSED (9'x20')	101



PLAT TO ACCOMPANY PETITION FOR REZONING VICINITY

MORRIS AVE. & SPRING AVE.
ELECT. DIST. 8 BALTO. CO. MD.
SCALE: 1"=50' DATE: 10-9-62



MATZ, CHILDS & ASSOCIATES, INC.
2129 N. CHARLES ST.
BALTIMORE 18, MARYLAND