I, or we, ATE ROSLi-Mix COPP. . . . legal owner .. of the property situate in Bal County and which is described in the description and plat attached hereto and made a part le reby petition (1) that the zoning status of the herein described property be re-cl R-6 to the Zoning Law of Baltimore County, from an... zone: for the following rea

1. That there was an error in the original zoning map in regar

said property.
2. That there has been a change in the neighborhood.
3. That the property cannot be used in the present zoning classification.

See Attached Description

Variances

under the said Zoning Law and Zoning Regulations of Baltimor County, to use the herein described property YOK as follows; 1, From Section 243.1-To permit front yard of 65 feet instead of the required 75 feet.

(See attached wheet for further Warlances)

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

I, or we agree to pay expenses of above re-cli ification and/or Special Exce posting, e.c., 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

Bender & Wargo Pres President

A Standar Il July
Petitioner's Atter 03 W. Chesapeake Ave.

> â., 000

ORDERED By The Zoning Co ..., 1963., that the subject matter of this petition be advertised, as required by the Zoning Law of Raltimore County, in two newspapers of general circulation through unly, that property be posted, and that the public hearing be had before the Zoning nore County in Room 106 County Office Building in Towson, Balti 

DETTE OF HUNNING & BRIDE

Ark has appealed from Judge Raine's order.

MICROFILMED

declared that the map was null and void with respect to Ark's property.

Appellees dismissed their appeal from Judge Jenifer's opinion and

order granting the piecemeal rezoning as being moot, since Judge

Raine's order requiring the map amendment removed the property in-

volved from the M. L. classification and restored its R. 6 zoring.

acts of the zoning authorities, the duty of the courts is to decide

Trustees v. Baltimore County, 221 Md. 550, 158 A. 2d 637; Mont. Co.

Council v. Scrimgeour, 211 Md. 306, 127 A. 2d 528; Kroen v. Board

stitute its judgment for that of the zoning authorities if their

746; Missouri Realty, Inc. v. Ramer, 216 Md. 442, 140 A. 2d 655;

Offutt v. Bd. of Zoning Appeals, 204 Md. 551, 105 A. 2d 219. When

a comprehensive map designed to cover a substantial area is adopted.

it is entitled to the same presumption of correctness as an original

zoning. Mandel v. Bd. of County Comm'rs, 238 Md. 208, 208 A. 2d 710;

more County, 221 Md. 312, 157 A. 2d 258. Thus, persons attacking

in the case of comprehensive zoning than in the case of piecemeal

reclassification. Reese v. Mandel, 224 Md. 121, 167 f. 2d 111;

Baltimore v. N. A. A. C. P., 221 Md. 329, 157 A. 2d 433.

the correctness of the map's classifications have a heavy burden of

overcoming the presumption of their validity. This burden is heavier

Town of Somerset v. County, 229 Md. 42, 181 A. 2d 671; McBee v. Balti-

decision is supported by substantial evidence and the issue before

them is fairly debatable. Bosley v. Hospital, 246 Md. 197, 227 A. 2d

of Zoning Appeals, 209 Md. 420, 121 A. 2d 181. A court cannot sub-

whether such action was arbitrary, discriminatory or illegal.

Zoning is a legislative function, and when reviewing the

163-77-80 the #/5 of

ARK READT-MTY CONCRETE

MERLE SMITH, et al.

IN THE COURT OF APPEALS OF MARYLAND

September Term. 1967

No. 280

ond, C.J. Marbury McWilliams Finan Smith,

TT

Opinion by Marbury, J.

Filed: October 7, 1968

This is an appeal by one of the defendants, Ark Readi-Mix Concrete Corporation ( Ark) from an order of the Circuit Court for Baltimore County, dated July 20, 1967. The chancellor, Judge John E. Raine, Jr., ordered that the Northeastern Planning Area Comprehensive Land Use Map (map) adopted by the Baltimore County Council on August 1, 1966, be declared null and rold with respect to that portion concerning Ark's property and that the Council instruct the Planning and Zoning Department and its director to change that part of the map concerning Ark's property from M. L. (Manufacturing, Light) to the previous zoning of R. 6 (Residence, One and Two-Family).

The property involved consists of a two and one-half acre tract, part of which has been operated as a sand and gravel plant under a non-conforming use since 1952. Also, for many years prior to 1945 when the original zoning was established, the property had been used for sand and gravel operations. On July 31, 1963, Ark filed a petition with the Zoning Commissioner of Baltimore County to have the property zoned from R. 6 to M. L. After the Zoning Commissioner denied this request, the case came before the Baltimore County Board of Appeals on april 15, 1965, and May 18, 1965. This Board, after hearing extensive testimony, overruled the Zoning Commissioner and granted the M. L. zoning. Protestants, who are the appellees in this case, appealed the Board of Appeals' decision to the Circuit Court for Baltimore County on November 8, 1065 The case was heard by Judge Walter M. Jenifer, who affirmed the Board's decision in a comprehensive and lucid opinion dated July 28, 1966.

Meanwhile, the Zoning Commissioner of Baltimore County and the Planning Board had been reviewing and updating planning mans for the county. The map concerned with the area in question is the Northeastern Planning Map. This map, which covered the 14th and portions of the 9th, 11th and 15th Election Districts, was offered for public hearings but there was no discussion covering the change in zoning from R. 6 to M. L. with reference to Ark's property. After these hearings, the map was then proposed to the Baltimore County Council for its consideration and adoption on August 1, 1966. However, on July 28, 1966, Judge Jenifer issued copies of his opinion and order to the Zoning Commissioner and the Planning Board of Baltimore County. His findings were reported to the County Council by George Gavrelis, the Director of Planning and Zoning of Baltimore County, on August 1, 1966. Mr. Gavrelis advised the County Council that although he personally did not approve of M. L. zoning in the particular area, in order to protect the map so that this would not beget other changes and bowing to the cpinion of others, he recommended that the County Council change the land in question from R. 6 to M. L. The Council, having previously visited the area, and after deliberations adopted the map, which included the property here involved in the M/ L. zone

On August 26, 1966, the protestants appealed Judge Jenifer's decision to this Court, and four days later they filed a bill of complaint in the Circuit Court for Baltimore County asking that the Council and the Department of Planning and Zoning be enjoined from adopting the portion of the map showing M. L. zoning granted to Ark. An amended bill making Ark a party to the suit was filed on January 12, 1967. After the case was heard on April 24, 1967, Judge Raine

The lower court concluded that the action of the Baltimore County Council was legally arbitrary and unreasonable. The chancellor found that there was insufficient basis for the legislative action and stated that the M. L. classification of the Ark tract was invalid spot zoning, citing Hewitt v. Baltimore County, 220 Md. 48, 151 A. 2d 144, as controlling. We disagree with the lower court's determination and reverse its order

We conclude that the instant case is distinguishable from Hewitt. In that case the protestants attacked the granting of a commercial classification (Business, Local) for a parcel of land in an otherwise exclusively residential area. The planning board had submitted to the zoning commissioner a man which recommended residential zoning for an entire area of fifteen to twenty square miles west of the Baltimore-Harrisburg Expressway. The zoning commissioner agreed with the planning board. Thereafter, at a public hearing of the Baltimore County Commissioners, owners of the subject property asked that they be granted a non-residential use. However, they introduced no evidence in support of their request. The Commissioners approved the commercial zoning although no reasons were given for this exception other than meeting the possible need of transients. This Court held that the expressway formed a barrier between the properties to the east, and west; and that it was the logical line of demarcation between business and residential uses.

In the instant case, there is no such "logical line of demarcation" between residential and business uses since the area around the Ark tract has been used for non-residential purposes. Part of the Ark property has been used as a sand and gravel plant under a non-conforming use since 1952. Judge Jenifer noted in his ontnies that Frederick Klaus, a real estate expert, testified before the Zoning Board of Appeals that the subject property "is definitely in the midst of a predominantly sand and gravel area." Judge Jenifer also pointed out that Mr. Klaus stated that in his opinion there had been an error in the original land use man of 1945 which classified the property as residential, that the cost of restoring the land to its natural condition "would be absolutely prohibitive": that the necessary utilities for the development of the R. 6 classification do not exist: that the highest and heat use of the land would be manufacturing; and that reclassification would not be detrimental to the neighborhood, but beneficial.

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In addition to Judge Jenifer's opinion, which affirmed the County Board of Zoning Appeals granting the M. L. classification for the property, Mr. M. Jay Brodie, one of the protestant's witnesses, testified on recross-examination before Judge Raine, that the contour of Ark's land drops off approximately twenty to twentyfive feet at one point, and that the property is not conducive to residential use in its present shape. Although he did not personally approve of the M. T. classification, Mr. Gavrelis, the Director of Planning and Zoning, did recommend that such zoning be granted, bowing to the judgment of others in order to protect the integrity of the map. By judgment of others, he meant the County Board of Zoning Anneals which had heard extensive testimony in the case, and Judge Jent Carls clear decision hased upon a review of the evidence. which presented the issue as fairly debatable. Judge Jenifer's opinion established the law of the case in regard to the M. L. zoning of the Ark tract. In fact, both Mr. Gavrelis and the Baltimore County Council accepted it as such. Finally, the Council had

made a personal inspection of the property on February 22, 1966, before adopting the comprehensive map. Accordingly, we hold that the Council had sufficient information upon which to exercise its plenary legislative powers, and that its action in changing the Ark tract from R. 6 to M. L. was not arbitrary, discriminatory or filegal.

> ORDER REVERSED AND THE ACTION OF THE COUNTY COUNCIL IN APPROVING THE M. L. ZONING REINSTATED. COSTS TO BE PAID BY APPELLEES.

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05-21-71

# MEMORANDUM OPINION AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Baltimore County (hereinafter referred to as the "Board"), which by its Order dated October 21, 1965, granted a reclassification of the property described in this proceeding from a R-5 Zone (Residence, 1 and 2 Family) to a M.L. Zone (Manufacturing, Light) and certain building satback variances. The Zoning Commissioner of Saltimore County had previously denied the reclassi and the variances requested by an Order passed under date of September 26, 1953. The Zoning Commissioner based his decision on two considerations. First, he was of the opinion that the problems, which had arisen in the past from the use of the property by the owner thereof in the operation of its business thereon, had been detrimental to the welfare of the locality immediately adjoining and that the granting of M.L. Zoning would create a further burden upon the residents is the immediate vicinity. Secondly, he found that the 20-foot right of way, which royided the only means of access to Joppa Road, was inadequate to support traffic emanating from a Manufacturing, Light Zone and that there was no likeliehood that the owner would improve the road in the future.

The property, for which a reclassification is requested, is trapezoidal in shape, and the northeast corner of which is situate approximately 527 feet and the southwast corner of which is situate 1,024 feet from the south side of Joppa Road in the Eleventh Election District of Baltimore County, Maryland, The eastern boundary of the parcel bounds in its entirety along a right of way of

for the digging and removal of sand; (2) Zoning File 33-80-S - a parcel containing 55.5 acres of land, more or less, situate near Ridgely Avenue south of Joppa Road ximately 3,200 feet southwest of the subject property for which a special permit for use as a sand and gravel pit was issued on February 15, 1955; and (3) Zoning File 33=25 - a parcel containing 90 acres of land, more or less, bordering along the same Susquehanna Transmission tower line right of way as the subject property and about 900 feet southwest thereof, which on February 16, 1955, was reclassified from an "A" Residence Zone to a "F" Light Industrial Zone (now known as M.L. Zone). He also testified that between the last mentioned 80-acre parcel and the end of Jasper Lane and the subject property, there is a large excavation area which is an abandoned operation of the Jasper Sand and Gravel Company.

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Mr. Klaus further stated that it was his opinion that there was an error in the original Land Use Map in classifying this property for residential use. He stated that the highest and best use of the land was that of manufacturing (Tr. p. 93) and that such reclassification would not be detrimental to other properties in the neighborhood (Tr. p. 103). Such reclassification would, in fact, improve the area. (Tr. p. 101) He further testified that "under no stretch of the imagination" could this property be considered as R-8 land, and the cost of restoring it to its natural contour "would be absolutely prohibitive" (Tr. pp. 94-95). In addition, he testified that the necessary utilities for development of the property in the R-5 reclassification does not exist; that it is not a residential neighborhood and that all of the mining of sand and gravel has been going on for years and years; that the only practical use of the property is that of manufacturing and "why not zone it correctly?" (Tr. p. 103). Mr. Wargo had also testified that areas 1 and 2 of the property owned by his corporation were not suitable for any use other than that of the present operation (fr. p. 24) and that at the time of the adoption of the 1945 Land Use Map, the property could not have been used for residential purposes (Tr. p. 39)

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The Protestants at the hearing before the Board produced the following

the Susquehanna Transmission Company, 150 feet in width, upon which are constructed overhead steel towers. It comprises areas 1 and 2 shown on the plat filed with the original zoning petition and offered in evidence before the Board at the hearing on April 15, 1965, as Petitioner's Exhibit No. 1. These is contain in the aggregate 2.25 acres of land, more or less. The Petitioner Ark Readi-Mix Corporation, is the legal owner of areas 1 and 2 and also owns areas 3 and 4 as shown on said plat and which are located between the subject property and Joppa Road. Area 4 is improved by some greenhouses which are operated commercially under a non-conforming use. Area 3 has a frontage of approximately 200 feet on the south side of Joppa Road and as far as the record

The manner of the use of areas 1 and 2 by the Petitioner herein over the past years has been the subject of much litigation in the form of petitions alleging violations of the Zoning Regulations before the Zoning Commissioner and injunctive proceedings before the Circuit Court.

According to the testimony of Andrew G. Wargo, stockholder and director of the corporate Petitioner and formerly General Manager and President of the corporation for 15 years, area No. 1 was purchased in the year 1950, and area No. 2 in the year 1952. According to the deed reference shown on the meter and bounds description of the property, area No. 1 was deeded to the Petitioner under date of April 24, 1952, and area No. 2 was deeded on February 23, 1956. The property appears on the Land Use Map for portions of the Eleventh and Fourteenth Election Districts adopted by the County Commissioners of Baltimore County on January 2, 1945. The subject property, along with other sand and gravel properties in the area, were place in a R-6 Zoning classification. On June 18, 1952, the Zoning Commissioner of Baltimore County granted to the present Petitioner a special permit for the use of area No. 1 as a sand and gravel pit. (See zoning file No. 22-33-SA.) At the time of acquisition by the Petitioner and even prior to 1945, the property had been operated as a san and gravel business. The Petitioner, upon acquiring the property, established a Readinfile plant MED

(1) Joseph P. Peeler, a civil engineer, who testified that he acted as General Manager of the corporate Petitioner from 1964 to March 26, 1965, during which time he used the building on area No. 2 as his office; that the waighing scales on this parcel were not used during that period; that he arranged for the installation of the new 50-foot roadway through parcels 3 and 4 as a means of access to Joppa Road: that the use of areas Nos. 1 and 2 for residential development "would depend on how much money you would want to spend to develop them" but he had made no specific study in this regard (Tr. pp. 56-57).

(2) Alverta Pearl Hinz, who testified that she resides at 3508 East Joppa Road and has been such a resident for approximately 17 years; that her house is situate approximately 25 feet from the new entrance driveway to the Petitioner's plant; that there was no sand and gravel operation on the Petitioner's property prior to its acquisition, and she is probably to blame for them being there presumably because she did not attend any prior zoning hearings: that her husband wanted to construct a repair shop on their property but could not obtain the appropriate zoning.

- (3) Dorothea Lewis, who testified that she has resided for 8 years at 8905 Jasper Lane; that the purchase price of her property was \$17,000.00 and is, at present, worth \$18,500,00; that she cannot see the Petitioner's plant from her residence, but she can see the Jasper Sand and Gravel excavation; that both of them were there when she acquired and built her home.
- (4) James P. Lazzatti, who testified that he is not a resident of the neighborhood but has been connected with the Petitioner's operation since 1959; that from 1959 to 1963, he was Vice President and Sales Manager and since 1963 has been acting as a representative of the Small Business Administration that the Petitioner has been carrying on the same type of operation since April of 1963 (fr n 59)

(5) Wilms Grant, who testified that she has resided since 1956 at 3:03 Joppa Road and that the Petitioner has expanded and charged its operation with LRUF IL ME D

operation including the construction of batch bins and mivery and a truck garage for the repair of its trucks. This operation also entailed the bringing of sand and gravel and bulk cement to the premises, and then these materials are weighed separately and ribbon (ed to trucks and are dispatched to various take, and in the course of transit mix the concrete. The materials are not mixed or blended in the plant on the premises. (Tr. p. 35.)

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Subsequent to the year 1952 (the exact date is not disclosed by the record), the Petitioner constructed on area No. 2 an office building and weighing station and used a portion thereof for the storage of sand and gravel In addition, the Petitioner began to use area No. 3 for the washing of its concrete mixing trucks and dismantling of old trucks thereby causing pacinhily conditions. It was this extention of operations and undoubtedly the careless manner of operation resulting in dust accumulation on the residential properties in the neighborhood and the accumulation of debris on area No. 3 which gave rise to the complaints of zoning violation. A hearing was held on April 2, 1983. before the Board: and on April 18, 1963, an Opinion and Oping was filed with respec) to the use of all 4 parcels. The Board provided in its Order as follows: (1) that parcel No. 3 was zoned R-6 for residential use and that the washing and dismantling of trucks thereon would ceese and that all acrap iron and parts of dismantled trucks must be removed therefrom: (2) that parcel No. 4 must be limited to use of commercial greenhouses: (3) that parcel No. 2 was zoned R-G for residential use and could not be used commercially in any way and that any commercial uses should cause prior to July 1, 1953; (4) that there was no violation as to parcel No. 1 by reason of the special permit granted in 1952 and that the hauling of sand and gravel into the property from other locations for weighing and straining, loading and mixing did not constitute a violation and was allowable. Subsequent to this Order, the Petitioner ceased its operation on parcel No. 2 which it unfortunately had not included in its petition for special permit in 1952, and, consequently, the original petition for reclassification MICROFIL MED in this case was filed on July 31, 1963.

There was no testimony offered on behalf of the Protestants from any witness relative to the question of error in the 1945 zoning map and, in fact, no expert testimony of any nature or kind was produced on their behalf.

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After summarizing the evidence before it, the Soard in its Opinion reached the following conclusion:

"From an examinating of the photographs and exhibits introduced before the Board's personal inspection of the property, it is indeed inconceivable to the Board how the subject property could be used in its present residential zoning. Therefore, the could be used in its present residential zoning. Interests
Board feels that there is an error with regard to this prope
that it cannot be used as R-5 and would amount to confisof the netitioner's property to allow it to re-

The sole question presented to this Court, therefore, is: Was then sufficient evicance before the Board to make the question of error in the original zoning of 1945 fairly debatable? This Court is of the opinion that the evidence presented requires an affirmative answer to this question

The Court is cognizant of the general proposition that there is a strong presumption of correctness of original zoning, or comprehensive rezoning. and that to sustain a piecemeal change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood. (See Temmink v. Bd. of Zoning Appeals, 205 Md. 489 p. 494 - decided November 18, 1954; Kroen v. Board of Zoning Appeals, 209 Md. 420 p. 425 - decided March 16, 1956; Reese v. Mandel, 224 Md. 121 p. 128 - decided January 13, 1961; Johar Corp. v. Rodgers Forge, 236 Md. 106 p. 121 - decided July 24, 1964; MacDonald v. County Board, 23. Md. 549 p. 555 - decided May 25, 1955; and Miller v. Abrahams, 239 Md. 263 p. 272 - decided June 23, 1965.) This general rule does not maan, however, that zoning, once established, is static and eternal. This was observed in the case of Missouri Resity, Inc. v. Ramer, 215 Md. 442, wherein Judge Prescott, speaking for the Court, at page 447, said:

"It i, a principle of universal recognition that zoning, once imported, is not static. If it could not be altered with the changing conditions that surround us in the world today. culd be retarded, and many of the advantages, progress would be retarded, and many of the logically expected from zoning, would be lost. Restrictions

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The operation of the Petitioner was before this Court on Decemb 8, 1954, in 2 separate suits filed by property owners in the neighborhood, one of which was instituted on April 17, 1952, and the other on December 2, 1953. These suits sought injunctive relief alleging that the Patitioner's operation on its premises constituted a nuisance and also for monetary damages. These case did not have as their basis for injunctive relief a violation of the Zoning Regulati At the time of hearing in these cases, the Petitioner was using as a means of access to its property the 20-foot roadway bordering along the easterly side thereof and which is adjacent to the residence of Mr. and Mrs. Herut which fromts or Joppa Road. The Court found the existence of a pulsance in the Portificaer's operation, and by its Order required the installation of dust control devices to its cement sile and the resurfacing of the 20-foot roadway with dust control naterial. The Court also awarded monetary damages to the property owners Mr. and Mrs. Kerst. The Court has recited these facts as to the litigation in this Court to point out that the question of rooting of the property was not involved therein and no decision was made with respect thereto. Since the date of the decision in these cases, the owner of the subject property has constructed a per-50-foot entrance road through parcels Nos. 3 and 4 as a means of access to Joppa

In addition to Mr. Wargo, the Petitioner produced before the Soard. Frederick P. Flaus who qualified as a real estate broker and appraisar and real estate consultant. He testified that the property in question is definitely in the midst of a predominately sand and gravel area. He stated that the property wa: placed in a R-6 Zoning classification on the 1945 map as were the other sand and gravel properties in the area, but there have been no comprehensive land use studies. Since the adoption of the 1945 map, there have been certain changes and reclassifications with respect to these other sand and gravel parcels as follows: (1) Zoning File 24-31-SA - a parcel containing 44 acres of land, more or less, situate on the westerly side of Belair Boad about 1 mile southwest of the

MICRQ LANGUARTY for which a special permit was granted on December 16, 1952,

on the use of property that are reasonable today may be so unreasonable under different conditions in the future as to amount to conditionation. Soning officials, when properly authorized, have the authority to after zone lines from time to time when there are substantial changes in ronditions and such alteration has a reasonable relation to the public welfars. Offutt v. Board of Zoning Appeals, supra, 204 Md.

The limited function of the Court in rooting appeal cases has been reiterated on numerous occasions by the Court of Appeals of Maryland. In the case of Jobar Corp. v. Rodgers Force, supra, the Court was dealing with both the question of change/conditions and the question of original error. At page 120, the Court said:

"It is obvious that the Board could have been more specific and It is obvious that the Board could have been more specific an definite in its findings of fact; however, it is certain that the pard found that there had been changes in the neighborhood of error in the original zoning sufficient to justify the classification (its other findings clearly meet the test of being fairly debatable, so it will be unnecessary to discuss them further). We have stated time after time that it is not the function of the courts to zone or resone, and the courts will not substitute their judgments for that of the expertise of the zoning officials. It is only where there is no room for reasonable debate or where the record is devoid of substantial antial supporting facts that the courts are justified in reversing a decision of the Board, or declaring its actions arbitrary or capricious. See Montgomery County Council v. Scringeour, 211 Md. 307, Temmink v. Board, 212 Md. 6, and West Ridge Inc. v. McNamara, 222 Md. 443, for three of the many Maryland cases so holding. Therefore, we must apply these tests to the evidence produced before the Board in order to determine the case at bar."

In considering the question of error in original coning, the Court continued at pages 121-122:

"We turn to the question of error in the original zoning. Again, we start off with the same presumption of validity. The Deputy Director of Planning did not consider the R-6 zoning of the subject property in 1955 to be an arm in original zoning. although it was 'suspect' and 'maybe' erroneous then. Mr. Willemain stated that it was his 'considered opinion' that the Willemain stated that it was me countries.

R-5 zoning was error in the original zoning, and gave his reasons for reaching that conclusion (again we do not repeat reasons for reaching that conclusion (again we do not repeat them here). Although the above may constitute some conflict in the testimony relative to original zoning, we are unable to conclude that this left the record barren of substantial, supporting facts relative thereto. The Board stated that it wa impressed with the testimony of Mr. Willemain reg error' in original zoning, and if it decided to accept his opinion for the reasons given by him, we cannot, under our previous ngs, reverse the Board's action, in the absence of a



of the opinion way arbitrary and -ten that the ac nus in a legal sense. Cf. Robbe v. County Board, Consequently, we hold that the question of error in test senior was fairly

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

\*\*\* \* the courts have exercised restraint so as not to substitute their indoments for that of the equency and not to choose between equally persistable inferences or make independent determination of fact, because to do so would be exercising a non-judicial rode, instance, they have attempted to decide whether is considered in the country of the cou

"In the cases dealing with consideration  $\ensuremath{\mathcal{L}}$  the weight of "In the cases dealing with consideration of the weight of the evidence, the matter seems to have come down to whether, all that was before the squency considered, its action was clearly eroseous or, to use the phrase which has become standard in Maryland zooling cases, not fairly debatable."

See also the following recent cases: Finney v. Falle, 241 Md. 224 (decided February 2, 1956); Dill v. The John Corp., 242 Md. 16 (decided March 15, 1966); Bonnie View Club v. Glass, 242 Md. 46 (decided March 22, 1966); Beth Tilloh v. Blum. 242 Md. 84 (decided March 29, 1966); Board v. Fair. 242 Md. 351 (decided April 26, 1966); and Vogel v. McCosh, 242 Md. 371 (decided April 28, 1966).

The Board in the instant case found error in the now rather ancient 1945 Land Use Map and that it was inconceivable how the subject property could be utilized in its present residential zoning and to allow it to remain so would amount to confiscation. There was undoubtedly evidence before the Board to justify this conclusion. The rezoning requested can be supported, however, without a finding of actual confiscation. In the recent case of Dill v. The Johar Corporation supra, the Court of Appeals said at page 23:

"Even though the existing zoning does not result in confiscation ROFILMED and thus require rezoning, original error may permit the egency

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

In unhaiding the reglassification from a residential sone to a commercial zone, the concluding part of the Court's opinion is as follows:

"In the case before us there is no need to consider whether as a matter of law the residential rezoning was confiscatory and compelled rezoning and we do not do so. We think the testimony of the president of The Jobar Corporation and the expert, which we have heretofore detailed, as to the reasons the County Council had erred in putting the Diehlmann land in residential classifications in putting the Diehlmann land in residential classifications in 1952 was strong, substantial and persuasive enough to justify the Board in the exercise of its expertise in finding that there had been original error. Reese v. Mandel. 224 Md. 121; Overton v. Co. Commissioners, supra. The rezoning to business local was not arbitrary, capricious or illegal, and having determined this, we have at the same time fulfilled and exhausted our judicial function in reviewing zoning

The Protestants rely heavily on the decision in the case of Howard County v. Merryman, 222 Md. 314, decided April 19, 1960. The property involved in this case was a tract of land containing 92 acres which was zoned for residential use by resolution of the County Commissioners of Howard County on January 12, 1954. On May 19, 1955, the Board of Zoning Appeals of Howard County granted a permit to operate a sand and gravel pit on the premises subject to certain limitations and restrictions, among which was one to the effect that the operatio should be confined "to the hill containing sand and gravel" and that the hill should be cut only to the extent of adjacent contours to the end that the property would be "more suitable for residential development" in the future. The number of trucks using the narrow access roadway to the gravel pit was also limited. Or April 7, 1958, the owner applied for rezoning for light manufacturing use on the basis of substantial change in the character of the neighborhood since January 12. 1954, the date of the original zoning. This application was denied and affirmed by the Circuit Court. On March 10, 1959, within leve than a year ofter rezoning had been denied, the County Commissioners found evidence of ", abstantial change MILL ROFIL MFD

in the erea ' and granted the reasoning requested. The only evidence of change was the discovery of an immense deposit of sand and gravel on the premise: and a proposed highway extension and proposed industrial replanning was bein considered for the area of which the subject property comprised a part. The proposed highway extension and industrial replanning were not immediate, however, but were projected in the distant future. The owner, moreover, desired to change his operation from that of merely mining sand and gravel to that of the operation of a permanent cinder and concrete block plant which he proposed to construct in the middle of a residential area. There was no allegation of error in the original zoning in 1954, and the facts of this case can be readily distinguished from the facts of the case at bar.

The Court's attention has also been called to the decision of Judge John E. Raine, Jr. made on June 19, 1984, for the percel of ground situate at the northwest corner of Simms Avenue and Joppa Road. (See Miscellaneous CASES Nos. 2412 and 2882.) The reclassification there requested was from residential to commercial use with a special exception for a guspline service station. The County Board of Appeals had granted the reclassification and special exception, and Judge Raine reversed the Board on the ground that the e was no showing of a substantial change from residential use to commercial use in the immediate neighborhood. This finding wer undoubtedly correct and is also supported by the record in the case at bar. There was no showing, however, that the parcel at Simms Avenue and Jopps Road could not be used in its present zoning category or that the original zoning, as applied to it, was, in fact, seous. The facts in that case are in apposite to the facts surrounding the property now under consideration.

In addition to the reclassification, the Board granted certain setback variances for the existing buildings on the property. The Board disposed of this phase of the petition in the following manner: MICROFILMED

"Since the setback variances sought are all variance from either the property lines of the petitioner's own property or that of the Susquehanna Transmission Company's overhead or that of the susquenance transmission conjuit and intent of

@ 4

ALVERTA PEARL HIMZ 3608 E. Joppa Road

WILMA GRANT 3603 E. Joppa Road Mervlund 21236

Plaintiffs

THE COUNTY BOARD OF ZONING APPEALS OF BALTIMORE COUNTY

DOROTHEA LEWIS

the Zoning Regulations would be violated by granting the the Zoning Regulations would be violated by granting the variances requested here. It also seems an extreme hardship to the petitioner to require him to remove the existing structures on the property which have long been used in connection with the petitioner's sand and gravel operation." The Court agrees with the position taken by the Board on the

matter of variances. In doing so, the Court does not wish to condone the owner's action in building the office and weighing station on area No. 2 without ining the requisite building permit. The owner has been deprived of the use of area No. 2 since April 18, 1963, and has been penalized to some extent for its arbitrary action in flouting the building permits requirements. By res Jon of the very location of all of the buildings on areas I and 2 and the vast intervening distance from any existing residence, the Court is unable to find that continuing these improvements in their present locations would adversely affect the health, safety and general welfare of the community. It is in the quality and character of the operation of the Petitioner's business which will dictate, in the future, whether or not it can lilive at peace with the residential properties in the neighborhood. If it conducts its operation with due regard to the reasonable enjoyment by residential home owners, it will encounter no difficulty; if, on the other hand, it conducts its operations in utter disrogard of the rights of residential properties, further trouble is undoubtedly on the

Upon a fair consideration of the entire record before the Board the Court is constrained to hold that a reasoning mind could reasonably have reached the same conclusion as that of the Board and hence its action 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 reviewing a zoning appeal.

For the reasons stated and in conformity with the foregoing Opinion, It is this 28th day of July, 1985, by the Circuit Court for Baltimore County ORDERED tha the Order of the County Board of Appeals of Baltimore County dated October

MICROFILMED /s/ walter M. Jenifer Walter M. Jenifer Judge

Att: John G. Rose, Zoning Commissioner

Dear Mr. Rose:

..... VALUE 5.4570

M. JACOUPLINE MCCURDS

ATTORNEY AT LAW 202 W. CHEMAPEARE AVENUE TOWNON 4. MARYLAND

October 16, 1963

This is to advise that I represent Ark Readi-Mix Corporation Petirioner in the above case and that I wish to enter an appeal on its behalf from the order of the Zoning Commissioner denying its Petition for Reclassification and Variances in the above case. The Commissioner's Order being dated Spetcheber 26, 1963.

I am enclosing check covering costs of the appeal.

Very truly yours.

M. Jacqueline McCurdy

Baltimore County Office of Planning and Zoning County Office Building Towson, Maryland 21204

030

Re: Petition for Reclassification and Variances to Zoning Regula-tions-Property 1024.06' S. of Joppa Road and W.S. Susquehanna Transmission Line, 11th Dist., Ark Readi-Mix Corporation, Petitioner - No. 03-77-RV

M. Joqueline M. Claudy

- OCT 21'63"

TONING C

D. II.

CASE # 63-77 RV

MERLE SMITE, ALVERTA PEARL HIME, DOROTHEA LEWIS and WILMA GRANT

THE COUNTY BOARD OF ZONING APPEALS OF BALTIMORE COUNT ARK READI-MIX CORPORATION

> ................. OFDER FOR APPEAL

Please enter an appeal to the Court of Appeals from the Trial Court's destaton affirming an Order of the County Board of Appeals of Baltimore County dated October 21, 1965.

> M. Michael Maslan Attorney for Complainants 2137 Durdalk Avenue

IN THE CIRCUIT COURT

I HERREY CERTIFY that a copy of the above was mailed this 25th day of August, 1966 to Marchi W. Lev. Esquire, 307-10 Court Square Building, Bultimore, Maryland and M. Jacqueline McCurdy, Esquire, 203 W. Chesapeak Avenue, Torson, Maryland 21204, Attorneys for Ark Read1-Mix Concrete Corp.

W. Michael Maslen

ALVERTA PEREL GINZ DOMOTERA LEWIS AND CIRCUIT COUR SE COUNTY BOARD OF TORING

Figure clinitar the Appeal heretofore filed in the above entitled case to the Court of Appeals in Anapolis, Maryland.

DRUGE POR UTTERRAL

of May 11967 to Harold .. Lev. Lequire, 307-18 Court Square Suilding, ru, Haryland and M. Jucqualine McCurdy, 203 W. Chesapanke Avenue, Team maye for Ark Readi-Mix Concrete Cor-

> MICROFILMED M. Michael Meelan

was mailed this \_\_\_\_\_ day of November, 1965 to the County Roard of Zoning Appeals

MICROFILMED

M. Michrel Haslan

ORDER TO ENTER APPEAL

00

FOR

ricese enter an appeal from the decision of the County Board of Zoning Armenia to the Circuit Court for Builtinore County in the case Petition for Re-Classification from an R-6 zone to an M-L zone, and for Variances from Sections 243.1, 243.2, 243.3 and 243.4 of the Zoning Regulations, 1024.06' South of Jeppe Road and W/S of the Susquehamma Transmission Line - 11th District, Ark Readi-Win Corporation, Petitioner, Zoning File No. 63-77-RV

I HERRRY CEPTIFY that a copy of the aforegoing Order to Enter Appeal of Baltimore County, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

MICROFILMED

Reid 9.28.44

MICROFILMED

Re. 2 7/11/67

05-21-71

MERLE SHITH of al.

VS

PREDERICK L. DEHERBRY, JR. et al. : FOR EALTHORS COUNTY of and county of the county of the

MEMORANDUM

This Bill of Complaint attacks the Eortheastern Planning Area Comprehensive Land Use Map, Edopted by the County Commoil on August 1, 1966.

A 2-1/2 acre parcol located on the south ride of Joppa Read was classified for industrial are and placed in an H. L. (Hamufacturing Light) mone. The subject property is evened by the defendant, Ark Readl Min Concrete Corporation. The complainants are tampayers, living in close prominity to the subject property. The posture of the came is the same as <u>Reviet very Paltimore County</u>, 220 Md. 48, and that case is controlling. Mr. Gavrolis, County Director of Planning, testified that there was no industrial coning in the immediate area of the subject property, and that with one exception (at the intersection of the Delair Read and the County Delt-May) there are no H. L. coning within a radium of several miles. There was testimony that the County Council made a finid trip and inspected the property without any recommendation as to

industrial soning. At a later public hearing the Planning Department did not recommend industrial soning. Rr. H. J. Brodie, an emport in the planning field, teetified that this was not a proper place for an H. L. zone, being surrounded by residential areas. He testified that the dust, noise and traffic nace industrial use incompatible with the surrounding areas. The only evidence before this court shows clearly that this is invalid epot zoning, as defined in the Mouitt case at page 64, to with

"An arbitrary and unreaconable dovotion of a small area to a use immonstatout with the uses to which the rest of the district is restricted, made for the sole benefit of the private interests of the owner and not in accordance with a comprehensive plan."

It therefore follows that Bill 76 adopted by the County Council on August 1, 1966 is invalid to the extent that it purports to allow the subject property to be used for industrial purposes.

Having declared that the action of the County Council in this regard in legally enhitrary and unreasonable, it is only fair that the Court should relate practical reasons for the Council's action. While plans and studies were under way looking toward the adoption of the northeastern area map the property owner applied for a reclassification of the subject property from R-6 to N. L. This was granted by the County Faurd, and the reclassification was affirmed on appeal

by Judgo Jenifer. An appeal to the Court of Appeals was then noted by the protestants, who are the complainants here. This occurred shortly before the scheduled meeting of the County Council on August 1, 1966. After Judge Jenifer's ruling Mr. Gavrelis advised the Council of the ruling and recommended that the Council designate the subject property as M. L. in conformity with Judge Jenifer's decision. Mr. Gavrelis' testimony makes it clear that his recommendation was prompted by his desire that the Council adopt a comprehensive land use map that would be stable in the foreseeable future, and not one that would have changes engrafted immediately as a result of administrative or judicial action. In other words, Mr. Gavrolis wanted a map adopted that would be consistent with what he thought would be the final ruling in the reclassification case. From the standpoint of a planning export it is clear that Mr. Gavrelis' opinion them and now is that the subject property should not be zoned for uses incompatible with the uses made of the surrounding area. After the adoption of the map, legislatively adopting a comprehensive land use plan, the appeal in the reclassification case became moot, Grau v. Board of Zoning Appeals, 210 Md. 19, so the appeal was dismissed by the protestants-appellants. This Court can appreciate the position taken by Mr. Gavrelis and followed by the County Council, but Judge Jenifer's decision, standing alone, cannot serve as a sufficient base for the legislative action. Since the action of the County Council was arbitrary and discriminatory it must be set aside, and the Court will sign an appropriate decree when presented.

John & Raine M

June 22, 1967

RE: PETITION FOR RECLASSIFICATION from on R-5 zone to an M-L zone, and for VALIANCES from Sections 240.1, 240.2, 243.3 and 243.4 of the Zoning Regulations, 1024.00° South of Jappa Road and W/S of the Suggestions Transmission Line – 1 th Dutch Copyright Cop

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BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 63-77-RV

#11+1+1

MICROFILMS

OPINION

The petitioner in this case seeks reclassification of a trapezoidal shaped tract of land 2.25 acres in size, 627 feet south of the Joppa Road on the west side of the Susquehanna Transmission Company high tension lines in the Eleventh District of Baltimore County, and variances from Section; 243.1 to 243.4 of the Zoning Regulations. The property of the Ark Readi-Mix Corporation and their operations has been the subject of much litigation both before the County zoning authorities and the Circuit Court for Baltimore County. In order to properly understand the present situation the Board will refer to petitioners' exhibit #1 which is a plat of the subject property together with two other parcels of ground awned by the petitioner. The exhibit shows four areas marked as area one, two, three and four. The portion of the property which we are concerned with are the areas marked area one and area two. The petitioner has used his property for a number of years for a sand and gravel operation, and the property was the subject of a hearing on an alleged zoning violation before the Board of Appeals in 1953. On April 18, 1963 the Board of Appeals passed on Order that the petitioner had a legal nonconforming use on area number one of his property but that area two, as well as three and four, were zoned R-6 and any operations other than a greenhouse on those parcels should cease and desist. The petitioner now seeks a reclassification to Manufacturing-Light for areas one and two to legalize a nonconforming use on area one, and to legalize the petitioner's use of area two as it was used by it between 1952 and 1963.

Andrew Wargo, a director and stackholder in Ark Readi-Mix who had also been the President and General Manager for the years 1950 to 1963, testified that the company purchased area one in 1950 and area two in the year 1952. He further testified that in 1952 the was ganted a special permit by the Zoning Commissioner for Baltimore County to use the property as a sand and grarel pit. He further testified that area two is necessary to the send and gravel operation as it is presently improved with an office and truck weighing station. He stated that are new access rood, fifty to skiry feet wide, had been provided for the operation across areas three and four of the petitioner's property.

Ark Readi-Mix - #63-77-RV

Mr. Fraderick P. Klaus, a realtor and appraiser, appeared on behalf of the as an expert witness. He testified that, in his opinion, the 1945 map did not present any comprehensive plan for the area, merely recognized certain existing uses. He cited as changes in the neighborhood petition 2283-SA which is a special permit granted on parcel one of the petitioner's land for use as a sand and gravel pit. He also cited petition 3325 which was a reclassification on Fabruary 15, 1955 from R-6 to M-L of a tract consisting of approximately eighty acres now owned by Harry T. Campbell and Sons Corporation which is only nine hundred feet southwest of the subject property. He further cited as change in the area petition 2431, a forty-four acre parcel which received a special permit in December of 1952, and petition 1404 rezoned to Business-Local which is on the south side of the Joppa Road almost next to parcel four of the petitioner's property. He further testified thut, in his opinion, the map was in error in zoning this property R-6 and that no developer would consider this property for residential development in view of the extensive mining operations in the vicinity. He stated that he thought the best use for the subject property was M-L to allow the owner to continue to use his property for the sand and gravel operation as he has been doing for years. He also testified that he couldn't in agine why people would build homes along Jasper Lane just west of the subject tract and adjacent to an abandoned quarry operation.

The protestants testified that there had been very little or no change in the character of the neighborhood. They objected to the rezoning here on the basis that it

From an examination of the photographs and exhibits introduced before the Board and a personal impection of the property, it is indeed inconceivable to the Board how the subject property could be used in its present residential zoning. Herefore, the Board feels that there is an error with regard to this property in that it cannot be used as R-d and would amount to confiscation of the patitioner's property to allow it to remain so.

Since the selbock variances sought are all variances from either the property lines of the petitioner's own property or that of the Susquehama Travestision Company's overhead high tension lines we control set that the pittin and intent of the Zoning Regulations would be violated by granting the variances requested here. It also seems on extreme hardship to the petitioner to require him to remove the aciting structures on the property which have long been used in connection with the petitioner's sond and gravel operation.

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Ark Readi-Mix - #63-77-RV

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#11 17 P

ORDER

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For the reasons set forth in the aforegoing Opinion, it is this  $2J_{\perp \perp}$  of October, 1965 by the County Board of Appeals, OR DERED that the reclassification and variances settlioned for, be and the same are hereby GRANTED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 8 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William S. Baldwin, Chairman

(6)

W. Giles Porker

R Drue Cleder

OR HITCH, IN

RE POINTON FOR REDIASSIFICATION :
From 76-0" Zene to "N-U" Zene
and Variances to Zening Regulations - Preparty 1001.00" S. Suppletions - Preparty 1001.00" S. Suppletions - Preparty 1001.00" S. Suppletions - Preparty 1001.00" S. SuppleDiaty, Ark Tenedi-Mix Corp.,
Fetilidens :
S. SuppleTenediate County S. SuppleTenediate Cou

a reclassification of property 1021.06 feet south of Jopa Rosi and the west side of the Sampenana Transmission Line for an #E-6\* Zone to a \*H-LT Zone and variances to Southon 213.1; 23.2; 23.3 and 23.3 in the Zone Zone Line Rosing Regulations.

the County Pourse of August property has been considered in detail by both the County Pourse of Augusts and the Zentz Consistent are the Control of August and the Zentz Consistent are the County Pourse of August and the County Pourse of August and it is evident from the Mattery of the problems arising because of the County Pourse of August and the County Pourse of the County Pourse of August and the County Pourse of August 2018.

right-of-way to dops mood. This rood is not paved but is said and gravel caturated with neter oil and applit. Insmeath as this road has never been improved over a paried of the last ten years it is unifiedly that the owner would improve the road in the future and seem if it would improve the road in the future and seem if it would be confidly insidequate to support traffic enumning from a manufacturing light come.

For the above reasons the re-lassification and variances should be denied.

It is this Cornisatour of Baltimero County, GEDENED that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is continued as a TM-Of Zeno.

The variances requested are also DENI

Zoning Commissioner of Baltimore County

MICROFILMED

MULLER. RAPHEL & ASSOCIATES, INC.

July 10, 1963

#63-77RV

DIAPHA

9/19/63

ZONING DESCRIPTION

BEGINNING for the same at a point distant 1024.06' measured southerly from the centerline of Joppa Road, said point being also at the beginning of the first or N45°35'00"W 459.07' line of that parcel of land which by deed dated April 24, 1952 and recorded among the Land Records of Baltimore County in Liber GLB 2227, Folic 332, was conveyed by Frederick A. Hornung and wife to Ark Readi-Nix Concrete Corporation, running thence and binding on said first 1'me N45'35'00"W 459.07' to the beginning of the second line of the aforesaid deed, running thence and binding on said second line and binding reversely on the third line of that parcel of land which by deed dated February 23, 1956 and recorded among the Land Records of Baltimore County in Liber GLB 2929, Folio 335, was conveyed by Frederick A. Hornung and wife to Ark Readi-Mix Concrete Corporation, N25\*14'00"E a total distance in all, 140.00° to the end of the second or N80°27'00"W 330.00° line in the deed, Hornung to Ark Readi-Mix Concrete Corporation, dated February 23, 1956, running thence and binding reversely on said second line S80°27'00"E 330.00° to the end of the first/in the last mentioned deed, running thence and binding reversely on the first line in the last mentioned deed to Ark Readi-Mix Concrete Corporation dated February 23, 1956 and binding on the 40 line of the aforesaid deed to Ark Readi-Mix Concrete Corporation dated April 24, 1952, S8\*20\*00\*W, a total distance in all of 397.60° to the place of beginning. CONTAINING 2.25 acres of land more or less.

BEING all that parcel of land which by deed dated April 24, 1952 and recorded among the Land Records of Baltimore County in Liber GLB 2227, Folio 332, was conveyed by Frederick A. Hornung and wife to Ark Readi-Mix Concrete Corporation and being also all that parcel of land which by deed dated February 23, 1956 and recorded among the Land Records of Baltimore County in Liber GLB 2929, Folio 335, was conveyed by Frederick A. Hornung and wife to Ark Readi-Mix Concrete Corporation.

MICROFILMED

Mille A. J. Muller #1391

#63-77121 2. From Section 243.2 to permit a 12 foot side yard along the east property line instead of the required 50 feet side yard.

3. From Section 243.3 to permit a rear yard of 4 feet instead of the required 50 foot rear yard.

4. From Section 243.4 to permft a building to be located within 12 feet of a residential zone boundary along the south 8 degrees 20 minutes west 397.6 foot line and within 4 feet of a residential zone boundary along the north 45 degrees 35 minutes west 459.07 foot line instead of the required 125 feet.

INVOICE BALTE ORE COUNTY, MARY AND No.38962 OFFICE OF FINANCE DATE 8/18/66 Division of Collection and Receipt. COURT HOUSE TOWSON, MARYLAND 21204 Mr. John Fantum 3611 East Jappa Road Baltimore, Md. 21234 BILLED TOTAL 1.50 Cast of copy of Board's Order - File No. 63-77-RV \$ 1.50 3 sheets @ 50c car shee 8-1660 7096 \* 38962 MP-150 MICROFILMED

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

BALTIN ORE COUNTY, MARY AND TELEPHONE No.34534 OFFICE OF FINANCE DATE 11/30/65 Division of Collection and Receipt COURT HOUSE TOWSON, MARYLAND 21204 County Board of Appeals (Zonina) Dundalk Avenue lalk, Md. 21222 "o"\$18"88" Cost of Cartified De No. 63-77-RV Ark Read!-Mix Corporation 1024.06' S. of Joppa Road \$ 10.00 41-3005 33 ca \* 20534 HP-MICROFILMED nnn

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.

MICROFILMED

PETITION FOR RECLASSIFICATION From "R-6" Zome to "M-L" Zone and Variances to Zoning Regula-tions - Property 1024.06' S. of Jopps Road and W.S. Susque-hance Transmission Line, 11th

ZONTEG APPRAIS

The Protestants, by their attorney, M. Michael Maslen, respectfully the County Board of Zoning Appeals affirm the decision of the sioner of Baltimore County dated the 26th day of September, 1963 denying any reclassification of the said property. Quoting from the said Order dated the 26th day of September, 1963, the Commissioner stated:

"The subject property has been considered in detail by both the ard of Appeals and the Zoning Commissioner in connection with various a. A portion of this property is needed in the various for the problems arising because of the use of the property by the Art Composation, that various matters detrimental to the welfare of the immediately adjoining would make the greating of the "M-L" zoning a under upon the residents in the immediate vicinity of the subject

The only access to this property is by means of a 60 feet right-of-way to Jopps Sond. This road is not payed but he shad not ground astumeted a partied of the last ten years it is unlikely that the owner been improved over a partied of the last ten years it is unlikely that the owner would approve the road in the future and even if it were improved it would be worfully inadequate to support tentific ensuring from a samufacturing light some.

For the above reasons the reclassification and variances should be

The Protestants are all citizens, taxpayers and residents of Baltimore County, living adjacent to the subject property or in close proximity thereto, assist this Board in making a proper decision state:

In the case of Elliott vs. Joyce, 233 MD. 76, (1963), the Court of Appeals said Reclassification in zoning as well as original zoning must bear some reasonable relationship to the general public interest in promoting the health, safety or welfare of the community.

Joppa Road is but two lanes wide and is a narrow, dangerous road with no sidewalks and heavy truck traffic creates hazards which the community

In the case of Smith et al vs. Simms tried before the Homorable John R. Raine in the Circuit Court for Baltimore County in 1964, it was decided that

there was no change in the neighborhood and the only change was the construction nal dwellings and that reclassification would constitute spot soning, and for that reason reclassification was denied at Joppa Road and Simms Avenue

Ugain in the case of Howard Co. vs. Merryman, 222 MD 314 (1960) plication for resoning by a company holding a special exception sand and gravel. The application for resoning or extension of use te and cinder block plant was deried and the reasons given for the denial were there was no substantial change in the neighborhood and the increase of traffic over narrow roads leading to the property.

In the case of the Mayor and City Council vs. H.A.A.C.P. 221 ND 329 (1960) the Court held that the testimony by protesting property owners conendeavored to preserve the residential character of the neighborhood. the restricted and actual use within the residential use district despite the existing non-conforming use and the sole special exception was still predominantly residential as it has always been since the inception of the soning laws. Again in this case, the soning was denied because there was no change in the neighborhood and no proof of mistake in original zoning.

The Protestants herein further contend and strenuously object to my of Mr. Klaus, the realtor testifying on behalf of the Ark Readi-Mix Concrete Corporation, in that his testimony was merely his opinion as to the use of the property. Mr. Klaus has not been active in developing any in the above mentioned neighborhood presently under consideration.

The Protestants respectfully request that the County Board of Zoning Appeals take judicial notice of a hearing entitled "Smith et al vs. Wargo and Ark Readi-Mix Concrete Corporation", combined with "Kerst et al vs. Ark Readirete Corporation" in the Circuit Court for Baltimore County, in Equity, decided December 8, 1964, in which the Court allowed Mr. Kerst the sum of One Thousand (\$1,000.00) Dollars in damages to his property caused by the the heavy trucks belonging to the Ark Readi-Mix Concrete Corporation. And further the Court found that the use of the Ark Readi-Hix Concrete Corporation of the subject property constituted a nuisance and issued orders to correct the

> -2-MICROFILMED

To sum up the aforegoing, the Protestants state that any rezoning at this time would be entirely premature for the reason that there is presently sideration by the County of Baltimore a new comprehensive soning map and that a portion of this zoning map will include the area presently involved opeal. Any "N-L" zoning would constitute a hazard to the health and the adjacent community, would destroy the property values and would the lives of the children living in the neighborhood by reason of the truck traffic inherent in such soning. And further that any reclassificat the subject property would be spot soning and as such completely contrary to the applicable rules and regulations of the Zoning Laws of Baltimor

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Respectfully submitted.

## BALT. ORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENC

TO Mr. John C. Rose, Zoning Commissioner Date September 13, 1963

#63-77RV

FROM Mr. George E. Gavrelis, Deputy Director

SUBJECT #59-TJMA. B-5 to Not and Variance to permit front yard of 65 feet instead of the required 75 feet; to permit a 12 feet side yard along the control of the permit and the permit of the permit

11th District

HEARING: Wednesday, September 25, 1963 (11:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for Reclassification from Re-6 to M-L tegather with Variances. It has the following advisory consent to make with respect to pertinent planning factors:

In light of the extractive operation now occurring on the subject property there may be an infinity between the sand and gravel operation and the proposed industrial uses.

MICROFILMED

MICROFIL'MED'

05-21-71

\*63-77RV No. 63-77-RV ARK READI-MIX CORPORATION MAPP 1024.06' S. of Joppa Road & W/S of Susqueheana Transmission Line 11th District \*IITH Reclassification from R-6 to M-L Variances from Section 243.1, 243.2, 243.3 and 243.4 DIL-Y Petition filed Rec. & Variances DENIED by Z.C. July 31, 1963 Sept. 26 Appeal to C. B. of A. Rec. & Variances GRANTED by the Board (Baldwin, Parker & Alderman) Oct. 16 " 21, 1965 Order for Appeal filed in Circuit Court (File #3405) 1 Nov. 18 Board AFFIRMED - Judge Jenifer Order for Appeal to Eourt of Appeals by M. Michael Maslin, Alty. for Protestants July 28, 1966 Aug. 26, Plaintiff's Order to Withdraw Appeal to Court of Appeals filed by Mr. Maslin May 3, 1967

M. MICHAEL MASLAN ATTORNEY AT LAW 2137 DUNDALK AVENUE BALTIHORE, MD. 2122

September 26, 1966

Re: Anneal - Ark Readi-Mix Corporation

As per your request, enclosed please find copy of Order

M. Michael Maslan

Very truly yours,

. . HE COUNTY BOARD OF TONING CIRCUIT COURT

IN The

ORDER FOR HITHDRANAL

Floane wit draw the Appeal heretofore filed in the above entitles case to the Court of Appeals in Annapolis, Maryland,

M. Michael Meslan Attorney for Complements 2137 Dundalk Avenue Baltimore, Maryland 21222 ATVater 2-2700

I MERRY CRETIFY that a copy of the above was mailed this lot day of may 11967 to march on Lev. magnire, 307-12 Court Square Building, Baltiners, Haryland and M. Jacqualine McGurdy, 203 W. Chesapasks Avenue, Towson,

> M. Hichael Maslan orney for Compleinants

CASE #63-77 RV

X comp. #63-77-RV Joppa Hd. & the W/S of Tran. Line 11th

1111111111111111111 OFDER FOR APPEAL

Please enter an appeal to the Court of Appeals from the Trial Court's ecision affirming an Order of the County Board of Appeals of Bultimore County dated October 21, 1965.

I HERENT CENTIFY that a copy of the above was mailed this 25th day of August, 1966 to Harold W. Lov, Esquire, 307-10 Court Square Building, Maryland and N. Jeoqueline McGurdy, Esquire, 203 W. Chesapenes on, Maryland 21204, Attorneys for Ark Readi-Mix Consrsts Corp.

Edith T. Elsenhart, Secretary

September 20, 1966

11111111111111111 OFFER FOR APPEAL

THE COUNTY HOARD OF ZOHITH APPEALS OF BALITHORE COUNTY

ARM READI-MIX CORPORATION

Bea Anderson CASE #63-1 RV NURLE BRITE, ALWESTA FRASL HIST, DOROTHEA LEWIS and WILMA TRANT

> Please enter an appeal to the Court of Appeals from the Trial Court's deriston affirming an Order of the County Board of Apposin of Bultimore County dated October 21, 1965.

IN THE CHECUTY COURT

FOR EALTHORS COUNTY

of Argust, 1966 to Barold W. Lev, Esquire, 307-10 Co of Square Building, Initiacro, Maryland and N. Jacqueline McCordy, Require, 203 W. Chesaposke Arenue, Tosson, Maryland 21204, Attorneys for Ark Rendi-Mix Coopeets Corp.

NOTICE OF HEARING

Petition for Reclassification & Variance for Ark Redi-Mix Corp. #63-77-RV

11:00 A.M.

DATE: Wednesday, Suptember 25, 1963

PIACE: Room 106, County Office Building, 111 W. Chesapeake Avenue Towson, Maryland

Attached is the completed file for your records.

man appointment A

COUNTY BOARD OF APPEALS

MR. JOHN G. ROSE. ZONING COMMISSIONER

SUBJECT: No. 63-77-RV ARK READI-MIX CORP. Board Affirmed

File recalled 9/20/66 Order for Appeal to Court of Appeals control on Court Docket as filed 8/24/66 - Called Mr. Maslan requesting copy 9/20

Approved on Map - Effective 1/2=/66

ATMATES 2-2700

Mrs. Eiith Eisenhart County Board of Appeals County Office Building Towson, Maryland 21204

Dear Mrs. Eisenhart:

Engls:

for Appeal in the above entitled case.

\*63-77 RV No. 63-77-RV ARK READI-MIX CORPORATION MAP 1024.06' S. of Joppa Road & W/S of Susquehanna Transmission Line 11th District \*ILLIAN Reclassification from R-6 to M-L Variances from Section 243.1, 243.2, 243.3 and 243.4 ML-V Petition filed Rec. & Variances DENIED by Z.C. July 31, 1963 Sept. 26 Appeal to C. B. of A. Rec. & Variances GRANTED by the Board (Baldwin, Parker & Alderman) Oct. 16 . 21, 1965 Order for Appeal filed in Circuit Court (File #3405) 1 Nov. 18 Board AFFIRMED - Judge Jenifer Order for Appeal to Court of Appeals by M. Michael Maslin, Alty. for Protestants July 28, 1966 Aug. 26, Plaintiff's Order to Withdraw Appeal to Court of Appeals filed by Mr. Maslin May 3, 1967

M. MICHAEL MASLAN

September 26, 1966

Re: Appeal - Ark Readi-Mix Corpostion

As per your request, enclosed please find copy of Order

M. Michael Maslan

Very truly yours.

IN The CIRCUIT COURT BALTINGRE COURTS THE COUNTY BOARD OF 20-ING

PRIME PUR HATOGRAPHAL

Flores withdres the Appeal heretofore filed in the above sutitles case to the Court of Appeals in Anapolis, Maryland,

K. Hicheel Maslan Attorney for Complainants 2137 Dundelk Avenue Bultimore, Maryland 21222 ATwater 2-2700

CATTLE that a copy of the above was mailed this lat des . .... Square Building, arylane and M. Jacquestow McGordy, 203 W. Chesapeake Avenue, Towson,

M. Michael Mamlan

CASE #63-77 RV

THE COUNTY BOARD OF ZORING APPEALS OF BALLTIMORE COUNTY

IN THE CIRCUIT COURT

1111111111111111111 OFDER FOR APPEAL

Please enter an appeal to the Court of Appeals from the Trial Court's

of August, 1966 to Harold W. Lov, Esquire, 307-10 Court Square Building, Baltimore, Maryland and M. Jacqueline McCurdy, Esquire, 203 W. Chesapenies Avenue, Towson, Maryland 21204, Attorneys for Ark Rendi-Mix Congrete Corp.

tled one when it is filed by the Court of Appeals. We

\*\*\*\*\*\*\*\*\*\*\*\* OFDER FOR APPEAL

Bea Anderson CASE #63.1 RV MERIE SMITE, ALMESTA PEARL HIME, DOROTHEA LESIS and WILMA TRANT

Vo. THE COUNTY BOARD OF ZONING APPEALS OF BALETHORE COUNTY

APK READI-MIX CORPORATION

dated October 21, 1965.

Edith T. Elsenhart, Secretary

THE THE CHICUTY COURT

FOR EALTIFORE COUNTY

N. Hichael Masian Attorney for Complainant-2137 U-dalk Avenue Bultinore, Haryland 21222 ATrator 2-2700

M. Michael Maslan Attorney for Complainants

Please enter an appeal to the Court of Appeals from the Trial Court's

I HEREBY CERTIFY that a copy or the above was mailed this 25th day of August, 1966 to Barold W. Lev, Esquire, 307-10 Court Square Building,

Daltimore, Maryland and N. Jacqueline McCurdy, Esquire, 203 W. Chesapeake

Avenue, Towson, Maryland 21204, Attorneys for Ark Read: Mix Concrete Corp.

decision affirming an Order of the County Board of Appeals of Emitimore County

Miss M. Jacqueline McCurdy 203 W. Chesapeake Ave. Towson I, Mi.

MAP

NOTICE OF HEARING

Re: Petition for Reclassification & Variances for Ark Redi-Mix Corp. #63-77-RV

11:00 A.M.

DATE: Wednesday, Suptember 25, 1963

PIACE: Room 106, County Office Building, 111 W. Chesapeake Avenue

Towson, daryland

Zoning Commissioner of Baltimore County

September 20, 1966

COUNTY BOARD OF APPEALS

MR. JOHN G. ROSE. ZONING COMMISSIONER

SUBJECT: No. 63-77-RV ARK READI-MIX CORP. Board Affirmed

Attached is the completed file for your records.

man of restaurant File recalled 9/20/66

Order for Appeal to Court of Appeals entered on Court Dacket as filed \$/2462 · Called Mr. Maslan requesting copy 9/20

Approved on Map - Effective 9/2=/66

ATMATES 2-2700

Mrs. Eiith Eisenhart County Board of Appeals County Office Building Towson, Maryland 21204

Dear Mrs. Eisenhart:

Engls:

for Appeal in the above entitled case.

#63-77-RV the W/S of

decision effirming an Order of the County Board of Appeals of Bultimore County dated October 21, 1965.

I EDNEST CERTIFY that is copy of the above was smiled this 25th day

MEMORANDUM OPINION AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Saitimore County (hersinafter referred to as the "Board"), which by its Order dated October 21, 1985, granted a reclassification of the property described in this proceeding from a R-5 Zone (Residence, 1 and 2 Family) to a M.L. Zone (Manufacturing, Light) and certain hallding setback variances. The Zoning Commissioner of Baltimore County had praviously decied the reclassification and the variances requested by an Order passed under date of September 28. 1933. The Zoning Commissioner based his decision on two considerations. First, he was of the opinion that the problems, which had arread in the past from the use of the property by the owner thereof in the operation of its business thereon, had been detrimental to the welfare of the locality immediately admining and that the granting of M.L. Zoning would create a further burden upon the residents in the immediate vicinity. Secondly, he found that the 24-foot right of way, which then worlded the only means of access to Joppa Soad, was inadequate to support traffic emmating from a Manufacturing, Light Zono and that there was no likelighe that the owner would improve the road in the future

The property, for which a reclassification is requested, in trapezoloal in shape, and the northeast corner of which is situate approximately -27 feat and the southwest corner of which is situate 1,921 feet from the south aids of Joppa wase in the Eleventh Election District of Saltimore County, Maryland, The eastern boundary of the parcel bounds in its entirety along a right of way or

for the digging and removal of sand; (2) Zoning File 33-80-8 - a percel containing 66.5 acres of land, more or less, situate near Ridgely Avenue south of Joppa Road approximately 3, 200 feet southwest of the subject property for which a special permit for use as a sand and gravel pit was besued on February 15, 1955; and (3) Zoning File 33-25 - a parcel containing 80 scree of land, more or less, bordering along the same Susquehanna Transmission tower line right of way on the subject property and about 965 feet southwest thereof, which on February 16, 1955, was reclassified from an "A" Residence Zone to a "F" Light Industrial Zone (now know as M.L. Zone). He also testified that between the last montioned 30-acre parcel and the end of Jasper Lane and the subject property, there is a large excavation area which is an abandoned operation of the Jasper Sand and Gravel Company.

Mr. Klaus further stated that it was his opinion that there was an error in the original Land Use Map in classifying this property for residential une. He stated that the highest and best use of the land was that of manufacture. (Tr. p. 93) and that such reclassification would not be detrimental to other properties in the neighborhood (Tr. p. 103). Such reclassification would, in fact improve the area. (fr. p. 101) He further testified that "under no stretch of the immerination" could this property be considered as R-6 land, and the cost of restoring it to 1% natural contour "would be absolutely prohibitive" (Tr. pp. 94-95). In addition, he testified that the necessary utilities for development of the property in the R-6 reclassification do ... not exist; that it is not a residential neighborhood and that all of the mining of sand and gravel has been going on for years and years; that the only practical use of the property is that of manufacturing and "why not some it correctly?" (Ir. p. 103). Mr. Wargo had also testified that areas I and 2 of the property owned by his corporation were not suitable for any use other than that of the present operation (fr. p. 24) and that, at the time of the adoption of the 1948 Land Use Map, the property could not have been used for

nte at the hearing before the Board produced the S

the Susquelianna Transmission Company, 150 feet in width, upon which are constructed overhead steel towers. It comprises aren: 1 and 2 shown on the plet filed with the original soning petition and offered in evidence before the Board at the hearing on April 15, 1985, as Petitioner's Exhibit No. 1. Those parcels contain in the aggregate 2.25 acres of land, more or lace. The Petitioner Ark Rendi-Mix Corporation, is the legal owner of areas 1 and 2 and also owns areas 3 and 4 as shown on said plat and which are located between the subject property and Joppa Road. Area 4 is improved by some greenhouses which are operated commercially under a non-conforming use. Area 3 has a frontage of approximately 200 feet on the south side of Jorpa Road and as far as the record is disclosed is unimproved.

The manner of the use of areas 1 and 2 by the Petitioner herein over the past years has been the subject of much litigation in the form of petitions alleging violations of the Zoning Regulations before the Zoning Commissioner and injunctive proceedings before the Circuit Court.

According to the testimony of Andrew G. Wargo, stockholder and director of the corporate Petitioner and formerly General Manager and President of the corporation for 13 years, area No. 1 was purchased in the year 1950, and area No. 2 in the year 1952. According to the used reference shown on the metes and bounds description of the property, erea No. 1 was decded to the Petitioner under date of April 24, 1952, and ares No. 2 was deeded on February 23, 1955. The property appears on the Land Use Map for portions of the Eleventh and Fourteenth Election Districts adopted by the County Commissioners of Baltimore County on January 2, 1945. The subject property, along with other sand and gravel propert as in the area, were place in a R-6 Zoning classification. On June 18, 1952, the Zoning Commissioner of Baltimora County granted to the present Patitioner a special permit for the use of area No. 1 as a sand and gravel pit. (See zoning file No. 22-23-SA.) At the time of acquisition by the Petitioner and even prior to 1945, the property had been operated as a sand and gravel business. The Petitioner, upon acquiring the projectly, established a Readi-Mix plant

(1) togeth P. Peeler, a civil engineer, who testified that he acted as Ganeral Manager of the corporate Petitioner from 1964 to March 26, 1955, during which time he used the building on area b.g. 2 as his office; that the weighing scales on this purcel were not used during that period: that he arranged for the installation of the new 50-foot roadway through parcels 3 and 4 as a means of access to Joppo Road; that the use of areas Nos. I and 2 for residential development "would depend on how much money you would want to around to deviation them? but he had reade no appendix study in this regard (Tr. pp. 55-57).

(2) Alverta Poarl Hinz, who testified that she resides at 3605 Fast Jones Boad and has been such a resident for approximately 17 years; that har house is altuate approximately 25 feet from the new entrance driveway to the Patitioner's plant; that there was no sand and gravel operation on the Petitioner's property prior to its acquisition, and she is probably to blama for them being there presumably because she did not attend any prior zoning hearings that her husband wanted to construct a repair shop on their property but could not obtain the appropriate roules

(3) Dorothea Lewis, who testified that she has resided for 8 years at 8905 Jasper Lane; that the purchase price of har property was \$17,000,00 and is, at present, worth \$18.500.00; that she cannot see the Petitioner's plant from her residence, but she can see the Jasper Sand and Gravel excevation; that both of them were there when she acquired and built her home.

(4) James P. Lazzetti, who testified tout as is not a resident of the neighborhood but has been connected with the Patitioner's operation since 1959: that from 1959 to 1953, he was Vice President and Sales Manager and since 1963 has been acting as a representative of the Small Business Administrations that the Petitioner has been carrying up the same type of operation since Auril of 1963 (Tr. p. 59).

(5) Wilms Grant, who testified that she has resided since 1956 at 3:02 Joppa Road and that the Petitioner has expanded and changed its operation

on including the construction of batch bins and mixers and a truck ga for the repair of its trucks. This operation also entaited the bringing of sand and gravel and bulk cement to the premises, and then these materials are weighed separately and ribcon fed to trucks and are dispatched to various jobs, and in the course of transit mix the concrete. The materials are not mixed or blended in the plant on the premises. (Tr. p. 35.)

Subsequent to the year 1952 (the exact date is not disclosed by the record), the Petitioner constructed on area No. 2 an office building and weighing station and used a portion thereof for the storage of sand and gravel. In addition, the Petitionar began to use area No. 3 for the washing of its concrete mixing trucks and dismantling of old trucks thereby causing unsightly conditions. It was this extention of operations and undoubtedly the caralass manner of operation resulting in dust accumulation on the residential properties in the neighborhood and the accumulatio, of debris on erea No. 3 which gave rise to the complaints of zoning violation. A hearing was held on April 2, 1903, before the Board; and on April 13, 1963, an Opinion and Order was filed with respect to the use of all 4 parcels. The Board provided in its Order as follows: (1) that percel No. 3 was somed R-6 for residential use and that the washings and dismactling of trucks thereon would cause and that all arrap iron and parts of dismantied trucks must be removed therefrom; (2) that percel No. 4 must be limited to use of commercial greenhouses; (3) that parcel No. 2 w.s zoned R-6 for residential use and could not be used commercially in any way and that any commercial uses should cease prior to July 1, 1983; (4) that there was no violation as to parcel No. 1 by reason of the special permit granted in 1952 and that the hauling of sand and gravel into the property from other locations for weighing and straining, loading and mixing did not constitute a violation and was allowable. Subsequent to this Order, the Petitioner ceased its operation on percel No. 2 which it unfortunately had not included in its petition for special permit in 1952, and, consequently, the original petition for reclassification in this case was filed on July 31, 1963.

The operation of the Petitioner was before this Court on Decem 8, 1954, in 2 separate suits filled by property owners in the neighborhood, one of which was instituted on April 17, 1962, and the other on December 2, 1983. These suits sought injunctive relief alleging that the Petitioner's operation on its prumises constituted a nuisance and also for monetary damages. These cares did not have as their basis for injunctive relief a violation of the Zoning Regulations At the time of bearing in these cases, the Patitioner was using as a means of access to its property the 20-foot roadway borduring along the easterly side thereof and which is adjacent to the residence of Mr. and Mrs. Kerst which from on Joppa Road. The Court found the existence of a nuisance in the Petitioner's operation, and by its Order required the installation of dust control devices in its coment sile and the resufacing of the 20-foot roadway with dust control material. The Court also awarded asonetary damages to the property owners, Mr. and Mrs. Kerst. The Court has recited these facts as to the laugation in this Court to point out that the question of soning of the property was not involved therein and no decision was made with respect thereto. Since the Cate of the decision in those cases, the owner of the subject property has constructed a new 50-foot entrance road through parcels Nos. 3 and 4 as a means of access to Joppa

In addition to Mr. Wargo, the Petitioner produced before the Board, Frederick P. Klaus who qualified as a real estate broker and appraiser and real consultant. He testified that the property in question is definitely in the midst of a predominately sand and gravel area. He stated that the property was placed in a R-6 Zoning classification on the 1945 map as were the other sand and gravel properties in the area, but there have been no comprehensive land use studies. Since the adoption of the 1945 map, there have been certain changes and reclassifications with respect to these other sand and gravel parcels as follows: (1) Zoning File 24-31-SA - a parcel containing 44 acres of land, more of loss, pituate on the westerly side of Belair Road about 1 mile scuthweat of the subject property for which a special permit was granted on December 16, 1952.

since 1956.

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There was no testimony offened on behalf of the Protestants from any witness relative to the question of error in the 1945 zening map and, in fact, no expert testimony of any nature or kind was produced on their behalf.

After summarizing the evidence before it, the Board in its Opinion reached the following conclusion:

"From an examination of the photographs and exhibits introduced before the Beard's personal inspection of the property, it is indeed inconceivable to the Beard her the subject property rould be used in its present readdential souther. Therefore, the search feels that there is an arrow with regard to this property to that it cannot be used as P- and would sound to conflication of the petitioner's property to allow it to remain as."

The sole question presented to this Court, therefore, is: Was there aufficient evidence before the Board to make the question of error in the original zoning of 1945 fairly debatable? This Court is of the opinion that the evidence presented requires an affirmative answer to this question.

The Court is cognizant of the general proposition that there is a strong presumption of corrections of original zoning, or comprehensive regoning, and that to custom a piecement change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood, (See Tommink v. Ed. of Zoning Appeals, 205 Md. 439 p. 494 - decided November 13, 1954; Kroen v. Board of Zoning Appeals, 209 Md. 423 p. 425 - decided March 16, 1955; Reese v. Mandel, 224 Md. 121 p. 128 - decided January 13, 1961; Johar Corp. v. Rodgers Forse, 235 Md. 106 p. 121 - decided July 24, 1964; MacConald v. County Board, 238 Md. 548 p. 555 - decided May 25, 1965; and Miller v. Abrahams, 239 Md. 253 p. 272 - decided June 23, 1955.) This general rule does not mean, however that zoning, once established, is static and eternal. This was observed in the case of Misseur Paulty, Inc. v. Ramer, 216 Md. 442, wherein Judge Prescott, speeking for the Court, at page 447, said:

"It is a principle of universal recognition that zoning, once imposed, is not static. If it could not be altered with the changing conditions that surround us in the world today, progress would be retarded, and many of the advantages, indicating expected from zoning, would be lost. Restrictions

on the use of property that are reasonable unday may be so unreasonable under different conditions in the future as to amount to confinction. Soning officials, when property authorized, have the authority to alk: prove the understanding the conditions and the conditions and such alteration by a region of the conditions and such alteration by a future. Soning the conditions and conditions and conditions and conditions and conditions and conditions. As the condition of the public conditions. About 16 Zealmon & Specials. Supra, 204 Md.

The limited function of the Court in zoning appeal cases has been reiterated on numerous occasions by the Court of Appeals of Maryland. In the case of John Corp. v. Rodgers Force, supra, the Court was dealing with both the question of change/conditions and the question of original error. At page 120, the

It is obvious that the floard could have been more specific and definite in its finding offset however, it is certain that the Board found that there and been changes in the neighborhood and error in the original soning sufficient to justify the reclassification (its other findings clearly need to test of being fairly debabable, so it will be unscensory to discuss the function of the ourse to receive the function of the south of the specific of the south of the function of the supporting facts that the courts are justified in reversing a decision of the Board, or declaring its actions arbitrary or coprisions of the sound, or declaring fits actions artitleary or capticlous. See Monitoners County Council v. Sortingson C. 211 Md. 407, Tannaik v. Board. 212 Md. c. and Wrest Ricke Inc. v. Moltomers. 222 Md. 448, for three of the many Maryland caser so holding. Therefore. Therefore. tests to the evidence produced before the Board in order to determine the case at bar.

In considering the question of error in original zoning, the Court continued at pages 121-122;

"We turn to the question of error in the original soning. Again, we start of with the same presumption of valicity. The Deputy Director of the mines of all on consider the Re-I soning of the tublest proper in 1925 to be an error in original soning, and should be supported to the same of the support of the same start. All the same is the same start of the transport errors such that the Re-I soning was error in the original soning, and que his reasons for reaching that conclusion fepsials were do not repeat them here). Although the shows may constitute some conflict in the testimony relative to original soning, we are unable to conclude that this left the record lawren of substantial. in the testimony palette to original soning, we are unable to conclude that this left the record barron of substantial, supporting facts relative thereto. The Board shaded his supporting facts relative thereto. The Board shaded his corror in original soning, and if it denied to accord his optimization of the research of the research given by his, we cannot, under our previous toldings, reverse the Board's action, in the absence of a Farms, 232 Md. 274 p. 283 stated at pages 371-372 as follows: \*\*\*\* \*\* the courts have exercised restraint so as not to substitute
their judgments for that of the agency and not to choose between
equally permissable inferences or make independent determination
(if last, because to do so would be secretizing a mon-judicial rolelabeler, they have attempted to decide whether a reasoning mind
COU!= reasonably have reached the result the agency reached upon
a fair consideration of the fact picture painted by the entire record.

"In the cases dealing with consideration of the weight of In the Cases dealing with consideration of the weight, the evidence, the matter seems to have come down to whether, all that was been segment considered, its action was clear croneous or, to use the planes which has become standard in Maryland continue cases, not fatrly debatable, "

See also the following recent cases: Finney 7. Halle, 241 Md. 224 (decided Pebruar, 2, 1966); Dill v. The John Corp., 242 Md. 16 (decided March 15, 1966); Bonnie View Club v. Glass, 242 Md. 46 (decided March 22, 1966); Reth Tilloh v. Blum. 242 Md. 84 (decided March 29, 1966); Hoard v. Fair. 242 Md. 251 (decided April 26, 1955); and Vocal v. MpCoah, 242 Md. 371 (decided April 28, 1966).

The Board in the instant case found error in the now rather ancien 1945 Land Use Map and that it was inconceivable how the subject property could be utilized in its present residential zoning and to allow it to remain so would amount to confiscation. There was undoubtedly evidence before the Board to justify this conclusion. The rezoning requested can be supported, however, without a finding of actual confiscation. In the recent case of Dill v. The John Corporation supra, the Court of Appeals said at page 23:

"Even though the existing goning does not result in confincation and thus require rezoning, original error may permit the agency

to which the controlling logislative 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.

In upholding the reclassification from a residential zone to a

zone, the concluding part of the Court's opinion is as follows:

"In the case before us there is no need to consider whether as a native of law the residential resoluting was continuously suspended resoluting and the control of the cont that there had been original error. Reese v. Mandel, 224 M 121; Overton v. Co. Commissioners, supra. The resconing to business local was not arbitrary, capricious or illegal, and, having determined this, we have at the same time fulfilled sted our judicial function in reviewing zoning

The Protestants rely heavily on the decision in the case of Howard County v. Mertyman, 222 Md. 314, dec'ded April 19, 1960. The property involve in this case was a tract of land containing 92 acres which was zoned for residential use by resolution of the County Commissioners of Howard County on January 12, 1954. On May 9, 1955, the Board of Zoning Appeals of Howard County granted a permit to operate a sand and gravel pit on the premises subject to certain limitations and restrictions, among which was one to the effect that the operation should be confined "to the hill containing sand and gravel" and that the hill should be cut only to the extent of adjacent contours to the end that the property would be "more suitable for residential development" in the future. The number of trucks using the narrow access roadway to the gravel pit was also limited. On April 7, 1958, the owner applied for rezoning for light manufacturing use on the basis of substantial change in the character of the neighborhood since January 12, 1954, the date of the original zoning. This application was denied and affirmed by the Circuit Court. On March 10, 1959, within less than a year after rezoning had been denied, the County Commissioners found evidence of "substantial change in the area" and granted the rezoning requested. The only evidence of change was the discovery of an immense deposit of sand and gravel on the premises and a proposed highway extension and proposed industrial replanning was being considered for the area of which the subject-property comprised a part. The proposed highway extension and industrial replanning were not immediate, however, but were projected in the distant future. The owner, moreover, desired to change his operation from that of mercly mining sand and gravel to that of the operation ant cinder and concrete block plant which he proposed to construct in the middle of a residential area. There was no allegation of error in the original zoning in 1954, and the facts of this case can be readily distinguished from the facts of the case at bar

The Court's attention has also been called to the decision of Judge John E. Raine, Jr. made on June 19, 1984, for the percel of ground situate at the northwest corner of Simms Avenue and Jopps Road. (See Miscellaneous cases Nos. 2412 and 2832.) The reclassification there requested was from residential to commercial use with a special exception for a gasoline service station. The County Board of Appeals had granted the reclassification and special exception, and Judge Raine reversed the Board on the ground that ther was no showing of a substantial change from residential use to commercial use in the immediate neighborhood. This finding was undoubtedly correct and is also supported by the record in the case at bar. There was no showing, however, that the parcel at Simms Avenue and Joppa Road could not be used in its present goning category or that the original zoning, as applied to it, was, in fact, erroneous. The facts in that case are in apposite to the facts surrounding the property now under consideration.

In addition to the reclassification, the Board granted certain setback variances for the existing buildings on the property. The Board disposed of this phase of the pettron in the following manner

"Since the setback variances sought are all variances from either the property lines of the petitioner's own property or that of the Suscuehanna Transmission Company's overhead high tension lines we cannot see that the spirit and intent of

the Zoning Regulations would be violated by greating the variances requested here. It also seems an entreme hardship to the petitioner to require him to remove the existing procures on the property which have long been used in connection with the petitioner's sand and gravel operation. The Court agroes with the position taken by the Board on the

matter of variances. In doing so, the Court does not wish to condone the owner's action in building the office and weighing station on area No. 2 without first obtaining the requisite building permit. The owner has been deprived of the ise of area No. 2 since April 18, 1963, and has been penalized to some extent for its arbitrary action in flouting the building permits requirements. By reason of the very location of all of the buildings on areas 1 and 2 and the vast ing distance from any existing residence, the Court is unable to find that continuing these improvements in their present locations would adversely affect the health, safety and general welfare of the community. It is in the quality and character of the operation of the Petitioner's business which will dictate, in the future, whether or not it can live at peace with the rasidential properties in the neighborhood. If it conducts its operation with due regard to mable enjoyment by residential home owners, it will encounter no difficulty; if, on the other hand, it conducts its operations in utter disregard of the rights of residential properties, further trouble is undoubtedly on the

Upon a fair consideration of the entire record before the Board, the Court is constrained to hold that a reasoning mind could reasonably have reached the same conclusion as that of the Board and hence its action was not arbitrary or capricious or tilegal but, on the other hand, was fairly debatable. Having determined this, the Court has fulfilled and exhausted its limited undicial function in reviewing a zoning appeal.

For the reasons stated and in conformity with the foregoing Opinion, it is this 28th day of July, 1986, by the Circuit Court for Baltimore County ORDERE that the Order of the County Source of Appeals of Seltimore County dated October 21, 1985, be and the same is hereby affirmed. /s/ Walter M. Jenifer Walter M. Jenifer, JUDGE

PE. PETITION FOR RECLASSIFICATION : BEFORE m an R-6 zone to an M-L zone, i for VARIANCES from Sections 1.1, 243.2, 243.3 and 243.4 COUNTY BOARD OF APPEALS OF of the Zoning Regulations, 1024.06' South of Joppa Road and RAI TIMORE COUNTY W/S of the Susquehan Line - 11th District No. 43-77-RV Ark Readi-Mix Corpor 

### OPINION

MAP

#11+144

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The petitioner in this case seeks reclassification of a trapezoidal shaped tra of land 2.25 acres in size, 627 feet south of the Joppa Road on the west side of the Susquehanna Transmission Company high tension lines in the Eleventh District of Baltimore County, and variances from Sections 243.1 to 243.4 of the Zoning Regulations. The property of the Ark Readi-Mix Corporation and their operations has been the subject of much litigation both before the County zoning authorities and the Circuit Court for Baltimore County. In order to properly understand the present situation the Board will refer to petitioners' exhibit #1 which is a plat of the subject property together with two other parcels of ground owned The exhibit shows four areas marked as area one, two, three and four. The portion of the property which we are concerned with are the areas marked area one and area two. The petitioner has used his property for a number of years for a sand and grave operation, and the property was the subject of a hearing on an alleged zoning violation before the Board of Appeals in 1963. On April 18, 1963 the Board of Appeals passed an Order that the petitioner had a legal nonconforming use on area number one of his property but that area two, as well as three and four, were zoned R-6 and any operations other than a greenhouse on those parcels should cease and desist. The petitioner now seeks a reclassification to Manufacturing-Light for areas one and two to legalize a nonconforming use on area one, and to legalize the potitioner's use of area two as it was used by it between 1952 and 1963.

Andrew Wargo, a director and stockholder in Ark Readi-Mix who had also esident and General Manager for the years 1950 to 1963, testified that the company purchased area one in 1950 and area two in the year 1952. He further testified that in 1952 he was granted a special permit by the Zoning Commissioner for Baltimore County to use the property as a sand and gravel pit. He further testified that area two is ssary to the sand and gravel operation as it is presently improved with an office and truck weighing station. He stated that a new access road, fifty to sixty feet wide, had been provided for the operation across areas three and four of the petitioner's property

Ark Readi-Mix - 163-77-RV

Mr. Frederick P. Klaus, a realtor and appraiser, appeared on behalf of the petitioner as an expert witness. He testified that, in his opinion, the 1945 map did not present any comprehensive plan for the area, merely recognized certain existing uses. He cited as changes in the neighborhood retition 2283-SA which is a special permit granted on parcel one of the petitioner's land for use as a sand and gravel pit. He also cited petition 3325 which was a reclassification on February 15, 1955 from R-6 to M-L of a tract consisting of approximately eighty acres now owned by Horry T. Campbell and Sons Corpor which is only nine hundred feet southwest of the subject property. He further cited as change in the area petition 2431, a forty-four acre parcel which received a special permit in December of 1952, and petition 1404 rezoned to Business-Local which is on the south side of the Joppa Road almost next to parcel four of the petitioner's property. He further testified that, in his opinion, the map was in error in zoning this property R-6 and that no developer would consider this property for residential development in view of the extensive mining operations in the vicinity. He stated that he thought the best use for the subject property was M-L to allow the owner to continue to use his property for the sand and grave operation as he has been doing for years. He also testified that he couldn't imagine why people would build homes along Jasper Lane just west of the subject tract and adjacent to

-2-

The profestants testified that there had been very little or no change in the character of the neighborhood. They objected to the rezoning here on the basis that it was unwarranted

From an examination of the photographs and exhibits introduced before the ard and a personal inspection of the property, it is indeed inconceivable to the Board ha the subject property could be used in its present residential zoning. Therefore, the Board feels that there is an error with regard to this property in that it cannot be used as R-6 and would amount to confiscation of the petitioner's property to allow it to remain so.

Since the setback variances sought are all variances from either the property lines of the petitioner's own property or that of the Susquehanna Transmission Company's overhead high tension lines we cannot see that the spirit and intent of the Zoning Regulations would be violated by granting the variances requested here. It also stems an extr hardship to the petitioner to require him to remove the existing structures on the property which have long been used in connection with the petitioner's sand and gravel operation.

Ark Readi-Mix - 63-77-RV

ORDER

- 3 -

MLY of October, 1965 by the County Board of Appeals, ORDERED that the reclassification and variances petitioned for, be and the same are hereby GRANTED

Any appear 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

#63-77FV

MAP

#11+144

BALTIMORE COUNTY, MARY ND Na. 34534 OFFICE OF FINANCE COURT HOUSE
TOWSON, MARYLAND 21204 \$ 10.00-11:000 1300 + 30534 HP-1000 IMPORTANT MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND BALTHEORE COUNTY, MARY AND MA38962 OFFICE OF FINANCE \$1.00

RE: PETITION FOR RECLASSIFICATION VARIANCES from Section 243.2, 243.3 and 243.4 of the Zoning Regulations, 1024.06' South of Jappa Road and W/S of the Susquetianna Tran. Line - 11th District Ark Readi-Mix Corporation,

REFORE

COUNTY L'OARD OF APPEALS

BALTIMORE COUNTY No. 63-77-RY

#### OPINION

The petitioner in this case seeks reclassification of a trapezoidal shaped trace of land 2.25 acres in size, 627 feet south of the Joppa Road on the west side of the Susquehanna Transmission Company high tension lines in the Eleventh District of Beltimore County and variances from Sections 243.1 to 243.4 of the Zoning Regulations. The property of the Ark Readi-Mix Corporation and their operations has been the subject of much litigation both before the County zoning authorities and the Circuit Court for Baltimore County. In order to properly understand the present situation the Board will refer to petitioners' exhibit #1 which is a plot of the subject property together with two other percels of ground owned by the patitioner. The exhibit shows four areas marked as area one, two, three and four. The portion of his property which we are concerned with one the areas marked area one and area two. The petitioner has used his property for a number of years for a sand and gravel operation, and the property was the subject of a hearing on an alleged zoning violation before the Board of Appeals in 1963. On April 18, 1963 the Board of Appeals possed on Order that the petitioner had a legal nonconforming use on area number one of his property but that area two, as well as three and four, were zoned R-6 and any operations ather than a greenhouse on those porcels should cause and desist. The petitioner new seeks a ractossifi cation to Manufacturing-Light for areas one and two to legalize a nonconforming use on area one, and to legalize the petitioner's use of area two as it was used by it between 1952 and 1963.

Andrew Wargo, a director and stockholder in Ark Readi-Mix who had also been the President and General Manager for the years 1950 to 1963, testified that the company purchased area one in 1950 and area two in the year 1952. He further testified that in 1952 he was granted a special parmit by the Zoning Commissioner for Baltimore County to use the property as a sand and grave) pli. He further testified that area two is nacessary to the sand and gravel operation as it is presently improved with an office and truck weighing station. He stated that a new occess road, fifty to sixty feet wide, had been provided for the operation across as sos three and four of the petitioner's property.

## Ark Read!-Mix - 63-77-RV

Mr. Frederick P. Klaus, a realtor and appraiser, appeared on behalf of the an expert witness. He testified that, in his opinion, the 1945 map did not 3325 which was a reclassification on February 15, 1955 from R-6 to M-L of a tract conwhich is only nine hundred feet southwest of the subject property. He further cited as change in the area petition 2431, a forty-four acre parcel which received a special permi in December of 1952, and petition 1404 rezoned to Business-Local which is on the south side of the Joppe Road almost next to parcel four of the petitioner's property. He further testified that, in his polition, the map was in error in zoning this property R-6 and that no developer would consider this property for residential development in view of the extensive mining appetitions in the vicinity. He stated that he thought the best use for the subject property was M-L to allow the owner to continue to use his property for the sand and arave operation as he has been doing for years. He also testified that he couldn't imagine why pecyle would build homes along Jasper Lane just west of the subject tract and adjacent to

-2-

character of the neighborhood. They objected to the rezoning here on the basis that it

Board and a personal inspection of the property, it is indeed inconceivable to the Brand how the subject property could be used in its present residential zoning. Therefore, the Board Firels that there is an error with regard to this property in that it cannot be used as R-6 and

present any comprehensive plan for the area, merely regoanized certain existing uses. He alted as change in the said-borhood patition 2283-SA which is a special permit graphed on arcel one of the petitioner's land for use as a sand and gravel pit. He also cited petition sisting of approximately eighty ecres now owned by Harry T. Campbell and Sons Corporation

The protestants testified that there had been very little or no change in the

From an examination of the photographs and exhibits introduced before the would arount to confiscation of the petitioner's property to allow it to remain so.

Since the serback variances sought are all variances from either the property lines of the petitioner's own property or that of the Susauchanna Transmission Company's overhead high tension lines we cannot see that the spirit and intent of the Zoning Regulations would be violated by granting the variances requested here. It also seems an extrem bandship to the petitioner to require him to remove the existing structures on the property which have long been used in connection with the petitioner's sand and gran of operation

the record), the Petitioner constructed on area No. 2 an office building and In addition, the Petitioner began to use area No. 3 for the washing of its commercial uses should cease prior to July 1, 1963; (4) that there was no

operation including the construction of batch bins and mixers and a truck garage for the repair of its trucks. This operation also entailed the bringing of sand and gravel and bulk cement to the premises, and then these materials are weighed separately and ribbon fed to trucks and are dispatched to various jobs, and in the course of transit, mix the concrete. The materials are not mixed or blended in the plant on the premises. (Fr. p. 35.) Subsequent to the year 1952 (the exact date is not disclosed by

weighing station and used a portion thereof for the storage of sand and gravel. concrete mixing trucks and diamantling of old trucks thereby causing unsightly conditions. It was this extention of operations and undoubtedly the careless manner of operation resulting in dust accumulation on the residential properties in the neighborhood and the accumulation of debris on area No. 3 which gave rise to the complaints of goning violation. A hearing was held on April 2, 1983, before the Board; and on April 18, 1963, an Opinion and Order was filed with respect to the use of all 4 parcels. The Board provided in its Order as follows: (1) that percel No. 3 was zoned R-5 for residential use and that the washing and dismantling of trucks thereon would cease and that all scrap iron and parts of dismantled trucks must be removed therefrom; (2) that parcel No. 4 must be limited to use of commercial greenhouses; (3) that parcel No. 2 was zoned R-6 for residential use and could not be used commercially in any way and that any violation as to parcel No. 1 by reason of the special permit granted in 1952 and that the hauling of sand and gravel into the property from other locations for weighing and straining, loading and mixing did not constitute a violation and was allowable. Subsequent to this Order, the Petitioner ceased its operation on parcel No. 2 which it unfortunately had not included in its petition for

special permit in 1952, and, consequently, the original petition for reclassification

in this case was filed on July 31, 1963.

## Ark Readi-Mix - 63-77-RV

## ORDER

For the reasons set forth in the aforegoing Opinion, it is this 2/1/den of October, 1965 by the County Board of Appeals, OR DERED that the reclassification and variances petitioned for, 'e and the same are hereby GRANTED.

Any appeal from this decision must be in accordance with Chapter 1100, ubtitle 8 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS

William S Baldway Clark

The Circuit Court for Baltimore County THIRD JUDICIAL CIRCUIT OF MARYLANE

July 28, 1966

Mr. John G. Rose Zoning Commissioner County Office Building

> Re: Smith et al. v. County Board of Appeals Misc. Docket 8, Folio 29, Case No. 3405 Zoning File No. 63-77-RV

I am enclosing copy of Memorandum Opinion and Order of Court which I have today filed in the above zoning appeal cas

With kind regards. Lam

Sincerely

Walter M. Jenifer

JL 29 '68 AM

41

The operation of the Petitioner was before this Court on December 8, 1964, in 2 separate suits filed by property owners in the neighborhood, one of which was instituted on April 17, 1962, and the other on December 2, 1963. These suits sought injunctive relief alleging that the Petitioner's operation on its premises constituted a nuisance and also for monetary damages. These cases did not have as their basis for injunctive relief a violation of the Zoning Regulations At the time of hearing in these cases, the Petitioner was using as a means of access to its property the 20-foot roadway bordering along the easterly side thereof and which is adjacent to the residence of Mr. and Mrs. Kerst which fronts on Joppa Road. The Court found the existence of a nuisance in the Petitioner's operation, and by its Order required the installation of dust control devices in its cement allo and the resurfacing of the 20-foot readway with dust control material. The Court also awarded monetary damages to the property owners. Mr. and Mrs. Kerst. The Court has recited these facts as to the litigation in this Court to point out that the question of soning of the property was not involved therein and no decision was made with respect thereto. Since the date of the decision in these cases, the owner of the subject property has constructed a new 59-foot entrance road through parcels Nos. 3 and 4 as a means of access to Jopp

In addition to Mr. Wargo, the Fetitioner produced before the Board, ick P. Klaus who qualified as a real estate broker and apprairer and real estate consultant. He testified that the property in question is definitely in the midst of a predominately sand and gravel area. He stated that the property was placed in a R-6 Zoning classification on the 1945 wap as were the other sand and gravel properties in the area, but there have been no comprehensive land use studies. Since the adoption of the 1945 map, there have been certain changes and reclassifications with respect to these other sand and gravel parcels as follows: (1) Zoning File 24-31-6A - a parcel containing 44 acres of land, more or less, situate on the westerly side of Relair Road about 1 mile southwest of the subject property for which a special permit was granted on December 16, 1952,

IN THE CIRCUIT COURT MERLE SMITH, ALVERTA PEARL HINZ, FOR BALTIMORE COUNTY DOROTHEA LEWIS and WILMA GRANT AT TAW Misc. Docket THE COUNTY BOARD OF ZONING Case No. ALS OF BALTIMORE COUNTY ARK READI-MIX COMPORATION

#### . MEMORANDUM OPINION AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Baltimore County (hereinafter referred to as the "Board"), which by its Order dated October 21, 1965, granted a reclausification of the property described in this proceeding from a R-5 Zone (Residence, 1 and 2 Family) to a M.L. Zone (Manufacturing, Light) and certain building setback variances. The Zoning Commissioner of Baltimore County had previously denied the reclassification and the variances requested by an Order passed under date of September 25, 1953. The Zoning Commissioner based his decision on two considerations. First he was of the opinion that the problems, which had arisen in the past from the use of the property by the owner thereof in the operation of its business thereon had been detrimental to the welfare of the locality immediately adjoining and that the granting of M.L. Zening would create a further burden upon the residents in the immediate vicinity. Secondly, he found that the 20-foot right of way, which then provided the only means of access to Joppa Road, was inadequate to support traffic emanating from a Manufacturing, Light Zone and that there was no likeliehood that the owner would improve the road in the future.

The property, for which a reclassification is requested, is idal in shape, and the northeast corner of which is situate approximately 627 feet and the southwest corner of which is situate 1,024 feet from the south side of Joppa Road in the Eleventh Election District of Baltimore County, Maryland constructed overhead steel towers. It comprises areas 1 and 2 shown on the plat filed with the original zoning petition and offered in evidence before the Board at the hearing on April 15, 1965, as Petitioner's Exhibit No. 1. These parcels contain in the aggregate 2.25 acres of land, more or less. The Patitioner. Ark Readi-Mix Corporation, is the legal owner of areas 1 and 2 and also owns areas 3 and 4 as shown on said plat and which are located between the subject

the Suscuehanna Transmission Company, 150 feet in width, upon which are

property and Joppa Road. Area 4 is improved by some greenhouses which are operated commercially under a non-conforming use. Area 3 has a frontage of approximately 200 feet on the south side of Joppa Road and as far as the record

The manner of the use of areas 1 and 2 by the Petitioner herein over the past years has been the subject of much litigation in the form of patitions alleging violations of the Zoning Regulations before the Zoning Commissioner and injunctive proceedings before the Circuit Court.

is disclosed is unimproved.

According to the testimony of Andrew G. Wargo, stockholder and director of the corporate Petitioner and formerly General Manager and President of the corporation for 13 years, area No. 1 was purchased in the year 1950, and area No. 2 in the year 1952. According to the deed reference shown on the metes and bounds description of the property, area No. 1 was deeded to the Petitioner under date of April 24, 1952, and area No. 2 was deeded on February 23, 1955. The property appears on the Land Use Map for portions of the Eleventh and Fourteenth Election Districts adopted by the County Commissioners of Baltimor County on January 2, 1945. The subject property, along with other sand and gravel properties in the area, were place in a R-5 Zoning classification. On June 18, 1952, the Zoning Commissioner of Britimers County granted to the present Potitioner a special permit for the use of area No. 1 as a sand and gravel pit. (See soning file No. 22-83-8A.) At the time of acquisition by the Petitioner and even prior to 1945, the property had been operated as a sand and gravel business. The Peritioner, upon acquiring the property, established a Readi-Mix plant

SRLE SMITH		IN THE	
190" Jesper Lane saltimore, Waryland 21234			
ALVERTA PEARL HINZ	1	CIRCUIT CO	JRT
leitimore, Maryland 21:236	1		
DOROTHEA LEWIS	1	FOR	•
3906 Jasper Lane Baltimore, Maryland 21234	•		
WILMA GRANT 3603 E. Joppa Road	•	BALTIMORE CO	UNTY
Baltimore, Maryland 21226			
Plaintiffs	•	AT LAW	
<b>va.</b>			
WILLIAM S. BALDWIN, W. GILES PARKER and	•	Misc. Docket No	
R. BRUCE ALDERMAN,	•		29
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY		Felio No.	
OF BALTIMORE CODITIO			
Defendants		File No3	405
	111		
CERTIFIC	ATE OF	NOTICE	

Paramet to the provisions of Rule 1101-B (4) of the Maryland Rules of Procedure; William S. Baldwin, W. Glies Perker and R. Bruce Alderman, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Appeal entative of every party to the proceeding before it; namely, Miss M. Jacqueline McCurdy, 203 West Chesapeake Avenue, Towson, Maryland 21204 and Harold Lev, Esq., 307-310 Court Square Building, Baltimore, Maryland 21202, Attorneys for the Petitioner, and M. Michael Masien, Esq., 2137 Dundalk Avenue, Dundalk, Maryland 21222, Attorney for the Protestants, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Elemhort, Secretary
County Board of Appeals of Baltimore County
County Office Building, Toward, Md. 21204
VAILey 3-3000, Ext. 570

I hereby certify that a copy of the aforegoing Certificate of Notice has been mailed to Miss M. Jacqueline McCurdy, 203 West Chesapeake Avenue, Towson, Marylone 21204 and Harold Lev, Esq., 307-10 Court Square Building, Baltimore, Maryland 21202,

Meryland 21222, Attorney for the Protestants, on this 22nd day of November, 1965.

Edith T. Elsenhart, Secretary County Board of Appeals of Baltimore County

CIRCUIT COURT WILLIAM S. BALDWIN, W. GILES PARKER and R. BRUCE ALDERMAN FOR BALTIMORE COUNTY constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY AT LAW Misc. Docket No. Follo No.\_ 29 File No. 3405 ANSWER TO ORDER OF APPEAL TO CIRCUIT COURT FOR BALTIMORE COUNTY AND CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY MR. CLERKI Please file, & c. Edith T. Elsenhart, Secretary County Board of Appeals of Baltimore County

IN THE

63-77

MERLE SMITH, ET AL

Zoning File No. 63-77-RV-Ark Readi-Mix Corp. - Appealed 11/18/65 63-75 IN THE entit ALVERTA PEARL HINZ 2608 E. Jappa Road Baltimore, Maryland 21206 CIRCUIT COURT DOROTHEA LEWIS FOR WILMA GRANT 3623 E. Jappa Road Baitlmore, Maryland 21226 BALTIMORE COUNTY AT LAW WILLIAM S. BALDWIN, W. GILES PARKER and R. BRUCE ALDERMAN, Misc. Docket No. 8 constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY 29 3405 File No. CERTIFICATE OF NOTICE

Pursuant to the provisions of Rule 110:-8 (4) of the Maryland Rules of Pro dure; William S. Beldwin, W. Giles Parker and R. Bruce Aldorman, constituting the Count Sound of Appeals of Baltimore County, has given notice by mail of the filling of the Appeal to the representative of every party to the proceeding before it; namely, Miss M. Jacque line McCurdy, 203 West Chesapeoke Avenue, Towson, Maryland 21204 and Harold Lev, Esq., 367-310 Court Square Building, Baltimore, Maryland 21202, Attorneys for the Petitioner, and M. Michael Maslen, Esq., 2137 Dundalk Avenue, Dundalk, Maryland 21222, Attorney for the Protestants, a cupy of which notice is attached hereto and prayer that it may be made a part thereof.

Edith T. Eisenhart, Secretary County Board of Appeals of Baltimore County County Office Building, Towson, Md. 21204 VAII/ry 3-3006, Ext. 570

I hereby certify that a copy of the aforegoing Certificate of Notice has been mailed to Miss M. Jacqueline McCurdy, 203 Wast Chesapeaks Avenue, Tousan, Marylan 21204 and Harold Lev, Esq., 307-10 Court Square Building, Beltimore, Maryland 21202,

Attorneys for the Petitioner, and M. Michael Masian, Esq., 2137 Dundalk Avenue, Lunda Maryland 21222, Attorney for the Protestants, on this 22nd day of November, 1965.

Edith T. Elsenhart, Secretary County Board of Appeals of Baltimore County

MERLE SMITH, ET AL IN THE CIRCUIT COURT WILLIAM S. BALDWIN. FOR W. GILES PARKER and R. BRUCE ALDERMAN BALTIMORE COUNTY constituting the COUNTY BOARD OF APPEALS AT LAW Misc. Docket No. 8 29 File No.\_\_\_\_ 3405

> ANSWER TO ORDER OF APPEAL TO CIRCUIT COURT FOR BALTIMORE COUNTY AND CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

MR. CLERKI

Please file, & c.

Edith T. Elsenhart, Secretary County Board of Appeals of Esitimore County

	MERLE SMITH, ET AL	1	IN THE
	vi.	1	CIRCUIT COURT
	WILLIAM S. BALDWIN, W. GILES PARKER and		FOR
	R. BRUCE ALDERMAN constituting the	1	BALTIMORE COUNTY
ĺ	COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY		AT LAW
			Misc. Docket No. 8
Ì			Foile No. 29
ŀ			File No. 3405

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William S. Baldwin, W. Giles Parker and R. Bruce Alderman, stituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

> ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 63-77-RV

4

Petition of Ark Readi-Mix Corporation for roclassification from on R-6 zone to an M-1 zone and variances from Sections 243.1, 243.2, 243.3 and 243.4 of the Zoning Regulations on property located 1024.06 fees south of Joppa Road and the west side of the susquehanna Transmission Line, 11th District of Ilide

Order of Zoning Commissioner directing advertisement and posting of property – date of hearing set for September 25, 1963 at 11:00 a.m.

Certificate of Posting of property - filed

Certificate of Publication in newspaper - filed

At 11:00 a.m. hearing held on petition by Zoning Commissioner case held sub curia . 25

Order of Zoning Commissioner denying reclassification and variances Oct. 16 Order of Appeal to County Board of Appeals from Order of Zoning

Hearing on appeal before County Board of Appeals

14av. 18, 1935 Order for Appeal filed in the Circuit Court for Baitimore County Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County · 22 Certificate of Notice sent to all interested partied Transcript of Yestimony filed - 1 volume Pecitioners' Exhibit No. 1 - Plat " 2 - Photographs (A to I)

" " 3 - Copy of Board of Appeals Opinion Zoning File No. 551-ZV

Protestanie' Exhibit "A" - Photographs (1 to 4)

Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and sold Board acted are permanent records of the Zoning Department of Baltimore County as are also the use district maps and your Respondents respectively suggest that it would be lent and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations together with the zoning use district maps at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County

. IN THE MERLE SMITH, ET AL CIRCUIT COURT FOR WILLIAM S. BALDWIN W. GILES PARKER and R. BRUCE ALDERMAN SALTIMORE COUNTY constituting the COUNTY BOARD OF APPEALS OF BULLIMORE COUNTY ATLAW Misa. Docket No. 29 Fello No. 3405 File No. ANSWER TO ORDER OF APPEAL TO CIRCUIT COURT FOR BALTIMORE COUNTY AND CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY MR. CLERKI Places file, & c. Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County

MERLE SMITH, ET AL IN THE CIRCUIT COURT vs. WILLIAM S. BALDWIN FOR W. GILES PARKER and BALTIMORE COUNTY AT LAW BALTIMORE COUNTY Misc. Docket No.\_ Follo No. 29 3405 File No. TO THE HONORABLE. THE JUDGE OF SAID COURT. And now come William S. Baldwin, W. Giles Parker and R. Bruce Alderman constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following cartifled copies or original papers on file in the office of the Zoning Department of Baltimore County: ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY No. 63-77-RV Petition of Ark Readi-Mix Corporation for reclassification from an R-ó zone to an M-L zone and variances from Sections 243, 1, 243, 2, 243, 3 and 243, 4 of the Zoning Regulations on properly located 1024, 05 feet worth of Joppe Road and the west side of the Susquehanna Transmission Line, 11th District — filled July 31, 1963 Order of Zoning Commissioner directing advertisement and posting of property – date of hearing set for September 25, 1963 at 11:00 a.m. Certificate of Posting of property - filed Aug. Sept. 6 Certificate of Publication in newspaper - filed 25 At 11:00 a.m. hearing held on petition by Zoning Commissioner case held sub curio 26 Order c\* Zoning Commissioner denying reclassification and variance Oct. 16 Order of Appeal to County Board of Appeals from Order of Zoning Hearing an appeal before County Board of Appeals
- case held sub curia Order of County Board of Appeals granting reclassification and 0.

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. 18, 1965 Order for Appeal filed in the Circuit Court for Baltimere County Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County 22 Certificate of Notice sent to all interested parties Transcript of Testimony filed - 1 volume Patitioners' Fubility No. 1 - Plat " " 2 - Photographs (A to I) Copy of Board of Appeals Opinior Zoning File No. 551-ZV Protestants' Exhibit "A" - Photographs (1 to 4) Record of proceedings filed in the Circuit Court for Baltimore County Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County as are also the use district maps and your Respondents respectively at agest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondent will produce any and all such rules and regulations together with the zoning use district mans at the hearing on this petition or whenever directed to do so by this Court Respectfully submitted

.

I HERREY CERTIFY that a copy of the aforegoing Petition was mailed

this 185 day of November, 1965, to the County Roard of Zoning Appeals of

.

Baltimore County, Towson, Maryland 21204.

Road and W/S of the Susquebanna Transmission Line - 11th District, Ark Readi-Mix Corporation, Petitioner, Zoming File No. 63-77-RV. Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County I REMEDY CERTIFY that a copy of the aforegoing Order to Enter Appeal was mailed this \_\_\_\_\_ day of November; 1965 to the downty Board of Zoning Appeals of Baltimore County, 111 N. Chesapeaks Avenue, Towson, Maryland 21206.

> RE: PATITION FOR REGLASSIFICATION From "R-6" Zone to "N-L" Zone and Variances to Zoning Regul tions - Property 1021,06' S. of Joppa Road and W. S. Siegu BAFORE MORTED DOMESTING hanna Transmission Line, 11th Dist., Ark Readi-Mix Gorp., OF. BALTIMONE COUNTY No. 63-77-57

90

ZN TWO

CHICUTT COURT

209

H. Highael Haglan Attorney for Appellants 2137 Dundalk Avenue Baltimore, Maryland 21222 Attorney 2 2022

M. Michael Maslan ttorney for Appellants.

BALTIMORE COURSE

111111111111111111111111111

ORDER TO ENTER APPEAL

Appeals to the Circuit Court for Baltimore County in the case Petition for Re-

Classifization from an R-6 mone to an M-4 mone, and for Variances from Sections

243.1, 243.2, 243.3 and 243.4 of the Zoning Regulations, 1024.06' South of Joppa

Please enter an appeal from the decision of the County Board of Zoning

MIRIZ SKIRK 6907 Jasper Lane Baltimore, Maryland 21234

ALWERTA PEARL HIMZ 3608 E. Joppe Road Paltimore, Maryland 21236

DOROTHE LAWIS 8906 Jasper Lane Baltimore, Maryland 218th

WIMA ORANY 3603 R. Joppa Road Baltimore, Maryland 21236

Ve.

Mr. Clerk

THE COUNTY BEARD OF ECHING APPEAUS OF BALTIMORE COUNT Towson, Maryland 21204

Plaintiffe

The politicar, in the above entitled unter, has requested a reclassification of property 1021.05 feat each of Jope Seed and the west side of the Sucy-shame Transation Line from m 97.67 see to a 74-17 feas and variances to Sections 203.13 203.23 203.3 and 203.04 of the Caming Legislations.

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The subject property has been considered indestall by both the County Sourd of Appeals and the Zening Constrainment in connection with various violations. A popular of this prepare of the property is new their used conservabily. As a result of a hearing by the County Sourd of Appeals it is avident from the history of the problems arising bosons of the use of the property by the Ark Seasi-thic Gosporation, that various used in the property by the Ark Seasi-thic Gosporation, that various would make the substall the bus subtract of the Doublet purchase yellowing sounds and the substalling the substalli

right-of-way to Jopa Book. This property is by means of a 20 feet right-of-way to Jopa Book. This road is not paved but is sand, and gravel antiqued with shore of it and sepalal. Immunot as this road he never best inproved over a period of the last ten years it is multiply that best in the former and oven if it were been improved to the property of the period of the last ten years of over it were improved to the property of the period of the peri

For the above reasons the reclassification and variances

It is this day of September, 1963, by the Sening Country, GUURED that the above reclassification be and the same is broken DERHED and that the above consider property or area be and the same is continued as an Wi-6º Zone.

The variances requested are also DENIED

Zoning Comissioner of



TO THE HOMORABLE, THE JUDGE OF SAID COURTS

Your Petitioners, Norle Smith, Alverta Pearl Hinz, Dorothea Lewis, and Wilma Grant, by M. Michael Maslan, their attorney, respectfully represents

1. That on October 21, 1965, the County Board of Eppeals of Baltimore County granted a reclassification and variance on property located 1024.061 Box of Joppa Road & W/B of the Susquehanna Transmission Line, 11th District of Baltimore County presently somed "R-G" to that of "M-L".

2. That your Petitioners herein are residents and taxpayers residing adjacent to and in close proximity to the aforesaid property.

3. That your Petitioners feeling agrieved by the decision of the said County Board of Appeals appeal from the said decision.

4. That originally a hearing was held for reclassification of the aforesaid property before the Zoning Commissioner of Bultimore County and that by Order dated the 26th day of September, 1963, the Monorable John O. Rose, designer of Beltimore County denied the reclassifies ion for "M-L" soning; that the said Order was appealed to the County Board of Appeals; that testimony was taken on May 16, 1965; that an Order was passed by the County Board of Appeals dated the 21st day of October, 1965 granting the reclassific

and variances presently soned "R-6" to that of "M-L".

5. That your Petitioners contend that the decision of the County Board of Zoning Appeals is contrary to all applicable sections of the Baltimore County Zoning regulations; that the County Board of Zoning Appeals committed error in its ruling; that the decision of the County Board of Zoning Appeals was arbitrary and not based on the facts as presented; that the County Board of Zoning Appeals did not consider the tremendous burden that "M-L" zoning would place upon the narrow roads adjacent to the property; that the County Board of Zoning Appeals did not consider the Northeastern Master Plan which included the area reclassified and that the sation of the County Board of Zoning Appeals is unwarranted and constitutes snot soning.

WHEREFORM, your Petitioners pray that this Honorable Court:

- (a) Reverse the Order and findings of the County Board of Zoning Appeals in the above entitled case.
  - (b) Restore the area to its original soning of "R-6".
  - (c) That the costs of this appeal be not assessed against your

AND, as in duty bound, etc.

Attorney for Petitioners 2137 Dundalk Avenue altimore, Maryland 21392

STATE OF MARYLAND, COUNTY OF BALFINORE, to wit:

I HEREEY CERTIFY that on this 12th day of November, 1965, before me, the subscriber, a Motary Public of the State of Mayland, in and for the County of Baltimore aforesaid, personally appeared Merle Smith, Alverta Pearl Hins, Dorothea Lewis, and Wilma Grant, Petitioners, and made outh in due form of law that the matters and facts set forth in the aforegoing Petition are true and correct to the best of their knowledge, information and belief.

AS WITHISS my hand and Noterial Seal.



Notary Public

M. MICHAEL MASLAN

June 2, 1965

Gentlemen

Enclosed please find a brief outlining the position of the Protestants, Citizens, Residents and Taxpayers of Baltimore County who reside adjacent to or in close proximity to the property owned by

Very truly yours

Marchae Disc. M. Michael Maslan

Ap-II 1, 1965

Re: Petition for reclassification and variances 1024.061 South of Jappa Road & W/S of the Susquehanna Transmission Line, 11th District Ark Readl=Mix Corp., Petitioner - #63-77-RV

Door Miss McCurdy:

The hearing on the appeal filed in the above entitled matter has been scheduled by the Board of Appeals on Thursday, April 15, 1965 at 10:00 a.m. in Room 301.

Please be advised that the Board will not grant post within ten (10) days of the scheduled hearing date.

Very truly yours,

Edith T. Elsenhart, Secretary

ca: Harold Lev, Esq. M. Michael Masian, Esq.

RE: PETITION FOR RECLASSIFICATION From "R-6" Zone to "M-L" Zone and Variances to Zoning Regulaof Joppa Road and W.S. Susque hanna Transmission Line, 11th Dist., Ark Readi-Mix Corp.,

REFORE THE COUNTY BOARD OF ZONING APPRAIS

The Protestants, by their attorney, M. Michael Masian, respectfully request that the County Board of Zoning Appeals affirm the decision of the Zoning Commissioner of Baltimore County dated the 26th day of September, 1963 denying any reclassification of the said property. Quoting from the said Order dated the 26th day of September, 1963, the Commissioner stated:

"The subject property has been considered in detail by both the County Board of Appeals and the Zoning Cornisatener in connection with various violations. A portion of this property is now being used construction the result of a hearing up a string property in the being used to the property for the result of a hearing up a riging because of the use of the property by the Ark Readi with Corporation, that various mattered settlements to the welfare of the locality immediately adjoining would make the greating of the "N-L" counting a further burden upon the residence in the limitative vicinity of the subject

The only access to this property is by means of a 20 feet right-of-way to Joyce Road. This read is not pared but as fast and a started with mode. On the started a started with mode and the started are to the started and the started are the unitary that he comer model fasprove the road in the future and even if it were improved it would be worklily indequate to apport attrict ceanting from a numerical night more.

For the above reasons the reclassification and variances should be

The Protestents are all citizens, taxpayers and residents of Baltimore County, living adjacent to the subject property or in close proximity thereto, and to further assist this Board in making a proper decision state:

In the case of Elliott vs. Joyce, 233 MD. 76, (1963), the Court of Appeals said Reclassification in roning as well as original zoning must bear some reasonable relationship to the general public interest in promoting the health, safety or welfare of the community.

Joppa Road is but two lanes wide and is a narrow, dangerous road with no sidewalks and heavy truck traffic creates hazards which the community

In the case of Smith et al vs. Simms tried before the Homorable John , E. Raine in the Circuit Court for Baltimore County in 1964, it was decided that

August 26, 1964

there was no change in the neighborhood and the only change was the construction of additional dwellings and that reclassification would constitute spot zoning, and for that reason reclassification was denied at Joppa Road and Simms Avenue barely 100 yards away from the subject property.

Again in the case of Howard Co. vs. Merryman, 222 MD 314 (1960) there was an application for rezoning by a company holding a special exception for mining sand and gravel. The application for rezoning or extension of use for concrete and cinder block plant was denied and the reasons given for the denial were there was no substantial change in the neighborhood and the increase of traffic over narrow roads leading to the property.

In the case of the Mayor and City Council vs. 7.A.A.C.P. 221 MD 329 (1960) the Court held that the testimony by protesting property owners consistently endeavored to preserve the residential character of the neighborhood. xxxx that the restricted and actual use within the residential use district despite the existing non-conforming use and the sole special exception was still predominantly residential as it has slways been since the inception of the zoning laws. Agein in this case, the zoning was denied because there was no change in the neighborhood and no proof of mistake in original zoning.

The Protestants herein further contend and strenuously object to the testimony of Mr. Klaus, the realtor testifying on behalf of the Ark Readi-Mix Concrete Corporation, in that his testimony was  $mere\lambda_i$  his opinion as to the use of the property. Mr. Klaus has not been active in developing any property in the above mentioned neighborhood presently under consideration.

The Protestants respectfully request that the County Board of Zoning Atyeals take judicial notice of a hearing entitled "Smith et #1 vs. Wargo and Ark Readi-Mix Concrete Corporation", combined with "Kerst et al vs. Ark Readi Mix Concrete Corporation" in the Circuit Court for Baltimore County, in Equity, decided December 8, 1964, in which the Court allowed Mr. Kerat the sum of One Thousand (\$1,000.00) Dollars in usmages to his property caused by the passage of the heavy trucks belowing to the Ark Readi-Mix Concrete Corporation. And further the Court found that the use of the Ark Readi-Mix Concrete Corporation of the subject property constituted a nuisance and issued orders to correct the said nuisance.

-2-

To sum up the aforegoing, the Protestants state that any rezoning at this time would be entirely premature for the reason that there is presently under consideration by the County of Baltimore a new comprehensive zoning map and that a portion of this zoning map will include the area presently involved in this appeal. Any "N-L" zoning would constitute a hazard to the health and welfare of the adjacent community, would destroy the property values and would endanger the lives of the children living in the neighborhood by reason of the heavy truck traffic innerent in such zoning. And further that any reclassificat ion of the subject property would be spot zoning and as such completely contrary to the applicable rules and regulations of the Zoning Laws of Baltimore

Respectfully submitted,

M. Michael Maslan Attorney for Frotestants 2137 Dundalk Avenue Baltimore, Maryland 21222 ATwater 2-2700

March 5, 1964

Miss M. Jacqueline McCurdy 203 West Charapeake Avenue Towson 4. Maryland

Re: Petition for reclassification from an "R-6" Zone to an "N-4" Zone, vertices to Sections 243.1, 243.2, 243.3 and 243.4 of Zoning Regulations 1024.06" south of Joppa Road & W/5 of the Sucyaband Trensmistion Line, 11th District Ark. Read!—Mix Corp., Petitioner = \$63-77-RV

The hearing on the appeal filed in the above matter has been scheduled by the Board of Appeals on Thursday, April 16, 1964 at 9:30 a.m.

Very truly your

Fallth T. Eisenhart, Secretary

M Michael Maslan, Esq.

April 8, 1964

Miss M. Jacqueline McCurd 203 W. Chesapsake Avenue Towson, Maryland 21204

Petition for reclassification from on "R-6" Zone to on "N=". Zone, veriance to Sections 243.1, 243.2, 243.3 and 243.4 of Zoning Regulations, 1024.06' south of Joppa Road & W/S of the Susquenonna Trausmission Line, 11th District Art Samplifet Con-Ark Readl-Mix Corp., Petitioner - No.63-77-RV

The appeal hearing for the above subject scheduled on Thursday, April 16, 1964 at 9:30 a.m. has been postponed by the Board.

You will be duly natified of the rescheduling of this

Very truly yours.

Edith T. Elsenhort, Secretary

----

HL/pap

County Board of Appeals County Office Building 111 West Chesapeake Avenue

Towson, Maryland 21204

I would appreciate having the above entitled case placed in for trial as early as possible since my clients must clear up some business matters based on the out come of this case.

Very truly yours,

HAROLD LEV

Lamel 7

Petition for reclassification from an "R-6" Zone to an "M-L" Zone, variance to Sections 243.1, 243.2, 243.3

iance to Sections 233.1, 243.2, 243.3 and 243, 4 of Zoning Regulations, 1024,06 south of Joppa Read & W/S of the Susquehanna Transmission Line, 11th District Ark Readi-Mix Corp., Petitioner-No. 63-77-RV

October 21, 1965 Res Zoning File No. 63-77-8V Ark Readi-Mix Corp., Petitioner Enclosed herewith is a copy of the Opinion and Order passed by the County Board of Appeals today in the above entitled case. Very truly yours. Edith 1. Elsenhart, Secretary dyn in ce: M. Michael Maslan, Esq. M. Michael Masian, Cay. Harold Lev, Esq. Mr. John G. Rose Mr. George E. Gavrells Board of Education W

> PETITION FOR ZONING RE-CLASSIFICATION 63-77 RV AND OR SPECIAL EXCEPTION VARIANCES

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

MAP I, or weAFE. Rodi. Mix. GOED.....legal owner.. of the property situate in Ballmore at 14.4. County and which is described in the description and plat attached hereto and made a part hereof, the hereby petition (1) that the rooting status of the horning 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, p uant plL to the Zoning Law of Baltimore County, from an R-6 9/19/63 ....zone: for the following reasons:

1. That there was an error in the original zoning map in regard

said property.

2. That there has been a change in the neighborhood.

3. That the property cannot be used in the present zoning classification.

See Attached Description

Variances and (2) for a Special Examples, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, \*\*\* as follows: 1, From Section 243.1-

To permit front yard of 65 feet instead of the required 75 feet.

(See Attached sheet for further Variances)
Property is to be posted and advertised as prescribed by Zoning Regulations.

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

Ark Redi-Mix Corp. Andrew G. Wargo Lord Owner Contract purchases President Address 3617 E. Joppa Road

Baltimore, Md. Mr Snichael Maslaw A Strandin Il July
Petitioner's Atternet
M. Jacqueline McCurdy 203 W. Chesapeake Ave. Towson 4. Md.

ioner of Baltimore County, this 31st ORDERED By The Zoning Com July 1963, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-, that property be posted, and that the public hearing be had before the Zoning ioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore

JUL 3 1 63 25th day of September / 1963 at 31 100 clock () A 2 Se

MERLE SMITH, ET AL IN THE CIRCUIT COURT WILLIAM S. BALDWIN, W. GILES PARKER and R. BRUCE ALDERMAN FOR BALTIMORE COUNTY constituting the COUNTY BOARD OF APPEALS AT LAW OF BALTIMORE COUNTY Misa. Docket No. Folio No. 29 File No. 3405 

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William S. Baldwin, W. Giles Parker and R. Bruce Alderman, constituting the County Boar! of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

> ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 63-77-RV

Petition of Ark Readi-Mix Corporation for reclassification from an R-6 zone to an M-L zone and variances from Sections 243.1, 243.2, 243.3 and 243.4 of the Zoning Regulations on property located 1024.06 feet south of Joppa Road and the west side of the Susquehanna Transmission

Order of Zoning Commissioner directing advertisement and posting of property - with of hearing set for September 25, 1963 at 11:00 a.m.

Aug. 7 Certificate of Posting of property Certificate of Publication in newspaper - filed

At 11:00 a.m. hearing held on petition by Zoning Commissioner case held sub curle

26 Order of Zoning Commissioner denying reclassification and variance Oct. Order of Appeal to County Board of Appeals from Order of Zoning

Hearing on appeal before County Board of Appeals 15, 1965

Oct. 21 Order of County Board of Appeals granting reclassification and Nov. 18, 1965 Order for Appeal filled in the Circuit Court for Baltimore County Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County Certificate of Notice sent to all Interested parties Transcript of Testimony filed - 1 volume

> Petitioners' Exhibit No. 1 - Plat " 2 - Photographs (A to 1)

" 3 - Copy of Board of Appaals Opinion Zoning File No. 551-ZV

Protestants' Exhibit "A" - Photographs (1 to 4)

Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permenent records of the Zoning Department of Baltimore County as are also the use district maps and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations together with the zoning use district maps at the hearing on this petition or whenever directed to do so by this Court

Respectfully submitted

2. From Section 243.2 to permit a 12 foot side yard along the east property line instead of the required 50 feet side yard.

4. From Section 243.4 to permit a building to be located within 12 feet of a residential zone boundary along the south # degrees 20 minutes west 39.6 foot line and within 4 feet of a residential zone boundary along the north 45 degrees 35 minutes west 459.07 foot line instead of the required 125 feet.

3. From Section 243.3 to permit a rear yard of 4 feet instead of required 50 foot rear yard.

Edith T. Eisenhort, Secretors

RE: PETITION FOR RECLASSIFICATION From Wm.6" Zone to "M-1" Zone and Variances to Zoning Regula-tions - Property 1021,06' S. of Jopa Road and W. S. Suc, an-hauma Transmission Line, 11th Dist., Ark Smadl-Mix Corp., P-titionar

ZONING COMPENSIONER BALTIMORE COUNTY No. 63-77-RV

..................

The potitioner, in the above entitled matter, has requested a reclassification of property 1021,06 feet south of Joppa Rosi and the west side of the Sumpensama Transmission Line, from an Warfarcos to Eccions 283-11, 283-2; 283-3 and 283-46 of the Commission Commis

The subject property has been considered in detail by both the County Board of Appeals and the Zening Commissions of moreover in consection with various violations. A persion of this property is now being used conservabily. As a result of a bearing by the County Board of Appeals it is evident from the history of the problems arising because of the mother than the persion of the problems arising because of the mother and the persion of th

right-of-way to depa Rood. This rood is not pared but is send and great auturated with noter oil and appalls. Insured as this rood has not pared but is send and great beautiful different course special of the last ten years it is unlikely that the provided of the last ten years it is unlikely that the provided of the last ten years it is unlikely that the provided is worth of the future and even if it were improved it would not be considered to apport traific commanding from a menufacturing light zone.

For the above reasons the reclassification and variance should be denied.

It is this <u>Z67</u>% day of September, 1963, by the Zening Commissioner of Balthoree Sensiny, (SENSIN) that he above reclassification be and the same is hereby BSHIND and that the <u>Sense described property</u> or area be and the same is continued as an "Mile" Zone.

The variances requested are also DENIED.

#63-77121

niL

BALTIMOE COUNTY, MARYLOND OFFICE OF FINANCE COURT HOUSE TOWSON 4. MARYLAND

No. 19243 DATE 7/31/63

1833.68°UNT DETACH UPPER SECTION AND RETURN WITH YOUR REMI Petition for Reclassification & Variances for Ark-Readi-Mix Corp 50.00 P30-500-7-3165 1884 . 19243: TP-50.00

IMPORTANTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TODIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURNUPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

TELEPHONE

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

icision of Collection and Receipt COURT HOUSE TOWSON 4, MARYLAND

Office of Planning & Zoning

No. 19955

DATE 10/21/63

STACH UPPER SECTION AND RETURN WITH YOUR REMIT **\$70.00** 

> PAG-Balliness Co arty, Inc. - Office of F 10.656 3635 . . . III -

IMPORTANTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TODIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURNUPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

#63-77RV niap HA ULLER, RAPHEL & ASSOCIATES, INC. July 10, 1963 9/19/63

ZONING DESCRIPTION

of the first or N45°35'00"W 459.07' line of that parcel of land which by binding reversely on the third line of that parcel of land which by deed dated February 23, 1956 and recorded among the Land Records of Baltimore County in Liber GLB 2929, Folio 335, was conveyed by Frederick A. Hornung and wife to Ark Readi-Mix Concrete Corporation, N25\*14\*00"E a total distance in all, 140.00° to the end of the second or N80°27'00"W 330.00° line in the deed, Hornung to Ark Readi-Mix Concrete Corporation, dated Pebruary 23, 1956, running thence and binding reversely on said second line 580°27'00"E 330.00' to the end of the first/in the last mentioned deed, running thence and binding reversely on the first line in the last mentioned deed to Ark Readi-Mix Concrete Corporation dated February 23, 1956 and binding on the 40 line of the aforesaid deed to Ark Readi-Mix Concrete Corporation dated April 24, 1952, S8\*20'00"W, a total distance in all of 397.60' to the place of beginning.

Mille

BEGINNING for the same at a point distant 1024.05' measured southerly from the centerline of Joppa Road, said point being also at the beginning deed dated April 24, 1952 and recorded among the Land Records of Baltimore Co mty in Liber GLB 2227, Folio 332, was conveyed by Frederick A. Hornung and wife to Ark Readi-Mix Concrete Corporation, running theore and binding on said first line N45°35'00"W 459.07' to the beginning of the second line of the aforesaid deed, running thence and binding on said second line and

CONTAINING 2.25 acres of land more or less. BEING all that parcel of land which by deed dated April 24, 1952 and recorded among the Land Records of Baltimore County in Liber GLB 2227, Folio 332, was conveyed by Frederick A. Hornung and wife to Ark Readi-Mix Concrete Corporation and being also all that parcel of land which by deed dated February 23, 1956 and recorded among the Land Records of Baltimore County in Liber GLB 2929, Folio 335, was conveyed by Frederick A. Hornung and wife to Ark Readi-Mix Concrete Corporation.

A. J. Muller #1391

H. Hichael Moslan, Esq., 2137 Dundalk Avenue, Dundalk 22, Md.

Rs: Potition for Reclassification and Variances to Zoning Regula-tions - Property 1020,06° 5. of Jopps Road and W. S. Susquahama Transmission Line, 31th Dist, trk Resit-fix Corp., Potitioner -No. 6)-77-RV

Please be advised that an appeal has been filed from the decision of the Zoning Commissioner rendered in the above matter.

You will be duly notified of the date and gring when scheduled by the County Board of

Very truly yours

Zentor Commissioner

ec: Harry S. Swartzwelder, Jr., Eeq., 3700 Wilder Avenue, Baltimore 7, Md.

Dann Mr. Rushs

I recoived your latter sailed October 10, 1963 in regard to the Ark-Readi Mix Coment Corporation and the Universal

omed by a Mr. Ankrew Margo. The matter of building poration has been referred to the Office of Furnits & Licenses and I of the executive has the states in as to building should be a few more steely what he status is as to building the Ark-heat Mr. Gerparation is not operating in violation of any four Codes.

Vanishing to any own work. This office has no central own the use of a private 20 feet right-densy, see he; it sayshing to do with make drawing in this area. This office has no central own trucks going in and off depa Read | the pasoline pump services has been recovered a preen house used for the ricerage of central entertials has been empticed of such materials and more applied of the materials and more applied to the control of the con

The matter referred to the Soning concerning shaining and so forth has been heard by the Board of Appeals and decision made. Any challengs to that decision would have to have been made to the Circuit Sourt for inditatence Sounty. If there are composed complaints the proper pignes is to refer to the Health Supersent. To conclude theme of the Soning was supported by the constant of the state of the Soning on the subject property.

If you uses to come in and examine our files at any time I would be more than pleased to go over thom with you.

Next, let us take up the matter of the Universal Company. It is true that the Universal Fonce Company has ordered to move its business from the presides. They have and as that they have purchased a wessite and hope to be able

Hone William Rush Parm No. 2

to move out at an early date but they have had difficulty in switting the property. I do not believe that the compilities of the noticibers are of such nature that they cannot wait a size to the such as the company as all of the new. I be the such as proper to take the word of the bitterwal News Company that it is making every affect to move to their results.

Very truly yours

Wand no Committed one P

P.S. I am attaching the list which you requested.

#

M. JACQUELINE MCCURDY ATTORNEY AT LAW FOR W. CHEMAPEAKE AVENUE TOWSON 4. MARTLAND

October 16, 1963

- 0CT 21'63 M TONING BY 1 97

Baltimore County Office of Planning and Zoning County Office Building Towson, Maryland 21204

Att: John G. Rose, Zoning Commissioner

Honorabio William Bush, 3307 Putty Hill Avenue, Baltimore 3h, Maryland Don't Hr. Rushs

I received your latter mailed O.teber 10, 1963 in regard to the Srk-Readl Nix Compart Corporation and the Univer-Fermo Commune.

cound by a Mr. Andrew Marge. The nature of building permits has been referred to the Office of Brentz a Mr. Andrew Marge. The nature of building permits has been referred to the Office of Brentz a Milding permits. To ay uncolledge the six and the second of the permits of the Control of the Mr. Andrew Mr. An

TRANSHER OR MAY NOW A WOFF.

This affice has no central over the use of a private 30 feet right-deway, nor hes it suptimp to do with save right-map in this area. This office has no central over twisting going it and off deput Read it speaking pusp mattered has been recovered a grown house used for the attempt of constant materials has been unquicked of such materials may need thoughty is no longer being used by the dead of the same than the way the dead of the same than the

The matter referred to the Zening concerning chiring and so forth has been heard by the Board of Appeals and decision made, any challenge to that decision excusions the property of the Circuit Goods for latitude Geomy. If there excessed complaint the proper place is to will be to the highly latitude of the Circuit Goods for the

Next, let us take up the matter of the Universal Fence Company. Is at a true that the Universal Fence Company has been ordered to more its bestmass from the promises. They have informed me this they have purchased a must be and hope to be able

Re: Petition for Reclassification and Variances to Zoning Regula-tions-Prope. ty 1024.06 S. of Joppa Road and W.S. Susquehanna Transmission Line, 11th Dist., Ark Readi-Mix Corporation, Petitioner - No. 03-77-RW

Dear Mr. Rose:

Peritioner in the above case and that I wish to enter an appeal on titloner in the above case and that I wish to enter an appeal on titloner in the above case and that I wish to enter an appeal on the above that the control of the

I am enclosing check covering costs of the appeal.

Very truly yours,

M. Loqueline McCardy M. Jacqueline McCurdy

Hon. William Rush Page No. 2

to nowe out at an early date but they have had difficulty in settling the property. I do not bolieve that the complaints of the meighbors are of such nature that they amone twit a short time until be limitureal Fence Company is able to move. I believe at is proper to take the word of the bintwarsal Fence Company that it is making every

Very truly yours

Youing Commissioner

P.S. T am attaching the list which you requested.

Outober 18, 1963

nomeble William Duch 3307 Putty Hill Avenue, Baltimore 34, Taryland

I received your latter mailed October 10, 1963 in regard to the /rk-Readi Mix Gement Corporation and the Universe

cound by a Wr. Mirch, lot be consider art-should Nix Corporation cound by a Wr. Markow Margo. The matter of building permits has knew exactly what the status is as to building permits. To my knewdadge the Ark-Sault Nix Corporation is not operating in violation of any Occa-Corbor.

This office has no control over the use of a private 20 foot right-of-way, nor has it anything to do with water drainage in this area. This office has no control over two keeping in and off-loop leady the gazdnine pump continend has been removed; a green house used fer the storage of concrete materials has been expliced of onch materials and an office that was used illegally is no longer being used by Art-leadi Mix Corpora tion.

mining and so forth has been heard by the Board of Appeals and declaricn made. Any challenges to that declare would have to have been made to the Circuit Court for lattener County. If there are composed complaints the proper place is to refer this must to the Malth Superland. To consider made to the first the mining the county of the co

Hext, let us take up the matter of the Universal Fence Company. It is true that the Universal Fence Company has been ordered to move its bestmess from the pressness. They have informed me that they have purchased a newsite and hope to be able

Hon. William Rush

to move cut at an early date but they have had difficulty in settling the property. I do not believe that the complaints of the meighbors are of such nature that they same tasks about time until the Universal Fence Company is able to move. I believe it is proper to sake the word of the Universal Fence Company that it is making every

Torry twill'r tretters

Zening Constagions r

P.S. I am attaching the list which you mequested.

Baltimore County Office of Planning and Zoning County Office Building Towson, Maryland 21204

Att: John G. Rowe, Zoning Commissioner

Re: Petition for Reclassification and Variances to Zening Regula-tions Property 1024, 66' S. of Jones Property 1024, 66' S. of Jones Stone Line, 11th Dist. Ark Resid-Mix Corporation, Petitioner - No. 63-77-RV

TOHNE C

Dear Mr. Rose:

This is to advise that I represent Ark Read: Hix Corporation Petitioner-in the above case and that I wish to enter an appeal on its behalf from the representation of the Zoning Coomign design and September of the Zoning Commissioner denying case. The Coomissioner's Order being dated September of 1905.

I am enclosing check covering costs of the appeal.

Very truly yours,

M. Leguline Mclaudy M. Jagguel he McCurdy

HOUSE OF DELEGATES ANNAPOLIS MARYLAND

Mr John Rose

hobeling Comm. Balt Co.

Mr Rose. The list attached was given to me by an officer of the Maglett Joggo

find out up ason asking me to can still operate lever the they this you & the were turned down by appeal Board Dworld they appricate an aswer to these

Larges. also the some for Unwersal flere Co which you turned blown to ordered then To stop operation as of July 1 st 63 yours She cerely Bill Rock

HARRY S. SWARTZWELDER, JR.

BALTIMORE Z. No. 727-4929

County Board of Appeals County Office Building Towson 4, Maryland

RE: Petition for Reclassification retition for Neclassification and Variances to Zoring Regula-tions - Property 1024.06' S. of Joppa Road and W. S. Susquehanna Transmission Line, 11th Dist. Ark Redi-Mix Corp., Petitioner No. 63-77 RV

Gentlemen:

Please strike my appearance as counsel for

October 29, 1963

the Protestants in the above entitled matter.

Harry S. Swartzwelder, Jr.

CC: Mr. L. B. Grant

oc: Harry S. Swartawelder, Jr., Esq., Numsay Bullding Baltimore 2, "aryland

M. Michael Maslas, Esq., 2137 Dundalk Avenue, Dundalk 22, Paryland

±63.77 RV

BALTMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Mr. John C. Rome, Joning Commissioner Date September 13, 1963

FROM Mr. George E. Cayrolis, Deputy Director

SUBJECT #59-FING. Be6 to New and Nariance to permit front yard of 65 feet instead of the required 55 feet; to permit a 12 feet side yard along the first property into instead of the required 50 feet; and to permit a building to No first instead of the required 50 feet; and to permit a building to No located within 12 feet of a residential zone boundary about the case boundary 20 minutes uses 397,6 feet line and within 16 minutes were 197,6 feet in the case boundary about the case becomes 197,6 feet 19

11th District

HEARING: Wednesday, September 25, 1963 (11:00 A.M.)

The staff of the Office of Flamming and Zening has reviewed the subject patition for Reclassification from R-0 to N-1 together with Yariances. It has the following advisory comment to make with respect to pertinent planning factors:

In light of the extractive operation now occurring on the subject property there may be an Afrinity between the sand and gravel operation and the proposed industrial uses.

September 17, 1963

Re: Putition for Reclassification and Variances to Zoning Regulations -Property 1021,05 S. of Joppa Res and W.S. Sasquahaman Transmission Line, Art Readi-Mix Corporation, Putitioner - No. 63-77-NV

I have today passed my Order denying the reclassification and variances in the above matter.

Attached is a copy of said Order.

Very truly yours

Zoning Commissioner

Re: Petition for Ark Redi-Mix Corp. #63-77-RV

Dear Miss HoCurdy;

This is to advice you that £75.00 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Mt. and remit to Mrs. Anderson, Room 119, County Office Building, before the

Yours very truly,

September 26, 1963

Miss M. Jacqueline McCurdy, 203 West Chesspeake Avenue, Townon h, Maryland

Re: Putition for Reclassification and Variances to Zoning Regula-tions - Property 102h.24 S. of Jopa Road and W. S. same, coharma "ranamination Line, 11th Harts, Ark Read-Nik Corporation, Petitioner - No. 55-77-NV

I have today passed my Order denying the reclassification and variances in the above matter for reasons whated in the attached copy of said Order.

Zoning Coasissioner

September 26, 1963

Miss M. Jacqueline McCurdy, 203 West Chasapeake Avenue, Towsen b, Maryland

Re: Putition for Reclassification and Variances to Zoning Regula-tions - Property 102h, 06' 5 of Joppa Reed and V. 5. Susyashama Transmission Line, 11th Dist, Ark Readi-Mix Corporation, Putitioner - Be. 65-77-RV

I have today passed my Order denying the reclassification and variances in the above matter for reason stated in the attached copy of said Order.

Very truly yours

Zentne Complesionen

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

September 13, 1963

#63-77 RV

Miss M. Jacqueline McCurdy 203 W. Chesapeake Ave. Towson h. Md.

Dear Miss McCurdy;

#11+14A

The enclosed memorandum is sent to you in Compliance with Section 23-22 of the 1961 Supplement of the Baltimore County Code.

Any questions of correspondence in regard to the enclosed subject matter must be directed to the Director of Planning and Zoning (or his Deputy) and NOT to the Zoning Commissioner.

If you desire to have a member of the Planning Staff testify, it will be necessary for you to summons him through the Sheriff's Office.

Yours very truly,

ZONING COMMISSIONER

JGR:ba:

BALTMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO Mr. John G. Rose, Zoning Commissioner Date\_ September 3, 1963

FROM Mr. George E. Gavrelis, Deputy Director

SUBJECT #63-77RV. R-6 to M-L and Variance to permit front yard of 65 feet instead of the required 75 feet; to permit a 12 foot side yard along the instead of the required 75 feet; to permit a 12 foot side yard along the east property line instead of the required 50 feet; and to permit a rear yard of 14 feet instead of the required 50 feet; and to permit a building to be located within 12 feet of a residential zone boundary along the south 8 legrees 20 minutes west 397.6 foot line end within h feet of a residential zone boundary along the north 15 degrees 35 minutes west 155.07 foot line instead of required 255 feet. 1021.05 feet South 6 Journ 20 along the north in degrees 39 minutes were 125 feet. 1021,06 feet South of Jopa Rd. and the West side of the Susquehama Transmission Line. Being property of Ark-Readi-Mix Corp.

11th District

Wednesday, September 25, 1963 (11:00 A.M.) HEARING:

> The staff of the Office of Planning and Zoning has reviewed the subject petition for Reclassification from R-C to M-L together with Variances. It has the following advisory comment to make with respect to pertinent planning factors:

1. In light of the extractive operation now occurring on the subject property there may be an infinity between the sand and gravel operation and the proposed industrial uses.

GEG: bms

RE: Petition for Reclassification From "R-6" Zone to "M-L" Zone and Variances to Zoning Regula tions - Property 1024.06' S. of Joppa Road and W.S. Susque-

ZONING COMMISSIONER BALTIMORE COUNTY No. 63-77-RV

BEFORE

SUBPOENA

Mr. Clerk:

Petitioner

hanna Transmission Line, 11th Dist., Ark Readi-Mix Corp.,

Please issue a summons for the following named witness:

Mr. Joseph G. Peeler, Jr. C/O Sheriff's Office Court House Towson 4, Maryland

to testify for the Protestants in the above entitled case scheduled to be heard on Thursday, April 15th, 1965 at 10:00 A.M. in Room 301.

> Attorney for Protestants 2137 Dundalk Avenue Baltimore, Maryland 21222 ATwater 2-2700

Mr. Sheriff:

Please issue summons in accordance with the above.

Edith T. Eisenhart, Secretary

County Board of Appeals of Baltimore County

ZCHINO:

LOCATION:

DATE & TIME.

PUBLIC HEARING:

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNT

1/13	-	Date of Posting 5/7/63 SEFT. 25-63 A711.4	
District//	/	Date of Posting	
Posted for HRAR	ING WECL.	DEPT. 25-63 A711.4	-
Petitioner ARK R	ED1-MIA. C.	Rr.	
Location of property 1020	.06 5 00 To	PPARD. AYD	
	TRANSMISSION		
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9110 APP 85"	CAR GARGE.	366 Sten 488 2777 550	

A PART. Hod TO USE FITTY SON BELOWS OF Long VARIANCES MOTICE Posted by Bobert For Bull S. Dale of return 6/11/62 ALSO PLACE FOOT WOLL OF LOCATION OF PROPIERTY I PUT THES SIAM HERR BALLINGE I TUNK IT WAS 144 BOLT TO DIE SEEN. BY TEADLE ENTERING THE PROPERTY

BALTIMORE COUNTY, MARCLAND OFFICE OF FINANCE

No. 20142 DATE 9/26/63

DEPOSIT TO ACCOUNT NO.	01.622	\$75.00
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
-	Advertising and posting of your property	75.00
	663-77-KV	
	PAID - Letters in George and - Office of Faces	
	9-2663 4263 · • • TIP-	15.00
8		

MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLANI PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

63-77 RU · appeal

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

District 11 15	Date of Posting. 12/21/63
Posted for: HAK Red	MIL CORP.
	SOF JOPPA FOLL WIS OF THE
Location of Signs: APP 30	FROM house and App 8 T.  APP. 3 TERM Special SIGN.
Remarks: Posted by Robert Lee O.	Bull A. Date of return: 12/26/63

#63-7712V

PETITION FOR REGIASSIFICATION AND VARIANCES

11th District

102h.06 feet South of Joppa Road and the West side of the Susquokenna Transmission Line

Room 106, County Office Building, 111 W. Checapeake Avenue, Towson, Maryland

WANTSDAY, SEPTEMBER 25, 1963 at 11:00 A.H.

The Zoning Regulations to be excepted as follows:

The Zoning Commissions: of Beltimore County by authority of the Zoning Act and Regulations of Beltimore County, will hold a public hearing:

Concerning all that percel of land in the Eleventh District of Baltimore County

Mr Eurice

Green Kouse & Primp

Being the property of Ark Redi-Mix ESEMENTEXES Corporation, as shown on plat plan filed with the Zoning Department.

BY CEDER OF JUES O. ROSE ZOSIEG COMMISSIONER OF SALVIMONE, COUNT

Office in an 2 - No Building Bernit

Section 2h3.1 - Front Yard - 75 feet Section 2h3.2 - Side Yard - 50 feet Section 2h3.2 - Seaf Rard - 50 feet Section 2h3.4 - 125 feet within a residential some

MAP #:1+14A Press B-6 to H-L Zone Petition for Variance to the Sming Regulations of Balthiever County to permit front yard of 65 feet instead of the required 15 feet) and to permit a 12 foot side yard along the east represery line lantead of the required 50 feet; and to permit a rear yard of h feet instead of the required 50 feet; and to permit a rear yard of h feet instead of the required 50 feet) and to rear yard of h feet instead of the required 50 feet; and to remove the county of the feet of the required 50 feet and the second of the required 150 feet and the required 150 feet and the required 155 feet.

Photographe Q 2 A thm I 1 & 3 Copy of Bl. Cypeals Spines 551 2V

Profestant TEX A 1thm 4 Photos

Peter Etherle

18x 1. Pat

PSTITION FOR MECLASSIFICATION AND VALUE AND VA

DATE & TIME: WEDNESDAY, SEPTEMBER 25, 1963 at 11:00 DATE & TIME: WILKNESSON, SETTEMBER 23, 1963 at 1150
LTUBLIC HEARING; Room 108,
COUNTY Office Bulling, Ill W.
Chesapeake Avenue, 7, 2008,
Maryland,
The Zoning Regulations to be
Section 243.1 - Frost Yard 5 feet.
Section 243.2 - Side Yard 50 feet
Section 243.3 - Rear Yard 50 feet

Section 243.3 - Rear Yard - 50 feet.
Section 243.4 - 125 feet within a residential zone.
The Zoning Commissioner of Baltimore County by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Concerning all that parcel of tand in the Eleventh District of

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OFFICE OF

THE BALTIMORE COUNTIAN

No. I Newburg Avenue

CATONSVILLE, MD.

63-77

THIS IS TO CERTIFY, that the annexed advertisement of Baltimore County

three weekly newspapers published in Baltimore County, Maryland, once a week for One Week successive wasks before the 9th day of Sept., 19 63, that is to say the same was inserted in the issues of

September 6, 1963, THE BALTIMORE COUNTIAN

By Paul J. Morgany

Approved to form this Me Day of Aug 1963

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland Posted for HEARING Wed SEPT. 25-63 AT11:47 Petitioner: ABK REDI - MIT. CURP Location of property 1026.06 SOP TOPPARD 470

The W/s of TRANSMISSION Line Location of Signa 3 Apportant Kand Town Land To AKK 860/ AND APP 85" FROM CAR CARGE DLL SIGN OF 1 DPP 500 A PART. HUND TO USE FITH SUN BELOWSE OF LONG VARIANCES MOTILE

Posted by Bollow Kon Bull S. Dase of return Ellifax.
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of the Surspeakansa Transminasson
Livart & JiME: WEINESON,V
SEPTEMBER 23, P64 at 18:06
AM.
FURLAC HEARING: Room 106,
County Office Building, III W.
Chestapeake Avenue, Trueson,
The Zoning Reputations to be
succepted as follows:
Section 241.1 - Frost Yard
Section 241.1 - Frost Yard
Section 241.3 - Rear Yard So feet.
Section 241.3 - Rear Yard So feet.

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Section 13.4 - 135 feet with Section 13.4 - 135 feet with residential new feet and section 13.4 - 135 feet with residential new feet and section 13.4 - 135 feet with residential new feet and section 13.4 - 135 feet with residential new feet and section 13.4 - 13.5 feet with residential new feet and f

s conveyed by Frederick nung and wife to Ark

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PETITION PECEEXCOSPICATION
EXCOSPICATION
E OFFICE OF
THE BALTIMORE COUNTIAN

RESTRICTION OF THE PARTY NAMED IN

No. I Newburg Avenue CATONSVILLE, MD.

0 # 63-77 RV

THIS IS TO CERTIFY, that the annexed advertisement of John C. Rose, Zoning Commissioner of Baltimore County

was inserted in THE BALTIMORE COUNTIAN, a group of three weekly newspapers published in Baltimore County, Mary-land, once a week for One Week BECKETE VIEW before the 9th day of Sept., 19 33, that is to say the same was inserted in the issues of

September 6, 1963.

THE BALTIMORE COUNTIAN

By Faul J. Morgany

TELEPHONE

INVOICE BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

No. 19955 DATE 10/24/63

Division of Collection and Receipts COURT HOUSE TOWSON 4, MARYLAND

Office of Planting & Zoning 119 County Office Bldg.s Torses h, Maryland

		TOTAL AMOUNT
QUANTITY	CCOUNT NO. 01.622 DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
-	Appeal costs - Ark-Roadi Min Corp No. 63-77-RV	270.00 <b>-</b>
	PAID Englishment County, Edd Office of Finance	
	102563 5655 · · • TRL	000
MICR	DFIL MED	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TODIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURNUPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

TELEPHONE VALLEY 3-3000	BALTIMG :E COUNTY, MARYL.  OFFICE OF FINANCE  Distains of Collection and Receipts COURT HOUSE TOWSON 4 MARYLAND	
To: Miss No J. 203 W. Ch Tourson L,		ng Department of Itimore Cerety
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	
Pet	ition for Reclassification & Variances for Ark-Reac	di-Mix Gerp 50.00 -
	AD-Miner Confe	Mission Cilliand Finance
MICROFILM	ED 7-3163 1884 * 1924	3* TIP \$0.00

MAIL TODIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURNUPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

TELEPHONE ALLEY 3-300	OFFICE OF FINANCE Division of Collection and Revisits COURT HOUSE TOWSON 4 MARYLAND	No. 20142 DATE 9/26/63
To:	Ark Backi-Mix Concrete Corp. 357 R. Japon Nd. Baltimore, Maryland 2123h Baltimore County COUNT NO. 18682	TOTAL ANOUN
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITFANCE	
	Advertising and posting of year property (63-77-00	75-00
	PAD - Serbinous George Nath - Cities	of Financos
	9-2663 4263 • • • HP-	
	3 MICROFILME	J

PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

63-77 RU

CERTIFICATE OF POSTING ZOMING DEPARTMENT OF BALTIMORE COUNTY

Redi MIL. CORP. Location of property: 1024.0615 OF JOPPA TCI & W/S OF The Susquehanna TRANSMISSION Line Location of Signar @ App. 30 FT FAUM house DWd APP 8 FT. ON PROPTERTY - PNO APP. 3" TRUM Special SICK.

@ # 63-77 RV CERTIFICATE OF POSTING G DEPARTMENT OF BALTIMORE COUNTY Posted for HEARING WECK Petitioner: ARK REDI-MIA. CURP Location of property: 1026.06 S OP JOFPA RID. 4110

The W/s of TRANSMISSION Line Location of Signa 3 APPS FIER . 4 ROAD TOWN Load TO ARK BED! AND APP 85" FROM CAR GARGE ALL SIGN ARE APP SET HAD TO USE FITH SIGN BELDOSE OF LONG VARIANCES NOTICE Opeled by Bobrut Law Beell A. Date of return Statistics ALSO, PLACE FOOT NOTE OF CONTION OF PROFIERY T put thes SIAN HERR BECOUSE I THINK IT WAS THE BOAT TO

DE SON. BY PEOPLE ENTERING THE PROPIERTY

PETITION FOR
RECLASSIFICATION
AND VARIANCES
IND Discrice
ZORING: From R-6 to M-2
Zone, Petition for Variance to the
Zocing Regulations of Baltimore
County to permit front yi / J of 85
net instead of the required 75 feet

public hearing:
Concerning all that percel of
land in the Elevensh District of
Baltimore County isnd in the Elevenh District of Baltimore County Being the propenty of Ark Redi-Mix Corporation, as shown on plat plan filed with the Zoning Desertation.

Department.
BEGINNING for the same at a
point distant 1024.06' measured point distant 1024.05 'measured activerly from the centerline of Jopps Road, said point being also at the beginning of the first or MS5 degrees 35' 00" W 459.07' line of that parcel of land which by deed dated April 24, 1952 and recorded among the Land Records of Battimore County in Liber GLB 2227, Folio 332, was conswed by Federick A. Horrung veyed by Frederick A. Horning and wife to Ark Readi-Mix Con-27' 00" W 330.00" Hie in ble
deed, Hornung to Art Readi.-Mix.
Concrete Corporation, dated Febuary 23, 1955, running thence
and binding reversely on, sade
second line Sob degrees 27' 00"
E 330.00" to the end of the first
line in the last mentioned deed,
running thence and binding reversely on the first, line in the
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poration.

BY ORDER OF

JOHN G. ROSE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

OFFICE OF THE BALTIMORE COUNTIAN

ORIGINAL 63-77

THE HERALD - ARGUS

No. I Newburg Avenue

CATONSVILLE, MD.

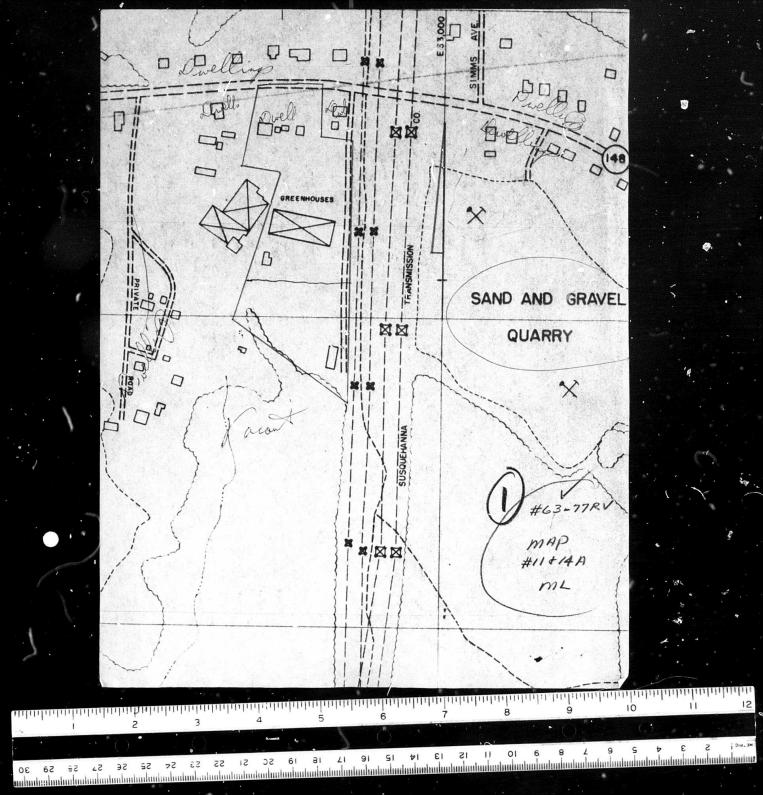
Sept. 9,

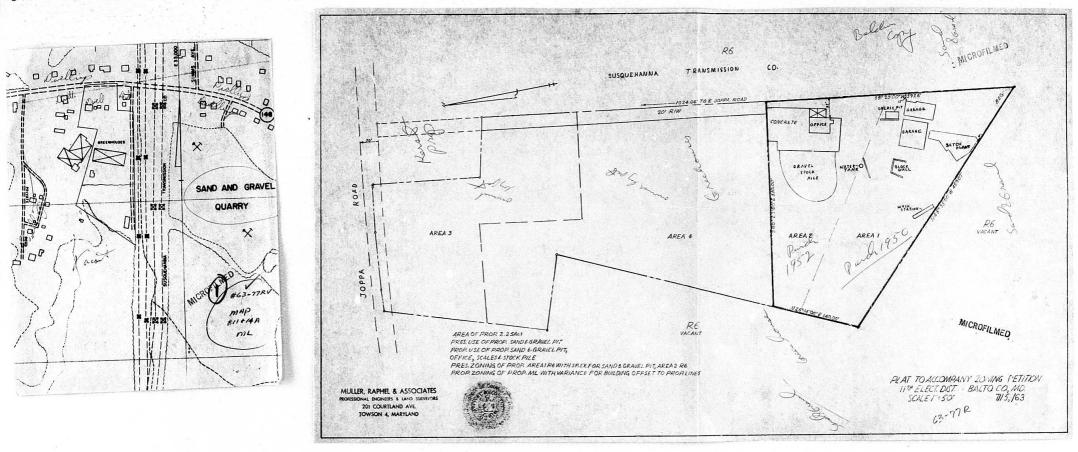
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> September 6, 1963. THE BALTIMORE COUNTIAN







CO. TRANSMISSION SUSQUEHANNA -1024.06 TO & JOFPA ROAD GREASE PIT 20' RIW CONCRETE GARAGE GRAVEL WATERO BLOCK STOCK PILE ROAD AREA 3 VACANT AREA 4 AREAZ OPPA R6 VACANT AREA OF PROP. 2.25Ac.t PRES. USE OF PROP. SAND & GRAVEL PIT PROP. USE OF PROP. SAND & GRAVELPIT, OFFICE, SCALES & STOCK PILE PRES. ZONING OF PROP. AK FAIRGWITH SP.EX. FOR SANDE GRAVEL PIT, AREA 2 RG PROP. ZONING OF PROP. ML WITH VARIANCE FOR BUILDING OFFSET TO PROP. LINES MULLER, RAPHEL & ASSOCIATES

PROFESSIONAL ENGINEERS & LAND SURVEYORS 201 COURTLAND AVE. TOWSON 4, MARYLAND





PLAT TO ACCOMPANY ZOVING PETITION SCALE 1:50' BALTO CO, MO.

63-77 R.