

5-21-71

MERLE SMITH,
ALBERTA PEARL HINZ,
DOROTHY LEWIS and
WILMA GRANT
vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
AND READ-MIX CORPORATION
(Intervenor)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. Docket 8
Folio 25
Case No. 3405

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, 1955, 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 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 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 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 likelihood 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 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. The eastern boundary of the parcel bounds in its entirety along a right of way of

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, 1955, as Petitioner's Exhibit No. 1. These parcels contain in the aggregate 2.25 acres of land, more or less. The Petitioner, Ark Read-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 100 feet on the south side of Joppa 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 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 Baltimore County on January 2, 1945. The subject property, along with other sand and gravel properties in the area, were placed in a R-5 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. 22-33-3A.) 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 property, established a Read-Mix plant

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. (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 Petitioner 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 extension 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, 1953, before the Board; and on April 18, 1953, 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 parcel 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-5 for residential use and could not be used commercially in any way and that any commercial uses should cease 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 in this case was filed on July 31, 1953.

The opinion of the Petitioner was before this Court on December 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 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 silo and the resurfacing of the 20-foot roadway with dust control material. The Court also awarded monetary damages to the property owners, Mr. and Mrs. Kerst. The Court has rectified these facts as to the litigation in this Court to point out that the question of zoning 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 50-foot entrance road through parcels Nos. 3 and 4 as a means of access to Joppa Road.

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 estate consultant. He testified that the property in question is definitely in the midst of a predominantly sand and gravel areas. He stated that the property was placed in a R-5 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 24-31-3A - a parcel containing 44 acres of land, more or less, situate on the westerly side of Belair Road about 1 mile southwest of the property for which a special permit was granted on December 16, 1952,

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for the digging and removal of sand; (2) Zoning File 32-30-8 - a parcel containing 56.5 acres of land, more or less, situate near Ridgely Avenue south of Joppa Road approximately 1,200 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 32-25 - a parcel containing 50 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 15, 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.

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-5 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 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 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 (Tr. 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. 35).

The Protestants at the hearing before the Board produced the following

witnesses:

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(1) Joseph P. Peeler, a civil engineer, who testified that he acted as General Manager of the corporate Petitioner from 1944 to March 29, 1955, during which time he used the building on area No. 2 as his office; that the weighing 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) Albert Pearl Hinz, who testified that she resides at 3608 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 3901 Jasper Lane; that the purchase price of her property was \$17,000.00 and is, at present, worth \$19,500.00; 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 1955; that from 1955 to 1953, he was Vice President and Sales Manager and since 1953 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 1953 (Tr. p. 59).

(5) Wilma Grant, who testified that she has resided since 1955 at 3403 Joppa Road and that the Petitioner has expanded and changed its operation

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since 1955.

There was no testimony offered on behalf of the Protestants from any witnesses 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.

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 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 Board feels that there is an error with regard to this property in that it cannot be used as R-5 and would amount to confiscation of the petitioner's property to allow it to remain so."

The sole question presented to this Court, therefore, is: Was there sufficient 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 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 *Temple v. Md. Bd. of Zoning Appeals*, 205 Md. 409 p. 494 - decided November 18, 1954; *Eron v. Board of Zoning Appeals*, 209 Md. 420 p. 423 - decided March 16, 1955; *Reese v. Mandel*, 224 Md. 121 p. 120 - decided January 13, 1951; *Johar Corp. v. Rodgers Forge*, 239 Md. 108 p. 121 - decided July 24, 1954; *MacDonald v. County Board*, 231 Md. 549 p. 555 - decided May 25, 1955; and *Miller v. Abraham*, 239 Md. 203 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 *Missouri Realty, Inc. v. Hamer*, 210 Md. 442, wherein Judge Prescott, speaking 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, logically expected from zoning, would be lost. Restrictions

on the use of property that are reasonable today may be so unreasonable under different conditions in the future as to amount to confiscation. Zoning officials, when properly authorized, have the authority to alter some laws from time to time when there are substantial changes in conditions and such alteration has a reasonable relation to the public welfare. *City of Baltimore v. Board of Zoning Appeals*, supra, 204 Md. 557."

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 *Johar Corp. v. Rodgers Forge*, supra, the Court was dealing with both the question of change of 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 definite in its findings of fact; however, it is certain that the Board found that there had been changes in the neighborhood and error in the original zoning sufficient to justify the reclassification (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 rezone, 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, supporting facts that the courts are justified in reversing a decision of the Board, or declaring its action arbitrary or capricious. See *Montgomery County Council v. Seltzer*, 211 Md. 307, *Temple v. Md. Bd. of Zoning Appeals*, 205 Md. 409, *Reese v. Mandel*, 224 Md. 121 p. 120, *MacDonald v. County Board*, 239 Md. 108 p. 121, *Miller v. Abraham*, 239 Md. 203 p. 272 - decided June 23, 1955. 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 zoning, 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-5 zoning of the subject property in 1955 to be an 'error' in original zoning, although it was 'suspect' and 'maybe' erroneous then. Mr. Williams stated that it was his 'considered opinion' that the R-5 zoning was error in the original zoning, and gave his 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 was 'impressed with the testimony of Mr. Williams regarding the error' in original zoning, and if it decided to accept his opinion for the reasons given by him, we cannot, under our previous holdings, reverse the Board's action, in the absence of a

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showing that the acceptance of the opinion was arbitrary and capricious in a legal sense. Cf. Robb v. Board of Appeals, 232 Md. 274, 275, 1958, where the court held that the question of error in the original zoning was fairly debatable."

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 Mohrhead v. Bd. of Comm'rs, 240 Md. 365 (decided November 18, 1958), the Court (in quoting from Judge Hammond's opinion in Board v. Oak Hill Farm, 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 permissible inferences or make independent determinations of fact, because to do so would be exercising a non-judicial role. Rather, they have attempted to decide whether a reasoning mind could 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 the evidence, the matter seems to have come down to whether, all that was before the agency considered, its action was clearly erroneous or, to use the phrase which has become standard in Maryland zoning cases, not fairly debatable."

See also the following recent cases: Finn v. Falls, 241 Md. 224 (decided February 2, 1959); Hill v. The Jobor Corp., 241 Md. 16 (decided March 15, 1959); Bonnie View Club v. Chase, 242 Md. 46 (decided March 22, 1959); Robb v. Board of Appeals, 242 Md. 84 (decided March 29, 1959); Board v. Farr, 242 Md. 351 (decided April 25, 1959); and Yoon v. McCosh, 242 Md. 371 (decided April 29, 1959).

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 Hill v. The Jobor Corporation, supra, the Court of Appeals said at page 23:

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

to which the controlling legislative body has entrusted individual rezoning properly to change a classification. Overton v. Co. Commissioners, 235 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 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 Jobor 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 1945 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, 234 Md. 121; Overton v. Co. Commissioners, supra. The reasoning 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 appeals of this nature."

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 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, 1959, 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 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, 1964, for the parcel of ground situated at the northwest corner of Simms Avenue and Joppa Road. (See Miscellaneous cases Nos. 2412 and 2392.) 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 there 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 zoning 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 petition in the following manner: MICROFILMED

"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 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 first obtaining the requisite building permit. The owner has been deprived of the use of area No. 2 since April 16, 1963, and has been penalized to some extent for its arbitrary action in flouting the building permit requirements. By reason of the very location of all of the buildings on areas 1 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 live 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 disregard of the rights of residential properties, further trouble is undoubtedly on the horizon.

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, 1965, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals of Baltimore County dated October 21, 1965, be and the same is hereby affirmed. /s/ Walter H. Isler, Judge
Walter H. Isler, JUDGE
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CASE #63-77 RV

HELEN SMITH,
ALFRED PEARL KING,
DOROTHY LEWIS and
WILMA GRANT
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
ARK READI-MIX CORPORATION
(Intervenor)

ORDER FOR APPEAL

Mr. Clerk:

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

M. Michael Neelan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21222
APater 2-4700

I HEREBY CERTIFY that a copy of the above was mailed this 25th day of August, 1966 to Harold V. Lev, Esquire, 307-10 Court Square Building, Baltimore, Maryland and M. Jacqueline McCurdy, Esquire, 203 W. Chesapeake Avenue, Towson, Maryland 21204, Attorneys for Ark Readi-Mix Concrete Corp.

M. Michael Neelan
Attorney for Complainants

HELEN SMITH,
ALFRED PEARL KING,
DOROTHY LEWIS and
WILMA GRANT
Complainants
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Respondents

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Misc. Jacket #

Folio 29

Case No. 3405

Mr. Clerk:

Please withdraw the Appeal heretofore filed in the above entitled case to the Court of Appeals in Annapolis, Maryland.

M. Michael Neelan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21222
APater 2-4700

I HEREBY CERTIFY that a copy of the above was mailed this 1st day of May, 1967 to Harold V. Lev, Esquire, 307-10 Court Square Building, Baltimore, Maryland and M. Jacqueline McCurdy, Esquire, 203 W. Chesapeake Avenue, Towson, Maryland 21204, Attorneys for Ark Readi-Mix Concrete Corp.

M. Michael Neelan
Attorney for Complainants

HELEN SMITH,
ALFRED PEARL KING,
DOROTHY LEWIS and
WILMA GRANT
Plaintiffs
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Towson, Maryland 21204
Defendants

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Misc. Jacket #

Folio 29

Case No. 3405

Mr. Clerk:

Please enter an appeal from the decision of the County Board of Zoning Appeals to the Circuit Court for Baltimore County in the case Petition for Re-Classification from an R-4 zone to an M-1 zone, and for Variances from Sections 243.1, 243.2, 243.3 and 243.4 of the Zoning Regulations, 1924.06' South of Joppa Road and W/S of the Susquehanna Transmission Line - 11th District, Ark Readi-Mix Corporation, Petitioner, Zoning File No. 63-77-RV.

M. Michael Neelan
Attorney for Appellants
2137 Dundalk Avenue
Baltimore, Maryland 21222
APater 2-4700

I HEREBY CERTIFY that a copy of the foregoing Order to Enter Appeal was mailed this 1st day of November, 1965 to the County Board of Zoning Appeals of Baltimore County, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

M. Michael Neelan
Attorney for Appellants

ORDER, TAYLOR & BROS.

M. JACQUELINE MCCURDY
ATTORNEY AT LAW
203 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND
October 16, 1963

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

At: John G. Rose, Zoning Commissioner
Re: Petition for Reclassification and Variances to Zoning Regulations-Property 1024.06' S. of Joppa Road and M.S. Susquehanna Transmission Line, 11th Dist., Ark Readi-Mix Corporation, Petitioner - No. 63-77-RV

Dear Mr. Rose:

This is to advise that I represent Ark Readi-Mix Corporation Petitioner 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 September 26, 1963.

I am enclosing check covering costs of the appeal.

Very truly yours,

M. Jacqueline McCurdy
M. Jacqueline McCurdy

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05-21-71

MERLE SMITH et al. : IN THE CIRCUIT COURT
VS :
FREDERICK L. DIMMICK, JR. et al. : FOR BALTIMORE COUNTY
and : etc.
ARK READI-MIX CONCRETE CORP. : EQUITY NO. 50273

MEMORANDUM

This Bill of Complaint attacks the Northeastern Planning Area Comprehensive Land Use Map, adopted by the County Council on August 1, 1966.

A 2-1/2 acre parcel located on the south side of Joppa Road was classified for industrial use and placed in an M. L. (Manufacturing Light) zone. The subject property is owned by the defendant, Ark Read-Mix Concrete Corporation. The complainants are taxpayers, living in close proximity to the subject property. The posture of the case is the same as Houltt vs. Baltimore County, 220 Md. 48, and that case is controlling. Mr. Gavrelis, County Director of Planning, testified that there was no industrial zoning in the immediate area of the subject property, and that with one exception (at the intersection of the Delair Road and the County Belt-way) there was no M. L. zoning within a radius of several miles. There was testimony that the County Council made a field trip and inspected the property without any recommendation as to

industrial zoning. At a later public hearing the Planning Department did not recommend industrial zoning. Mr. M. J. Brodie, an expert in the planning field, testified that this was not a proper place for an M. L. zone, being surrounded by residential areas. He testified that the dust, noise and traffic made industrial use incompatible with the surrounding areas. The only evidence before this court shows clearly that this is invalid spot zoning, as defined in the Houltt case at page 66, to wit:

"An arbitrary and unreasonable devotion of a small area to a use inconsistent 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 is legally arbitrary 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 M. L. This was granted by the County Board, and the reclassification was affirmed on appeal

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by Judge 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. Gavrelis 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 expert it is clear that Mr. Gavrelis' opinion then 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, Pena 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,

-3-

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 E. Rains, Jr.
JUDGE

June 22, 1967

RE: PETITION FOR RECLASSIFICATION :
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 Joppa Road and :
W/2 of the Susquehanna Transmission :
Line - 11th District :
Ark Read-Mix Corporation, :
Petitioner :

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

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 Sections 243.1 to 243.4 of the Zoning Regulations. The property of the Ark Read-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 parcels of ground owned 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 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 petitioner's use of area two as it was used by it between 1952 and 1963.

Andrew Wargo, a director and stockholder in Ark Read-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 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 necessary 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 Read-Mix - #63-77-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 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 3225 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 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 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 gravel operation as he has been doing for years. He also testified that he couldn't imagine why people would build homes along Joppa 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 was unwarranted.

From an examination of the photographs and exhibits introduced before the Board and a 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 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 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.

Ark Read-Mix - #63-77-RV

ORDER

For the reasons set forth in the foregoing Opinion, it is this 21st day 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 appeal from this decision must be in accordance with Chapter 1100, subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Glen Parker

R. Bruce Alderman

RE: PETITION FOR RECLASSIFICATION :
from "R-6" Zone to "M-L" Zone :
and Variances to Zoning Regulations - :
Property 1024.06' S. :
of Joppa Road and W. S. Susquehanna :
Transmission Line, 11th :
District, Ark Read-Mix Corp., :
Petitioner :
BALTIMORE COUNTY :
No. 63-77-RV

The petitioner, in the above entitled matter, has requested a reclassification of property 1024.06' feet south of Joppa Road and the west side of the Susquehanna Transmission Line, from an "R-6" Zone to a "M-L" Zone and variances to Sections 243.1, 243.2, 243.3 and 243.4 of the Zoning Regulations.

The subject property has been considered in detail by both the County Board of Appeals and the Zoning Commissioner in connection with various violations. A portion of this property is now being used commercially. As a result of a hearing by the County Board of Appeals it is evident from the history of the problems arising because of the use of the property by the Ark Read-Mix Corporation, that various matters detrimental to the welfare of the locality immediately adjoining would make the granting of the "M-L" zoning a further burden upon the residents in the immediate vicinity of the subject property.

The only access to this property is by means of a 70 foot right-of-way to Joppa Road. This road is not paved but is sand and gravel saturated with motor oil and asphalt. Inasmuch as this road has never been improved over a period of the last ten years it is unlikely that the owner would improve the road in the future and even if it were improved it would be woefully inadequate to support traffic emanating from a manufacturing light zone.

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

It is this 26th day of September, 1965, by the Zoning Commissioner of Baltimore County, ORDERED 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 an "R-6" Zone.

The variances requested are also DENIED.

Zoning Commissioner of
Baltimore County

MICROFILMED

MULLER, RAPHAEL & ASSOCIATES, INC.
PROFESSIONAL ENGINEER - LAND SURVEYOR - LICENSED ENGINEER
201-208 COURTNEY AVENUE, TOWSON 4, MARYLAND
BALTIMORE 12, MARYLAND

July 10, 1963

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, Folio 332, was conveyed by Frederick A. Hornung and wife to Ark Read-Mix Concrete Corporation, running thence 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 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 Read-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, running thence and binding reversely on said second line S80°27'00"W 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 Read-Mix Concrete Corporation dated February 23, 1956 and binding on the 49 line of the aforesaid deed to Ark Read-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 Read-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 Read-Mix Concrete Corporation.

MICROFILMED

[Signature]
A. E. Muller #1391

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 permit 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
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

TELEPHONE 623-3000

No. 38962
DATE 8/16/66

TO: Mr. John Fenton
3611 East Joppa Road
Baltimore, Md. 21224

BILL TO: County Board of Appeals (Zoning)

REPORT TO ACCOUNT NO. 01.712

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	Cost of copy of Board's Order - File No. 63-77-RV Ark-Read-Mix Corp.	\$1.50	\$1.50
3 sheets @ 50¢ per sheet			1.50
	MICROFILMED		

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.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

TELEPHONE 623-3000

No. 34534
DATE 11/30/65

TO: M. Michael Maolan, Esq.
2137 Dundalk Avenue
Dundalk, Md. 21222

BILL TO: County Board of Appeals (Zoning)

REPORT TO ACCOUNT NO. 01.712

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
1	Cost of Certified Documents - No. 63-77-RV Ark-Read-Mix Corporation 1024.06' S. of Joppa Road & W/2 Susquehanna Transmission Line 11th District	\$10.00	\$10.00
	MICROFILMED		

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.

RE: PETITION FOR RECLASSIFICATION
From "M-1" Zone to "M-1" Zone
and Variances to Zoning Regulations - Property 1024.06' S. of Joppa Road and W.2. Susquehanna Transmission Line, 11th Dist., Ark Read-Mix Corp., Petitioner

BEFORE

THE COUNTY BOARD OF

ZONING APPEALS

The Petestants, by their attorney, M. Michael Maolan, 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 Commissioner in connection with various violations. A portion of this property is now being used commercially. As a result of a hearing by the County Board of Appeals it is evident from the history of the problems arising because of the use of the property by the Ark Read-Mix Corporation, that various matters detrimental to the welfare of the locality immediately adjoining would make the granting of the 'M-1' zoning a further burden upon the residents in the immediate vicinity of the subject property."

"The only access to this property is by means of a 30 foot right-of-way to Joppa Road. This road is not paved but is sand and gravel saturated with motor oil and asphalt. Inasmuch as this road has never been improved over a period of the last two years it is unlikely that the same would improve the road in the future and even if it were improved it would be woefully inadequate to support traffic emanating from a manufacturing light zone."

For the above reasons the reclassification and variances should be denied."

The Petestants 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 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 can do without.

In the case of Smith et al vs. Sims tried before the Honorable John R. Reine 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 of additional dwellings and that reclassification would constitute spot zoning, and for that reason reclassification was denied at Joppa Road and Sims 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 timber 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. N.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. xxx 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 always been since the inception of the zoning laws. Again in this case, the zoning was denied because there was no change in the neighborhood and no proof of mistake in original zoning.

The Petestants herein further contend and strenuously object to the testimony of Mr. Klaus, the realtor testifying on behalf of the Ark Read-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 property in the above mentioned neighborhood presently under consideration.

The Petestants respectfully request that the County Board of Zoning Appeals take judicial notice of a hearing entitled "Smith et al vs. Vargo and Ark Read-Mix Concrete Corporation", combined with "Kerst et al vs. Ark Read-Mix Concrete 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 passage of the heavy trucks belonging to the Ark Read-Mix Concrete Corporation. And further the Court found that the use of the Ark Read-Mix Concrete Corporation of the subject property constituted a nuisance and issued orders to correct the said nuisance.

To sum up the foregoing, the Petestants 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 "M-1" 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 inherent in such zoning. And further that any reclassification 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 County.

Respectfully submitted,
[Signature]
M. Michael Maolan
Attorney for Petestants
2137 Dundalk Avenue
Baltimore, Maryland 21222
Atwater 2-4700

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rogers, Zoning Commissioner Date: September 11, 1963

FROM: Mr. George E. Gervell, Deputy Director

SUBJECT: #63-77-RV. R-6 to M-1, and Variance to permit front yard of 65 feet 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 4 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 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 required 125 feet. 1024.06 feet South of Joppa Rd. and the West side of the Susquehanna Transmission Line. Being property of Ark-Read-Mix Corp.

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 R-6 to M-1, 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.

GEB:tes

MICROFILMED

MICROFILMED

MICROFILMED

05-21-71

ARK READI-MIX CORPORATION
1024.06' S. of Joppa Road &
W/S of Susquehanna Transmission Line
Reclassification from R-6 to V-L
Variances from Section 243.1, 243.2, 243.3 and 243.4

No. 63-77-RV

11th District

July 31, 1963
Sept. 26
Oct. 16
= 21, 1965
Nov. 18
July 28, 1966
Aug. 26
May 3, 1967

Petition filed
Rec. & Variances DENIED by Z.C.
Appeal to C. B. of A.
Rec. & Variances GRANTED by the Board
(Baldwin, Parker & Alderman)
Order for Appeal filed in Circuit Court (File #3405)
Board AFFIRMED - Judge Jenifer
Order for Appeal to Court of Appeals by
M. Michael Maslan, Atty. for Protestants
Plaintiff's Order to Withdraw Appeal to
Court of Appeals filed by Mr. Maslan

#63-77RV
MMP
#1144
MIL-2

ATTORNEY AT LAW
ATTORNEY AT LAW

M. MICHAEL MASLAN
ATTORNEY AT LAW
307 DUNDALK AVENUE
BALTIMORE, MD. 21224
September 26, 1966

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

Re: Appeal - Ark Readi-Mix Corporation

Dear Mrs. Eisenhart:

As per your request, enclosed please find copy of Order
for Appeal in the above entitled case.

Very truly yours,

M. Michael Maslan
M. Michael Maslan

MM:esj
Encls:

Rec'd 9-28-66
9:30 AM

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Complainants
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Defendants
Case No. 3405

Mr. Clerk:
Please withdraw the Appeal heretofore filed in the above entitled
case to the Court of Appeals in Annapolis, Maryland.

M. Michael Maslan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21222
Attorney 2-4700

I HEREBY CERTIFY that a copy of the above was mailed this last day
of May 1967 to Harold W. Lev, Esquire, 307-10 Court Square Building,
Baltimore, Maryland and M. Jacqueline McCurdy, 203 W. Chesapeake
Avenue, Towson, Maryland 21204, Attorneys for Ark Readi-Mix Concrete Corp.

M. Michael Maslan
Attorney for Complainants

May 31, 1967

Mr. James H. Morris, Jr., Chief Deputy
Court of Appeals of Maryland
Annapolis, Maryland 21406

Re: 8/29/2405 Marie Smith, et al vs.
Ark Readi-Mix Corporation

Dear Mr. Morris:

Please forward to this office a copy of the opinion in
the above entitled case when it is filed by the Court of Appeals. We
would appreciate it if you would note our request in your file on this
case. Thank you.

Very truly yours,

Edith T. Eisenhart, Secretary

Case #63-77 RV

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Ark Readi-Mix Corporation
(Intervenor)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Miss. Docket 8-
Folio 29
Case No. 3405

ORDER FOR APPEAL

Mr. Clerk:

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

M. Michael Maslan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21224
Attorney 2-4700

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Avenue, Towson, Maryland 21204, Attorneys for Ark Readi-Mix Concrete Corp.

M. Michael Maslan
Attorney for Complainants

Rec'd 9-28-66
9:30 AM

CASE #63-77 RV

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Ark Readi-Mix Corporation
(Intervenor)

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Attorney 2-4700

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Avenue, Towson, Maryland 21204, Attorneys for Ark Readi-Mix Concrete Corp.

M. Michael Maslan
Attorney for Complainants

September 20, 1966

FROM: COUNTY BOARD OF APPEALS

TO: MR. JOHN G. ROSE, ZONING COMMISSIONER

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

Attached is the completed file for your
records.

File recalled 9/26/66

Order for Appeal to Court of Appeals
entered on Court Docket as filed 9/26/66
Called Mr. Maslan requesting copy 9/26

Approved on Map - Effective 9/26/66

August 27, 1963

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

NOTICE OF HEARING

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

11:00 A.M.
DATE: Wednesday, September 25, 1963
PLACE: Room 106, County Office Building, 111 W. Chesapeake Avenue,
Towson, Maryland

John G. Rose
Zoning Commissioner
of Baltimore County

#63-77
MMP
#1144
MIL
9/26

ARK READI-MIX CORPORATION
1024.06' S. of Joppa Road &
W/S of Susquehanna Transmission Line
Reclassification from R-6 to V-L
Variances from Section 243.1, 243.2, 243.3 and 243.4

July 31, 1963
Sept. 26
Oct. 16
= 21, 1965
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M. Michael Maslan, Atty. for Protestants
Plaintiff's Order to Withdraw Appeal to
Court of Appeals filed by Mr. Maslan

No. 63-77-RV

11th District

#63-77RV
RIAP
#1114A
MIL-V

ATWATER 2-2700
ATWATER 2-7700

M. MICHAEL MASLAN
ATTORNEY AT LAW
307 DUNDALK AVENUE
BALTIMORE, MD. 21204
September 26, 1966

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

Re: Appeal - Ark Readi-Mix Corporation

Dear Mrs. Eisenhart:
As per your request, enclosed please find copy of Order
for Appeal in the above entitled case.

Very truly yours,

M. Michael Maslan
M. Michael Maslan

MMH:jj
Encls:

Rec'd 9-28-66
9:30 AM

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Complainants
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Defendants
M. Michael Maslan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21222
Atwater 2-7700

Mr. Clerk:
Please withdraw the Appeal heretofore filed in the above entitled
case to the Court of Appeals in Annapolis, Maryland.

M. Michael Maslan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21222
Atwater 2-7700

I HEREBY CERTIFY that a copy of the above was mailed this 1st day
of September, 1966 to Harold W. Lev, Esquire, 307-10 Court Square Building,
Baltimore, Maryland and M. Jacqueline McCurdy, Esquire, 203 W. Chesapeake Avenue, Towson,
Maryland and M. Michael Maslan, Esquire, 2137 Dundalk Avenue, Baltimore, Maryland.

M. Michael Maslan
Attorney for Complainants

CASE #63-77RV

MONIE SMITH,
ALBERTA PEARL KING,
DOROTHY LEWIS and
VIRMA GRANT
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
ARK READI-MIX CORPORATION
(Intervenor)
IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Misc. Docket 8
Folio 29
Case No. 3405

ORDER FOR APPEAL

Mr. Clerk:

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

M. Michael Maslan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21222
Atwater 2-7700

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of August, 1966 to Harold W. Lev, Esquire, 307-10 Court Square Building,
Baltimore, Maryland and M. Jacqueline McCurdy, Esquire, 203 W. Chesapeake
Avenue, Towson, Maryland 21204, Attorneys for Ark Readi-Mix Concrete Corp.

M. Michael Maslan
Attorney for Complainants

Rec'd 9-28-66
9:30 AM

May 31, 1967

Mr. James H. Morris, Jr., Chief Deputy
Court of Appeals of Maryland
Annapolis, Maryland 21406

Re: 8/29/2405 Marie Smith, et al. vs.
Ark Readi-Mix Corporation

Dear Mr. Morris:

Please forward to this office a copy of the opinion in
the above entitled case when it is filed by the Court of Appeals. We
would appreciate it if you would note our request in your file on this
case. Thank you.

Very truly yours,

Edith T. Eisenhart, Secretary

September 20, 1966

FROM: COUNTY BOARD OF APPEALS

TO: MR. JOHN G. ROSE, ZONING COMMISSIONER

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

Attached is the completed file for your
records.

File recalled 9/26/66

Order for Appeal to Court of Appeals
entered on Court Docket as filed 9/26/66
Called Mr. Maslan requesting copy 9/26

Approved on Map - Effective 9/26/66

Case #63-77RV

MONIE SMITH,
ALBERTA PEARL KING,
DOROTHY LEWIS and
VIRMA GRANT
Vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
ARK READI-MIX CORPORATION
(Intervenor)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Misc. Docket 8
Folio 29
Case No. 3405

ORDER FOR APPEAL

Mr. Clerk:

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

M. Michael Maslan
Attorney for Complainants
2137 Dundalk Avenue
Baltimore, Maryland 21222
Atwater 2-7700

I HEREBY CERTIFY that a copy of the above was mailed this 25th day
of August, 1966 to Harold W. Lev, Esquire, 307-10 Court Square Building,
Baltimore, Maryland and M. Jacqueline McCurdy, Esquire, 203 W. Chesapeake
Avenue, Towson, Maryland 21204, Attorneys for Ark Readi-Mix Concrete Corp.

M. Michael Maslan
Attorney for Complainants

Rec'd 9-28-66
9:30 AM

August 27, 1963

Mrs. M. Jacqueline McCurdy
203 W. Chesapeake Ave.
Towson, Md.

NOTICE OF HEARING

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

11:00 A.M.

DATE: Wednesday, September 25, 1963

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

John G. Rose
Zoning Commissioner
of Baltimore County

#63-77
RIAP
#1114A
MIL
9/26/66

MERLE SMITH,
ALBERTA PEARL HINE,
DOROTHIA LEWIS and
WILMA GRANT
vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
ASK READ-MIX CORPORATION
(Intervenor)

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

AT LAW

MRS. DOCKET
FILE
CASE NO. 2405

MAP
B1114A
ML

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, 1955, granted a reclassification of the property described in this proceeding from a R-6 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 Zoning would create a further burden upon the residents in the immediate vicinity. Secondly, he found that the 74-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 likelihood 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 situated approximately 127 feet and the southwest corner of which is situated 1,971 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

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, 1955, as Petitioner's Exhibit No. 1. These parcels contain in the aggregate 2.45 acres of land, more or less. The Petitioner, Ark Read-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 greenhouse 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 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 deed reference shown on the notes 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 property in the area, were placed 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. 22-93-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 property, established a Read-Mix plant

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 were 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. (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 Petitioner 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 extension 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, 1953, before the Board; and on April 19, 1953, 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 parcel No. 3 was zoned R-6 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 commercial uses should cease 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 in this case was filed on July 31, 1953.

The operation of the Petitioner was before this Court on December 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 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 silos and the resurfacing of the 20-foot roadway 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 zoning 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 50-foot entrance road through parcels Nos. 3 and 4 as a means of access to Joppa Road.

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 estate consultant. He testified that the property in question is definitely in the midst of a predominantly 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 or less, situated on the westerly side of Blair Road about 1 mile southwest of the subject property for which a special permit was granted on December 16, 1953.

for the digging and removal of sand; (2) Zoning File 33-26-9 - a parcel containing 66.5 acres of land, more or less, situated 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 issued on February 15, 1955; and (3) Zoning File 33-2-5 - a parcel containing 80 acres of land, more or less, bordering along the same Susquehanna Transmission tower line right of way on 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.

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-6 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-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 so use 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 (Tr. 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).

The Protestants at the hearing before the Board produced the following witnesses:

(1) Joseph P. Foster, a civil engineer, who testified that he acted as General Manager of the corporate Petitioner from 1904 to March 25, 1955, during which time he used the building on area No. 2 as his office; that the weighing 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. 51-57).

(2) Alberta Pearl Hine, who testified that she resides at 3505 East Joppa Road and has been such a resident for approximately 17 years; that her house is situated 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) Dorothia Lewis, who testified that she has resided for 8 years at 9900 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. Leaster, who testified that he is not a resident of the neighborhood but has been connected with the Petitioner's operation since 1950; that from 1950 to 1953, he was Vice President and Sales Manager and since 1953 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 1945 (Tr. p. 59).

(5) Wilma Grant, who testified that she has resided since 1956 at 3623 Joppa Road and that the Petitioner has expanded and changed its operation

since 1950.

There was no testimony offered on behalf of the Protestants from any witness relative to the question of error in the 1945 zoning map, 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 Board and 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 Board feels that there is an error with respect 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."

The sole question presented to this Court, therefore, is: Was there sufficient 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 correctness of original zoning, or comprehensive rezoning, and that to sustain a plea of change thereon, there must be proof of mistake or a substantial change in the character of the neighborhood. (See *Thompson v. Bd. of Zoning Appeals*, 205 Md. 499 p. 494 - decided November 13, 1954; *Kran v. Board of Zoning Appeals*, 209 Md. 423 p. 425 - decided March 16, 1955; *Reese v. Mandel*, 224 Md. 121 p. 120 - decided January 13, 1956; *John Corp. v. Board of Zoning Appeals*, 231 Md. 106 p. 121 - decided July 24, 1954; *MacDonald v. County Board of Zoning Appeals*, 238 Md. 548 p. 555 - decided May 23, 1955; and *Miller v. Abraham*, 239 Md. 233 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 *Missouri Realty, Inc. v. Board*, 216 Md. 442, wherein Judge Prescott, speaking 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 it in the world today, progress would be retarded, and many of the advantages, logically expected from zoning, would be lost. Restrictions

on the use of property that are reasonable today may be so unreasonable under different conditions in the future as to amount to confiscation. Zoning officials, when properly authorized, have the authority to alter zoning lines from time to time when there are substantial changes in conditions and such alteration has a reasonable relation to the public welfare. *Offutt v. Board of Zoning Appeals*, supra, 204 Md. 557."

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. Board of Zoning Appeals*, supra, the Court was dealing with both the question of change of 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 definite in its findings of fact; however, it is certain that the Board found that there had been changes in the neighborhood and error in the original zoning sufficient to justify the reclassification (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 renege on zoning, 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 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. Board of Zoning Appeals*, 211 Md. 367, 212 Md. 449, 213 Md. 450, and *West Side, Inc. v. Baltimore*, 222 Md. 449, 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 zoning, 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 1951 to be an error in original zoning, although it was 'suspect' and 'maybe' erroneous then. Mr. Williamson stated that it was his 'conclusion' that the R-6 zoning was error in the original zoning, and gave his reasons for reaching that conclusion (again we do not repeat 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 was 'impressed with the testimony of Mr. Williamson regarding the error' in original zoning, and it decided to accept his opinion for the reasons given by him, we cannot, under our previous holdings, reverse the Board's action, in the absence of a

showing that the acceptance of the opinion was arbitrary and capricious in a legal sense. Cf. *Bohde v. County Board of Appeals*, 243 Md. 243, 243.2, 243.3 and 243.4 of the Zoning Regulations, 1963. Consequently, we hold that the question of error in the original zoning was fairly debatable."

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 *Hobbshead v. Bd. of Comm'rs.*, 240 Md. 315 (decided November 13, 1963), the Court in quoting from Judge Hammond's opinion in *Board v. Oak Hill Farms*, 232 Md. 274 p. 283 stated at pages 371-372 as follows:

"... the courts have exercised restraint so as not to substitute their judgment for that of the agency and not to choose between equally permissible inferences or make independent determinations of fact, because to do so would be exercising a non-judicial role. Rather, they have attempted to decide whether a reasoning mind could 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 the evidence, the matter seems to have come down to whether, all that was before the agency considered, its action was clearly erroneous or, to use the phrase which has become standard in Maryland zoning cases, not fairly debatable."

See also the following recent cases: *Finnay v. Hialeah*, 241 Md. 224 (decided February 2, 1964); *Dill v. The Jobar Corp.*, 242 Md. 15 (decided March 15, 1964); *Bonita View Club v. Glass*, 242 Md. 44 (decided March 22, 1964); *Reh. T. F. v. Blum*, 242 Md. 84 (decided March 23, 1964); *Board v. Farr*, 242 Md. 351 (decided April 26, 1964); and *Vogel v. McComb*, 242 Md. 371 (decided April 23, 1964).

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 Jobar Corporation*, supra, the Court of Appeals said at page 23:

"Even though the existing zoning does not result in confiscation and thus require rezoning, original order may permit the agency

to which the controlling legislative body has entrusted individual rezoning property to change a classification, *Quinton v. Co. Commissioners*, 235 Md. 212, if it does so on evidence before it which is substantial enough to permit rezoning under the presumption 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 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 zoning 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 Diehlman 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. *Bohde v. Hialeah*, 242 Md. 15 (1964). *Quinton 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 appeals of this nature."

The Protestants rely heavily on the decision in the case of *Howard County v. Merryman*, 222 Md. 314, decided April 19, 1950. 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 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, 1954, 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 rezoning was being considered for the area of which the subject property comprised a part. The proposed highway extension and industrial rezoning were not immediate, however, but were projected in the distant future. The owner, *acres v. r.*, 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. Baugh, Jr. made on June 19, 1964, for the parcel of ground struts at the northwest corner of Simms Avenue and Joppa Road. (See Miscellaneous cases Nos. 2412 and 2387.) 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 Baugh reversed the Board on the ground that there 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 zoning 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 petition 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 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 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. 1 without first obtaining the requisite building permit. The owner has been deprived of the use of area No. 2 since April 19, 1963, and has been penalized to some extent for its arbitrary action in flouting the building permit requirements. By reason of the very location of all of the buildings on areas 1 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 or the Petitioner's business which will dictate, in the future, whether or not it can live 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 disregard of the rights of residential properties, further trouble is undoubtedly on the horizon.

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, 1965, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals of Baltimore County dated October 21, 1965, be and the same is hereby affirmed. /s/ Walter M. Jenifer
Walter M. Jenifer, JUDGE

RE: PETITION FOR RECLASSIFICATION :
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,
1963, of the Susquehanna Transmission
Line - 11th District
Ark Read-Mix Corporation,
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY

No. 63-77-RV

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 Sections 243.1 to 243.4 of the Zoning Regulations. The property of the Ark Read-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 parcels of ground owned 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 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 petitioner's use of area two as it was used by it between 1952 and 1963.

Andrew Wargo, a director and stockholder in Ark Read-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 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 necessary to the sand and gravel operation as it is presently improved with an office and truck weighing station. He states 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 Read-Mix - #63-77-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 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 February 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 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 gravel operation as he has been doing for years. He also testified that he couldn't imagine why people would build homes along Joppa 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 was unwarranted.

From an examination of the photographs and exhibits introduced before the Board and a 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 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 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.

Ark Read-Mix - #63-77-RV

ORDER

For the reasons set forth in the foregoing Opinion, it is this 21st day 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 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

W. Giles Parker

R. Bruce Alderman

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204		INVOICE No. 34534 DATE 11/20/64
TO: Mr. Michael J. Hahn, Esq. 2137 Danville Avenue Dundalk, Md. 21222		BILLED BY: County Board of Appeals (Zoning)
REPORT TO ACCOUNT NO. 01-712	ESTATE UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COUNT
QUANTITY	Cost of Certified Documents - No. 63-77-RV Ark Read-Mix Corporation 1084.06' S. of Joppa Road & W/S of Susquehanna Transmission Line 11th District	\$ 10.00
11 3085 3300 = 34534 TIP =		1.000
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND		
BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204		INVOICE No. 38962 DATE 6/16/64
TO: Mr. John Peterson 3611 East Joppa Road Baltimore, Md. 21204		BILLED BY: County Board of Appeals (Zoning)
REPORT TO ACCOUNT NO. 01-713	ESTATE UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COUNT
QUANTITY	Cost of copy of Board's Order - File No. 63-77-RV Ark Read-Mix Corp.	\$ 1.00
3 items @ \$1.00 per item		
11 1846 1440 = 38962 TIP =		150
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.		

RE: PETITION FOR RECLASSIFICATION
from an R-6 zone to an M-L zone,
and for VARIANCES from Sections
243.1, 243.7, 243.3 and 243.4
of the Zoning Regulations,
1024.06' South of Joppa Road and
W/S of the Susquehanna Transmission
Line - 11th District
Ark Read-Mix Corporation,
Petitioner

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

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 Sections 243.1 to 243.4 of the Zoning Regulations. The property of the Ark Read-Mix Corporation and its 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 parcels of ground owned 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 is area one, two, three and four. 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 operation, and the property was the subject of a hearing on an alleged zoning violation operation 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 area 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 Read-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 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 necessary 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 area three and four of the petitioner's property.

MIRLA SMITH,
ALBERTA PEARL HINE,
DOROTHY LEWIS and
WILMA GRANT
vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
ARK READ-MIX CORPORATION
(Intervenor)

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. Docket 9
File 29
Case No. 3405

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-6 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 26, 1963. 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 in the immediate vicinity. Secondly, he found that the 70-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 likelihood 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 situated approximately 627 feet and the southwest corner of which is situated 1,024 feet from the south side of Joppa Road in the Eleventh Election District of Baltimore County, Maryland.

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 parcels contain in the appropriate 2.25 acres of land, more or less. The Petitioner, Ark Read-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 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 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 Baltimore County on January 2, 1945. The subject property, along with other sand and gravel properties in the area, were placed 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 sand and gravel business. The Petitioner, upon acquiring the property, established a Read-Mix plant

Ark Read-Mix - #63-77-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 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 February 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 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 gravel operation as he has been doing for years. He also testified that he couldn't imagine why people would build homes along Joppa Lane just west of the subject tract and adjacent to an abandoned quarry operation.

The protestors 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 Board and a 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 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 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.

Ark Read-Mix - #63-77-RV

ORDER

For the reasons set forth in the foregoing Opinion, it is this 21st day of October, 1965 by the County Board of Appeals, ORDERED that the reclassification and variances petitioned for, and the same are hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. G. Parks

R. Bruce Alderman

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

TOWSON, MARYLAND 21204

July 28, 1966

Mr. John G. Rose
Zoning Commissioner
County Office Building
Towson, Maryland 21204

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

Dear John:

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

With kind regards, I am

Sincerely,

Walter M. Jenifer

WMJ/mvo
Enclosure



-4-

The operation of the Petitioner was before this Court on December 9, 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 70-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 silo and the resurfacing of the 20-foot roadway 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 zoning 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 50-foot entrance road through parcels Nos. 3 and 4 as a means of access to Joppa Road.

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 estate consultant. He testified that the property in question is definitely in the midst of a predominantly 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 or less, situated on the westerly side of Blair Road about 1 mile southwest of the subject property for which a special permit was granted on December 16, 1952.

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. (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 Petitioner 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 extension 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, 1963, 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 parcel No. 3 was zoned R-6 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 commercial uses should cease prior to July 1, 1963; (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 in this case was filed on July 31, 1963.

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

Please file, & c.

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

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 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

July 31, 1963 Petition of Ark Read-Mix Corporation for reclassification from an R-4 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 feet south of Joppa Road and the west side of the Susquehanna Transmission Line, 11th District - filed

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

Aug. 7	Certificate of Posting of property	- filed
Sept. 6	Certificate of Publication in newspaper	- filed

Sept. 6	Certificate of Publication in newspaper - filed
" 25	At 11:00 a.m. hearing held on petition by Zoning Commissioner - case held sub curia

Oct. 16 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner

Apr.	15, 1965	Hearing on appeal before County Board of Appeals
May	18	" " " " " " " " - case held sub curia

Oct. 21	Order of County Board of Appeals granting reclassification and variances
---------	--

Paragraph to the provisions of Rule 1101-8 (4) of the Maryland Rules of Procedure. William S. Delorito, W. Giles Parker and R. Bruce Alderman, constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Appeal to the representative of every party to the proceeding before it; namely, Miss M. Jacqueline McCurdy, 203 West Chesapeake Avenue, Towson, Maryland 21204 and Harold Lee, Esq., 267-310 Court Square Building, Baltimore, Maryland 21202, Attorneys for the Petitioner, and Mr. Michael Nwan, Esq., 2137 Dundalk Avenue, Dundalk, Maryland 21222, Attorney for the Prostateans, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

Edith Y. Eichenhart, Secretary
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
VAlley 3-3000, Ext. 570

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

Attorneys for the Petitioner, and M. Michael Maslan, Esq., 2137 Dundalk Avenue, Dundalk, 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	1	IN THE
vs.	1	CIRCUIT COURT
WILLIAM S. BALDWIN, W. GILES PARKER and R. BRUCE ALDERMAN	1	FOR
constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	1	BALTIMORE COUNTY
	1	AT LAW
	1	Misc. Docket No. <u>8</u>
	1	Folio No. <u>29</u>
	1	File No. <u>3405</u>

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. CLERK:

Please file, & c.

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

Nov. 16, 1935	Order for Appeal filed in the Circuit Court for Baltimore County
" 18	Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County
" 22	Certificate of Notice sent to all interested parties
" 19	Transcript of Testimony filed - 1 volume

Petitioners' Exhibit No. 1	-	Plat
" " " 2	-	Photographs (A to I)
" " " 3	-	Copy of Board of Appeals Opinion Zoning File No. 531-ZV
Protestants' Exhibit "A"	-	Photographs (1 to 4)

Dec. 1 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 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

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

MERLE SMITH, ET AL
vs.
WILLIAM S. BALDWIN,
W. GILES PARKER and
R. BRUCE ALDERMAN
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 8
Folio 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. CLERK:
Please file, & c.

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

MERLE SMITH, ET AL
vs.
WILLIAM S. BALDWIN,
W. GILES PARKER and
R. BRUCE ALDERMAN
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 8
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 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. 63-77-1V

July 31, 1963 Petition of Ark Road-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 1024.05 feet south of Joppa Road and the west side of the Susquehanna Transmission Line, 11th District - filed

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

Aug. 7 Certificate of Posting of property - filed

Sept. 6 Certificate of Publication in newspaper - filed

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

26 Order of Zoning Commissioner denying reclassification and variances

Oct. 16 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner

Apr. 15, 1965 Hearing on appeal before County Board of Appeals - case held sub curia

May 18

Oct. 21 Order of County Board of Appeals granting reclassification and variances

Nov. 18, 1965 Order for Appeal filed in the Circuit Court for Baltimore County

18 Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County

22 Certificate of Notice sent to all interested parties

19 Transcript of Testimony filed - 1 volume

Petitioners' Exhibit No. 1 - Plat

" " " 2 - Photographs (A to I)

" " " 3 - Copy of Board of Appeals Opinion Zoning File No. 551-2V

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

Dec. 1 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board voted are permanent records of the Zoning Department of Baltimore County and are also the use district maps and your Respondents respectively request 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

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

MERLE SMITH
0507 Jasper Lane
Baltimore, Maryland 21234

ALBERTA PEARL HINE
3505 S. Joppa Road
Baltimore, Maryland 21236

DOROTHEA LEWIS
8506 Jasper Lane
Baltimore, Maryland 21234

WILMA GRANT
3503 S. Joppa Road
Baltimore, Maryland 21235

THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Towson, Maryland 21204

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Plaintiffs
vs.
Defendants

ORDER TO ENTER APPEAL

Mr. Clerk:
Please enter an appeal from the decision of the County Board of Zoning Appeals to the Circuit Court for Baltimore 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, 1024.05' South of Joppa Road and W/8 of the Susquehanna Transmission Line - 11th District, Ark Road-Mix Corporation, Petitioners, Zoning File No. 63-77-1V.

N. Michael Maslan
Attorney for Appellants
2137 Dandak Avenue
Baltimore, Maryland 21229
AAttner 2-4700

I HEREBY CERTIFY that a copy of the foregoing Order to Enter Appeal was mailed this _____ day of November, 1965 to the County Board of Zoning Appeals of Baltimore County, 111 U. Chesapeake Avenue, Towson, Maryland 21204.

N. Michael Maslan
Attorney for Appellants

MERLE SMITH
0507 Jasper Lane
Baltimore, Maryland 21234

ALBERTA PEARL HINE
3505 S. Joppa Road
Baltimore, Maryland 21236

DOROTHEA LEWIS
8506 Jasper Lane
Baltimore, Maryland 21234

WILMA GRANT
3503 S. Joppa Road
Baltimore, Maryland 21235

Plaintiffs
vs.
THE COUNTY BOARD OF ZONING
APPEALS OF BALTIMORE COUNTY
Towson, Maryland 21204

Defendants

PETITION

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Your Petitioners, Merle Smith, Alberta Pearl Hine, Dorothea Lewis, and Wilma Grant, by N. Michael Maslan, their attorney, respectfully represents unto your Honor:

- That on October 21, 1965, the County Board of Appeals of Baltimore County granted a reclassification and variance on property located 1024.05' South of Joppa Road and W/8 of the Susquehanna Transmission Line, 11th District of Baltimore County presently zoned "R-6" to that of "M-L".
- That your Petitioners herein are residents and taxpayers residing adjacent to and in close proximity to the aforesaid property.
- That your Petitioners feeling aggrieved by the decision of the said County Board of Appeals appeal from the said decision.
- That originally a hearing was held for reclassification of the aforesaid property before the Zoning Commissioner of Baltimore County and that by Order dated the 26th day of September, 1965, the Honorable John G. Rose, Zoning Commissioner of Baltimore County denied the reclassification for "M-L" zoning; that the said Order was appealed to the County Board of Appeals; that testimony was taken on May 18, 1965; that an Order was passed by the County Board of Appeals dated the 21st day of October, 1965 granting the reclassification

and variances presently zoned "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 action of the County Board of Zoning Appeals is unwarranted and constitutes spot zoning.

WHEREFORE, your Petitioners pray that this Honorable Court:

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

AND, as in duty bound, etc.

N. Michael Maslan
Attorney for Petitioners
2137 Dandak Avenue
Baltimore, Maryland 21229
AAttner 2-4700

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 15th day of November, 1965, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County of Baltimore aforesaid, personally appeared Merle Smith, Alberta Pearl Hine, Dorothea Lewis, and Wilma Grant, Petitioners, and made oath in due form of law that the matters and facts set forth in the foregoing Petition are true and correct to the best of their knowledge, information and belief.

AS WITNESS my hand and Notarial Seal.



N. Michael Maslan
Notary Public

I HEREBY CERTIFY that a copy of the foregoing Petition was mailed this _____ day of November, 1965, to the County Board of Zoning Appeals of Baltimore County, Towson, Maryland 21204.

N. Michael Maslan
Attorney for Petitioners

RE: PETITION FOR RECLASSIFICATION
From "R-6" Zone to "M-L" Zone
and Variances to Zoning Regulations - Property 1024.05' S. of Joppa Road and W. S. Susquehanna Transmission Line, 11th Dist., Ark Road-Mix Corp., Petitioner

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

No. 63-77-1V

The petitioner, in the above entitled matter, has requested a reclassification of property 1024.05 feet south of Joppa Road and the west side of the Susquehanna Transmission Line from an "R-6" Zone to a "M-L" Zone and variances to Sections 243.1, 243.2, 243.3 and 243.4 of the Zoning Regulations.

The subject property has been considered in detail by both the County Board of Appeals and the Zoning Commissioner in connection with various violations. A portion of this property is now being used commercially. As a result of a hearing by the County Board of Appeals it is evident from the history of the problems arising because of the use of the property by the Ark Road-Mix Corporation, that various matters detrimental to the welfare of the locality immediately adjoining would make the granting of the "M-L" zoning a further burden upon the residents in the immediate vicinity of the subject property.

The only access to this property is by means of a 30 foot right-of-way to Joppa Road. This road is not paved but is sand and gravel surfaced with motor oil and asphalt. Inasmuch as this road has never been improved over a period of the last ten years it is unlikely that the owner would improve the road in the future and even if it were improved it would be woefully inadequate to support traffic emanating from a manufacturing light zone.

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

It is this _____ day of September, 1965, by the Zoning Commissioner of Baltimore County, ORDERED 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 an "R-6" Zone.

The variances requested are also DENIED.

Zoning Commissioner of
Baltimore County

cc: Harold Lev, Esq.
M. Michael Maslan, Esq.
Board Members
Mr. Perkins
Planning & Zoning
Staff
Mr. H. B. Staab

Miss M. Jacqueline McCurdy
203 West Chesapeake Avenue
Towson, Maryland 21204

October 21, 1965

Re: Zoning File No. 63-77-RV
Ark Read-Mix Corp., Petitioner

Dear Miss McCurdy:

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 Y. Eisenhart, Secretary

cc: Mr. Michael Maslan, Esq.
Harold Levy, Esq.
Mr. John G. Rose
Mr. George L. Gervais
Board of Education

MERLE SMITH, ET AL
vs.
WILLIAM S. BALDWIN,
W. GILES PARKER and
R. BRUCE ALDERMAN
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
AT LAW
Misc. Docket No. 8
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 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
July 31, 1963 Petition of Ark Read-Mix Corporation for reclassification from an R-6
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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
Line, 11th District - filed
Aug. 7 Order of Zoning Commissioner directing advertisement and posting of
property - date of hearing set for September 25, 1963 at 11:00 a.m.
Sept. 6 Certificate of Publication in newspaper - filed
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variances

Nov. 18, 1965 Order for Appeal filed in the Circuit Court for Baltimore County
18 Petition to Accompany Order for Appeal filed in the Circuit Court
for Baltimore County
22 Certificate of Notice sent to all interested parties
19 Transcript of Testimony filed - 1 volume
Petitioners' Exhibit No. 1 - Plot
2 - Photographs (A to I)
3 - Copy of Board of Appeals Opinion
Zoning File No. 551-2V
Protestants' Exhibit "A" - Photographs (1 to 4)
Dec. 1 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 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

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

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-
hanna Transmission Line, 11th
Dist., Ark Read-Mix Corp.,
Petitioner
BUREAU
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 63-77-RV

The petitioner, in the above entitled matter, has requested
a reclassification of property 1024.06 feet south of Joppa Road and
the west side of the Susquehanna Transmission Line, from an "R-6" Zone
to a "M-L" Zone and variances to Sections 243.1, 243.2, 243.3 and
243.4 of the Zoning Regulations.

The subject property has been considered in detail by both
the County Board of Appeals and the Zoning Commissioner in connection
with various violations. A portion of this property is now being used
commercially. As a result of a hearing by the County Board of Appeals
it is evident from the history of the problems arising because of the
use of the property by the Ark Read-Mix Corporation, that various
matters detrimental to the welfare of the locality immediately adjoining
would make the granting of the "M-L" zoning a further burden upon the
residents in the immediate vicinity of the subject property.

The only access to this property is by means of a 50 foot
right-of-way to Joppa Road. This road is not paved but is sand and gravel
surfaced with meter oil and asphalt. Inasmuch as this road has never
been improved over a period of the last ten years it is unlikely that
the owner would improve the road in the future and even if it were
improved it would be woefully inadequate to support traffic emanating
from a manufacturing light zone.

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

It is this 26th day of September, 1963, by the Zoning
Commissioner of Baltimore County, ORDERED 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 an "R-6" Zone.

The variances requested are also DENIED.

Edith Y. Eisenhart
Zoning Commissioner of
Baltimore County

PETITION FOR ZONING RE-CLASSIFICATION
AND VARIANCES

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, ARK READ-MIX CORP., legal owner... of the property situate in Baltimore
County and which is described in the description and plat attached hereto and made a part hereof,
herby petition (1) that the zoning status of the herein described property be reclassified, pursuant
to the Zoning Law of Baltimore County, from an... zone to an
M-L zone; for the following reasons:

1. That there was an error in the original zoning map in regard to
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 ~~reclassification~~ under the said Zoning Law and Zoning Regulations of Baltimore
County, to use the herein described property, ~~from an R-6 zone to an M-L zone~~. From Section 243.1-
To permit front yard of 65 feet instead of the required 75 feet.
(See "attached" sheet for further explanation.)
Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above reclassification and/or Special Exception advertising,
posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning
regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore
County.

Ark Read-Mix Corp.
Contract purchase
Address
M. Jacqueline McCurdy
Petitioner's Attorney
203 W. Chesapeake Ave.
Towson 4, Md.

ORDERED By The Zoning Commissioner of Baltimore County, this... day
of... 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-
out Baltimore County, that property be posted, and that the public hearing be had before the Zoning
Commissioner of Baltimore County in Room 104, County Office Building in Towson, Baltimore
County, on the... day of September, 1963, at 11:00 o'clock
A.M.

Zoning Commissioner of Baltimore County.

MULLER, RAPHEL & ASSOCIATES, INC.
PROFESSIONAL ENGINEERS - LAND SURVEYORS - ENGINE CONSULTANTS
201-228 CHESAPEAKE AVENUE, TOWSON 4, MARYLAND
VALLEY 8-3008

July 10, 1963

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, Folio 332, was conveyed by Frederick A. Hornung
and wife to Ark Read-Mix Concrete Corporation, running thence 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
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 Read-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, running to Ark Read-Mix Concrete Corporation, dated
February 23, 1956, running thence and binding reversely on said second
line S80°27'00"W 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 Read-Mix Concrete Corporation dated February 23,
1956 and binding on the 4th line of the aforesaid deed to Ark Read-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 Read-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 Read-Mix Concrete Corporation.

A. S. Muller #1391

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND
No. 19243
DATE 7/21/63
To: Miss M. Jacqueline McCurdy
203 W. Chesapeake Ave.
Towson 4, Md.
BILLED BY: Zoning Department of
Baltimore County
DEBIT TO ACCOUNT NO. 01.622
QUANTITY
DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE
Petition for Reclassification & Variances for Ark Read-Mix Corp
50.00
8-31-63 1964 • 19243-11P-
\$0.00
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.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND
No. 19955
DATE 10/26/63
To: Miss M. Jacqueline McCurdy
203 West Chesapeake Avenue
Towson 4, Md.
BILLED BY: Office of Planning & Zoning
219 County Office Bldg.
Towson 4, Maryland
REPORT TO ACCOUNT NO. 01.622
QUANTITY
DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE
Appeal costs - Ark Read-Mix Corp. - No. 63-77-RV
\$70.00
10-26-63 5635 • • • 111-
7.00
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.

October 21, 1963

H. Michael Nuzlan, Esq.,
217 Dundalk Avenue,
Dundalk 22, Md.

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-Road-Mix Corp., Petitioner -
No. 63-77-RV

Dear Mr. Nuzlan:

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
time of appeal hearing when scheduled by the County Board of
Appeals.

Very truly yours

Zoning Commissioner

cc: Harry S. Schwartzberg, Jr., Esq.,
3700 Wilcox Avenue,
Baltimore 7, Md.

October 15, 1963

Honorable William Rush,
1307 Putty Hill Avenue,
Baltimore 30, Maryland

Dear Mr. Rush:

I received your letter mailed October 10, 1963
in regard to the Ark-Road-Mix Cement Corporation and the Universal
Fence Company.

First, let us consider Ark-Road-Mix Corporation
owned by a Mr. Andrew Marge. The matter of building permits has
been referred to the Office of Permits & Licenses and I do not
know exactly what the status is as to building permits. To my
knowledge the Ark-Road-Mix Corporation is not operating in
violation of any Court Order.

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
trucks going in and off Joppa Road; the gasoline pump mentioned
has been removed; a green house used for the storage of concrete
materials has been emptied of such materials and an office that
was used illegally is no longer being used by Ark-Road-Mix
Corporation.

The matter referred to the Zoning concerning
mining and so forth has been heard by the Board of Appeals and
decision made. Any challenge to that decision would have to have
been made to the Circuit Court for Baltimore County. If there
are no appeal complaints the proper place is to refer this matter
to the Health Department. To conclude insofar as I am aware
there are no violations of zoning on the subject property.

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

Next, 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 business from the premises. They have
informed us that they have purchased a new site and hope to be able

Hon. William Rush Page No. 2

to move out at an early date but they have had difficulty in settling
the property. I do not believe that the complaints of the neighbors
are of such nature that they cannot wait a short time until the
Universal Fence Company is able to move. I believe it is proper to
take the word of the Universal Fence Company that it is making every
effort to move to their new site.

Very truly yours

Zoning Commissioner

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

October 16, 1963

Honorable William Rush,
1307 Putty Hill Avenue,
Baltimore 30, Maryland

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Hon. William Rush Page No. 2

to move out at an early date but they have had difficulty in settling
the property. I do not believe that the complaints of the neighbors
are of such nature that they cannot wait a short time until the
Universal Fence Company is able to move. I believe it is proper to
take the word of the Universal Fence Company that it is making every
effort to move to their new site.

Very truly yours

Zoning Commissioner

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

M. JACQUELINE MCCURDY
ATTORNEY AT LAW
822 W. CHESAPEAKE AVENUE
TOWSON 4, MARYLAND

October 16, 1963

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

Att: John G. Rose,
Zoning Commissioner

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-Road-Mix Corporation,
Petitioner - No. 63-77-RV

Dear Mr. Rose:

This is to advise that I represent Ark-Road-Mix Corporation
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 September 26, 1963.

I am enclosing check covering costs of the appeal.

Very truly yours,

M. Jacqueline McCurdy
M. Jacqueline McCurdy

October 16, 1963

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 Zoning Regula-
tions - Property 1024.06' S. of
Joppa Road and W. S. Susquehanna
Transmission Line, 11th Dist.,
Ark Read-Mix Corporation,
Petitioner - No. 63-77-RV

Dear Mr. Rose:

This is to advise that I represent Ark Read-Mix Corporation
Petitioner 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 September 20, 1963.

I am enclosing check covering costs of the appeal.

Very truly yours,

M. Jacqueline McCurdy
M. Jacqueline McCurdy

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND

WILLIAM RUSH
BALTIMORE COUNTY
COMMITTEES
LAND
1-100A VEHICLES
AGRICULTURE AND
NATURAL RESOURCES

HOME ADDRESS:
3107 PUTTY HILL AVENUE
BALTIMORE 24, MARYLAND

8512

Mr. John Rose
Zoning Comm.
Balt Co.

Mr. Rose:

The list attached was given to
me by an officer of the Magleth Joppa
Del. Imp. Assn. asking me to find out why
this Co. can still operate even tho they
they were turned down by you & the
Zoning Appeal Board. I would
appreciate an answer to these
charges.

Also the same for Universal for
which you turned down & ordered them
to stop operation as of July, 1st 63
Sincerely Yours
Bill Dick

HARRY S. SWARTZWELDER, JR.
ATTORNEY AT LAW

1700 MARKET BUILDING
BALTIMORE 2, MD.
767-0222

8700 WISDOM AVENUE
BALTIMORE 2, MD.
682-4822

October 29, 1963

County Board of Appeals
County Office Building
Towson 4, Maryland

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 Read-Mix Corp., Petitioner
No. 63-77 RV

Gentlemen:

Please strike my appearance as counsel for
the Protestants in the above entitled matter.

Yours very truly,

Harry S. Swartzwelder, Jr.

HSS/rf

CC: Mr. L. B. Grant

M. Michael Mullan, Esq.,
2137 Dundalk Avenue,
Dundalk 24, Maryland

Re: Petition for Reclassification and
Variances to Zoning Regulations -
Property 1024.06' S. of Joppa Road
and W. S. Susquehanna Transmission
Line, Ark Read-Mix Corporation,
Petitioner - No. 63-77-RV

Dear Mr. Mullan:

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

cc: Harry S. Swartzwelder, Jr., Esq.,
Hunsey Building
Baltimore 2, Maryland

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rowe, Zoning Commissioner Date: September 11, 1963
FROM: Mr. George H. Gottwals, Deputy Director

SUBJECT: #63-77-RV - B-6 to M-1 and Variance to permit front yard of 65 feet
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 4 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 degrees
30 minutes west 397.6 foot line and within 4 feet of a residential zone boundary
along the north 85 degrees 35 minutes west 459.07 foot line instead of required
125 feet. 1024.06 feet South of Joppa Rd. and the West side of the Susquehanna
Transmission Line, being property of Ark Read-Mix Corp.

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 B-6 to M-1 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 affinity between the sand
and gravel operation and the proposed industrial uses.

GHD:rbw

September 20, 1963

Miss M. Jacqueline McCurdy,
203 West Chesapeake Avenue,
Towson 4, Maryland

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 Read-Mix Corporation,
Petitioner - No. 63-77-RV

Dear Miss McCurdy:

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

Very truly yours

Zoning Commissioner

September 20, 1963

Miss M. Jacqueline McCurdy,
203 West Chesapeake Avenue,
Towson 4, Maryland

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 Read-Mix Corporation,
Petitioner - No. 63-77-RV

Dear Miss McCurdy:

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

Very truly yours

Zoning Commissioner

September 17, 1963

Miss M. Jacqueline McCurdy
203 W. Chesapeake Avenue
Towson 4, Maryland

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

Dear Miss McCurdy:

This is to advise you that \$75.00 is due for advertising
and posting of the above property.

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

Yours very truly,

JGR/ba

JOHN G. ROWE
ZONING COMMISSIONER

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

September 13, 1963

#63-77RV

Miss M. Jacqueline McCurdy
203 W. Chesapeake Ave.
Towson 4, Md.

Dear Miss McCurdy:

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,

John G. Rose
JOHN G. ROSE
ZONING COMMISSIONER

JGR:ba

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

#63-77RV

TO: Mr. John G. Rose, Zoning Commissioner Date: September 13, 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
east property line instead of the required 50 feet; and to permit a rear yard
of 4 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 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 159.07 foot line instead of required
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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.

GEO:tms

RE: Petition for Reclassification : BEFORE
From "R-6" Zone to "M-L" Zone : ZONING COMMISSIONER
and Variances to Zoning Regula- :
tions - Property 1024.06' S. : OF
of Joppa Road and W.S. Susque- :
hanna Transmission Line, 11th : BALTIMORE COUNTY
Dist., Ark Read-Mix Corp., :
Petitioner : No. 63-77-RV

.....

SUBPOENA

Mr. Clerk:

Please issue a summons for the following named witness:

Mr. Joseph G. Feeler, 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.

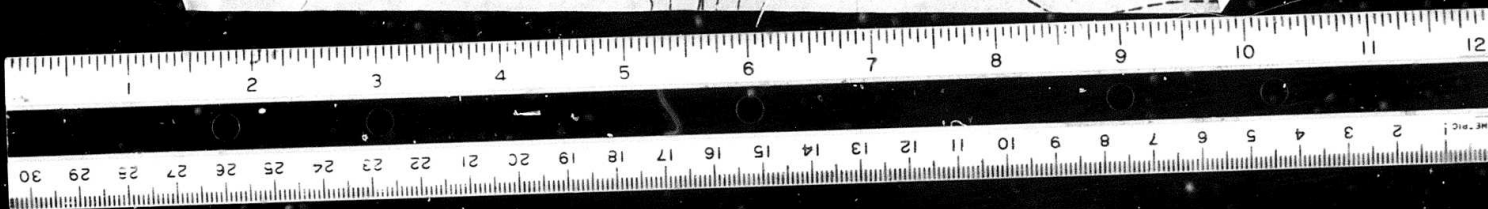
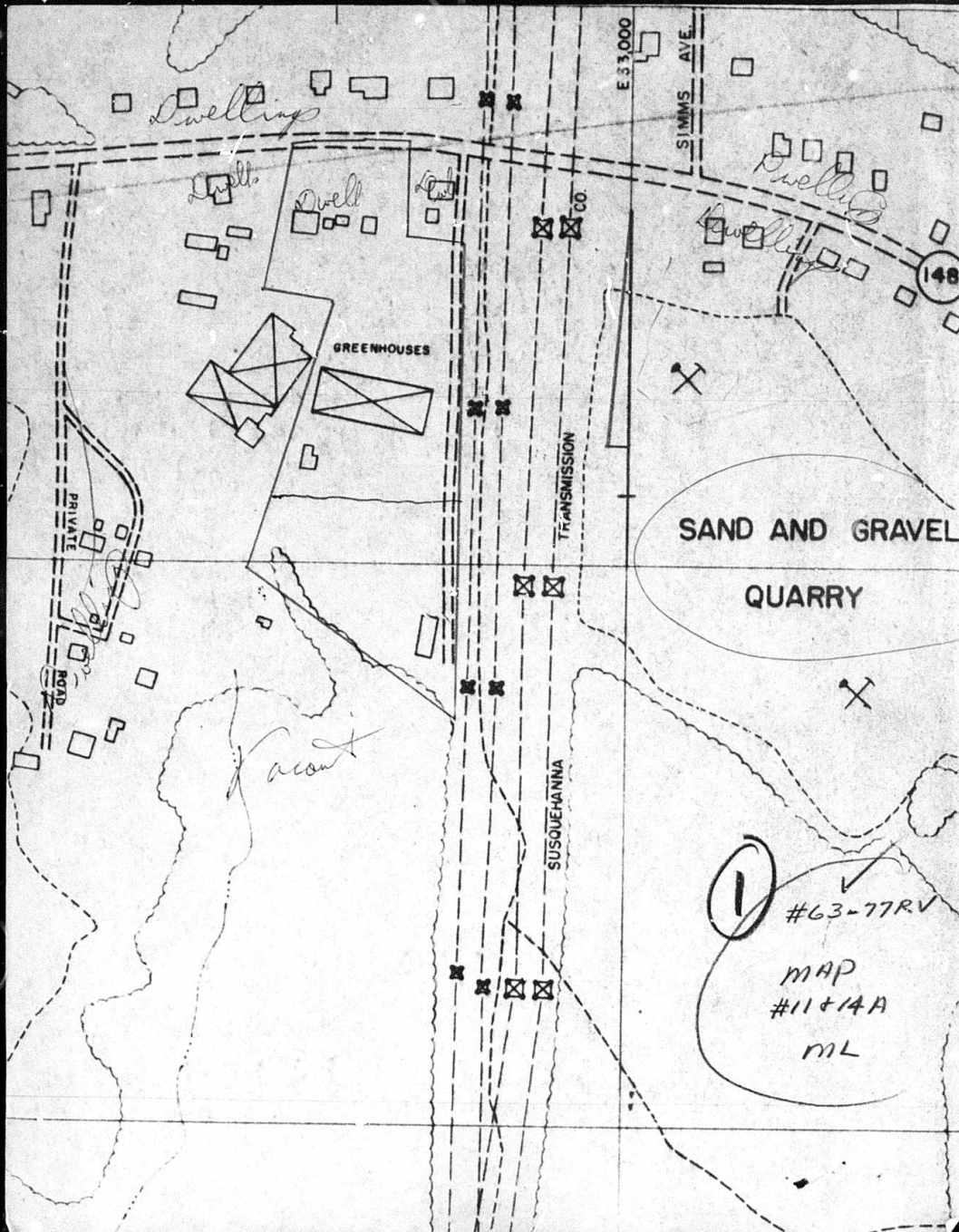
M. Michael Maslan
M. Michael Maslan
Attorney for Protestants
2137 Dundalk Avenue
Baltimore, Maryland 21222
ATwater 2-2700

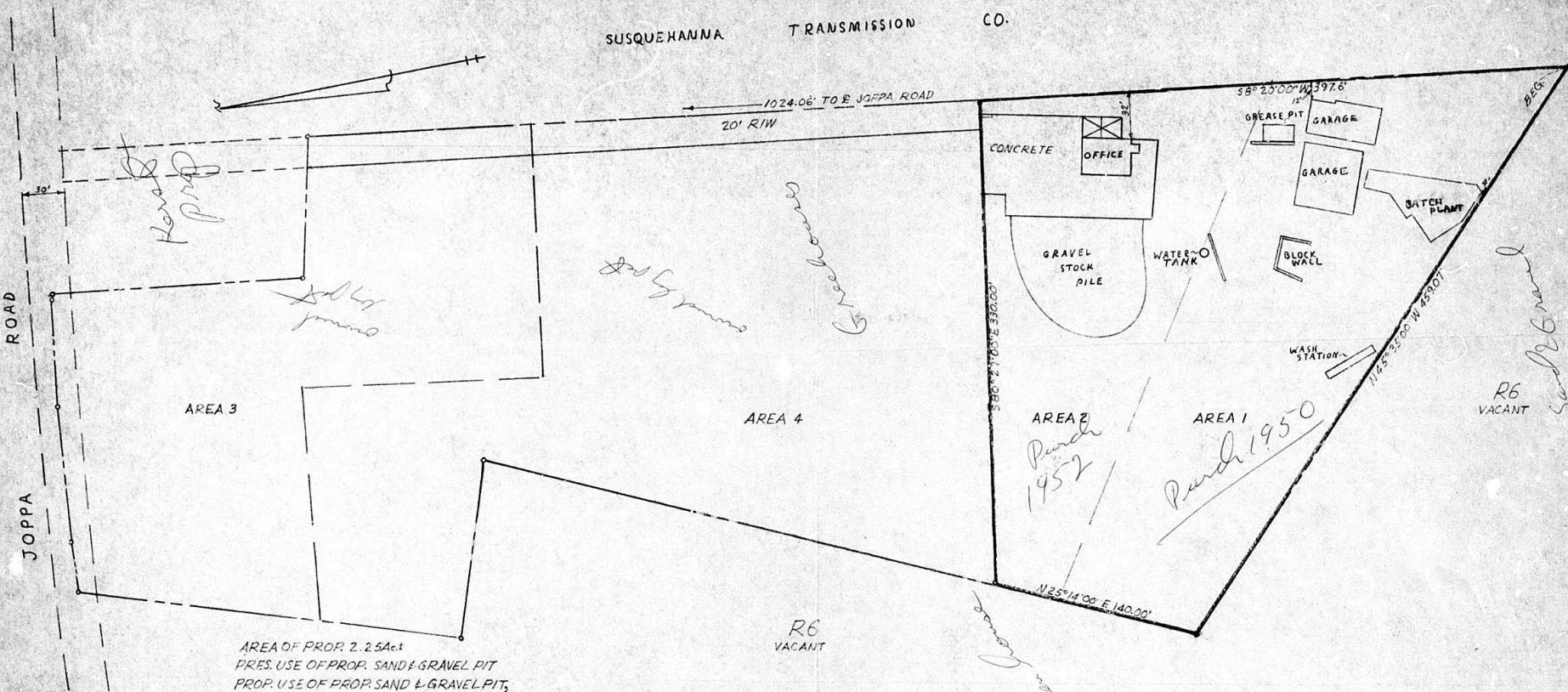
Mr. Sheriff:

Please issue summons in accordance with the above.

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

*Rec'd 4-14-65
10:00 AM*





AREA OF PROP. 2.25Ac±
 PRES. USE OF PROP. SAND & GRAVEL PIT
 PROP. USE OF PROP. SAND & GRAVEL PIT,
 OFFICE, SCALES & STOCK PILE
 PRES. ZONING OF PROP. AREA 1 R6 WITH S.P.E.X. FOR SAND & GRAVEL PIT, AREA 2 R6
 PROP. ZONING OF PROP. ML WITH VARIANCE FOR BUILDING OFFSET TO PROPLINES

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



PLAT TO ACCOMPANY ZONING PETITION
 11TH ELECT. DIST. BALTO. CO., MD.
 SCALE 1"=50' 7/15/63

63-77R