

IN THE COURT OF APPEALS OF MARYLAND

No. 708
September Term, 1966

ANNITA FRANCE, et al.

v.

ISRAEL D. SHAPIRO, et al.

Hammond, C. J.
Horney
Marbury
McWilliams
Singley, JJ.

Opinion by Singley, J.

Filed: January 3, 1968

ZONING FILE NO. 63-90-RX

*Read 4-14-68
9-30-67*

ISRAEL G. & JOSEPH W. SHAPIRO
N/S Old Court Road 3957 E. of Stevenson Road
Reclassification from R-40 and R-20 zones to R-A zone
SE - Elevator Apartment Building

63-90-RX

3d District

27.065+ Acres

July 31, 1963 Petition filed
Oct. 3 Rec. and SE DENIED by D.Z.C.
" 29 Order of Appeal to C. B. of A. filed
June 30, 1964 Hearing on appeal
Oct. 8 " " "
Jan. 5, 1965 " " "
Feb. 15, 1966 " " "
Mar. 31 " " "
June 24, Reclassification GRANTED, SE DENIED by the Board
(Baldwin and Parker)
July 22 Order for Appeal filed in the Circuit Court by
Arnold Fleischmann for Annita France, et al (File #574)
Record of Proceedings filed in the Circuit Court
Aug. 8 Board AFFIRMED - Judge Turnbull
Jan. 19, 1967 Order for Appeal filed in Court of Appeals by Mr. Fleischmann
17 26
t Jan. 3, 1968 BOARD REVERSED BY COURT OF APPEALS

DE'IED

This case comes to us on appeal from an order of the Circuit Court for Baltimore County entered 19 January 1967, affirming an order of the County Board of Appeals of Baltimore County dated 24 June 1966, granting the petition of Israel D. Shapiro and Joseph W. Shapiro, appellees herein, for the rezoning of 27.065 acres of land on the north side of Old Court Road in the Third Election District of Baltimore County.

The opinion of the County Board of Appeals suggested that the opening paragraph of the opinion filed for this Court by Judge McWilliams in Beth Tfiloh Congregation of Baltimore City v. Blum, 242 Md. 84, 218 A.2d 29 (1966) could well have been incorporated in the opinion of the Board. This paragraph reads in part as follows:

"Unless forewarned, no Maryland lawyer whose practice embraces zoning matters would be able to read this opinion and the briefs without experiencing a feeling of déjà vu. Eventually, however, the familiar names, places, and principles of law would fall into place and the reader then would realize that, in reality, he was revisiting Finney v. Halle, 41 Md. 234, 216 A.2d 230 (1966). The property in the case at bar is less than a mile to the east of the Halle property. Both properties are in the 3rd Election District of Baltimore County and both about the Baltimore Beltway. The zoning classification sought was the same in each case. The same attorneys opposed each other. The same witnesses (with minor exceptions) testified in both cases. The Board of Appeals reasoned both properties for substantially the same reasons. In each case there were appeals first to the Circuit Court for Baltimore County and then to this Court."

Under our view of this case, the trilogy commenced by Halle and continued by Beth Tfiloh has been concluded by the case before us.

A Comprehensive Zoning Map for most of the Third

District of Baltimore County was adopted on 16 January 1957, which classified the property which was the subject of litigation in Halle, the property which was the subject of litigation in Beth Tfiloh, and the property which is the subject of the present appeal as R-20 (residence, one family, 20,000 square foot lot) and R-40 (residence, one family, 40,000 square foot lot). At the time of the adoption of the Comprehensive Zoning Map, the proposed location of the Baltimore County Beltway in the area was generally known, but the plans and design of the Beltway interchanges to be located at Stevenson Road and Park Heights Avenue were not approved until 15 April 1959, a construction contract was not awarded until 23 January 1961, and the Beltway itself was not in general use in the area until 1962.

The property which was involved in Halle consisted of 49.672 acres, being all that remained of Fillbox Farms, originally a tract of 69 acres improved by a substantial fieldstone residence, a tenant house and barn. The construction of the Beltway completely destroyed the house, the tenant house, the barn and several other outbuildings, leaving to the south of the Beltway an unimproved parcel without access which was acquired by the State Roads Commission; and to the north of the Beltway, left the 49.672 acre tract which was the subject of an application for rezoning from R-20 and R-40 to R-A (residence - apartment) and for a special exception for elevator apartments. The requested reclassifications were granted by the County Board of Appeals; the reclassification to R-A was affirmed by the

order of the circuit court but the granting of the special exception was reversed. The court order was in turn affirmed on appeal, insofar as it related to the requested reclassification, but was reversed (so as to affirm the County Board of Appeals) as to the granting of the special exception for the construction of high-rise apartments.

The rationale adopted by the County Board of Appeals and by the lower court to justify the granting of the reclassification was that there had been sufficient changes in the character of the neighborhood since the adoption of the Comprehensive Zoning Map of 16 January 1957 to support the requested rezoning. We held, on review, that the issue before the Board was fairly debatable and that the result should not be disturbed by us. In a dissenting opinion filed by Judge (now Chief Judge) Hammond, it was pointed out that the only substantial change which had occurred in the character of the neighborhood since the adoption of the Comprehensive Zoning Map on 16 January 1957 had been the determination of the precise location of the access and exit ramps at Park Heights Avenue and Stevenson Road.

Halle was decided on 2 February 1966 and was immediately followed by the opinion filed on 25 March in Beth Tfiloh. In 1961 the Beth Tfiloh congregation had purchased a tract of 57.25 acres extending north from Old Court Road to the Beltway, adjoined on the west by a development known as Dumbarton Heights. The land was purchased as a location for a synagogue complex, consisting of a sanctuary, a school, a social center and a library, all of which were designed by Morris Lapidus, a distinguished American architect of international reputation. On 21 March 1963, the congregation entered into a contract of sale

with the developer of Dumbarton Heights for the sale of the northernmost 20 acres of the site, on which the developer was to erect a number of apartment units designed by Mr. Lapidus, to which members of the congregation were to be given a limited priority as prospective tenants. This naturally required a change in the zoning classification from R-20 and R-40 to R-A (residence - apartment). Included in the application was a request for a special exception for a high-rise apartment building. Both the reclassification and the special exception were denied by the Zoning Commissioner; an appeal was taken to the County Board of Appeals, which, on 25 June 1964, granted the reclassification but denied the special exception, basing its determination on changes which had occurred in the neighborhood and "the needs and desires of the Beth Tfiloh Congregation to accommodate its members." On appeal to the circuit court, the determination of the County Board of Appeals was reversed. The lower court's opinion, filed on 14 June 1965, found that an extension of utility lines for water and sewage into the area made possible changes in use but did not constitute a change in character and that while the construction of the Beltway had had a substantial impact, from a legal point of view this was not the kind of change that justifies reclassification.

On appeal to this Court, the order of the circuit court was reversed and the requested reclassification (but not the special exception) was granted, primarily on the ground that our

opinion in the Halle case had not been available to the Court below.

The case at bar involves a tract of 27 1/2 acres, roughly rectangular in shape, fronting on the north side of Old Court Road for a distance of 577 feet with an irregular depth of between 2125 feet on the east and 2130 feet on the west to the Beltway. On the east, it is bounded by property owned by Annita France, one of the appellants, which consists of an estate of some 140 acres used primarily for residential and agricultural purposes, and zoned R-40. On the west the appellees' land is contiguous to the property owned by the Beth Tfiloh Congregation and to the adjacent property reclassified R-A in the Beth Tfiloh case. Across xxx Old Court Road is a 55-acre tract owned since 1954 by the appellee, Joseph W. Shapiro, improved by a residence and zoned R-40. Mr. Shapiro testified that he purchased the tract which is the subject of the present appeal on 12 January 1962, as an investment and also to protect his own home, which is located on the 55-acre tract directly across Old Court Road. It should be noted, however, that the record discloses that Mr. Shapiro, subsequent to the filing of the petition in the instant case, filed an application for a reclassification of the 55-acre parcel from R-40 to R-A.

The petition for reclassification of the tract which is the subject of this appeal was originally filed with the Zoning Commissioner of Baltimore County on 31 July 1963, seeking a change from R-40 and R-20 to R-A and a special exception

for elevator apartment buildings to permit the construction of three 16 story apartment buildings, containing 576 units. On 20 September 1963, the staff recommended the denial of the petition for reclassification and for the special exception; and on 3 October 1963, an order was issued by the Deputy Zoning Commissioner in conformity with the staff recommendation. An appeal was taken to the County Board of Appeals on 28 October 1963 and prosecuted on the theory that changes in the character of the neighborhood and an error in original zoning would support the reclassification requested.

Hearings were commenced on 30 June 1964 and were finally concluded on 31 March 1966, the delay apparently having been occasioned by the desire of counsel to continue the case until the filing of the Beth Tfiloh opinion. On 24 June 1966, the County Board of Appeals granted the reclassification but denied the special exception.

While the Board referred to the expansion of utility services and the construction of the Beltway as evidence of changes in the area, greater emphasis was laid on the development of the Beth Tfiloh complex. In its opinion, the Board said:

"The Board certainly agrees that a line of demarcation must be drawn somewhere and obviously all of the available vacant land in the immediate area, which is in excess of 200 acres, should not be zoned for apartments. However, we feel that if a line is to be drawn it properly should be drawn on the east boundary of the subject tract. The Board feels that we are constrained to follow the Court's opinion in Beth Tfiloh v. Blum as all of the same factors are present in this case that were present in the Beth Tfiloh case. In the instant

case we feel that the numerous and substantial changes in the neighborhood, and particularly the construction of the synagogue, school, and apartment complex on the Beth Tfiloh tract, which is immediately adjacent, warrant the reclassification requested here. In arriving at our decision to reclassify this property to apartment zoning we do not intend in any way to commit other properties in the area to be likewise reclassified, and any future petitions must stand on their own merit."

On 22 July 1966 the appellants entered an appeal to the Circuit Court for Baltimore County; the appellees were permitted to intervene by appropriate order; and by order entered 19 January 1967, the circuit court affirmed the action of the Baltimore County Board of Appeals. In its opinion, which followed the Board's approach, the court said:

"I cannot fail to agree with what Mr. Hennegan has pointed out, that a large complex of a place of religious worship, a school, a center, with the necessary large parking areas, is not what was in contemplation when the Beth Tfiloh area was zoned R-40. It seems to me that, considering the fact that the Board denied the application for a special exception for a high rise apartment building, considering that, it seems to me that going eastwardly, or for that matter westwardly from the Beth Tfiloh property a zoning of R-4A is a proper transition zoning between a large area, which necessarily must rely upon large numbers of people to use it, than a zoning which is in the R-40 or R-20 category for single family dwellings.

"In the light of the testimony of Mr. Willemain, and in the light of, as Mr. Fleischman very candidly concedes, the conflict in the testimony as to traffic hazard, and in the light of the Court of Appeals decision in the Beth Tfiloh case, and also considering, which was a most unusual case, and which I don't believe was cited in the manual case, and which I don't believe was cited in the manual case, the Bonnie View case, Bonnie View Club v. Glass, 242 Md. 463, 237 A.2d 647 (1967) over those on South Avenue where the old abandoned copper mines were, in the light of the reasoning of the Court of Appeals in all of those cases, but particularly considering that the Court of Appeals was dealing in the Bonnie View case, in the appeal was dealing in the Beth Tfiloh case, with properties which were geographically fairly close together, and considering from this record, from those exhibits, and considering

what the Court of Appeals has told me I must consider, I can't find that the Board of Appeals acted in an arbitrary, capricious or illegal fashion when it granted this application, and for those inadequately expressed reasons, gentlemen, the action of the Board will be affirmed.

We have consistently held that "there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning or else a substantial change in conditions." Greenblatt v. Toney Schloss Properties Corp., 235 Md. 9, 13, 200 A.2d 70 (1964) citing Shadybrook Imp. Assn. v. Nollow, 232 Md. 265, 192 A.2d 502 (1963) and cases there cited.

We have also held that "the Courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence and the issue before the Board was fairly debatable." Bowley v. Hospital for Consumptives, 246 Md. 197, 208, 227 A.2d 746 (1967) citing Yonah v. McCosh, 242 Md. 371, 219 A.2d 89 (1966). See also Ameslane, Inc. v. Lucas, 247 Md. 612, 233 A.2d 757 (1967).

However, the "[C]ourt will, where the record is so

devoid of substantial supporting facts as to be incapable of raising a debatable issue, declare the legislative or administrative action invalid." Baker v. Montgomery County Council, 241 Md. 178, 186, 215 A.2d 831 (1966) citing Jobar Corp. v. Rodgers Forge, 236 Md. 106, 202 A.2d 612 (1965); Levitt and Sons v. Board of County Commissioners, 233 Md. 186, 195 A.2d 723 (1963).

After a review of testimony offered in behalf of both the appellants and the appellees in the hearing before the Baltimore County Board of Appeals, it is our view that the record offers insubstantial support for the contention that the requested reclassification is justified by changes in the character of the neighborhood or a mistake in original zoning. It is our view that the reliance placed by the Board and by the court below on the development of the Beth Tfiloh site as a basis for granting the requested rezoning was clearly erroneous as a matter of law. It is well recognized that the location in a residential zone of improvements of a character permitted by the ordinance, even although not necessarily compatible with a residential development, is not the type of change of character of a neighborhood which will justify reclassification. Ameslane, Inc. v. Lucas, *supra* (fire house); Baker v. Montgomery County Council, *supra* (school);

Levy v. 7 Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964) (synagogue, school, parking lot, powerhouses); Kaslow v. Mayor and Council of Rockville, 236 Md. 159, 202 A.2d 638 (1964) (church); Montgomery County v. Britter, 233 Md. 414, 197 A.2d 135 (1964) (armory, motor shed, paved area). But compare McKinnis v. Trustees of the Sheppard and Enoch Pratt Hospital, 246 Md. 704, 229 A.2d 417 (1967), which involved an intensification of institutional uses without an insulating line of demarcation.

Nor should an improvement in water and sewage facilities, standing alone, be taken as a change of conditions affecting the neighborhood. MacDonald v. County Board, 238 Md. 549, 556, 210 A.2d 325 (1965). But compare MacDonald with Rohde v. County Board of Appeals for Baltimore County, 234 Md. 259, 199 A.2d 216 (1964); and with White v. County Board of Appeals, 219 Md. 136, 148 A.2d 420 (1959).

We did not intend Halle to be taken as authority for the proposition that all property adjoining the Beltway, whether or not adversely affected, had undergone so substantial a change as to be a candidate for rezoning. Halle, on its facts, was an

extreme case, where the construction of the Beltway severed the property, involved the destruction of the improvements, and left a tract for which the requested reclassification was justified. Halle should be compared with Greenblatt v. Toney Schloss Properties Corporation, 235 Md. 9, 200 A.2d 70 (1964), where a change in access to the subject property caused solely by the Beltway was held to be insufficient change to support a reclassification from R-40 to R-20, even though the tract was out off from other R-40 property and access could be had only through R-20 property.

The appellees also attempt to avail themselves of the result reached in Beth Tfiloh. While we were careful to point out that the result in that case was not determined by the needs of the congregation, it is undoubtedly true that the congregation could have accomplished directly the result which our

determination of the case permitted it to accomplish by indirection. Putting this another way, the complex erected by a religious institution was a permitted use in a residential zone and would probably not have been regarded as incompatible if it had included provision for the housing of members of the congregation. To hold otherwise would be to put in question the right of a college, seminary or convent to make such use of property in the absence of statutory limitation. While this was not a basis for our opinion, it is an aspect of the problem which cannot be overlooked. The fact that the congregation elected to implement its plan through an independent developer under an agreement which maintained aesthetic standards and offered protection to the members of the congregation makes the situation analogous to that of a special exception (which possibly could have been granted under § 502.1 of the County's zoning regulations) and cannot be regarded as spot zoning or as authority for similar utilization under other auspices elsewhere in the area. Under such circumstances, the reclassification of a portion of the Beth Tfiloh site is not such a change as would require the rezoning of an adjacent tract for the same purpose. Baker v. Montgomery County Council, 241 Md. 178, 215 A.2d 831 (1966); Levy v. 7 Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964).

The County Board of Appeals recognizes, and we agree, that a line must be drawn somewhere if an area of some 200 acres located in the heart of a neighborhood of substantial one-family

residences to be protected. The County Board of Appeals suggests that the line be drawn along the east boundary of the property owned by the appellees. It is our view that this is not warranted by the testimony in the case.

The contention with respect to the error or mistake in the original zoning classification was largely supported by the testimony of Mr. Bernard M. Willemain, the former Deputy Director of the County's Planning Commission and now an independent consultant, who gave substantially the same testimony in Halle and Beth Tfiloh. In substance, Mr. Willemain's testimony in all three cases was the same: that the improvements to be erected if the reclassification were granted would be compatible with the area; that a high-rise apartment would be more desirable than garages; and that the Comprehensive Zoning Map adopted for the Third District on 16 January 1957 was in error because it made no practical provision for apartment development in the area for which there was an increasing demand. On cross examination in the case at bar, Willemain admitted that the area's population had increased only from 3,081 in the year 1950 to an estimated population of 6,395 at 1 January 1963 and identified the substantial apartment development which had already occurred or was in prospect in the neighborhood. This Court was careful to point out that Halle was predicated on the

change doctrine and that it was unnecessary to consider the question of mistake in original zoning, although a footnote, Finney v. Halle, 241 Md. at 236, recognizes: "There is strong evidence in the case which might well have justified a finding of mistake in original zoning by the failure of the County Council to provide a recognizable need for apartment zoning in January 1957." * * * As we have indicated, it is not necessary to pass on this issue of mistake in original zoning, and we make no holding in regard to it." The Willemain testimony was not a basis for our decision in Beth Tfiloh and in view of the development which is in being or will occur partially as a result of our determination in Halle and Beth Tfiloh, it is our opinion that the Willemain testimony in the instant case lends no support for the contention that there was a mistake in original zoning.

For the reasons stated, it is our conclusion that the issue presented to the County Board of Appeals was not supported by substantial evidence and thus was not fairly debatable; that the requested reclassification should not have been granted; and that the order entered by the court below should be reversed.

ORDER REVERSED, COSTS TO BE PAID BY APPELLEES.

ANITA FRANCE, et al.

v.

ISRAEL D. SHAPIRO, et al.

Hammond, C.J.
Borsey
McMillan
Singley, JJ.

Opinion by Singley, J.

Filed: January 3, 1968

ZONING FILE NO. 63-90-RX

This case comes to us on appeal from an order of the Circuit Court for Baltimore County entered 19 January 1967, affirming an order of the County Board of Appeals of Baltimore County dated 24 June 1966, granting the petition of Israel D. Shapiro and Joseph W. Shapiro, appellees herein, for the rezoning of 27,065 acres of land on the north side of Old Court Road in the Third Election District of Baltimore County.

The opinion of the County Board of Appeals suggested that the opening paragraph of the opinion filed for this Court by Judge McMillan in Beth Tfiloh Congregation of Baltimore City v. Blum, 242 Md. 84, 218 A.2d 29 (1966) could well have been incorporated in the opinion of the Board. This paragraph reads in part as follows:

"Unless forewarned, no Maryland lawyer whose practice embraces zoning matters would be able to read this opinion and the briefs without experiencing a feeling of déjà vu. Eventually, however, the familiar names, places, and principles of law would fall into place and the reader then would realize that, in reality, he was revisiting Pinney v. Halle, 381 Md. 228, 316 A.2d 530 (1966). The property in the case at bar is less than a mile to the east of the Halle property. Both properties and both about the Baltimore Beltway. The zoning classification sought was the same in each case. The same attorneys opposed each other. The case witnesses (with minor exceptions) testified in both cases. The Board of Appeals reasoned both properties for substantially the same reasons. In each case there were appeals first to the Circuit Court for Baltimore County and then to this Court."

Under our view of this case, the trilogy commenced by Halle and continued by Beth Tfiloh has been concluded by the case before us.

A Comprehensive Zoning Map for most of the Third

opinion in the Halle case had not been available to the Court below.

The case at bar involves a tract of 27 1/2 acres, roughly rectangular in shape, fronting on the north side of Old Court Road for a distance of 577 feet with an irregular depth of between 2125 feet on the east and 2190 feet on the west to the beltway. On the east, it is bounded by property owned by Anita France, one of the appellants, which consists of an estate of some 140 acres used primarily for residential and agricultural purposes, and zoned R-40. On the west the appellees' land is contiguous to the property owned by the Beth Tfiloh congregation and to the adjacent property reclassified R-A in the Beth Tfiloh case. Across x-z Old Court Road is a 55-acre tract owned since 1954 by the appellee, Joseph W. Shapiro, improved by a residence and zoned R-40. Mr. Shapiro testified that he purchased the tract which is the subject of the present appeal on 12 January 1962, as an investment and also to protect his own home, which is located on the 55-acre tract directly across Old Court Road. It should be noted, however, that the record discloses that Mr. Shapiro, subsequent to the filing of the petition in the instant case, filed an application for a reclassification of the 55-acre parcel from R-40 to R-A.

The petition for reclassification of the tract which is the subject of this appeal was originally filed with the Zoning Commissioner of Baltimore County on 31 July 1963, seeking a change from R-40 and R-20 to R-A and a special exception

District of Baltimore County was adopted on 16 January 1957, which classified the property which was the subject of litigation in Halle, the property which was the subject of litigation in Beth Tfiloh, and the property which is the subject of the present appeal as R-20 (residence, one family, 20,000 square foot lot) and R-40 (residence, one family, 40,000 square foot lot). At the time of the adoption of the Comprehensive Zoning Map, the proposed location of the Baltimore County Beltway in the area was generally known, but the plans and design of the Beltway interchanges to be located at Stevenson Road and Park Heights Avenue were not approved until 15 April 1959, a construction contract was not awarded until 23 January 1961, and the Beltway itself was not in general use in the area until 1965.

The property which was involved in Halle consisted of 49,672 acres, being all that remained of Pilbox Farm, originally a tract of 69 acres improved by a substantial fieldstone residence, a tenant house and barn. The construction of the Beltway completely destroyed the house, the tenant house, the barn and several other outbuildings, leaving to the south of the Beltway an unimproved parcel without access which was acquired by the State Roads Commission; and to the north of the Beltway, left the 49,672 acre tract which was the subject of an application for rezoning from R-20 and R-40 to R-A (residence - apartment) and for a special exception for elevator apartments. The requested reclassifications were granted by the County Board of Appeals; the reclassification to R-A was affirmed by the

order of the circuit court but the granting of the special exception was reversed. The court order was in turn affirmed on appeal, insofar as it related to the requested reclassification, but was reversed (so as to affirm the County Board of Appeals) as to the granting of the special exception for the construction of high-rise apartments.

The rationale adopted by the County Board of Appeals and by the lower court to justify the granting of the reclassification was that there had been sufficient changes in the character of the neighborhood since the adoption of the Comprehensive Zoning Map of 16 January 1957 to support the requested rezoning. We held, on review, that the issue before the Board was fairly debatable and that the result should not be disturbed by us. In a dissenting opinion filed by Judge (now Chief Judge) Hammond, it was pointed out that the only substantial change which had occurred in the character of the neighborhood since the adoption of the Comprehensive Zoning Map on 16 January 1957 had been the determination of the precise location of the access and exit ramps at Park Heights Avenue and Stevenson Road.

Halle was decided on 2 February 1966 and was immediately followed by the opinion filed on 29 March in Beth Tfiloh. In 1961 the Beth Tfiloh congregation had purchased a tract of 57.25 acres extending north from Old Court Road to the Beltway, adjoined on the west by a development known as Dumbarton Heights. The land was purchased as a location for a synagogue complex, consisting of a sanctuary, a school, a social center and a library, all of which were designed by Morris Lapidus, a distinguished American architect of international reputation. On 21 March 1963, the congregation entered into a contract of sale

case we feel that the numerous and substantial changes in the neighborhood, and particularly the construction of the synagogue, school, and apartment complex on the Beth Tfiloh tract, which is immediately adjacent, warrant the reclassification requested here. In arriving at our decision to reclassify this property to apartment zoning, we do not intend in any way to exempt other properties in the area to be likewise reclassified, and any future petitions must stand on their own merits."

On 22 July 1966 the appellants entered an appeal to the Circuit Court for Baltimore County; the appellees were permitted to intervene by appropriate order; and by order entered 19 January 1967, the circuit court affirmed the action of the Baltimore County Board of Appeals. In its opinion, which followed the Board's approach, the court said:

"I cannot fail to agree with what Mr. Hennegan has pointed out, that a large complex of a place of religious worship, a school, a center, with the necessary large parking areas, is not what was in contemplation when the Beth Tfiloh area was zoned R-40. It seems to me that, considering the fact that the Board denied the application for a special exception for a high rise apartment building, considering that, it seems to me that zoning curiously, or for that matter retroactively, from the Beth Tfiloh property a zoning of R-A is a proper transition zoning between a large area, which necessarily must rely upon large numbers of people to use it, then a zoning which is in the R-40 or R-20 category for single family dwellings."

"In the light of the testimony of Mr. Willerman, and in the light of, an Mr. Fleischmann very candidly concedes, the conflict in the testimony as to traffic hazard, and in the light of the Court of Appeals decision in the Beth Tfiloh case, and also considering, which was a most unusual case, and which I don't believe was cited in the memoranda, the Bonnie Vie case, Bonnie Vie Club v. Olsz, 242 Md. 461 217 A.2d 647 (1965) over there on which the light of the reasoning of the Court of Appeals in all of these cases, but particularly considering that the Court of Appeals was dealing in the Bonnie Vie case, with properties which have, as in the Beth Tfiloh case, with properties which were geographically fairly close together, I can't find from this record, from these exhibits, and considering

for elevator apartment buildings to permit the construction of three 16 story apartment buildings, containing 576 units. On 30 September 1963, the staff recommended the denial of the petition for reclassification and for the special exception; and on 3 October 1963, an order was issued by the Deputy Zoning Commissioner in conformity with the staff recommendation. An appeal was taken to the County Board of Appeals on 23 October 1963 and prosecuted on the theory that changes in the character of the neighborhood and an error in original zoning would support the reclassification requested.

Hearings were commenced on 30 June 1964 and were finally concluded on 31 March 1966, the delay apparently having been occasioned by the desire of counsel to continue the case until the filing of the Beth Tfiloh opinion. On 24 June 1966, the County Board of Appeals granted the reclassification but denied the special exception.

While the Board referred to the expansion of utility services and the construction of the Beltway as evidence of changes in the area, greater emphasis was laid on the development of the Beth Tfiloh complex. In its opinion, the Board said:

"The Board certainly agrees that a line of demarcation must be drawn somewhere and obviously all of the available vacant land in the immediate area, which is in excess of 200 acres, should not be zoned for apartments. However, we feel that if a line is to be drawn it properly should be drawn on the east boundary of the subject tract. The Board feels that we are constrained to follow the Court's opinion in Beth Tfiloh v. Blum as all of the same factors are present in this case that were present in the Beth Tfiloh case. In the instant

with the developer of Dumbarton Heights for the sale of the northernmost 20 acres of the site, on which the developer was to erect a number of apartment units designed by Mr. Lapidus, to which members of the congregation were to be given a limited priority as prospective tenants. This naturally required a change in the zoning classification from R-20 and R-40 to R-A (residence - apartment). Included in the application was a request for a special exception for a high-rise apartment building. Both the reclassification and the special exception were denied by the Zoning Commissioner; an appeal was taken to the County Board of Appeals, which, on 25 June 1964, granted the reclassification, denying the special exception, basing its determination on changes which had occurred in the neighborhood and "the needs and desires of the Beth Tfiloh Congregation to accommodate its members." On appeal to the circuit court, the determination of the County Board of Appeals was reversed. The lower court's opinion, filed on 14 June 1965, found that an extension of utility lines for water and sewage into the area made possible changes in use but did not constitute a change in character and that while the construction of the Beltway had had a substantial impact, from a legal point of view this was not the kind of change that justifies reclassification.

On appeal to this Court, the order of the circuit court was reversed and the requested reclassification (but not the special exception) was granted, primarily on the ground that our

Read 1/24/68
9:30 AM

what the Court of Appeals has told me I must consider, I can't find that the Board of Appeals acted in an arbitrary, capricious or illegal fashion when it granted this application, and for those inadequately expressed reasons, gentlemen, the action of the Board will be affirmed."

We have consistently held that "there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning or else a substantial change in conditions." Greenblatt v. Toney Schloss Properties Corp., 235 Md. 9, 13, 200 A.2d 70 (1964) citing Shadybrook Imp. Assn. v. Holloway, 232 Md. 265, 192 A.2d 502 (1963) and cases there cited.

We have also held that "the Courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence and the issue before the Board was fairly debatable." Booley v. Hospital for Consumption, 245 Md. 197, 204, 227 A.2d 746 (1967) citing Wesol v. McDash, 242 Md. 371, 219 A.2d 89 (1966). See also Ameslano, Inc. v. Lucas, 247 Md. 612, 233 A.2d 757 (1967).

However, the "[c]ourt will, where the record is so

devoid of substantial supporting facts as to be incapable of raising a debatable issue, declare the legislative or administrative action invalid." Baker v. Montgomery County Council, 241 Md. 178, 186, 215 A.2d 831 (1966) citing Jobar Corp. v. Rodgers Forge, 236 Md. 106, 202 A.2d 612 (1965); Lewitt and Sons v. Board of County Commissioners, 233 Md. 186, 195 A.2d 723 (1963).

After a review of testimony offered in behalf of both the appellants and the appellees in the hearing before the Baltimore County Board of Appeals, it is our view that the record offers insubstantial support for the contention that the requested reclassification is justified by changes in the character of the neighborhood or a mistake in original zoning. It is our view that the reliance placed by the Board and by the court below on the development of the Beth Tfiloh site as a basis for granting the requested rezoning was clearly erroneous as a matter of law. It is well recognized that the location in a residential zone of improvements of a character permitted by the ordinance, even although not necessarily compatible with a residential development, is not the type of change of character of a neighborhood which will justify reclassification. Ameslano, Inc. v. Lucas, *supra* (fire house); Baker v. Montgomery County Council, *supra* (school);

Lavy v. 7 Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964) (synagogue, school, parking lot, powerhouse); Kanlow v. Mayor and Council of Rockville, 236 Md. 159, 202 A.2d 638 (1964) (church); Montgomery County v. Britter, 233 Md. 414, 197 A.2d 139 (1964) (armory, motor shed, paved area). But compare Keininnis v. Trustees of the Sheppard and Enoch Pratt Hospital, 246 Md. 704, 229 A.2d 417 (1967), which involved an intensification of institutional uses without an insulating line of demarcation.

Nor should an improvement in water and sewage facilities, standing alone, be taken as a change of conditions affecting the neighborhood. Macdonald v. County Board, 238 Md. 549, 556, 210 A.2d 325 (1965). But compare Macdonald v. Rohde v. County Board of Appeals for Baltimore County, 234 Md. 259, 199 A.2d 216 (1964); and with White v. County Board of Appeals, 219 Md. 136, 148 A.2d 420 (1959).

We did not intend Halle to be taken as authority for the proposition that all property adjoining the Beltway, whether or not adversely affected, had undergone so substantial a change as to be a candidate for rezoning. Halle, on its facts, was an

extreme case, where the construction of the Beltway severed the property, involved the destruction of the improvements, and left a tract for which the requested reclassification was justified. Halle should be compared with Greenblatt v. Toney Schloss Properties Corporation, 235 Md. 9, 200 A.2d 70 (1964), where a change in access to the subject property caused solely by the Beltway was held to be insufficient change to support a reclassification from R-40 to R-20, even though the tract was cut off from other R-40 property and access could be had only through R-20 property.

The appellees also attempt to avail themselves of the result reached in Beth Tfiloh. While we were careful to point out that the result in that case was not determined by the needs of the congregation, it is undoubtedly true that the congregation could have accomplished directly the result which our

determination of the case permitted it to accomplish by indirectation. Putting this another way, the complex erected by a religious institution was a permitted use in a residential zone and would probably not have been regarded as incompatible if it had included provision for the housing of members of the congregation. To hold otherwise would be to put in question the right of a college, seminary or convent to make such use of property in the absence of statutory limitation. While this was not a basis for our opinion, it is an aspect of the problem which cannot be overlooked. The fact that the congregation elected to implement its plans through an independent developer under an agreement which maintained aesthetic standards and offered protection to the members of the congregation makes the situation analogous to that of a special exception (which possibly could have been granted under § 502.1 of the County's zoning regulations) and cannot be regarded as spot zoning or as authority for similar utilization under other auspices elsewhere in the area. Under such circumstances, the reclassification of a portion of the Beth Tfiloh site is not such a change as would require the rezoning of an adjacent tract for the same purpose. Baker v. Montgomery County Council, 241 Md. 178, 215 A.2d 831 (1966); Lavy v. 7 Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964).

The County Board of Appeals recognizes, and we agree, that a line must be drawn somewhere if an area of some 200 acres located in the heart of a neighborhood of substantial one-family

residences to be protected. The County Board of Appeals suggests that the line be drawn along the east boundary of the property owned by the appellees. It is our view that this is not warranted by the testimony in the case.

The contention with respect to the error or mistake in the original zoning classification was largely supported by the testimony of Mr. Bernard M. Willemsin, the former Deputy Director of the County's Planning Commission and now an independent consultant, who gave substantially the same testimony in Halle and Beth Tfiloh. In substance, Mr. Willemsin's testimony in all three cases was the same: that the improvements to be erected if the reclassification were granted would be compatible with the area; that a high-rise apartment would be more desirable than garden apartments; and that the Comprehensive Zoning Map adopted for the Third District on 16 January 1957 was in error because it made no practical provision for apartment development in the area for which there was an increasing demand. On cross examination in the case at bar, Willemsin admitted that the area's population had increased only from 3,081 in the year 1950 to an estimated population of 6,395 at 1 January 1963 and identified the substantial apartment development which had already occurred or was in prospect in the neighborhood. This Court was careful to point out that Halle was predicated on the

change doctrine and that it was unnecessary to consider the question of mistake in original zoning, although a footnote, Finney v. Halle, 241 Md. at 236, recognizes: "There is strong evidence in the case which might well have justified a finding of mistake in original zoning by the failure of the County Council to provide a recognizable need for apartment zoning in January 1957. . . . As we have indicated, it is not necessary to pass on this issue of mistake in original zoning, and we make no holding in regard to it." The Willemsin testimony was not a basis for our decision in Beth Tfiloh and in view of the development which is in being or will occur partially as a result of our determination in Halle and Beth Tfiloh, it is our opinion that the Willemsin testimony in the instant case lends no support for the contention that there was a mistake in original zoning.

For the reasons stated, it is our conclusion that the issue presented to the County Board of Appeals was not supported by substantial evidence and thus was not fairly debatable; that the requested reclassification should not have been granted; and that the order entered by the court below should be reversed.

ORDER REVERSED, COSTS TO
BE PAID BY APPELLEES.

June 24, 1966

A. Cross Hamilton, Esq.
Jefferson Building
Towson, Maryland 21286

Re: Zoning File No. 63-90-RX
Isabel G. & Joseph W. Shapiro

Dear Mr. Messinger:

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,

Wm. T. Hamaker, Secretary

cc: Samuel Kinard, Esq.
Arnold Robinson, Esq.
Stacey Mum, Esq.
J. Hager Willey, Esq.
J. Elmer Waddell, Jr., Esq.
Mr. John C. Ross
Mr. Edward D. Handley
Mr. George E. Gervelis
Board of Education

RE: PETITION FOR RECLASSIFICATION
from an R-20 zone and an R-40 zone
to an R-A zone, and SPECIAL
EXCEPTION for Elevator Apartment
Building
N/S Old Court Road 3957' East of
Stevenson Road,
3rd District
Isabel G. & Joseph W. Shapiro,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 63-90-RX

OPINION

The petitioners in this case seek a reclassification from an R-20 zone and an R-40 zone to an R-A zone, and a special exception for elevator apartment buildings on their property situated on the north side of the Old Court Road approximately 4000 feet east of Stevenson Road in the Third Election District of Baltimore County.

The subject tract of land is approximately twenty-seven acres and only a slight portion of the western edge of the tract is zoned R-20, the balance of the property being presently zoned R-40. The property is roughly rectangular in shape and lies on a frontage on the north side of Old Court Road for approximately 550 feet, and a depth of 2600 to 2700 feet with the rear of the property abutting the Baltimore County Beltway for approximately 580 feet.

The zoning surrounding the property is as follows: The land south of Old Court Road, across from the subject tract, is zoned R-40 as is a large tract of land, known as the France property, on the east side. On the north, across the Baltimore County Beltway, the zoning is R-20. Along the western edge of the property the zoning is R-A. This R-A zoning was finally approved by the Maryland Court of Appeals in the case of *Beth Tiliak vs. Blum*, 242 Md. 84 which opinion was filed on March 29, 1966.

The opening paragraph of Judge McWilliams opinion in *Beth Tiliak vs. Blum* could well be repeated in toto in this opinion as this tract is adjacent to the Beth Tiliak property and again involved many of the same arguments, litigation, and witnesses.

The hearing before the Board in the instant case began on June 30, 1964 and was concluded, after five days of testimony, on March 31, 1966. Between the outset of the case before the Board and its conclusion, one Board member's term expired and the case was concluded by two members (Fosker and Baldwin). Oddly enough, in the case of *Beth Tiliak vs. Blum*, one member of the Board in that case had become ill and resigned during the hearing, and that case was also decided by the remaining two Board members (Fosker and Austin). The instant case was set for further hearing on a number of occasions between January of 1965 and March of 1966, and was postponed by either the lawyers for the petitioners or the protestors, apparently neither side wanting to conclude the case

Shapiro - 63-90-RX

zoning we do not intend in any way to curtail other properties in the area to be likewise reclassified, and any future petition must stand on their own merits.

With regard to the petitioners request for a special exception for elevator apartment buildings, the petitioners produced very impressive testimony by both the architect and the contract purchaser as to plans for three high rise luxury towers on the property which in their opinion, would be an asset to the community. The proposal is to construct 576 units on the property instead of the approximate 432 units allowable under the existing zoning regulations for garden type apartments (we arrive at this figure by multiplying the permitted density of 16 units per acre by 27). In the *Beth Tiliak* case the prior Board granted the reclassification to R-A, but denied the special exception for elevator buildings requested by the petitioners in that case. In view of the Board's denial of the special exception on the adjoining property, we do not think it would be proper to grant the special exception requested here and, therefore, will adopt the same reasoning with regard to the special exception requested here.

For the reasons stated above, the reclassification from an R-20 zone and an R-40 zone to an R-A zone will be granted, and the special exception for elevator apartment buildings will be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of June, 1966 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, and the special exception petitioned for, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman
W. Giles Foster

Shapiro - 63-90-RX

prior to the Court of Appeals decision on the Beth Tiliak property immediately to the west of the subject tract. Oddly enough, the case was set for conclusion by the Board on March 31, 1966, the notice of hearing date having been forwarded to the attorneys on March 22, 1966. The Court of Appeals decision was filed on March 29, 1966 and a copy of the Court's decision was received by the Board on the morning of March 31, 1966, the last hearing day.

A detailed recitation of the testimony of each witness would serve no purpose here, however, an examination of the record will show that the testimony as to error, change, and traffic was almost identical in both the Beth Tiliak case and the instant case.

Joseph W. Shapiro, one of the owners of this property, testified that he purchased the tract in January of 1962 primarily as an investment and as a protection for his present home which is situated on a fifty-five acre parcel of ground on the south side of Old Court Road opposite this property. While Mr. Shapiro, in his testimony, did not directly state that he intended to make no request for rezoning on the fifty-five acre tract on the south side of Old Court Road he did, in the Board's opinion, convey the impression that he did not intend to request zoning on that parcel of ground south of Old Court Road. Indeed, on page six of the transcript of the testimony taken before the Board, Mr. Shapiro, when asked what he proposed to do with this property, answered, "I intend to live there", and further stated that he did not expect to sell his property for future development nor did he have any contract purchaser for the property. Apparently Mr. Shapiro had a change of heart as there is presently pending before the Board an application to change the zoning on the fifty-five acre parcel from R-40 to R-A, which application was filed prior to the conclusion of the testimony in this case.

Expert witnesses for the petitioners produced testimony of numerous utility changes in the area since the adoption of the zoning map in 1957, and most particularly the reinforcement of the water system and construction of the Moore's Branch Sewer Interceptor which was put in operation in 1963 and has more than adequate capacity to sewer the proposed apartment here. Leonard M. Glan, an expert sanitary engineer, testified that prior to the construction of the Moore's Branch Interceptor there was insufficient sewer capacity to allow any intensive development of this area. He also testified that the construction of a new fifty-four inch water main from Ashaba to the Pikesville reservoir and a general reinforcement of the water system since 1957 would have water pressures in the area.

W. W. Ewell, a recognized traffic expert appearing for the petitioners, testified that he had made a detailed study of the traffic in the area, and particularly studied additional traffic that would be generated by apartments here and the proposed

RE: PETITION FOR RECLASSIFICATION
from an R-40 Zone and R-20 Zone
to an R-A Zone, Special Exception for
Elevator Apartment Building,
N/S Old Court Road, 3957' E. of
Stevenson Road, 3rd District
Isabel G. & Joseph W. Shapiro -
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
Case No. 63-90-RX

Open hearing on the above petition for re-classification from an R-40 Zone and R-20 Zone to an R-A Zone and Special Exception for Elevator Apartment Building, the land lying on the North side of Old Court Road, 3957' East of Stevenson Road, in the Third Election District of Baltimore County, the testimony produced at the hearing did not indicate that the Official Zoning Map of Baltimore County was in error when adopted by the County Council.

For the reason stated above the reclassification should not be had, and the Special Exception should not be granted.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 3rd day of October, 1966, that the above reclassification be and the same is hereby DENIED and that the above property or area be and the same is hereby continued as and to remain an R-40 Zone and R-20 Zone, and the Special Exception for Elevator Apartment Building be and the same is hereby DENIED.

Edward D. Handley
Deputy Zoning Commissioner

Shapiro - 63-90-RX

synagogue, school, and apartments on the Beth Tiliak property if the Beth Tiliak rezoning was finally accomplished (at the time of his testimony the Court's Opinion in *Beth Tiliak vs. Blum* had not been handed down). He stated that, in his opinion, the additional traffic to be generated, added to the existing traffic on Old Court Road, would approach the capacity of Old Court Road but would not exceed it. He further testified that prior to the opening of the Baltimore County Beltway in 1962 the average daily traffic on Old Court Road was 6200 vehicles per day, but that after the opening of the Beltway the traffic dropped by fifty percent and now approximates 3100 vehicles per day, and that, in his opinion, the additional traffic generated by the Beth Tiliak tract and the subject tract would not bring Old Court Road up to its level of traffic volume prior to the Beltway opening.

An expert traffic engineer appearing for the protestors, Harry E. Beard, differed with Mr. Ewell on the question of possible traffic congestion. Both experts generally agreed as to the traffic volume counts, the main difference of opinion being the practical capacity of Old Court Road which Mr. Ewell stated to be 540 vehicles per hour while Mr. Beard felt that the practical capacity of the road would only be 300 vehicles per hour. The Board is inclined to accept Mr. Ewell's opinion as to the practical capacity of the road since it is obvious that prior to the opening of the Baltimore County Beltway, the road must have been carrying, at times, at least 600 vehicles per hour during peak hours without too much apparent difficulty.

William B. Goy, Jr., an expert realtor, testified that he had made studies of apartments and their effect on surrounding residential neighborhoods, and he could not find any case where apartments depressed the surrounding residential properties. He further stated that there was a strong need for apartments in this area and that there was very little land available in the Pikesville area for apartment uses.

Edward Williamson, a recognized expert in the field of land planning, stated that apartment zoning was entirely compatible with the surrounding neighborhood, that he felt there was an error committed in the adoption of the Third District land use map because of the complete lack of any "practical" provision for rental housing. He stated that, in his opinion, in a comprehensive land use plan, one-third of the housing should be rental units, and that the failure of Baltimore County to anticipate the population explosion and the consequent need for apartment was an error. At the time Mr. Williamson testified both Pikesville area since the adoption of the map.

At the time Mr. Williamson testified both the Halle tract and the Beth Tiliak tract were in litigation and could not be considered as changes in the neighborhood. The Halle tract, which is less than a mile west of the subject property on the north side of the Baltimore County Beltway, was granted by this Board and upheld by the Court of Appeals in *Flores vs. Halle*, 241 Md. 224. He further

PETITION FOR ZONING RE-CLASSIFICATION
AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
I or we, Joseph W. Shapiro and Isabel G. Shapiro, legal owner(s) of the property situated in Baltimore County, and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified pursuant to the Zoning Law of Baltimore County, from an R-40, R-20, R-40, R-20, R-20 zone to an R-A zone; and for the following reasons:
Res: In map
Change in character of neighborhood

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for: Elevator-type apartment building, 16 stories.
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, printing, etc., upon filing of this petition, and further agree to and to be bound by the zoning regulations and restrictions of Baltimore County pursuant to the Zoning Law of Baltimore County.

Contract purchaser
Address: Old Court Road, Pikesville 8, Md.

Address: 408 Jefferson Building
Towson 4, Maryland VALLEY 8-7500

196 3, at 2:00 o'clock
day of October, 196 2, at 2:00 o'clock

OFFICE OF PLANNING & ZONING
Zoning Commissioner of Baltimore County
(over)

Proposed by: Joseph W. Shapiro
Isabel G. Shapiro
Official Zoning Commission
Office 3101 Valley Road
Towson, Md. 21286

63-90-RX
MAD
#3
PA-1
9/21/66

9/22/66
10/19/66

Benjamin M. ...
John G. ...
George W. ...
Robert W. ...
Leland M. ...
Norman F. ...
Paul Lee ...
Paul S. ...

MATZ, CHILDS & ASSOCIATES, INC.
Engineers - Surveyors - Site Planners
2129 N. Charles St., Baltimore 18, Maryland
HO 4146-2308

Water Supply
Sewerage
Drainage
Highways
Structures
Development
Investigations
Recreation
#63-908X

PART OF JOSEPH W. SHAPIRO PROPERTY TO BE REZONED FROM R-40 TO RA NORTH SIDE OF OLD COURT ROAD, EAST OF STEVENSON ROAD, THIRD ELECTION DISTRICT, BALTIMORE COUNTY, MD.

Beginning for the same at the beginning of the seventh or N. 16° 39' 35" W., 49.96 feet of the 27.065 acre tract, which by deed dated January 12, 1962 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3948, Folio 439 was conveyed by Helen C. Grant and William C. Grant, her husband, to Joseph W. Shapiro said point of beginning being also at a point on the center line of Old Court Road, said point of beginning being 3957 feet, more or less, as measured northeasterly along said center line of Old Court Road from the intersection thereof with the center line of Stevenson Road, running thence binding on said seventh line N. 16° 39' 35" W., 49.96 feet to a concrete monument, thence continuing the same course and binding on a part of the eighth line of said land N. 16° 39' 35" W., 920 feet, more or less, to a point on the second line of the existing zoning description 3 R 20-8 thence binding reversely on a part of said second line N. 07° 22' 35" W., 240 feet, more or less, to the end of the first line of said zoning description thence, binding reversely on a part of said first

MMP
#3
SEC. 2-C
RA-X
5/2-1/63



GAV:shr 6/18/63
J. O. #63135

MATZ, CHILDS & ASSOCIATES, INC.
2129 N. Charles St., Baltimore 18, Maryland
Page Two

Water Supply
Sewerage
Drainage
Highways
Structures
Development
Investigations
Recreation
#63-908X

MATZ, CHILDS & ASSOCIATES, INC.
Engineers - Surveyors - Site Planners
2129 N. Charles St., Baltimore 18, Maryland
HO 4146-2308

PART OF JOSEPH W. SHAPIRO PROPERTY TO BE REZONED FROM R 20 TO RA NORTH SIDE OF OLD COURT ROAD, EAST OF STEVENSON ROAD, THIRD ELECTION DISTRICT, BALTIMORE COUNTY, MD.

Beginning for the same at a point on the eighth or N. 16° 39' 35" W., 2190.66 foot line of the 27.065 acre tract, which by deed dated January 12, 1962 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3948, Folio 439 was conveyed by Helen C. Grant and William C. Grant, her husband, to Joseph W. Shapiro said beginning point being N. 16° 39' 35" W., 970 feet more or less, as measured reversely along the seventh line and a part of the eighth line of said land from a point on the center line of Old Court Road, said point on the center line of Old Court Road being 3957 feet, more or less, as measured northeasterly along said center line of Old Court Road from the intersection thereof with the center line of Stevenson Road, running thence binding reversely on a part of the second line of the existing zoning description 3 R 20-8 N. 07° 22' 35" W., 240 feet, more or less to the end of the first line of said zoning description, thence binding reversely on a part of said first line northwesterly 50 feet, more or less, to a point on the fifth or S. 16° 39' 35" E., 2949.13 foot line of the 57.254 acre tract, which by deed dated January 13, 1961 and recorded among said



GAV:shr J. O. #63135
6/18/63

MATZ, CHILDS & ASSOCIATES, INC.
2129 N. Charles St., Baltimore 18, Maryland
Page Two

Land Records in Liber W.J.R. No. 3801, Folio 632 was conveyed by Ruth L. Si' iter to both Beth Tilloh Congregation of Baltimore City, said point being also at said eighth line of the first herein mentioned land thence binding reversely on a part of said eighth line and on a part of said fifth line of the secondly herein mentioned land S. 16° 39' 35" E., 300 feet more or less to the place of beginning.

ANNITA FRANCE,
CERENGE M. SHRIVER, JR., and
VIRGINIA SHRIVER, his wife,
LEON PAINTZ,
M. RICHARD WYMAN,
HERBERT KATZENBERG,
SOL J. PERLMAN,
SIDNEY BLUM, and
THE DUMBARTON IMPROVE-
MENT ASSOCIATION, INC.

IN THE
CIRCUIT COURT

Appellants
vs.
WILLIAM S. BALDWIN and
W. GILES PARKER
constituting the BALTIMORE
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Appellees

PETITION ACCOMPANYING ORDER FOR APPEAL

TO THE HONORABLE, JUDGE OF SAID COURT:
The petition of Annita France, George M. Shriver, Jr., and Virginia Shriver, his wife, Leon Paintz, M. Richard Wyman, Herbert Katzenberg, Sol J. Perlman, Sidney Blum, and The Dumbarton Improvement Association, Inc., (protestants and aggrieved parties before the County Board of Appeals) by Arnold Fleischmann, their attorney, respectfully represents:
1. This appeal is taken from the Order of the County Board of Appeals dated June 24, 1966, in Case No. 63-90-RX, granting the petition of Israel G. Shapiro and Joseph W. Shapiro for the reclassification from an R-20 and R-40 zone to an R-A zone of a parcel of ground 27.065 acres in area, fronting approximately six hundred feet (600') on Old Court Road with a depth of approximately twenty-one hundred ninety feet (2190').
2. The opinion of the County Board of Appeals whereby petitioners are aggrieved and injured, is erroneous and void, and without legal force and effect, and should be reversed and set aside by this Court for the following reasons:
a. Because the subject property has only very limited frontage on Old Court Road, a very narrow, curving country road with limited sight distances, creating severe and dangerous traffic problems so that the classification is contrary to the public safety, health and welfare of the community.

b. Because there is clear and uncontroverted evidence that the area of Old Court Road, where the subject property is located, has hills and deep valleys, and the road is badly congested, resulting in serious and dangerous traffic conditions and numerous accidents at nearby intersections. As a result of short sight distances, the topography of the area and the road, and the limited vision of drivers of automobiles approaching subject property, the construction of apartments on the same would cause additional substantial traffic and tend to increase and further aggravate the present congestion on Old Court Road and the dangers to the general public which now exist at this location.

c. Because the development on an adjoining property of a school and religious institution within the context of existing zoning constitutes no legal basis for a reclassification of subject property, which had been purchased by the petitioner a substantial period after the completion of the Baltimore County highway and the completion of plans for the construction of the religious institution and school on the adjoining property.

d. The decision of the Board is arbitrary, capricious and discriminatory in the petitioner's favor, when said Board created a corridor of R-A zoning from the beltway to Old Court Road, although heretofore no R-A zone had existed anywhere on Old Court Road.
e. Because there was no substantial evidence in the record to support the reclassification of the property on the ground that there was error in the original zoning of a change in the character of the neighborhood, all development having occurred in the immediate neighborhood being completely within the context of existing zoning.

f. Because there is substantial evidence in the record that adequate provisions for rental units have been made for the general area, in which subject property is situated, so that there is no need or demand for further and additional rental housing in the area.

g. Because the reclassification order is beyond the authority granted the County Board of Appeals and is contrary to the public interest.
3. All Appellants named herein were protestants before the County Board of Appeals and were there represented by counsel.
4. Appellant Annita France (Mrs. Jacob France) is the owner of the property adjoining petitioner's property on the east side for the entire length thereof. Appellant France owns appx. 140 acres of land, presently zoned R-40, which are being affected by the reclassification granted herein. All other individual Appellants are property owners and taxpayers of the immediate neighborhood, who are able to see the premises subject of the petition from their properties and are otherwise adversely affected by the reclassification order.

5. And for such other and further reasons as may be shown at the hearing of this appeal.
WHEREFORE, Appellants pray this Honorable Court to pass an Order reversing, setting aside, and declaring void and of no effect the Order of the County Board of Appeals dated June 24, 1966.

Arnold Fleischmann

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Petition Accompanying Order for Appeal was served on the County Board of Appeals on the day of July, 1966.

Arnold Fleischmann

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing Petition Accompanying Order for Appeal was served on the County Board of Appeals by delivery of the same to said Board at its office in the County Office Building, Towson, Maryland, and which service was effected prior to the filing of the said Petition Accompanying Order for Appeal all in accordance with the requirements of Rule B-2 (c) (service on agency) of the Maryland Rules of Procedure, this day of July, 1966.

Service admitted,
County Board of Appeals

by *Richard P. Reinhart*

ANNITA FRANCE, et al.
Appellants
vs.
WILLIAM S. BALDWIN and
W. GILES PARKER
constituting the BALTIMORE
COUNTY BOARD OF APPEALS
Appellees
and
ISRAEL G. SHAPIRO and
JOSEPH W. SHAPIRO
Intervenor
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket: 8
114/3574

ANSWER TO PETITION FOR APPEAL

TO THE HONORABLE, THE JUDGE OF SAID COURT:
Israel G. Shapiro and Joseph W. Shapiro, Intervenor, by A. Owen Henagan and Samuel Kimmel, their attorneys, in Answer to the Petition for Appeal previously filed herein, say:

1. That they admit that this appeal is taken from the Order of the County Board of Appeals in Case No. 63-90-RX, dated June 24, 1966, granting the Petition of Israel G. Shapiro and Joseph W. Shapiro for the reclassification from R-20 and R-40 Zones to R-A Zone, of a parcel of ground 27.065 acres in area, fronting approximately 600 feet on Old Court Road, with a depth of approximately 2,190 feet.

2. In Answer to Paragraph 2 of the Petition, and each and every sub-paragraph thereof, the Intervenor say that the opinion of the County Board of Appeals is not erroneous and void, but is based on substantial testimony and evidence, and the statutory case law applicable to the case herein.

Further answering Paragraphs 2, and each and every sub-paragraph thereof, the Intervenor say that no dangerous traffic problem is created by the re-classification, and there is ample and substantial testimony and documentary evidence that no dangerous traffic condition is created.

Ans. A. Henagan
S. Kimmel

The Intervenor affirmatively deny all the allegations of paragraphs 2c, 2d, 2e, 2f, and 2g of the said Petition.

3. In Answer to Paragraph 3, the Intervenor are without knowledge as to whether all Appellants were Protestants before the County Board of Appeals.

4. In Answer to Paragraph 4, the Intervenor admit that Annie France is the owner of adjoining property, and though she may be affected by a reclassification, she is not adversely affected thereby. The Intervenor deny the allegations of the last sentence of Paragraph 4 of the said Petition.

WHEREFORE, the Intervenor pray this Honorable Court affirm the decision of the County Board of Appeals.

AND, AS IN DUTY BOUND, etc.

A. Owen Hennegan

Samuel Kimmel
406 Jefferson Building
Towson, Maryland - 21204
Attorneys for Intervenor

I HEREBY CERTIFY, that on this 24th day of August, 1964, a copy of the foregoing Answer to Petition for Appeal was mailed to Arnold Fleischman, Esq., 200 First National Bank Building, Towson, Maryland - 21204, Attorney for Appellants, and to the Baltimore County Board of Appeals, 301 County Office Building, Towson, Maryland - 21204, Appellees.

A. Owen Hennegan

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Appellants
vs.
WILLIAM S. BALDWIN and
W. GILES PARKER,
containing the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Nin. Docket No. 6

Folio No. 118

File No. 1576

CERTIFICATE OF NOTICE

Nr. Clerk:

Pursuant to the provisions of Rule 1103-B(4) of the Maryland Rules of Procedure; William S. Baldwin and W. Giles Parker, 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, A. Owen Hennegan, Esq., Jefferson Building, Towson, Maryland, 21204, and Samuel Kimmel, Esq., Jefferson Building, Towson, Maryland 21204, Attorneys for the Petitioners, and Arnold Fleischman, Esq., First National Bank Building, Baltimore, Maryland, 21202, Sidney Blum, Esq., 10 Light Street, Baltimore, Maryland, 21202, J. Mayer Willen, Esq., 111 N. Charles Street, Baltimore, Maryland, 21201, and J. Elmer Weisheit, Jr., Esq., Jefferson Building, Towson, Maryland, 21204, Attorneys for the Protestants, a copy of which notice is attached hereto and

prayed that it may be made a part thereof.

I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to A. Owen Hennegan, Esq., Jefferson Building, Towson, Maryland, 21204, and Samuel Kimmel, Esq., Jefferson Building, Towson, Maryland, 21204, Attorneys for the Petitioners, and Arnold Fleischman, Esq., First National Bank Building, Baltimore, Maryland, 21202, Sidney Blum, Esq., 10 Light Street, Baltimore, Maryland, 21202, J. Mayer Willen, Esq., 111 N. Charles Street, Baltimore, Maryland, 21201, and J. Elmer Weisheit, Jr., Esq., Jefferson Building, Towson, Maryland, 21204, Attorneys for the Protestants, on this 27th day of July, 1964.

Muriel B. Buddemeier
County Board of Appeals
of Baltimore County

RE: PETITION FOR RECLASSIFICATION
from an R-20 zone and an R-40 zone
to an R-A zone, an SPECIAL
EXCEPTION for Elevator Apartment
Buildings
N/S Old Court Road 957' East of
Stevenson Road,
3rd District
Israel G. & Joseph W. Shapiro,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 63-90-RX

OPINION

The petitioners in this case seek a reclassification from an R-20 zone and an R-40 zone to an R-A zone, and a special exception for elevator apartment building on their property situated on the north side of the Old Court Road approximately 4000 feet east of Stevenson Road in the Third Election District of Baltimore County.

The subject tract of land is approximately twenty-seven acres and only a slight portion of the western edge of the tract is zoned R-20, the balance of the property being presently zoned R-40. The property is roughly rectangular in shape and has a frontage on the north side of Old Court Road for approximately 550 feet, and a depth of 2500 to 2700 feet with the rear of the property abutting the Baltimore County Beltway for approximately 380 feet.

The zoning surrounding the property is as follows: The land south of Old Court Road, across from the subject tract, is zoned R-40 in a large tract of land, known as the France property, on the east side. On the north, across the Baltimore County Beltway, the zoning is R-20. Along the western edge of the property the zoning is R-A. This R-A zoning was finally approved by the Maryland Court of Appeals in the case of Beth Tfilah vs. Blum, 242 Md. 84 which opinion was filed on March 29, 1964.

The opening paragraph of Judge McWilliams opinion in Beth Tfilah vs. Blum could well be repeated in toto in this opinion as this tract is adjacent to the Beth Tfilah property and again involved many of the same attorneys, litigants, and witnesses.

The hearing before the Board in the instant case began on June 30, 1964 and was concluded, after five days of testimony, on March 31, 1966. Between the outset of the case before the Board and its conclusion, one Board member's term expired and the case was concluded by two members (Parker and Baldwin). Oldly enough, in the case of Beth Tfilah vs. Blum, one member of the Board in that case had become ill and resigned during the hearing, and that case was also decided by the remaining two Board members (Parker and Austin). The instant case was set for further hearing on a number of occasions between January of 1965 and March of 1966, and was postponed by either the lawyers for the petitioners or the protestors, apparently neither side wanting to conclude the case

Shapiro - #63-90-RX

prior to the Court of Appeals decision on the Beth Tfilah property immediately to the west of the subject tract. Oldly enough, the case was set for conclusion by the Board on March 31, 1966, the notice of hearing date having been forwarded to the attorneys on March 22, 1966; the Court of Appeals decision was filed on March 29, 1966 and a copy of the Court's decision was received by the Board on the morning of March 31, 1966, the last hearing day.

A detailed recitation of the testimony of each witness would serve no purpose here, however, an examination of the record will show that the testimony as to area, change, and traffic was almost identical in both the Beth Tfilah case and the instant case.

Joseph W. Shapiro, one of the owners of this property, testified that he purchased the tract in January of 1962 primarily as an investment and as a protection for his present home which is situated on a fifty-five acre parcel of ground on the south side of Old Court Road opposite this property. While Mr. Shapiro, in his testimony, did not directly state that he intended to make a request for rezoning on the fifty-five acre tract on the south side of Old Court Road he did, in the Board's opinion, convey the impression that he did not intend to request zoning on that parcel of ground south of Old Court Road. Indeed, on page six of the transcript of the testimony taken before the Board, Mr. Shapiro, when asked what he proposed to do with this property, answered, "I intend to live there", and further stated that he did not expect to sell his property for future development nor did he have any contract purchaser for the property. Apparently Mr. Shapiro had a change of heart as there is presently pending before the Board an application to change the zoning on the fifty-five acre parcel from R-40 to R-A, which application was filed prior to the conclusion of the testimony in this case.

Expert witnesses for the petitioners produced testimony of numerous utility changes in the area since the adoption of the zoning map in 1957, and most particularly the reinforcement of the water system and construction of the Moore's Branch Sewer Interceptor which was put in operation in 1963 and has more than adequate capacity to sewer the proposed apartment here. Leonard M. Glaw, an expert sanitary engineer, testified that prior to the construction of the Moore's Branch Interceptor there was insufficient sewer capacity to allow any intensive development of this area. He also testified that the construction of a new fifty-four inch water main from Abutts to the Pikeville reservoir and a general reinforcement of the water system since 1957 would boost water pressures in the area.

W. W. Ewell, a recognized traffic expert appearing for the petitioners, testified that he had made a detailed study of the traffic in the area, and particularly studied additional traffic that would be generated by apartments here and the proposed

Shapiro - #63-90-RX

synagogue, school, and apartments on the Beth Tfilah property if the Beth Tfilah rezoning was finally accomplished (at the time of his testimony the Court's Opinion in Beth Tfilah vs. Blum had not been handed down). He stated that, in his opinion, the additional traffic to be generated, added to the existing traffic on Old Court Road, would approach the capacity of Old Court Road but would not exceed it. He further testified that prior to the opening of the Baltimore County Beltway in 1962 the average daily traffic on Old Court Road was 6200 vehicles per day, but that after the opening of the Beltway the traffic dropped by fifty percent and now approximates 3100 vehicles per day, and that, in his opinion, the additional traffic generated by the Beth Tfilah tract and the subject tract would not bring Old Court Road up to its level of traffic volume prior to the Beltway opening.

An expert traffic engineer appearing for the protestors, Harry E. Beard, differed with Mr. Ewell on the question of possible traffic congestion. Both experts generally agreed as to the traffic volume counts, the main difference of opinion being the practical capacity of Old Court Road which Mr. Ewell stated to be 540 vehicles per hour while Mr. Beard felt that the practical capacity of the road would only be 300 vehicles per hour. The Board is inclined to accept Mr. Ewell's opinion as to the practical capacity of the road since it is obvious that prior to the opening of the Baltimore County Beltway, the road must have been carrying, at times, at least 600 vehicles per hour during peak hours without too much apparent difficulty.

William B. Goy, Jr., an expert realtor, testified that he had made studies of apartment and their effect on surrounding residential neighborhoods, and could not find any case where apartments depressed the surrounding residential properties. He further stated that there was a strong need for apartments in this area and that there was very little land available in the Pikeville area for apartment uses.

Bernard Willen, a recognized expert in the field of land planning, stated that apartment zoning was entirely compatible with the surrounding neighborhood, and he felt there was an error committed in the adoption of the Third District land use map because of the complete lack of any "realistic" provision for rental housing. He stated that, in his opinion, in a comprehensive land use plan, one-third of the housing should be rental units, and that the failure of Baltimore County to anticipate the population explosion and consequent need for apartment was error. He also testified to five zoning changes in the Pikeville area since the adoption of the map. At the time Mr. Willen testified both the Halle tract and the Beth Tfilah tract were in litigation and could not be considered as changes in the neighborhood. The Halle tract, which is less than a mile west of the subject property on the north side of the Baltimore County Beltway, was granted by this Board and upheld by the Court of Appeals in Finney vs. Halle, 241 Md. 224. He further

Shapiro - #63-90-RX

testified that he felt there were other significant changes that affected this property; to wit, the change in the utility picture between 1957 and 1965 which will now allow more intensive development of this area, and the changes in road patterns, particularly the new Suburban Lane connection; the Green Spring Avenue connection, which was completed in 1964, and the construction of the Baltimore County Beltway, which was opened in July of 1962. Subsequent to Mr. Willen's testimony in this case, the Court of Appeals recognized in Finney vs. Halle the construction of the Beltway as being an important change which made the reclassification there "fairly debatable". Indeed, in the Court's Opinion in Beth Tfilah vs. Blum, supra, the Court quoting Finney vs. Halle, supra, said: " * * * It necessarily follows that we should hold that the construction of the Beltway was an important change in conditions in the case at bar and we so hold * * * "

George E. Corvella, Director of Planning for Baltimore County, opposed the reclassification and special exception sought here on the basis that the large lot zoning should be retained and that apartment zoning would contravene the Master Plan applicable to this area, and further, he felt that apartment zoning here could be an entering wedge for subsequent reclassification requests. In all fairness to Mr. Corvella it should be noted that at the time he testified in the instant case he had only become aware of the Court of Appeals decision in the Beth Tfilah case a few minutes before, and had not had an opportunity to read or study the Court's Opinion. The protestors, in the main, opposed any reclassification and expressed their fears, either directly or indirectly, that a reclassification here would lead to subsequent reclassifications in the area. The Board recognizes that a reclassification here could lead to subsequent petitions on surrounding properties, and also recognizes that one reclassification often times can lead to subsequent reclassifications. Mr. Corvella testified that there were many changes in the neighborhood but that, in his personal opinion, these did not necessarily justify additional apartment zoning, stating that he felt the line for apartment zoning must be drawn somewhere and he felt the logical line is the Beth Tfilah tract.

The Board certainly agrees that a line of demarcation must be drawn somewhere and obviously all of the available vacant land in the immediate area, which is in excess of 200 acres, should not be zoned for apartments. However, we feel that if a line is to be drawn it properly should be drawn on the east boundary of the subject tract. The Board feels that we are constrained to follow the Court's Opinion in Beth Tfilah vs. Blum as all of the same factors are present in this case that were present in the Beth Tfilah case. In the instant case we feel that the numerous and substantial changes in the neighborhood, and particularly the construction of the synagogue, school, and apartment complex on the Beth Tfilah tract, which is immediately adjacent, warrant the reclassification requested here. In arriving at our decision to reclassify this property to apartment

Shapiro - #63-90-RX

zoning we do not intend in any way to commit other properties in the area to be likewise reclassified, and we find any further petitions must stand on their own merit.

With regard to the petitioners request for a special exception for elevator apartment buildings, the petitioners produced very impulsive testimony by both the architect and the contract purchaser as to plans for three high rise luxury towers on the property which, in their opinion, would be an asset to the community. The proposal is to construct 576 units on the property instead of the approximate 432 units allowable under the existing zoning regulations for garden type apartments (we arrive at this figure by multiplying the permitted density of 16 units per acre by 27). In the Beth Tfilah case the prior Board granted the reclassification to R-A, and denied the special exception for elevator buildings requested by the petitioner in that case. In view of the Board's denial of the special exception on the adjoining property, we do not think it would be proper to grant the special exception requested here and, therefore, will adopt the same reasoning with regard to the special exception requested here.

For the reasons stated above, the reclassification from an R-20 zone and an R-40 zone to an R-A zone will be granted, and the special exception for elevator apartment buildings will be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of June, 1966 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, and the special exception petitioned for, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

MAP #3 SEC 2-C RA-X 9/24/63

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: Israel G. Shapiro and I, et al. Joseph W. Shapiro, legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an R-40 Zone to an R-20 Zone; for the following reasons:

Error in map Change in character of neighborhood and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for... Elevator-type apartment building... 16 stories 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 of Baltimore County.

Contract purchaser: Israel G. Shapiro, Joseph W. Shapiro, Legal Owner, Address: Old Court Road, Pikesville 8, Md.

Protestant's Attorney: Samuel Kimmel, 406 Jefferson Building, Towson 4, Maryland, Valley 5-7500

ORDERED BY the Zoning Commissioner of Baltimore County, this 3rd day of July, 1963, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation through out Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 3rd day of October, 1963, at 1:00 o'clock P. M.



Signature of Zoning Commissioner of Baltimore County.

BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY: PETITION FOR RE-CLASSIFICATION FROM AN R-40 ZONE AND R-20 ZONE TO AN R-4 ZONE, SPECIAL EXCEPTION FOR ELEVATOR APARTMENT BUILDING 1/2 OF OLD COURT ROAD, 3967' E. OF STEVENSON ROAD, 3RD DISTRICT OF BALTIMORE COUNTY, BALTIMORE COUNTY, MARYLAND. Petitioners: Israel G. & Joe. W. Shapiro

Upon hearing on the above petition for re-classification from an R-40 Zone and R-20 Zone to an R-4 Zone and Special Exception for Elevator Apartment Building, the land lying on the North side of Old Court Road, 3967' East of Stevenson Road, in the Third Election District of Baltimore County, the testimony produced at the hearing did not indicate that the Official Zoning Map of Baltimore County was in error when adopted by the County Council.

For the reason stated above the re-classification should not be had, and the Special Exception should not be granted. IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 3rd day of October, 1963, that the above re-classification be and the same is hereby DENIED and that the above property or area be and the same is hereby continued as to remain an R-40 Zone and R-20 Zone and the Special Exception for Elevator Apartment Building be and the same is hereby DENIED.

Signature of Deputy Zoning Commissioner.

MATZ, CHILDS & ASSOCIATES, INC. Engineers - Surveyors - Soil Planners 2129 N. Charles St., Baltimore 18, Maryland. DESCRIPTION: PART OF JOSEPH W. SHAPIRO PROPERTY TO BE REZONED FROM R-40 TO RA NORTH SIDE OF OLD COURT ROAD, EAST OF STEVENSON ROAD, THIRD ELECTION DISTRICT, BALTIMORE COUNTY, MD. Beginning for the same at the beginning of the seventh line N. 16° 39' 35" W., 49.96 feet of the 27.065 acre tract, which by deed dated January 12, 1962 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3948, Folio 439 was conveyed by Helen C. Grant and William C. Grant, her husband, to Joseph W. Shapiro said point of beginning being also at a point on the center line of Old Court Road, said point of beginning being 3957 feet, more or less, as measured northwesterly along said center line of Old Court Road from the intersection thereof with the center line of Stevenson Road, running thence binding on said seventh line N. 16° 39' 35" W., 49.56 feet to a concrete monument, thence continuing the same course and binding on a part of the eighth line of said land N. 16° 39' 35" W., 920 feet, more or less, to a point on the second line of the existing zoning description 3 R 20-B N. 07° 22' 35" W., 240 feet, more or less, to the end of the first line of said zoning description thence, binding reversely on a part of said first

MAP #3 SEC 2-C RA-X 9/24/63



GAV:abr 6/18/63 J. O. #63135

MATZ, CHILDS & ASSOCIATES, INC. Engineers - Surveyors - Soil Planners 2129 N. Charles St., Baltimore 18, Maryland. DESCRIPTION: PART OF JOSEPH W. SHAPIRO PROPERTY TO BE REZONED FROM R-20 TO RA NORTH SIDE OF OLD COURT ROAD, EAST OF STEVENSON ROAD, THIRD ELECTION DISTRICT, BALTIMORE COUNTY, MD. Beginning for the same at a point on the eighth or N. 16° 39' 35" W., 2190.66 foot line of the 27.065 acre tract, which by deed dated January 12, 1962 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3948, Folio 439 was conveyed by Helen C. Grant and William C. Grant, her husband, to Joseph W. Shapiro said beginning point being N. 16° 39' 35" W., 970 feet more or less, as measured reversely along the seventh line and a part of the eighth line of said land from a point on the center line of Old Court Road, said point on the center line of Old Court Road being 3957 feet, more or less, as measured northwesterly along said center line of Old Court Road from the intersection thereof with the center line of Stevenson Road, running thence binding reversely on a part of the second line of the existing zoning description 3 R 20-B N. 07° 22' 35" W., 240 feet, more or less to the end of the first line of said zoning description, thence binding reversely on a part of said first line northwesterly 50 feet, more or less, to a point on the fifth or S. 16° 39' 35" E., 2949.13 foot line of the 57,254 acre tract, which by deed dated January 13, 1961 and recorded among said



GAV:abr J. O. #63135 6/18/63

ANNITA FRANCE, et al. Appellants vs. WILLIAM S. BALDWIN and W. GILES PARKER constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Appellees. IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW Misc. Docket: 8 114/3574. PETITION TO INTERVENE TO THE HONORABLE, THE JUDGE OF SAID COURT: The Petition of Israel G. Shapiro and Joseph W. Shapiro, by A. Owen Hennegan and Samuel Kimmel, their attorneys, respectfully shows: 1. That on October 3, 1963, a hearing before the Deputy Zoning Commissioner for Baltimore County was held on the Petition for Re-Classification from R-40 and R-20 Zones, to R-A Zone, and Special Exception for Elevator Apartment Building, on the premises owned by Israel G. Shapiro and Joseph W. Shapiro, said property being on the North side of Old Court Road, 3,967 feet East of Stevenson Road, in the Third District of Baltimore County, which Petition was denied by and Order of the Deputy Zoning Commissioner, dated October 3, 1963. 2. That subsequent thereto, on October 28, 1963, an Appeal was filed with the Baltimore County Board of Appeals by your Petitioners, Israel G. Shapiro and Joseph W. Shapiro. 3. That on June 30, 1964, and on four subsequent dates, including March 31, 1966, hearings before the Baltimore County Board of Appeals were held that on June 24, 1966, the Board of Appeals of Baltimore County issued its opinion and Order reversing the decision of the Deputy Zoning Commissioner, as to the re-classification of the property, thereby granting same, and affirming the decision of the Deputy Zoning Commissioner, as to the special exception requested, thereby

denying same. 4. That on or about the 21st day of July, 1966, and Appeal from the decision and Order of the Baltimore County Board of Appeals was filed in the Circuit Court for Baltimore County, and a copy of said Order for Appeal was served on your Petitioners through their attorney, A. Owen Hennegan. 5. That subsequent thereto, a copy of the Petition Accompanying Order for Appeal was served on your Petitioners through their attorney, A. Owen Hennegan. 6. That your Petitioners are the owners of the subject property, and principal parties in interest, and therefore pray this Honorable Court to pass an Order: a) Granting them leave to intervene in these proceedings as Parties-Defendants; b) Granting them leave to file an Answer to the Petition filed herein.

A. Owen Hennegan, Samuel Kimmel, 406 Jefferson Building, Towson, Maryland - 21204, Attorneys for Petitioners

ORDER OF COURT

IT IS this 4th day of August, 1966, by The Circuit Court for Baltimore County, At Law.

ORDERED, that leave be granted as prayed.

JUDGE: I HEREBY CERTIFY that on this 4th day of August, 1966, a copy of the aforesaid Petition to Intervene and Order thereon was mailed to Arnold F. Hochman, Esq., 200 First National Bank Building, Towson, Maryland - 21204, Att. for the Appellants; and to the Baltimore County Board of Appeals, County Office Building, Towson, Maryland - 21204, Appellees. A. Owen Hennegan

Rec'd. Filed 9-18-66

what the Court of Appeals has told me I must consider, I can't find that the Board of Appeals acted in an arbitrary, capricious or illegal fashion when it granted this application, and for those inadequately expressed reasons, likewise, the action of the Board will be affirmed."

We have consistently held that "there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning or also a substantial change in conditions." Greenblatt v. Toney Schloss Properties Corp., 235 Md. 9, 13, 200 A.2d 70 (1964) citing Shadybrook Exp. Assn. v. Nolley, 232 Md. 266, 192 A.2d 502 (1963) and cases there cited.

We have also held that "the Courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence and the issue before the Board was fairly debatable." Booley v. Hospital for Communicables, 246 Md. 197, 204, 227 A.2d 746 (1967) citing Yonel v. McDermott, 242 Md. 371, 219 A.2d 89 (1966). See also Ameslans, Inc. v. Lucas, 247 Md. 612, 233 A.2d 757 (1967).

However, the "[C]ourt will, where the record is so

devoid of substantial supporting facts as to be incapable of raising a debatable issue, declare the legislative or administrative action invalid." Baker v. Montgomery County Council, 241 Md. 178, 186, 215 A.2d 831 (1966) citing Jobar Corp. v. Rodgers Forge, 236 Md. 106, 202 A.2d 612 (1965); Levit and Sons v. Board of County Commissioners, 233 Md. 186, 195 A.2d 723 (1963).

After a review of testimony offered in behalf of both the appellants and the appellees in the hearing before the Baltimore County Board of Appeals, it is our view that the record offers insubstantial support for the contention that the requested reclassification is justified by changes in the character of the neighborhood or a mistake in original zoning. It is our view that the reliance placed by the Board and by the court below on the development of the Beth Triloh site as a basis for granting the requested rezoning was clearly erroneous as a matter of law. It is well recognized that the location in a residential zone of improvements of a character permitted by the ordinance, even although not necessarily compatible with a residential development, is not the type of change of character of a neighborhood which will justify reclassification. Ameslans, Inc. v. Lucas, supra (fire house); Baker v. Montgomery County Council, supra (school);

Levy v. T Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964) (synagogue, school, parking lot, powerhouse); Kaelow v. Mayor and Council of Rockville, 236 Md. 159, 202 A.2d 638 (1964) (church); Montgomery County v. Ritter, 233 Md. 414, 197 A.2d 135 (1964) (armory, motor shed, paved area). But compare Reinolds v. Trustees of the Sheppard and Knoch Pratt Hospital, 246 Md. 704, 229 A.2d 417 (1967), which involved an intensification of institutional uses without an insulating line of demarcation.

Nor should an improvement in water and sewage facilities, standing alone, be taken as a change of conditions affecting the neighborhood. MacDonald v. County Board, 238 Md. 549, 556, 210 A.2d 325 (1965). But compare MacDonald with Rohde v. County Board of Appeals for Baltimore County, 234 Md. 259, 199 A.2d 216 (1964); and with White v. County Board of Appeals, 219 Md. 136, 148 A.2d 430 (1959).

We did not intend Halle to be taken as authority for the proposition that all property adjoining the Beltway, whether or not adversely affected, had undergone so substantial a change as to be a candidate for rezoning. Halle, on its facts, was an

extreme case, where the construction of the Beltway severed the property, involved the destruction of the improvements, and left a tract for which the requested reclassification was justified. Halle should be compared with Greenblatt v. Toney Schloss Properties Corporation, 235 Md. 9, 200 A.2d 70 (1964), where a change in access to the subject property caused solely by the Beltway was held to be insufficient change to support a reclassification from R-40 to R-20, even though the tract was cut off from other R-40 property and access could be had only through R-20 property.

The appellees also attempt to avail themselves of the result reached in Beth Triloh. While we were careful to point out that the result in that case was not determined by the needs of the congregation, it is undoubtedly true that the congregation could have accomplished directly the result which our

determination of the case permitted it to accomplish by indirectness. Putting this another way, the complex erected by a religious institution was a permitted use in a residential zone and would probably not have been regarded as incompatible if it had included provision for the housing of members of the congregation. To hold otherwise would be to put in question the right of a college, seminary or convent to make such use of property in the absence of statutory limitation. While this was not a basis for our opinion, it is an aspect of the problem which cannot be overlooked. The fact that the congregation elected to implement its plans through an independent developer under an agreement which maintained aesthetic standards and offered protection to the members of the congregation makes the situation analogous to that of a special exception (which possibly could have been granted under § 502.1 of the County's zoning regulations) and cannot be regarded as spot zoning or as authority for similar utilization under other auspices elsewhere in the area. Under such circumstances, the reclassification of a portion of the Beth Triloh site is not such a change as would require the rezoning of an adjacent tract for the same purpose. Baker v. Montgomery County Council, 241 Md. 178, 215 A.2d 831 (1966); Levy v. T Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964).

The County Board of Appeals recognizes, and we agree, that a line must be drawn somewhere if an area of some 200 acres located in the heart of a neighborhood of substantial one-family

residences to be protected. The County Board of Appeals suggests that the line be drawn along the east boundary of the property owned by the appellants. It is our view that this is not warranted by the testimony in the case.

The contention with respect to the error or mistake in the original zoning classification was largely supported by the testimony of Mr. Bernard N. Willemin, the former Deputy Director of the County's Planning Commission and now an independent consultant, who gave substantially the same testimony in Halle and Beth Triloh. In substance, Mr. Willemin's testimony in all three cases was the same: that the improvements to be erected if the reclassification were granted would be compatible with the area; that a high-rise apartment would be more desirable than garden apartments; and that the Comprehensive Zoning Map adopted for the Third District on 16 January 1957 was in error because it made no practical provision for apartment development in the area for which there was an increasing demand. On cross examination in the case at bar, Willemin admitted that the area's population had increased only from 3,081 in the year 1950 to an estimated population of 6,395 at 1 January 1963 and identified the substantial apartment development which had already occurred or was in prospect in the neighborhood. This Court was careful to point out that Halle was predicated on the

change doctrine and that it was unnecessary to consider the question of mistake in original zoning, although a footnote, Finney v. Halle, 241 Md. at 236, recognizes: "There is strong evidence in the case which might well have justified a finding of mistake in original zoning by the failure of the County Council to provide a recognizable need for apartment zoning in January 1957." * * * As we have indicated, it is not necessary to pass on this issue of mistake in original zoning, and we make no holding in regard to it." The Willemin testimony was not a basis for our decision in Beth Triloh and in view of the development which is in being or will occur partially as a result of our determination in Halle and Beth Triloh, it is our opinion that the Willemin testimony in the instant case lends no support for the contention that there was a mistake in original zoning.

For the reasons stated, it is our conclusion that the issue presented to the County Board of Appeals was not supported by substantial evidence and thus was not fairly debatable; that the requested reclassification should not have been granted; and that the order entered by the court below should be reversed.

ORDER REVERSED, COSTS TO BE PAID BY APPELLEES.

Ben Anderson
207A

IN THE COURT OF APPEALS OF MARYLAND

No. 708
September Term, 1966

ANITA FRANCE, et al.

v.

ISRAEL D. SHAPIRO, et al.

HOWARD, C. J.
TOWSE
CORPUS
McMILLIAN
SINGLEY, JJ.

Opinion by Singley, J.

Filed: January 3, 1968

ZONING FILE NO. 63-90-8X

Revised
9-20-66

This case comes to us on appeal from an order of the Circuit Court for Baltimore County entered 19 January 1967, affirming an order of the County Board of Appeals of Baltimore County dated 24 June 1966, granting the petition of Israel D. Shapiro and Joseph W. Shapiro, appellees herein, for the rezoning of 27.065 acres of land on the north side of Old Court Road in the Third Election District of Baltimore County.

The opinion of the County Board of Appeals suggested that the opening paragraph of the opinion filed for this Court by Judge McMillian in Beth Tfiloh Congregation of Baltimore City v. Blum, 242 Md. 84, 218 A.2d 29 (1966) could well have been incorporated in the opinion of the Board. This paragraph reads in part as follows:

"Unless forewarned, no Maryland lawyer whose practice concerns zoning matters would be able to read this opinion and the briefs without experiencing a feeling of déjà vu. Essentially, however, the familiar is placed in a new setting. The principles of law would fall into place and the reader then would realize that, in reality, he was revisiting Pinney v. Halle, 241 Md. 228, 216 A.2d 530 (1966). The property in the case at bar is less than a mile to the east of the Halle property. Both properties are in the 3rd Election District of Baltimore County and both about the Baltimore Beltway. The zoning classification sought was the same in each case. The same attorneys opposed each other. The same witnesses (with minor exceptions) testified in both cases. The Board of Appeals reversed both properties for substantially the same reasons. In each case there were appeals first to the Circuit Court for Baltimore County and then to this Court."

Under our view of this case, the trilogy commenced by Halle and continued by Beth Tfiloh has been concluded by the case before us.

A Comprehensive Zoning Map for most of the Third

District of Baltimore County was adopted on 16 January 1957, which classified the property which was the subject of litigation in Halle, the property which was the subject of litigation in Beth Tfiloh, and the property which is the subject of the present appeal as R-20 (residence, one family, 20,000 square foot lot) and R-40 (residence, one family, 40,000 square foot lot). At the time of the adoption of the Comprehensive Zoning Map, the proposed location of the Baltimore County Beltway in the area was generally known, but the plans and design of the Beltway interchange to be located at Stevenson Road and Park Heights Avenue were not approved until 15 April 1959, a construction contract was not awarded until 23 January 1961, and the Beltway itself was not in general use in the area until 1962.

The property which was involved in Halle consisted of 49.672 acres, being all that remained of Pilbox Farm, originally a tract of 69 acres improved by a substantial fieldstone residence, a tenant house and barn. The construction of the Beltway completely destroyed the house, the tenant house, the barn and several other outbuildings, leaving to the south of the Beltway an unimproved parcel without access which was acquired by the State Roads Commission and to the north of the Beltway, left the 49.672 acre tract which was the subject of an application for rezoning from R-20 and R-40 to R-A (residence - apartment) and for a special exception for elevator apartments. The requested reclassifications were granted by the County Board of Appeals; the reclassification to R-A was affirmed by the

3.

order of the circuit court but the granting of the special exception was reversed. The court order was in turn affirmed on appeal, insofar as it related to the requested reclassification, but was reversed (so as to affirm the County Board of Appeals) as to the granting of the special exception for the construction of high-rise apartments.

The rationale adopted by the County Board of Appeals and by the lower court to justify the granting of the reclassification was that there had been sufficient changes in the character of the neighborhood since the adoption of the Comprehensive Zoning Map of 16 January 1957 to support the requested rezoning. We hold, on review, that the issue before the Board was fairly debatable and that the result should not be disturbed by us. In a dissenting opinion filed by Judge (now Chief Justice) Hammond, it was pointed out that the only substantial change which had occurred in the character of the neighborhood since the adoption of the Comprehensive Zoning Map on 16 January 1957 had been the determination of the precise location of the access and exit ramps at Park Heights Avenue and Stevenson Road.

Halle was decided on 2 February 1966 and was immediately followed by the opinion filed on 29 March Beth Tfiloh. In 1961 the Beth Tfiloh congregation had purchased a tract of 27.25 acres extending north from Old Court Road to the Beltway, adjoining on the west by a development known as Dumbarton Heights. The land was purchased as a location for a synagogue complex, consisting of a sanctuary, a school, a social center and a library, all of which were designed by Morris Lapidus, a distinguished American architect of international reputation. On 21 March 1963, the congregation entered into a contract of sale

4.

with the developer of Dumbarton Heights for the sale of the northeastern 20 acres of the site, on which the developer was to erect a number of apartment units designed by Mr. Lapidus, to which members of the congregation were to be given a limited priority as prospective tenants. This naturally required a change in the zoning classification from R-20 and R-40 to R-A (residence - apartment). Included in the application was a request for a special exception for a high-rise apartment building. Both the reclassification and the special exception were denied by the Zoning Commissioner; an appeal was taken to the County Board of Appeals, which, on 25 June 1964, granted the rezoning but denied the special exception, basing its determination on changes which had occurred in the neighborhood and the needs and desires of the Beth Tfiloh Congregation to accommodate its members." On appeal to the circuit court, the determination of the County Board of Appeals was reversed. The lower court's opinion, filed on 14 June 1965, found that an extension of utility lines for water and sewage into the area made possible changes in use but did not constitute a change in character and that while the construction of the Beltway had had a substantial impact, from a legal point of view this was not the kind of change that justifies reclassification.

On appeal to this Court, the order of the circuit court was reversed and the requested reclassification (but not the special exception) was granted, primarily on the ground that our

5.

opinion in the Halle case had not been available to the Court below.

The case at bar involves a tract of 27 1/2 acres, roughly rectangular in shape, fronting on the north side of Old Court Road for a distance of 577 feet with an irregular depth of between 2155 feet on the east and 2190 feet on the west to the Beltway. On the east, it is bounded by property owned by Anita France, one of the appellants, which consists of an estate of some 140 acres used primarily for residential and agricultural purposes, and zoned R-40. On the west the appellees' land is contiguous to the property owned by the Beth Tfiloh Congregation and to the adjacent property reclassified R-A in the Beth Tfiloh case. Across x x Old Court Road is a 55-acre tract owned since 1954 by the appellee, Joseph W. Shapiro, improved by a residence and zoned R-40. Mr. Shapiro testified that he purchased the tract which is the subject of the present appeal on 12 January 1962, as an investment and also to protect his own home, which is located on the 55-acre tract directly across Old Court Road. It should be noted, however, that the record discloses that Mr. Shapiro, subsequent to the filing of the petition in the instant case, filed an application for a reclassification of the 55-acre parcel from R-40 to R-A.

The petition for reclassification of the tract which is the subject of this appeal was originally filed with the Zoning Commissioner of Baltimore County on 31 July 1963, seeking a change from R-40 and R-20 to R-A and a special exception

6.

for elevator apartment buildings to permit the construction of three 16 story apartment buildings, containing 576 units. On 20 September 1963, the staff recommended the denial of the petition for reclassification and for the special exception; and on 3 October 1963, an order was issued by the Deputy Zoning Commissioner in conformity with the staff recommendation. An appeal was taken to the County Board of Appeals on 28 October 1963 and prosecuted on the theory that changes in the character of the neighborhood and an error in original zoning would support the reclassification requested.

Hearings were commenced on 30 June 1964 and were finally concluded on 31 March 1965, the delay apparently having been occasioned by the desire of counsel to continue the case until the filing of the Beth Tfiloh opinion. On 24 June 1966, the County Board of Appeals granted the reclassification but denied the special exception.

While the Board referred to the expansion of utility services and the construction of the Beltway as evidence of changes in the area, greater emphasis was laid on the development of the Beth Tfiloh complex. In its opinion, the Board said:

"The Board certainly agrees that a line of demarcation must be drawn somewhere and obviously all of the available vacant land in the immediate area, which is in excess of 200 acres, should not be zoned for apartments. However, we feel that if a line is to be drawn it properly should be drawn on the east boundary of the subject tract. The Board feels that we are constrained to follow the Court's Opinion in Beth Tfiloh v. Blum as all of the same factors are present in this case that were present in the Beth Tfiloh case. In the instant

7.

case we feel that the numerous and substantial changes in the neighborhood, and particularly the construction of the synagogue, school, and apartment complex on the Beth Tfiloh tract, which is immediately adjacent, warrant the reclassification requested here. In arriving at our decision to reclassify this property to apartment zoning we do not intend in any way to limit other properties in the area to be likewise reclassified, and any future petitions must stand on their own merit.

On 22 July 1966 the appellants entered an appeal to the Circuit Court for Baltimore County; the appellees were permitted to intervene by appropriate order; and by order entered 19 January 1967, the circuit court affirmed the action of the Baltimore County Board of Appeals. In its opinion, which followed the Board's approach, the court said:

"I cannot fail to agree with that Mr. Homanagan has pointed out, that a large complex of a place of religious worship, a school, a center, with the necessary large parking areas, is not what one in contemplation when the Beth Tfiloh area was zoned R-40. It seems to me that, considering the fact that the Board denied the application for a special exception for a high-rise apartment building, considering that it seems to me that zoning such property a zoning of R-A is a proper transition zoning between a large area, which necessarily must fully accommodate a large number of people to use it, and a zoning which is in the R-40 or R-20 category for single family dwellings.

"In the light of the testimony of Mr. McMillian, and in the light of, as Mr. Fleishchman says, a fully considered, the conflict in the testimony as to traffic hazard, and in the light of the Court of Appeals decision in the Beth Tfiloh case, and also considering, which was a real unusual case, and which I don't believe was cited in the record, the Bonnie View case, (Bonnie View Club v. Queen's, 242 Md. 463, 217 A.2d 474 (1966)) and there on Sixth Avenue where the old abandoned copper mines were, in the light of the reasoning of the Court of Appeals in all of these cases, but particularly considering that the Court of Appeals was dealing in the Bonnie View case, with properties which Halle cases, in the Beth Tfiloh case, with properties which were geographically fairly close together, I can't find, from this record, from these exhibits, and I don't find

what the Court of Appeals has told me I must consider, I can't find that the Board of Appeals acted in an arbitrary, capricious or illegal fashion when it granted this application, and for those inadequately expressed reasons, gentlemen, the action of the Board will be affirmed.

We have consistently held that "there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning or else a substantial change in conditions." Greenblatt v. Toney Schloss Properties Corp., 235 Md. 9, 13, 200 A.2d 70 (1964) citing Shadybrook Imp. Assn. v. Hollis, 236 Md. 265, 192 A.2d 502 (1963) and cases there cited.

We have also held that "the Courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence and the issue before the Board was fairly debatable." Borley v. Hospital for Communicables, 246 Md. 177, 204, 227 A.2d 746 (1967) citing Yonel v. McDoshi, 242 Md. 371, 219 A.2d 89 (1966). See also Agneslane, Inc. v. Lucas, 247 Md. 612, 233 A.2d 757 (1967).

However, the "[c]ourt will, where the record is so

devoid of substantial supporting facts as to be incapable of raising a debatable issue, declare the legislative or administrative action invalid." Baker v. Montgomery County Council, 241 Md. 178, 186, 215 A.2d 831 (1966) citing Jobar Corp. v. Rodgers Forge, 236 Md. 106, 202 A.2d 612 (1965); Levitt and Sons v. Board of County Commissioners, 233 Md. 186, 195 A.2d 723 (1963).

After a review of testimony offered in behalf of both the appellants and the appellees in the hearing before the Baltimore County Board of Appeals, it is our view that the record offers insubstantial support for the contention that the requested reclassification is justified by changes in the character of the neighborhood or a mistake in original zoning. It is our view that the reliance placed by the Board and by the court below on the development of the Beth Tfiloh site as a basis for granting the requested rezoning was clearly erroneous as a matter of law. It is well recognized that the location in a residential zone of improvements of a character permitted by the ordinance, even although not necessarily compatible with a residential development, is not the type of change of character of a neighborhood which will justify reclassification. Agneslane, Inc. v. Lucas, supra (fire house); Baker v. Montgomery County Council, supra (school);

Levy v. Y Slade, Inc., 234 Md. 146, 198 A.2d 267 (1964) (synagogue, school, parking lot, powerhouse); Kelov v. Mayor and Council of Rockville, 236 Md. 159, 202 A.2d 638 (1964) (church); Montgomery County v. Britter, 233 Md. 514, 197 A.2d 139 (1964) (armory, motor shed, paved area). But compare Kosminiss v. Trustees of the Sheppard and Froeh Pratt Hospital, 246 Md. 704, 229 A.2d 217 (1967), which involved an intensification of institutional uses without an insulating line of demarcation.

Nor should an improvement in water and sewage facilities, standing alone, be taken as a change of conditions affecting the neighborhood. MacDonald v. County Board, 238 Md. 549, 556, 210 A.2d 395 (1965). But compare MacDonald with Wade v. County Board of Appeals for Baltimore County, 234 Md. 259, 199 A.2d 216 (1964); and with White v. County Board of Appeals, 219 Md. 136, 148 A.2d 420 (1959).

We did not intend Halle to be taken as authority for the proposition that all property adjoining the Beltway, whether or not adversely affected, had undergone so substantial a change as to be a candidate for rezoning. Halle, on its facts, was an

extreme case, where the construction of the Beltway severed the property, involved the destruction of the improvements, and left a tract for which the requested reclassification was justified. Halle should be compared with Greenblatt v. Toney Schloss Properties Corporation, 235 Md. 9, 200 A.2d 70 (1964), where a change in access to the subject property caused solely by the Beltway was held to be insufficient change to support a reclassification from R-40 to R-20, even though the tract was cut off from other R-40 property and access could be had only through R-20 property.

The appellees also attempt to avail themselves of the result reached in Beth Tfiloh. While we were careful to point out that the result in that case was not determined by the needs of the congregation, it is undoubtedly true that the congregation could have accomplished directly the result which our

determination of the case permitted it to accomplish by indirection. Putting this another way, the complex erected by a religious institution was a permitted use in a residential zone and would probably not have been regarded as incompatible if it had included provision for the housing of members of the congregation. To hold otherwise would be to put in question the right of a college, seminary or convent to make such use of property in the absence of statutory limitation. While this was not a basis for our opinion, it is an aspect of the problem which cannot be overlooked. The fact that the congregation elected to implement its plans through an independent developer under an agreement which maintained aesthetic standards and offered protection to the members of the congregation makes the situation analogous to that of a special exception (which possibly could have been granted by § 502.1 of the County's zoning regulations) and cannot be regarded as spot zoning or as authority for similar utilization under other auspices elsewhere in the area. Under such circumstances, the reclassification of a portion of the Beth Tfiloh site is not such a change as would require the rezoning of an adjacent tract for the same purpose. Baker v. Montgomery County Council, 241 Md. 178, 215 A.2d 831 (1966); Levy v. Y Slade, Inc., 234 Md. 145, 198 A.2d 267 (1964).

The County Board of Appeals recognizes, and we agree, that a line must be drawn somewhere if an area of some 200 acres located in the heart of a neighborhood of substantial one-family

residences to be protected. The County Board of Appeals suggests that the line be drawn along the east boundary of the property owned by the appellants. It is our view that this is not warranted by the testimony in the case.

The contention with respect to the error or mistake in the original zoning classification was largely supported by the testimony of Mr. Bernard N. Willemain, the former Deputy Director of the County's Planning Commission and now an independent consultant, who gave substantially the same testimony in Halle and Beth Tfiloh. In substance, Mr. Willemain's testimony in all three cases was the same: that the improvements to be erected if the reclassification were granted would be compatible with the area; that a high-rise apartment would be more desirable than garden apartments; and that the Comprehensive Zoning Map adopted for the Third District on 16 January 1957 was in error because it made no practical provision for apartment development in the area for which there was an increasing demand. On cross examination in the case at bar, Willemain admitted that the area's population had increased only from 3,081 in the year 1950 to an estimated population of 6,395 at 1 January 1963 and identified the substantial apartment development which had already occurred or was in prospect in the neighborhood. This Court was careful to point out that Halle was predicated on the

change doctrine and that it was unnecessary to consider the question of mistake in original zoning, although a footnote, Finney v. Halle, 241 Md. at 236, recognizes: "There is strong evidence in the case which might well have justified a finding of mistake in original zoning by the failure of the County Council to provide/a recognizable need for apartment zoning in January 1957." * * * As we have indicated, it is not necessary to pass on this issue of mistake in original zoning, and we make no holding in regard to it." The Willemain testimony was not a basis for our decision in Beth Tfiloh and in view of the development which is in being or will occur partially as a result of our determination in Halle and Beth Tfiloh, it is our opinion that the Willemain testimony in the instant case lends no support for the contention that there was a mistake in original zoning.

For the reasons stated, it is our conclusion that the issue presented to the County Board of Appeals was not supported by substantial evidence and thus was not fairly debatable; that the requested reclassification should not have been granted; and that the order entered by the court below should be reversed.

ORDER REVERSED, COSTS TO BE PAID BY APPELLANTS.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John C. Rose, Zoning Commissioner Date: September 20, 1963

FROM: Mr. George E. Carralis, Deputy Director

SUBJECT: 40-00 Hill, R-40 and R-20 to R-4 and Special Exception for Elevator Apartment Building, North side of Old Court Road 3757 Feet East of Stevenson Road. Being property of Israel Shapiro.

3rd District

REMARKS: Thursday, October 3, 1963 (1:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-40 and R-20 to R-4 zoning together with a Special Exception for Elevator Apartment Building (e). It has the following advisory comments to make with respect to pertinent planning factors:

1. The 3rd District Master Plan and the subsequent Zoning Map carefully considered the character and status of land use, both existing and proposed, for this area. Large lot zoning was provided in this area as a valid recognition of the existing and emerging pattern of land usage. Large lot zoning apparently has not been a deterrent to development in this area - even where utilities were available.
2. Creation of apartment zoning on the subject tract would contravene the adopted Master Plan and Zoning Map applicable to this area. Apartment zoning here would not meet any of the locational criteria established and utilized by the Planning Board for apartments elsewhere. Establishment of apartment zoning here would be spot zoning in the sense that apartment usage would not be consistent with the goals or provisions of a comprehensive plan. Creation of apartment zoning here further would abort the established plans and maps for this area in the sense that an entering wedge would be created for subsequent reclassifications to apartment zoning.
3. The consequential effects of creating apartment zoning here must be considered and should not be taken lightly. Apartment zoning here would establish the very condition of change in character of the neighborhood that would justify extension of apartment zoning to the east and on the undeveloped plateau along Old Court Road.

GEOL:MS

RE: PETITION FOR RECLASSIFICATION
from an R-20 zone and an R-40 zone
to an R-A zone, and SPECIAL
EXCEPTION for Elevator Apartment
Buildings
N/S Old Court Road 3957' East of
Stevenson Road,
3rd District
Ireneal G. & Joseph W. Shapiro,
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 63-90-RX

OPINION

The petitioners in this case seek a reclassification from an R-20 zone and an R-40 zone to an R-A zone, and a special exception for elevator apartment buildings on their property situated on the north side of the Old Court Road approximately 4000 feet east of Stevenson Road in the Third Election District of Baltimore County.

The subject tract of land is approximately twenty-seven acres and only a slight portion of the western edge of the tract is zoned R-20, the balance of the property being presently zoned R-40. The property is roughly rectangular in shape and has a frontage on the north side of Old Court Road for approximately 550 feet, and a depth of 2500 to 2700 feet with the rear of the property abutting the Baltimore County Beltway for approximately 580 feet.

The zoning surrounding the property is as follows: The land south of Old Court Road, across from the subject tract, is zoned R-40 as is a large tract of land, known as the France property, on the east side. On the north, across the Baltimore County Beltway, the zoning is R-20. Along the western edge of the property the zoning is R-A. This R-A zoning was finally approved by the Maryland Court of Appeals in the case of *Beth Tilloh vs. Blum*, 242 Md. 84 which opinion was filed on March 29, 1966.

The opening paragraph of Judge McWilliams' opinion in *Beth Tilloh vs. Blum* could well be repeated in toto in this opinion as this tract is adjacent to the *Beth Tilloh* property and again involved many of the same attorney, litigants, and witnesses.

The hearing before the Board in the instant case began on June 30, 1964 and was concluded, after five days of testimony, on March 31, 1966. Between the outset of the case before the Board and its conclusion, one Board member's term expired and the case was concluded by two members (Parker and Baldwin). Oddly enough, in the case of *Beth Tilloh vs. Blum*, one member of the Board in that case had become ill and resigned during the hearing, and that case was also decided by the remaining two Board members (Parker and Austin). The instant case was set for further hearing on a number of occasions between January of 1965 and March of 1966, and was postponed by either the lawyers for the petitioners or the protestors, apparently neither side wanting to conclude the case

Shapiro - #63-90-RX

prior to the Court of Appeals decision on the *Beth Tilloh* property immediately to the west of the subject tract. Oddly enough, the case was set for conclusion by the Board on March 31, 1966, the notice of hearing date having been forwarded to the attorneys on March 22, 1966; the Court of Appeals decision was filed on March 29, 1966 and a copy of the Court's decision was received by the Board on the morning of March 31, 1966, the last hearing day.

A detailed recitation of the testimony of each witness would serve no purpose here, however, an examination of the record will show that the testimony as to error, change, and traffic was almost identical in both the *Beth Tilloh* case and the instant case.

Joseph W. Shapiro, one of the owners of this property, testified that he purchased the tract in January of 1962 primarily as an investment and as a protection for his present home which is situated on a fifty-five acre parcel of ground on the south side of Old Court Road opposite this property. While Mr. Shapiro, in his testimony, did not directly state that he intended to make no request for rezoning on the fifty-five acre tract on the south side of Old Court Road he did, in the Board's opinion, convey the impression that he did not intend to request zoning on that parcel of ground south of Old Court Road. Indeed, on page six of the transcript of the testimony taken before the Board, Mr. Shapiro, when asked what he proposed to do with this property, answered, "I intend to live there" and further stated that he did not expect to sell his property for future development nor did he have any contract purchaser for the property. Apparently Mr. Shapiro had a change of heart as there is presently pending before the Board an application to change the zoning on the fifty-five acre parcel from R-40 to R-A, which application was filed prior to the conclusion of the testimony in this case.

Expert witnesses for the petitioners produced testimony of numerous utility changes in the area since the adoption of the zoning map in 1957, and most particularly the reinforcement of the water system and construction of the Moore's Branch Sewer Interceptor which was put in operation in 1963 and has more than adequate capacity to sewer the proposed apartments here. Leonard M. Glas, an expert sanitary engineer, testified that prior to the construction of the Moore's Branch Interceptor there was insufficient sewer capacity to allow any intensive development of this area. He also testified that the construction of a new fifty-four inch water main from Arbutus to the Pikesville reservoir and a general reinforcement of the water system since 1957 would boost water pressures in the area.

W. W. Ewell, a recognized traffic expert appearing for the petitioners, testified that he had made a detailed study of the traffic in the area, and particularly studied additional traffic that would be generated by apartments here and the proposed

Shapiro - #63-90-RX

synagogue, school, and apartments on the *Beth Tilloh* property if the *Beth Tilloh* rezoning was finally accomplished (at the time of his testimony the Court's Opinion in *Beth Tilloh vs. Blum* had not been handed down). He stated that, in his opinion, the additional traffic to be generated, added to the existing traffic on Old Court Road, would approach the capacity of Old Court Road but would not exceed it. He further testified that prior to the opening of the Baltimore County Beltway in 1962 the average daily traffic on Old Court Road was 6200 vehicles per day, but that after the opening of the Beltway the traffic dropped by fifty percent and now approximates 3100 vehicles per day, and that, in his opinion, the additional traffic generated by the *Beth Tilloh* tract and the subject tract would not bring Old Court Road up to its level of traffic volume prior to the Beltway opening.

An expert traffic engineer appearing for the protestors, Harry E. Beard, differed with Mr. Ewell on the question of possible traffic congestion. Both experts generally agreed as to the traffic volume counts, the main difference of opinion being the practical capacity of Old Court Road which Mr. Ewell stated to be 540 vehicles per hour while Mr. Beard felt that the practical capacity of the road would only be 300 vehicles per hour. The Board is inclined to accept Mr. Ewell's opinion as to the practical capacity of the road since it is obvious that prior to the opening of the Baltimore County Beltway, the road must have been carrying, at times, at least 600 vehicles per hour during peak hours without too much apparent difficulty.

William B. Guy, Jr., an expert realtor, testified that he had made studies of apartments and their effect on surrounding residential neighborhoods; that he did not find any case where apartments depreciated the surrounding residential properties. He further stated that there was a strong need for apartments in this area and that there was very little land available in the Pikesville area for apartment uses.

Benard Willemain, a recognized expert in the field of land planning, stated that apartment zoning was entirely compatible with the surrounding neighborhood; that he felt there was an error committed in the adoption of the Third District land use map because of the complete lack of any "flexible" provision for rental housing. He stated that, in his opinion, in a comprehensive land use plan, one-third of the housing should be rental units, and that the failure of Baltimore County to anticipate the population explosion and consequent need for apartment was error. He also testified to five zoning changes in the Pikesville area since the adoption of the map. At the time Mr. Willemain testified both the *Halle* tract and the *Beth Tilloh* tract were in litigation and could not be considered as changes in the neighborhood. The *Halle* tract, which is less than a mile west of this subject property on the north side of the Baltimore County Beltway, was granted by this Board and upheld by the Court of Appeals in *Finney vs. Halle*, 241 Md. 224. He further

Shapiro - #63-90-RX

testified that he felt there were other significant changes that affected this property; to wit, the change in the utility picture between 1957 and 1965 which will now allow more intensive development of this area, and the changes in road patterns, particularly the new Sudbrook Lane connection; the Green Spring Avenue connection, which was completed in 1964; and the construction of the Baltimore County Beltway, which was opened in July of 1962. Subsequent to Mr. Willemain's testimony in this case, the Court of Appeals recognized in *Finney vs. Halle* the construction of the Beltway as being an important change which made the reclassification there "fairly debatable". Indeed, in the Court's Opinion in *Beth Tilloh vs. Blum*, supra, the Court quoting *Finney vs. Halle*, supra, said: "It necessarily follows that we should hold that the construction of the Beltway was an important change in conditions in the case at bar and we so hold ***".

George E. Gervelis, Director of Planning for Baltimore County, opposed the reclassification and special exception sought here on the basis that the large lot zoning should be retained and that apartment zoning would contravene the Master Plan applicable to this area, and further, he felt that apartment zoning here could be an entering wedge for subsequent reclassification requests. In all fairness to Mr. Gervelis it should be noted that at the time he testified in the instant case he had only become aware of the Court of Appeals decision in the *Beth Tilloh* case a few minutes before, and had not had an opportunity to read or study the Court's Opinion. The protestors, in the main, opposed any reclassification and expressed their fears, either directly or indirectly, that a reclassification here would lead to subsequent reclassifications in the area. The Board recognizes that a reclassification here could lead to subsequent petitions on surrounding properties, and also recognizes that one reclassification often times can lead to subsequent reclassifications. Mr. Gervelis testified that there were many changes in the neighborhood but that, in his personal opinion, these did not necessarily justify additional apartment zoning, stating that he felt the time for apartment zoning must be drawn somewhere and he felt the logical line is the *Beth Tilloh* tract.

The Board certainly agrees that a line of demarcation must be drawn somewhere and obviously all of the available vacant land in the immediate area, which is in excess of 200 acres, should not be zoned for apartments. However, we feel that if a line is to be drawn it properly should be drawn on the east boundary of the subject tract. The Board feels that we are constrained to follow the Court's Opinion in *Beth Tilloh vs. Blum* as all of the same factors are present in this case that were present in the *Beth Tilloh* case. In the instant case we feel that the numerous and substantial changes in the neighborhood, and particularly the construction of the synagogue, school, and office complex on the *Beth Tilloh* tract, which is immediately adjacent, warrant the reclassification requested here. In arriving at our decision to reclassify this property to apartment

- 5 -

Shapiro - #63-90-RX

zoning we do not intend in any way to commit other properties in the area to be likewise reclassified, and any future petitions must stand on their own merit.

With regard to the petitioners request for a special exception for elevator apartment buildings, the petitioners produced very impressive testimony by both the architect and the contract purchaser as to plans for three high rise luxury towers on the property which, in their opinion, would be an asset to the community. The proposal is to construct 576 units on the property instead of the approximate 432 units allowable under the existing zoning regulations for garden type apartments (we arrive at this figure by multiplying the permitted density of 16 units per acre by 27). In the *Beth Tilloh* case the prior Board granted the reclassification to R-A, but denied the special exception for elevator buildings requested by the petitioner in that case. In view of the Board's denial of the special exception on the adjoining property, we do not think it would be proper to grant the special exception requested here and, therefore, will adopt the same reasoning with regard to the special exception requested here.

For the reasons stated above, the reclassification from an R-20 zone and an R-40 zone to an R-A zone will be granted, and the special exception for elevator apartment buildings will be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of June, 1966 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, and the special exception petitioned for, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin
William S. Baldwin, Chairman

Paul G. Griffin
Paul G. Griffin, Clerk

ANNITA FRANCE, GEORGE M. SHRIVER, JR., and VIRGINIA SHERVEN, his wife, LEON PAITZ, M. RICHARD WYMAN, HERBERT KATZENBERG, SOL J. FELDMAN, RENEY BLUM, and THE DUMBARTON IMPROVEMENT ASSOCIATION, INC., Appellants
vs.
BALTIMORE COUNTY
WILLIAM S. BALDWIN and W. GILES PARKER, co-constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY, Appellees
and
IRENEAL G. SHAPIRO and JOSEPH W. SHAPIRO, Interveners
December 21, 1966
Before: HONORABLE JOHN GRASON TURNBULL, Judge.
Reported by:
Paul G. Griffin

(Counsel made argument to the Court.)

THE COURT (Sustained): Gentlemen, as you know, we have a practice of rotation of administrative appeals. When an appeal is taken it is referred to our senior judge, and from the list which he keeps, he, in rotation, assigns these matters to be heard by all the members of the court and it was with a great deal of distress that I received this particular case. I do not think a judge should disqualify himself for any other than weighty reasons. I did not, however, disqualify myself in this case, although I know Mrs. France and Mr. Shapiro.

I cannot fail to agree with what Mr. Menegon has pointed out, that a large complex of a place of religious worship, a school, a center, with the necessary large parking areas, is not what was in contemplation when the *Beth Tilloh* case was decided. It seems to me that, considering the fact that the board denied the application for a special exception for a high rise apartment building, considering that, it seems to me that going essentially, or for that matter westwardly from the *Beth Tilloh* property a zoning of R-A is a proper transition zoning between a large area, which necessarily must rely upon large numbers of people to use it, then a zoning which is in the R-40 or R-20 category for single family dwellings.

In the light of the testimony of Mr. Willemain, and in the light of, as Mr. Fleischmann very candidly concedes, the conflict in the testimony as to traffic hazard, and in the light of the Court of Appeals decision in the *Beth Tilloh* case, and also considering which was a most unusual case, and which I don't believe was cited in the annotations, the *Bonnie View* case, over there on Bath Avenue where the old abandoned copper mines were, in the light of the reasoning of the Court of Appeals in all of those cases, but particularly considering that the Court of Appeals was dealing in the *Bonnie View* case, in the *Halle* case, in the *Beth Tilloh* case, with properties which were geographically fairly close together, I can't find from the record, from these exhibits, and considering what the Court of Appeals has told me I must consider, I can't find that the Board of Appeals acted in an arbitrary, capricious or illegal fashion when it granted this application, and for these inadequately expressed reasons, gentlemen, the action of the Board will be affirmed.

ANNITA FRANCE, et al. IN THE
Appellants • CIRCUIT COURT
vs. •
WILLIAM S. BALDWIN and FOR
W. GILES PARKER • BALTIMORE COUNTY
constituting the BOARD OF APPEALS • BALTIMORE COUNTY
Appellees • AT LAW
and •
ISRAEL G. SHAPIRO and Misc. Docket 3
JOSEPH W. SHAPIRO •
Intervenor • 114/3574

ORDER

THIS CASE having come on for hearing, the record having been read, argument of counsel having been heard and considered, it is this day of October 3, 1963, by The Circuit Court for Baltimore County, ORDERED that the Decision of The Baltimore County Board of Appeals in the above captioned case be, and is hereby, AFFIRMED.

JUDGE

RE: PETITION FOR RECLASSIFICATION from an R-20 zone and an R-40 zone to an R-A zone, and SPECIAL EXCEPTION for Elevator Apartment Building N/S Old Court Road 3957' East of Stevenson Road, 3rd District Council G. & Joseph W. Shapiro, Petitioners

BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY No. 63-90-RX

OPINION

The petitioners in this case seek a reclassification from an R-20 zone and an R-40 zone to an R-A zone, and a special exception for elevator apartment buildings on their property situated on the north side of the Old Court Road approximately 4000 feet east of Stevenson Road in the Third Election District of Baltimore County.

The subject tract of land is approximately twenty-seven acres and only a slight portion of the western edge of the tract is zoned R-20, the balance of the property being presently zoned R-40. The property is roughly rectangular in shape and has a frontage on the north side of Old Court Road for approximately 550 feet, and a depth of 2500 to 2700 feet with the rear of the property abutting the Baltimore County Beltway for approximately 580 feet.

The zoning surrounding the property is as follows: The land south of Old Court Road, across from the subject tract, is zoned R-40 as is a large tract of land, known as the France property, on the east side. On the north, across the Baltimore County as the France property, on the east side. Along the western edge of the property the zoning is R-A. This R-A zoning was finally approved by the Maryland Court of Appeals in the case of Beth Tfiloh vs. Blum, 247 Md. 84 which opinion was filed on March 29, 1966.

The opening paragraph of Judge McWilliams opinion in Beth Tfiloh vs. Blum which could well be repeated in toto in this opinion as this tract is adjacent to the Beth Tfiloh property and again involved many of the same attorneys, litigants, and witnesses.

The hearing before the Board in the instant case began on June 30, 1964 and was concluded, after five days of testimony, on March 31, 1966. Between the outset of the case before the Board and its conclusion, one Board member's term expired and the case was concluded by two members (Parker and Baldwin). Oddly enough, in the case of Beth Tfiloh vs. Blum, one member of the Board in that case had become ill and resigned during the hearing, and that case was also decided by the remaining two Board members (Parker and Austin). The instant case was set for further hearing on a number of occasions between January of 1965 and March of 1966, and it was postponed by either the lawyers for the petitioners or the protestants, apparently neither side wanting to conclude the case.

zoning we do not intend in any way to commit our predecessors in the area to be likewise reclassified, and any future petitions must stand on their own merit.

With regard to the petitioners request for a special exception for elevator apartment buildings, the petitioners produced very impressive testimony by both the architect and the contract purchaser as to plans for three high rise luxury towers on the property which, in their opinion, would be an asset to the community. The proposal is to construct 576 units on the property instead of the approximate 432 units allowable under the existing zoning regulations for garden type apartments (we arrive at this figure by multiplying the permitted density of 18 units per acre by 27). In the Beth Tfiloh case the prior Board granted the reclassification to R-A, but denied the special exception for elevator buildings requested by the petitioner in that case. In view of the Board's denial of the special exception on the adjoining property, we do not think it would be proper to grant the special exception requested here and, therefore, will adopt the same reasoning with regard to the special exception requested here.

For the reasons stated above, the reclassification from an R-20 zone and an R-40 zone to an R-A zone will be granted, and the special exception for elevator apartment buildings will be denied.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of June, 1966 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, and the special exception petitioned for, be and the same is hereby DENIED.

Any appeal from this decision will 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. Giles Parker

Shapiro - 63-90-RX

prior to the Court of Appeals decision on the Beth Tfiloh property immediately to the west of the subject tract. Oddly enough, the case was set for conclusion by the Board on March 31, 1966, the notice of hearing date having been forwarded to the attorney on March 22, 1966, the Court of Appeals decision was filed on March 29, 1966 and a copy of the Court's decision was received by the Board on the morning of March 31, 1966, the last hearing day.

A detailed recitation of the testimony of each witness would serve no purpose here, however, an examination of the record will show that the testimony as to error, change, and traffic was almost identical in both the Beth Tfiloh case and the instant case.

Joseph W. Shapiro, one of the owners of this property, testified that he purchased the tract in January of 1962 primarily as an investment and as a protection for his present home which is situated on a fifty-five acre parcel of ground on the south side of Old Court Road opposite this property. While Mr. Shapiro, in his testimony, did not directly state that he intended to make no request for zoning on the fifty-five acre tract on the north side of Old Court Road he did, in the Board's opinion, convey the impression that he did not intend to request zoning on that parcel of ground south of Old Court Road. Indeed, on page six of the transcript of the testimony taken before the Board, Mr. Shapiro, when asked what he proposed to do with this property, answered, "I intend to live there," and further stated that he did not expect to sell his property for future development nor did he have any contract purchaser for the property. Apparently Mr. Shapiro had no change of heart as there is presently pending before the Board an application to change the zoning on the fifty-five acre parcel from R-40 to R-A, which application was filed prior to the conclusion of the testimony in this case.

Expert witnesses for the petitioners produced testimony of numerous utility changes in the area since the adoption of the zoning map in 1957, and most particularly the reinforcement of the water system and construction of the Moore's Branch Sewer Interceptor which was put in operation in 1963 and has more than adequate capacity to serve the proposed apartment here. Leonard M. Glon, an expert sanitary engineer, testified that prior to the construction of the Moore's Branch Interceptor there was insufficient sewer capacity to allow any intensive development of this area. He also testified that the construction of a new fifty-four inch water main from Arbutus to the Pikeville reservoir and a general reinforcement of the water system since 1957 would boost water pressures in the area.

W. W. Ewell, a recognized traffic expert appearing for the petitioners, testified that he had made a detailed study of the traffic in the area, and particularly studied additional traffic that would be generated by apartments here and the proposed

RE: PETITION FOR RECLASSIFICATION from an R-40 Zone and R-20 Zone to an R-A Zone and Special Exception for Elevator Apartment Building N/S Old Court Road, 3957' E. of Stevenson Road, 3rd District Council G. & Joseph W. Shapiro, Petitioners

BEFORE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 63-90-RX

Upon hearing on the above petition for reclassification from an R-40 Zone and R-20 Zone to an R-A Zone and Special Exception for Elevator Apartment Building, the land lying on the north side of Old Court Road, 3957' East of Stevenson Road, in the Third Election District of Baltimore County, the testimony produced at the hearing did not indicate that the Official Zoning Map of Baltimore County was in error when adopted by the County Council.

For the reasons stated above the reclassification should not be had, and the Special Exception should not be granted.

IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 10th day of October, 1963, that the above reclassification be and the same is hereby DENIED and that the above property or area be and the same is hereby continued as and to remain an R-40 Zone and R-20 Zone and the Special Exception for Elevator Apartment Building be and the same is hereby DENIED.

Deputy Zoning Commissioner

Shapiro - 63-90-RX

synagogue, school, and apartments on the Beth Tfiloh property if the Beth Tfiloh rezoning was finally accomplished (at the time of his testimony the Court's Opinion in Beth Tfiloh vs. Blum had not been handed down). He stated that, in his opinion, the additional traffic to be generated, added to the existing traffic on Old Court Road, would approach the capacity of Old Court Road but would not exceed it. He further testified that prior to the opening of the Baltimore County Beltway in 1962 the average daily traffic on Old Court Road was 6200 vehicles per day, but that after the opening of the Beltway the traffic dropped by fifty percent and now approximates 3100 vehicles per day, and that, in his opinion, the additional traffic generated by the Beth Tfiloh tract and the subject tract would not bring Old Court Road up to its level of maximum traffic to the Beltway opening.

An expert traffic engineer appearing for the protestant, Harry E. Board, differed with Mr. Ewell on the question of possible traffic congestion. Both experts generally agreed as to the traffic volume counts, the main difference of opinion being the practical capacity of Old Court Road which Mr. Ewell stated to be 540 vehicles per hour while Mr. Board felt that the practical capacity of the road would only be 300 vehicles per hour. The Board is inclined to accept Mr. Ewell's opinion as to the practical capacity of the road since it is obvious that prior to the opening of the Baltimore County Beltway, the road must have been carrying, at times, at least 600 vehicles per hour during peak hours without too much apparent difficulty.

William B. Guy, Jr., an expert realtor, testified that he had made studies of apartments and their effect on surrounding residential neighborhoods, and could not find any case where apartments depreciated the surrounding residential properties. He further stated that there was a strong need for apartments in this area and that there was very little land available in the Pikeville area for apartment uses.

Bernard Williamsin, a recognized expert in the field of land planning, stated that apartment zoning was entirely compatible with the surrounding neighborhood, that he felt there was an error committed in the adoption of the Third District land use map because of the complete lack of any "practical" provision for rental housing. He stated that, in his opinion, in a comprehensive land use plan, one-third of the housing should be rental units, and that the failure of Baltimore County to anticipate the population explosion and consequent need for apartment was an error. He also testified to five zoning changes in the Pikeville area since the adoption of the map. At the time Mr. Williamsin testified both the Halle tract and the Beth Tfiloh tract were in litigation and could not be considered as changes in the neighborhood. The Halle tract, which is less than a mile west of the subject property on the north side of the Baltimore County Beltway, was granted by this Board and upheld by the Court of Appeals in Finney vs. Halle, 241 Md. 224. He further

LAW OFFICES
A OWEN HENNEGAN, JR.
SAMUEL KIMMEL
400 GREENSBORO BUILDING
TOWSON 4, MARYLAND

October 28, 1963

Honorable John G. Rose
Zoning Commissioner of Baltimore County
County Office Building
Towson 4, Maryland

Re: Case No. 63-90-RX
Petition for Re-Classification from R-40 Zone and R-20 to R-A Zone
Special Exception for Elevator Apartment Building N/S Old Court Road, 3957' E. of Stevenson Road, 3rd District - Israel G. & Joseph W. Shapiro, Petitioners

Mr. Commissioner:

Please enter an appeal to the County Board of Appeals from the Order of the Deputy Zoning Commissioner, dated October 3, 1963, denying the above reclassification and special exception.

Enclosed herewith is check in the amount of \$70.00 to cover costs of same.

Very truly yours,

A. Owen Hennegan, Jr.
Samuel Kimmel

Attorneys for Petitioners

AOH-SK:mrf
Encl.



PETITION FOR ZONING RECLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
Iracl G. Shapiro and
I, or we, Joseph W. Shapiro, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the hereto described property be reclassified, pursuant to the Zoning Law of Baltimore County, from RA-4 to RA-X and (2) for the following reasons:
RA-4
Change in character of neighborhood

MAP #3
#3
#2-2
RA-X
9/24/63

September 17, 1963

Revised Petition and Plans
and Declaration
Iracl G. Shapiro
Towson 4, Maryland

Re: Petition for Reclassification & Special Exception for Iracl G. Shapiro
RA-4 to RA-X

Comments:

Enclosed is a copy of the Fire Bureau's comments, pertaining to the above petition.

If you have any questions, concerning this comment, please do not hesitate to contact me or Captain Reinken.

Yours very truly,

James E. Dyer
JAMES E. DYER

JED/ra

INTER-OFFICE CORRESPONDENCE

DEPARTMENT OF PUBLIC SAFETY
Baltimore (Housing, Engineering)
FIRE BUREAU
Towson 4, Maryland

#63-90X

TO: Mr. James Dyer
Chairman of Zoning Advisory Committee
FROM: Capt. Paul H. Reinken
SUBJECT: Comments on properties presented at meeting August 23, 1963

Date: September 3, 1963

The plan of proposed zoning for RA and special exceptions to construct elevator apartment buildings will require a reliable water supply properly prepared to supply domestic uses and have a reserve available for emergency use by the Fire Bureau.

The National Board of Fire Underwriters conducted a survey of the water supply system in 1952 and recommended major revisions to the system. A supplementary report concerning this problem was made in 1957, and it was noted, very strongly recommended on existing hydrant spacing not being realistic due to the knowledge of proposed expansion by the erection of high rise apartments, especially in the amount they are being submitted.

The Fire Bureau has been advised by the Director of Public Safety, General James P. S. Dewey, to proceed with caution and evaluate the requirements of each proposal. Future approval by the Baltimore County Fire Bureau shall only be given where proper water supply is available and shown on submitted plot plans. Further we feel it is the county's responsibility to notify property owners who are contemplating expansion of this necessity before engaging a professional engineer or architect. The public lines will not be subjected to disutilization if rezoning is granted and they are for a building permit.

Following is a standard adopted by our Bureau and recommended by eminent fire protection organizations.

Residential R 20, R 30 - 600 feet distance apart measured by the road and an encroaching radius of 300 feet.

Residential R 10, R 5 - One (1) hydrant at or near each street intersection and by the road extends 350 to 400 feet between intersections.

Apartments (High Rise) - The Fire Bureau reserves the right to survey each individual building to determine the amount and the location of hydrants.

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

Shopping centers, manufacturing, institutional, located on public roads sans authority as granted under the fire prevention code Section 28, 11 A, B, C, D, and E, where:

OFFICE OF THE BALTIMORE COUNTY ZONING COMMISSIONER

THE BALTIMORE COUNTY ZONING COMMISSIONER
1100 PATENT BUILDING
BALTIMORE, MD.

No. 1 Newburg Avenue
CATONSVILLE, MD.

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

was inserted in the BALTIMORE COUNTEER, a group of three weekly newspapers published in Baltimore County, Maryland, once a week for One Week

September 13, 1963.
THE BALTIMORE COUNTEER
By Paul J. Morgan, Editor-in-Chief

Contract purchaser: Joseph W. Shapiro, Iracl G. Shapiro
Address: Old Court Road, Pikesville 8, Md.
Contract purchaser: Joseph W. Shapiro, Iracl G. Shapiro
Address: 400 Jefferson Building, Towson 4, Maryland
ORDERED BY THE ZONING COMMISSIONER OF BALTIMORE COUNTY, MARYLAND, that the subject matter of this petition be advertised, as provided by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 11th day of October, 1963, at 10:30 A.M.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland
District - 3rd
Date of Posting - Sept. 14, 1963
Petitioner - Iracl G. Shapiro, et al.
Location of property - N/8 Old Court Rd. - 30571 - E. Stevenson Rd.
Location of Signs - 4000' E. Stevenson Lane on Old Court Rd. on trees - 1 Sign Exempt & 1 Reless.
Posted by - Joseph W. Shapiro, Iracl G. Shapiro
Date of return - Sept. 18, 1963

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

INVOICE No. 19962 DATE 10/20/63

TO: Samuel Shapiro, Iracl G. Shapiro
Jefferson Building
Towson 4, Md.

REPORT TO ACCOUNT NO. 01622

QUANTITY	REMARKS	TOTAL AMOUNT
1	Apparel costs - Property Iracl G. & Joseph W. Shapiro - No. 63-90-X	\$70.00
1	Advertising and posting of your property	0.00
		70.00

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.

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

INVOICE No. 19247 DATE 9/7/63

TO: A. Owen Manning, Jr., Rep.
Jefferson Building
Towson 4, Md.

REPORT TO ACCOUNT NO. 01622

QUANTITY	REMARKS	TOTAL AMOUNT
1	Petition for Reclassification & Special Exception for Iracl Shapiro et al.	\$0.00
1	Advertising and posting of your property	0.00
		0.00

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.

Listed below are properties that should conform to above hydrant requirements:

Silver Holding Corp.
3975 of Steaton Rd. 1/4 E of South Road
District: 36

Iracl Shapiro
N/S Old Court Rd. 39571 E of Stevenson Rd.
District: 36

Annie Stern
N/S Miller Ave. 601 W of Honover Ave.
District: 64

Ernest J. Hess
W/Cor. of Edmonstone & Miller Ave.
District: 64

I solemnly hope the Fire Bureau's requirements shall be included in the forthcoming zoning revisions. Until this matter is resolved, the Fire Bureau earnestly requests your support. Thank you very much and 3 remain:

Respectfully yours,
Paul H. Reinken, Captain
FIRE PREVENTION DIVISION
BALTIMORE COUNTY FIRE BUREAU

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

INVOICE No. 20193 DATE 9/25/63

TO: Joseph W. Shapiro
1520 Patented Building
Baltimore 20, Md.

REPORT TO ACCOUNT NO. 01622

QUANTITY	REMARKS	TOTAL AMOUNT
1	Advertising and posting of your property	\$0.00
1	Apparel costs - Property Iracl G. & Joseph W. Shapiro - No. 63-90-X	\$70.00
		70.00

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.

63-90 Y

PETITION FOR RECLASSIFICATION AND ZONING

THE BALTIMORE COUNTY

THE COMMUNITY NEWS
Baltimore, Md.

THE HERALD-ARGUS
Columbia, Md.

No. 1 Newburg Avenue CATONSVILLE, MD.

Sept. 16, 1963.

THIS IS TO CERTIFY, that the annexed advertisement was inserted in THE BALTIMORE COUNTY, a group of three weekly newspapers, published in Baltimore County, Maryland, once a week for One Week successive weeks before the 16th day of September, 1963, that to say the same was inserted in the issues of

September 13, 1963.

THE BALTIMORE COUNTY

By Paul J. Morgan
Editor and Publisher

CERTIFICATE OF PUBLICATION

TOWSON, MD., September 13, 1963.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., successive weeks before the 16th day of September, 1963, that to say the same was inserted in the issues of

September 13, 1963.

THE JEFFERSONIAN,
Franklin
Manager.

Cost of Advertisement, \$.....

PETITION FOR RECLASSIFICATION AND ZONING

THE BALTIMORE COUNTY

THE COMMUNITY NEWS
Baltimore, Md.

THE HERALD-ARGUS
Columbia, Md.

No. 1 Newburg Avenue CATONSVILLE, MD.

Sept. 16, 1963.

THIS IS TO CERTIFY, that the annexed advertisement was inserted in THE BALTIMORE COUNTY, a group of three weekly newspapers, published in Baltimore County, Maryland, once a week for One Week successive weeks before the 16th day of September, 1963, that to say the same was inserted in the issues of

September 13, 1963.

THE BALTIMORE COUNTY

By Paul J. Morgan
Editor and Publisher

CERTIFICATE OF PUBLICATION

TOWSON, MD., September 13, 1963.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., successive weeks before the 16th day of September, 1963, that to say the same was inserted in the issues of

September 13, 1963.

THE JEFFERSONIAN,
Franklin
Manager.

Cost of Advertisement, \$.....

May 16, 1967

My, James H. Norris, Jr., Chief Deputy
Court of Appeals of Maryland
Annapolis, Maryland 21404

Re: 8/114/2674 Annita France, et al. vs.
Israel G. and Joseph W. Shapiro

Dear Mr. Norris:

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

ANNITA FRANCE, et al.
Appellants

vs.
WILLIAM S. BALDWIN and
W. GILES PARKER
constituting the BALTIMORE COUNTY
BOARD OF APPEALS

and
ISRAEL G. SHAPIRO and
JOSEPH W. SHAPIRO

Intervenor

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket #
114/3574

NOTICE OF APPEAL

My, Clerk:

Please note an Appeal to the Court of Appeals of Maryland from the Order dated January 19, 1967, of the Circuit Court for Baltimore County, affirming the Baltimore County Board of Appeals in the above-entitled case.

Arnold Fleischmann
250 First National Bank Building
Towson, Maryland 21284
825-8220, 837-8928
Attorney for the Appellants

I HEREBY CERTIFY that a copy of the foregoing Notice of Appeal was sent to A. Owen Heneghan, Jr., Esq., 406 Jefferson Building, Towson, Maryland 21204, and to Samuel Kimmel, Esq., 408 Jefferson Building, Towson, Maryland 21204, attorneys for the Intervenor, on this 24th day of January, 1967.

Arnold Fleischmann

ARNOLD FLEISCHMANN
LAW OFFICES

250 First National Bank Building
Towson, Maryland 21284

February 21, 1967

Court of Appeals for Baltimore County
County Office Building
Towson, Maryland 21204

Attention: Edith T. Eisenhart, Secy.

Dear Miss Eisenhart:

In accordance with our telephone conversation this date enclosed you will find a copy of Notice of Appeal as you requested.

Sincerely yours,
Arnold Fleischmann

AF:mc
Encl: 1

ANNITA FRANCE, et al.
Appellants

vs.
WILLIAM S. BALDWIN and
W. GILES PARKER
constituting the BALTIMORE COUNTY
BOARD OF APPEALS

and
ISRAEL G. SHAPIRO and
JOSEPH W. SHAPIRO

Intervenor

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket #
114/3574

ORDER

THIS CASE having come on for hearing, the record having been read, argument of counsel having been heard and considered, it is this 24th day of February, 1967, by the Circuit Court for Baltimore County, ORDERED that the decision of The Baltimore County Board of Appeals in the above captioned case, be, and is hereby, AFFIRMED.

JUDGE

Exhibits

Shapiro Case 63-90 AX

Petition:

- ✓ 1- Kozmicki Plat plan.
- ✓ 2- Rendering of proposed building. (Plat A-4e modified)
- ✓ 3- Plat of north extension of Old Court Road - by Maty Childs.
- ✓ 4- n R. Munn Beach Wharfer Survey.
- ✓ 5- Traffic Count, B.W. & S. Hill.
- ✓ 6- Dr. Eddy's chart of projections of various traffic in area.
- ✓ 7- a+b - Photos of Old Court Road.
- ✓ 8 - Quality studies of W. O. King, Jr. (Baltimore)
- ✓ 9 - Part of aerial of residential home near apartment.

Prof. C. G. L.

- ✓ (A) 1164 exhibit, "Belt, and Population Prob."
- ✓ (B) - Traffic Count of Projections of various Blvd. (1-6-3)
- ✓ (C) for identification only - affidavit of Mrs. Annita France dated 7/7/67.
- ✓ (D) Resolution of Boardman - Sherman dated 9/30/63.
- ✓ (E) Comments of plat dated 9/30/63

Rec. 2 1/27/67
9:30 am

July 29, 1966

Arnold Fleischmann, Esq.,
1st National Bank Bldg.,
Baltimore, Maryland 21202

Re: Israel G. and Joseph W. Shapiro
File No. 63-90-RX

Dear Mr. Fleischmann:

In accordance with Rule 1101(b) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County, in the above matter, within thirty days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you might file in court, in accordance with Rule 1101(b).

Enclosed is a copy of the Certificate of Notice. Also bill in the amount of \$15.00 covering cost of certified copies of necessary documents.

Very truly yours,

Muriel E. Buddemeier

LAW OFFICE
ARNOLD FLEISCHMANN
SUN LIFE BUILDING
CHAPIN CENTER
BALTIMORE, MARYLAND 21201
FIRST NATIONAL BANK BUILDING
WASHINGTON AVENUE
TOWSON, MARYLAND 21286
833-8220

August 1, 1966

County Board of Appeals
Room 100 County Office Building
Towson, Maryland 21204

Re: Israel G. and Joseph W. Shapiro
File No. 63-90-RX

Attention: Miss Buddemeier
Gentlemen:

In accordance with Miss Buddemeier's letter to me, dated July 29, 1966, please find my check for Fifteen Dollars (\$15.00) covering cost of certified copies of necessary documents in the above-entitled case.

Please send any future correspondence to me at either of the above addresses. Thank you.

Very truly yours,

Arnold Fleischmann

AFAef
Enclosure: Check No. 1046

TELEPHONE 823-3000
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204
DATE 8/1/66
No. 38961
County Board of Appeals (Zoning)
TO: Arnold Fleischmann, Esq.,
First National Bank Building
Washington Avenue
Towson, Maryland 21204
BILL TO: County Board of Appeals (Zoning)
DEPOSIT TO ACCOUNT NO. 01.712
QUANTITY 1
STITCH UPPER SECTION AND RETURN WITH YOUR REMITTANCE
TOTAL AMOUNT DUE \$ 15.00
Cost of Certified Documents - No. 63-90-RX
Israel G. & Joseph W. Shapiro
N/S Old Court Road 2957, East
of Stevenson Road
3rd District
8-966 7039 • 38961 11P- 1500
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.

July 29, 1966

A. Owen Hennegan, Esq.,
Jefferson Building
Towson, Maryland 21204

Re: Israel G. and Joseph W. Shapiro
No. 63-90-RX

Dear Mr. Hennegan:

Notice is hereby given in accordance with the Rules of the Court of Appeals of Maryland that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Muriel E. Buddemeier

Encl.
cc: Samuel Kimmel, Esq.
Sidney Blum, Esq.
J. Mayer Wilten, Esq.
J. Elmer Weisheit, Jr., Esq.

ANNITA FRANCE,
GEORGE M. SHRYVER, JR., and
VIRGINIA SHRYVER, his wife,
LEON PANITZ,
M. RICHARD WYMAN,
HERBERT KATZENBERG,
SOL J. PERLMAN,
SIDNEY BLUM, and
THE DUMBARTON IMPROVE-
MENT ASSOCIATION, INC.
Appellants
vs.
WILLIAM S. BALDWIN and
W. GILES PARKER
consisting of the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Appellees

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

4. This Appeal is being filed in compliance with Subtitle B, entitled "Appeal from Administrative Agencies" (formerly Maryland Rule 1101) of the Maryland Rules of Procedure.

Arnold Fleischmann
200 First National Bank Building
Towson, Maryland 21204
837-6926 825-8220
Attorney for the Appellants

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal was served on the County Board of Appeals by delivery by me to said Board at its office in the County Office Building, Towson, Maryland, and which service was effected prior to the filing of the said Order for Appeal all in accordance with the requirements of Rule B-2 (service an agency) of the aforesaid Maryland Rules of Procedure. This certificate is made as the "certificate of compliance" required by said section of said Maryland Rules.

Arnold Fleischmann

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal was mailed this 21st day of July, 1966, to A. Owen Hennegan, Esquire, 406 Jefferson Building, 105 W. Chesapeake Avenue, Towson, Maryland 21204.

Arnold Fleischmann

ORDER FOR APPEAL

Mr. Clerks
Please enter an appeal on behalf of Annita France, George M. Shryver, Jr., and Virginia Shryver, his wife, Leon Panitz, M. Richard Wyman, Herbert Katzenberg, Sol J. Perlman, Sidney Blum, and The Dumbarton Improvement Association, Inc., from the Opinion and Order of the County Board of Appeals dated June 24, 1966, in Case No. 63-90-RX, being a petition of Israel G. Shapiro and Joseph W. Shapiro for the reclassification from an R-20 and R-40 zone to an R-A zone with a special exception for elevator apartment buildings.
1. The property subject of this Appeal is described in the petition filed in these proceedings as a tract of land located in the third election district of Baltimore County, 27.968 acres in area, fronting on Old Court Road for a frontage of approximately six hundred feet (600') with a depth of approximately twenty-one hundred ninety feet (2190').
2. All the appellants named herein were protestants before the County Board of Appeals and were there represented by counsel.
3. All of said individual appellants are either adjoining or adjacent property owners or residents of the immediate neighborhood and taxpayers of Baltimore County and are thus parties aggrieved entitled to file this Appeal.

June 24, 1966

A. Owen Hennegan, Esq.,
Jefferson Building
Towson, Maryland 21204

Re: Zoning File No. 63-90-RX
Israel G. & Joseph W. Shapiro

Dear Mr. Hennegan:

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 T. Eisenhart, Secretary

cc: Samuel Kimmel, Esq.,
Arnold Fleischmann, Esq.,
Sidney Blum, Esq.,
J. Mayer Wilten, Esq.,
J. Elmer Weisheit, Jr., Esq.,
Mr. John G. Ross
Mr. Edward D. Handberg
Mr. George E. Govealls
Board of Education

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. John D. Boze, Zoning Commissioner Date: September 20, 1963
FROM: Mr. George E. Govealls, Deputy Director

SUBJECT: R63-90-RX, "B" and "C-20" and Special Exception for Elevator Apartment Building, North side of Old Court Road 1951 feet East of Stevenson Road, being property of Israel Shapiro.

Re: Districts
MEMORANDUM Thursday, October 3, 1963 (2:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R60 and R-40 to R-A zoning together with a Special Exception for Elevator Apartment Building (s). It has the following advisory comments to make with respect to pertinent planning factors:

- The 3rd District Master Plan and the subsequent Spring Map carefully considered the character and status of land use, both existing and proposed, for this area. Large lot zoning was provided in this area as a valid recognition of the existing and emerging pattern of land use. Large lot zoning apparently has not been a deterrent to development in this area - even where utilities were available.
- Creation of apartment zoning on the subject tract would contravene the adopted Master Plan and Zoning Map applicable to this area. Apartment zoning here would not meet any of the locational criteria established and utilized by the Planning Board for apartments elsewhere. Establishment of apartment zoning here would be spot zoning in the sense that apartment usage would not be consistent with the goals or provisions of a comprehensive plan. Creation of apartment zoning here further would distort the established plans and maps for this area in the sense that an entering usage would be created for subsequent reclassifications to apartment zoning.
- The consequential effects of creating apartment zoning here must be considered and should not be taken lightly. Apartment zoning here would establish the very condition of change in character of the neighborhood that would justify extension of apartment zoning to the east end of the undeveloped plateau along Old Court Road.

EGT:baw

Rec'd 7-22-66
9-15-66

THE FIFTH FLOOR
 410 WEST CHESTER AVENUE
 BALTIMORE, MD 21202
 TEL: 555-1234
 FAX: 555-5678
 TELETYPE: 555-9012
 L. J. WEISHEIT, JR.
 A. OWEN HENNEGAN
 JOHN W. SHAPIRO

April 14, 1966

Hon. William S. Baldwin
 Hon. W. Giles Parker
 County Board of Appeals for Baltimore County
 County Office Building
 Towson, Maryland 21204

Re: In the matter of petition of
 Israel G. and Joseph W. Shapiro
 Case No. 63-90-IX

Dear Mr. Baldwin and Mr. Parker:

At the time of the concluding hearing on March 31, 1966, the Board suggested that, particularly because of the decision of the Court of Appeals in the Beth Tfiloh case, it would consider a law amendment helpful in preparing the decision in this case.

In view of the Beth Tfiloh decision, it appears important to note that the County Board of Appeals in its decision in that case dated June 23, 1964 specifically stated:

"Mr. Cavrelis fears that rezoning of this particular property might be an ongoing which for more extensive apartment zoning to the case. . . . The Board cannot agree that its decision in this case would alone operate as a chance warranting any further rezoning of the area as each case must stand on its own merits."

The opinion of the Court of Appeals of Maryland in the Beth Tfiloh case dated March 29, 1966 appears to be a restatement of the facts, case, which the Court apparently did not distinguish on the facts. In its conclusion, the Court apparently accepted the Board's findings that the construction of the highway, water and sewer facilities constituted a change of condition sufficient to make the Board's decision to grant the petition fairly debatable. Upon finding the Board's decision fairly debatable, the Court thereupon sustained the decision of the Board.

*Rec'd 4-14-66
9:00 am*

With the exception of this holding, all other portions of the opinion appear to be dicta. It is not clear from the Court's opinion whether or not it would have taken a different position had it found that the change resulting from the construction of the highway and the water and sewer facilities had been anticipated and foreseen by the County Commissioners at the time of the adoption of the zoning map of 1957. This anticipation has been, we believe, more clearly shown in the record of the Shapiro case.

Thus, the Court of Appeals in Beth Tfiloh recognized that the County Board of Appeals had legislative and administrative discretion to grant or deny the petition on the basis of the evidence and that in either event, the Board's action would have been sustained by the Court.

It is further apparent that even proof of error in the original zoning, or of change either in conditions or character of the neighborhood, does not require the Board to grant a reclassification but that the finding of error or change is a necessary foundation for the exercise of discretion of the Board should the Board deem such a reclassification in the best interest and the general welfare without a finding of error or change, the Board has no power to exercise its discretion.

In view of the prior statement of this Board in the Beth Tfiloh case property, the reasoning of the Director of Planning as to adjoining on March 31, 1966 should apply to this case.

We therefore respectfully suggest to the Board that the public interest will be best served if the Old Court Road area between Stevenson and Green Spring Avenue is developed in large lots in accordance with the comprehensive plan developed by the County and shown on the Zoning Map.

The evidence in this case shows the traffic burden of the existing development on the Beth Tfiloh site on the narrow Old Court Road. Since the final determination of the Beth Tfiloh grants additional apartments and thus creates more traffic, the problem is further multiplied, thus exceeding the practical capacity of Old Court Road.

Thus there appears to be no evidence in the record to justify a reclassification of this property.

In view of the foregoing, we respectfully submit that the petition for reclassification of the Shapiro case be denied.

Respectfully submitted,

Arnold Fleischmann
 Arnold Fleischmann

CC: J. Elmer Weisheit, Esq.
 A. Owen Hennegan, Esq.
 Samuel Kimmel, Esq.

LAW OFFICES
 A. OWEN HENNEGAN
 410 WEST CHESTER AVENUE
 BALTIMORE, MARYLAND 21202
 TEL: 555-1234
 FAX: 555-5678
 TELETYPE: 555-9012
 L. J. WEISHEIT, JR.
 A. OWEN HENNEGAN
 JOHN W. SHAPIRO

(cont'd) Page 2 April 25, 1966

developments in the area had not yet begun. At the time of the adoption of the map there was a serious public water problem in the immediate area, due to the lack of adequate water facilities.

Mr. Bernard Williams, testified that in his opinion an error was committed in the adoption of the comprehensive zoning map for the third district in that County Commissioners failed to take into consideration the general increase in population, despite the fact that this increase should have been known to the planners and other factors.

Mr. Williams further testified that there was error in the adoption of the Third District Map particularly as to the complete lack of suitable provisions for apartment land, in the Pikesville area. The only apartment units that were placed on this Comprehensive zoning map by the Board of Zoning Commissioners in 1957 amounted to two small areas near the center of Pikesville, both of which in his opinion were uneconomic and inadequate for apartment houses.

Mr. Williams stated that the design for access to the Beltway in this area was not adopted in preliminary form until April, 1957, which was three months after the adoption of the comprehensive zoning map on January 16, 1957. He felt that this constituted a substantial change in the character of the area.

Mr. Walter Worthington Bell, a civil engineer of outstanding qualifications generally and particularly in regard to traffic problems, gave a detailed testimony for the owner in regard to traffic tests, and conditions that the proposed reclassification of, and the erection of elevator apartments on, the subject property would not create a traffic hazard. Mr. Bell pointed out that the traffic on Old Court Road had been halved by the opening of the Baltimore County Parkway (Cr. 113). He also stated that it was his opinion that no hazard would be created on Old Court Road by the construction of the proposed apartment development (Cr. 113).

Mr. George W. Cavrelis, at that time the Deputy Director of Planning and the Acting Director of Planning, testified for the respondents stated that he felt the construction of the Beltway did not constitute a change in the neighborhood from the time of the adoption of the Zoning Map in 1957.

J. ELMER WEISHEIT, JR.
 410 WEST CHESTER AVENUE
 BALTIMORE, MARYLAND 21202
 TEL: 555-1234
 FAX: 555-5678
 TELETYPE: 555-9012
 L. J. WEISHEIT, JR.
 A. OWEN HENNEGAN
 JOHN W. SHAPIRO

AREA CODE 301
 RE: 301-555-1234

May 5, 1966

County Board of Appeals for Baltimore County
 County Office Building
 Towson, Maryland 21204

RE: In the matter of the Petition of
 Israel G. and Joseph W. Shapiro
 Case No. 63-90-IX

Dear Sirs:

My co-counsel, Arnold Fleischmann, Esquire, has very persuasively set forth in his letter previously submitted to this Board numerous cogent reasons as to why the subject petition should be denied. However, after reviewing the letter submitted by opposing counsel, I feel compelled to raise several points not previously commented on.

This case is clearly distinguishable from *Fimey, et al. v. Halle* in that Halle was located at the northwest quadrant of Park Heights Avenue and the Baltimore County Beltway and it was conceded by Mr. Cavrelis in Halle that Halle did possess some elements of locational criteria. However, this is not the case in the subject Petition in that Mr. Cavrelis testified that the tract failed to meet any of the elements of locational criteria and was accessible only by Old Court Road, a narrow, winding country road. Furthermore, in Halle, the Petitioners had suffered a specific damage not here present in that they were the owners of the property at the time the area was zoned and subsequently lost a large portion of their tract to the Baltimore County Beltway; in this case, the Petitioner purchased the property some time after the construction of the Beltway and was well aware of its existence and the zoning for the area.

In the Beth Tfiloh case, the Court of Appeals paid particular heed to the fact that property was being developed primarily to serve congregants of the synagogue petitioner and that even after the sale was consummated, the synagogue had certain architectural controls and its members a right of first occupancy.

*Rec'd 5-11-66
10:00 am*

May 5, 1966

County Board of Appeals
 Page 2

Retaining the Shapiro property in its present zoning classification would provide an ideal buffer between the lower densities to the West and the higher density properties improved by spacious and costly private residences located to the East thereof.

Certainly all arguments as to need must fall by the wayside in view of the granting of the Petitions in both Beth Tfiloh and Halle. The need in this area has been satisfied for many years to come and all evidence indicates that the apartment boom is, at least for the present, stymied.

Respectfully submitted,

J. Elmer Weisheit, Jr.
 J. Elmer Weisheit, Jr.

JW/lpp

cc: A. Owen Hennegan, Esq.
 Arnold Fleischmann, Esq.

A. OWEN HENNEGAN
 410 WEST CHESTER AVENUE
 BALTIMORE, MARYLAND 21204
 TEL: 555-1234
 FAX: 555-5678
 TELETYPE: 555-9012
 L. J. WEISHEIT, JR.
 A. OWEN HENNEGAN
 JOHN W. SHAPIRO

April 25, 1966

Hon. William S. Baldwin
 Hon. W. Giles Parker
 County Board of Appeals for Baltimore County
 County Office Building
 Towson, Maryland 21204

Re: In the matter of petition of
 Israel G. and Joseph W. Shapiro
 Case No. 63-90-IX

Dear Mr. Baldwin and Mr. Parker:

The property which is the subject matter of this Appeal is a tract consisting of 27 acres owned by Joseph W. Shapiro and Israel D. Shapiro. The property is located in the Third Election District of Baltimore County on the north side of Old Court Road, about midway between the intersection of Old Court Road with Park Heights Avenue and Stevenson Road, and its intersection with Green Spring Avenue. This area has developed intensively since World War II, with most of the development having occurred within the last eight years.

The property is bounded on the north by the Baltimore County Beltway, on the South by Old Court Road, on the east by the France Estate, and on the west by the Beth Tfiloh property presently being improved by a Synagogue, and school as a part of the Religious complex. An application for rezoning 20 acres of said property from R-40 and R-20 zones to an R-6 zone has been approved by the County Board of Appeals and recently affirmed by the Maryland Court of Appeals.

That there was error in the adoption of the comprehensive map and many changes in the character of the neighborhood is amply supported by the evidence and testimony in the case.

The Comprehensive Rezoning Map for this area was adopted by the Board of County Commissioners of Baltimore County on January 16, 1957. At the time of the adoption of the map, the subject parcel was not served by sanitary sewers and the Baltimore County Beltway was only in the planning stage, its construction not having commenced until 1961, and the mass movement of people into this section of suburban was not yet fully felt. The development of mubarton heights and other

*Rec'd 5-11-66
10:00 am*

LAW OFFICES
 A. OWEN HENNEGAN
 410 WEST CHESTER AVENUE
 BALTIMORE, MARYLAND 21204
 TEL: 555-1234
 FAX: 555-5678
 TELETYPE: 555-9012
 L. J. WEISHEIT, JR.
 A. OWEN HENNEGAN
 JOHN W. SHAPIRO

(cont'd) Page 3 April 25, 1966

He suggested that the County knew of the location of the Beltway in the area when the comprehensive zoning map was adopted.

The evidence, however, indicates that while the Baltimore County authorities knew that the Beltway was to be located in this general area at the time the comprehensive zoning map was promulgated on January 16, 1957, the design for access to the Beltway in this area was not adopted in preliminary form until April, 1957, three months after adoption of said zoning map.

The Beltway was not actually constructed at this location until 1962. At the time of its adoption on January 16, 1957, nothing appeared on the comprehensive zoning map even indicating in outline form the possible location of the Beltway. It seems clear that its future construction was given little, if any, effect in formulating and adopting the 1957 zoning map.

Mr. Leonard M. Glass, a highly qualified registered professional sanitary engineer, specializing in water supply and sewerage testified that prior to the construction of the Severn Branch Interceptor placed into operation in 1963, sewerage in the area was definitely limited and there was no capacity to handle any new development. Mr. Glass further stated that with the construction of the Severn Branch Interceptor in 1963, the capacity became available to serve the subject property and many others (Cr. 82).

Mr. Glass testified that since 1957, there have been many changes in the area and probably the change which is most important to the subject project, and to the whole area for that matter, is the allocation of money, the present and future plans and the "500" stream main into the Park Heights Reservoir. Also there have been other groupings of water mains in the area, such as a new 12" line up Lightfoot Drive and other combinations of mains, whereby a lighter system which would meet present needs throughout the area was obtained. He further stated that, without a doubt, the water supply in the area was now adequate for the proposed project.

Therefore, the availability of hot water and sewer service since 1957 represents a substantial change in the public utilities, serving the area, and therefore, a substantial change in the character of the neighborhood.

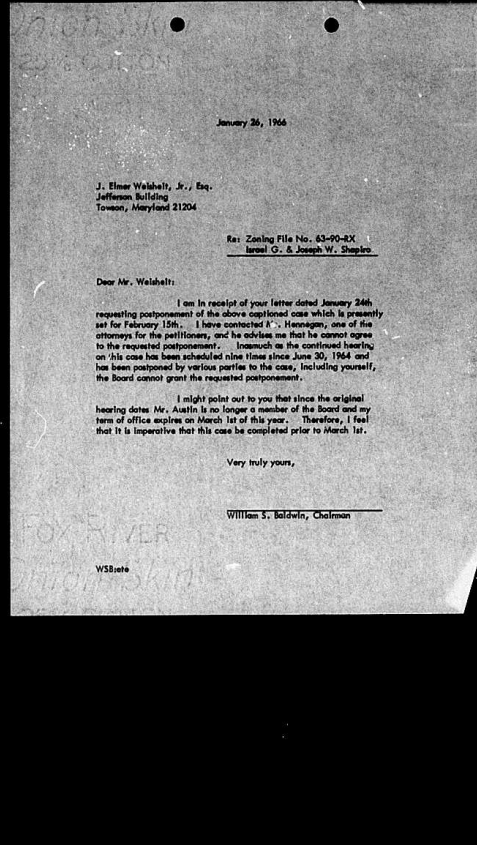
LAW OFFICES
A. OWEN HENNEGAN
101 JEFFERSON BUILDING
3957 EAST STEVENSON ROAD
BALTIMORE, MARYLAND 21204
TELEPHONE AREA CODE 301
653-7400

(cont'd) Page 4 April 25, 1966

These facts have been conclusively decided by our Court of Appeals in the case of The Beth Tfiloh Congregation vs. Sidney Blum, et al. (No. 255, September Term 1965) which was a Petition for reclassification of a 20 acre tract adjoining the subject property from R-1 and R-2D to R-4 and the Appellate Court stated "based on testimony such the same as produced in Baltimore, and by virtually the same witnesses, the board of Appeals found 'that there have been extensive changes in the neighborhood not the least of which are those connected with the development of homes, the construction of synagogues and schools, (not only the Beth Tfiloh but others as well), the present availability of utilities (and) the opening of the highway together with its access roads... (emphasis supplied). The board cited additional evidence of change in the character of the neighborhood 'the needs and desires of the Beth Tfiloh Congregation to accommodate its members' ". This case, of course, further affirms the basic case which is in close proximity.

It is respectfully submitted that from all the evidence adduced in this case that petitioners are entitled to the Reclassification and special Exception requested.

Respectfully submitted,
Arnold Fleischmann
Samuel Kimmel
ARNOLD FLEISCHMANN
SAMUEL KIMMEL
Attorneys for Petitioners
cc: Arnold Fleischmann, Esquire
J. Elmer Weisheit, Esquire



LAW OFFICES
J. ELMER WEISHEIT, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204
AREA CODE 301
653-1001

January 20, 1966

County Board of Appeals
County Office Building
Towson, Maryland 21204

RE: Petition #63-90 RX
Israel G. & Joseph W. Shapiro
Baltimore Co., Md.

Dear Sirs:

The above-entitled case is scheduled for hearing before the County Board of Appeals on February 5, 1966. By agreement of counsel, please postpone and reschedule for an early date.

Very truly yours,
Edward C. Conahay, Jr.
Edward C. Conahay, Jr.

ECC/lpp
cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.

660

LAW OFFICES
Mr. George E. Gavrelis, Director
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

January 26, 1966

RE: Petition No. 63-90 RX for Reclassification and Special Exception for an elevator apartment building north side of Old Court Road 3957 feet East of Stevenson Road, Third Election District, Baltimore County, Maryland. Being property of Israel Shapiro.

Dear Mr. Gavrelis:

In accordance with the authority contained in Title 23, Section 23-22 (d) of the Baltimore County Code, the protestants in Case No. 63-90 RX, now pending before the County Board of Appeals, hereby summons you to appear at the hearing on the above-captioned matter scheduled for public hearing before the County Board of Appeals on Tuesday, February 15, 1966 at 10:00 A.M., in Room 301, County Office Building, Towson, Maryland 21204, to testify for the protestants.

I am in receipt of your letter dated January 24th requesting postponement of the above captioned case which is presently set for February 15th. I have contacted Mr. Henneagan, one of the attorneys for the petitioners, and he advises me that he cannot agree to the requested postponement. Inasmuch as the continued hearing on this case has been scheduled nine times since June 30, 1964 and has been postponed by various parties to the case, including yourself, the Board cannot grant the requested postponement.

I might point out to you that since the original hearing dates Mr. Austin is no longer a member of the Board and my term of office expires on March 1st of this year. Therefore, I feel that it is imperative that this case be completed prior to March 1st.

Very truly yours,
William S. Baldwin
William S. Baldwin, Chairman

Mr. Edward G. Mueller, Sheriff
Court House, Baltimore County
Towson, Maryland 21204

Dear Mr. Sheriff:

Under the authority of Title 23, Section 23-22 (d) of the Baltimore County Code, please serve this writ of Summons upon GEORGE E. GAVRELIS, commanding and directing him to appear to testify for the Protestants in Zoning Case No. 63-90 RX, at a public hearing to be held before the County Board of Appeals, on Tuesday, February 15, 1966, at 10:00 A.M., in Room 301, County Office Building, Towson, Maryland 21204.

Very truly yours,
J. Elmer Weisheit, Jr.
J. Elmer Weisheit, Jr.
Attorney for Protestants

RE: Petition No. 63-90 RX for Reclassification and Special Exception for an elevator apartment building north side of Old Court Road 3957 feet East of Stevenson Road, Third Election District, Baltimore County, Maryland. Being property of Israel Shapiro.

RE: Petition No. 63-90 RX for Reclassification and Special Exception for an elevator apartment building north side of Old Court Road 3957 feet East of Stevenson Road, Third Election District, Baltimore County, Maryland. Being property of Israel Shapiro.

RE: Petition No. 63-90 RX for Reclassification and Special Exception for an elevator apartment building north side of Old Court Road 3957 feet East of Stevenson Road, Third Election District, Baltimore County, Maryland. Being property of Israel Shapiro.

ASSOCIATE
EDWARD C. CONAHAY, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204

LAW OFFICES
J. ELMER WEISHEIT, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204

AREA CODE 301
653-1001

December 1, 1965

County Board of Appeals
County Office Building
Towson, Maryland 21204

Re: Joseph Shapiro et al

Dear Sirs:

The above case has been scheduled for hearing on Tuesday, December 21, 1965. I have an equity case set for trial on that date and by agreement of counsel it would be appreciated if this case can be rescheduled for the first of next year.

Very truly yours,
J. Elmer Weisheit, Jr.
J. Elmer Weisheit, Jr.

JW:bc
cc: A. Owen Henneagan, Esquire
Arnold Fleischmann, Esquire
J. Mayer Wilten, Esquire

LAW OFFICES
Mr. George E. Gavrelis, Director
Office of Planning and Zoning
County Office Building
Towson, Maryland 21204

RE: Petition No. 63-90 RX for Reclassification and Special Exception for an elevator apartment building north side of Old Court Road 3957 feet East of Stevenson Road, Third Election District, Baltimore County, Maryland. Being property of Israel Shapiro.

Dear Mr. Gavrelis:

In accordance with the authority contained in Title 23, Section 23-22 (d) of the Baltimore County Code, the protestants in Case No. 63-90 RX, now pending before the County Board of Appeals, hereby summons you to appear at the hearing on the above-captioned matter scheduled for public hearing before the County Board of Appeals on Tuesday, February 15, 1966 at 10:00 A.M., in Room 301, County Office Building, Towson, Maryland 21204, to testify for the protestants.

I hereby certify that, on this 1st day of February, 1966, a copy of the foregoing Summons was mailed to J. Mayer Wilten, Esquire, 111 N. Charles Street, Baltimore, Maryland, and A Owen Henneagan, Jr., Esquire, Jefferson Building, Towson, Maryland 21204.

I hereby certify that, on this 1st day of February, 1966, a copy of the foregoing Summons was mailed to J. Mayer Wilten, Esquire, 111 N. Charles Street, Baltimore, Maryland, and A Owen Henneagan, Jr., Esquire, Jefferson Building, Towson, Maryland 21204.

Mr. Edward G. Mueller, Sheriff
Court House, Baltimore County
Towson, Maryland 21204

Dear Mr. Sheriff:

Under the authority of Title 23, Section 23-22 (d) of the Baltimore County Code, please serve this writ of Summons upon GEORGE E. GAVRELIS, commanding and directing him to appear to testify for the Protestants in Zoning Case No. 63-90 RX, at a public hearing to be held before the County Board of Appeals, on Tuesday, February 15, 1966, at 10:00 A.M., in Room 301, County Office Building, Towson, Maryland 21204.

Very truly yours,
J. Elmer Weisheit, Jr.
J. Elmer Weisheit, Jr.
Attorney for Protestants

RE: Petition No. 63-90 RX for Reclassification and Special Exception for an elevator apartment building north side of Old Court Road 3957 feet East of Stevenson Road, 3rd Dist. - 63-90-RX
Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Kimmel:

Replying to your letter of January 29th informing us that Mr. Henneagan will be out of town until the 15th of February, the continued hearing on the appeal filed in the above case, scheduled for Thursday, February 11, 1966 at 11:00 a.m., has been postponed by the Board.

You will be duly notified of the rescheduling of this hearing at a future date.

Very truly yours,
Edith T. Elmhorst
Edith T. Elmhorst, Secretary

LAW OFFICES
J. ELMER WEISHEIT, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204
AREA CODE 301
653-1001

January 24, 1966

William S. Baldwin, Esquire
Chairman
County Board of Appeals
County Office Building
Towson, Maryland, 21204

Re: Israel G. & Joseph W. Shapiro
#63-90-RX Zoning
Our File No. #2006B

Dear Bill:

This will acknowledge receipt from your office of the postponement in the above case from February 8 and now rescheduled for February 15, 1966 at 10:00 a.m. After discussing with counsel and clients, I requested that the case be postponed for hearing until sometime after March 1, 1966. This request is made because I must complete the case personally and I will be out of the country from February 10 until Sunday, February 27th. On February 28 and March 1st I must try a condemnation case in the Circuit Court of Baltimore County. Therefore, any time thereafter that you can set the hearing date for final testimony is agreeable. As far as I know all other counsel in the case are agreeable to this request.

Kindest personal regards.

Very truly yours,
Arnold Fleischmann
Arnold Fleischmann, Esq.

JW:bc
cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.

ASSOCIATE
EDWARD C. CONAHAY, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204

LAW OFFICES
J. ELMER WEISHEIT, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204
AREA CODE 301
653-1001

January 20, 1966

County Board of Appeals
County Office Building
Towson, Maryland 21204

RE: Petition #63-90 RX
Israel G. & Joseph W. Shapiro
Baltimore Co., Md.

Dear Sirs:

The above-entitled case is scheduled for hearing before the County Board of Appeals on February 5, 1966. By agreement of counsel, please postpone and reschedule for an early date.

Very truly yours,
Edward C. Conahay, Jr.
Edward C. Conahay, Jr.

ECC/lpp
cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.

ASSOCIATE
EDWARD C. CONAHAY, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204

LAW OFFICES
J. ELMER WEISHEIT, JR.
101 JEFFERSON BUILDING
TOWSON, MARYLAND 21204
AREA CODE 301
653-1001

December 1, 1965

County Board of Appeals
County Office Building
Towson, Maryland 21204

Re: Joseph Shapiro et al

Dear Sirs:

The above case has been scheduled for hearing on Tuesday, December 21, 1965. I have an equity case set for trial on that date and by agreement of counsel it would be appreciated if this case can be rescheduled for the first of next year.

Very truly yours,
J. Elmer Weisheit, Jr.
J. Elmer Weisheit, Jr.

JW:bc
cc: A. Owen Henneagan, Esquire
Arnold Fleischmann, Esquire
J. Mayer Wilten, Esquire

VALLEY 6000

COUNTY BOARD OF APPEALS
COUNTY OFFICE BUILDING
101 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND
February 1, 1965

Samuel Kimmel, Esq.
The Jefferson Building
Towson, Md. 21204

Re: Petition for reclassification from "R-40" and "R-20" Zones to an "R-A" Zone, special exception for elevator apartment building, N/S Old Court Road, 3957' E. of Stevenson Road, 3rd Dist. - 63-90-RX
Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Kimmel:

Replying to your letter of January 29th informing us that Mr. Henneagan will be out of town until the 15th of February, the continued hearing on the appeal filed in the above case, scheduled for Thursday, February 11, 1966 at 11:00 a.m., has been postponed by the Board.

You will be duly notified of the rescheduling of this hearing at a future date.

Very truly yours,
Edith T. Elmhorst
Edith T. Elmhorst, Secretary

HENNEGAN, CHIPMAN & KIMMEL

ATTORNEYS AT LAW
100 WEST STEVENSON BUILDING
TOWSON, MARYLAND

TELEPHONE
AREA CODE 410
7-2120

January 29, 1965

County Board of Appeals
County Office Building
Towson, Maryland - 21204

Re: Petition for reclassification from "R-40" and "R-20" to "R-A"; Special Exception for Elevator Apartment Building; N/S Old Court Road, 3927' E. of Stevenson Road, 3rd Dist. 663-90-RX - Israel G. & Jos. W. Shapiro, Petitioners.

Gentlemen:

Inasmuch as Mr. Hennegan will be out of town until the 15th of February, it would be sincerely appreciated if the above captioned hearing, scheduled for February 11, 1965, could be postponed and a new date given subsequent to February 15, 1965.

Very truly yours,

Samuel Kimmel
Samuel Kimmel

SK:mf

January 29, 1965

A. Owen Hennegan, Jr., Esq.
The Jefferson Building
Towson, Md. 21204

Re: Petition for reclassification from "R-40" and "R-20" Zones to an "R-A" Zone, special exception for elevator apartment building, N/S Old Court Road, 3927' E. of Stevenson Road, 3rd District - 663-90-RX Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Hennegan:

The continued hearing on the appeal filed in the above matter has been scheduled by the Board of Appeals on Thursday, February 11, 1965 at 11:00 a.m. in Room 301.

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

Very truly yours,

Edith T. Eisenhart, Secretary

cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.
Sidney Blum, Esq.
J. Mayer Willen, Esq.
J. Elmer Weisheit, Jr., Esq.
Mr. Henry V. Mackie
Mes. Sol J. Perlman

November 18, 1964

A. Owen Hennegan, Jr., Esq.
The Jefferson Building
Towson, Md. 21204

Re: Petition for reclassification from "R-40" and "R-20" Zones to an "R-A" Zone, special exception for elevator apartment building, N/S Old Court Road, 3927' E. of Stevenson Road, 3rd District - 663-90-RX Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Hennegan:

The continued hearing on the appeal filed in the above matter has been scheduled by the Board of Appeals on Tuesday, January 5, 1965 at 10:00 a.m. in Room 301.

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

Very truly yours,

Edith T. Eisenhart, Secretary

cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.
Sidney Blum, Esq.
J. Mayer Willen, Esq.
J. Elmer Weisheit, Jr., Esq.
Mr. Henry V. Mackie
Mes. Sol J. Perlman

October 20, 1964

Edward C. Covahay, Jr., Esq.
The Jefferson Building
Towson, Maryland 21204

Re: Petition for reclassification from "R-40" and "R-20" Zones to an "R-A" Zone, special exception for elevator apartment building, N/S Old Court Road, 3927' E. of Stevenson Road, 3rd Dist. - 663-90-RX Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Covahay:

Replying to your letter of October 19, 1964, the continued hearing on the appeal filed in the above case, scheduled for Thursday, October 29, 1964 at 10:00 a.m., has been postponed by the Board.

You will be duly notified of the rescheduling of this hearing at a future date.

Very truly yours,

Edith T. Eisenhart, Secretary

Arnold Fleischmann, Esq.
A. Owen Hennegan, Jr., Esq.
Samuel Kimmel, Esq.
Sidney Blum, Esq.
J. Mayer Willen, Esq.
Mr. Henry V. Mackie
Mes. Sol J. Perlman
Burt Hensbers
Mr. Parkes
Mr. Rose
Mr. Chevrolet
Sallicher
Mr. H. B. Staub

LAW OFFICES
J. ELMER WEISHEIT, JR.
JEFFERSON BUILDING
TOWSON, MARYLAND 21204

AREA CODE 410
863-1011

October 19, 1964

Mrs. Edith Eisenhart
Secretary, County Board of Appeals
Baltimore County Office Building
Towson, Md. 21204

Re: Shapiro Hearing

Dear Mrs. Eisenhardt:

It is my understanding that the above hearing has been scheduled for October 29, 1964. Unfortunately, it will be impossible for Mr. Weisheit to attend because we have a case in Harford County that morning and an case in our Circuit Court in the afternoon.

We request, therefore, that another hearing date be set that proves convenient to all parties.

Sincerely,

Edward C. Covahay, Jr.
Edward C. Covahay, Jr.

EDC/bis

*Rec'd 10-22-64
9:30 am*

October 16, 1964

A. Owen Hennegan, Jr., Esq.
The Jefferson Building
Towson, Md. 21204

Re: Petition for reclassification from "R-40" and "R-20" Zones to an "R-A" Zone, special exception for elevator apartment building, N/S Old Court Road, 3927' E. of Stevenson Road, 3rd District - 663-90-RX Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Hennegan:

The continued hearing on the appeal filed in the above matter has been scheduled by the Board of Appeals on Thursday, October 29, 1964 at 10:00 a.m. in Room 301.

Very truly yours,

Edith T. Eisenhart, Secretary

cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.
Sidney Blum, Esq.
J. Mayer Willen, Esq.
J. Elmer Weisheit, Jr., Esq.
Mr. Henry V. Mackie
Mes. Sol J. Perlman

September 14, 1964

A. Owen Hennegan, Jr., Esq.
The Jefferson Building
Towson, Md. 21204

Re: Petition for reclassification from "R-40" and "R-20" Zones to an "R-A" Zone, special exception for elevator apartment building, N/S Old Court Road, 3927' E. of Stevenson Road, 3rd District - 663-90-RX Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Hennegan:

The continued hearing on the appeal filed in the above matter has been scheduled by the Board of Appeals on Thursday, October 8, 1964 at 10:00 a.m. in Room 301.

Very truly yours,

Edith T. Eisenhart, Secretary

cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.
Sidney Blum, Esq.
J. Mayer Willen, Esq.
J. Elmer Weisheit, Jr., Esq.
Mr. Henry V. Mackie
Mes. Sol J. Perlman

May 15, 1964

A. Owen Hennegan, Jr., Esq.
The Jefferson Building
Towson, Maryland 21204

Re: Petition for reclassification from "R-40" and "R-20" Zones to an "R-A" Zone, special exception for Elevator Apartment Building, N/S Old Court Road, 3927' E. of Stevenson Road, 3rd District - No. 663-90-RX Israel G. & Joseph W. Shapiro, Petitioners

Dear Mr. Hennegan:

The hearing on the appeal filed in the above matter has been scheduled by the Board of Appeals on Tuesday, June 30, 1964 at 10:00 a.m. in Room 301.

Very truly yours,

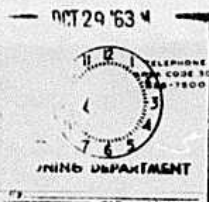
Edith T. Eisenhart, Secretary

cc: Samuel Kimmel, Esq.
Arnold Fleischmann, Esq.
Sidney Blum, Esq.
J. Mayer Willen, Esq.
J. Elmer Weisheit, Jr., Esq.
Mr. Henry V. Mackie
Mes. Sol J. Perlman

A. OWEN HENNEGAN, JR.
SAMUEL KIMMEL
JOSEPH W. SHAPIRO

LAW OFFICES
A. OWEN HENNEGAN, JR.
SAMUEL KIMMEL
408 JEFFERSON BUILDING
TOWSON 4, MARYLAND

October 28, 1963



Honorable John G. Rose
Zoning Commissioner of Baltimore County
County Office Building
Towson 4, Maryland

Re: Case No. 63-90-RX
Petition for Re-Classification from
R-40 Zone and R-20 to R-A Zone
Special Exception for Elevator Apartment Building
N/S Old Court Road, 3967' E. of Stevenson Road
3rd District - Israel G. & Joseph W. Shapiro,
Petitioners

Mr. Commissioner:

Please enter an appeal to the County Board of Appeals from the Order of the Deputy Zoning Commissioner, dated October 3, 1963, denying the above reclassification and special exception.

Enclosed herewith is check in the amount of \$70.00 to cover costs of same.

Very truly yours,

A. Owen Hennegan, Jr.



Samuel Kimmel

Attorneys for Petitioners

AOH-SK:mf
Encl.

OFFICE TELEPHONE
BALTIMORE 8-1000
BALTIMORE 8-4840

SIDNEY BLUM
ATTORNEY AT LAW
10 LIGHT STREET
SUITE 2104
BALTIMORE 2, MD.

#63-90RX

September 18, 1963

Mr. John Rose
Zoning Commissioner
County Office Building
Towson 4, Maryland

Re: Application No. 63-90 RX
Israel G. Shapiro and Joseph W. Shapiro

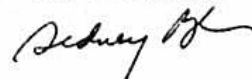
Dear Mr. Rose:

I reside at 7937 Winterset Avenue in Baltimore County, Maryland, and am concerned with the application filed in the above entitled matter.

Kindly enter my appearance and that of my wife, Shirley R. Blum, as protestants against the granting of this application.

Kindly keep me informed as attorney of all proceedings.

Very truly yours,



Sidney Blum

SR/mib



BELTWAY

63-90 RX

3

SUBJECT PROPERTY

#63-90 RX

MAP #3 SEC. 2-2

Vacant

Vacant
R-20

ORCHARD

ORCHARD

COURT

MICROFILMED

R-40

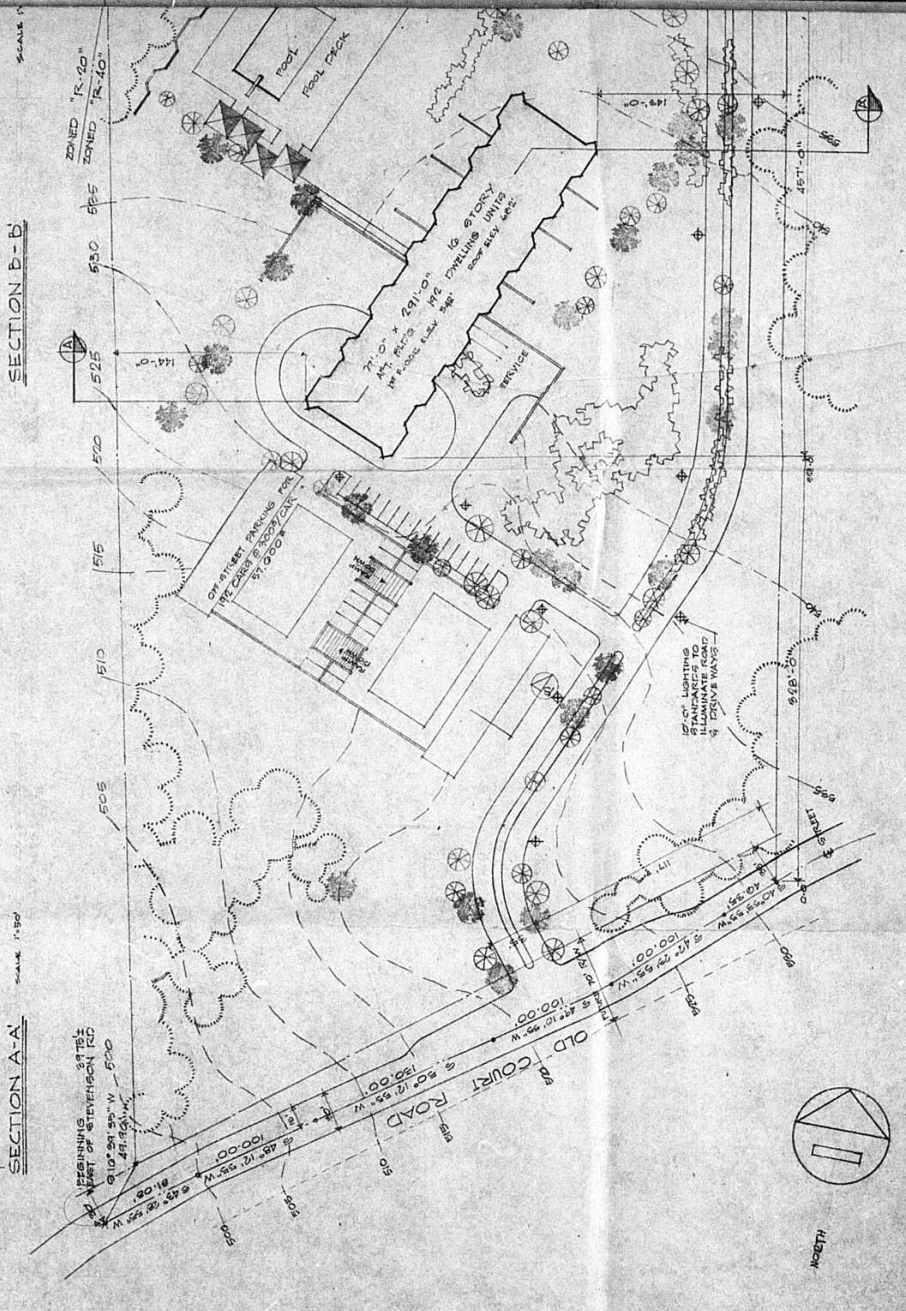
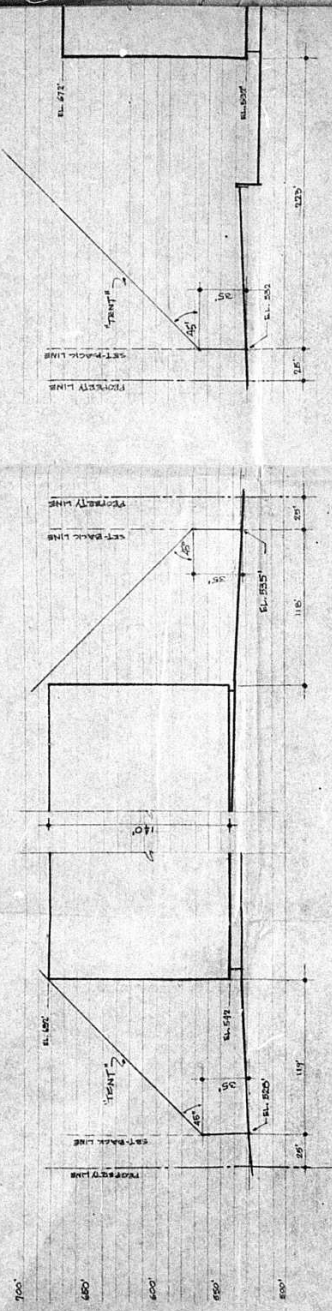
NW
9-E

W 25.500 R-20

135

PRIVATE ROAD





- GENERAL NOTES:
1. ALL DIMENSIONS ARE TO FACE UNLESS NOTED OTHERWISE.
 2. ALL SETBACKS ARE TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.
 3. ALL UTILITIES TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.
 4. ALL UTILITIES TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.
 5. ALL UTILITIES TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.
 6. ALL UTILITIES TO BE MAINTAINED THROUGHOUT THE LIFE OF THE PROJECT.

PLOT PLAN
 SCALE: 1" = 20'-0"
 AREA: 27,000 SQUARE FEET

VELOCITY: 100 MPH
 DISTRICT: B
 COUNTY: ST. LOUIS
 STATE: MISSOURI



