

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

George E. Mellor, Edna M. Mellor, and Margaret Mellor, Contract Purchasers of 1046' East of Rolling Road, 1st District, 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-6 zone to an R-A zone, for the following reason:

There is a present need in the area for additional apartment dwellings which use the subject property is most adaptable. Further changes in the character of the area justify reclassification of the property from an R-6 zone to an R-A zone.

See Attached Description

Subject to subject's agreement, the said zoning law and zoning regulations of Baltimore County, as amended, shall be applied to the subject property.

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

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

PARLAND, INC.

By *John E. Dyer*
Contract purchaser
Address c/o M. William Adelson

M. William Adelson, Attorney

Address 1035 Maryland National Bank Bldg.
Baltimore, Maryland 21202

ORDERED By The Zoning Commission of Baltimore County, this 27th day of September, 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 throughout 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 11th day of October, 1963, at 10:00 o'clock A.M.



Mr. Clark:

Please enter an Appeal from the decision of the County Board of Appeals of Baltimore County dated October 6, 1964 in re the Petition for reclassification from a "R-6" zoning to a "R-A" zoning, N/S Edmondson Avenue 1046' East of Rolling Road, 1st Election District, George E. Mellor, et al, Petitioners, No. 63-134, on behalf of the Petitioner, Remond Land Leasing Corporation.

(s)

John E. Dyer, IV, Attorney for Remond Land Leasing Corporation
1201 Maryland Building
Baltimore, Maryland 21202
Telephone 6-2155

I HEREBY CERTIFY that on this 31st day of April, 1964, a copy of the foregoing Order of Appeal was mailed, postage prepaid, to the County Board of Appeals of Baltimore County, County Office Building, Towson, Maryland 21204.

DESCRIPTION OF PREMISES OF GEORGE E. MELLOR, et al.

Second, third and fourth floors, Remond Land Leasing Corporation, 1046' East of Rolling Road, 1st District, Baltimore County, Maryland.

DATE: 7/26/63 Description for Zoning Purposes Only

First: "Caterpillar" Home Apartments

All that piece or parcel of land situate, lying or being in the First Election District of Baltimore County and described as follows, to-wit:
BEGINNING for the same on the north side of Edmondson Avenue, approximately 1,000 feet westerly from the east side of Rolling Road, and running thence binding on the north side of Edmondson Avenue, North 759 01 17' East 35.10 feet and North 75 11 10' East 194.11 feet, thence leaving Edmondson Avenue, North 137 04 04' East 73.10 feet to the eastmost property line of the dwellings fronting on Oakdale Road, thence binding thence, South 17 12 11' East 146.20 feet, thence North 78 11 10' East 14.77 feet and South 17 12 11' East 137.10 feet to the place of beginning.

Containing 3.11 acres of land more or less.



Wm. L. Luetjeh

GEORGE E. MELLOR, et AL

N/S Edmondson Avenue, 1046' East of Rolling Road

Reclassification from R-6 to R-A

NO. 63-134

1st District

3.11 acres

- Sept. 27, 1963 Petition for reclassification filed
- Nov. 26 Reclassification DENIED by Deputy Zoning Commissioner
- Dec. 3 Appealed to County Board of Appeals
- Oct. 6, 1964 Reclassification GRANTED by Board of Appeals (Austin and Baldwin)
- Nov. 2 Order for Appeal filed in Circuit Court by John H. Hasey, IV, Attorney for Remond Land Leasing Corp. (Court File No. 3119)
- Nov. 5 Order for Appeal filed in Circuit Court by Samuel F. Kenney, Esq., Attorney for E. Kenneth Gundersdorf and Gordon Holland (Court File No. 3124)
- Dec. 2 Transcript of Testimony filed in Circuit Court under Remond Land file only (No. 3119) because monies for certified papers had not been paid by Mr. Kenney to cover File No. 3124
- Jan. 27, 1965 Judge Walter M. Jenifer: " * * * since the Court concludes that the Appellant does not have the requisite legal standing to maintain the appeal * * * ORDERED that the Demurrer of the Intervening Appellees to the Appellant's Petition for Appeal be and the same is hereby sustained without leave to amend, the costs to be paid by the Appellant." (Remond Land - File No. 3119)
- Feb. 5 Check for certified papers received by Board of Appeals from Mr. Kenney (File No. 3124 - Gundersdorf and Holland)
- Feb. 16 Answer filed in Circuit Court by Board of Appeals on File No. 3124
- Mar. 9 Order to enter app. of John H. Hasey, IV, Esq. for the Plaintiff Gordon Holland fd.
- Apr. 26 Order to enter app. of Thomas L. Hennessey, Esq., for Gundersdorf & Holland
- Aug. 2 Board Reversed - Judge Jenifer

DENIED

RE: PETITION FOR RECLASSIFICATION

From an R-6 Zone to an R-A

Zone, N/S Edmondson Avenue,

1046' E. of Rolling Road,

1st District - George Mellor

Petitioner

REPORT

DEPUTY ZONING COMMISSIONER

OF

BALTIMORE COUNTY

Case No. 63-134-d

The subject property consists of some 3.11 acres of land on Edmondson Avenue near the intersection of Oakdale Road. The petitioner stated if R-A zoning were granted, he would build garden type apartments consisting of 51 units with off-street parking for some 17 cars.

There was testimony that there are a number of commercial uses on the south side of Edmondson Avenue consisting of a tavern, drug store, paint store and a variety of other types of businesses. However, testimony showed these as being non-conforming uses and they were there some years before the zoning map was adopted.

There was considerable testimony as to the suitability of the land for residential development. The petitioner was of the opinion that because of a county right-of-way going through the property and the irregular topography of the land, it would be infeasible from a financial viewpoint to construct residences of the type permitted in an R-6 zone. However, this argument was refuted by witnesses for the respondents who testified that homes could be built on the subject land and sold at a financial gain.

Mr. DeBurt, who lives next to subject land and who built some 37 dwellings in the immediate area, was of the opinion that Edmondson Avenue could be extended through to Edmondson Avenue and that homes could be built on either side and sold at a profit. Mr. J. L. Lemme, real estate broker and consultant, likewise felt that homes could be built on the petitioned property and sold at a profit.

It is the opinion of the Deputy Zoning Commissioner that the petitioner herein has failed to show an error in the original zoning or such change in the character of the neighborhood that would warrant revising of subject land.

For the foregoing reasons, it is ORDERED by the Deputy Zoning Commissioner of Baltimore County, this 26th day of November, 1963, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain an R-6 Zone.

Edward O. Hulse
Deputy Zoning Commissioner of Baltimore County

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. John G. Rose, Zoning Commissioner November 1, 1963

TO: Mr. George E. Gervelle, Deputy Director Date

FROM: Mr. William Adelson, Esq. to Mr. Rose, South side of Edmondson Avenue

1046' East of Rolling Road, Being property of George

SUBJECT: Mellor.

1st District

RE: Thursday, November 14, 1963 (10:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-6 to R-A zoning and has the following advisory comment to make with respect to pertinent planning factors:

1. The Planning staff notes that, although the subject property is in the proximity of commercially zoned property, it is neither directly across the street from or immediately next to commercial uses. Hence the established character of properties immediately adjacent to the subject property clearly is residential. The Planning staff desires that a transition function for the proposed R-A zoning would be valid here.

Mr. WILLIAM ADELSON
ATTORNEY AND COUNSELLOR AT LAW
1035 MARYLAND NATIONAL BANK BUILDING
BALTIMORE, MARYLAND 21202

December 3, 1963

Hon. John G. Rose
Zoning Commissioner of Baltimore County
County Office Building
Towson, Maryland, 21204

Re: Case No. 63-134-R - Petition filed by George E. Mellor, Edna M. Mellor and Margaret Mellor, Legal Owners, and Farland, Inc., Contract Purchaser, for Reopening Reclassification of 3.11 Acres of Land, more or less, from an R-6 Zone to R-A Zone

Dear Mr. Rose:

Please enter an appeal to the County Board of Appeals from the decision of the Deputy Zoning Commissioner, dated November 26, 1963, denying the Petition for Reclassification in the above entitled case. This appeal is taken pursuant to Section 25-26, Title 23, Baltimore County Code, as enacted by Bill No. 80, approved June 10, 1960. A check for \$70.00 is enclosed herewith to cover the cost of the instant appeal.

Respectfully yours,

George E. Mellor
George E. Mellor, Edna M. Mellor and Margaret Mellor, Contract Purchasers, 1035 Maryland National Bank Building Baltimore, Maryland, 21202 Plaza 2-6662

MWA:DMB

Certified No. 775883

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James Dyer, Chairman Date: October 24, 1963

Zoning Advisory Committee

FROM: Capt. Paul H. Reinske

SUBJECT: George Mellor, District 1

N/S Edmondson Avenue, 1046' E. of Rolling Road

1. Advise owners of the Fire Prevention Code, Section 28.13 A.B.C. and E. and for further information, please contact Capt. Paul H. Reinske at VA. 5-7310

MW/ab

CC: Capt. Reinske
File

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

No. 22010
DATE 11/4/64

To: **W. William Adams, Esq.**
and **Charles Edmund Bank Building**
Baltimore 2, Md.

Office of Planning & Zoning
200 South Street
Baltimore 2, Md.

REPORT TO ACCOUNT NO.	QUANTITY	DEBIT UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT	COST
0622		Appeal, George E. Mallory, et al. No. 63-134	70.00	
		PAID - Baltimore County, Md. - Office of Finance		
		12-1163 7772 • • • TIL •	70.00	

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

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

No. 20149
DATE 9/7/63

To: **Supreme P. Smith, Esq.**
and **Charles Edmund Bank Building**
Baltimore 2, Md.

Office of Planning & Zoning
200 South Street
Baltimore 2, Md.

REPORT TO ACCOUNT NO.	QUANTITY	DEBIT UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT	COST
0622		Petition for Reclassification for George Haller	50.00	
		PAID - Baltimore County, Md. - Office of Finance		
		12-1163 4334 • • • TIL •	50.00	

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

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st
Date of Posting: Oct. 20, 1963

Posted for: Petition for Reclassification from R-4 to R-4A

Petitioner: **George E. Mallory**

Location of property: **N/S of Edmondson Ave., 1040' E. of Rolling Rd.**

Location of Sign: **N/S of Edmondson Ave., opposite West end of Rolling Rd.**

Remarks: *John A. Baker*

Posted by: *John A. Baker*

Date of return: Oct. 21, 1963

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st
Date of Posting: Jan. 9, 1964

Posted for: **George E. Mallory**

Petitioner: **George E. Mallory**

Location of property: **N/S of Edmondson Avenue 1040' E. of Rolling Rd.**

Location of Sign: **Opposite end of Rolling Rd.**

Remarks: *John A. Baker*

Posted by: *John A. Baker*

Date of return: Jan. 9, 1964

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner
FROM: Mr. Charles E. Bank, Deputy Director

SUBJECT: **Reclassification from R-4 to R-4A**
North side of Edmondson Avenue
1040' East of Rolling Road. Being property of George Mallory.

1st District
Baltimore: Thursday, November 14, 1963 (10:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-4 to R-4A zoning and has the following advisory comment to make with respect to pertinent planning factors:

- The Planning staff notes that, although the subject property is in the proximity of commercially zoned property, it is neither directly across the street from or immediately next to commercial uses. Since the established character of property immediately adjacent to the subject property clearly is residential, the Planning staff doubts that a transition function for the proposed R-4A zoning would be valid here.

062:ime

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD. October 24, 1963

THIS IS TO CERTIFY, That the annexed advertisement was published in THE TIMES, a weekly newspaper printed and published in Baltimore County, Md. once in each of one successive weeks before the 14th day of November, 1963, the first publication appearing on the 24th day of October 1963.

THE TIMES
John M. Martin
John M. Martin (M)

Cost of Advertisement \$16.00
Purchase Order No. T 2355
Requisition No. H1088

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

No. 21742
DATE 11/4/64

To: **Henry & Henry**
1311 Fidelity Building
Baltimore, Md. 21201

County Board of Appeals
(Check)

REPORT TO ACCOUNT NO.	QUANTITY	DEBIT UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT	COST
0622		Cost of Certified Documents - No. 63-134 - George E. Mallory, et al. N/S Edmondson Avenue, 1040' East of Rolling Road for District	6.00	
		12-1163 6343 • • • TIL •	6.00	

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

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st
Date of Posting: Jan. 9, 1964

Posted for: **George E. Mallory**

Petitioner: **George E. Mallory**

Location of property: **N/S of Edmondson Avenue 1040' E. of Rolling Rd.**

Location of Sign: **Opposite end of Rolling Rd.**

Remarks: *John A. Baker*

Posted by: *John A. Baker*

Date of return: Jan. 9, 1964

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st
Date of Posting: Oct. 20, 1963

Posted for: Petition for Reclassification from R-4 to R-4A

Petitioner: **George E. Mallory**

Location of property: **N/S of Edmondson Ave., 1040' E. of Rolling Rd.**

Location of Sign: **N/S of Edmondson Ave., opposite West end of Rolling Rd.**

Remarks: *John A. Baker*

Posted by: *John A. Baker*

Date of return: Oct. 21, 1963

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

No. 20244
DATE 11/23/63

To: **Henry, Condy & Parley**
10 South Street
Baltimore 2, Md.

County Board of Appeals
(Check)

REPORT TO ACCOUNT NO.	QUANTITY	DEBIT UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT	COST
0622		Advertising and posting of property for George Haller	35.00	
		PAID - Baltimore County, Md. - Office of Finance		
		12-1163 6613 • • • TIL •	35.00	

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

RE: PETITION FOR RECLASSIFICATION
from an "R-4" Zone to an "R-4A" Zone,
N/S Edmondson Avenue, 1040'
East of Rolling Road
First District
George E. Mallory, et al.
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 63-134

OPINION

The petitioner requests a reclassification from an "R-4" Zone to an "R-4A" Zone in the First Election District of Baltimore County, the subject property being located on the north side of Edmondson Avenue, 1040 feet east of Rolling Road.

The subject property appears to be a small tract of undeveloped land, wooded in nature, fronting on Edmondson Avenue near its intersection with Dutton Avenue with a total gross acreage of 3.34 acres. The petitioner proposes to erect garden-type apartments of masonry construction on the triangular shaped plot of ground providing adequate parking under the Baltimore County regulations for the tenants therein.

The property is situated in a section which has undergone various and sundry changes since the adoption of the land use map. These changes indicate that the neighborhood trends towards a combination of institutional uses for funeral homes, nursing homes, and convalescing homes. The property is also located near a commercial use which is almost directly across from the subject property. The Board takes note that since the adoption of the map there has been only one actual zoning change in the neighborhood, that being from residential to business-local. While not one of the special exceptions as noted above and standing alone might be sufficient indication of the change in the character of the neighborhood, the cumulative effect demonstrates a significant trend from the former single family residential character of the neighborhood.

The conversion of a number of older homes in the neighborhood into multi-family dwellings not only demonstrates the transition from a single family character of the area, but also reflects a need and demand for residential dwelling space which was neither envisioned nor provided for in the zoning map.

The peculiar shape of the subject property does not readily lend itself to single family development especially in view of the County right-of-way for a storm sewer through a portion of the property. A short distance away from the subject property is the Baltimore County Beltway which has provided an additional access to all portions of the city and the county.

The omission of apartment land in the subject neighborhood, either by design or error, would support the propriety of making adequate apartment zoning available in keeping with the general character of the neighborhood, especially when such apartments are situated within walking distance from public transportation and shopping facilities.

The Board feels that the granting of this petition would not adversely affect the surrounding homes and the apartments, when constructed, would fit harmoniously with the surrounding area. Therefore, the Board feels that the subject petition, for the above stated reasons, should be granted.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 6th day of October, 1964 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby granted.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
William S. Baker
CHAIRMAN

Note: Mr. Parker did not sit at this hearing.

Objecting neighbors (the protestants) appeal from an order of the Circuit Court for Baltimore County (Berry, J.) reversing an order of the County Board of Appeals and granting a petition of the appellees (the appellants) for the reclassification of certain property, which petition the Board had denied. The reclassification had originally been granted by the Zoning Commissioner, and his order had in turn been reversed by the Board. The appellants are the owners and prospective sellers of the property in question. The contract purchaser, owner of a chain of food stores, is not a party to these proceedings, but two of its representatives testified before the Board.

The appellants (appellees) have filed a motion to dismiss the appeal, which was heard immediately prior to the argument on the merits. The motion raises two contentions: (a) that the protestants were too late in intervening and answering the appeal from the Board's order in the Circuit Court, and (b) that they have no sufficient interest to maintain this appeal.

The first of these is based upon Maryland Rule 25, which is one of the Rules relating to appeals from administrative agencies contained in subtitle B of the Rules governing Special Proceedings. This Rule provides in part that a party before the agency who desires to participate in the appeal shall file an answer "within thirty days after the filing of the petition of appeal, or such longer or shorter time as may be fixed by the Court." This contention was raised by a preliminary motion in the trial court, which was heard

and denied by Judge Turnbull. We think that his ruling was correct.

Though ordinarily an answer should be filed within the thirty days, we think that Rule 25 is not inflexible and mandatory as to the thirty day period. It is not shown that the appellants were prejudiced by the delay from early June to early August in the filing of the answer, and the delay seems to have been due at least to some extent to delay on the part of the appellants in furnishing the protestants with a copy of the petition of appeal as had been promised. The provisions of Rule 24 a and b with regard to the time for filing an appeal are generally similar to those of Rule 25 for the time of filing an answer. All use the word "shall," as does Rule 24 c, which deals in part with the time for filing a petition which, if not joined with, must follow an order for appeal. We note that Rule 24 c requires an application for extension of time for filing an order of appeal to be made within the time allowed for filing the order of appeal. There is no counterpart to this provision in Rule 25, nor is there any to Rule 25. The latter provides that the appeal shall be dismissed for failure to file an order for appeal within the time prescribed by Rule 24, or to file a petition of appeal under Rule 24 within the time prescribed by the Rule, "unless cause to the contrary be shown." If the provisions as to the time of Rule 24 a and b or of Rule 24 c were mandatory requirements, there would hardly be any necessity for the provisions of Rule 25 for the dismissal of the appeal; and the concluding

clause of that Rule shows that some elasticity is allowed in "cause" (meaning "good cause," Myrtimack Park Recreation Ass'n, Inc. v. County Board of Appeals, 228 Md. 104, 189, 179 A. 2d 345) is shown. We accordingly hold that the time requirement of Rule 25 is not mandatory, and we think that it was within Judge Turnbull's discretion to refuse to strike out the answer of the protestants, and we find nothing to indicate any abuse of discretion on his part in so refusing. We deny the motion to dismiss insofar as it is based upon delay in the filing of the appellants' answer in the Circuit Court.

The second ground upon which dismissal is sought is in substance that the properties of the protestants are so remote from the property for which rezoning is sought that the protestants have no standing to maintain this appeal. Though the trial judge made a comment in his opinion to the effect that the protestants' properties were more than two city blocks away from the property for which rezoning was sought and "could hardly be directly affected by any permitted commercial use," no objection to their standing to participate was made in the trial court. The record shows not only that there was evidence before the Board from the protestants that the value of their residential properties would be depreciated by the proposed reclassification, but that there was testimony by the Deputy Director of Planning of the County that in his opinion the proposed extension of commercial zoning would have an impact on the surrounding residential areas and that the commercial area

should not be extended in the direction proposed. There was in addition testimony by an experienced real estate broker and developer that, in his opinion, the reclassification of the property in question, at least if followed by the development and use of the property as planned by the appellants' contract purchaser, would eat into the existing residential community and would depreciate and depress the area.

In view of the above evidence we are not prepared to hold that the appellants are without standing to maintain this appeal, as not being "parties aggrieved" (see Sec. 604 of the Baltimore County Charter ¹), particularly in view of the fact that their standing was not even challenged in the trial court. Castelle v. Selling, 223 Md. 24, at 29, 161 A. 2d 824; Pressman v. City of Baltimore, 223 Md. 330, at 334-35, 160 A. 2d 375. Cf. Richards Realty Co., Inc. v. Whittier, 226 Md. 273, at 281-82, 173 A. 2d 156, where the chancellor found on conflicting evidence that the complainants would suffer special damages from the establishment of a "no garage, without cooking" that under the Baltimore County Code (1961 Supp.) Sec. 23-27, which allows appeals to the courts to be taken "in the manner provided in Article VI of the Baltimore County Charter," the right of appeal is limited to parties "aggrieved" by the action of the Board of Appeals or of the Circuit Court, since Sec. 604 of the Charter provides for appeals only by such persons, and that the term is less broad in scope than the term of Sec. 23-26 of the County Code which provides that "any person or persons, singly or severally, or any taxpayer or any official, officer, department, board or bureau of Baltimore County, feeling aggrieved by any decision of the zoning commission shall have the right to appeal therefrom to the county board of appeals." Sec. 604, as the notes of the Reporter for the Charter Revision Commission show, was intended to conform with Code (1957) Art. 25A, Sec. 50.

filling station within 300 feet of a city park and about 200 feet from the complainants' residence. The chancellor's finding, which was not disturbed by this Court, rested largely on the testimony of a real estate expert that part of the value of the property of the complainants and of other property in the neighborhood was derived from their proximity to the park and that a "chipping away" of the restrictions established to protect the areas in and around the parks would inevitably reduce the value of nearby residential real estate.

All three of the cases cited above were suits in equity, but the same test has been applied in determining who are "aggrieved" persons entitled to appeal from adverse action of a zoning body. Pattison v. Conkey, 206 Md. 57, 172 A. 2d 400. As was there said (126 Md. at 102): "an adjacent owner - in the sense of being near or close by - as well as an abutting owner, whose legal rights have been infringed, is an aggrieved person. But the farther a protestant resides from the zoning objected to, the more difficult it is, in the absence of other pertinent circumstances, to decide whether he has standing to appeal." In the Pattison case the appellant's interest was held insufficient, and a similar result was reached in Laughborough v. Rivasana, 213 Md. 239, 131 A. 2d 461. In each of them the sufficiency of the objector's interest was challenged in the trial court. In the Pressman case above referred to, where the sufficiency of the complainants' interest was not challenged in the trial court, the nearest property owned by any of

them was about two blocks from that being rezoned. Other complainants - appellants, whose right to sue was upheld against a motion to dismiss filed in this Court, owned properties at considerably greater distances. Our pertinent cases up to the time of the decision of Pattison are reviewed in the opinion in that case. We shall not review them further here. We think that the present case falls under Castelle and Pressman, rather than Pattison and Laughborough, and accordingly we deny the motion to dismiss insofar as it is based upon the appellants' asserted lack of standing.

We now come to the merits of the case.

The property sought to be rezoned from R-6 (a rather high density residential classification) to B-1 (a commercial use classification) has a frontage on its western side of about 107 feet along the east side of Stemmers Run Road beginning at a point about 415 feet north of the intersection of that road and the northern side of Eastern Boulevard. (Though Stemmers Run Road in this area runs somewhat west of north from this intersection and Eastern Boulevard runs almost northeast from it, we shall speak of Stemmers Run Road as running north and south and Eastern Boulevard as running east and west.) The subject property is roughly rectangular in shape with its long lines, of about 376 to 378 feet, running almost parallel to Eastern Boulevard. The contract purchaser has under lease a somewhat irregular, but generally rectangular tract,

recently reclassified as B-1, south of and adjoining the subject property. This tract has a frontage of about 300 feet on Stemmers Run Road and it has access to Eastern Boulevard by a thirty-foot rights of way, one on each side of a hamburger shop fronting on Eastern Boulevard. To the west of the hamburger shop and at the northeast corner of Stemmers Run Road and Eastern Boulevard is a gasoline filling station and to the east of this hamburger shop is a used car lot. To the east, north and west of the subject property the area is residential, zoned R-6, with the exception of three tracts which are used for schools, one of which is across Stemmers Run Road from the subject property.

We now quote from the opinion of the Board:

"The protestants pointed out that Stemmers Run Junior High School is located across Stemmers Run Road from the subject property. They testified that the lot on the west side of Stemmers Run Road is also used by the buses to Edmund High School and an elementary school, both of which are in the neighborhood. They opposed the reclassification of this property on the grounds of increased traffic hazards and the encroachment of commercial land into a residential area with resultant adverse effect on the community. George E. Gouville, Director of Planning and Zoning, testified that 'B-1 zoning of the subject tract stated it would also open the possibility of the land opposite the subject property being used for residential purposes. The Junior High School being used for residential purposes. It was his opinion that the area is predominantly residential in nature and that the present boundary of 'B-1' is the farthest point north along Stemmers Run Road to which it should be extended. Practically the same opinion was stated by Frederick P. Klau, an expert realtor witness. The principal reason advanced by the petitioner appeared to be that it needed this additional tract of ground in order to properly locate the desired size store building. Such additional land area however, would not alter the poor access lanes to the parking lot of the proposed store.

"It is the unanimous opinion of the Board of Appeals that there have been no changes in the immediate neighborhood which warrant a reclassification, and that the protestants have failed to show an expert in rezoning. Further it is the opinion of the Board that to grant such reclassification would certainly tend to increase the traffic in the area which would result in additional traffic congestion and further, that the reclassification of the subject property into a commercial land into the predominantly residential area which would have an adverse effect on the value of property in the community.

The record contains evidence to support the Board's findings and conclusions.

Mr. additional testimony was taken before Judge Berry. Almost 50% of the transcript of proceedings before him (based upon litigants, treating incomplete lines as full lines) is taken up with comments, observations and some questions by the trial judge. At the outset he announced his complete familiarity with the area in question, and our review of the transcript of the proceedings before him indicates that he relied very heavily upon his personal familiarity with the neighborhood and his own views based thereon.

"I turn the key to the trial judge's opinion to the case may be found in the passage below which occurs after the judge had spoken of the 'strange arrangement' for getting in and out of the supermarket tract and that 'You almost can do anything with it the way it is set up now.' (The Court.) You can't do anything now because you are jammed up badly for space, i.e. because (counsel for the protestants, who were pro-litigants in the Circuit Court), I am addressing this to you, how or less because the burden is on you in this case although it would not appear from the record. I don't think anyone can build a house on this piece of property. It is much too close to all of these schools and heavy commercial development in my opinion. The one hundred and seven feet would not sell for a house and I would not live there, I am putting you on the spot. I don't believe the property can be used for residential."

In his formal opinion the trial judge said in part:

"All the other three corner properties at Eastern Boulevard and Stemmers Run have long been used commercially and are so zoned. It is contended that since the adoption of the original zoning map numerous changes have occurred in the area both as to zoning and use but, it is argued, those are preferable only to Eastern Boulevard. That is the real question in this case. Is the subject property really entitled to Eastern Boulevard or to the existing residential zoning lying to the north? It seems inconceivable to this Court that this property is really much more entitled to Eastern Boulevard and its extensive commercial development than to the residential area lying to the north and not only that changes in the area have been sufficient to justify the reclassification but that its continued zoning as residential was erroneous. In reaching this conclusion the Court has not overlooked the well established principle that zoning lines must be drawn somewhere and the Court must not substitute its judgment for that of the Board.

Notwithstanding the trial judge's recognition of these established rules, we are forced to conclude that his decision cannot be reconciled with them. There was evidence before the Board from which it reasonably could and did reach its conclusions which we have quoted above. We therefore think that the questions before the Board were at least fairly debatable and that the trial court actually substituted its judgment for that of the Board and that in so doing it went beyond the proper exercise of its powers. See *Penn. v. Bonfield Holding Co.*, 283 Md. 34, 43, 161 A. 2d 436, and cases therein cited; *Levy v. Seven Glades, Inc.*, 234 Md. 145, 150 A. 2d 267. The judgment will accordingly be reversed, with directions to reinstate the order of the Board; the costs are to

be paid by the appellees. Maryland Rule 882 a. (See *Penn. v. Hinder*, 208 Md. 151, 167 A. 2d 111).

DISPOSITIVE EVIDENCE AND CASE REVISIONS
FOR THE ENTRY OF AN ORDER IN CONFORMITY
WITH THIS OPINION; THE COSTS TO BE PAID
BY THE APPELLANTS.

IN THE COURT OF APPEALS OF MARYLAND

No. 301

September Term, 1963

George Walter Tocoy, Jr.,
et al.

v.

Henry J. Conringier, et ux.

Bruno, C. J.,
for appellant,
appellee,
appellee.

32.

Opinion by Bruno, C. J.

Pl'd: July 3, 1964

BARON LAND LEASING CORPORATION,
a Maryland corporation,
1029 St. Paul Street
Baltimore, Maryland 21202

IN THE
CIRCUIT COURT
OF
BALTIMORE COUNTY
(A. Law)
Miscellaneous Docket
Folio , File No.

PETITION FOR APPEAL

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Petition of Baron Land Leasing Corporation by John R. Hasey, IV, its attorney, filed pursuant to the provisions of the Maryland Rule, Chapter 1100, subtitle 3, respectfully represents unto your Honor:

1. That this Appeal is from an Order of the County Board of Appeals of Baltimore County passed on the 6th day of October, 1964 in Petition 63-134 by which Order the Board granted a reclassification from "R-4", residential zoning, to "R-4", residential apartment zoning, of a certain tract of unimproved land consisting of 3.34 acres, more or less, lying on the north side of Edmondson Avenue, 1040 feet east of Rolling Road in the 1st Election District of Baltimore County, which said tract of land is owned by George H. Mallor, et al.

2. That Baron Land Leasing Corporation is a Maryland corporation owning both improved and unimproved commercial real estate as follows: approximately 3 acres of unimproved land zoned "R-1" on the north side of Frederick Road, 1500 feet west of Rolling Road in the 1st Election District of Baltimore County and on the same zoning map as the property owned by George H. Mallor, et al, said property being .75 mile from the Mallor tract; and approximately 4.5 acres of commercial property zoned "B-M", located

provisions of the Maryland Administrative Procedure Act, Article 41, Section 51, which provides: "Every party shall have the right of cross-examination of the witnesses who testify, and shall have the right to submit relevant evidence."

3. That the Board, a public administrative body, has failed to adopt any general law or procedure for the conduct of its business or to formally establish guidelines of practice and procedure and, in this and many other proceedings, has arbitrarily refused to afford this appellant, through its President, P. T. Lennon, acting as its representative, the right to leave witnesses and evidence alone and then has refused this appellant the effective right to "submit relevant evidence" . . . except when it is represented by legal counsel, which the appellant does not wish to engage in the administrative level because of the substantial expense involved.

5. That the decision of the County Board of Appeals is arbitrary, capricious and unreasonable, and therefore erroneous and void, and should be reversed for the following reasons:

a. That there is no credible evidence of the record of any substantial change in the basic character of the neighborhood since the adoption of the said law on April 5, 1960, and the changes cited by the Board in its opinion were either not supported by the evidence or too inconsequential upon which to base a decision, or not sufficiently significant to constitute a change in the basic character of the neighborhood.

b. That the zoning cannot be granted on the grounds of error because error has not been demonstrated in the record, nor does the Board find in its opinion that an error had been made in the original zoning classification assigned the Mallor tract.

c. That the appellant, Baron Land Leasing Corporation, was a trespasser before the County Board of Appeals in this proceeding and errors that as a result of said zoning reclassification, it has suffered special damages in that the rezoning of this tract opens a "red line" but will result in the destruction of the carefully planned comprehensive zoning map for the northern portion of the 1st Election District of Baltimore County made at great cost to the taxpayer, including the appellant, which will ultimately destroy the zoning and land use of the property contiguous to the Mallor tract and other adjacent lands, including the land owned by the appellant, and that the reclassification from "R-4" to "R-4" constitutes a change in zoning and rezoned land use, a change which opens the way for successive changes (see the Board's order itself in this very instance) of all types, including the reclassification of land from residential to business local, hotel, and other uses, business residential and other more intensive land uses, thus changing the character of the neighborhood) creating the opening for a comprehensive zoning reclassification, including the introduction into other areas residential areas of any commercial uses, particularly the uncontrolled strip-type of commercial use of small properties held by many different owners. That the reclassification of zoning of property within the zoning of rezoned and special exceptions - rezoned in its economic effect far beyond the application of the property involved for the reasons that changes in zoning require changes in zoning and they travel quickly over extended distances - not within a specific time, at the time of the adoption of the zoning map for the 1st Election District of Baltimore County, an explicit reservation

c. That the evidence indicating a need for additional apartment zoning in this area is insufficient to establish as a matter of law a sufficient need upon which to predicate a change in zoning classification, and even if a great need had been sufficiently demonstrated, such a ground for reclassification is not permitted at law;

d. That the evidence submitted is legally insufficient to overcome the strong presumption of the validity of the zoning set forth on a comprehensive zoning map, which presumption imposes on the property owners a heavy burden of proof, and particularly heavy in cases of piecemeal reclassification;

e. That the evidence shows that the property owners are not denied a reasonable use of their land under the existing zoning classification, and they are therefore not entitled to relief as a matter of constitutional right and law.

TO THE END, THEREFORE, That this Honorable Court may: Pass an Order remanding this case to the County Board of Appeals for the purpose of taking and receiving such other and further evidence as Baron Land Leasing Corporation may deem necessary and pertinent to the case, consistent with the ordinary rules of evidence, said order to contain a mandate requiring the County Board of Appeals to permit Baron Land Leasing Corporation to appear through its President, P. T. Lennon and that P. T. Lennon, as its attorney-in-fact, be afforded the right to cross-examine the property owners and all witnesses presented by them, the right to submit evidence through its own witnesses, and to conduct direct examination of said witnesses, and the right to subpoena witnesses and records through the legal processes of this Court, without the necessity of employing legal counsel; and that this be done irrespective of whether or not this Honorable Court finds on the incomplete record before it

AND, as to duty found, etc.

I HEREBY CERTIFY that a copy of the foregoing Petition for Appeal was mailed, postage prepaid, this 31 day of October, 1964, to the County Board of Appeals of Baltimore County, County office building, Towson, Maryland 21204.

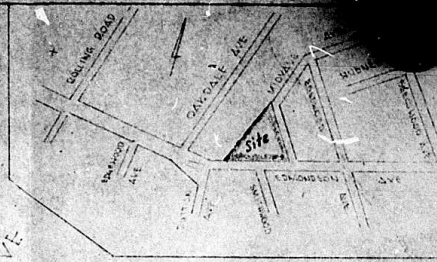
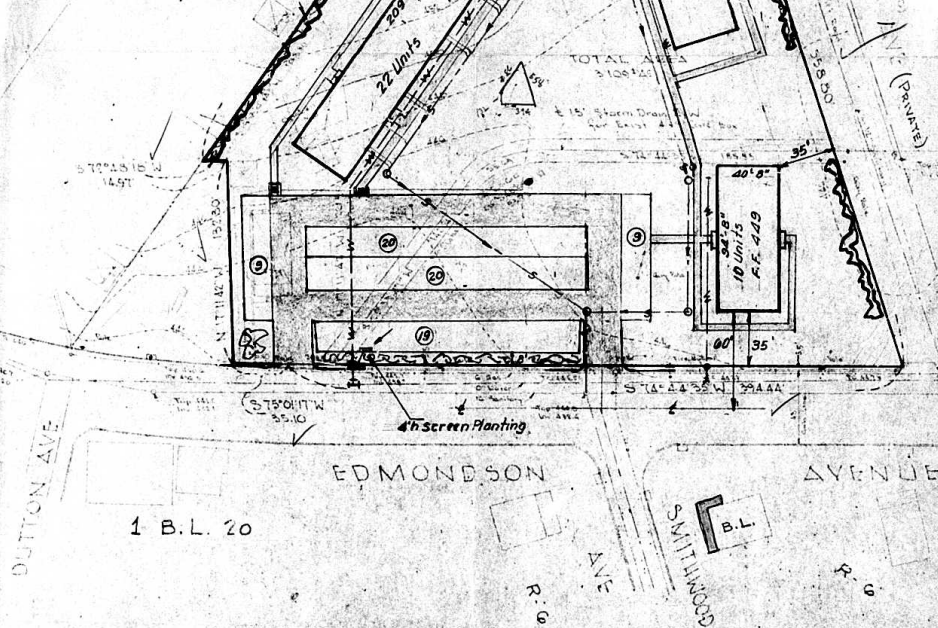
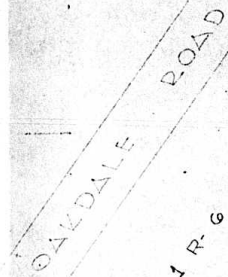
John R. Hasey, IV

of unimproved commercial land was established to meet the requirements for all future commercial needs in this Election District for many years to come, the change created by the reclassification of the Mallor tract, and the rezoning subsequent upon approval of additional lands for business uses in the date transaction would open the way, to applicant the general public witness as long as an empty space of property would land is available for commercial use, in that it permits property owners to retain land as before, i.e., for a residential classification, until such time as the owner thereof may wish to develop said land) monthly, there are many more of unimproved commercial land parcels within the immediate vicinity of the Mallor tract, upon which the owners thereof, including this appellant, are compelled to pay high real estate taxes by reason of higher assessments predicated upon commercial zoning, until such time as the owner requires improvement thereof for commercial purposes; that, in addition to this appellant's land owner, there are many more of commercial land owned by others in this vicinity which should be developed and utilized for the designated purpose (commercial use) before other properties now zoned residential should be reclassified for commercial uses; that by reason of the foregoing, this appellant alleges that the granting of the petition for reclassification in this proceeding would cause to special damage and would be contrary to the public interest and general welfare by opening the way to uncontrolled change and the destruction of the carefully planned and adopted comprehensive zoning map.

4. That the record before this Court is incomplete, in that areas, insofar as testimony sought to be adduced on behalf of this appellant is concerned; that this appellant, Baron Land Leasing Corporation, through its President, P. T. Lennon, a recognized land leasing expert, and a zoning specialist, was arbitrarily and without cause refused the right to directly examine its own witnesses and to cross-examine witnesses produced on behalf of the property owners before the County Board of Appeals, contrary to the

Aug. 23, 1963

by: Marcus J. Spamer & Associates - 400 York Rd - Towson 4, Md.



LOCATION - MAP

UTILITY REFERENCES

16. Sanitary Sewer	A-10	3087	30-COT
17. Box Drain		C	180
	A-9	7135	0-55-440
18. Water, Michigan Ave.	A-10	5071	30-757

Edmondson Ave.:-
Water, Sewer, Gas, Drains & Power Exists

Density Calculations:

Gross Ac 3.34 (54)
Net Ac. 3.11 (56)
Total # of Apts = 54
Total # of Parking Spaces = 77

OFFICE
COPY

#63-134

MAP
#1
SEC. 2-A



J.O* 1* 1086B

JAMES S. SPAMER & ASSOCIATES
SURVEYORS & CIVIL ENGINEERS
499 YORK ROAD - TOWSON, 4 MD
SCALE: 1"=50' MAY 24 1966
Outline & Topo: Catonsville Dist. No. 1
Baltimore, Md.

