

IN THE COURT OF APPEALS OF MARYLAND

No. 544
September Term, 1966

MRS. FRANKLIN RAGAN, et al.

v.

HERBERT HILDESHEIM, et al.

Hammond, C.J.
Horney
Opinion writer
McWilliams
Finan
Clapp, Robert E., Jr.
(specially assigned),
JJ.

Opinion by Horney, J.

Filed: October 12, 1967

FRANKLIN RAGAN (ONS.)
1709 Tyler Road
Baltimore, Maryland 21222
EARL QUICK
1848 Portchase Road
Baltimore, Maryland 21222
ANN QUICK
1848 Portchase Road
Baltimore, Maryland 21222
ELIZABETH GULLIDGE
7019 Sollers Point Road
Baltimore, Maryland 21222
RICHARD DEINMANN
1207 Jackson Road
Baltimore, Maryland 21222
BERNARD EAM
1987 Portchase Road
Baltimore, Maryland 21222

COUNTY BOARD OF APPEALS
County Office Building
111 W. Chesapeake Avenue
Baltimore, Maryland 21204

ORDER FOR APPEAL

Mr. Clerk:

Please enter an appeal to the Circuit Court for Baltimore County on behalf of FRANKLIN RAGAN (ONS.), EARL QUICK, ANN QUICK, ELIZABETH GULLIDGE, RICHARD DEINMANN, BERNARD EAM, from the order of the County Board of Appeals dated June 8, 1966, said plaintiffs having been parties to the proceedings and are aggrieved thereby.

Johnson Bowie
Attorney for Plaintiffs
12 W. Pennsylvania Avenue
Towson, Maryland 21204
825-6014

I hereby certify that a copy of the foregoing was called this 14th day of July, 1966 to the County Board of Appeals, County Office Building, Towson, Maryland and L. Robert Evans, Esq., Attorney for the Petitioner, Jefferson Building, Towson, Maryland.

Johnson Bowie
Attorney for Plaintiffs

The only question posed by the appeal in this Baltimore County zoning case is whether or not the reclassification of land from one zone to another constituted such change as was fairly debatable.

The rezoned property is an undeveloped tract of approximately fourteen acres located on and bounded by Sollers Point Road, Johnson Avenue and Delvale Boulevard in the twelfth district of the county. Topographically the tract is low-lying and swampy and subject to flooding during periods of heavy rainfall. At the time of the adoption of the comprehensive zoning map on May 1, 1956, the land in question was zoned R-6 (residence, one and two family) but it had not been developed for such use.

The zoning commissioner declined to reclassify the property. The board of appeals, in reversing the commissioner, granted reclassification to R-A (residence, apartments). In so doing the board found that there had been substantial change in the neighborhood since the adoption of the 1956 map, that there was error in the original zoning and that the cost of developing the property as theretofore classified would be prohibitive. The circuit court affirmed the board and this appeal followed.

The proponents-appellees are Herbert Hildesheim and his wife, former owners of the property, and the Dun Lea Apartments, the corporate contract purchaser, which plans to build garden type apartments on the premises. The protestants-appellants are Mrs. Franklin Ragan and several other residents of the neighborhood.

When the 1956 zoning map was adopted, Delvale Boulevard was not in existence. At the hearing before the board of appeals,

MRS. FRANKLIN RAGAN
ET AL.
vs.
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

PETITION

The Petition of Mrs. Franklin Ragan, Earl Quick, Ann Quick, Elizabeth Gullidge, Richard Deinmann, and Bernard Eam, Plaintiffs, by David N. Bates and Johnson Bowie, their attorneys, respectfully represents:

1. That this is an appeal from the County Board of Appeals granting the reclassification of approximately fourteen (14) acres on the northwest side of Sollers Point Road and Towson Avenue, in the Twelfth Election District of Baltimore County, Maryland, from R-6 to R-A, by order of the Board dated June 8, 1966.

2. That the error committed by the County Board of Appeals in granting this reclassification is as follows:

a. That the Board in its opinion found as a matter of fact "The cost of development under present zoning would be as high as to be prohibitive economically if not high enough to amount to confiscation".

It is submitted that under the Laws of Maryland that this is not a proper basis for granting a reclassification.

b. The Board in its opinion found as a fact "There was error in the original zoning of this property on the basis of the testimony as outlined above".

The only testimony as to error in the original zoning was that of Augustine J. Mueller who, based there was error in the original zoning, by saying the cost of building R-6 houses would be prohibitive, which is not a proper basis

a surveyor and engineer (Augustine J. Mueller) testified that he was then a member of the board of county commissioners and that if a plan to construct the boulevard was in existence, he had no knowledge of it. He further testified that there was error in the original zoning because it would have been impossible to build R-6 homes on the tract even at that time. He also specified at least twelve zoning changes in the surrounding neighborhood which, along with the construction of Delvale Boulevard, he thought were substantial enough to warrant reclassification.

A real estate broker (Frederic P. Klaus), not only confirmed the testimony of the former county commissioner as to change, but testified that in his opinion the highest and best use of the land was for residential apartments.

A consulting engineer and traffic expert (Joseph D. Thompson), whose firm had designed Delvale Avenue to service the school property, was of the opinion that its construction had completely changed the picture from that which had previously existed. He further testified that without the boulevard it would not have been feasible to build apartments on the property in question because the use of Sollers Point Road and the narrower streets in the vicinity would have presented quite a problem and created traffic congestion. Subsequently, the proponents and protestant stipulated that traffic was not a problem to be considered.

The president of Dun Lea Apartments (A. Michael Hooke), citing estimated costs to substantiate his opinion, testified that the overall cost made R-6 development of the property economically prohibitive. He stated that he was willing to do whatever was necessary to clear up the drainage situation, including the installation,

for a reclassification or for original zoning.

c. The Board in its opinion found as a fact "That there have been substantial changes in the neighborhood since 1936 sufficient by themselves to warrant the requested rezoning".

It is submitted that there was no testimony to support this finding of fact that there had been any substantial changes which were in view of the subject property.

WHEREFORE, your Plaintiffs move that the Court reverse the Order of the County Board of Appeals granting the reclassification, and deny the reclassification of the property.

David N. Bates

Johnson Bowie
Attorneys for Plaintiffs
12 West Penna. Avenue
Towson, Maryland 21204
Phone: 825-6014

I HEREBY CERTIFY that copy of the foregoing was mailed July 14, 1966, to County Board of Appeals, County Office Building, Towson, Maryland 21204, and L. Robert Evans, Esq., Jefferson Building, Towson, Maryland 21204, Attorney for the Petitioner.

Johnson Bowie

suggested by another witness, of a box culvert running through the entire tract to carry off storm water.

The principal objection of the protestants (as expressed by Geraldine Marrah, a long time resident of the neighborhood), seems to have been based on the fear that the flooding conditions would be worsened. An expert in the sewer and drainage field (Jerome B. Wolff), testifying on behalf of the protestants, was of the opinion that construction of apartments might increase the runoff of surface water but that it would not increase it more than development of the property for R-6 homes.

Since the record clearly indicates substantial change in the neighborhood, it is unnecessary for us to consider whether there was original error in the zoning or confiscation by reason of prohibitive developments costs.

The courts, of course, do not undertake to substitute their judgment for that of the zoning agency and as long as the decision of the zoning authority is not arbitrary or capricious, it will be allowed to stand. See *Agnesline, Inc. v. Lucas* [No. 545, September Term, 1966], ___ Md. ___, ___ A.2d ___ (1967).

We think the change in the character of the neighborhood brought about by the construction of Delvale Boulevard together with the zoning changes that had been granted, all of which changes occurred subsequent to the comprehensive zoning plan, were sufficiently substantial to make the decision of the board of appeals fairly debatable. *Rosley v. Hospital for Consumptives*, 246 Md. 197, 227 A.2d 746 (1967); *Board of County Commissioners of Howard County v. Turf Valley Associates* [No. 91, September Term, 1967], ___ Md. ___, ___ A.2d ___ (1967).

ORDER AFFIRMED; APPEALANTS TO PAY THE COSTS.

MRS. FRANKLIN RAGAN,

ET AL.

vs.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Mr. Clerk:

Please enter an appeal to the Court of Appeals of Maryland from the order entered in the above entitled cause on September 23, 1966.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Misc. Docket 8, folio 111
Case No. 3568

David N. Bates

Johnson Bowie
Attorneys for Plaintiffs

I HEREBY CERTIFY that copy of the foregoing was mailed October 20, 1966, to L. Robert Evans, Esq., Jefferson Building, Towson, Maryland 21204, Atty. for Herbert H. Hildesheim, et al.

Johnson Bowie
Of counsel for Plaintiffs

64-89 - 12th Deck

FRANKLIN RAGAN (MRS.) et al.
VS
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
HERBERT HILDSHEIM, et ux
DUN LEE APARTMENT CORPORATION

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

8
111
3568

MEMORANDUM OPINION
AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Baltimore County, which by its Order dated June 8, 1966, granted a reclassification of the property described in this proceeding, from an R-6 Zone (Residence, 1 and 2 Family) to an R-A Zone (Residence-Apartments). The Zoning Commissioner of Baltimore County, by his order dated March 31, 1964, had denied the reclassification requested, because there was no error in the Map proven to him, and that the several reclassifications from 1959 to 1963 did not constitute a change insofar as the subject property is concerned. The County Board of Appeals found that the evidence produced before it showed substantial changes in the neighborhood since the adoption of the Dundalk-Patapsco Neck Land Use Map 4-A, which was adopted May 1, 1956. The Board further found that there was error in the original zoning of this property, and finally that the cost of development under the present R-6 zoning would be prohibitive, economically.

The Petitioners in the Application for Reclassification are Herbert H. Hildesheim and Hilda Hildesheim, his wife, legal owners,

and A. Michael Hooks, President, Dun Lee Apartments, Inc., contract purchasers of the parcel of land in question. The property contains 14.74 acres of land, more or less, and is located in the Twelfth District of Baltimore County, on the northwest side of Sollers Pt. Road and Towson Avenue, subject to the use in common with others of Towson Avenue, Sollers Pt. Road, and Delvale Boulevard. The property is bounded by Sollers Pt. Road, Towson Avenue, and Delvale Boulevard.

The Court is cognizant of the general proposition that there is a strong presumption of correctness of original zoning, or comprehensive rezoning, and that to sustain a practical change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood. (See Tennak v. Bd. of Zoning Appeals, 205 Md. 489; Green v. Board of Zoning Appeals, 209 Md. 420; Rans v. Handel, 224 Md. 121; Jobar Corp. v. Rodgers Forge, 236 Md. 106; MacDonald v. County Board, 238 Md. 549; and Hillier v. Abraham, 239 Md. 263. This general rule does not mean, however, that zoning, once established, is static and eternal. This was observed in the case of Hissouri Realty, Inc. v. Board, 216 Md. 442, wherein Judge Prescott, speaking for the Court, at page 44, said:

"It is a principle of universal recognition that zoning, once imposed, is not static. If it could not be altered with the changing conditions that surround us in the world today, progress would be retarded, and many of the advantages, logically expected from zoning, would be lost. Restrictions on the use of property that are reasonable today may be so unreasonable under different conditions in the future as to amount to confiscation. Zoning officials, when properly authorized, have the authority to alter some lines from time to time when there are substantial changes in conditions and such alteration has a reasonable relation to the public welfare. Offutt v. Board of Zoning Appeals, supra, 204 Md. 587."

In fact, any evidence of a substantial nature supporting and justifying the Board's action. In Mathershead v. Bd. of Comm'rs, 240 Md. 385 (decided November 18, 1965), the Court in quoting from Judge Hammond's opinion in Board v. Oak Hill Farms, 232 Md. 274 p. 283 stated at pages 371-372 as follows:

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

See also the following cases: Finnov v. Helle, 241 Md. 224 (decided Feb. 2, 1966); Pill v. The Jobar Corp., 242 Md. 16 (decided March 15, 1966); Bonnie View Club v. Glass, 242 Md. 46 (decided March 22, 1966); Roth Tilton v. Blum, 242 Md. 84 (decided March 29, 1966); Board v. Farr, 242 Md. 351 (decided April 26, 1966); and Vogel v. McGowan, 242 Md. 371 (decided April 28, 1966).

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

Testimony indicates, in detail, that the cost of land preparation for development of this property as it is now zoned, i.e., R-6, would be prohibitive and approaches on being confiscatory. This was thoroughly developed by the proposed developer of the property. Further, the former Zoning Commissioner of Baltimore County testified that he was a member of the Board of County Commissioners of Baltimore County at the time of the adoption of the Zoning Map, and there were no plans for the construction of Delvale Boulevard. He stated there was an error in the zoning, because the property had been zoned, when the Map was adopted, in a manner in which it cannot be used; i.e., to build R-6 houses on it. Upon further questioning, he said this situation was true then, and is true now, because of a matter of economics.

A real estate broker testified that at the adoption of the Map in 1956, there was no provision made in the general area for the development of apartments. He further stated there was no open land for R-A development provided for in the Map, and in his opinion, this was a serious error.

A traffic expert testified that the construction of Delvale Boulevard completely changed the picture as to possible traffic congestion and access to the proposed apartments. This expert planned Delvale Boulevard, and was fully familiar with the development of the boulevard. As a matter of fact, counsel for the Petitioners and the Protestants stipulated that traffic was not a problem to be considered in this application.

The testimony of these three experts clearly indicates to the Court that when the Map was adopted in 1956, and this land

was zoned R-6, that the legislative body was in error. There was no provision for R-A development in the entire area. Secondly, it was not feasible, economically, to use the property for development of R-6 residences, either in 1956, or at the present time. Thirdly, the development of the boulevard took care of any traffic problem that may or may not have existed at the time of the adoption of the map.

A great deal of testimony was taken pertaining to the existing flooding conditions in the area. The principal complaint of the protestants is that this condition will be accelerated if the property were developed for apartments. The testimony of one expert for the Petitioners indicates that this flooding condition can be corrected by the installation of the proper facility. The testimony of the Protestants' expert agreed with the Petitioner's expert that this installation could correct the immediate problem, and he further stated that ultimately the entire problem can be corrected. In addition, he said that the construction of apartments, without any correction, would add little to the flooding problem. Further, a statement was made for the record by the counsel for the Petitioner, that he, the Petitioner, would enter into an agreement with the County to install any system that the County required to correct the entire drainage problem that has existed for years in the area.

The next question for the Court to determine is: old the evidence before the Board make the question of whether there has been a sufficient change in the neighborhood since the original zoning to warrant the reclassification, fairly debatable.

This Court is of the opinion that the evidence presented requires an affirmative answer to this question. There was certainly substantial evidence of extensive reclassification and/or the granting of special exceptions in the general area of the subject property. As a matter of fact, some thirteen changes, either by way of reclassification or special exceptions have taken place since the adoption of the map.

The development of Delvale Boulevard was a substantial change in the neighborhood, and many cases have said that construction of highways and widening of highways amount to sufficient change for reclassification. This was clearly developed in the case of Jobar Corp. v. Rodgers Forge, 236 Md. 106. This case further set forth the rule by which this Court is to be governed in a decision in the instant case, and it was clearly stated on Pages 120-121:

"It is obvious that the Board could have been more specific and definite in its findings of fact; however, it is certain that the Board found that there had been change in the neighborhood and error in the original zoning sufficient to justify the reclassification (its other findings clearly meet the test of being fairly debatable, so it will be unnecessary to discuss them further). We have stated time after time that it is not the function of the courts to move or remove, and the courts will not substitute their judgments for that of the expertise of the zoning officials. It is only where there is no room for reasonable debate or where the record is devoid of substantial, supporting facts that the courts are justified in reversing a decision of the Board, or declaring its actions arbitrary or capricious. See Baltimore County Council v. Erdmann, 211 Md. 197; Tennak v. Board, 212 Md. 6; and East Ridge, Inc. v. Baltimore, 222 Md. 446, for three of the many Maryland cases so holding. Therefore, we must apply these tests to the evidence produced before the Board in order to determine the case at bar."

It is not the province of this Court, moreover, to resolve the various conflicts in the evidence before the Board if there was,

For the reasons stated and in conformity with the foregoing opinion, it is this 28th day of September, 1966, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals of Baltimore County dated June 8, 1966, be and the same is hereby affirmed.

John H. McPherson
JUDGES

MRS. FRANKLIN RAGAN,
et al
VS
R. BRUCE ALDERMAN,
W. GILES PARKER and
JOHN A. SLOWIK,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 8
Folio No. 111
File No. 3568

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

20170 ENTRIES FROM DOCKET OF
ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 64-89-R
Feb. 5, 1964
Petition of Herbert H. Hildesheim, et al for reclassification from an R-6 zone to an R-A zone on property located on NW/3 of Sollers Point Road and Towson Avenue, 12 District - filed
Mar. 7
Certificate of posting of property - filed
" 10
Certificate of Publication in newspaper - filed
" 26
At 11:00 a.m. hearing held on petition by Zoning Commissioner - case held sub curia
Apr. 22
Order of Zoning Commissioner DENYING reclassification
Order of Appeal to County Board of Appeals from Order of Zoning Commissioner

LAND SURVEYS • LOTS • PLATS • SUBDIVISIONS • TOPOGRAPHICAL • LOCATION • SUBDIVISIONS • ADJACENT • UTILITIES
DRAINAGE • SEWER • WATER • RAILROADS • ZONING CONSULTATION • CONTRACTING SERVICE • TESTIMONY

Herbert H. Hildeheim - #64-89-4

The only expert witness for the protests was Jerome B. Wolff, an eminently qualified expert in the sanitary sewer and drainage field who had studied the storm drainage problem in this area. He felt that the apartments might increase the runoff on this particular property but under any circumstance would be not more than a three to five percent increase over present conditions. He further stated that the site plan proposed the use of a box culvert which would be adequate to cure any difficulty caused by run-off above grade or on the subject property but stated that, in his opinion, the flooding was caused by a backup where the storm water ran close to the B. and O. Railroad which is a considerable distance downgrade from the subject property. He felt the 42 inch pipes presently used for drainage were inadequate. He also stated that the development of the property for R-G or R-d homes would aggravate the problem as much as the proposed apartments, and he agreed with Mr. Mueller that "a box culvert would be more than sufficient" to solve the problem while retaining his opinion that larger facilities would still be needed downstream. He, at least partly, agreed with the development figures stated by Mr. Mueller and Mr. Hooks.

It is the Board's opinion that the County requirements for the allowance of construction in this area would require a satisfactory arrangement to adequately cope with the storm water problem. At the end of this case a statement was made for the record by counsel for the petitioner that Mr. Hooks was willing to do anything necessary to clear up the drainage situation and specifically by entering into an agreement with the County, if possible, to extend the box culvert or other satisfactory drainage from the subject property to the railroad.

Under the above circumstances and in consideration of all the facts the Board finds, as a fact, that there should be a reclassification of this property because

1. The cost of development under present zoning would be so high as to be prohibitive economically if not high enough to amount to confiscation
2. There was error in the original zoning of this property on the basis of the testimony as outlined above, and
3. That there have been substantial changes in the neighborhood since 1956 sufficient by themselves to warrant the requested rezoning

The requested rezoning from R-d to R-A will, therefore, be granted.

Herbert H. Hildeheim - #64-89-4

ORDER

For the reasons set forth in the foregoing Opinion, it is this 8th day of June, 1966 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

W. Allen Parker
W. Allen Parker, Acting Chairman

John A. Slawik
John A. Slawik

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Herbert H. Hildeheim and *Herbert H. Hildeheim* legal owners, 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 R-d to R-A and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for residential apartments.

Property is zoned in a manner in which it cannot be used; therefore, an error in the original zoning.

See Attached Description

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

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

Let us agree, as by express agreement 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.

As REQUESTED, MOORE, PRESIDENT
Herbert H. Hildeheim
DOH LSA APARTMENTS, INC.
Contract purchaser
Address **9233 BELLEFORE AVENUE**
TOWSON, MARYLAND 21204

Herbert H. Hildeheim
Herbert H. Hildeheim
Legal Owner
Address **7939 SOLLERS POINT ROAD**
BALTIMORE, MARYLAND 21208

Petitioner's Attorney
SEANSON BOWEN
22 W. Potosi Ave. Towson, Md.
1100AM 3/24/66

ORDERED BY THE Zoning Commissioner of Baltimore County, this 5th day of February, 1966, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 180, County Office Building in Towson, Baltimore County, on the 26th day of March, 1966, at 11:00 o'clock A.M.

SEND ALL NOTICES TO:
A.J. Mullin

RE: PETITION FOR RECLASSIFICATION

from an R-d zone to an R-A zone
NW/4 SOLLERS POINT ROAD and
TOWSON AVENUE,
12th District
Herbert H. Hildeheim, et al
Petitioners

BEFORE

COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 64-89-4

OPINION

This is an application for the rezoning from R-d to R-A of a tract of approximately fourteen (14) acres on the northwest side of Sollers Point Road and Towson Avenue in the Twelfth District of Baltimore County. This property was zoned R-d on the map adopted May 1st, 1956 and is part of a larger tract owned by Mr. and Mrs. Herbert H. Hildeheim, who have disposed of a large part of their property for individual home development and who still live on the premises where they expect to remain. The Dunlop Apartments, Inc. is the contract purchaser who plans to build garden type apartments with approximately 120 units.

Mr. A. Michael Hooks, President of Dunlop Apartments, testified that he had been building apartments in this area for over fourteen years, a number of which may be seen on petitioner's exhibit #1 on aerial photo of the Dunlop area which, incidentally, also shows the present situation with respect to the development of the land in this area. He testified from his experience that the cost of land preparation for development of this land for normal R-d purposes would be \$6,641 per lot which is an extraordinarily high cost to be prohibitive because from his experience the maximum feasible amount to be spent for land development in an R-d area would be from \$2,500 to \$3,000. He further testified, from his experience, that there was a large demand for apartments in this area and that the Dunlop Apartments and others in the area are completely filled up even with a more than average turnover. The difficulty with the land development situation is in a large degree caused by the topography of the area which is swampy and has been, in the past, subject to flooding during periods of heavy rainfall.

Mr. Joseph Thompson, an engineer and a well qualified expert, had made a study of the property and the proposed plan for development, and had made traffic counts in the vicinity. Delvalle Avenue, a new and modern thoroughfare, was not in existence at the time of the map, and has recently been extended south to Sollers Point Road along the east side of the property which, in his opinion, has completely changed the picture as to possible traffic congestion and access to the proposed apartment.

Mr. A. Z. Mueller, a qualified land surveyor and registered civil engineer, is a former County Commissioner, Zoning Commissioner, and County Councilman.

Herbert H. Hildeheim - #64-89-4

men of Baltimore County, testified that he had prepared the site plan presented as petitioner's exhibit #2, that water and sewer were available in adequate supply, and this indeed was stipulated by counsel for the protestants. His site plan includes the replacement of the present open ditch which is now used to carry off storm water coming into it through one 42 inch culvert at the north end and drained by two 42 inch pipes going out at the southwest corner of the property. His proposed replacement was a 4 x 8 foot box culvert to go through the entire tract to carry off the storm water which, under present conditions, is apparently the cause of flooding at times in the immediate neighborhood. In his opinion, this box culvert would be more than sufficient for the purpose of relieving the present drainage situation. He confirmed Mr. Hooks' testimony as to the prohibitive cost of developing this land for normal R-d purposes. He further testified that he was on the Board of County Commissioners at the time of the adoption of the zoning map and that they knew nothing of the plans for the construction of Delvalle Avenue if there were, in fact, any in existence at that time, and he further stated that there was an error in the original zoning because even at that time it would have been impossible to build R-d houses on this tract. He further listed at least twelve changes in zoning in the neighborhood since 1956 which will be found in the record in his testimony which he felt, with the construction of Delvalle Avenue, amounted to a sufficient change in the neighborhood to warrant the rezoning of this property even if there had not been an error in the original zoning.

Mr. Frederick P. Klose, an expert real estate developer and appraiser, submitted numerous photos of the property (petitioner's exhibit #3) which group of photos show the present drainage condition, and he confirmed Mr. Mueller's testimony as to changes in the area since 1956 and submitted a list (petitioner's exhibit #9). In his opinion, the highest and best use of this land was for residential apartments, the cost of R-d development would be prohibitive, that apartments would enhance the value of other property in the area, and that the construction as planned would eliminate the storm water drainage difficulties which already exist.

The protestants case included testimony by five residents of the neighborhood whose principal objection seemed to be against the presently existing situation which causes their lots to be flooded in times of extraordinary run-off of storm water, and some of them testified that they did not like the widening of Sollers Point Road or Towson Avenue because of an increased hazard to their particular properties because of the road improvements. This last objection is not well taken because the improvements would occur regardless of what use was made of the subject tract. The objection with respect to the flooding the Board finds is untenable because from the testimony and other evidence the proposed use would probably tend to cure this situation and certainly could not possibly make it any worse than it is at present.

MULLER, RAPHAEL & ASSOCIATES, INC.
SURVEYORS & ENGINEERS
201-209 CHANDLER AVENUE, TOWSON, MD. 21204
MADE BY: RALPH MULLER

DESCRIPTION FOR HILDEHEIM PROPERTY ZONING

January 27, 1966
BEGINNING for the same at the point of intersection of the center lines of Sollers Point Road (45' wide) and Towson Avenue (40' wide) as shown on the Plat of Willow Terraces and recorded among the Land Records of Baltimore County in Plat Book GLB-23, Folio 144, March 27, 1957, said point of beginning being also at the end of the 1st or S46°E 15-6/10 perch line of the 2nd parcel of land described in a deed from Claude A. Hanley to Max and Florence Hildeheim and recorded among the Land Records of Baltimore County in Liber 976, Folio 92, on May 20, 1936, running thence and binding on the centerline of Towson Avenue and the 2nd or N24°E 67% perch line of aforesaid deed, and running and binding on the aforesaid deed N2°30'00"E 740.13' to the end of the 1st or S24°W 165'-74" line of the 3rd parcel of land described in aforesaid deed Hanley to Hildeheim, thence leaving the centerline of Towson Avenue and the 2nd or N24°E 67% perch line of aforesaid deed, and running and binding on the 2nd, 3rd and 4th lines of aforesaid deed, and the three following courses and distances: (1) S88°15'E 682.33' to intersect the N24°W 202 perch line of the 2nd parcel of land from M. J. Bryson to J. L. Sutton and to intersect the 3rd or N34°E 20 perch line of land from Hildeheim to al and recorded among the Land Records of Baltimore County in Liber 237, Folio 256, thence binding on part of the aforesaid N24°W 202 perch line of Bryson to Sutton and on part of the aforesaid 3rd or N34°E 20 perch line of Hildeheim to Poreski, thence leaving the aforesaid N24°W 202 perch line of Bryson to Sutton and running and binding on the 4th or N88°W 41.7 perch line of land of aforesaid deed Hildeheim to Poreski, and running and binding reversely on the 3rd or S88°W 41-7/10 perch line of land from Lippincott et al to Kaiphas et al and recorded among the Land Records of Baltimore County in Liber 211, Folio 132; (2) N88°15'E 682.67' to intersect the centerline of Towson Avenue and the 2nd or N24°E 67% perch line of Bryson to Sutton and running and binding on the aforesaid 2nd or N24°E 67% perch line of Bryson to Sutton and the remainder of the aforesaid 2nd or N24°E 67% perch line of aforesaid deed Hanley to Hildeheim

It is not the province of this Court, moreover, to resolve the various conflicts in the evidence before the Board if there was

in fact, any evidence of a substantial nature supporting and justifying the Board's action. In Motherhead v. Bd. of Comm'rs, 240 Md. 365 (decided November 18, 1965). The Court in quoting from Judge Hammond's opinion in Board v. Oak Hill Farms, 232 Md. 274 p. 203 stated at pages 371-372 as follows:

"...the courts have exercised restraint so as not to substitute their judgments for that of the agency and not to choose between equally permissible inferences or make independent determinations of fact, because to do so would be encroaching a non-judicial role. Rather, they have attempted to decide whether a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the facts and circumstances presented by the entire record. "In the cases dealing with consideration of the weight of the evidence, the matter seems to have come down to whether, all that was before the agency considered, its action was clearly erroneous, or to use the phrase which has become standard in Maryland zoning cases, not fairly debatable."

See also the following cases: Finney v. Hall, 241 Md. 224 (decided Feb. 2, 1966); Hill v. The Johns Corp., 242 Md. 16 (decided March 15, 1966); Bonnie View Club v. Glass, 242 Md. 46 (decided March 22, 1966); Northwich v. Blum, 242 Md. 84 (decided March 29, 1966); Board v. Farr, 242 Md. 151 (decided April 26, 1966); and Yonah v. McCool, 242 Md. 371 (decided April 29, 1966).

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

For the reasons stated and in conformity with the foregoing Opinion, it is this 28th day of September, 1966, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals of Baltimore County dated June 8, 1966, be and the same is hereby affirmed.

John H. Maguire
John H. Maguire
JUDGE

MRS. FRANKLIN RAGAN,
et al.
vs.
B. BRUCE ALDERMAN,
W. GILES PARKER and
JOHN A. SLOWIK,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

Misc. Docket 8, Folio 111
Case No. 3560

Mr. Clerk:

Please enter an appeal to the Court of Appeals of Maryland from the order entered in the above entitled cause on September 28, 1966.

David N. Bates

Johnson Bowie
Attorneys for Plaintiffs

I HEREBY CERTIFY that copy of the foregoing was mailed October 4th, 1966, to L. Robert Evans, Esq., Jefferson Building, Towson, Maryland 21204, Atty. for Herbert H. Hildeheim, et al.

Johnson Bowie
Of counsel for Plaintiffs

*Rec'd 10-21-66
9:30 AM*

MRS. FRANKLIN RAGAN,
et al.
vs.
B. BRUCE ALDERMAN,
W. GILES PARKER and
JOHN A. SLOWIK,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 8
Folio No. 111
File No. 3560

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

RE. CLARK:

Please file, etc.

Harriet H. Hildeheim
County Board of Appeals
of Baltimore County

MRS. FRANKLIN RAGAN,
et al.
vs.
B. BRUCE ALDERMAN,
W. GILES PARKER and
JOHN A. SLOWIK,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 8
Folio No. 111
File No. 3560

TO THE MEMORANDUM, THE JUDGES OF SAID COURT:

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

NOTING RETURNS FROM DOCKET OF
ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 64-89-2
Feb. 5, 1964
Petition of Herbert H. Hildeheim, et al. for redlined location from an R-1 zone to an R-1 zone on property located on NW 1/2 of Section 14, T14N, R14E, and Town of Towson, 12 District - filed
Order of Zoning Commission directing advertisement and posting of property - date of hearing set for March 28, 1964 at 11:00 a.m.
Mar. 7
Certificate of posting of property - filed
" 10
Certificate of Publication in newspaper - filed
" 11
At 11:00 a.m. hearing held on petition by Zoning Commissioner - case held sub curia
" 11
Order of Zoning Commissioner MEETING reclassification
Apr. 22
Order of Appeal to County Board of Appeals from Order of Zoning Commissioner

No. 64-89-2 (Hildeheim) - 2 -

Mar. 31, 1966
May 3
June 8
July 7
" 7
" 14
Aug. 3
Hearing on appeal before County Board of Appeals
case held sub curia
Order of County Board of Appeals granting reclassification
Order of Appeal filed in the Circuit Court for Baltimore County
Certificate of Notice sent to all interested parties
Petition to accompany Order for Appeal filed in Circuit Court for Baltimore County
Transcript of Testimony filed - 1 volume

Petitioners' Exhibit No. 1 - Large (approx. 2'x3') B & W aerial photo (in closed, Board of Appeals office)
" 2 - Flat of subject site by Muller Raphael & Associates, 3/23/64 (Revised)
" 3 - Approx. 18"x30" colored picture, artist conception of appearance (attorney for petitioners has exhibit)
" 4 - Topographical map, colored
" 5 - (a,b and c) B & W photos, approx. 8"x10"
" 6 - (a,b and c) B & W photos, approx. 8"x10"
" 7 - Topographical photo-grammetric map showing drainage area, 1954
" 8 - (a-c inclusive) photos
" 9 - List of zoning changes on map since adoption

Protestants' Exhibit A - 1 (three 12" - Photos (Quick) showing flooding

Aug. 8
Recording proceedings filed in the Circuit Court for Baltimore County
Record of proceedings pursuant to which said Order was entered and said Board action are permanent records of the Zoning

No. 64-89-2 (Hildeheim) - 3 -

Department of Baltimore County, as are also the use district maps, and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations, together with the zoning use district map used in this petition or whenever directed to do so by this Court.

Respectfully submitted,

Harriet H. Hildeheim
County Board of Appeals
of Baltimore County

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND
TOWSON, MARYLAND 21204

September 28, 1966

Johnson Bowie, Esq.
22 N. Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. Bowie:

Re: Franklin Ragan (Mrs.) et al.

The County Board of Appeals of Baltimore County
Harriet Hildeheim, et al.
Dun Lee Apartment Corporation
Misc. Docket 8, Folio 111
Case No. 3560

Enclosed herewith is my Opinion and Order of Court in the above entitled matter.

Very truly yours,

John H. Maguire
John H. Maguire

JHM:aw
enclosure

CC: David N. Bates, Esq.
2 Market Pl., Balto. 21222, Md.
L. Robert Evans, Esq.
Jefferson Bldg., Balto. 21204, Md.
B. Bruce Alderman, Chairman,
County Bd. of Appeals-21204
John C. Snow, Zoning Comm.
of Baltimore County-21204

*Rec'd 9-28-66
9:55 AM*

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Herbert H. Hildesheim and
Dun Lea Apartments, Inc. legal owners of the property situate in Baltimore
County and which is described in the description and plat attached hereto and made a part hereof,
herby petition (1) that the zoning status of the herein described property be reclassified, present
to the Zoning Law of Baltimore County, from an R-4 Zone to an R-4 Zone, 12th District -
RA 3110/4
same, for the following reason:
Property is used in a manner in which it cannot be used
therefore, an error in the original zoning.

See Attached Description

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

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

Herbert H. Hildesheim
MICHAEL MOORE, PRESIDENT
DUN LEA APARTMENTS, INC.
Address 8333 BELLEHUA AVENUE
TOWSON, MARYLAND 21204
Protestant's Attorney

Address 7090 SOLLERS POINT ROAD
BALTIMORE, MARYLAND 21222
Protestant's Attorney

ORDERED BY The Zoning Commissioner of Baltimore County, this 26th day of March, 1964, at 11:00 o'clock
A.M.

Zoning Commissioner of Baltimore County
(over)

RE: PETITION FOR
RECLASSIFICATION
FROM AN R-4 ZONE TO AN
R-4 ZONE, 12TH DISTRICT -
HILDESHEIM AND HILDA,
DUN LEA APARTMENTS, INC.
Cont. Par. 64-89-R

ORDER FOR APPEAL

MR. CLERK:

Please enter an Appeal in the above captioned case to
the Board of Appeals for Baltimore County.

John Warfield Armiger
406 Jefferson Building
Towson 4, Maryland
Valley 5-7666
Attorney for Petitioners



100 OFFICE
AND BOARD ROOMS
TOWSON, MARYLAND

MR. WARFIELD ARMIGER, Esq.
406 JEFFERSON BUILDING
TOWSON 4, MARYLAND
VALLEY 5-7666
ATTORNEY FOR PETITIONERS

ORDER TO ORDER OF APPEAL TO
CITY OF BALTIMORE COUNTY
AND CERTIFIED COPIES OF PROCEEDINGS
BEFORE THE ZONING COMMISSIONER AND
BOARD OF APPEALS OF BALTIMORE COUNTY

MR. CLERK:

Please file, as.

WILLIAM S. HILDESHEIM
County Board of Appeals
of Baltimore County

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
111 N. CONNELL AVE.
TOWSON 4, MARYLAND
APR 22 1964

MICHAEL H. DILL
DIRECTOR

JOHN J. HINE
100 OFFICE BUILDING
TOWSON 4, MARYLAND

March 11, 1964

Johnson Davis, Esq.,
Loyola Building
Towson 4, Maryland

Re: Reclassification of property
of Herbert H. Hildesheim and
Hilda Hildesheim, N.W. Side
Sollers Point Road and Town
Ave., 12th District from R-4
Zone to an R-4 Zone -
No. 64-89-R

Dear Mr. Davis:

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

Very truly yours

Zoning Commissioner

cc: Mr. Willie H. Adams,
6905 Duncannon
Dundalk 22, Md.
David P. Doyle, Esq.,
2 Market Place
Baltimore 22, Md.

Johnson Davis, Esq.,
Loyola Building
27 West Pennsylvania Ave.,
Towson 4, Maryland

Re: Reclassification of property
of Herbert H. Hildesheim -
N.W. Side Sollers Point Road
and Town Ave., 12th District
No. 64-89-R

Dear Mr. Davis:

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

You will be duly notified of the date and
time of appeal hearing then scheduled by the Board of Appeals.

Very truly yours

Zoning Commissioner

cc: Mr. A. J. Muller,
201 Courtland Ave.,
Towson 4, Md.
Mr. Willie H. Adams,
6905 Duncannon,
Dundalk 22, Md.

April 27, 1964

Johnson Davis, Esq.,
Loyola Building
27 West Pennsylvania Ave.,
Towson 4, Maryland

Re: Reclassification of property
of Herbert H. Hildesheim -
N.W. Side Sollers Point Road
and Town Ave., 12th District
No. 64-89-R

Dear Mr. Davis:

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

You will be duly notified of the date and
time of appeal hearing then scheduled by the Board of Appeals.

Very truly yours

Zoning Commissioner

cc: Mr. A. J. Muller,
201 Courtland Ave.,
Towson 4, Md.
Mr. Willie H. Adams,
6905 Duncannon,
Dundalk 22, Md.

March 11, 1964

Mr. Augustine J. Muller,
201 Courtland Avenue,
Towson 4, Maryland

Re: Petition for Reclassification
from R-4 Zone to R-4 Zone -
N.W. Side Sollers Point Road
and Town Ave., 12th District -
Herbert H. Hildesheim and Hilda
Hildesheim, Petitioners -
Dun Lea Apartments, Inc.,
Cont. Par. No. 64-89-R

Dear Mr. Muller:

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

Very truly yours

Zoning Commissioner

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, Herbert H. Hildesheim, 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 re-classified, pursuant to the Zoning Law of Baltimore County, from an R-4 zone to an R-1 zone; for the following reason:

Property is owned in a manner in which it cannot be used; therefore, an error in the original zoning.

See Attached Description

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

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

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

MICHAEL MOORE, PRESIDENT
 DUN LEE APARTMENTS, INC.
 Contract purchaser
 Address: 8131 BELLEHUA AVENUE
 TOWSON, MARYLAND 21204
 Petitioner's Attorney

HERBERT H. HILDESHEIM
 Legal Owner
 Address: 7030 SOLLERS POINT ROAD
 BALTIMORE, MARYLAND 21222
 Protester's Attorney

ORDERED BY The Zoning Commissioner of Baltimore County, this 5th day of February, 1964, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 26th day of March, 1964, at 10:00 o'clock P.M.

(over)

RE: PETITION FOR RECLASSIFICATION
 FROM AN R-4 ZONE TO AN R-1 ZONE
 SOLLERS POINT ROAD AND TOWSON AVENUE, 12th DISTRICT - HERBERT H. HILDESHEIM AND WIFE, DUN LEE APARTMENTS, INC.
 CONT. PAR. 64-89-R
 BALTIMORE COUNTY

ORDER FOR APPEAL

MR. CLERK:

Please enter an Appeal in the above captioned case to the Board of Appeals for Baltimore County.

John Warfield Arringer
 406 Jefferson Building
 Towson 4, Maryland
 Valley 5-7666
 Attorney for Petitioners



LAW OFFICE
 200 WEST MONROE STREET
 TOWSON, MARYLAND

MRS. FRANKLIN HAGAN, et al
 vs.
 W. BRUCE ALDERMAN, W. GILES PARKER and JOHN A. SLOWIK, consisting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
 IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
 AT LAW
 Misc. Docket No. 8
 Folio No. 111
 File No. 3548

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

MR. CLERK:

Please file, do.

RUPERT S. BODENHEIMER
 County Board of Appeals of Baltimore County

April 27, 1964
 No. 64-89-R - Herbert H. Hildesheim, et al

Petition, description of property and Order of Zoning Commissioner
 Certificate of posting
 Certificate of advertisement
 Comments of Office of Planning
 Appeal

Photogrammetric Map
 Letter, dated March 11, 1964, from Christ Lutheran Church
 4 plates submitted with petition

John Warfield Arringer, Rec.
 Counsel for petitioners
 Jefferson Building
 Towson 4, Md.

Johnson Bowie, Rec.
 Council for protestants
 Towson 4, Md.

Mr. Willie H. Adams,
 6805 Dunesway
 Dundalk 22, Md.
 Protester -
 Dundalk Lions Club

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING
 106 W. MONROE ST.
 TOWSON 4, MARYLAND
 TEL. 5-3000

MICHAEL H. DEAN
 Director
 JOHN J. ROSE
 Asst. Dir. of Planning

March 11, 1964

Johnson Bowie, Rec.
 Legal Federal Building
 Towson 4, Maryland

Re: Reclassification of property of Herbert H. Hildesheim and wife, Hildesheim, W. Side Sollers Point Road and Towson Ave., 12th District from "R-4" zone to an "R-1" zone - No. 64-89-R.

Dear Mr. Bowie:

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

Very truly yours

 Zoning Commissioner

cc: Mr. Willie H. Adams,
 6805 Dunesway
 Dundalk 22, Md.

David S. Boyle, Rec.
 2 Market Place
 Baltimore 22, Md.

Johnson Bowie, Rec.
 Legal Building
 27 West Pennsylvania Ave.
 Towson 4, Maryland

Re: Reclassification of property of Herbert H. Hildesheim and wife, Hildesheim, W. Side Sollers Point Road and Towson Ave., 12th District No. 64-89-R.

Dear Mr. Bowie:

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

You will be duly notified of the date and time of appeal hearing then scheduled by the Board of Appeals.

Very truly yours

 Zoning Commissioner

cc: Mr. J. J. Hillier,
 200 West Monroe Street
 Towson 4, Md.

Mr. Willie H. Adams,
 6805 Dunesway
 Dundalk 22, Md.

Johnson Bowie, Rec.
 Legal Building
 27 West Pennsylvania Ave.
 Towson 4, Maryland

Re: Reclassification of property of Herbert H. Hildesheim and wife, Hildesheim, W. Side Sollers Point Road and Towson Ave., 12th District No. 64-89-R.

Dear Mr. Bowie:

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

You will be duly notified of the date and time of appeal hearing then scheduled by the Board of Appeals.

Very truly yours

 Zoning Commissioner

cc: Mr. J. J. Hillier,
 200 West Monroe Street
 Towson 4, Md.

Mr. Willie H. Adams,
 6805 Dunesway
 Dundalk 22, Md.

Mr. Augustine J. Hillier,
 201 Courtland Avenue,
 Towson 4, Maryland

Re: Petition for Reclassification from "R-4" zone to "R-1" zone - W. Side Sollers Point Road and Towson Ave., 12th District - Herbert H. Hildesheim and wife, Hildesheim, Petitioners - Dunlee Apartments, Inc., Cont. Par. No. 64-89-R.

Dear Mr. Hillier:

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

Very truly yours

 Zoning Commissioner

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO.....Mr. James A. Dyer, Chairman.....
Zoning Advisory Committee
FROM.....Capt. Paul H. Heinicke.....
Fire Bureau
SUBJECT.....Herbert H. Hildeheim.....NW/8 Sellers Point Road and Towson Avenue
District 12 - 2-3-4

March 31, 1964

Johnson Davis, Mayor
Legislative Building
Towson, Maryland

Re: Reclassification of property
of Herbert H. Hildeheim and
Hilda Hildeheim, NW/8
Sellers Point Road and Towson
Ave., 12th District, from
"R-6" to "R-4" Zone
See to me "R-4" Zone
See 6/6/64

Dear Mr. Mayor:

I have today passed my order denying the
reclassification, in the above matter, for reasons stated in
the attached copy of said order.

Very truly yours

Zoning Commissioner

cc: Mr. Willis R. Adams,
6005 Conway
Dundalk 22, Md.

David H. Salter, Esq.,
2 Market Place,
Baltimore 29, Md.



Mr. Albert Mueller
220 Chestnut Ave.
Towson 4, Maryland

Re: Petition for Reclassification for Herbert H.
Hildeheim
NW/8-4

Dear Sir:

We are enclosing a copy of comment from the Fire Bureau, in
reference to the above petition.

Yours very truly,

A/H

JAMES R. DYER

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING

TOWSON 4, MARYLAND

February 25, 1964

SUBJECT: Petition for Reclassification from
R-6 to R-4 for Herbert H. Hildeheim

The Zoning Advisory Committee has reviewed the subject petition and
makes the following comments:
The status of public roads such as widening, extension
by the Project Planning Section of this office, prior to hearing date. The interior portion and
circulation pattern as indicated on this plan is not satisfactory and should be subject to
TRAFFIC DEPARTMENT: approval of this office, if the reclassification is granted.
See above comment.

REMARKS OF ENGINEERING: Sellers Point Road is proposed for a 70 foot R/W. Towson
Ave. and all other streets will be 60 feet R/W.

FIRE DEPARTMENT: No comment

STATE ROAD COMMISSION: No comment

REDEVELOPMENT COMMISSION: No comment

FIRE DEPARTMENT: No comment

INDUSTRIAL DEPARTMENT: No comment

BUILDINGS DEPARTMENT: No comment

BOARD OF EDUCATION: No comment

cc: Albert G. Gandy - Office of Planning & Zoning
Albert Salter - Traffic
George Salter - Bureau of Engineering

JED/ba

Yours very truly,

James R. Dyer
JAMES R. DYER

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to an R-4 zone
NW/8 Sellers Point Road and
Towson Avenue,
12th District
Herbert H. Hildeheim, et al
Petitioners
: COUNTY BOARD OF APPEALS
: OF
: BALTIMORE COUNTY
: No. 64-89-R

OPINION

This is an application for the rezoning from R-6 to R-4 of a tract of approx-
imately fourteen (14) acres on the northeast side of Sellers Point Road and Towson Avenue in
the Twelfth District of Baltimore County. This property was zoned R-6 on the map adopted
May 1st, 1956 and is part of a larger tract owned by Mr. and Mrs. Herbert H. Hildeheim
who have disposed of a large part of their property for individual home development and
who still live on the premises where they expect to remain. The Dunlee Apartments, Inc.
is the contract purchaser who plans to build garden type apartments with approximately 230
units.

Mr. A. Michael Hooks, President of Dunlee Apartments, testified that he
had been building apartments in this area for over fourteen years, a number of which may be
seen on petitioner's exhibit #1 an aerial photo of the Dundalk area which, incidentally,
also shows the present situation with respect to the development of the land in this area.
He testified from his experience that the cost of land preparation for development of this
land for normal R-6 purposes would be \$6,641 per lot which is so inordinately high as to be
prohibitive because from his experience the maximum feasible amount to be spent for land
development in an R-6 area would be from \$2,500 to \$3,000. He further testified, from
his experience, that there was a large demand for apartments in this area and that the
Dunlee Apartments and others in the area are completely filled up even with a more than
average turnover. The difficulty with the land development situation is to a large degree
caused by the topography of the area which is swampy and has been, in the past, subject to
flooding during periods of heavy rainfall.

Mr. Joseph Thompson, an engineer and a well qualified expert, had made a
study of the property and the proposed plan for development, and had made traffic counts
in the vicinity. Delvale Avenue, a new and modern thoroughfare, was not in existence
at the time of the map, and has presently been extended south to Sellers Point Road along
the east side of the property which, in his opinion, has completely changed the picture as
to possible traffic congestion and access to the proposed apartments.

Mr. A. J. Mueller, a qualified land surveyor and engineer and who, in-
cidentally, is a former County Commissioner, Zoning Commissioner, and County Council-

Herbert H. Hildeheim - #64-89-R

man of Baltimore County, testified that he had prepared the site plan presented as petitioner's
exhibit #2, that water and sewer were available in adequate supply, and this indeed was so
as stipulated by counsel for the protestants. His site plans include the replacement of the
present open ditch which is now used to carry off storm water coming into it through one 42
inch culvert at the north end and drained by two 42 inch pipes going out at the southwest
corner of the property. His proposed replacement was a 4 x 8 foot box culvert to go
through the entire tract to carry off this storm water which, under present conditions, is
apparently the cause of flooding at times in the immediate neighborhood. In his opinion,
this box culvert would be more than sufficient for the purpose of relieving the present drain-
age situation. He confirmed Mr. Hooks' testimony as to the prohibitive cost of developing
this land for normal R-6 purposes. He further testified that he was on the Board of County
Commissioners at the time of the adoption of the zoning map and that they knew nothing of
the plans for the construction of Delvale Avenue if there were, in fact, any in existence at
that time, and he further stated that there was an error in the original zoning because even
at that time it would have been impossible to build R-6 houses on this tract. He further
listed at least twelve changes in zoning in the neighborhood since 1956 which will be found
in the record in his testimony which he felt, with the construction of Delvale Avenue,
amounted to a sufficient change in the neighborhood to warrant the rezoning of this property
even if there had not been an error in the original zoning.

Mr. Frederick P. Klaus, an expert real estate developer and appraiser, sub-
mitted numerous photos of the property (petitioner's exhibit #3) which group of photos show
the present drainage condition, and he confirmed Mr. Mueller's testimony as to changes in
the area since 1956 and submitted a list (petitioner's exhibit #4). In his opinion the
highest and best use of this land was for residential apartments, the cost of R-6 development
would be prohibitive, that apartments would enhance the value of other property in the area,
and that the construction as planned would eliminate the storm water drainage difficulties
which already exist.

The protestants case included testimony by five residents of the neighborhood
whose principal objection seemed to be against the presently existing situation which causes
their lots to be flooded in times of extraordinary run-off of storm water, and some of them
testified that they did not like the widening of Sellers Point Road or Towson Avenue because
of an increased hazard to their particular properties because of the road improvements. This
last objection is not well taken because the road improvements would occur regardless of
what use was made of the subject tract. The objection with respect to the flooding the
Board finds is untenable because from the testimony and other evidence the proposed use
would probably tend to cure this situation and certainly could not possibly make it any worse
than it is at present.

Herbert H. Hildeheim - #64-89-R

The only expert witness for the protestants was Jerome B. Wolff, an
eminently qualified expert in the sanitary sewer and drainage field who had studied the
storm drainage problem in this area. He felt that the apartments might increase the run-
off on this particular property but under any circumstance would be not more than a three
to five percent increase over present conditions. He further stated that the site plan pro-
posed the use of a box culvert which would be adequate to cure any difficulty caused by
run-off above grade or on the subject property but stated that, in his opinion, the flooding
was caused by a backup where the storm water ran close to the B. and O. Railroad which is
a considerable distance downgrade from the subject property. He felt the 42 inch pipes
presently used for drainage were inadequate. He also stated that the development of the
property for R-6 or R-6 homes would aggravate the problem as much as the proposed apart-
ments, and he agreed with Mr. Mueller that "a box culvert would be more than sufficient"
to solve the problem while retaining his opinion that larger facilities would still be needed
downstream. He, at least partly, agreed with the development figures stated by Mr.
Mueller and Mr. Hooks.

It is the Board's opinion that the County requirements for the allowance of
construction in this area would require a satisfactory arrangement to adequately cope with
the storm water problem. At the end of this case a statement was made for the record by
counsel for the petitioner that Mr. Hooks was willing to do anything necessary to clear up
the drainage situation and specifically by entering into an agreement with the County, if
possible, to extend the box culvert or other satisfactory drainage from the subject property
to the railroad.

Under the above circumstances and in consideration of all the facts the
Board finds, as a fact, that there should be a reclassification of this property because

1. The cost of development under present zoning would be
so high as to be prohibitive economically if not high
enough to amount to confiscation.
2. There was error in the original zoning of this property
on the basis of the testimony as outlined above, and
3. That there have been substantial changes in the neigh-
borhood since 1956 sufficient by themselves to warrant
the requested rezoning.

The requested rezoning from R-6 to R-4 will, therefore, be granted.

Herbert H. Hildeheim - #64-89-R

ORDER

For the reasons set forth in the foregoing Opinion, it is this 2nd day
of June, 1966 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 1105,
subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Ed. Bruce Alderman, Acting Chairman
W. Giles Parker

W. Giles Parker
John A. Slawik

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James A. Ryan, Chairman
Zoning Advisory Committee
FROM: Capt. Paul H. Hilscheim
Fire Bureau
SUBJECT: Herbert H. Hilscheim, N.W. 2nd Sellers Point Road and Towson Avenue
District 12 - 2-3-4

- Arrangement of the entire development in poor because of the traffic pattern and dead end situation. Lack of parking for the swimming pool area could result in a serious traffic problem.
- Water mains, meters, and fire hydrants shall be of an approved type and installed in accordance with the Baltimore County Standard Design Manual. Spacing of fire hydrants is 500 feet apart as measured along an improved road, and within 300 feet from any dwelling. Hydrants, shall be located in a pattern approved by the Baltimore County Fire Bureau.

Contact Capt. Paul H. Hilscheim at Valley 5-7310 for information concerning above comments.



Mr. Alvin Mueller
201 Clifford Ave.
Towson 4, Maryland

Re: Petition for Reclassification for Herbert H. Hilscheim
64-89-2

Dear Sir:

We are enclosing a copy of comment from the Fire Bureau, in reference to the above petition.

Yours very truly,

JAMES A. RYAN

JH/ha

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING

TOWSON 4, MARYLAND

February 25, 1964

SUBJECT: Petition for Reclassification from R-6 to R-4 for Herbert H. Hilscheim

The Zoning Advisory Committee has reviewed the subject petition and makes the following comments: The status of public roads such as widening, extension by the proposed plan, and at this property, should be approved by the Planning Board of this office, prior to hearing date. The interior parking and circulation patterns as indicated on this plan is not satisfactory and should be subject to TRAFFIC DEPARTMENT approval of this office, if the reclassification is granted.

See Above comments.

REMARK: OF INTEREST: Sellers Point Road is proposed for a 70 foot R/W. Towson Ave. and all other streets will be 60 foot R/W.

HEALTH DEPARTMENT: No comment

STATE ROAD COMMISSION: No comment

REDEVELOPMENT COMMISSION: No comment

FIRE DEPARTMENT: No comment

INDUSTRIAL DEVELOPMENT: No comment

BUILDING DEPARTMENT: No comment

BOARD OF EDUCATION: No comment

cc: Albert Gandy, Office of Planning & Zoning
Albert Salam-Traffin
George Robinson, Bureau of Engineering

JH/ha

Yours very truly,

James A. Ryan

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to an R-4 zone :
N.W. 2nd Sellers Point Road and :
Towson Avenue, :
12th District :
Herbert H. Hilscheim, et al :
Petitioners :
BALTIMORE COUNTY :
No. 64-89-2

OPINION

This is an application for the rezoning from R-6 to R-4 of a tract of approximately fourteen (14) acres on the northwest side of Sellers Point Road and Towson Avenue in the Twelfth District of Baltimore County. This property was zoned R-6 on the map adopted May 1st, 1956 and is part of a larger tract owned by Mr. and Mrs. Herbert H. Hilscheim who have disposed of a large part of their property for individual home development and who still live on the premises where they expect to remain. The Dunlap Apartments, Inc. is the contract purchaser who plans to build garden type apartments with approximately 230 units.

Mr. A. Michael Hooks, President of Dunlap Apartments, testified that he had been building apartments in this area for over fourteen years, a number of which may be seen on petitioner's exhibit #1 on aerial photo of the Dundalk area which, incidentally, also shows the present situation with respect to the development of the land in this area. He testified from his experience that the cost of land preparation for development of this land for normal R-6 purposes would be \$6,641 per lot which is so inordinately high as to be prohibitive because from his experience the maximum feasible amount to be spent for land development in an R-6 area would be from \$2,500 to \$3,000. He further testified, from his experience, that there was a large demand for apartments in this area and that the Dunlap Apartments and others in the area are completely filled up even with a more than average turnover. The difficulty with the land development situation is to a large degree caused by the topography of the area which is swampy and has been, in the past, subject to flooding during periods of heavy rainfall.

Mr. Joseph Thompson, an engineer and a well qualified expert, had made a study of the property and the proposed plan for development, and had made traffic counts in the vicinity. Delvale Avenue, a new and modern thoroughfare, was not in existence at the time of the map, and has presently been extended south to Sellers Point Road along the east side of the property which, in his opinion, has completely changed the picture as to possible traffic congestion and access to the proposed apartments.

Mr. A. J. Mueller, a qualified land surveyor and engineer and who, incidentally, is a former County Commissioner, Zoning Commissioner, and County Council-

Herbert H. Hilscheim - 64-89-2

man of Baltimore County, testified that he had prepared the site plan presented as petitioner's exhibit #2, that water and sewer were available in adequate supply, and this indeed was so stipulated by counsel for the protestants. His site plans include the replacement of the present open ditch which is now used to carry off storm water coming into it through one 42 inch culvert at the north end and drained by two 42 inch pipes going out at the southwest corner of the property. His proposed replacement was a 4 x 8 foot box culvert to go through the entire tract to carry off the storm water which, under present conditions, is apparently the cause of flooding at times in the immediate neighborhood. In his opinion, this box culvert would be more than sufficient for the purpose of relieving the present drainage situation. He confirmed Mr. Hooks's testimony as to the prohibitive cost of developing this land for normal R-6 purposes. He further testified that he was on the Board of County Commissioners at the time of the adoption of the zoning map and that they knew nothing of the plans for the construction of Delvale Avenue if there were, in fact, any in existence at that time, and he further stated that there was an error in the original zoning because even at that time it would have been impossible to build R-6 houses on this tract. He further listed at least twelve changes in zoning in the neighborhood since 1956 which will be found in the record in his testimony which he felt, with the construction of Delvale Avenue, amounted to a sufficient change in the neighborhood to warrant the rezoning of this property even if there had not been an error in the original zoning.

Mr. Frederick P. Klaus, an expert real estate developer and appraiser, submitted numerous photos of the property (petitioner's exhibit #3) which group of photos show the present drainage condition, and he confirmed Mr. Mueller's testimony as to changes in the area since 1956 and submitted a list (petitioner's exhibit #4). In his opinion the highest and best use of this land was for residential apartments, the cost of R-6 development would be prohibitive, that apartments would enhance the value of other property in the area, and that the construction as planned would eliminate the storm water drainage difficulties which already exist.

The protestants case included testimony by five residents of the neighborhood whose principal objection seemed to be against the presently existing situation which causes their lots to be flooded in times of extraordinary run-off of storm water, and some of them testified that they did not like the widening of Sellers Point Road or Towson Avenue because of an increased hazard to their particular properties because of the road improvements. This last objection is not well taken because the road improvements would occur regardless of what use was made of the subject tract. The objection with respect to the flooding the Board finds is untenable because from the testimony and other evidence the proposed use would probably tend to cure this situation and certainly could not possibly make it any worse than it is at present.

Herbert H. Hilscheim - 64-89-2

The only expert witness for the protestants was Jerome B. Wolff, an eminently qualified expert in the sanitary sewer and drainage field who had studied the storm drainage problem in this area. He felt that the apartments might increase the run-off on this particular property but under any circumstances would be not more than a three to five percent increase over present conditions. He further stated that the site plan proposed the use of a box culvert which would be adequate to cure any difficulty caused by run-off above grade or on the subject property but stated that, in his opinion, the flooding was caused by a backup where the storm water ran close to the B. and O. Railroad which is a considerable distance downgrade from the subject property. He felt the 42 inch pipes presently used for drainage were inadequate. He also stated that the development of the property for R-6 or R-4 homes would aggravate the problem as much as the proposed apartment, and he agreed with Mr. Mueller that "a box culvert would be more than sufficient" to solve the problem while retaining his opinion that larger facilities would still be needed downstream. He, at least partly, agreed with the development figures stated by Mr. Mueller and Mr. Hooks.

It is the Board's opinion that the County requirements for the allowance of construction in this area would require a satisfactory arrangement to adequately cope with the storm water problem. At the end of this case a statement was made for the record by counsel for the petitioner that Mr. Hooks was willing to do anything necessary to clear up the drainage situation and specifically by entering into an agreement with the County, if possible, to extend the box culvert or other satisfactory drainage from the subject property to the railroad.

Under the above circumstances and in consideration of all the facts the Board finds, as a fact, that there should be a reclassification of this property because

- The cost of development under present zoning would be so high as to be prohibitive economically if not high enough to amount to confiscation
- There was error in the original zoning of this property on the basis of the testimony as outlined above, and
- That there have been substantial changes in the neighborhood since 1956 sufficient by themselves to warrant the requested rezoning

The requested rezoning from R-6 to R-4 will, therefore, be granted.

Herbert H. Hilscheim - 64-89-2

ORDER

For the reasons set forth in the foregoing Opinion, it is this 25th day of June, 1966 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

James A. Ryan
E. Brock Alderson, Acting Chairman

W. Giles Parker

John A. Shaw

HERBERT H. HILDESHEIM, ET AL
NW/S Sollers Point Road & Towson Avenue
Reclassification from an R-6 zone to an R-A zone

NO. 64-89-R
12th District
14.74 Acres

Feb. 5, 1964 Petition filed
Mar. 31 Reclassification DENIED by Z.C.
Apr. 22 Order of Appeal to County Board of Appeals filed
June 8, 1966 Reclassification GRANTED by the Board
July 7 Order for Appeal filed in the Circuit Court by Johnson Bowie, Esq. for Franklin Ragan (Mes.), et al
August 8 Record of proceedings filed in the Circuit Court (file #3528)
September 28 Board AFFIRMED - Judge Maguire
Oct. 20 Order for Appeal filed in Court of Appeals by David N. Bates, Esq. and Johnson Bowie, Esq.
Oct. 12, 1967 Order of C.B. of A. Affirmed by Court of Appeals (Horne, J.)

GRANTED

L. ROBERT EVANS
ATTORNEY AT LAW
TOWSON, MARYLAND 21204

September 20, 1965

VALLEY 8-2658

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

Re: Hildesheim Property
64-89-R

Dear Mr. Baldwin:

The above matter was postponed recently at the request of Jack Bowie, at which time I wrote your office and asked that it be re-scheduled around November 1st.

This morning I got a letter scheduling it for October 5th. I have cases set in Baltimore and Queen Anne's County for that week and expect to be in Court without a break from October 4 through October 7th or 8th.

Would you be kind enough to re-schedule this matter about November 1st if possible? Thanks.

Sincerely,

[Signature]

L. Robert Evans

LRE/j

cc: Johnson Bowie, Esquire

L. ROBERT EVANS
ATTORNEY AT LAW
TOWSON, MARYLAND 21204

September 8, 1965

VALLEY 8-2658

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

Re: Hildesheim Property
Reclassification 64-89-R

Dear Mr. Baldwin:

I received a copy of a letter from Mr. Bowie requesting a postponement in the above matter. I am agreeable to this, but I would like the case to be set up about November 1st or a little later, so that I can get my witnesses lined up again and be sure they will be at the hearing.

Thanking you for your kind attention to this matter, I am,

Sincerely yours,

[Signature]
L. Robert Evans

LRE/j

cc: Johnson Bowie, Esquire

JOHNSON BOWIE
ATTORNEY AT LAW
191 LUTHERA BUILDING
24 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

September 2, 1965

County Board of Appeals
County Office Building
Towson, Maryland 21204

Re: Petition of Herbert H. Hildesheim, et al. #64-89-R

Gentlemen:

The above entitled appeal has been set for Thursday, September 23, 1965.

As I am a member of the Property Review Board and already have two cases set in for that date, it would be appreciated if you would postpone this until the next available date.

This appeal was originally set for hearing on June 29, 1965, and was postponed at the request of the attorney for the appellants.

Thanking you for your consideration, I am

Very truly yours,

[Signature]
Johnson Bowie

JB#mb
CC- L. Robert Evans, Esq.

L. ROBERT EVANS
ATTORNEY AT LAW
TOWSON, MARYLAND 21204

June 11, 1965

VALLEY 8-2658

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

Dear Mr. Baldwin:

John Amberg has stricken his appearance as counsel in the above matter and I have been retained by the Petitioners, just last week. I have hired experts to begin work on our case, but I will not be able to be ready for a hearing on June 29th, 1965. Furthermore, I will be on active duty with the Army from July 3rd to July 17th.

I am requesting a postponement of the hearing date for about 45 days until around the middle of August which will give me time to prepare.

Very truly yours,

[Signature]
L. Robert Evans

LRE/j

CHRIST LUTHERAN CHURCH

CHURCH OFFICE
TOWSON, MARYLAND 21204
CHURCH TELEPHONE
ATTORNEY AT LAW

JOSEPH T. PASOLKA, PASTOR
7041 SOLLERS POINT ROAD
DUNDALK (BALTIMORE 23) MD.

March 11, 1964



Baltimore County Office
Department of Zoning
111 W. Chesapeake Ave.,
Towson, Md. 21204

Dear Sirs:

The property, part of which is across the street from our church, was briefly posted for zoning reclassification from R-6 Residence to R-A Apt. The date set for the hearing, March 26, is Thursday of Holy Week and will make it impossible for the pastor to attend. However, our congregation will be represented at the hearing.

Please enlighten us as soon as possible with regard to the type of apartment that is specified by R-A Apt. Zone. Also, please inform us specifically as to how many parking spaces must be provided by the builder per unit.

Very sincerely yours,

[Signature]
Joseph T. Pasolka, Pastor

July 7, 1966

Johnson Bowie, Esq.
Loyale Federal Building
Towson, Maryland 21204

Re: Zoning File No. 64-89-R
Herbert H. Hildesheim, et al,
Petitioners

Dear Mr. Bowie:

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 30 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 30 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 \$9.00 covering cost of certified copies of necessary documents.

Very truly yours,

[Signature]
Edith T. Elsenhorst, Secretary

May 16, 1967

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

Re: B/111/3566 Ragan vs. Hildesheim, et al

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,

[Signature]
Edith T. Elsenhorst, Secretary

Rec'd 6-14-65
3:15 PM

RECEIVED 1945 MAR 20	INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Municipal Building COURT HOUSE TOWSON, MARYLAND 21204	No. 38953 DATE 4/4/45
TO: John A. Mahan, Jr., Esq. 1200 Philadelphia Ave. Baltimore, Md. 21205	NAME: _____ COUNTY: Sevier	COUNTY: Sevier OFFICE: Sevier
SUBJECT: TO ADVERTISE ON: 4/5 - 4/11		
THIS IS A STATEMENT OF THE DEBTS DUE TO THE OFFICE OF FINANCE AND SERVICE WITH THESE DEBITMENTS.		
State of Tennessee, County of Sevier, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears on the records of the Office of Finance and Service of the County of Sevier, State of Tennessee.	SIGNED: _____ J. Mahan, Jr., Esq.	200 200

REMIT TO: County Board of Appeals
Room 300 County Office Building
Towson, Maryland 21204

64 7-1

Ephelitis
Bettner's

Phyllis (1951)
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cc: Johnnie Davis, Esq.
Mr. Ryan
Mr. Gervais
Board of Education


John Warfield Armiger
200 Padonia Road East
Cockeysville, Maryland 2103
666-0440

Rec'd 5-18-65
8:45am

BALTIMORE COUNTY, MARYLAND		No. 41095
COUNTY OFFICE OF FINANCE		DATE 12-24-57
Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21286		
To: Stewart & Ashman 203 W. Pennsylvania Avenue Towson, Maryland, 21286	PAID TO: Board of Appeals of Baltimore County (Check)	
PAYEE'S ACCOUNT NO. <u>02-78</u> ISSUED BY CHECK NO. <u>10-20</u>		
REMARKS: PAYMENT ON BEHALF OF COTTON AND RETURN WITH YOUR RESIDENTANCE		
Case of copy of Citation of Court of Appeals of Maryland in re - National Shikharika, et al File No. 44-57-2		
		AMOUNT PAID \$ 200.00 \$ 200.00

BALTIMORE COUNTY, MD - COLLECTION DIVISION

**REPORTED, 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 RESIDENCE.**

TELEPHONE 222-0000		INVOICE MARYLAND COUNTY, MARYLAND OFFICE OF FINANCE <i>Division of Collection and Receipts</i> COURT HOUSE TOWSON 4, MARYLAND		No. 17521 DATE 10/25/64
TO: John Warfield Arndt, Esq., Jefferson Building Towson 4, Md.	ML-APP Office of Planning & Housing 119 County Office Bldg., Towson 4, Md.			
DEBIT TO ACCOUNT NO. 01-4221		DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE		TOTAL AMOUNT DUE
SECURITY	Cost of posting Hildenhorn property for legal hearing 10-6-69			115.00
PAID - Baltimore County, Md. - Chief of Finance				
10-22-64 0 1 1 8 * 27521 TYP--		10-22-64 0 1 1 8 * 27521 TYP--		3.00
10-22-64 0 1 1 8 * 27521 TYP--		10-22-64 0 1 1 8 * 27521 TYP--		3.00
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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.				

TELEPHONE RES-3000		INVOICE		No. 23245	
		BALTIMORE COUNTY, MARYLAND			
		OFFICE OF FINANCE		DATE 4/29/54	
		Division of Collection and Receipts			
		COURT HOUSE			
		TOWSON 4, MARYLAND			
To: John W. Field, Auditor, State Department Building Towson 4, Md.		BILLED BY: Office of Planning & Budget 130 Century Ridge Rd. Towson 4, Md.			
DEPOSIT TO ACCOUNT NO. <u>06-42</u>				TOTAL AMOUNT	
QUANTITY	DETAILS (UPPER SECTION AND RETURN WITH YOUR REMITTANCE)			COST	
—	One of appra. - R. H. Schaefer property No. 64-49			778.00	
	PAID — Baltimore County, Md. — CDP of all Receipts				
	* 5094 3 1 2 5 * 23245* 117 * * 5094 3 1 2 5 * 23245* 117 *			700.00 70.00	
3					

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Journal compilation © 2007 Blackwell Publishing Ltd

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Division of Collection and Receipts COUNTY HOUSE TOWSON, MARYLAND 21284		No. 38969 Date 1/14/80
TO: John S. Hadden, Jr., Rep. 1900 Piddling Station Collierville, TN 38238	DATE: 1/14/80 County Board of Agents (Initials)	
REFERENCE TO ACCOUNT NO. 02-328		TOTAL 12.00 PAID 00.00
RECEIVED BY: John S. Hadden, Jr. RECEIVED FOR: John S. Hadden, Jr.	RECEIVED BY: John S. Hadden, Jr. RECEIVED FOR: John S. Hadden, Jr.	RECEIVED BY: John S. Hadden, Jr. RECEIVED FOR: John S. Hadden, Jr.

(351645)

CERTIFICATE OF POSTING
BORING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

6049.R

District: 12B

Date of Posting: 4/16/64

Posted for: Herbert H. Hiedesheim et al.

Location of property: Middlebrook Village P.O. Rd. Towson Md

Location of Sign: ① 1 mi SW cor. P.O. across From Towson Md
AND 400 30' from CRANFORD RD #2 400 30' from ALVA

Remarks: RIGHT WAY AND APP 5' from N. of dumping sign

Posted by: Robert J. Sullivan Date of return: 5/16/64

#5 app 25' on property inside of wire fence and
at the dead end of JACKSON BLAVE.

[illegible]

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

No. 38960
DATE 8/8/64

TO: Johnson Swartz, Esq.
Loyola Federal Building
Towson, Maryland 21204

RECEIVED
County Board of Appeals
(Zoning)

DEPOSIT TO ACCOUNT NO. 01.712

QUANTITY	UNIT PRICE	TOTAL
Cost of Certified Documents - No. 64-89-R	\$0.00	\$0.00
Herbert H. Hildesheim, et al 1400 1/2 Sellers Point Road and Towson Avenue 12th District	\$0.00	\$0.00
6-796 7043	38960 12P-	\$0.00

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

PETITION FOR RECLASSIFICATION
12th DISTRICT

FROM: R-6 to R-4 Zone
LOCATION: Northwest side of Sellers Point Road and Towson Avenue
DATE & TIME: THURSDAY, MARCH 26, 1964, at 11:00 A.M.
PUBLIC HEARING: Room 100, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing concerning all that parcel of land in the Twelfth District of Baltimore County

Being the property of Herbert H. Hildesheim and Hilda Hildesheim as shown on plat plan filed with the Zoning Department.

BY ORDER OF
JAMES G. ROSE
ZONING COMMISSIONER OF
BALTIMORE COUNTY

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: March 13, 1964
FROM: Mr. Charles E. Swartz, Acting Director

SUBJECT: 64-89-R, R-6 to R-4 Zone Northwest side of Sellers Point Road and Towson Avenue. Being property of Herbert H. Hildesheim.

12th District

HEARING: Thursday, March 26, 1964 (11:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-6 to R-4 zoning and has the following advisory comments to make with respect to pertinent planning factors:

1. The Planning staff voices no adverse comment with respect to the concept of apartment zoning here. Although unusual, the request does seem logical. The Planning staff does question the creation of apartment zoning at this time on the thin finger of land extending easterly to Delridge Avenue. It has some question with respect to the status and disposition of roads leading into the edge of the subject property, these doubtlessly can be clarified if and when the final site plans are processed.

Origins

October 6, 1966

The Honorable John H. Maguire,
Circuit Court for Baltimore County
Court House, Towson, Maryland

Re: Franklin Ragan (Mrs.) et al,
vs
County Board of Appeals of
Baltimore County
Herbert Hildesheim, et al
Dun Lea Apartment Corp.,
HMC, Docket #, Folio 111
Case No. 3568

Dear Judge Maguire:

I am in receipt of copy of Memorandum Opinion and Order of Court which you so kindly forwarded to me concerning the above entitled matter.

I appreciate receiving this as it is a great help to us in completing our docket.

Sincerely

Zoning Commissioner

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

TOWSON, MARYLAND 21204

September 25, 1964



Johnson Swartz, Esq.
32 W. Pennsylvania Avenue
Towson, Maryland 21204

Dear Mr. Swartz:

Re: Franklin Ragan (Mrs.) et al.
vs
The County Board of Appeals of
Baltimore County
Herbert Hildesheim, et al
Dun Lea Apartment Corporation
HMC, Docket #, Folio 111
Case No. 3568

Enclosed herewith is my Opinion and Order of Court in the above entitled matter.

Very truly yours,

John H. Maguire

Enclosure

CC: David H. Bates, Esq.
2 Market Pl., Balto. 21202, Md.
S. Robert Brown, Esq.
Jefferson Bldg., Balto. 21204, Md.
R. Bruce Alderman, Chairman,
County Bd. of Appeals-21204
John G. Rose, Zoning Comm.
of Baltimore County-21204

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 12th Date of Posting 3/1/64
Posted for: HARBERT HILDESHEIM, MARCH 26 1964 AT 11:00 A.M.
Petitioner: HARBERT HILDESHEIM
Location of property: NW 1/4 SELLERS POINT RD. AND TOWSON AVE
Location of Sign: 1400 1/2 SELLERS POINT RD. AND TOWSON AVE
Location of Sign: 1400 1/2 SELLERS POINT RD. AND TOWSON AVE
Property on: SELLERS POINT RD. AND TOWSON AVE
Remarks: 1400 1/2 SELLERS POINT RD. AND TOWSON AVE
Posted by: Robert H. Swartz Jr. Date of return: 3/1/64
R. Jackson Rd.

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

March 13, 1964

COURT OFFICE BUILDING
111 W. CHESAPEAKE AVE.
TOWSON 4, MARYLAND
21204

Mr. A. J. Miller
201 Courtyard Ave.
Towson 14, Md.

Dear Sirs:

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

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

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

Yours very truly,

John H. Maguire
ZONING COMMISSIONER

JGR:ms

64-89-R

Mr. Samuel Capucci - 6918
\$11,000 & \$12,000
Lease - 3.8K units
Not will have 2 cars - family
Area V of PTA - B.C.

Mr. Geraldine Murrell 189 Madison Road
Hwy - Hwy - Hwy - Hwy
Hwy - Hwy - Hwy - Hwy

Clifford Glass - 1821 West Ave. since 1929
Hwy - Hwy - Hwy - Hwy
Hwy - Hwy - Hwy - Hwy
Hwy - Hwy - Hwy - Hwy

Mr. Margaret Ragan, 1800 24th Rd - 5 years
Hwy - Hwy - Hwy - Hwy
On Hwy - 4 children
25 children play in area 137265 736 137264

NEW LOCATION 5500 64-89-R

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 12th Date of Posting 3/1/64
Posted for: HARBERT HILDESHEIM, MARCH 26 1964 AT 11:00 A.M.
Petitioner: HARBERT HILDESHEIM
Location of property: NW 1/4 SELLERS POINT RD. AND TOWSON AVE
Location of Sign: 1400 1/2 SELLERS POINT RD. AND TOWSON AVE
Property on: SELLERS POINT RD. AND TOWSON AVE
Remarks: 1400 1/2 SELLERS POINT RD. AND TOWSON AVE
Posted by: Robert H. Swartz Jr. Date of return: 3/1/64
R. Jackson Rd.

#5 ON DELAWARE AVE ACROSS FROM SCHOOL
AND APPLICABLE ON PROPERTY.
Location where signs are marked on other
Hwy.

MICROFILMED

March 26, 1964

A. Michael Hoots
5231 Baltimore Ave.
Towson, Maryland 21204

Re: Petition for Reclassification for
Baltimore Hillsdale
#64-89-R

Dear Sir:

This is to advise you that \$120.00 is due for advertising
and posting of the above property.

Please make check payable to Baltimore County, Md. and
sent to Mrs. Anderson, Room 119, County Office Building.

Yours very truly,

JUDITH H. ROSE
ZONING COMMISSIONER

JHR/hm

February 27, 1964

#64-89-R

MAP
#12
SEC. 4A
RA
3/16/64

Mr. A. J. Waller
201 Cleveland Ave.
Towson, Maryland

NOTICE OF HEARING

Re: Petition for Reclassification for
Baltimore Hillsdale
#64-89-R

TIME: 11:00 A.M.

DATE: Thursday, March 26, 1964

PLACE: ROOM 106 COUNTY OFFICE BUILDING, 111 W. Chesapeake Avenue
Towson, Maryland

ZONING COMMISSIONERS OF
BALTIMORE COUNTY

NOTES TO ACCOMPANY NILESHMEIN ZONING PETITION (ANSWERS TO CHECKLIST).

#64-89-R

1. Present property lines are in center of street except as otherwise shown.
2. As shown on plan to scale.
3. Size of proposed buildings - 10 unit building - 45' x 95';
20 unit building - 45' x 177'
4. As shown on plan to scale.
5. As shown on plan to scale.
6. As shown on plan to scale.
7. As shown on plan to scale.
8. As shown on plan to scale.
9. As shown on plan to scale.
10. Not known

The setbacks of all buildings and apartments shall meet the requirements as set forth in the zoning regulations of Baltimore County.

The swimming pool shall be constructed and protected in accordance with all requirements of Baltimore County.

J. J. Waller
#1391

March 27, 1964

Rev. Joseph T. Hanchin
Christ Lutheran Church
7043 Sellers Park Road
Baltimore (Hilshire 22) Maryland

Dear Rev. Hanchin:

In answer to your letter requesting information
regarding a reclassification of property across the street from your
church, please be advised as follows:

The type of apartment specified by Rev. Hanchin in garden
apartment, this means a building not over three (3) stories or 35 feet
high. The proposed apartment in this case is to be 2 1/2 stories high.

One parking space is required for each apartment
unit. The developer is proposing 230 units and 238 parking spaces.

This office will have the property posted again as
soon as is possible.

If you have any further questions, please do not hesitate
to contact me.

Sincerely yours,
James E. Dyer

JAMES E. DYER
Chief-Planning and Permit Processing
Division

#64-89-R
MAP
#12
SEC. 4A
RA
3/16/64

PETITION FOR
RECLASSIFICATION
OF ZONING

FROM: John H. Hanchin
TO: Baltimore County

LOCATION: 7043 Sellers Park Road
Baltimore, Maryland

DATE: 2/26/64
PUBLIC HEARING: Room 106
County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

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

Consistent with the provisions of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

Consistent with the provisions of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

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Consistent with the provisions of the Zoning Act and Regulations of Baltimore County, will hold a public hearing:

OFFICE OF
THE BALTIMORE COUNTYAN

THE COMMUNITY NEWS
Baltimore, Md.

No. 1 Newburg Avenue

CATONSVILLE, MD.

March 10, 1964

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

was inserted in THE BALTIMORE COUNTYAN, a group of
three weekly newspapers published in Baltimore County, Mary-
land, once a week for One Week

the 10th day of March,
1964, that is to say
the same was inserted in the issues of

THE BALTIMORE COUNTYAN

By Paul J. Morgan
Zoning Commissioner

Petitioner's Name
John G. Rose
Petitioner's Address
Ch. Rose
No. 1001 of Flats
St. Charles of Pet.
Attorney's Name
Travis

Approved to form this 25 day of Feb 1964

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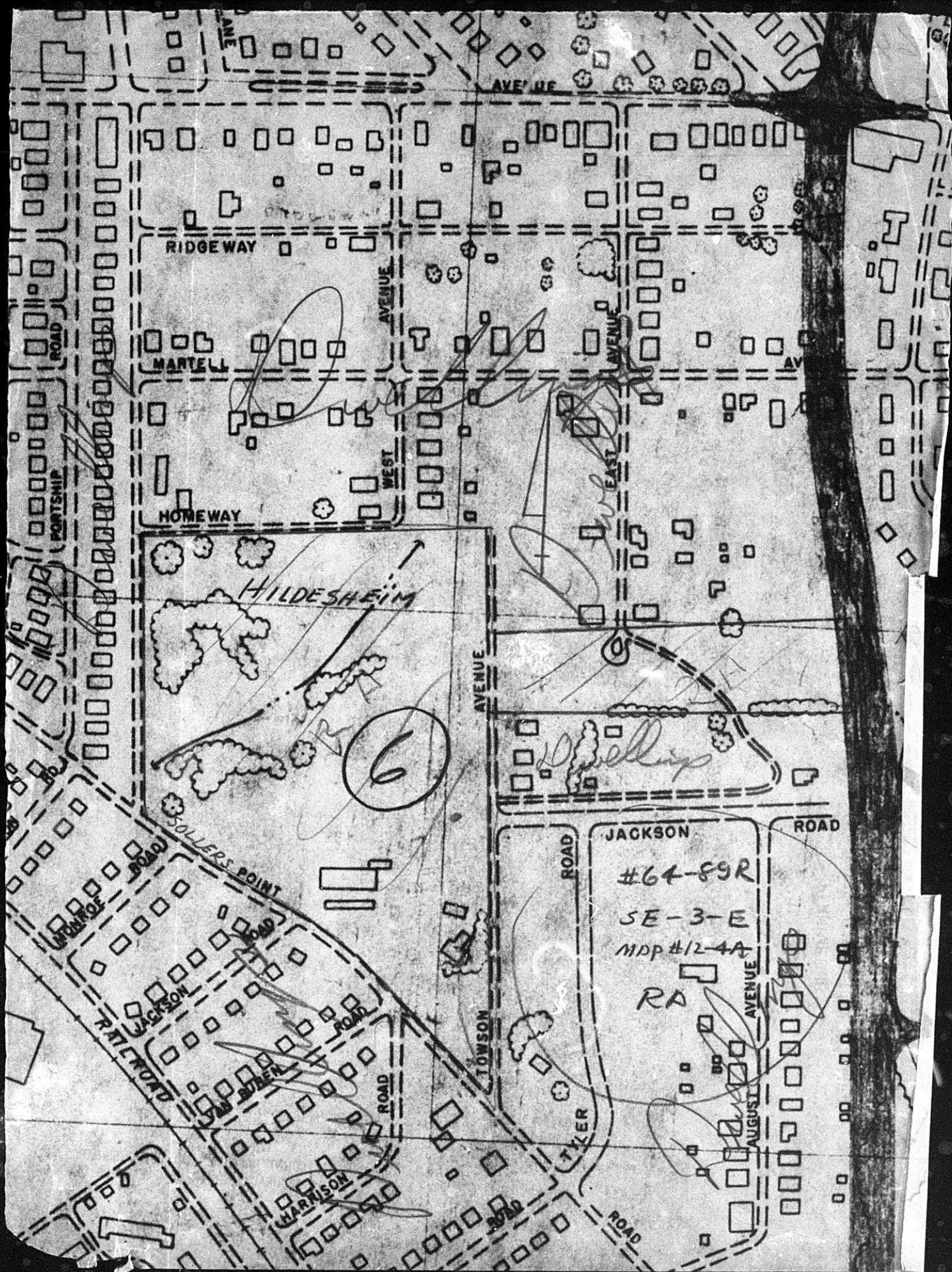
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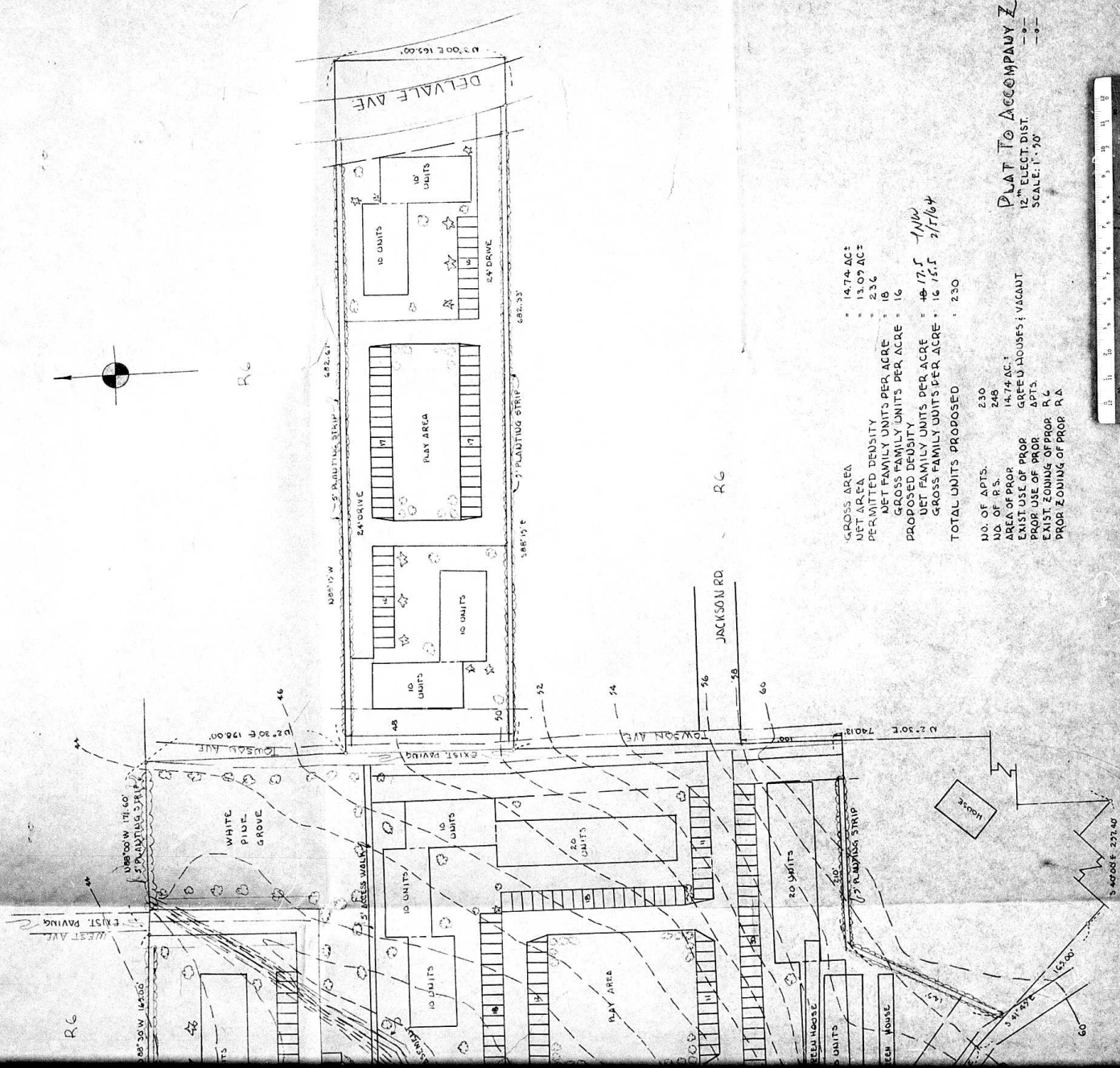
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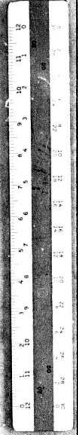




GROSS AREA = 14.74 AC.
 NET AREA = 13.09 AC.
 PERMITTED DENSITY = 236
 NET FAMILY UNITS PER ACRE = 18
 GROSS FAMILY UNITS PER ACRE = 16
 PROPOSED DENSITY = 17.5
 NET FAMILY UNITS PER ACRE = 16.5
 GROSS FAMILY UNITS PER ACRE = 16.5
 TOTAL UNITS PROPOSED = 230

NO. OF APTS. 230
 NO. OF R.S. 248
 AREA OF PROR 14.74 AC.
 EXIST. USE OF PROR GREEN HOUSES; VACANT
 PROR USE OF PROR APTS.
 EXIST. ZONING OF PROR R6
 PROR ZONING OF PROR R6

PLAT TO ACCOMPANY ZONING PETITION
 12TH ELECT. DIST.
 SAUTO, CO. MD.
 JAN. 23, 1964



RG

NOTES TO ACCOMPANY WILDMAN TRUMB SUBDIVISION (ANSWERS TO CHECKLIST).

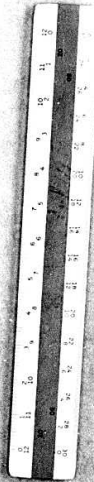
1. Present property lines are in center of street except as otherwise shown.
2. As shown on plan to scale.
3. Size of proposed buildings - 18 unit building - 43' x 85', 20 unit building - 43' x 177'.
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2-4. Not known

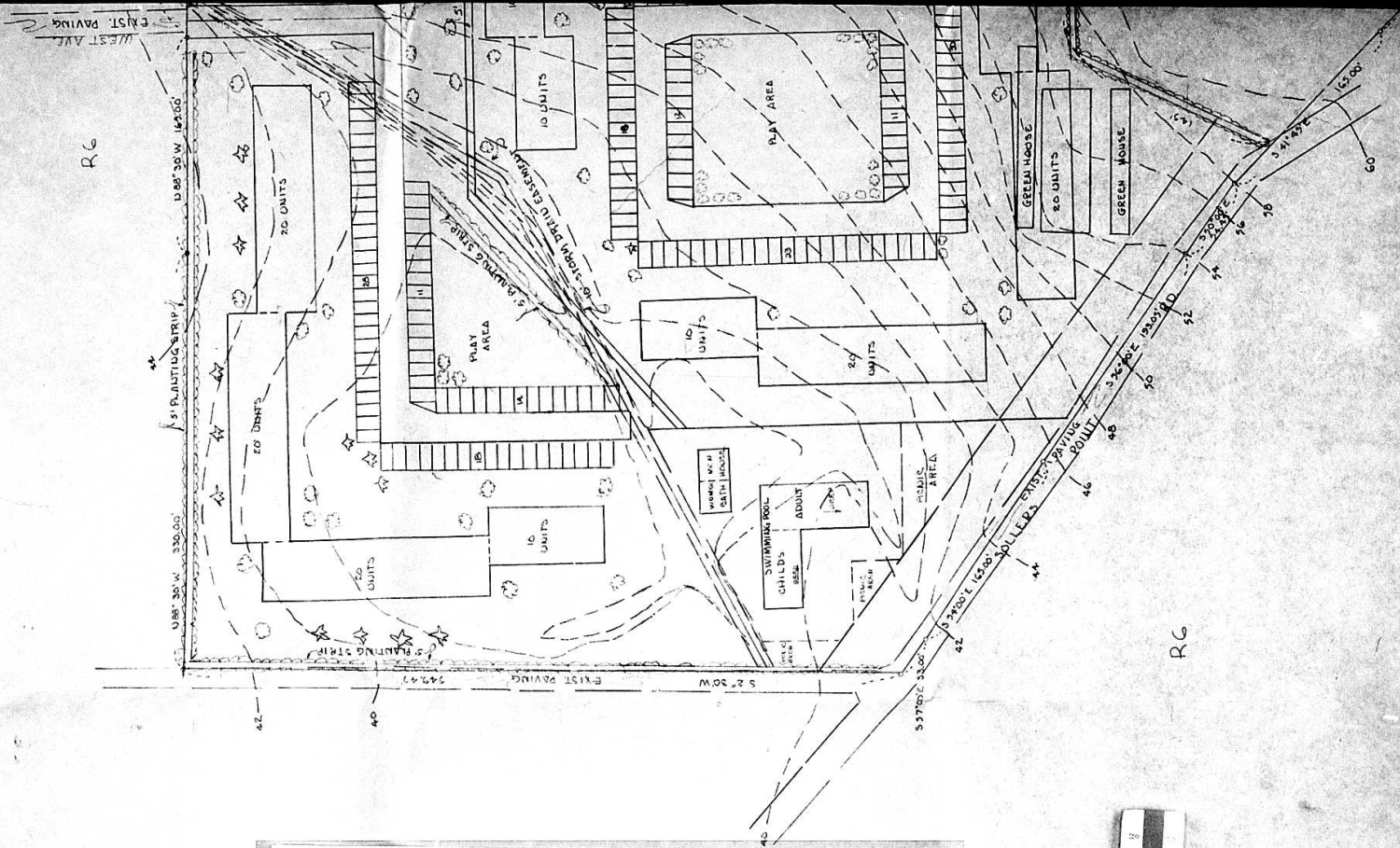
The setbacks of all buildings and improvements shall meet the requirements as set forth in the zoning regulations of Baltimore County.

The swimming pool shall be constructed and protected in accordance with all requirements of Baltimore County.

A. P. Muller
A. P. Muller
#4371



MULLER, RAPHEL & ASSOCIATES, INC.
REGISTERED ENGINEERS & SURVEYORS
201 CORTLAND AVE.
TOWSON, MARYLAND



RG