

RE: PETITION FOR RECLASSIFICATION
from R-6 and R-10 zones to
an R-A zone,
N/S Ingleside Avenue 140'
West of Security Boulevard,
1st District
Guarantee Title Holding Corp.,
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 65-69-R

OPINION

This is an application for rezoning of a tract of land presently zoned R-6 and R-10 on the zoning map which was adopted on November 15, 1962 as part of the western area. The tract is one of approximately fourteen acres located on Ingleside Avenue beginning at a point approximately 140 feet west of Security Boulevard in the First District of Baltimore County.

The petitioner proposes to develop the land for garden-type apartment use with 214 living units consisting of 98 one-bedroom apartments, 98 two-bedroom apartments, and 18 three-bedroom apartments to rent from \$120 to \$135 per month including utilities, and the plans provide for 287 parking spaces for automobiles. The architect presented sketches of the type of structure to be used and testified that the land, from an architect's point of view, was not practical for home subdivision because of its topography and the structure of the underlying rock. The engineer who had prepared the layout for the property and had studied the topography testified that out of twenty-nine rock borings only thirteen went as deep as ten feet before hitting solid rock, and that while there was adequate provision in the area for both water and sanitary sewers it would be very expensive to install the same for any kind of development of individual homes on the property and that, according to his figures, a development cost per lot under an R-10 use would exceed \$3600 per lot plus sewer connection charges and other items, whereas the usual maximum cost should be not more than \$2500. He further testified that the road pattern to be used if apartments were to be built would be better and safer than anything that could be planned for individual home construction, and that either R-6 or R-10 development was not economically feasible.

An engineer testifying for the protests disagreed with these figures and stated that, in his opinion, the cost could be kept down to \$2560 per lot but in arriving at this figure he had made no allowance whatever for excavation or removing rock from the property, and further testified that, in his opinion, \$2800 per lot was the top cost a difficult lot even for apartments but it could be so developed, with imagination, as to be economically feasible for apartment use.

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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

R. Bruce Alderman, Acting Chairman

W. Giles Parker

John A. Slonek

Guarantee Title - 65-69-R

to feel that this case might have some nebulous effect on commercial rezoning near him at sometime in the future.

Another witness called by the protests was C. Gordon Gilbert, an eminent qualified real estate appraiser and consultant, who testified that the property could be utilized for R-10 development which is undoubtedly true if not considered as a factor but even he stated, on cross-examination, that he felt the highest and best use of this property, in the absence of any zoning problems, would be for apartment development. He also conceded that there is a growing need for apartments and rental housing as well as for cottages. Protests also called Mrs. Dorothy N. Boone, who had been a member of the County Council on November 15, 1962, as a witness to rebut Mr. Willemain's testimony as to what occurred at the time of the adoption of the map by the County Council. Among other things she testified that she felt that if part of the apartment zoning which appeared on the map were withdrawn from such use by being put to other purposes said should be replaced under the comprehensive plan by other areas to provide necessary rental housing space.

Through all the considerations in this case and upon the testimony as outlined above, the Board feels that there was at least some degree of error in the adoption of the map as to this particular property; that there have been substantial changes sufficient to warrant the granting of the application; that no harm will be done to the general welfare by its granting; that the subject property is a logical place for the granting of apartment zoning to fill the accepted need for said zoning in this area; and that the construction of apartments in accordance with the plans as presented by the petitioner make good common sense in every respect and will be an asset to the community. We can find no reason whatever to substantiate the protests' fears that this might lead to more commercial zoning in the neighborhood.

The question was raised at our hearing as to whether or not the protests were "aggrieved parties". We will not rule on this question as we feel that this is a legal question which can only properly be raised by the Circuit Court on an appeal from this I ord, if any.

For the foregoing reasons the application for reclassification to R-A zoning will be granted.

ORDER

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

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Mr. W. Worthington Ewell, a traffic expert, testified as to traffic counts he had made in the vicinity and, in his opinion, the planned construction would not bring about any congestion even near to the capacity of the existing roads. He further testified that all of the land on the south side of Ingleside Avenue, opposite the property, had been acquired by the State Roads Commission as part of an interchange to be constructed between Security Boulevard and the new Route 70-N which is under construction at the time. Although the land has been taken for the above mentioned interchange no construction has been started to date, but somewhat north of the property Route 70-N is under construction together with a large and complicated interchange with the Baltimore County Beltway.

Mr. John L. Durr, Roads Engineer for the State Roads Commission, also testified to these facts and produced as an exhibit the State Roads plan of the proposed interchange directly south of the subject property. There will be no direct interchange between 70-N and Ingleside Avenue. The Board can find no possibility of any traffic congestion which might be caused by the proposed land use although the above mentioned interchange will very soon make for substantial changes in the traffic patterns in the neighborhood.

Mr. Bernard Willemain, a recognized expert in the planning field, testified, among other things, that he had investigated the subject property and had done other work in the area. He said that the Planning Board recommended and the composite comprehensive guide plan of Baltimore County showed this property as R-A at the time of the adoption of the map and that the present comprehensive guide plan of the Planning Department also recommended this land for apartment use. Directly north of the property is located a large tract upon which is St. Lawrence Church and School which would act as a permanent barrier between any further application of apartment zoning north on Security Boulevard, and that the extension of Route 70-N would act as a similar barrier to the west of the property as the State Roads Commission has a right-of-way crossing Ingleside between the Westcliffe and Strawberry Hill apartments, both located on Ingleside Avenue a short distance from the subject property. Mr. Willemain spoke of the conditions surrounding the adoption of the original map in 1962 and stated that at that time it had been requested that this property be zoned R-A which proposal was looked on with favor by the County Council but which request was made too late so that the County Council decided to take any action for change on the map because it had already held hearings in connection with the Western Area zoning map. He expressed his opinion that the Planning office made no recommendation and presented no information to the County Council under which it could reasonably have zoned this property as R-6 and R-10, and that apparently the Planning Department did not know what the State Roads Commission was doing and if they did they did not tell the County Council. He further testified, as a planner, that this property was absolutely no good for single family use because of the terrain, its location near heavily traveled arterial highways, not only present

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but planned for the immediate future, and its proximity to the City Line. He also said that the present zoning did not provide a reasonable or logical use and that at the time of the adoption of the map the Council had taken no consideration of the need of apartments in the area. He detailed in his testimony several R-A zonings within reasonable distance of the subject property and without going into detail the Board believes that the evidence supports its finding that all of the R-A zones in the area are either completely built up or under construction, or will be used for other than residential purposes; one prime example being that of a large tract (I R-A 16) which after being zoned R-A by the County Council was acquired by the Social Security Administration for use as a parking lot. This one factor alone has removed a good percentage of the available apartment potential from this area zoning map. A number of other areas are being used for such purposes as town homes, doctors' offices, churches and office buildings. Further testimony indicated that Security Boulevard has Baltimore Transit bus service which obviously it did not have before Security Boulevard was completed, and he felt that the construction of garden apartments at this location would have no adverse effect on either the immediate adjoining property or the community as a whole.

Mr. George E. Gavelis, Director of Planning and Zoning, had filed comments in the case before the Zoning Commissioner (who incidentally granted the petition for reclassification) and his comments indicated that to the best of his recollection the question of apartment zoning had come up before the County Council at the time of final action on the Western Area zoning map and that the Council concurred with the concept of apartment zoning here but felt that it could not take any action since the request was made after the public hearings were closed which left the property owner no recourse other than to ask for a change by way of petition. Mr. Gavelis testified that there have been great changes in both population and demand for rental housing in the area since the adoption of the map. The entire Planning staff, after studying this property, felt that with the expansion in the area the subject property should be properly zoned for higher densities in a residential classification. He felt that his opinion was now the same as it was at the time of the map's adoption and among other factors the basis for this opinion to put apartment zoning here would have a good relationship to other land use; that the corridor along Security Boulevard lends itself to apartment use; that there is institutional use next door; and that in view of the continued and existing pressure for more rental housing it was a necessity that some provision be made for apartments in the area especially in the nature of moderately priced rental housing such as is proposed in the present application. He further stated that at the time of the adoption of the map the classification was related to existing road patterns which have changed greatly by the improvement of Ingleside Avenue at its crossing of Security Boulevard and its extension into Baltimore City, and that at the time of the adoption of the map Mt. Vernon Drive was only a paper street but is now used as an access road to St.

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY
I, or we, Sun Life Insurance Co., legal owner, of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an R-6 and R-10 zone to an R-A zone; for the following reasons:

Error in the Comprehensive Zoning Map.

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 be and to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

GUARANTEE TITLE HOLDING CORPORATION
W & W CORPORATION
BY: R. Bruce Alderman, Contract purchaser
Address: 933 Maryland National Bank Bldg., Baltimore, Maryland 21202
William L. Slonek, President's Attorney

Address: _____
Protestant's Attorney

ORDERED: By the Zoning Commissioner of Baltimore County, this 31st day of _____, 1965, 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 the public hearing be held before the Zoning Commissioner of Baltimore County in Room 105, County Office Building in Towson, Baltimore County, on the 2nd day of September, 1965, at 10:30 o'clock.

Attest: _____

_____ Zoning Commissioner of Baltimore County

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Lawrence Church and School and other developments north of the subject tract. He stated in his opinion, one zoning change does not necessarily cause other changes and probably would not in this case because of local conditions of land use.

The protestant who took the appeal from the Zoning Commissioner's granting of the petition in this case was the Rescon Land Leasing Corporation which is one of the owners of the fee simple property involved by the St. Agnes Apartments approximately half mile away from the subject property. Mr. P. T. Lemmon, the President and one of the owners of Rescon Land Leasing Corporation, testified very frankly that he has a special interest in the area of the subject property because he is a substantial property owner in the area. Further, his experience has qualified him as an expert real estate appraiser and consultant he having served five years as a salesman for the Roland Park Company and the chief appraiser for the F.H.A. in Maryland for twenty-one years up to 1955, except for three years service in the Navy for whom he did real estate work in World War II. He presented in evidence protests' exhibit "A", an aerial photograph taken by him of the Ingleside Avenue area, which gives a very graphic picture of the land in the vicinity north of the subject property, and the Baltimore County Beltway, but that he stated that all of the signs showed an increase in population calling for an increase in demand for rental housing in the area, and stated that he was not opposed to apartments on this site per se and as a matter of fact was not opposed to this particular project although he felt it would be possible to develop it for cottage use. His reason for opposing the application seemed to be that he feels that a change here might cause a chain reaction of pending some other applications for zoning changes in the area which he felt might open "Pandora's Box" which might affect his own commercial land on Route 40 (I R-A 9 near Johnny Cake Road) to the east, that it would help his property by providing more customers for business use but on the other hand would hurt if it led to the opening of more commercial land which would be in competition with him. The Board does not share his fears in any of these respects as we do not believe that the granting of the petition in this application would have any influence whatever on any other application in the entire general area and certainly could not lead to any "chain reaction" affecting the immediate adjoining properties because of the present land use by which these areas are currently occupied.

The only other protestant was a gentleman who lives in a home three-tenths of a mile from the subject property who testified that he cannot see the subject property from his home except from upstairs in the winter. He stated that he was opposed to any change in zoning at all anywhere, and though not opposed to apartments generally seemed

RE: PETITION FOR RECLASSIFICATION
from R-6 and R-10 zones to an R-A zone,
N/S Ingleside Avenue 140'
West of Security Boulevard,
1st District - Guarantee
Title Holding Corporation,
Petitioner

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 65-69-R

The petitioner has requested a reclassification, from R-6 and R-10 zones to an R-A zone of property located on the north side of Ingleside Avenue 140 feet west of Security Boulevard, in the First District of Baltimore County.

At the time of the hearing there was a possibility that a Master Plan might be in effect within a short time after the hearing. The Master Plan is still being worked on, but the Director of the Office of Planning and Zoning in a memorandum dated December 1, 1964, indicated:

"As noted in our earlier comments, the subject property appears on the Comprehensive Guide Plan as being appropriate for apartment use. The Guide Plan has been approved by the Planning Board subject to public hearings now being arranged."

Mr. Gavelis' comments have governed the Zoning Commissioner's opinion that the subject property was originally zoned in error and that the proper zoning should be residential apartment use.

For the above reasons the reclassification should be granted.

It is this 31st day of December, 1964, by the Zoning Commissioner of Baltimore County, ORDERED that the herein described property or area should be and the same is hereby reclassified from R-6 and R-10 zones to an R-A zone, subject to the approval of the site plan for the development of said property by the Bureau of Public Services and the Office of Planning and Zoning.

_____ Zoning Commissioner of Baltimore County

Description of Land to be Rezoned
from R-6 to R-A, Security Boulevard
and Ingleside Avenue

September 3, 1963

Beginning for the same at a point on the north side of Ingleside Avenue 70.00 feet wide, said point of beginning being distant 75.00 feet, measured westerly along said north side of Ingleside Avenue from the west side of Security Boulevard 140.00 feet wide, said point of beginning being the end of the fourteenth or South 23° 35' 54" West 113.28 foot line of the first parcel of land described in a deed from Franklin M. Zimmerman et al to Guarantee Title Holding Corporation dated August 11, 1961, and recorded among the Land Records of Baltimore County in Liber W.J.R. 3888, folio 080, and running thence binding on the fifteenth line of the first parcel of said deed and binding on said north side of Ingleside Avenue South 64° 25' 56" West 198.00 feet, thence binding on the sixteenth line of said deed North 16° 16' 20" West 234.79 feet to intersect the second or Northeastly 1300 foot more or less line of Zoning Area 1-R-6-28, thence binding on part of said second line of Zoning Area 1-R-6-28, as now surveyed North 66° 30' 36" East 271.68 feet to intersect the said west side of Security Boulevard, thence binding on said west side of Security Boulevard South 15° 41' 39" East 150.00 feet, thence South 23° 35' 54" West 113.28 feet to the place of beginning.

Containing 1.354 acres of land more or less.

Being part of the first parcel of land described in a deed from Franklin M. Zimmerman et al to Guarantee Title Holding Corporation dated August 11, 1961, and recorded among the Land Records of Baltimore County in Liber W.J.R. 3888, folio 080.



Description of land to be Rezoned
from R-10 to R-A, Security Boulevard
and Ingleside Avenue

September 3, 1963

Beginning for the same at a point on the West side of Security Boulevard 140.00 feet wide said point of beginning being distant 225.00 feet measured northerly along said west side of Security Boulevard from the north side of Ingleside Avenue 70.00 feet wide, said point of beginning being the end of the last or 1300 foot more or less line of Zoning Area 1-R-10-14, said point of beginning being on the thirteenth or South 15° 41' 39" East 199.81 foot line of the first parcel of land described in a deed from Franklin M. Zimmerman et al to Guarantee Title Holding Corporation dated August 11, 1961, and recorded among the Land Records of Baltimore County in Liber W.J.R. 3888, folio 080, at a point distant 49.81 feet from the beginning of said thirteenth line, and running thence binding reversely on part of said last line of Zoning Area 1-R-10-14, as now surveyed South 66° 30' 36" West 271.68 feet to the end of the sixteenth or North 16° 16' 20" West 234.79 foot line of the first parcel of said deed, thence South 63° 43' 40" West continuing to bind reversely on part of the last line of said Zoning Area 1-R-10-14 as now surveyed, and binding on the last line of the first parcel of said deed in all 178.41 feet, thence binding on the first line of the first parcel said deed North 29° 31' 20" West 355.95 feet to the north side of Eberhart Avenue 30.00 feet wide, thence binding on said north side of Eberhart Avenue and binding on the second line of the first parcel of said deed South 54° 27' 20" West 392.24 feet thence binding on the third through the seventh line of the first parcel of said deed the five following courses and distances viz: first North 35° 29' 00" West 132.83 feet,

Description of Land to be Rezoned
from R-10 to R-A Security Boulevard
and Ingleside Avenue

September 3, 1963
Sheet 2

second North 23° 57' 36" East 502.54 feet, third North 47° 07' 20" East 47.53 feet, fourth North 49° 55' 00" East 62.88 feet, and fifth North 57° 48' 10" East 74.77 feet to a point on the South side of Mount Vernon Drive 50.00 feet wide, thence binding on said south side of Mount Vernon Drive and binding on the eighth and ninth lines of the first parcel of said deed the two following courses and distances viz: first easterly along a curve to the right with a radius of 250.00 feet for a distance of 152.82 feet, said curve being subtended by a chord bearing North 82° 06' 25" East 150.45 feet, and second easterly along a curve to the left with a radius of 1250.00 feet for a distance of 325.93 feet, said curve being subtended by a chord bearing South 87° 51' 05" East 325.01 feet to intersect the West side of Security Boulevard, thence binding on said West side of Security Boulevard the four following courses and distances viz: first Southeasterly along a curve to the right with a radius of 2940.00 feet, for a distance of 136.94 feet, said curve being subtended by a chord bearing South 17° 01' 43" East 136.94 feet, second South 15° 41' 39" East 256.93 feet, third South 12° 07' 15" East 160.30 feet, and fourth South 15° 41' 39" East 49.81 feet to the place of beginning.

Containing 11.326 acres of land more or less.

Being part of the first parcel of land described in a deed from Franklin M. Zimmerman et al to Guarantee Title Holding Corporation dated August 11, 1961, and recorded among the Land Records of Baltimore County in Liber W.J.R. 3888, folio 020.



RE: PETITION OF GUARANTEE TITLE
HOLDING CORPORATION for
Reclassification from "R-4" and
"R-10" Zones to an "R-A" Zone,
N/S Ingleside Avenue, 140' West
of Security Boulevard, First
Election District of Baltimore
County

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 65-69-R

REPLY LEGAL MEMORANDUM OF GUARANTEE
TITLE HOLDING CORPORATION

Protestants' Memorandum is devoted to two issues: (i) the legal issue concerning the status of Protestants as "proper parties" in this case; and (ii) the factual issue as to whether sufficient evidence was introduced before the Board to establish "error" in the zoning map with respect to the subject property. For convenience this Reply Memorandum will deal with each of these issues in the same order they were treated in Protestants' Memorandum.

I. Status of Protestants as Proper Parties.

Protestants' Memorandum seeks to sustain their position that Rescom Land Leasing Corporation (the corporation which took the Appeal to this Board) and/or Mr. Conrad Engel (a property owner in the neighborhood who appeared at the hearing in opposition to the Petition for Reclassification) are proper parties. Petitioner submits that neither of them are proper parties and that the Appeal should be dismissed for this reason.

Protestants' Memorandum further states that the Trial Memorandum previously submitted by Petitioner failed to deal with the status of Mr. Conrad Engel, a property owner in the neighborhood of the subject property, who appeared at the hearing in opposition to the Petition. The reason why Petitioner's Trial Memorandum failed to deal with the status of Mr. Engel is

that the Memorandum was prepared prior to the hearing, and Mr. Engel, who did not join in the Appeal, made his first appearance in the case at the hearing itself. As such his status is at the most that of an intervenor although no formal petition to intervene was filed. Since the Appeal was taken only by Rescom Land Leasing Corporation, the Appeal must perforce stand or fall procedurally on whether or not Rescom is a proper party. If the Appeal was not taken by a proper party, intervention after the expiration of the thirty day appeal period will not cure the defect. Nyburg v. Soliman, 250 Md. 150, 106 A 2d 483; Windsor Hills Improvements Association v. Mayor and City Council of Baltimore, 195 Md. 383, 73 A 2d 531. An intervenor cannot accomplish by intervention that which the party prosecuting the Appeal failed to do, namely, procure a proper "person aggrieved" to initiate the Appeal within the 30 day appeal period.

Petitioner submits that Rescom is not a proper party in this proceeding for two reasons:

1. The objection of Rescom was only as to a possible future grievance and not as to a present grievance. Mr. Lemmon, the President of Rescom, testified that his objection was not to the construction of apartments per se on the subject property, but was rather to the granting of the reclassification which would establish a precedent and be an "entering wedge" for the "breaking of the map" in future cases. This type of objection has been held insufficient to establish a proper "party aggrieved" under the statute. See Pattison v. Corby, 226 Md. 97, 172 A 2d 490, an extract from

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which is quoted on page 2 of Petitioner's Trial Memorandum. See also Judge Zentler's Opinion in Rescom Land Leasing Corporation v. Mellor (Circuit Court for Baltimore County, Miscellaneous Docket 7, folio 435, Case No. 3119) in which the Court stated that:

"The crux of the Appellant's specific grievance is set forth in paragraph 3 of the Petition for Appeal and which was developed during the course of argument before the Court. The Appellant's position forming the basis upon which he alleges that he is 'aggrieved' by the present apartment house reclassification is that the Applicants for this reclassification own adjacent land to the apartment house area which the Appellant feels at some time in the future may be reclassified for commercial use which will preclude it from it developing its existing parcel of ground already classified for such business use. In other words, the Appellant is not objecting to the present reclassification for apartment house use, but is rather objecting to what might happen in the future on the remaining tract retained by the Petitioners for the apartment house reclassification.

"The Court finds that the grievance of the Appellant, if any in fact exists, is a future grievance and not a present one. For this reason, the Court cannot find that the Appellant is a party presently and currently aggrieved. By the decision of the County Board of Appeals, the Court does not feel that the Appellant has alleged that it 'has or will suffer a private and special wrong different in character and kind from that suffered by the public generally' and that the Demurrer to the Petition for Appeal should be sustained."

The same objections to the status of Rescom as a proper party apply with equal testimony to Mr. Engel. Even if he had been one of the original Appellants (which he of course was not) it is submitted that his testimony established that he had no actual objection to apartment development on the property in question; his real concern was with possible future development and consequently he is not "a party aggrieved" within the statutory definition.

2. Rescom as a competitor or potential competitor to an apartment development on the tract in question is not a proper party. The only property owned by Rescom within the vicinity of the tract in question is an undivided one-half interest in the St. Agnes Apartments, approximately

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one-half mile from the site in question. The other properties owned by Rescom in the area are a mile or more away from the subject property (as shown in Petitioner's Trial Memorandum) and are too remote to enable Rescom to qualify as a proper party for purposes of this proceeding. Insofar as the St. Agnes Apartment property is concerned, Rescom is the owner of a potentially competing apartment project and its objection (if in fact it has any) to the proposed apartment development on Petitioner's property is economic in the sense that Rescom will be faced with the competition of another apartment project in the area. The Court of Appeals has held "that the prevention of competition is not a proper element of zoning" (Kretschman v. Rameburg, 224 Md. 209, 167 A 2d 345, 351) and one whose real concern is the prevention of competition is not a "party aggrieved". See also Cook v. Normac Corporation, 176 Md. 394, 4 A 2d 747. In a very similar case to the case at bar (which did not go to the Court of Appeals) Judge McChesney ruled that corporations which owned apartment houses had no standing to file a Bill in Equity seeking to revoke a building permit for the construction of an apartment building in the vicinity. Grant Bros., Inc. v. Eleven Slade, Inc., Circuit Court for Baltimore County Docket 66, folio 389, Case No. 42583.

II. Error in the Comprehensive Zoning Map.

Protestants contend that there was insufficient evidence to prove original error in the classification of the subject property when the zoning area map was adopted. In support of this contention, Protestants state that Mr. Willemain's testimony to the effect that the property was erroneously

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zoned by the Council when it adopted the map was based solely upon the fact that the Council was misled by the fact that part of the property across the street was designated as "RG" Zone while actually the property was to be used for the cloverleaf of Interstate Highway I-70. This statement is a distortion of Mr. Willemain's testimony. Mr. Willemain used the example of the "RG" Zone on the southwest side of Ingleside and Security Boulevard as a glaring example of the confusion in the minds of the members of the Council when they zoned certain neighboring property "RG" when in fact it had actually been in public ownership since 1959 and was not to be made available for private development. The tract which was designated "RG" on the map was in fact to be utilized for the construction of the cloverleaf intersection of the new Interstate Highway I-70. Mr. Willemain adverted to this situation as a classic example of the inadequate and erroneous information given to the zoning authorities at the time the map was adopted.

The subject property lies within a few hundred feet of the cloverleaf to an important interstate highway. Definitive information from the Baltimore County Planning Staff and the State Roads Commission is a "must" insofar as such facts bear on the proper zoning classification for the property. In this case the Council was given a map showing "R-6" only, and not showing the location of the cloverleaf for this large interchange. The Council did not have any information of any definitive nature from the Planning Board to clarify or show further the importance of the interchange or the exact location of the cloverleaf access roads. Also as a further illustration of Mr. Willemain's point, he was allowed to read into the record the comments from the Planning Staff to the Zoning Commissioner in the David Brown zoning case involving the southwest corner of Ingleside and Security Boulevard,

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in which the Planning Staff declared they did not have a clear indication as to where the interchange was going nor the exact land area that was to be taken to construct the cloverleaf, and that this information was not made available to them until after the zoning map was adopted. The absence of exact information concerning the interchange left the Council with a complete lack of understanding regarding the relation of the subject property to this very important interstate highway. Without this information, Petitioner contends that no one could be in a position to make an intelligent decision as to the proper zoning.

Mr. Willemain also illustrated the suitability of the property for apartment classification at the time the map was adopted by referring to the fact that the Council reclassified the opposite east side of Security Boulevard to the "RA" Zone for office use. This property encompassed a thin strip of land fronting on Social Security Boulevard for a distance of approximately one mile. The Council seemed to have no hesitation in reclassifying this property to "RA" since it had a petition requesting this change before it. The evidence presented by the Protestants through Mrs. Boone showed there was no petition before the Council concerning the subject property when the Council decided not to change its existing "R-6" and "R-10" classifications. Mr. Garvello supported this position when he testified that if his Planning Staff had been asked its opinion as to recommending apartment zoning for the subject property at the time the Council was considering adoption of the map, it would have had no hesitation in recommending apartment classification for this property.

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Mr. Willemain also testified to the complete lack of information by the Council as to the need for apartments in this area. To illustrate, he stated that the only properties zoned for apartments within a mile radius of the subject property was a 26 acre parcel of land which was acquired by the Federal Government and therefore was not available for apartment development. This 26 acre "RA" parcel was apparently an important factor in obtaining the zoning "balance" that was referred to by Mrs. Boone. The "RA" zoning on the east side of Security Boulevard did not alleviate the situation in that this was specially adapted for office use and the petition requesting its reclassification specifically asked for office use development.

Petitioners recognize the legal proposition referred to in Protestants' Memorandum that "a witness' opinion is only as good as his reasons supporting that opinion". Petitioners submit that this rule of law applies most strongly with respect to the testimony of Mrs. Boone, who formerly represented the Second District in the County Council. She disclosed the extent of the Council's knowledge (or lack thereof) with respect to the subject property in stating it was obtained from a "bus ride" past the property on one occasion. This visual inspection made at a single field trip seemed to be the only source of information used by the Council in determining the proper classification for the subject property. She further stated that no traffic counts or studies were made available to her, that no land planning or other area studies were made available for her consideration, that no other data or expert opinions on the subject were either made available or sought by the Council. Although Mrs. Boone was of course introduced as a witness by Protestants, her testimony was welcomed by Petitioner as it disclosed

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on the record the actual methods used by the Council in determining the zoning status of the subject property, and afforded the Board an unusual insight into the reasons why the Council committed "error" in this case with respect to its classification of the subject property. Mrs. Boone's testimony further revealed that normally a change in classification was not considered unless the Council had before it a specific request in the form of a petition for reclassification of a particular property, and that in the case of the subject property no such petition had been filed accordingly the Council gave no real consideration (beyond the "bus ride" field trip) to what its proper zoning should be.

With regard to the location of the proposed interchange, Mrs. Boone stated that she was shown a map with straight dotted lines purporting to be the proposed route of Interstate Highway I-70; that the map did not indicate the location of the cloverleaf; that she had no idea how much acreage was to be used for the interchange; that she had no idea of the area a normal interchange requires; and that she was not advised as to the boundaries of the State ownership. Mrs. Boone further stated that no studies with regard to the need for apartments in the area were made available to her or the Council to aid it in making a determination as to whether a proper zoning "balance" was achieved.

On the other hand, the experts produced at the hearing by Petitioner, viz: Dr. Worthington Ewell, a traffic expert; Mr. Willemain, a planning expert; and Mr. Hocheder, an engineering expert, all cumulatively showed that the Council was in error in not reclassifying the subject property to

- 8 -

"RA", and that its haphazard, uninformed and unscientific method of determining its proper zoning classification amounted to mere guesswork rather than a mature, informed judgment. If the Council had sought advice of its own staff of experts, it would have been aware of Mr. Gavrelis' concurrence with the concept of "RA" zoning for the subject property.

The Petitioners do not contend that the present classification amounts to an unconstitutional confiscation of their property as Protestants' Memorandum seems to imply. Of course, Petitioners do not have to show that the present zoning amounts to an unconstitutional confiscation of their property. All that need be established by a preponderance of the evidence is that an "error" or "mistake" was made in the adoption of the zoning classification for this property when the map was adopted. Overton v. Board of County Commissioners, (1961) 225 Md. 212, 170 A.2d 172.

The purpose of Mr. Hocheder's testimony was not (as Protestants imply) to prove an unconstitutional confiscation, but was rather intended to illustrate the adaptability of the land for apartment zoning, particularly in view of the glaring need in the community for additional apartment development. The topography of the property and its proximity to both an important interchange and to the Westcliff apartment development made it a logical site for apartment development rather than for the development of detached homes. As a matter of fact, Mr. Pohmer, the Protestants' expert, stated that should the lot development cost reach \$2800.00 per lot it would not be possible to construct detached houses on the site. Mr. Pohmer's own testimony revealed that in his opinion the development cost per lot was at least \$2500.00. Moreover, his testimony revealed some question as to whether

he attributed any "cost" factor resulting from the proven rock condition, nor did his estimate include the cost of crossing Social Security Boulevard with utility lines. Mr. Pohmer's own testimony therefore can easily indicate an additional \$300.00 or \$400.00 "cost" per lot above his \$2500.00 estimate, which in his own opinion would cross the "point of no return" and make a housing development of detached houses on individual lots unsound, if not impossible. On the other hand, Mr. Hocheder's testimony was that the individual lot development cost would be in excess of \$3600.00, which if true would, in Mr. Pohmer's opinion, make the development of the property as single family residences unsound.

CONCLUSION

For the reasons set forth above it is submitted (i) that Rescom Land Leasing Corporation does not qualify as a proper "party aggrieved" within the meaning of Baltimore County Zoning Regulations 500.10; (ii) moreover, since it appears that Rescom was not a proper party to begin with, Mr. Engel (who is at the most an intervenor in the case) cannot cure the initial defect of failure to have a proper party file the Appeal within the 30 day period; (iii) even if Mr. Engel had been a Co-Appealant along with Rescom, his testimony establishes that he is not an "aggrieved party" within the meaning of the Ordinance; and (iv) there was ample evidence before the Board to show that a "mistake" had been made in the adoption of the map with respect to the subject property. Petitioner submits that for all of these reasons the application should be approved.

Respectfully submitted

William L. Siskind
William L. Siskind

Siskind & Taber

By *William L. Siskind*

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: John G. Rose, Zoning Commissioner Date: December 1, 1964
FROM: George E. Gavrelis, Director
SUBJECT: Petition #65-69-R

This memorandum confirms our discussion with respect to the subject petition. As noted in our earlier comments, the subject property appears on the Composite Guide Plan as being appropriate for apartment use. The Guide Plan has been approved by the Planning Board subject to public hearings now being arranged.

George E. Gavrelis
George E. Gavrelis, Director
Office of Planning and Zoning

GEG:bms

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 1st Date of Posting: August 12, 1964
Posted for: Petition for Reclassification from R-2 to R-10 in R-2
Petitioner: Guarantee Title Holding Corp.
Location of property: N/S Ingleside Ave. 140' W. of Security Blvd.
Location of Sign: (1) N/S Ingleside Ave. 150' W. of Security Blvd. (2) W. Dead End, Eberhart Rd. (3) Intersection of W. Vernon Dr. & Lexington Dr. (4) 100' S. of Ingleside on N/S Security Blvd.
Remarks: *[Signature]*
Posted by: *[Signature]* Date of return: August 20, 1964
4 of 628

- 9 -

August 6, 1964

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

Messrs. Siskind & Taber
933 Maryland National Bank Bldg.
Baltimore, Md. 21202

County Office Building
111 W. Chesapeake Avenue
Towson 4, Maryland

Your petition has been received and accepted for filing this
11th day of July, 1964.

[Signature]
JOHN G. ROSE
Zoning Commissioner

Owner Name: Guarantee Title Holding Corp.
Reviewed by: *[Signature]*

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

No. 27669

DATE 1/6/65

TO: Rescom Land Leasing Corp.,
1029 St. Paul Street,
Baltimore 2, Md.

BY: Office of Planning & Zoning
119 County Office Building
Towson 4, Maryland

REPORT TO ACCOUNT NO.	QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
01-622			
		Cost of appeal - Title Holding Co., Petitioner	\$70.00
		No. 65-69-R 4 signs	20.00
			\$90.00

PAID - Baltimore County, Md. - Office of Finance

1-665 6-63 • 27669 TIP- \$000

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

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

No. 25300

DATE 9/9/64

TO: A. Owen Hemmings, Rec.,
Jefferson Building
Towson 4, Md.

BY: Office of Planning & Zoning
219 County Office Bldg.
Towson 4, Md.

REPORT TO ACCOUNT NO.	QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
01-622			
		Cost of advertising property of Owner on Title Holding Cor.	\$63.00
		No. 65-69-	

PAID - Baltimore County, Md. - Office of Finance

9-264 6-61 • 25300 TIP- \$300

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

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 35 Date of Posting: Jan 23 1965
Posted for: Appraisal
Petitioner: Guarantee Title Holding Corp.
Location of property: N/S Ingleside Ave. 140' W. of Security Blvd.
Location of Sign: (1) N/S Ingleside Ave. 140' W. of Security Blvd.
(2) E. End of Eberhart Rd. (3) W. of Security Blvd. (4) S. of Security Blvd.
Remarks: Petitioner's report on N/S Security Blvd. is being reviewed.
Posted by: *[Signature]* Date of return: Jan 28, 1965
4 signs

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 1st Date of Posting: August 12, 1964
Posted for: Petition for Reclassification from R-2 to R-10 in R-2
Petitioner: Guarantee Title Holding Corp.
Location of property: N/S Ingleside Ave. 140' W. of Security Blvd.
Location of Sign: (1) N/S Ingleside Ave. 150' W. of Security Blvd. (2) W. Dead End, Eberhart Rd. (3) Intersection of W. Vernon Dr. & Lexington Dr. (4) 100' S. of Ingleside on N/S Security Blvd.
Remarks: *[Signature]*
Posted by: *[Signature]* Date of return: AUG 20, 1964
4 of 628

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: August 12, 1964

FROM: Mr. George E. Gavrelis, Director

SUBJECT: 65-69-R, R-2 and R-10 to R-2, Northside of Ingleside Avenue
150' West of Security Boulevard. Being property of Guarantee
Title Holding Corporation.

1st District

HEARING: Wednesday, September 2, 1964 (10:30 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-2 and R-10 to R-2 zoning. It has the following advisory comments to make with respect to pertinent planning factors:

- It is the recollection of the writer that the question of apartment zoning on the subject tract had come up before the County Council at the time it was taking final action on the Western Planning Area Zoning Map. It is the further recollection of the writer that the Council concurred with the concept of apartment zoning here, but felt that it could take no action since the request was made after the public hearings were closed.
- The planning staff is in accord with the concept of apartment zoning here. Apartment land use is recommended on the Composite Guide Plan.

GEG:bms

[Signature]
#7

Plot X #1



EXISTING BUILDING	4,400 S.F. 10-6	PARKING
NEW BUILDING	10,877 S.F. 10-6	GRADED TERRACE
NET AREA	15,277 S.F.	TRAIL WALK/BIKE UNIT
PERMITTED DENSITY	10.0	TOTAL GRADED TERRACE UNIT
NET FAMILY UNITS (ACRE)	1.0	
PERMITTED DENSITY	10.0	
NET FAMILY UNITS/ACRE	1.0	
TOTAL	15,277 S.F.	

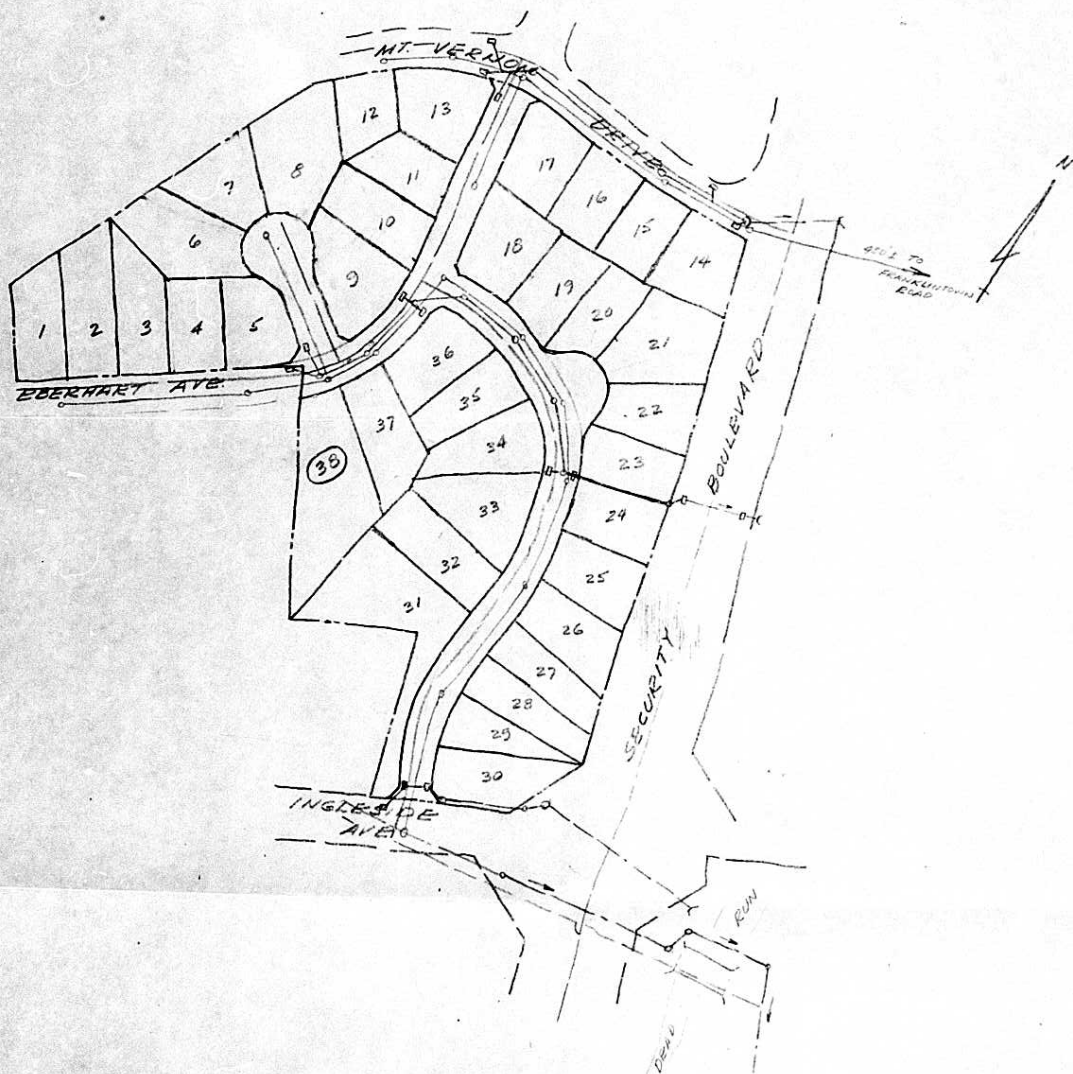
NDS HILL APARTMENTS PLANNING & DESIGN

SCALE: 1"=20' DATE: 10/10/00

DESIGNED BY: [Signature] DRAWN BY: [Signature] CHECKED BY: [Signature] APPROVED BY: [Signature]



Px 4 #4

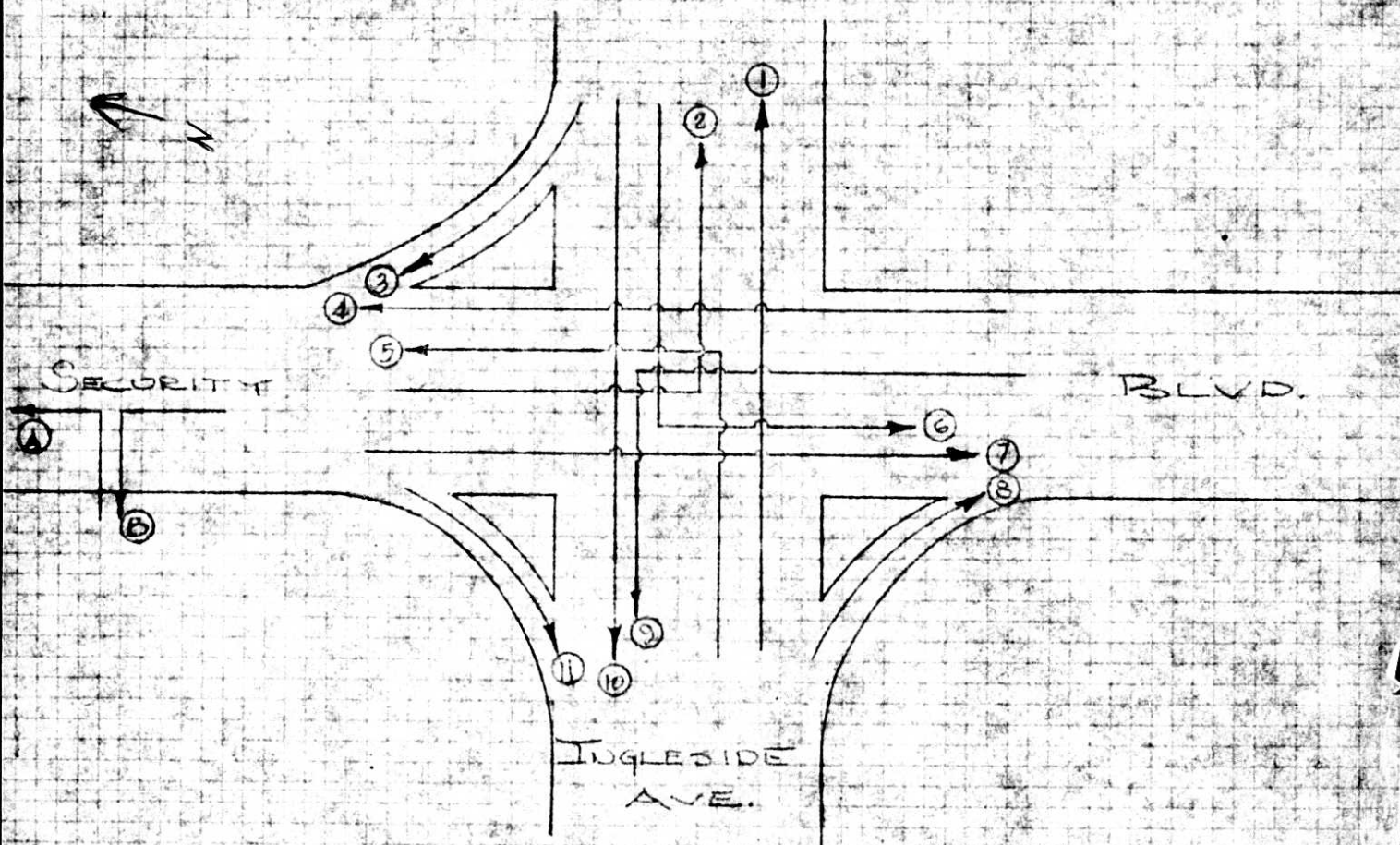


STANDARD LAYOUT
38 LOTS
4-R-6
34-R-10

EWELL, BOMHARDT & ASSOCIATES
CONSULTING ENGINEERS
1808 NORTH CHARLES STREET
BALTIMORE, MARYLAND 21201

PROJECT TRAFFIC SURVEY
SUBJECT INGLESIDE & SECURITY
BY JE

JOB NO. _____
SHEET NO. _____ OF _____
DATE _____



DATE	TIME	DIRECTION											FREE TIME
		①	②	③	④	⑤	⑥	⑦	⑧	⑨	⑩	⑪	
Wed. 6-23-65	7:30AM - 9:30AM	292	71	161	697	270		451	41	61	212	45	
	4:30PM - 5:30PM	279	112	84	523	128		319	19	111	221	108	⑪ 14'-26"
Thurs. 6-24-65	7:30AM - 8:30AM	217	63	165	713	221		471	49	64	254	86	⑪ 7'-29"
	4:30PM - 5:30PM	271	102	92	572	107		898	61	101	232	154	⑪ 12'-46"

Part 6

UNIT BREAKDOWN

TOTAL NO. BUILDINGS 22
19 BLDGS. @ 10 APTS. = 190 UNITS
3 BLDGS. @ 8 APTS. = 24 UNITS
TOTAL = 214 UNITS

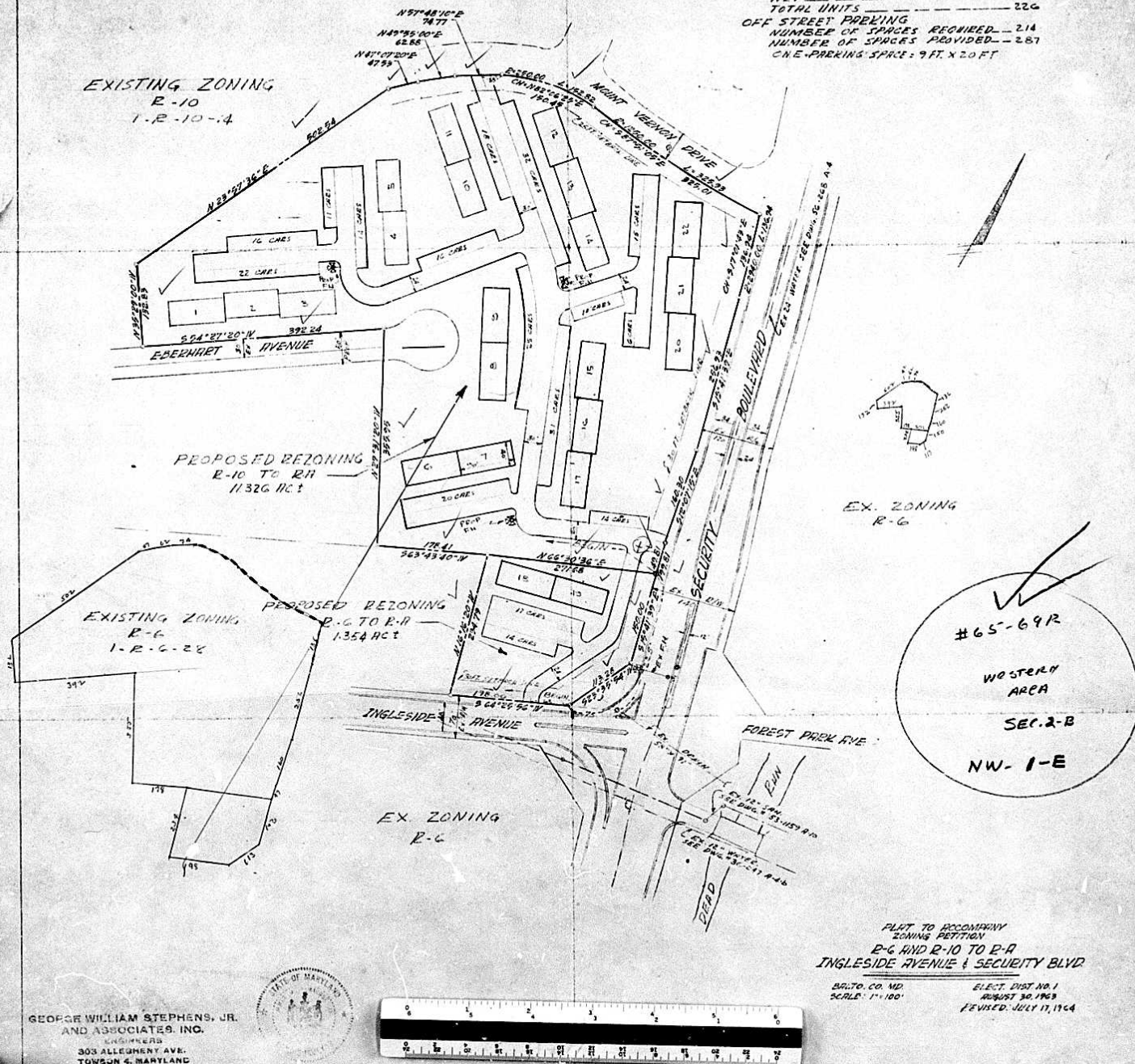
DENSITY CALCULATIONS:

EXISTING ZONING E-G E-R-10
PROPOSED ZONING R-A
GROSS AREA 14,130 AC.
NET AREA 12,670 AC.

DESIGNED DENSITY
GROSS 15.185
NET 16.877
TOTAL UNITS 214

PERMITTED DENSITY
GROSS 16
NET 18
TOTAL UNITS 220

OFF STREET PARKING
NUMBER OF SPACES REQUIRED 214
NUMBER OF SPACES PROVIDED 287
ONE PARKING SPACE: 9 FT. X 20 FT.



GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
303 ALLEGANY AVE.
TOWSON 4, MARYLAND



PLAT TO ACCOMPANY
ZONING PETITION
R-6 AND R-10 TO R-A
INGLESIDE AVENUE & SECURITY BLVD.

DIST. CO. MD.
SCALE: 1"=100'

ELECT. DIST. NO. 1
AUGUST 30, 1963
REVISED: JULY 17, 1964