

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Cecil E. Shifflett, et al, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified pursuant to the Zoning Law of Baltimore County from an R-40 zone to an M-H-X zone; for the following reasons:

1. Zone is original zoning
2. Change in the neighborhood
3. and for real estate reasons as this county requires

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 WOODWORK YARD

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

I, or we, agree to pay expenses of above re-classification 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.

Legend J. Makowski Betty A. Shifflett
James H. Makowski George J. Shifflett
Edward J. Makowski William A. Shifflett
William A. Shifflett William A. Shifflett
William A. Shifflett William A. Shifflett
Contract purchaser
Address 1000 E. Wright Mill Road
Woodstock Rd
Woodstock Rd
Attorney's Address
Address 1000 E. Wright Mill Road
Woodstock Rd
Attorney's Address

ORDERED BY THE Zoning Commission of Baltimore County, this 11th day of August, 1962, 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 Commission of Baltimore County in Room 104, County Office Building in Towson, Baltimore County, on the 19th day of October, 1962, at 10:00 o'clock
A.M.



Registration No. 1577



William M. Magnadier
County Surveyor
Professional Engineer and Land Surveyor
East House
Caton, Md. 21224

For purpose of Zoning Only
L-40 to M-H

All that piece or parcel of land situate lying and being in the Second Election District of Baltimore County, State of Maryland and described as follows:

BEGINNING for the same in or near the easterly side of Wrights Mill Road to the beginning point of the land conveyed by William E. Wiley, widower, to Gilbert K. Shifflett and wife by a deed dated December 1st 1960 and recorded among the land records of Baltimore County in Liber T.H.S. No. 1902 folio 281 etc., said beginning point also being distant 1068 feet more or less measured outwardly along Wrights Mill Road from the center of the existing paving of Davis Avenue running thence as surveyed by J. H. Rife, Registered Surveyor, in the year 1953 and referring the courses of this description to Solar Observation true meridian as established by said J. H. Rife, and leaving Wrights Mill Road and binding reversely on the last and eleventh lines in said deed the following two courses and distances viz: south 20 degrees 48 minutes 35 seconds west 122.56 feet to the end of said eleventh line and south 25 degrees 34 minutes 02 seconds east 162.24 feet to the end of the tenth line therein and to a point in or near the center of Wrights Mill Road thence binding reversely on said tenth line and in or near the center of said road south 10 degrees 34 minutes 02 seconds east 9.90 feet to intersect the beginning of the third line of the first parcel of land conveyed by Gilbert K. Shifflett and wife, et al to State of Maryland by a deed dated September 16th 1959 and recorded among said land records in Liber W.J.L. No. 3617 folio 584 etc., thence binding on said third line as surveyed aforesaid south 36 degrees 04 minutes 01 seconds west 337.27 feet to the end of

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said third line thence north 10 degrees 39 minutes 43 seconds east 14.65 feet to the beginning of the last line of the second parcel of land in said deed from Gilbert K. Shifflett and wife, et al, to State of Maryland thence binding on said last line north 53 degrees 45 minutes 47 seconds west 821.39 feet to the end of the last line of the second parcel of land conveyed by Edward J. Makowski and wife, et al, to State of Maryland by a deed dated June 30th 1960 and recorded among said land records in Liber W.J.L. No. 3775 folio 516 etc., thence binding reversely on said last line north 72 degrees 49 minutes 57 seconds west 734.47 feet more or less to the end of the fourth line in the first herein mentioned deed from Wiley to Shifflett thence binding reversely on said fourth line and reversely on a part of the third line therein the following two courses and distances viz: north 6 degrees 40 minutes 03 seconds east 175.18 feet to the end of said third line and south 72 degrees 39 minutes 08 seconds east 260.53 feet thence leaving said third line and the survey made by J. H. Rife and running for the following two lines of division now made through the land of Edward J. Makowski and wife, et al, as now surveyed viz: north 11 degrees 40 minutes 06 seconds west 656.21 feet and north 10 degrees 24 minutes 10 seconds east 1237.13 feet to intersect the twenty eighth line of the land conveyed by Edward J. Makowski and wife to Leonard J. Makowski and wife by a deed dated June 15th 1958 and recorded among said land records in Liber G.L.R. No. 3366 folio 543 etc., thence a part of binding reversely on said twenty eighth line and reversely on a part of the twenty seventh line therein the following two courses and distances viz: south 62

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degrees 11 minutes 25 seconds east 68.23 feet to the end of said twenty seventh line and south 20 degrees 48 minutes 35 seconds west 330.00 feet to the place of beginning.
Containing 30.46 acres of land more or less



William A. Shifflett

RE: PETITION FOR RECLASSIFICATION
from an R-40 zone to a M-H-X zone,
SPECIAL EXCEPTION for a
Junk Yard
E/S of Wrights Mill Road 1068'
South of Davis Avenue,
2nd District
Cecil E. Shifflett, et al
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 45-102-RX

OPINION

The petitioners in this case seek a reclassification from an R-40 zone to a Manufacturing Heavy (M-H) zone of a tract of ground of approximately 30.5 acres north of the Potomac State Park and west of the Wrights Mill Road in the Second Election District of Baltimore County. The petitioners also request a special exception for a Junk Yard on a five acre parcel in the center of the thirty acre tract mentioned above. The special exception sought is in accordance with Section 40B of the Zoning Regulations, and in order to comply with the setback requirements set forth in Section 40B.2 the property owners are required to seek a rezoning of the entire thirty acre tract to achieve their basic request for the special exception for a Junk Yard.

The zoning map in question was adopted by the Baltimore County Council in November of 1962. The zoning on the east, north, and west sides of the subject property is R-40 as is the great majority of all the land on the zoning map for this area. The south boundary of the property borders on property owned by the State of Maryland which is part of the Potomac State Park. The State of Maryland acquired seven acres of property from the petitioners in 1958 for the park and at that time apparently was well aware of the commercial use on the remaining Shifflett property.

The petitioners produced numerous witnesses who have been familiar with the property dating back to the late 1930's and they testified, without contradiction, that the property has been used continuously as an automobile junk yard since, at least, prior to the enactment of the zoning regulations for Baltimore County in 1945. The Board finds as a fact that the property has been used as an automobile junk yard since prior to 1945 and if it were not for Section 200.16 of the Zoning Regulations it would presently enjoy a legal non-conforming use as a junk yard. Section 200.16 of the Zoning Regulations, which was enacted by the County Council on November 17, 1962, provides that any existing junk yard in a residential zone shall be eliminated within two years of the date of its enactment. The Board understands from counsel that the constitutionality of this amendment is presently being attacked in the Circuit Court for Baltimore County but has not yet been decided.

Cecil Shifflett, one of the petitioners in this case, testified at length as to the operation of the business conducted on the property. He testified that the value of

Cecil E. Shifflett - 465-102-RX

the inventory in 1965 was approximately \$225,000 and that for the same year he had a payroll of approximately \$60,000. He further stated that he has spent \$20,000 since 1956 on new equipment, tools, and on office building, and that as recently as 1961 he spent \$12,000 for repaving the property, paving the access road, and installing a drainage system. He further stated that in 1962 he was not aware of the proposed land use map that was under consideration by Baltimore County and subsequently adopted by the County Council in November of 1962, also he was not aware of County Council Bill No. 140 (subsequently enacted as Section 200.16 of the Zoning Regulations) until April of 1964 when he received a letter from the Baltimore County zoning authorities telling him that he was obliged to close out his business by November 17, 1964.

George Corvella, Director of Planning for Baltimore County, was called to testify by the petitioners in this case. He testified that the Planning Staff is opposed to the reclassification because of the primarily rural atmosphere of this area, however, he also stated that the Staff was not aware of the existence of the junk yard on the subject property when it studied the area in connection with the preparation of the land use map. He agreed the County presented has a substantial problem in disposing of junk automobiles but that in 1962 the Staff did not have any means study for automobile junk yards and that the pressure for the enactment of Section 200.16 of the Zoning Regulations banning existing junk yards in residential zones came after the Planning Board's adoption of the land use map here.

The majority of the protests, who were residents of the neighborhood, did not seem to be opposed to the present operation conducted on the property by Shifflett, but are fearful that the reclassification of a thirty acre tract from R-40 to M-H would:

1. be an unwarranted intrusion of manufacturing zoning into a rural area, and,
2. could possibly lead to other requests for manufacturing zoning.

It may be well here for the Board to briefly cite the testimony of each of the protestants that appeared at the hearing.

Iris Sassi: Mrs. Sassi testified that she fears the rezoning of the subject tract would lead to the rezoning of the Makowski property which adjoins Shifflett. She further testified that she did not personally oppose the Shiffletts, and that the business operated by Shifflett has not adversely affected her.

Clarence W. Martin, M.D.: Dr. Martin objected to the reclassification and specifically to the junk yard. He testified that he has seen cars hauled to and from the property, and that odd and bizarre signs had been placed at the entrance road advertising the business conducted on the premises. He also cited the narrowness of Wrights Mill Road but did state that he could not see the property from his residence.

Cecil E. Shifflett - 465-102-RX

Edward Minor: Mr. Minor, a member of the Planning Board of Baltimore County, objected to the use of the property and cited the narrowness of the roads in the vicinity. He also indicated that he cannot see the cars from his property but that at certain times he can see the reflection of the sunlight on the metal bodies. He further stated that the junk yard cannot be seen from the Potomac State Park property.

William A. Parr: Mr. Parr the Superintendent of the State Parks system appeared opposing the petition on behalf of the State stating that he feels that the Manufacturing Heavy use potentially conflict with the State Park usage of its property to the south. His testimony indicated that no development of the State property is contemplated at this time, and that the development of the property as a park here would possibly be ten years away. He also indicated that he objected to both phases of the petition but objected more strenuously to the thirty acre M-H zone.

Myrtle E. Souver: This witness resides on Dogwood Road approximately a mile east of the property and while she apparently cannot see the subject property she generally objects to the petition.

Harriet Saylor: Mrs. Saylor lives on Dogwood Road approximately a mile and a quarter from the property and stated that on occasion she could see smoke rising from the operation.

Mrs. Conway Robinson: Mrs. Robinson lives on a farm west of the subject property and is generally opposed to the petition although she did state that the present operation on the property did not bother her.

Mrs. Quall: Mrs. Quall is the owner of the thirty acre tract on Wrights Mill Road across from Dr. Martin, one of the other witnesses, and is approximately one-half mile from the subject property. She objected primarily on the grounds that she wanted the area to remain strictly residential.

There was no testimony of any substantial change in the character of the neighborhood since the adoption of the map in 1962, however, the Board feels that the zoning on the subject property is erroneous in that the Planning Staff, prior to the adoption of the map, was apparently unaware of the existing commercial use on the property, and consequently did not even consider recommending zoning on the property that would allow the commercial use of the land to continue, even though apparently (from Cecil Shifflett's testimony) in 1962 the petitioner had an inventory of cars valued at \$97,000 located on the property. It seems to the Board that to properly adopt a land use map the County should endeavor to determine existing land uses of properties, and in cases where feasible, adopt zoning that would allow existing businesses to continue their operation as long as they are not detrimental to the general health, safety, and welfare of the public. The testimony in this case indicated that very few, if any, persons can actually see the junk

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All that piece or parcel of land situate lying and being in the Second Election District of Baltimore County, State of Maryland and described as follows:

BEGINNING for the same at a point distant 333.61 feet measured south 60 degrees 53 minutes west from the beginning point in the above description of the land containing 30.46 acres more or less of which this description is a part running thence parallel to and 300.00 feet southerly measured at a right angle from the eleventh line in the aforesaid herein above description south 10 degrees 24 minutes 10 seconds east 1237.13 feet thence parallel to and 100.00 feet northeasterly measured at a right angle from the tenth line therein south 11 degrees 40 minutes 06 seconds east 556.42 feet thence south 76 degrees 04 minutes east 393.21 feet thence parallel to and 300.00 feet westerly measured at a right angle from the second and first lines in said herein above description the following two courses and distances viz: north 25 degrees 34 minutes 02 seconds west 393.59 feet and north 20 degrees 48 minutes 35 seconds east 39.22 feet to the place of beginning.
Containing five acres of land.



William A. Shifflett

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of...

the above Reclassification should be had, and it further appearing that by reason of...

a Special Exception for a... should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this... day of... 1964, that the herein described property or area should be and the same is hereby reclassified from a... zone to a... zone, and/or a Special Exception for a... should be and the same is granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of the petitioners did not prove an error in zoning... the subject property on the Western Ave. Map...

the above reclassification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this... day of... 1964, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain a... zone; under the Special Exception for... and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

CONWAY ROBINSON, J. ARVIN
DEITY, MRS. NICHOLAS
WALTONSTER, HESLEY QUAIL
VS.
WILLIAM S. SALOWIN, JOHN A.
SLONIK AND PAUL T. MCHEENEY, JR.
constituting the COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY
CECIL E. SHIFFLETT ET AL
Intervenor
8/109/3564

APPEAL

Kindly enter an appeal to the Court of Appeals of Maryland from the Order of this Court dated November 14, 1967 affirming the decision of the County Board of Appeals of Baltimore County dated May 25, 1966 in this case.

George W. White, Jr.
Buchmaster, White, Mindel & Clarke
Attorneys for Petitioners

I HEREBY CERTIFY that a copy of the above was mailed this 12th day of December, 1967 to Richard D. Payne, Esq., attorney for Intervenor and to the County Solicitor for Baltimore County.

For Attorneys for Petitioners

Cecil E. Shifflett - #65-102-RX

operation on the tract, and, as cited above, several witnesses testified that they knew of the use of the property but that it had not adversely affected them. Indeed, the overlooking of the existing use of this property by the Planning Staff would indicate that the junk operation is so remote and screened from public view that very few people are even aware of its existence.

The Board feels, for reasons cited above, that there is an error with regard to the zoning of the subject tract with regard to the five acre parcel on which the special exception is requested, and not with regard to the remaining twenty-five acres on which the petitioner requests M-H zoning. If the petitioner is to continue his present operation on the five acre parcel, which we feel should be property M-H, it will be necessary for him to obtain setback variances from the adjoining R-40 zone, as Section 408.2 of the Zoning Regulations requires a setback of at least 300 feet from any other zone. If the petitioner has to comply strictly with this regulation (408.2) then the five acre parcel would be totally unusable to him as a junk yard. We feel that strict compliance with the aforementioned Section would result in a practical difficulty or an unreasonable hardship to the petitioner in that he would be completely deprived of the use of his property. Further, we do not feel that any such variance would violate the spirit and intent of the Zoning Regulations as the setback variance that would be required is a setback only from a zoning line, and the surrounding property is all owned by the petitioner, therefore, such a setback variance would harm no one except the petitioner himself.

The Board feels that the petition for the reclassification from an R-40 zone to an M-H zone for the entire 30.5 acres should be denied, but that the five (5) acre parcel of ground on which is requested both a reclassification and special exception should be granted. The testimony does not indicate that the special exception sought would in any way violate Section 502.1 of the Zoning Regulations, therefore, the special exception requested will be granted. We will also grant the petitioner a variance from Section 408.2 of the Zoning Regulations allowing a zero foot setback instead of the required 300 foot setback from the surrounding R-40 zone.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 25th day of May, 1966 by the County Board of Appeals, ORDERED that the reclassification from an R-40 zone to an M-H zone in accordance with the attached legal description, be and the same is hereby granted, and that the petitioner is granted a variance from Section 408.2 of the Zoning Regulations allowing a zero foot setback instead of the required 300 foot setback from the surrounding residential zone for the storage of automobiles not in running condition and, further, that the special exception requested be and the same is hereby granted subject

Cecil E. Shifflett - #65-102-RX

to the following restrictions:

1. That a stockade type fence shall completely surround the property and dense evergreen screening, at least six (6) feet in height and at least five (5) feet in width, shall be planted outside the aforesaid fence
2. That burning of automobiles shall take place on the property no more than once each month, and then only on week days and days on which the wind velocity shall be at least ten miles an hour or more to rapidly dissipate any smoke emitting from such burning
3. That no public address system shall be used on the property in conjunction with the operation conducted thereon
4. That there shall only be one sign at the entrance of the property advertising the business conducted thereon, and such sign shall be unlighted, constructed of wood, and not larger than twenty (20) square feet

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Salowin, Chairman

John A. Slonik

Paul T. McHeeny, Jr.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: John G. Rose, Zoning Commissioner Date: September 29, 1964

FROM: George E. Gavrelis, Director

SUBJECT: #65-102-RX, R-40 to M-H and Special Exception for a Junk Yard. East side of Wrights Mill Road 1068 feet South of Davis Avenue. Being property of Cecil E. Shifflett, et al.

2nd District

HEARING: Wednesday, October 7, 1964 (10:00 A.M.)

The planning staff is unable to comment on the subject petition within the required time. The petition was not transmitted to the staff for comment. Members of the staff are available if properly subpoenaed to present oral testimony on the subject petition.

GEG:bms

CECIL E. SHIFFLETT, ET AL

NO. 65-102-RX

E/S Wrights Mill Road 1068' S. of Davis Avenue
Reclassification from R-40 to M.H.

2nd District
30.46 Total Acres

Special Exception for a Junk Yard on 5 acres of subject property

Aug. 14, 1964

Petition filed

Dec. 1

Reclassification & SE DENIED by Z.C.

May 25, 1966

Order of Appeal to County Board of Appeals filed
Order of Board GRANTING reclassification on five (5) acre parcel of land only.
GRANTING variance from Section 408.2 GRANTING special exception

June 23

Order for Appeal filed in Circuit Court by Geo. W. White, Esq., for Minor, et al. (File #3559)

Nov. 14, 1967

Order for Appeal filed in Circuit Court by W. Esquire Parks, Esq., for Greater Potomac Community Association, et al. (File #3564)

Dec. 12

Board AFFIRMED - Judge Maguire (both appeals)

Jan. 15, 1969

Board and Circuit Court REVERSED - Court of Appeals (P) Concurring Opinion of Judge Barnes "because I must as a result of the doctrine of stare decisis."

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 2ND Date of Posting: Sept. 12, 1964
Posted for: RESUBMITTAL R-40 to M-H Special Exception Junk Yard
Petitioner: Cecil E. Shifflett, et al.
Location of property: E/S of Wrights Mill Rd. 1068' S. of Davis Ave.
Location of Sign: W/S of Wrights Mill Rd. 1068' S. of Davis Ave.
(at) W/S of Wrights Mill Rd. 1068' S. of Davis Ave. (at) W/S of Davis Ave.
Remarks: [Signature]
Posted by: [Signature] Date of return: Sept. 24, 1964
4 signs

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 2ND Date of Posting: Jan. 9, 1965
Posted for: Appeal
Petitioner: Cecil E. Shifflett
Location of property: E/S of Wrights Mill Rd. 1068' S. of Davis Ave.
Location of Sign: E/S of Wrights Mill Rd. 1068' S. of Davis Ave.
Remarks: [Signature]
Posted by: [Signature] Date of return: Jan. 14, 1965
3 signs

MICROFILMED

EDWARD MINOR and TERESA K. MINOR, his wife and CLARENCE W. MARTIN and ETHEL I. MARTIN, his wife
 vs.
 WILLIAM S. BALDWIN, JOHN A. SLOWIK and PAUL T. MC HENRY, JR., constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

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 May 25, 1966, granted a reclassification of five (5) acres of a 30.5 acre tract requested in their petition, from an R-40 zone (Residence - 1 Family), to an M-H zone (Manufacturing - Heavy), with a Special Exception for a Junk Yard. Further, the Board granted a variance from Section 408.2 of the zoning regulations, allowing a zero foot set-back instead of the required 300 foot set-back from the surrounding R-40 zone. Further, the Board imposed restrictions with respect to the use of the Junk Yard as follows:

1. That a stockade type fence shall completely surround the property and dense evergreen screening, at least six (6) feet in height and at least five (5) feet in width, shall be planted outside the aforesaid fence.
2. That burning of automobiles shall take place on the property no more than once each month, and then only on week days and days on which the wind velocity shall be at least ten miles an hour or more to rapidly dissipate any smoke emitting from such burning.
3. That no public address system shall be used on the property in conjunction with the operation conducted thereon.

junk yards in Baltimore County as of November 17, 1964. The record clearly shows that the Petitioner, Cecil Shifflett, was not aware of this phasing out until April, 1964. As a result, the validity of this ordinance was contested before the Circuit Court for Baltimore County, and Judge John E. Raine, Jr. found that the ordinance was a valid exercise of police power. On appeal to the Court of Appeals of Maryland, the matter of Cecil Shifflett v. Baltimore County, Maryland, et al, decreed of Judge Raine was affirmed. The Court would like to comment on this matter of Shifflett v. Baltimore County, 247 Md. 151, decided on June 8, 1967, whereby the elimination of non-conforming uses was deemed to be constitutional and reasonable. Johnson/Cecil Shifflett would be out of business unless the reclassification and special exception were awarded to him. We feel that the harm to the applicants outweighs a very nebulous benefit to the public by disallowing this business of substantial investment and longevity.

In the appellants' memorandum, it set forth, "to sustain a piecemeal change, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning, or else a substantial change in conditions." Appellants cite The Shadybrook Improvement Association v. Malloy, 232 Md. 265; Pahl v. County Board of Appeals, 237 Md. 294; Becker Company v. Jerns, 230 Md. 541; Dill v. Tobar Corp., 242 Md. 16. We heartily agree with this summation of the law which disfavors spot zoning. Law of its very nature must be flexible and find exceptions. This instant case is such an exception for truly we cannot see how there could be stronger evidence of mistake in the original zoning.

4. That there shall only be one sign at the entrance of the property advertising the business conducted thereon, and such sign shall be unlighted, constructed of wood, and not larger than twenty (20) square feet.

The protestant plaintiffs are property owners in an R-40 zone (Residence - 1 Family), whose properties are anywhere from 1/4 of a mile to 1 mile or more from the applicants' property, and have recently seen a five acre tract nearby rezoned to M-H (Manufacturing - Heavy), a Special Exception for a Junk Yard, and a zero set-back variance, rather than the required 300 foot set-back, granted by an Order of the County Board of Appeals of Baltimore County. The protestants are appealing the decision of the Board of Appeals, not especially because they are distraught at the presence of the Junk Yard, but because they fear that the potential of M-H zoning in their neighborhood opens the door to several other possible manufacturing operations which could be far more repugnant than a Junk Yard. M-H zoning in Baltimore County opens the door for practically any type of operation of an industrial nature. Actually, the majority of the protestants testified that they had no objection to the Junk Yard itself, which is well camouflaged by trees and the hilly topography of the land, and which Junk Yard has existed since the late 1930's. Thus the Junk Yard was in existence prior to 1945 when the zoning regulations were adopted by Baltimore County originally, and which regulations permit a non-conforming use of any properties in the County to continue after the adoption of these regulations, with some exceptions.

It is well established that the function of the Circuit Court is not to zone, and that the said Court will disturb the order of the Board of Appeals only where the question is not fairly debatable, or where there is evidence in the record of unreasonableness, arbitrariness, or capriciousness.

The County Board of Appeals also imposed stringent restrictions on the use of the five acres by screening, limitations as to burning, eliminating any public address system, and the limitation of the use of signs affecting the business. These limitations will be additional protection and safeguards to the protesting property owners.

For the reasons stated above, it is this 14th day of November, 1967, by the Circuit Court for Baltimore County, ORDERED that the order of the County Board of Appeals of Baltimore County dated May 25, 1966, be and the same is hereby affirmed.

John H. McGuire
 John H. McGuire
 JUDGE

Finney v. Hall, 241 Md. 236; Motherhead v. Board of County Commissioners, 240 Md. 365; City of Baltimore v. Borinsky, 239 Md. 611; Roth Triflich v. Blum, 242 Md. 94, etc.

We find that the question was fairly debatable and that there is no evidence that the action of the Board was unreasonable, arbitrary, or capricious.

The zoning officials will rezone if there is evidence of substantial change in the character of the neighborhood since the inception of the existing zoning ordinances, or if there is evidence of original error in the drawing of the comprehensive zoning map. Rosley v. Hospital, 246 Md. 197; Queen Anne's County v. Miles, 246 Md. 355, etc.

The evidence of original error in the instant matter seems crystal clear. The Junk Yard business was in existence long before the zoning map was adopted in 1962. Mr. George Gavrellis, Director of Planning for Baltimore County, admitted under oath, that his staff was not aware of the existence of the Junk Yard when they prepared the zoning map. Further, the owner, Cecil Shifflett, has a substantial investment in his business approaching \$300,000. We might add that the admission of Mr. Gavrellis seems an attestation to a fine effort on the owner's part to minimize the unavoidable eyesore of a Junk Yard by shielding the metal components with trees and hills. It is an effort that seems emulation by other Junk Yard owners.

The Petitioner owns 30.5 acres. By granting only a five (5) acre reclassification, the Board found a very equitable remedy. The remainder of the tract remains R-40, providing a buffer against the rest of the neighborhood and making it possible

THE GREATER RAPAPOC COMMUNITY ASSOCIATION, INC. c/o J. AUSTIN DEITE Davis Avenue Woodstock, Maryland	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY (AT LAW)
COMANY ROBINSON Davis Avenue Woodstock, Maryland	:	
J. AUSTIN DEITE Davis Avenue Woodstock, Maryland	:	
NICHOLE WALTERMEYER Davis Avenue Woodstock, Maryland	:	APPEAL FROM THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
WELSHY QUAIL Wright's Mill Road Woodstock, Maryland	:	65-104-10X
vs.	:	
WILLIAM S. BALDWIN JOHN A. SLOWIK PAUL T. MC HENRY Constituting the County Board of Appeals of Baltimore County County Office Building Towson, Maryland 21204	:	

ORDER FOR APPEAL

MR. CLERK:

The above named Appellants by Parks and Parks, their attorneys being apprised by the action of the County Board of Appeals of Baltimore County on the 25th day of May, 1966, in reclassifying from R-40 Zone to a M.H. Zone certain land owned by Cecil Shifflett, et al, on Wright's Mill Road, south of Davis Avenue in the Second District of Baltimore County. The Appellants are further apprised by the action of the aforementioned Board in allowing a zero foot setback instead of the required Three Hundred

for the owner to operate his junkyard in the entire five acres without adhering to set-back ordinances. It would be both an unnecessary hardship and futile not to grant the set-back variance as the surrounding property remains his own and a 300 foot set-back would eliminate the Junk Yard.

The Court admits that the threat remains that the five acres could become an immensely more noxious enterprise if Shifflett should sell the five acres. We find this unfortunate but place the blame for this possible inequity on the legislative agency which wrote the inflexible area of the zoning. Again it is not the function of the Court to write zoning laws, or substitute their judgment for that of the agency. 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 Farm, 232 Md. 274 p. 283 stated at pages 371-372 as follows:

"...the courts have exercised restraint so as not to substitute their judgments for that of the agency and not to choose between equally permissible inferences or make independent determinations of fact, because to do so would be exercising a non-judicial role. Rather, they have attempted to decide whether a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the fact picture painted by the entire record."

"In the cases dealing with consideration of the weight of the evidence, the matter seems to have come down to whether, all that was before the agency considered, its action was clearly erroneous, or to use the phrase which has become standard in Maryland zoning cases, 'not fairly debatable'."

See cases cited supra.

The testimony before the County Board of Appeals further developed that County Council Bill No. 140 subsequently enacted as Section 200.16 of the zoning regulations phased out

(300) foot setback from the surrounding residential zone for the storage of automobiles not in running condition. The Appellants are further apprised by the granting of special exception by said Board for a junk yard and therefore, respectfully request that an appeal be entered in the above-entitled case to the Circuit Court for Baltimore County At Law.

PARKS AND PARKS
 2101 One Charles Center
 Baltimore, Maryland 21201
 800-6-5045
 Attorneys for Appellants

By *H. Edgar Parks*
 H. EDGAR PARKS

I HEREBY CERTIFY, that a copy of the foregoing Order for Appeal was mailed to H. Kemp MacDaniel, Esquire, 26 West Pennsylvania Avenue, Attorney for Appellees, on this 24 day of June, 1966.

H. Edgar Parks
 H. EDGAR PARKS

THE GREATER PATAPSCO COMMUNITY ASSOCIATION, INC., COMMAN ROBINSON, J. JUSTIN DEITS, NICHOLAS WALTMEYER, WESLEY QUAIL
VS.
WILLIAM S. BALWIM, JOHN A. BLOWIK and PAUL T. MCHENRY, JR., constituting the COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
CECIL E. SHIFFLETT, ET AL. (Interveners)

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
AT LAW
Misc. Docket 8
Folio 109
Case No. 3564

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 May 25, 1966, granted a reclassification of five (5) acres of a 30.5 acre tract requested in their petition, from an R-40 (Residence - 1 Family) zone, to an M-H zone (Manufacturing - Heavy), with a Special Exception for a Junk Yard. Further, the Board granted a variance from Section 408.2 of the zoning regulations, allowing a zero foot set-back instead of the required 300 foot set-back from the surrounding R-40 zone. Further, the Board imposed restrictions with respect to the use of the Junk Yard as follows:

1. That a stockade type fence shall completely surround the property and dense evergreen screening, at least six (6) feet in height and at least five (5) feet in width, shall be planted outside the aforesaid fence.
2. That burning of automobiles shall take place on the property no more than once each month, and then only on week days and days on which the wind velocity shall be at least ten miles an hour or more so rapidly dissipate any smoke emitting from such burning.
3. That no public address system shall be used on the property in conjunction with the operation conducted thereon.

junk yards in Baltimore County as of November 17, 1964. The record clearly shows that the Petitioner, Cecil Shifflett, was not aware of this phasing out until April, 1964. As a result, the validity of this ordinance was contested before the Circuit Court for Baltimore County, and Judge John E. Raine, Jr. found that the ordinance was a valid exercise of police power. On appeal to the Court of Appeals of Maryland, the matter of Cecil Shifflett v. Baltimore County, Maryland, et al, decree of Judge Raine was affirmed. The Court would like to comment on this matter of Shifflett v. Baltimore County, 247 Md. 151, decided on June 8, 1967, whereby the elimination of non-conforming uses was deemed to be constitutional and reasonable. Thus Cecil Shifflett would be out of business unless the reclassification and special exception were awarded to him. We feel that the harm to the applicants outweighs a very nebulous benefit to the public by disallowing this business of substantial investment and longevity.

In the appellants' memorandum, it set forth, "to sustain a piecemeal change, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning, or else a substantial change in conditions." Appellants cite The Shadybrook Improvement Association v. Mayor, 232 Md. 265; Pahl v. County Board of Appeals, 237 Md. 294; Becker Company v. Jorns, 230 Md. 541; Dill v. Johar Corp., 242 Md. 16. We heartily agree with this summation of the law which disfavors spot zoning. Law of its very nature must be flexible and find exceptions. This instant case is such an exception for truly we cannot see how there could be stronger evidence of mistake in the original zoning.

4. That there shall only be one sign at the entrance of the property advertising the business conducted thereon, and such sign shall be unlighted, constructed of wood, and not larger than twenty (20) square feet.

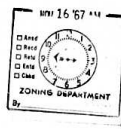
The protestant plaintiffs are property owners in an R-40 zone (Residence - 1 Family), whose properties are anywhere from 1/4 of a mile to 1 mile or more from the applicants' property, and have recently seen a five acre tract nearby rezoned to M-H (Manufacturing - Heavy), a Special Exception for a Junk Yard, and a zero set-back variance, rather than the required 300 foot set-back, granted by an Order of the County Board of Appeals of Baltimore County. The protestants are appealing the decision of the Board of Appeals, not especially because they are distraught at the presence of the Junk Yard, but because they fear that the potential of M-H zoning in their neighborhood opens the door to several other possible manufacturing operations which could be far more repugnant than a Junk Yard. M-H zoning in Baltimore County opens the door for practically any type of operation of an industrial nature. Actually, the majority of the protestants testified that they had no objection to the Junk Yard itself, which is well camouflaged by trees and the hilly topography of the land, and which Junk Yard has existed since the late 1930's. Thus the Junk Yard was in existence prior to 1945 when the zoning regulations were adopted by Baltimore County originally, and which regulations permit a non-conforming use of any properties in the County to continue after the adoption of these regulations, with some exceptions.

It is well established that the function of the Circuit Court is not to zone, and that the said Court will disturb the order of the Board of Appeals only where the question is not fairly debatable, or where there is evidence in the record of unreasonableness, arbitrariness, or capriciousness.

The County Board of Appeals also imposed stringent restrictions on the use of the five acres by screening, limitations as to burning, eliminating any public address system, and the limitation of the use of signs affecting the business. These limitations will be additional protection and safeguards to the protesting property owners.

For the reasons stated above, it is this 14th day of November, 1967, by the Circuit Court for Baltimore County, ORDERED that the order of the County Board of Appeals of Baltimore County dated May 25, 1966, be and the same is hereby affirmed.

John E. Raine
John E. Raine
JUDGE



Finney v. Hall, 241 Md. 236; Motherhead v. Board of County Commissioners, 240 Md. 365; City of Baltimore v. Borinsky, 239 Md. 611; Beth Tylloh v. Blum, 242 Md. 84, etc.

We find that the question was fairly debatable and that there is no evidence that the action of the Board was unreasonable, arbitrary, or capricious.

The zoning officials will rezone if there is evidence of substantial change in the character of the neighborhood since the inception of the existing zoning ordinances, or if there is evidence of original error in the drawing of the comprehensive zoning map. Bosley v. Hospital, 246 Md. 197; Queen Anne's County v. Miles, 246 Md. 355, etc.

The evidence of original error in the instant matter seems crystal clear. The Junk Yard business was in existence long before the zoning map was adopted in 1962. Mr. George Gavrelis, Director of Planning for Baltimore County, admitted under oath, that his staff was not aware of the existence of the Junk Yard when they prepared the zoning map. Further, the owner, Cecil Shifflett, has a substantial investment in his business approaching \$300,000. We might add that the admission of Mr. Gavrelis seems an attestation to a fine effort on the owner's part to minimize the unavoidable eyesore of a Junk Yard by shielding the metal components with trees and hills. It is an effort that deems emulation by other Junk Yard owners.

The Petitioner owns 30.5 acres. By granting only a five (5) acre reclassification, the Board found a very equitable remedy. The remainder of the tract remains R-40, providing a buffer against the rest of the neighborhood and making it possible

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

No. 27658
DATE 8/12/64

TO: Honors, Macdonald & Payne,
26 W. Pennsylvania Avenue
Towson 4, Md.

RECEIVED Office of Planning & Zoning
119 County Office Bldg.
Towson 4, Md.

DEBIT TO ACCOUNT NO.	QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT DUE
01-422		Cost of appeal and posting property - Cecil E. Shifflett, et al No. 65-102-KX	150.00
		PAID - Baltimore County, Md. - Office of Finance	
		12-4964 2357 * 27658 11P-	50.00
		3	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWNSON 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
TOWNSON 4, MARYLAND

No. 25251
DATE 8/12/64

TO: Cash

RECEIVED Zoning Department of Baltimore County

DEBIT TO ACCOUNT NO.	QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT DUE
01-422		Petition for Reclassification & Special Exception for Cecil Shifflett et al	50.00
		PAID - Baltimore County, Md. - Office of Finance	
		8-4164 2357 * 25251 11P-	50.00
		3	

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

for the owner to operate his junkyard in the entire five acres without adhering to set-back ordinances. It would be both an unnecessary hardship and futile not to grant the set-back variance as the surrounding property remains his own and a 300 foot set-back would eliminate the Junk Yard.

The Court admits that this threat remains that the five acres could become an immensely more noxious enterprise if Shifflett should sell the five acres. We find this unfortunate but place the blame for this possible inequity on the legislative agency which wrote the inflexible area of the zoning. Again it is not the function of the Court to write zoning laws, or substitute their judgment for that of the agency. 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. 283 stated at pages 371-372 as follows:

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See cases cited supra.

The testimony before the County Board of Appeals further developed that County Council Bill No. 140 subsequently enacted as Section 200.16 of the zoning regulations phased out

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

No. 25378
DATE 10/7/64

TO: Shifflett Bros. Auto Parts
Wright Hill Rd.
Towson, Md.

RECEIVED Zoning Department of Balto. Co.

DEBIT TO ACCOUNT NO.	QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT DUE
01-422		Advertising and posting of your property 65-102-KX	150.00
		PAID - Baltimore County, Md. - Office of Finance	
		12-784 2356 * 25378 11P-	150.00
		3	

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWNSON 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
TOWNSON 4, MARYLAND

No. 25251
DATE 8/12/64

TO: Cash

RECEIVED Zoning Department of Baltimore County

DEBIT TO ACCOUNT NO.	QUANTITY	DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT DUE
01-422		Petition for Reclassification & Special Exception for Cecil Shifflett et al	50.00
		PAID - Baltimore County, Md. - Office of Finance	
		8-4164 2357 * 25251 11P-	50.00
		3	

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

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

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

JOHN G. ROSE
Zoning Commissioner

OWNERS Name: Cecil Shifflett, et al
Reviewed by John G. Rose

MICROFILMED

September Term, 1968

EDWARD MINOR, et al. and
CONWAY ROBINSON, et al.

v.

CECIL E. SHIFFLETT, et al.

Hammond, C.J.
Marty
Sutton
Moylan
Singley
Sutcliffe,
J.J.

Concurring Opinion by Barnes, J.

Filed: January 15, 1969

ZONING FILE #48-102-K

Barnes, J., concurring:

I most reluctantly concur in the result in this case.

I only concur because I must as a result of the doctrine of stare decisis.

The result in the case on this appeal - contrary to the result reached both by the Board and by the Circuit Court - is based upon two lines of decision in this Court both of which I consider to be quite erroneous and contrary to a correct understanding of the constitutional provisions involved.

The first of these erroneous lines of decision is the Maryland "change in conditions - mistake in original zoning" rule. My comments upon this unfortunate rule in regard to its curious inception, its illogical character and its unhappy results, have already appeared at some length in earlier dissenting and concurring opinions. See MacDonald v. Board of County Comm'rs, 238 Md. 549, 557, 604, 210 A.2d 385, 388, 340 (1965). See also Wahler v. Montgomery County, 249 Md. 62, 71, 249 Md. 265, 271 (1968) and Randolph v. City of Baltimore, 249 Md. 78, 90, 249 Md. 237, 264 (1968).

These comments need not be repeated again or even summarized here. The present case, however, appears to me to be a good example of an unfortunate and unsound result, emanating from this erroneous doctrine, which is gravely injurious to the property rights of Shifflett, the property owner, and to the public interest as well.

First of all, it is established that the junk use is a lawful use of private property, and does not constitute a nuisance per se. Town of Pledenshure v. Barr, 215 Md. 292, 296, 139 A.2d 703, 705-06 (1958).This brings me to the second line of erroneous decision, which began with Grant v. Mayor and City Council of Baltimore, 212 Md. 301, 129 A.2d 383 (1957) and has unfortunately been continued with increasing vigor in Mayor v. Mayor and City Council of Baltimore, 241 Md. 680, 217 A.2d 348 (1966) and Shifflett v. Baltimore County, 247 Md. 151, 230 A.2d 310 (1967).In my concurring opinion in Stevens v. City of Salisbury, 240 Md. 556, 575, 214 A.2d 775, 785 (1966), I indicated my distress at the Court's approval of the prior decision in Grant and expressed the hope that the Grant decision would be overruled by the Court as soon as possible or, at least, strictly limited to the facts in the Grant case. As indicated, neither hope was realized.In my concurring opinion in Stevens, I quoted at some length from the "dissenting" opinion of Judge Van Voorhis of the1. By coincidence, by the operation of our general practice of stating in panels of five judges, I did not sit in either Barnes v. Baltimore, 240 Md. 749, 217 A.2d 348 (1966) or Shifflett v. Baltimore County, 247 Md. 151, 230 A.2d 310 (1967). I would have dissented in both cases had I sat.2. As pointed out in Note 1 in the concurring opinion in the Stevens case, the Van Voorhis dissent in the Barnes case was an opinion as there was no majority within the Barnes case.

Secondly, the private property involved in this case has been used for the lawful purpose since 1922, assuming, arguendo, that Section 200.16 of the Baltimore County Zoning Regulations is unconstitutional. The property owner has a substantial investment of approximately \$300,000 in this property and the business conducted there. The use of this property for a lawful business is, in my opinion, a vested property right. The lawful use provides substantial employment for 10 full-time employees, and two part-time employees, with a payroll of approximately \$60,000 per year. The use not only is beneficial to the economy generally but specifically provides employment and advances the public interest in that important way.

Thirdly, the vesting of this property right occurred some 13 years before the original zoning in the area in 1945 and has continued without interruption until the present time.

What other property owner has been injured by this use? Some of the protestants in this case did not even know of the existence of the use when they acquired and moved into their properties. While others knew about the use, some could not see the subject property from their own properties; and not one testified in regard to any specific injury to him personally or even to any specific amount of depreciation in the value of his property resulting from Shifflett's use. The terrain where the junk use is carried on is quite rough and at one time there was a quarry on the property. No nearby or other property owner has sought any relief in equity for any alleged nuisance, doubtless because there is no nuisance. And yet, notwithstanding this factual situation, his long-established lawful and beneficial use, by the terms of Section 200.16 of the Baltimore

County of Appeals of New York in Madison v. City of Buffalo, 4 N.Y.2d 553, 554, 152 N.Y.2d 48, 50 (1968), in which my views on this extraordinary doctrine of the constitutionality of the elimination by legislative provision of established non-conforming uses by the use of an "amortization" period in the statute, but without provision for the payment of just compensation, are fully articulated by Judge Van Voorhis. Again, I need not repeat these views here. When the right to use private property for a lawful use vests - as the right has, in my opinion, in this case - the only constitutional way that vested right may be eliminated by the State or its political subdivisions against the will of the property owner is by the exercise of the power of eminent domain and the payment of just compensation. As Mr. Justice Holmes aptly stated in 1922 in Pennsylvania Coal Co. v. Mahan, 260 U.S. 393, 415, 43 S.Ct. 158, 160, 67 L.Ed. 329, 338:

"The mere prohibition of private property in the Fifth Amendment presupposes that it is vested for public use, and provides that it shall not be taken for such use without compensation. A similar assumption is made in the definition upon the Fourteenth Amendment. . . . When the government exercises its power to extend the qualification here and until it has private property dispossessed, but that cannot be accomplished in this way under the Constitution of the United States."

Quite apart from our obligation as I see it to protect Shifflett's property rights under the provisions of the Maryland Constitution, to seek to acquire payment to Shifflett for the deprivation of his right to continue to use part of the subject property for the lawful use, in my opinion, contrary to the public interest.

County Zoning Regulations, enacted by the County Council on November 17, 1962, must be obliterated, with no provision for just compensation, unless the Board could pursuant to its delegated legislative powers rescind a sufficient part of the subject property to enable the property owner to continue the use. At this point the difference between what I conceive to be the proper constitutional doctrine which ought to be applied and the Maryland "change-mistake" rule becomes clearly apparent.

It is conceded that there has been no "change in conditions" since the last constitutional reasoning to justify the Board in approving the rescinding. I must agree with the majority in its observation that the proof in the present case does not support the Board's finding that there was a "mistake in original zoning." There was no expert testimony to this effect introduced on behalf of Shifflett. Indeed, the only expert testimony in the case - that of Mr. Gavreli - indicated (hypothetically, at least) that there was, in his opinion, no error in the original zoning. It is apparent, I think, that merely because there was a non-conforming use created at the time of the original zoning, which was not then made to conform by some type of zoning, there is not, ipso facto, a "mistake" in the original zoning.

If, however, the pre-constitutional doctrine were applied, which, in my opinion, is whether or not the rescinding action of the Board was "arbitrary, unreasonable or capricious" and thus a denial of due process of law contrary to Article 23 of the Declaration of Rights in the Maryland Constitution - the

Where will Shifflett get the necessary money to continue his business? Where will he locate his business, if he is fortunate enough to have sufficient private resources to re-establish his business at another location, in view of the very few locations in Baltimore County as a result of the present legislative and other restrictions? If he is forced out of business, who will perform the useful function accomplished by his business and where will his employees be employed and receive the wages necessary to support them and their families? If we had held that Section 200.16 of the Baltimore County Zoning Regulations, enacted November 17, 1962, was unconstitutional and void, as I firmly believe it to be, Shifflett would not have to seek answers to these questions and, in my opinion, the public interest would also be served.

Finally, it is not without irony that in the first of these erroneous lines of decision, we have, in my opinion, placed a restitution on the exercise of the legislative power more stringent than permitted to us under the Maryland Constitution, whereas in the second of these erroneous lines of decision, we have declined to place a restitution upon the exercise of the legislation which seems to me to be clearly required by the constitutional prohibitions against taking private property for public use without the payment of just compensation. In the generous words of Archbishop Cramer in the General Conference in Lansing and Evading Prayer in the Book of Common Prayer "we have left undone those things which we ought to have done and have done those things which we ought not to have done." I will not, however, add the next clause. I think here that ultimately we will return to more serious constitutional questions in the case at hand mentioned.

ZONING FILE #65-102-RX

Appellants appealed to the Circuit Court for Baltimore County which court affirmed the decision of the Board of Appeals. This appeal followed. For the reasons hereinafter set forth we hold the reclassification should have been denied.

Although Mr. Gavrelis, Director of Planning for Baltimore

[illegible]

"I don't mean in every case. A. They are identified, and from a planning viewpoint, and it seems they do make sense as part of the zoning fabric, commercial zoning or what is recommended to the Board, but on the other hand, if the property has no zoning status, it is a nonperforming use, and from a staff viewpoint, and from the Board's viewpoint, it is best that the establishment of zoning potential be infeasible, the recommendation to make is to retain the property in its present use."

Q. Why, - if they are not needed for the junk yard? A. You can go around and around and around."

Moreover, on the Quarry Express Garbelle testified a quarry can exist with a special exception to 10.0, 10.0, and 10.0 and 10.0.

1. Background The work is a continuation of the work done in the previous year, which was a study of the effects of the use of the word "and" in the title of a paper.

See also, Gonzalez College v. Martinez, (74-33, September Term, 1957 decided December 6, 1958) citing Amalgamated, supra.

However, the 100-hour rule, where the person

There are certain exceptions to "spot zoning" recognized in the Basal and Tamiami cases, "such as the creation of small districts within a residential zone for the operation of such establishments as grocery stores, drug stores, barber shops, and even gasoline stations. For the accommodation and convenience of the residents of the

The presence of ~~nonconforming~~ use in an area would not and could not be evidence of error in original zoning requiring a change of classification. To so hold would defeat the very purpose of zoning. Ordinarily, planners expect that nonconforming uses will wither on the vine, so to speak, and ultimately disappear. The usual zoning ordinance provides, as does the Baltimore County ordinance, that a discontinuance of a nonconforming use for a specified period of time shall be deemed an abandonment.

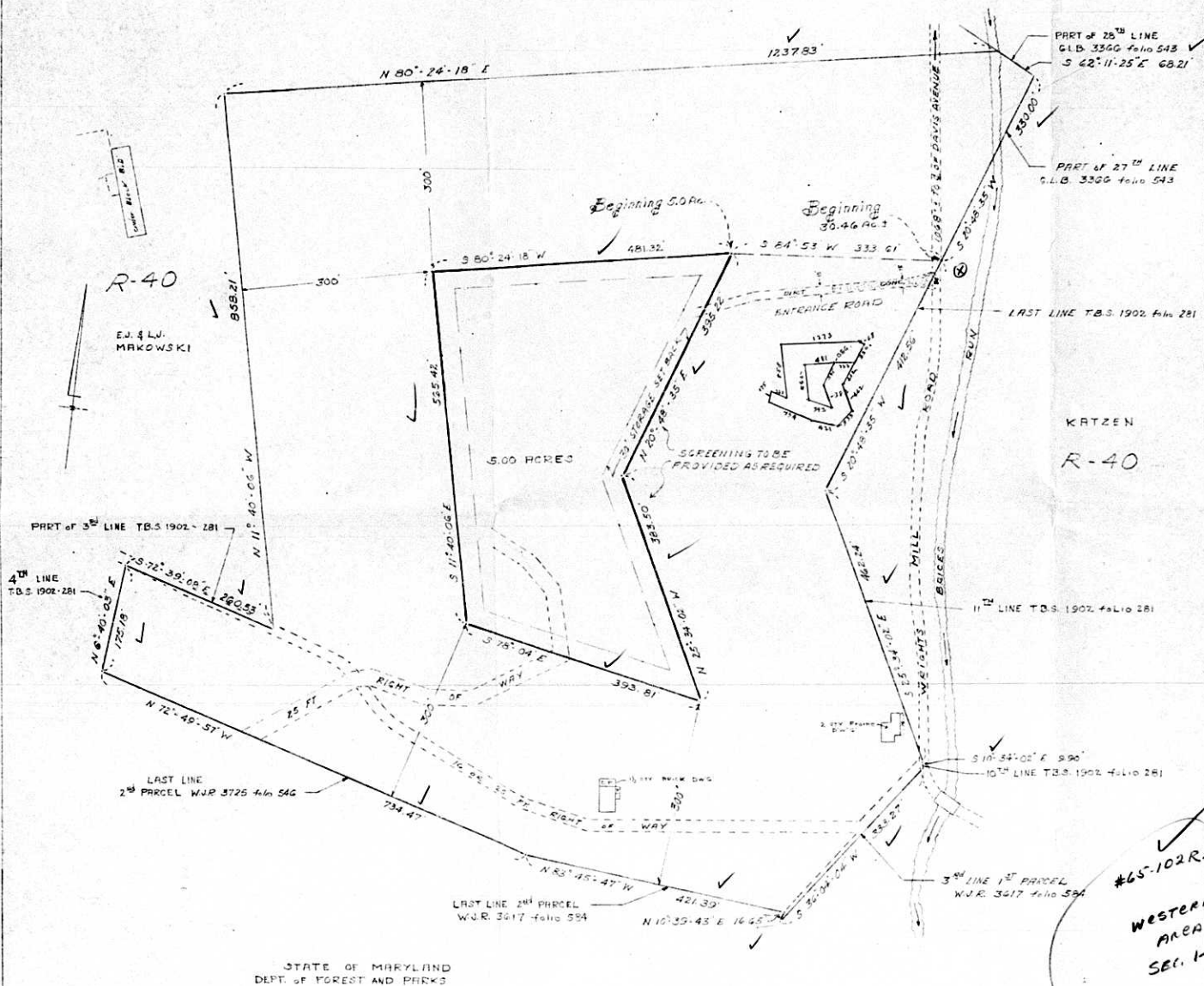
The burden of proof was on Plaintiff. The Board of Appeals conceded that there was no evidence of any substantial change in the character of the neighborhood. The uncontroverted evidence is that the entire surrounding area is devoted to residential uses. We hold the record to be devoid of substantial supporting facts as to original error. The request here is squarely within the language of Watts and Hovick, supra. The request for the sale benefits of the private interests of the owner and is for use inconsistent with the uses to which the rest of the district is restricted.

MICROFILMED

[illegible]

-ED. & L.V. MAKOWSKI

R-40



STATE OF MARYLAND
DEPT. OF FOREST AND PARKS

FOR PURPOSE OF ZONING ONLY

PRESENT ZONING = R-40

PROPOSED ZONING = M-H WITH SPECIAL EXCEPTION

AREA M-H = 30.46 ACRES (TOTAL)

SPECIAL EXCEPTION 5 ACRES

PRESENT USE = JUNK YARD

PROPOSED USE = JUNK YARD

STATE OF MARYLAND
DEPT. OF FOREST AND PARKS



Wm. M. Maynardier



WILLIAM M. MAYNARDIER
COUNTY SURVEYOR
CIVIL ENGINEER & LAND SURVEYOR
COURT HOUSE FOWSON, 4, MD.
SCALE 1" = 100' JUNE 25, 1964

#65-102RX
WESTERN
AREA
SEC. 1-B