

IN THE COURT OF APPEALS OF MARYLAND

No. 188

September Term, 1966

MRS. HOWARD BOSLEY, et al

HOSPITAL FOR CONSUMPTIVES OF MARYLAND, et al

Hammond, C. J.
Harvey
Oppenheimer
Barnes
McMillans
JJ.

Opinion by Barnes, J.

Filed: April 6, 1967

NO. 188
HOSPITAL FOR CONSUMPTIVES OF MARYLAND, et al
v.
MRS. HOWARD BOSLEY, et al
FILED
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CLERK OF THE COURT

The County Board of Appeals of Baltimore County (the Board) rezoned a 15.016 acre tract of land in the Ninth Election District of Baltimore County, owned by the appellee, Hospital for Consumptives of Maryland, commonly called Endowood, from the R-10 and R-6 zones (residential lots of not less than 10,000 and 6,000 square feet, respectively) to the B-1 (business, light) zone. The Board's action was affirmed by the Circuit Court for Baltimore County (Munich, J.) on April 21, 1966. The appellants, who own and dwell in residences in the general vicinity of the 15.016 acre tract, protested the rezoning before the Board and took a timely appeal to this Court from the order of the Circuit Court.

The 15.016 acre tract (the subject property) is triangular in shape bounded on three sides by public roads, i.e., on the north by Joppa Road, a 48 foot paved road on a 70 foot right-of-way; on the east by Prince Road a 42 foot paved road on a 70 foot right-of-way; on the west-southwesterly side by Goucher Boulevard, which has a 110 foot right-of-way with two 38 foot paved lanes of travel. The proposed use to be made of the subject property by the contract purchaser, Vornado, Inc., is for a discount department store which will have a one-story building of 141,000 square feet with a parking area for 745 parking units. There are adequate public water and sewer facilities at the subject property for the proposed use.

The existing topography of the subject property is irregular. It is at the road level with Prince Road on the east of the site, but on the western one-third of the subject property—a triangular portion bounded by Joppa Road and Goucher Boulevard—

there is a grade running as high as 40%. At the intersection of Goucher Boulevard and Joppa Road the property is 22 feet below the grade of the intersection.

The original zoning map, placing the subject property in the R-6 and R-10 zones, is dated November 14, 1959. At that time neither Goucher Boulevard nor Prince Road were in existence, although there was testimony before the Board that the intention to construct these roads in the general area was known at the time the zoning map was adopted. However, neither road appears on the zoning map.

Prior to the adoption of the zoning map, the Hospital owned and used 300 acres of land which extended from Hillen Road on the south, to Joppa Road to the north and from the Greenbrier Development on the west to Pleasant Plains Road on the east. This large tract was reduced in 1954 by the sale of 150 acres to the Swarthmore Company, which developed the Endowood Shopping Center, and by the sale of 20 acres to the Bendix Corporation. The portions of the original 300 acre tract had been farmed by the Hospital prior to the sales. The remaining land contained all of the hospital buildings and was used by the Hospital for its treatment of tubercular patients.

Beginning in 1930 roads were extensively developed in the area. Goucher Boulevard (then called Tyler Avenue Extended) was constructed from Loch River Boulevard to Prince Road and Prince Road was constructed from Goucher Boulevard to Joppa Road. In 1964 Joppa Road was widened from a 22 foot paved road (including shoulders) to a 48 foot road and by means of a 24 foot fill the

Directly across from the subject property and within 200 feet of it, on the north side of Joppa Road and diagonally across from the intersection of that road and Prince Road, there have been three zoning changes. First, a rezoning from R-6 to R-A at Center Road and Joppa Road was approved by the Zoning Commissioner on July 26, 1965. Second, a companion property to that involved in the first change, located 137 feet west of Center Road on Joppa Road, was also reclassified from R-6 to R-A on March 22, 1962. No appeals were taken from either of these decisions. Third, a request for a variance to adapt apartment buildings to a particular site was approved on July 12, 1963.

In addition, the Board approved a special exception on July 14, 1964, for an elevator apartment building on a property located at Edgerton and Joppa Roads, also diagonally across the street from the subject property. On November 22, 1963, 8.1 acres, xxx approximately one block south of the subject property, was rezoned from R-6 to R-A. This reclassification was final, although there was an appeal from the request for an elevator apartment building permit on the 8.1 acre tract. The balance of the Endowood tract directly across Goucher Boulevard from the subject property, consisting of 30.9 acres between the Greenbrier Development and Goucher Boulevard, has been rezoned to the R-A zone for 525 apartment units which are now under construction.

Mr. Willensin concluded that because of the alleged error in original zoning, the changes in the neighborhood since the original zoning map was adopted, and the presence of the unused

hospital buildings on the subject property was "an ideal property for business use." He pointed out that the intensive construction of apartments in the immediate area and a substantial increase in population made an additional commercial location necessary and desirable. The expert stated, moreover, that a tract of land the size of the subject property with its network of roads, uses and convenience could not be duplicated for a considerable distance from the subject property.

W. Worthington Bwell, a traffic expert with impressive qualifications, testified that the proposed use of the subject property would create no traffic hazard, stating specifically his reasons for that opinion. His traffic study indicated that Goucher Boulevard was only used at 25% of its capacity.

Frederick P. Klaus, a well-qualified real estate expert, testified that the subject property could not economically be used for development in R-6 zoning and that the highest and best use of the property was for a business use. He testified that commercial expansion or reclassification in the area had not kept pace with the high-density reclassification. He also stated that the proposed use could not be seen from the homes on Holden Road, Overcrest Road and Brook Road as they now exist and that the occupants of the houses in the Greenbrier development after the intervening 31 acre tract is developed with apartments, could not see the proposed improvements on the subject property. He was of the opinion that "there is a need for additional commercial zoning in an area that

the elevation of Joppa Road was raised substantially to form an intersection at grade with Goucher Boulevard. During this same period, Goucher Boulevard was extended from Prince Road to Providence Road on a 110 foot right-of-way providing two 38 foot wide paved lanes with a 12 foot median strip. The Hospital had protested the final location of Goucher Boulevard because it severed the subject property, containing the principal hospital buildings, from the remaining portion of the Hospital's property. Notwithstanding this protest, the road was built in its present location. The Hospital closed on June 26, 1964. The record does not indicate the value of the vacant buildings, but there was testimony that it cost the Hospital \$16,000 a year to maintain them.

An engineer produced by the applicant at the hearing before the Board, testified in detail concerning substantial improvements made in the water and sewage facilities serving the xxxxxxxxxxxxxxxx subject property since the 1959 zoning map was adopted.

Bernard Willensin, a well-qualified land planner, testified for the applicant before the Board. In his opinion, the R-10 and R-6 zoning was incorrect when placed on the subject property on November 14, 1959 since the zoning was inconsistent with the circumstances and knowledge that the County Commissioners had at that time. Mr. Willensin pointed out that the County Commissioners knew of the location of the property and its characteristics and that there was a proposed shopping center to be erected on 40 acres across the road from the subject property (25 acres of which was zoned B-1) subject to a contract of purchase when the zoning map was adopted.

has so much high density zoning for rental units," and that the subject property was appropriate to supply this need "because it is contiguous to an existing B-1 zone, to the east, it is contiguous to an R-1 zone to the west and it is a large property that is a triangle-shaped property surrounded by large boulevards."

The owners of single-family dwellings in the Greenbrier Development and two similar owners on Hillen Road, both individually and in two instances representing two neighborhood improvement associations, testified in opposition to the proposed rezoning. They contended that there was no need for additional commercial rezoning as there were 18 or 19 vacancies in the Endowood Shopping Center when they testified. They believed the rezoning would depreciate the value of their properties.

The principal witness for the protestors was George E. Gavrelis, the Director of Planning for Baltimore County. He expressed the opinion that there was no error in the original zoning map and that the construction of Goucher Boulevard was anticipated by the County Commissioners when that map was adopted in November 1959. He also testified that because the only rezoning changes in the immediate area were to more intensive residential use, commercial zoning would not be appropriate or justified.

The Board, in an extensive and carefully considered opinion, reviewed the facts in detail and concluded that there had been an error in the original zoning and further that there had been a substantial change in the character of the neighborhood

since 1955 sufficient to justify the granting of the proposed rezoning to B-L. The Board believed this reasoning would not depreciate the value or adversely affect the properties of the protestants.

On appeal, Judge Menchine in affirming the Board again reviewed the facts and in his careful opinion reached the following conclusion:

"It seems crystal clear to this Court that the record shown abundantly that there is evidence of a great many changes in the immediate neighborhood; that perhaps there was a lack of careful consideration for this particular property at the time of the adoption of the map; and certainly that there was no consideration of it in the light of Goucher Boulevard as it came to be laid out. Whether the latter circumstance is regarded as change of error would appear to be a matter of semantics after Minney v. Hallie, 241 Md. 224. (See also 241 v. Joseph Borne, 1942 Md. 16, 217 A.2d 266 (1966)) There certainly is evidence within the record that the property could not usefully be employed with an R-6 reclassification, except by the expedient of the removal of the buildings, or their substantial alteration under somewhat equivocal provisions of § 96 of the Zoning Laws. Thus the record tends to show that conditions are such that error or change, or both, make zoning reclassification an issue for reasonable debate. The Board had to decide whether such reclassification should be permitted and, if so, whether it should be RA or BL. This case, in short, is singularly one for the exercise of expertise of the Board and its judgment if supported by substantial evidence cannot be disturbed by the Court. There is such substantial evidence."

We agree that there was sufficient substantial evidence before the Board to make its decision "fairly debatable" and hence not arbitrary, unreasonable or capricious.

In our opinion, the construction of Goucher Boulevard in its final location after the adoption of the zoning map in 1955, its severance of the subject property with the hospital buildings from the rest of the hospital land and the change of construction plans so that Goucher Boulevard set Joppa Road at grade, resulted in important changes in the neighborhood. Moreover, the rezoning changes subsequent to November 1955, previously discussed, were important changes in the law and resulted in substantial changes in the character of the neighborhood even though all of the rezoning changes were to more intensive residential use by an increase in density from R-6 or R-10 to R-A. The substantial development of housing units and the concurrent growth in population could reasonably lead to need for additional commercial zoning in the area to supply the wants of the increased population. At least, a reasonable man could conclude - as the Board concluded - that these changes in condition in the area could justify the rezoning of the subject property to the B-L zone. The Courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence and the issue before the Board was fairly debatable. Wood v. McCosh, 242 Md. 371, 219 A.2d 59 (1966). See Minney v. Hallie, 241 Md. 224, 216 A.2d 530 (1966); Carpler v. Board of Zoning Appeals of Baltimore County, 204 Md. 397, 104 A.2d 568 (1954). See also Rohde v. County Board of Appeals for Baltimore County, Super.

ORDER AFFIRMED, THE APPELLANTS TO PAY THE COSTS.

Lower Man
John C. Vail,
Associate
George W. Babbly
Edwin W. Cadmus
Edward M. Hill
Norman F. Horvath
Paul Lee
Paul S. Swartz

MATZ, CHILDS & ASSOCIATES, INC.
Engineers - Surveyors - Site Planners
2129 S. Charles St., Baltimore, Maryland 21218
665-5385

DESCRIPTION

PART OF PROPERTY OF THE HOSPITAL FOR CONSUMPTIVES OF MARYLAND, NORTHEAST CORNER GOUCHER BOULEVARD AND PRINCE ROAD, NINTH ELECTION DISTRICT, BALTIMORE CO., MD.
PARCEL "A"
Present Zoning: "R-10"
Proposed Zoning: "B-L"

Beginning for the same at a point on the northeast side of Goucher Boulevard, 110 feet wide, at the distance of 335 feet, more or less, as measured northwesterly along said northeast side of Goucher Boulevard from the intersection thereof with the north side of Prince Road, 70 feet wide, said point of beginning being on the second line of the Baltimore County Zoning description 9-R-10-11, and running thence binding on a part of said second line southeasterly 390 feet, more or less, to said north side of Prince Road, thence binding thereon the two following courses and distances: (1) southwesterly, by a curve to the right with a radius of 270.67 feet, the distance of 80 feet, more or less, and (2) S. 70° 45' 57" W., 40.86 feet, to the gusset line connecting said north side of Prince Road at said northeast side of Goucher Boulevard, thence binding thereon N. 65° 08' 49" W., 79.00 feet to said northeast side of Goucher Boulevard, thence binding thereon northwesterly, by a curve to the left, with a radius

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of 1965.00 feet, the distance of 285 feet, more or less, to the place of beginning.

CAV:shr
J. O. #64014
8/31/64



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#9
SE 1-3-C
BL
11/9/64

Lower Man
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DESCRIPTION

PART OF PROPERTY OF THE HOSPITAL FOR CONSUMPTIVES OF MARYLAND, NORTHEAST CORNER GOUCHER BOULEVARD, NORTH PRINCE ROAD, NINTH ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND
PARCEL "B"
Present Zoning: "R-6"
Proposed Zoning: "B-L"

Beginning for the same at a point on the northeast side of Goucher Boulevard, 110 feet wide, at the distance of 335 feet, more or less, as measured northwesterly along said northeast side of Goucher Boulevard from the intersection thereof with the north side of Prince Road, 70 feet wide, said point of beginning being on the second line of the Baltimore County zoning description 9-R-10-11, and running thence binding on said northeast side of Goucher Boulevard the four following courses and distances: (1) northwesterly, by a curve to the left with a radius of 1965.00 feet, the distance of 209 feet, more or less, (2) N. 36° 15' 50" W., 218.44 feet, (3) northwesterly, by a curve to the right with a radius of 1855.00 feet, the distance of 437.36 feet and (4) N. 22° 45' 18" W., 14.79 feet, thence N. 27° 17' 00" E., 129.97 feet to the southwest side of Joppa Road, as laid out 70 feet wide, thence binding thereon the three following courses and distances: (1) S. 72° 21' 30" E., 894.88 feet, (2) southwesterly,

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MATZ, CHILDS & ASSOCIATES, INC.
2129 S. Charles St., Baltimore 18, Maryland

by a curve to the right with a radius of 903.64 feet, the distance of 117.07 feet and (3) S. 64° 56' 08" E., 101.20 feet to the northernmost end of a gusset line connecting said southwest side of Joppa Road and the northwest side of Prince Road, thence binding on said gusset line S. 20° 38' 48" E., 28.63 feet to the northwest side of Prince Road, thence binding thereon, the two following courses and distances: (1) S. 23° 38' 33" W., 660.42 feet, and (2) southeasterly, by a curve to the right with a radius of 270.67 feet, the distance of 143 feet, more or less, to a point on the aforementioned second line of said zoning description, thence binding reversely on a part thereof northwesterly 390 feet, more or less, to the place of beginning.

CAV:shr
J. O. #64014
8/31/64



RE: PETITION FOR RECLASSIFICATION OF PROPERTY FROM R-10 AND R-6 ZONES TO B-L ZONE, SE CORNER JOPPA ROAD AND GOUCHER BOULEVARD, 9TH DISTRICT HOSPITAL FOR CONSUMPTIVES OF MARYLAND, PETITIONERS
BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
No. 65-156-R

OPINION

The Hospital for Consumptives of Maryland, the petitioner in this case, seeks a reclassification of fifteen acres of its property from R-10 and an R-6 zone to a Business-Local zone. The subject tract consists of approximately fifteen acres, is triangular in shape, and is bounded on three sides by major arterial roads. The tract has considerable frontage along the south side of Joppa Road, the west side of Prince Road, and the north (northeast) side of Goucher Boulevard, a dual lane highway. It is the remaining tract of land owned by the Hospital for Consumptives of Maryland, commonly called Eudowood. The contract purchaser, Vorstad, Inc., proposes to erect a one-story building for retail sales with parking for approximately seven hundred forty-six vehicles. Prior to November of 1955 (the date of the adoption of the Ninth District zoning map) Eudowood owned approximately two hundred acres of land which was used by the hospital for hospital purposes and as a farm operation in conjunction with the hospital. Just prior to the adoption of the 1955 map Eudowood sold one hundred and fifty acres of its property to the Swartzmore Company which was subsequently zoned on the 1955 map as Business-Local (the present Eudowood Shopping Center) and Manufacturing-Light. The remaining forty-six acres was retained by the hospital and used as a hospital specializing in the treatment of tubercular patients. Construction of Goucher Boulevard, after the adoption of the zoning map, severed this forty-six acre tract into two parcels leaving a thirty-one acre parcel on the south side of Goucher Boulevard and a fifteen acre parcel on the north side of Goucher Boulevard (the latter is the subject of this petition). James R. Hamilton, formerly the superintendent of Eudowood, testified that the hospital had opposed the construction of Goucher Boulevard as it severed the property and they felt it might render the subject fifteen acre tract unusable for hospital purposes. He further testified that the decision to close the Eudowood Hospital was made in 1957, two years after the adoption of the map, and introduced in evidence a contract entered into by Eudowood and the Johns Hopkins Hospital and others whereby in the event that if any of the real estate belonging to Eudowood was offered for sale these funds were pledged for the construction of the children's hospital. In turn the children's hospital agreed to take care of any patients which Eudowood might have at the time of its closing. Transfer of the patients started in October of 1963 and the hospital eventually closed its doors forever in June of 1964. The fifteen acre tract which is the subject of this petition, is improved with three

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substantial hospital buildings which are now vacant but are looked after by caretakers employed by Eudowood who live on the hospital grounds. Mr. Hamilton testified that the cost of maintenance of this vacant property is approximately \$10,000 per year.

The property is bounded by or across the street from R-6, B-L, R-A, and M-L zoning. On the north side of the Joppa Road across from the property, the present zoning if R-6 and is developed as a rental housing project known as Towson Estates, in one ownership. On the east side of the property, across Prince Road, there is a large tract of B-L which is developed as the Eudowood Shopping Center consisting of Montgomery Ward's and numerous other stores and shops with the attendant parking facilities found in a major regional shopping center. The major portion of the south side of the property is across the street from a large tract of R-A land which was rezoned from R-6 and R-10 to R-A by the Deputy Zoning Commissioner in October of 1964. Going westerly (northwest) along Goucher Boulevard a small portion of the subject property is across from an R-6 zone which is developed as the community of Greenbrier. A little further northwest, across Goucher Boulevard from the subject property, is a large Manufacturing-Light zone which is the property of the Black and Decker Manufacturing Company, an internationally known manufacturer of electric power tools. The property is improved with various buildings used for the manufacturing and warehousing of electrical tools and the offices of the company. There has been substantial new road construction and improvements in the area since 1955. The Joppa Road, on the north side of the property, is presently a forty-eight foot paved road on a seventy foot right-of-way. Prince Road, east of the property, is a forty-two foot pavement on a seventy foot right-of-way, while Goucher Boulevard, on the south side of the property, is a dual lane boulevard on a one hundred and ten foot right-of-way. Lester Matz, an engineer testifying on behalf of the petitioner, stated that the topography of this tract is good on the east side of the property, is twenty-two feet below the grade of Goucher Boulevard. The site plan introduced in evidence indicates that the building roof line of the proposed building will be only eleven feet higher than Joppa Road on the north, but barely visible from Joppa Road due to a ridge of higher ground between the road and the building, and that the development of the property would require a twenty-four foot fill at the western edge near Goucher Boulevard and Joppa Road for a parking area. This would elevate the western portion of the property eighteen feet above the grade of Goucher Boulevard and approximately forty feet above the level of the homes in the Greenbrier development across Goucher Boulevard.

Leonard Glass, another engineer appearing on behalf of the petitioner, testified that public utilities were available at the property with sufficient capacity to allow its development as proposed. He did, however, testify to numerous utility and road changes which have occurred in the area since 1955. Goucher Boulevard from Loch Raven to Prince Road was completed in 1960. The construction of Prince Road occurred in 1960. The

reconstruction of Joppa Road apparently was completed in September of 1964 from Providence to Prince Roads along the north side of the property when the existing eighteen foot road was regraded, resurfaced, and its width increased forty-eight feet. The section of Goucher Boulevard from Prince Road to Providence Road along the south side of the property was not constructed until 1964. There was also testimony of other witnesses for the petitioner; namely, Worthington Ewell, a recognized traffic expert, that in 1955 Joppa Road was the only existing road serving this property, and that at the time of the adoption of the map in 1955 there was no intersection contemplated for Goucher Boulevard and Joppa Road. Goucher Boulevard was subsequently regraded to the southward and the plans changed to provide a grade intersection at Joppa and Goucher rather than the originally planned overpass of Goucher over Joppa. Mr. Glas testified numerous utility changes in the area: A twenty inch main from the reservoir to Joppa Road eastward to complete a loop was built; the completion of the Reservoir Pumping Station and main in 1962; in 1956 the pump capacity in the Towson area was boosted from eight to twenty-five million gallons; and a general reinforcement in the entire water distribution system for the area was effected. He further testified that in 1956 the Register Report was made public which became the basis of an agreement between Baltimore City and Baltimore County regarding sewer costs; in 1957 the Minkbank Pumping Station was constructed and in 1961 the Minkbank Sewer Interceptor was constructed. The construction of this interceptor made possible the elimination of an ejector pump at Joppa Road and the Maryland and Pennsylvania Railroad (now the intersection of Joppa and Goucher Boulevard), the railroad having since discontinued its operations and the tracks over Joppa Road at that point has been removed. He stated that the ejector station restricted the capacity of the sewer and an ejector is normally considered only a temporary means of providing sewer. However, the only means of sewer for the subject property in 1955, prior to the Minkbank Interceptor, was through this ejector.

Worthington Ewell, a recognized traffic expert, testified on behalf of the petitioner that there was no problem with road capacity in the area; that the entrances, of course, should be subject to site plan approval by the Baltimore County Planning and Zoning authorities. Goucher Boulevard is now operating on only twenty-five percent of its capacity; and based on his estimates of traffic using the proposed street, the proposal here would in no way create any difficulties with regard to traffic hazards or congestion.

Bernard Willmain, a noted expert in the field of land and city planning, said that he thought the map as adopted by the County in 1955 was in error with regard to the subject property, and noted that the original 1955 zoning map, which was put in evidence on Exhibit No. 7, did not show the location or proposed location of either Prince Road, Goucher Boulevard, or Putty Hill Road. He testified that he had represented the Swarthmore Company who purchased the major portion of the Edwood tract prior to 1955 and had made recommendations to the County as to the zoning on that one hundred and fifty

acre parcel most of which were accepted by the County. However, he made no recommendations to the County regarding the zoning on the remaining forty-five acres of hospital property and had no indication in 1955 that the hospital contemplated disposing of the remaining land. He felt that the map in error because R-6 is not consistent with the remaining land. He stated that the changes in the road and utility picture, and changes of uses and zoning of adjoining lands were sufficient to warrant the rezoning of this property Business-Local. He cited seven zoning reclassifications, all of which were to apartment zoning and particularly cited case No. 65-22-R which was the other portion of the Edwood tract consisting of thirty-one acres that was rezoned from R-6 and R-10 to R-A by the Deputy Zoning Commissioner in October 1964.

An expert realtor appearing on behalf of the petitioner, testified that, in his opinion, the best use for the property was commercial; that it is not suitable for R-6 development and that the proposal here would not adversely affect the homes in the Greenbriar development; stating that any damage to the Greenbriar development was done by the elevation of the grade level of Goucher Boulevard some twenty feet higher than the Greenbriar lots. He further testified that very few of the homes in Greenbriar would be able to see the property because of the difference in elevation and the triangular piece of property that had been rezoned to apartments, which is on the south side of Goucher Boulevard between the Greenbriar development and the subject tract. He testified that the community of Fellowship Forest would not be adversely affected as there would be very few, if any, homes that would be able to see the proposed store, and that in any event the forty acre Edwood Shopping Center was much closer to the Fellowship Forest homes than the subject tract.

The protesters were all from either the Greenbriar or Fellowship Forest developments and their testimony in the main was that they objected to any commercialization of the property and that there was no need for additional commercial property in the area, citing instances of vacant stores in the Edwood Shopping Center. J. Henry Feldman, a resident of Fellowship Forest and President of the Community Association, testified in opposition, however, he did state that he moved into his present home in 1962 while the Edwood Shopping Center was under construction. Mrs. Howard Bailey, a wife of the Greenbriar development, felt that the proposal here would depreciate her property because of its view, however, her property, by her testimony, is within three hundred feet of the Black and Decker Manufacturing Company and neither their parking lot nor the manufacturing operation bothered her. There was no protest from the owner of the

Towson Estates rental project across the Joppa Road north of the subject tract.

Mr. George Gavrallis, Director of Planning for Baltimore County, testified in opposition to the proposed rezoning; stating that, in his opinion, commercial zoning here is not in accordance with the plan nor do changes in the area justify the rezoning. He did state that there have been changes in zoning in the neighborhood but they have been mostly changes to higher density residential uses; namely, apartments. He did admit that this fifteen acre parcel is the only remaining land owned by the hospital that is still zoned R-6. He testified that, in his opinion, this tract was zoned R-6 in 1955 because it was responsive to surrounding land uses even though there was apparently no indication to the County at that time that the forty-six acre parcels still owned by the hospital would ever be used for anything other than hospital purposes (a permitted use in an R-6 zone). The witness said he did not know whether or not it would be economically feasible to develop the property as it is presently zoned. An examination of the present zoning map indicates that the subject property is surrounded by R-6, R-4, M-L, and R-A zoning. It is interesting to note that Mr. Gavrallis in July of 1964 refused to make any comment on behalf of Baltimore County with regard to the proposed rezoning from R-6 and R-10 to R-A, the thirty-one acre tract directly across Goucher Boulevard which also belonged to the hospital (Petitioners' Exhibit No. 11). The Board is at a loss to understand why the Director of Planning should take a position of opposing the rezoning sought here, yet refused comment on the appropriateness or inappropriateness of a tract of land twice as large in the same ownership (but different contract purchasers) directly across the street.

The Board feels that the homes in Fellowship Forest cannot be adversely affected by the rezoning here as they are too far removed and there is an intervening shopping center and apartment project between the homes and this tract. A personal inspection by the Board of the property and the Greenbriar development and surroundings indicates that there will be very few homes in that development that will even be able to see the property especially when the intervening apartment project is completed. A plat prepared by James Spomer, a registered land engineer appearing on behalf of the protesters, indicates that only fourteen homes in the Greenbriar development will be able to see the subject property from their first floor view.

It is apparent that the authorities in 1955 thinking that the hospital use would remain indefinitely gave little thought to the proper zoning for the balance of the Edwood tract. With regard to change in conditions: it is quite clear that conditions have altered considerably over the past few years to wit: numerous zoning changes; a drastic change in utilities; the closing of the hospital and major road construction all around the property particularly the construction of Goucher Boulevard which severed the subject property from the rest of the hospital land making it an isolated triangular island

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unusable for residential development. From all the evidence before it the Board finds that there is error in the comprehensive zoning map with regard to this property and, further, that there has been a substantial change in the character of the neighborhood since 1955 to warrant the reclassification sought.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 7th day of October, 1965 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, subject to the site plan approval by the Office of Planning and Zoning, and approval of ingress and egress by the State Roads Commission.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William S. Baldwin, Chairman
John A. Slawik
Paul T. McHenry, Jr.

MRS. HOWARD BOSLEY, et al
VS
WILLIAM S. BALDWIN, et al,
CONSISTING OF THE
COUNTY BOARD OF APPEALS

MEMORANDUM OPINION

This is an appeal by protesters from an order granting a reclassification from R-6 to R-A of a fifteen acre tract of land. The tract is in that part of the Ninth District of Baltimore County included in the first comprehensive zoning map in 1955, and was given R-6 classification. A much larger tract had been used as a tuberculosis hospital, with a number of buildings on the subject acreage being used in connection therewith. The land and buildings have not been used for a number of years. The value of the buildings is not shown by the record, but it does appear that they have been maintained at a yearly cost of \$10,000.00.

The property in question is triangular in shape, bounded on the north by Joppa Road, on the east by Prince Road, and on the southwest by Goucher Boulevard. Joppa Road, although now widened, is a highway of some utility to the County. Prince Road and Goucher Boulevard, although planned for introduction in the general area at the time of the adoption of the 1955 zoning map, were placed in their actual location after the adoption of the map. The grade of Goucher Boulevard was altered substantially from its planning because the Maryland & Pennsylvania Railroad ceased operation and a proposed bridge was eliminated.

Opposite the Joppa Road frontage is a cottage development known as Towson Estates. Across Prince Road to the east is a large commercial complex known as the Edwood Shopping Center. Across Goucher Boulevard to the southwest, land formerly in the ownership of Fathmoss was rezoned R-A, and plans now are in process to utilize that zoning.

Goucher Boulevard as laid out severed this triangular portion from other

lands in the same ownership. Counsel for the protesters contends that certain errors in rulings upon questions of evidence were committed by the Board, and such errors adversely and improperly influenced its decision. The contentions in this area are essentially four (1) that it was error for the Board to receive in evidence the contract between Edwood and Johns Hopkins Hospital; (2) that it was error to permit testimony relating to the cost of maintaining the vacant buildings on the property; (3) that the permitted interrogation of the witness Gavrallis as to his comments in connection with the hearing relating to the apartment zoning of property across the Goucher Boulevard was improper, and (4) that it was error to admit in evidence the brochure of the Varnado Corporation.

Counsel for protesters, with customary skill and persuasiveness argues that each error standing alone might be considered harmless, but their combined effect was harmful and that such harm is clearly shown by examination of the weight given them by the Board in its opinion. He ingeniously compares the remark of Commissioner Baldwin at the contract introduction: "It may not be particularly relevant; I do not see where it is harmful" (Tr. p. 4), with the opinion of the Board which he suggests uses that very contract to bolster his erroneous course by lauding the charitable activities of its sponsors (see Opinion p. 1).

However, this may be, the contract was clearly related to an issue before the Board, i.e., change of conditions or error and accordingly is proper evidence. The objection to evidence relating to the cost of maintaining the buildings is not well taken. It shows an economic loss to the owner to effect testimony of the appellants that tended to suggest or compel an inference that the buildings could be utilized for apartment use. Thus it bore directly on factors that the Board would be authorized to take into account in connection with its decision whether reclassification should be granted.

The contention of Mr. Gavrallis in connection with his comment or failure to comment on the propriety of the requested reclassification of property across

Goucher Boulevard falls directly within proper cross-examination. The suggested wide difference between the view of Mr. Baldwin in the course of the hearing (Tr. p. 23) and the opinion of the Board (Opinion p. 5) is of no help to the appellants, because the latter could represent the opinions of the other two Board members, or a change of view, or both.

The introduction of the glowing brochure of the Varnado Corporation nowhere appears to have been a factor in the Board's decision, and it is not possible for this Court to find harmful error in its acceptance by the Board.

The opinion of the Board goes carefully into the evidence it considered and accepted. It seems crystal clear to this Court that the record shows abundantly that there is evidence of a great many changes in the immediate neighborhood; that perhaps there was a lack of careful consideration for this particular property at the time of the adoption of the map; and certainly that there was no consideration of it in the light of Goucher Boulevard as it came to be laid out. Whether the latter circumstance is regarded as change or error would appear to be a matter of semantics after *Fleming v. Hall*, 241 Md. 224. (See also *Shilly v. John Corp.*, No. 193 Sept. Term 1965, D.R. April 11, 1966). There certainly is evidence within the record that the property could not usefully be employed within an R-6 reclassification, except by the expedient of the removal of the buildings, or their substantial alteration under somewhat conditional provisions of §402 of the Zoning Laws. Thus the record tends to show that equivoals are such that error or change, or both, make zoning reclassification an issue for reasonable debate. The Board had to decide whether such reclassification should be permitted and, if so, whether it should be R-A or R-L. This case, in short, is singularly one for the exercise of expertise of the Board and its judgment if supported by substantial evidence cannot be disturbed by the Court. There is such substantial evidence.

The decision of the Board is affirmed.

W. ALBERT MENCHINE, Judge

MRS. HOWARD BOSLEY, et al
Appellant
VS
WILLIAM S. BALDWIN, etc.,
Appellee

ORDER FOR APPEAL

MR. CLERK:
Please enter an appeal in the above entitled case to the Court of Appeals of Maryland.

Richard C. Murray,
Attorney for Protestants

I HEREBY CERTIFY, that a copy of the foregoing Order for Appeal was mailed this 6th day of May, 1966, to W. Les Harrison, Esquire, 22 W. Pennsylvania Avenue, Towson 4, Maryland, Attorney for Hospital for Consumptives of Maryland and Fourth Avenue Realty Corporation and to The County Board of Appeals, County Office Building, Towson 4, Maryland.

Richard C. Murray

Filed 5/11/66
3:50 PM

FILED 5-11-66
J. Down

Bo Anderson
 28th
 65-156-R
 IN THE CIRCUIT COURT
 FOR BALTIMORE COUNTY
 VS
 WILLIAM S. BALDWIN, ass.
 Appellee
 MISCELLANEOUS 3384
 ORDER FOR APPEAL


MR. CLERK:
 Please enter an appeal in the above entitled case to the
 Court of Appeals of Maryland.

Richard C. Murray
 Attorney for Protestants

I HEREBY CERTIFY that a copy of the foregoing Order for
 Appeal was mailed this 26th day of May, 1966, to W. Lee Harrison,
 Esquire, 22 W. Pennsylvania Avenue, Towson 4, Maryland, Attorney
 for Hospital for Consumptives of Maryland and Fourth Avenue Realty
 Corporation and to The County Board of Appeals, County Office
 Building, Towson 4, Maryland.

Richard C. Murray

LAW OFFICES
 W. LEE HARRISON
 THE LOYOLA BLDG.
 TOWSON, MD. 21286
 November 30, 1964



John G. Zone, Esq.
 Zoning Commissioner
 County Office Building
 Towson, Maryland 21284

Re: Petition for Reclassification R-10 & R-6 to B-L zone, SE corner
 Joppa Road & Cougher Blvd., 9th District, Hospital for Consumptives
 of Maryland, Petitioner - No. 65-156-R

Dear Mr. Rose:
 Please enter an appeal to the County Board of Appeals from the decision
 and order denying the above captioned dated November 23, 1964 on behalf of
 the Petitioner, Hospital for Consumptives of Maryland,

I enclose herewith my check in the amount of \$70.00 to cover the cost
 of the same.
 Very truly yours,
W. Lee Harrison
 W. Lee Harrison

b
 Enc.

PETITION FOR ZONING RECLASSIFICATION
 AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY,
 Of Maryland
 I or we/Hospital For Consumptives, legal owner... of the property situate in Baltimore
 County and which is described in the description and plat attached hereto and made a part hereof,
 hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant
 to the Zoning Law of Baltimore County, from an R-10-R-6 zone to an
 B-L zone, for the following reason:
 Error in the original zoning and a genuine change in conditions.

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

Fourth Avenue Realty Corporation Hospital For Consumptives of Maryland
 By *John G. Zone* By *W. Lee Harrison*
 President Legal Owner
 Address Address

W. Lee Harrison
 W. Lee Harrison, Petitioner's Attorney
 Address: 507 Loyola Building
 Towson, Maryland 21284 (823-1200)
 Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 19th day
 of October, 1964, that the subject matter of this petition be advertised, as
 required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-
 out Baltimore County, that property be posted, and that the public hearing be had before the Zoning
 Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore
 County, on the 23rd day of November, 1964 at 1:00 o'clock
 P. M.



John G. Zone
 Zoning Commissioner of Baltimore County

65-156-R
 MAP #4
 SET 3-C
 BL
 11/9/64

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 if further appearing that by reason of...

a Special Exception from... 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... zone to...
 zone, and/or a Special Exception from... should be had and this same is
 granted, from and after the date of this order.

Deputy 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 failure to show an error in the original zoning
 or substantial change in the character of the neighborhood...

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 23rd day
 of November, 1964, that the above reclassification be and the same is hereby
 DENIED and that the above describe property or area be and the same is hereby continued as and
 to remain a R-10 and R-6 zone; and no Special Exception be
 and the same is hereby DENIED.

Edward D. Hubert
 Deputy Zoning Commissioner of Baltimore County

MICROFILMED

CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: 9th Date of Posting: 12-10-64
 Posted for: *John G. Zone*
 Petitioner: Hospital for Consumptives of Maryland
 Location of property: SE corner Joppa Rd. & Cougher Blvd.
 Location of Signs: 8

Remarks:
 Posted by: *Robert H. Bawell* Date of return: 12-17-64
 Location of sign on page # 2

- at the Cor. of Joppa & Prince Rd. on the NW
- on Prince Rd. 210' from Joppa Rd.
- on Prince Rd. approx. 200' from Joppa Blvd.
- on Cougher Blvd. approx. 125' from Prince Rd.
- on Cougher Blvd. approx. 12' from the first telephone pole for Prince Rd.
- at the Cor. of Joppa Rd. and Cougher Blvd. middle of ground line.
- on Joppa Rd. approx. 60' from all-entrance to hospital
- on Cougher Blvd. approx. 25' from the corner of 2nd and approx. 6' from sidewalk

CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: Date of Posting:
 Posted for:
 Petitioner:
 Location of property:
 Location of Signs:
 Remarks:
 Posted by: *John G. Zone* Date of return:

(over)

MICROFILMED

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: John R. Rose, Acting Commissioner Date: November 13, 1964
 FROM: George R. Gavrilis, Director

SUBJECT: 65-156-R, R-10 and R-6 to B-L Zone. Southeast corner of Joppa
 Road and Cougher Boulevard. Being property of Hospital for
 Consumptives of Maryland.

9th District
 HEARING: Monday, November 23, 1964 (1:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed
 the subject petition for reclassification from R-10 and R-6
 to B-L zoning. It has the following advisory comments to
 make with respect to pertinent planning factors:

- The 9th District Zoning Map carefully established commercial zoning in this area. The 9th District Zoning Map also anticipated the construction of Cougher Boulevard. Development in the area has proceeded in accordance with the land use potential established or affirmed by the zoning map. Creation of commercial zoning here manifestly would not be in accordance with the comprehensive plan for this area.

- Since the adoption of the Zoning Map changes in the manner of land uses have not occurred so as to justify commercial zoning here.

GEO:lms

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

To: Mr. James A. Dyer, Chairman
 Zoning Advisory Committee
 Date: October 23, 1964
 FROM: Capt. Paul H. Heinke
 Fire Bureau

SUBJECT: Hospital for Consumptives of Maryland
 1/4 corner of Cougher Boulevard and 1/2 of Prince Road
 District 9 - 10/19/64

- Insist on plat plan location of existing or proposed fire hydrant and size of water main. Spacing of fire hydrants is 300 feet apart as measured along an improved road and the National Board of Fire Underwriters water supply requirements for the structures involved. In addition hydrants shall be at least 50' from any building.
- Contact Capt. Paul H. Heinke at Valley 5-7310 for assistance or information concerning above comment.

PHB/vbr

#65-156-R
 MAP #4
 SET 3-C
 BL
 11/7/64

JOPPA ROAD

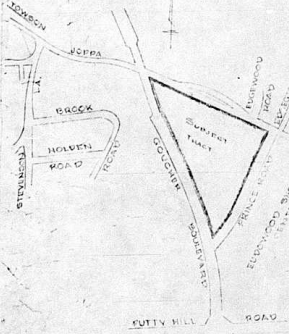
GOUCHER ROAD

PRICE ROAD

BOULEVARD

To Towson

To Loch Raven Blvd



GENERAL NOTES

1. AREA OF TRACT EQUALS 15.016 ACRES
2. EXISTING ZONING OF TRACT, R-1
3. PROPOSED USE OF TRACT, RETAIL SHOPPING CENTER
4. PROPOSED FLOOR AREA EQUALS 140,412 SQ. FT.
5. REQUIRED OFF-STREET PARKING EQUALS 1873 UNITS (0.85-10)
6. PROPOSED OFF-STREET PARKING EQUALS 780 UNITS (0.420)
7. EXISTING STRUCTURES ON TRACT SHALL BE REMOVED



PRELIMINARY PLAN OF

TWO GUYS FROM HARRISON STORE
 PRICE RD & GOUCHER BLVD
 ELECTION DISTRICT 9 BALTIMORE COUNTY, MD.
 SCALE 1"=50'

DEVELOPER
 T. G. STONES, Inc.
 174 PRINCE STREET
 BRIDGEVILLE, N.J., 07006

August 24, 1967
 Revised: 8/29/67
 8/31/67

PLANS APPROVED
 OFFICE OF PLANNING & ZONING
 BY: *[Signature]*
 DATE: 8/30/67
 COUNTY COMMISSIONER
 DATE: 8/31/67



MATZ CHILDS ASSOCIATES
 1020 CRYSTAL BRIDGE RD.
 BALTIMORE, MARYLAND 21204
 20 14 04