IN THE COURT OF APPEALS OF MARYLAND

No. 382

September Term, 1967

G. LEIPER CAREY, et al.

v.

JOSEPH J. MARTIN, et al.

Hammond, C.J.
Barnes
McWilliams
Singley
Smith,
JJ.

Opinion by McWilliams, J.

Filed: November 27, 1968

ZONING FILE NO. 65-220-R

Rec'd 11-29-68
11:15am

The land in this case, like the Low Countries, has been the scene of much controversy. Its recent history is our only concern at the moment. The earlier chapters will be found in McBee v. Baltimore County, 221 Md. 312, 157 A. 2d 258 (1960). To expedite comprehension of the facts and circumstances we have filed with this opinion a sketch to which, from time to time, reference should be made.

On 12 January 1965, Martin[1] filed with the Zoning Commissioner of Baltimore County a petition for the reclassification from B.L. (Business, Local) to R.A. (Residence, Apartments) of the 3.3 acre parcel and the reclassification from R.10 (Residence, One-family) to R.A. of the 2.0 acre parcel. Following a hearing on 24 March the Zoning Commissioner, on 31 March 1965, denied Martin's petition. Martin's appeal was heard by the Board of Appeals (the Board) on 7 and 8 June 1966. On 21 December 1966 the Board reversed the Zoning Commissioner and granted the reclassification. The appeal of the protestants (appellants here) was heard by the Circuit Court for Baltimore County on 28 August 1967. The appeal before us is from the order of the Circuit Court, dated 13 November 1967, affirming the action of the Board.

An "unusual feature" of the case, in the opinion of the Board, is that the owner, who proposes to build 101 apartment units if the Board is sustained, presently has the right to build from 69 to 78 apartment units. He could utilize both the R.A. and the B.L. areas

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[1] Joseph J. Martin and Kathryn F. Martin, his wife, acquired the property in June 1961.

for the apartment buildings and the R.10 area for the required parking. It was pointed out, however, that such a use would be aesthetically awkward and undesirable economically.

The Board went on to point out that the 3.3 acre portion "has been * * * zoned B.L. at least since the adoption of the Ninth District Zoning Map on November 14, 1955." At that time, it said,

> "Bellona Avenue was, in spite of its width and curving lines and contours, a major arterial highway used to a great extent by traffic * * * between Baltimore and points north of the subject property * * * . The traffic was extremely heavy at that time * * * overburdening [perhaps] the capacity of the roadway. In 1961 the reconstruction and relocation of Charles Street was completed to the Baltimore County Beltway, and the Jones Falls Expressway was completed in 1962, which construction removed almost all of the through traffic from Bellona Avenue, and it now has become only a feeder road. * * * In Mr. Thompson's [Joseph D. Thompson, Martin's traffic expert] opinion the construction of the proposed apartments would have a minimal effect and would create no congestion whatever because the present daily traffic on the road is far below capacity. The traffic counts on Malvern Avenue and Ruxton Road are so small as to make no appreciable difference to the situation. Mr. Risa [Justin Risa, appellee's traffic expert] agreed with Mr. Thompson's facts but feared that the extra traffic generated by the proposed apartments, or for that matter any use of this land, might lead to hazardous conditions at the intersections because of the narrowness of Malvern Avenue, and the sight distance from it to the south along Bellona. However, on cross-examination it was brought out in his testimony that the construction of a shopping center, in fact any B-L use, would probably generate more traffic than the proposed apartments. Therefore, the Board finds, as a fact, that if the proposed use were granted and the entire layout, entrances and exits, were prepared subject to approval by the proper authorities, there would be no problem arising from traffic which would warrant any objection to the application for the proposed use."

The Board found there had been "a great number of changes in the neighborhood since the adoption of the zoning map in 1955" in addition to the changes connected with traffic, which in themselves had

made the 3.3 acres of B.L. zoning "if not useless, at least undesirable, for a site for any feasible B.L. use;" in fact, Acme Stores had abandoned an option it once had to build a shopping center on the property. The Board cited the testimony of George E. Gavrelis, the Director of Planning for Baltimore County, who testified that the proposed use of the property seemed to be logical because the proximity of commercial development makes it appear to be "appropriately transitional," that the adequacy of nearby commercial facilities makes the present B.L. zoning seem excessive and that there is a need for apartments because of the limited amount of rental housing in the Ruxton-Riderwood area. Reference was made by the Board to the testimony of Frederick P. Klaus, "a qualified realtor and appraiser," appearing on behalf of Martin, who spoke of "changes in the use and occupancy of the roadside business development immediately north of the property," the erection of "a few apartments" on the site of the old Ruxton railroad station and the changes in the road pattern. In his opinion "the proposed use of the subject property would appreciate the surrounding properties * * * [and] the difference between the number of apartments which could be constructed under the present zoning and those proposed would be minimal, and would allow for a much more satisfactory development of the property, both from an aesthetic standpoint and with respect to its impact on the values of neighboring properties." Reference was made also to the testimony of Bernard Willemain, "an experienced land planner" who was familiar with the property and its previous history. In addition to his repetition of the items mentioned by prior witnesses the Board noted Mr. Willemain's recital of the reclassification of the 1.0 acre portion (see plat) from R.10 to R.A. in October 1959, the availability of sewerage since the adoption of the map in 1955 and the continuing

"trend for apartments." The Board took note also of his opinion "that the present zoning deprives the owner of a reasonable use of his property; that rezoning the entire property to R.A. is a reasonable solution; * * * apartments would not have any adverse effect on the community or adjoining properties * * * ; that the presence of R.10 next to B.L. was unreasonable * * * ." There appears to be "no serious dispute as to the availability of utilities, sewer and water."

The Board confessed to an inability to "find anything in the testimony of the protestants to support a decision adverse" to Martin. In this regard the Board said:

> "The main trend of the protestants' testimony was that they would prefer to have this property remain in its present vacant condition, and feel that any use of this land, of any nature or description, would effect some change in the character of the neighborhood which they describe as 'bucolic'." (Emphasis added.)

The concluding paragraph of the Board's opinion is, in part, as follows:

> "This is a case, as in many others, where it is difficult to determine under the facts whether there has been error in the original zoning, or substantial change in the character of the neighborhood, or both. The error, if any, would be based mainly upon the failure of the original zoning authority to foresee or expect the changes which have occurred which have made the present zoning obsolete under any view taken of proper zoning under present conditions. However, even if there were no error the Board finds that the change in traffic, land use, population, and furnishing of utilities, is sufficient almost to require rezoning, and certainly sufficient to support rezoning. * * *"

Appellants seem to agree that their testimony was "well summarized" by the following excerpt, selected by appellants, from the testimony of Kenneth B. Marty:

> "Q. Would you tell us why you are here opposing this request. A. Well, basically, it is because I am afraid that these proposed apartments will change the character of this neighborhood, that I have learned to love very much, and it would open up other possibilities. If they have this one change, there will always be the possibility of further change.
>
> "And actually, this area appealed to us, and the one reason we moved out here was the fact that it is unique, to the extent that it has some large estates, and some nice expensive properties, and has some modest homes right next to them. We all get along well, regardless of income status."

The only question before us then is whether the Board's action is supported by any substantial evidence. It is undisputed that the construction, in 1966, of the Minebank interceptor relieved the load on the Roland Run interceptor to such an extent that it acquired excess capacity which, of course, became available to serve the Martin property. And as Martin points out, expert witnesses testified that the relegation of Bellona Avenue to the secondary role of handling mostly local traffic and the construction and expansion of large shopping facilities in the Towson area have reduced the need for commercial uses in Ruxton, making his property virtually useless for business purposes.

Martin also emphasizes 4 zoning reclassifications in the neighborhood. The most significant, it is claimed, is the change from R.10 to R.A. of the 1.0 acre lot shown on the plat. Appellants insist that this 1959 rezoning was merely the correction of an oversight. In 1945, it seems, the 1.0 acre lot was changed from Cottage A to Apartment C because the improvements on it were actually divided into several apartments. The comprehensive rezoning of 1955, which changed it to R.10, also changed the 4.1 acres fronting on Bellona Avenue to B.L. In 1959 the Circuit Court ordered the 1.0 acre lot changed to R.A. Martin argues that because the zoning regulations adopted in 1955 permit, in the B.L. zone, any use allowed in the immediately adjoining residential zone, the 1959 change to R.A. made possible an apartment development of at least 69 units and thereby effected a distinct and important change

in conditions. A 1.55 acre tract on the north side of Ruxton Road west of Bellona Avenue was changed from R.20 to R.A. upon which were built the Ruxton Township Apartments, clearly visible from the Martin property. There were also several other minor changes from residential to commercial in nearby properties which, Martin claims, further reduced the desirability of his property for commercial use.

Martin advances also, but seems not to press, the argument that because the rezoning of his property is a "zoning up" from commercial to residential use the mistake-change rule does not apply. By imposing additional and more stringent restrictions on his property the police power, he says, has been exercised for the benefit rather than the detriment of the neighbors and since the property has been "zoned up" the change ought to be upheld without evidence of any change in conditions, citing Metropolitan Homes, Inc. v. Town Plan & Zoning Comm'n, 152 Conn. 7, 202 A. 2d 241, 243 (1964).

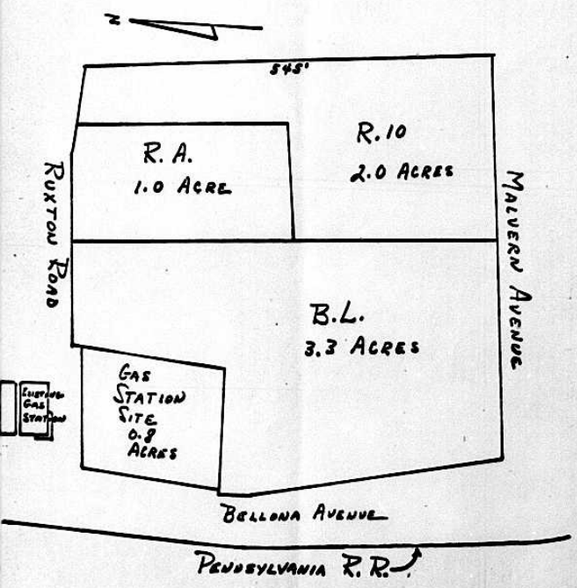
We considered this proposition in Board of Zoning Appeals v. Bailey, 216 Md. 536, 141 A. 2d 502 (1958). Judge Horney, for the Court, said:

> "In Maryland there seems to be no distinction between 'rezoning up' and 'rezoning down.' See Note, 13 Md. L. Rev. 242 (1953). Apparently the same rules with respect to rezoning are applicable regardless of whether the reclassification is to a 'higher' or a 'lower' use. In Northwest Merchants Terminal v. O'Rourke, 191 Md. 171, 60 A. 2d 743 (1948), Kracke v. Weinberg, 197 Md. 339, 79 A. 2d 387 (1951), and Bruning Bros. v. Mayor & City Council of Baltimore, 199 Md. 602, 87 A. 2d 589 (1952), the issue was the validity of a rezoning ordinance classifying land 'upward,' that is, from commercial to residential. The same standards were applied as in the 'rezoning downward' cases. In the O'Rourke and Kracke cases the ordinance was held invalid. In the Bruning case it was held valid. It should be pointed out, however,

that in all of those cases it was the property owners within the commercial zone who were protesting the 'rezoning upward.' In the O'Rourke case, for instance, the property owner complained that its land was suitable only for commercial use and that it would be unconstitutional to deprive it of this use by rezoning the land residential. The specific question as to whether the same rules must invariably be applied in a 'rezoning up' as are normally applied in a 'rezoning down' was not before us in the O'Rourke, Kracke and Bruning cases. Nor is the question squarely before us in this case, and we leave it open." Id. at 541-42.

We shall continue to "leave it open" because, while the question is more nearly "squarely before us" in the case at bar than it was in Bailey, we need not consider it since, in our judgment, the action of the Board was not arbitrary, unreasonable nor capricious. The record reveals evidence sufficiently substantial to support its findings and we cannot say the reclassification was not fairly debatable. xxxxxxxxxxxxxxxxxxxxxxxx Brown v. Wimpress, 250 Md. 200, 242 A. 2d 157 (1968); France v. Shapiro, 248 Md. 335, 236 A. 2d 726 (1968); Beth Tfiloh Congregation v. Blum, 242 Md. 84, 218 A. 2d 29 (1966).

JUDGMENT AFFIRMED.
COSTS TO BE PAID BY APPELLANTS.



65-220 R

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9TH — Date of Posting March 6 1965
Posted for: Reclass from B.L. & R-10 to RA
Petitioner: Joseph J. Martin
Location of property: NE Cor. of Bellona & Malvern Ave.
Location of Signs: ① N/S Malvern Ave 545' E of Bellona Ave
#6 Cor " " " and Bellona Ave
E/S Bellona Ave 50' N of Malvern Ave
S/S Ruxton Rd 225' E Bellona Ave
Remarks:
Posted by J. Bosse — Date of return March 11 1965
4 Signs

RE: PETITION FOR RECLASSIFICATION from R-10 and B-L zones to an R-A zone, NE corner Bellona Avenue and Malvern Avenue, 9th District, Joseph J. Martin, Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 65-220-R

: :

OPINION

This case involves an application for rezoning to an R-A classification of a tract of approximately six and three-tenths acres which is presently zoned in three separate categories; namely, one acre as R-A, three and three-tenths as B-L, and two acres as R-10. This particular piece of land has quite a history zoning wise, and has been before the zoning authorities and the Courts on previous occasions.

The tract is roughly rectangular and fronts on Bellona Avenue in the Ninth District of Baltimore County running between Malvern Avenue and Ruxton Road. The approximate width is 550 feet and the depth about 530 feet. The westernmost section of the land, comprising three and three-tenths acres, is and has been for sometime zoned B-L, at least since the adoption of the Ninth District zoning map on November 14, 1955. Behind this area and abutting on Ruxton Road is one acre which is zoned R-A, and an irregular "L" shaped tract running between Malvern Avenue and Ruxton Road around two sides of the R-A zone, which tract is approximately two acres and is zoned R-10. An unusual feature of this case is that the owner proposes to construct apartments on the tract which he already has the right to do under the present zoning regulations, on both the R-A area and the B-L area which abuts it, and could use the R-10 area for a parking space for the apartment development if placed upon the property as it is presently zoned. There is some difference of opinion, but it appears that under the present zoning the developer could construct apartments containing some sixty-nine to seventy-eight units on the land as is, however, his plat plan filed with the case (Petitioner's Exhibit #1) shows a site plan including the entire tract with more than sufficient parking spaces as required by law, using the entire area, and providing for a total of one hundred and one apartment units, so that the actual dispute between the petitioner and the protestants involves nothing more than whether or not the developer should be allowed to construct apartment houses with one hundred and one units rather than the allowed number under present zoning, which would be an actual difference of only twenty to thirty units.

At the time of the adoption of the zoning map in November, 1955, Bellona Avenue was, in spite of its width and curving lines and contours, a major arterial highway used to a great extent by traffic north and south, between Baltimore and points north of the subject property, including Riderwood, Lutherville, and a large part of Baltimore County

North of that area. The traffic was extremely heavy at that time and was very probably close to overburdening the capacity of the roadway. In 1961 the reconstruction and relocation of Charles Street was completed to the Baltimore County Beltway, and the Jones Falls Expressway was completed in 1962, which construction removed almost all of the through traffic from Bellona Avenue, and it now has become only a feeder road. The State Roads Commission's traffic counts for 1964 at Bellona Avenue near Charles Street show an average daily count of 3,750, and for 1965 a count of 3,800. Mr. Joseph D. Thompson, a traffic expert testifying for the petitioner, indicated that his counts, made during 1966, showed a daily average total of 3,420 cars at the site, and Mr. Justin Risa, a traffic expert testifying for the protestants, expressed the opinion that, according to his traffic counts, the average daily traffic was 3,520 cars per day at the site. In Mr. Thompson's opinion the construction of the proposed apartments would have a minimal effect and would create no congestion whatever because the present daily traffic on the road is far below capacity. The traffic counts on Malvern Avenue and Ruxton Road are so small as to make no appreciable difference to the situation. Mr. Risa agreed with Mr. Thompson's facts but feared that the extra traffic generated by the proposed apartments, or for not matter any use of this land, might lead to hazardous conditions at the intersections because of the narrowness of Malvern Avenue, and the sight distance from it to the south along Bellona. However, on cross-examination it was brought out in his testimony that the construction of a shopping center, in fact any B-L use, would probably generate more traffic than the proposed apartments. Therefore, the Board finds, as a fact, that if the proposed use were granted and the entire layout, entrances and exits, were prepared subject to approval by the proper authorities, there would be no problem arising from traffic which would warrant any objection to the application for the proposed use.

There have been a great number of changes in the neighborhood since the adoption of the zoning map in 1955 in addition to those connected with traffic as stated above and which are not to be disregarded because the severe drop off in through traffic past the site since the adoption of the map, due to the construction of other highways, as stated above, has made the B-L portion of this land, if not useless, at least undesirable for a site for any feasible B-L use. It was testified that at the time of the original zoning, the Acme Stores had an option on the property to construct a store or shopping center which they abandoned, and the property has now remained vacant with its B-L zoning for ten years with no takers for commercial use. It may or may not have been an error for the zoning authorities not to have foreseen these conditions at the time the map was adopted, and there has been an expansion of commercial facilities in the neighborhood to take care of neighborhood needs for many years. It may also have been error for the zoning authorities not to have foreseen a subsequent increase for demand of apartment use in residential districts in 1955, and there is presently practically no provision for rental housing in the

Ruxton-Riderwood area. This was testified to by a number of the witnesses called by the petitioner. Particularly to be noted is the testimony of Mr. George E. Gavrelis, Director of Planning for Baltimore County, who stated that there had been no realization of the oncoming need for apartment use in the early 1950's. The comments of his staff, which were read into the record by him, state that rezoning generally, as proposed by the petitioner, would appear to be logical for the following reasons:

a. Because of its proximity to commercial development as well as to cottage development, use of the parcel for apartments would appear to be appropriately transitional

b. Recent expansion of nearby commercial facilities has probably been adequate to serve present local needs and the needs of residents of the proposed apartments. Therefore, the present B.L. zoning of the subject parcel is probably excessive

c. There is only a limited amount of rental housing in the Ruxton-Riderwood area. In view of trends throughout the metropolitan area, there would appear to be some degree of need for apartments here. There is doubt in our minds that the recent apartment development across Bellona Avenue has fully satisfied this need

Other testimony in this respect was that of Mr. Frederick P. Klaus, a qualified realtor and appraiser, who listed certain changes which have been made in the neighborhood since 1955, mostly in connection with some changes in the use and occupancy of the roadside business development immediately north of the property, and concerning the construction of a few apartments on the site of the old Ruxton Railroad Station, and the changes in the road patterns. It was his opinion that the proposed use of the subject property would appreciate the surrounding properties and would be a much more appropriate use than the commercial zoning which, in his opinion, would hurt nearby property. He felt that the difference between the number of apartments which could be constructed under the present zoning and those proposed would be minimal, and would allow for a much more satisfactory development of the property, both from an aesthetic standpoint and with respect to its impact on the values of neighboring properties.

Mr. Bernard Willemain, an experienced expert planner, testified that he had been familiar, not only with the property in its present state, but with its previous history. He cited the Acme Store contract under which excavation was started and then the whole project abandoned; the opening of Charles Street in 1961; the Jones Falls Expressway completion in 1962; and brought out the fact that a piece of this tract had been zoned as R-A in April of 1945; that the 1955 map had removed the R-A zoning, and the Circuit Court for Baltimore County (Gontrum, Judge) ordered a return to R-A on October 19, 1959 which, in itself, constitutes a change since the adoption of the 1955

map. He stated that the zoning authorities recognized what they thought was a need for additional commercial zoning in 1955 and 1956 which, at this time, is no longer wanted because of the changes in the traffic pattern, and that the present B-L zoning makes the area useless for development as a retail area in any manner harmonious with the neighborhood. He further pointed out that there has been sewer availability since the map was adopted, and that the trend for apartments in this area has continued since 1959 although its existence was not recognized in 1955. It was his opinion that the present zoning deprives the owner of a reasonable use of his property; that rezoning the entire property to R-A is a reasonable solution; and the apartments would not have any adverse effect on the community or adjoining properties. He pointed out that the presence of R-10 next to B-L was unreasonable, and that the R-A would be a transitional zoning, stating that good land planning calls for a variety of rental types.

The Zoning Commissioner who denied the application, according to his opinion, did so because he felt that the present zoning of R-A and B-L on the tract could be used for apartments, and that the R-10 might be approved for a parking lot adjacent thereto. Under the proposed use, as shown by the plats presented in evidence, the Board feels the use of the entire tract, as planned, would be much more advantageous to the neighborhood than the present zoning, and in the words of Mr. Gavrelis "would appear to be logical". Incidentally, the proposed plat, as approved by the Baltimore County Engineering Department, would require the widening of both Malvern Avenue and Ruxton Road, as well as Bellona Avenue which, in itself would be an alleviating influence on any traffic problem which might exist, although we do not find, as a fact, that there is or would be a serious traffic problem as a result of this application as opposed to use which might be made of the property under its present zoning. There is no serious dispute as to the availability of utilities, sewer and water, and we have been unable to find anything in the testimony of the protestants to support a decision adverse to the petitioner. The main trend of the protestants testimony was that they would prefer to have this property remain in its present vacant condition, and feel that any use of this land, of any nature or description, would affect some change in the character of the neighborhood which they describe as "bucolic". There have been many, many changes in the area described as "Ruxton" over the last twenty years and specifically since 1955, the time of the adoption of the zoning map. If the neighborhood or community is taken as the entire area of the Ninth District zoning map, the changes have been phenominal during this period. If the area in which changes have occurred is the area within a half mile radius of the subject property, the changes have also been extensive, with particular respect to the development of the presently adequate commercial area in the neighborhood of Bellona and Ruxton Roads, the construction of the apartments on the site of the old railroad station, and the changes in traffic patterns.

This is a case, as in many others, where it is difficult to determine under the facts whether there has been error in the original zoning, or substantial change in the

character of the neighborhood, or both. The error, if any, would be based mainly upon the failure of the original zoning authority to foresee or expect the changes which have occurred which have made the present zoning obsolete under any view taken of proper zoning under present conditions. However, even if there were no error the Board finds that the change in traffic, land use, population, and furnishing of utilities, is sufficient almost to require rezoning, and certainly sufficient to support rezoning. We feel that our decision on these facts is buttressed by the obvious fact that this land has remained in its present B-L classification for over ten years with no takers for commercial use, and that the logical rezoning of the odd shaped piece of R-10, which could hardly be used for the construction of homes under that classification, would be the best possible use from any standpoint of planning or benefit to the community. One alternative, of course, possibly could be to leave the B-L zone as is and grant a change to R-A on the R-10 tract. The Board has considered this and decided that it would be to the greater interest of the community to maintain the entire tract for residential purposes, and the petition for change to R-A of the entire area will, therefore, be granted.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 21st day of December, 1966 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin
William S. Baldwin, Chairman

W. Giles Parker
W. Giles Parker

John A. Slowik
John A. Slowik

65-220-R
2

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 9TH — Date of Posting May 1 1965
Posted for: Appeal
Petitioner: Joseph J. Martin et al
Location of property: NE Cor. Bellona & Malvern Aves.
Location of Signs: ① N/S Malvern Ave 502' of Bellona Ave
② E/S Bellona Ave 100' N of Malvern Ave
Remarks:
Posted by J. Bosse — Date of return May 6 1965
2 Signs

PETITION FOR ZONING RE-CLASSIFICATION

[redacted]

65-220R

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Joseph J. Martin and Kathryn F. Martin, his wife, 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 the R-L and R-10 zones to an R-A zone; for the following reasons: The Character of the area has changed since the existing zoning classification was established, (2) there was an error made in establishing the existing zoning classification, (3) the proper use of the property, which is the subject of this petition, is not reflected in the present zoning classification, **but an R-A zone is proper.**

MAP #9 SEC. 3-C RA 2/4/65 (NW-9B NW-10B)

See Attached Description

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

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

I, or we, agree to pay expenses of above 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.

James Keelty, Jr., Contract purchaser

Address

Joseph J. Martin
Kathryn F. Martin, Legal Owner

Address 2234 Monocacy Road
Baltimore, Maryland 21221

T. Bayard Williams, Jr., Petitioner's Attorney

Address 6732 Holabird Avenue (22)

Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 12th day of January, 1965, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that 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 17th day of February, 1965, at 1:00 o'clock P.M.

JAN 12 '65 AM — OFFICE OF PLANNING & ZONING

Zoning Commissioner of Baltimore County.

(over)

G. LEIPER CAREY
1207 Malvern Avenue,
Baltimore County, Maryland

AND

J. W. MIDDENDORF
1212 Malvern Avenue
Baltimore County, Maryland

VS

WILLIAM S. BALDWIN,
W. GILES PARKER AND
JOHN A. SLOWIK, being
and constituting the County
Board of Appeals of Baltimore
County, Maryland

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

Miscellaneous Docket

ORDER AND PETITION FOR APPEAL

G. Leiper Carey and J. W. Middendorf, Appellants, by Richard C. Murray, their attorney, hereby appeal from the Order and decision rendered by the County Board of Appeals of Baltimore County on December 21, 1966, in a proceeding before it entitled "Petition for Re-classification from R-10 and B. L. zones to an R. A. zone, N. E. Corner Bellona Avenue and Malvern Avenue, 9th District, Joseph J. Martin, Petitioner", said proceeding also being known as Zoning Case No. 65-220-R before the said County Board of Appeals.

The said Appellants, pursuant to Maryland Rule B-2 join with this Order for Appeal their Petition setting forth the action appealed from, the error committed by the County Board of Appeals and the relief sought, all as follows:

1. The action appealed from is the order and opinion of the County Board of Appeals of Baltimore County (hereafter referred to as the Board) in Zoning Case No. 65-220-R before said Board which Order and opinion under date of December 21, 1966, granted a re-classification of the property therein described from an R-10 and B. L. zones to an R. A. zoning classification.

Recd 1-18-67 4 PM

2. The said Board committed error in the following respects:

(a) That the action of the Board was arbitrary and capricious.

(b) That the action of the Board was not supported by substantial evidence.

(c) That the action of the Board was not supported by substantial evidence upon viewing the whole record before the Board.

(d) That the Board erred in the admission testimony before it.

(e) That the Board misconstrued the evidence before it.

(f) That the action of the Board in granting such zoning classification amounts to spot zoning and is not in accordance with a comprehensive plan.

(g) That there is no evidence legally sufficient to establish any error in the zoning existing on said property.

(h) That the evidence was legally insufficient to establish such change of conditions or change in the neighborhood or other basis upon which reclassification would be warranted.

(i) And for other and further reasons to be presented at the time of hearing herein.

3. That the relief sought in this case is the reversal of the Order and Opinion of said Board in said proceeding.

WHEREFORE, the Appellants pray that the action of the Board herein appealed from may be reversed.

Richard C. Murray
Bringsdine S Murray
22 W. Pennsylvania Avenue
Towson, Maryland 21204
VA. 5-1818

I HEREBY CERTIFY, that a copy of the aforegoing Order and Petition for Appeal was served upon the County Board of Appeals of Baltimore County by personally delivering a copy of the same to the Secretary of said Board at the office of said Board this day of January, 1967.

Richard C. Murray

9-28-64

DESCRIPTION OF PART OF THE PROPERTY OF JOSEPH J. MARTIN
TO BE REZONED FROM R-10 to R-A

#65-220R

Beginning for the same at the end of the first line of the second parcel of land as described in a deed from John McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and recorded among the Land Records of Baltimore County in Liber W.J.R. 3851, Folio 349 said point of beginning being also on the centerline of Malvern Avenue, running thence binding reversely on all of the said first line of the second parcel and running with and binding on part of the fifth line of the first parcel of land in the above described deed and also binding on the centerline of said Malvern Avenue South 81 degrees 06 minutes 34 seconds West 237.00 feet, thence leaving said Malvern Avenue and running for lines of division the three following courses and distances viz: first, North 8 degrees 53 minutes 26 seconds West 274.82 feet; second, North 80 degrees 39 minutes 10 seconds East 155.81 feet, and third, North 9 degrees 20 minutes 50 seconds West 280.00 feet to intersect the third line of the third parcel of land in the above described deed at a distance of 79.77 feet from the beginning thereof thence binding reversely on part of the said third line of the third parcel of land and in the bed of Ruxton Road North 88 degrees 36 minutes 00 seconds East 79.77 feet, thence leaving said Ruxton Road and binding reversely on the second line of the said third parcel of land and binding reversely on the second line of the second parcel of land South 9 degrees 20 minutes 50 seconds East 545.67 feet to the place of beginning.

Containing 1.991 Acres of land more or less.

Being parts of the first, second and third parcels of land as described in a deed from John McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and recorded among the Land Records of Baltimore County in Liber 3851, Folio 349.

DONALD L. BROWN
Reg. No. 2423

RE: PETITION FOR RECLASSIFICATION
From B-L and R-10 Zones to
R-A Zone - NE/Cor. Bellona & Malvern Aves., 9th District -
Jos. L. Martin and Kathryn L. Martin, his wife, Petitioners

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 65-220-R

: : : : : : : : : : : : : : : : : :

The petitioners in the above matter asked for a reclassification, from B-L and R-10 Zones to an R-A Zone of property at the northeast corner of Bellona and Malvern Avenues, in the Ninth District of Baltimore County, claiming an error in the Baltimore County zoning classification.

This could scarcely be so as the Baltimore County Zoning Regulations, Section 230.1 reads as follows:

"Uses permitted and as limited in residential zone immediately adjoining".

The owner of the property owns the land immediately adjoining the R-A Zone, which is now zoned Business Local. There is nothing to prohibit the petitioner from using Business Local land for apartment use. The property currently zoned R-10 may be approved by the Director of the Office of Planning for parking in conjunction with apartments.

For the above reasons the reclassification should NOT BE HAD.

It is this 8th day of March, 1965, by the Zoning Commissioner of Baltimore County, ORDERED 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 B-L and R-10 Zones.

Zoning Commissioner of
Baltimore County

G. LEIPER CAREY
AND
J. W. MIDDENDORF
VS
WILLIAM S. BALDWIN,
W. GILES PARKER and
JOHN A. SLOWIK, being and
constituting the COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY,
MARYLAND
JOSEPH J. MARTIN
KATHRYN F. MARTIN

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
3678/2/166

#65-220-R

coo0ooc

MEMORANDUM OPINION

This is an appeal on behalf of protestants from the grant of an "RA" zoning reclassification. It is perhaps the semi-final battle in the long series of skirmishes that have marked the campaign for zoning classifications affecting the property bordered by Malvern and Bellona Avenues and Ruxton Road. (The northeast corner of Ruxton Road and Bellona Avenue excepted). The 6.329 acres of land presently are a hodge-podge of zoning classifications, namely: 1 acre BL; 2 acres R-10; 3.329 acres BL. McBee v. Baltimore County, 221 Md. 312, decided in January, 1960, furnishes a history and description of the BL portion of the subject tract. That case upheld the BL reclassification of part of the property but that zoning never was utilized in the intervening years.

It is maintained that there have been both physical and economic changes affecting the property. The record supports the contention. Reclassification to RA and actual construction of apartment buildings have occurred nearby on the site of the former Ruxton Railroad Station. The interaction of newly opened highways and enlargement of the nearby Harrington commercial complex have altered the formerly anticipated need for commercial use of the property. Countervailing contentions by the protestants also are made, also buttressed by impressive

Recd 11/14/67 1:15 PM

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evidence. Under such conditions, the resolution of the dispute is for the County Board of Appeals not for the Courts.

The objection that traffic generated by apartment use would create highway hazards falls with the factually supported observation of the Board of Appeals that use of the property authorized under existing zoning would generate more traffic than the proposed change.

Suggested difficulty with sewer connections also was raised as a ground for reversal. Such difficulty, if it in fact exists, would prohibit equally, actual use of the property, under present or proposed classifications.

Since it appears clearly from the record that there was substantial evidence of change in the area; that there was substantial evidence of an unsatisfied need for apartment zoning in the area, and that there was substantial evidence that the subject property was a suitable site to provide for that need, it is clear that the issue of reclassification must be left to the expertise of the Board for decision.

The decision of the Board of Appeals is affirmed.

W. ALBERT MENCHINE, Judge

November 13, 1967

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

No. 41078

County Board of Appeals (Zoning)

#65-221-R

APR -8 '65 AM
ZONING DEPARTMENT

IN THE MATTER OF THE PETITION FOR RECLASSIFICATION OF JOSEPH J. MARTIN and KATHRYN F. MARTIN, his wife, FROM B-L AND R-10 ZONES TO R-A ZONE - NE/COR. BELLONA & MALVERN AVES., 9TH DISTRICT	:	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY NO. 65-220-R

: : : : : : : : :

ORDER OF APPEAL

MR. COMMISSIONER:

Please enter an appeal in the above-mentioned case from the Order of Denial passed on the 31st day of March, 1965.

T. Bayard Williams, Jr.,
Attorney for Petitioners
6732 Holabird Avenue
Dundalk, Maryland 21222
ATwater 2-3450

MICROFILMED

LAW OFFICES
T. BAYARD WILLIAMS, JR.
JACK H. WILLIAMS

G. LEIPER CAREY, J. W. MIDDENDORF	*	IN THE CIRCUIT COURT
VS	*	FOR BALTIMORE COUNTY
WILLIAM S. BALDWIN, et al., being and constituting the County Board of Appeals of Baltimore County and	*	Miscellaneous Docket
JOSEPH J. MARTIN and KATHRYN MARTIN	*	Case No. 3678

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 G. Leiper Carey
and J. W. Middendorf

I HEREBY CERTIFY, that a copy of the aforegoing Order for Appeal was mailed this day of December, 1967, to the County Board of Appeals, County Office Building, Towson, Maryland, 21204; and M. William Adelson, Esquire, 1035 Maryland National Bank Building, Baltimore, Maryland, 21202, and T. Bayard Williams, Jr., Esquire 6732 Holabird Avenue, Baltimore, Maryland, m 21202, Attorneys for Joseph J. Martin and Kathryn Martin.

Richard C. Murray

Rec'd 12/14/67
9:30 a.m.

DESCRIPTION OF PART OF THE PROPERTY OF JO[illegible] MARTIN
TO BE REZONED FROM B-L to R-A

Beginning for the same [illegible] the beginning of the first parcel of land as described in a deed from [illegible] McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and rec[illegible] among the land records of Baltimore County in Liber W.J.R. 3851, Foli[illegible] said point of beginning being at the point formed by the intersection [illegible] centerline of Bellona Avenue with the centerline of Malvern Avenu[illegible] running thence binding in the bed of said Bellona Avenue and binding [illegible] of the first line and part of the second line of the said first parcel of land the two following courses and distances viz: first, North 15 degrees 38 minutes 26 seconds West 346.50 feet and second, North 6 degrees 23 minutes 26 seconds West 30.06 feet, thence leaving the bed of said Bellona Avenue and running for lines of division the two following courses and distances viz: first, North 85 degrees 35 minutes 35 seconds East 160.18 feet and second, North 0 degrees 39 minutes 45 seconds East 207.57 feet to intersect the fifth line of the third parcel of land in the above described deed at a distance of 153.91 feet from the beginning of said fifth line, running thence binding reversely on part of the said fifth line and in the bed of Ruxton Road North 82 degrees 06 minutes 00 seconds East 135.30 feet, thence leaving the bed of Ruxton Road and running for a line of division South 8 degrees 53 minutes 26 seconds East 563.97 feet to intersect the fifth line of the said first parcel of land at a distance of 290.00 feet from the end of said fifth line and also to intersect the centerline of said Malvern Avenue running thence binding on part of the said fifth line of the first parcel of land and binding also on the centerline of said Malvern Avenue South 81 degrees 06 minutes 34 seconds West 290.00 feet to the place of beginning.

Containing 3.323 Acres of land more or less.

Being part of the first and part of the third parcels of land as described in a deed from John McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and recorded among the Land Records of Baltimore County in Liber W.J.R. 3851, Folio 349.

DONALD L. Bau[illegible]
Reg. No. 3423

MICROFILMED

OFFICE OF PLANNING AND ZONING
Inter-Office Correspondence

Date Feb. 5, 1965

To: Mr. John G. Rose, Zoning Commissioner
From: George E. Gavrelis, Director

Subject: #65-219-X - Petition for a Special Exception for a Filling Station - Southeast corner of Bellona Avenue and Ruxton Road

and

#65-220-R - Petition for Reclassification from R-10 and B.L. Zones to R.A. Zone. Northeast corner of Bellona and Malvern Avenues
Being the property of Joseph J. Martin and Kathryn Martin.
9th DISTRICT

HEARING: Wednesday, February 17, 1965 at 1:00 P. M.

The planning staff of the Office of Planning and Zoning has reviewed the subject petitions and offers the following advisory comments regarding planning factors:

(1) The subject properties are part of a single large parcel. Carrying out the proposals here would constitute a subdivision of the land. This office would require that the plans be submitted for subdivision processing and approval.

After preliminary review, we are not convinced that the present plans are entirely satisfactory. There are particular questions regarding the adequacy of present Malvern Avenue to serve any portion of the apartment development and the possibility of widening Malvern while at the same time retaining as many as possible of the trees that now enhance it. Another question relates to the grading of the property; here the staff's principal concern with the plan is the fact that the easterly boundary of the proposed filling station lot — presumably the easterly edge of the excavation cut — is planned in such a way as to deny the westernmost house across Ruxton Road the effect of terrain screening. There are further questions regarding internal circulation. There would appear to be good reason for providing access between the filling station and the apartment development, if such access can be worked out gradewise.

It is proposed to put 101 units on the property and six buildings covering about 37,200 sq. ft. Placing this number of units in buildings of such little coverage poses design problems requiring the submission of more detailed information regarding site planning factors before the staff could recommend approval of the plan.

(2) Present zoning of the parcel is R.A., R-10 and B.L. That part of the B.L. Zone which adjoins the R.A. Zone would permit apartments. Rezoning generally as proposed by the petitioner would appear to be logical for the following reasons:

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Page - 2

Petitions #65-219-X and #65-220-R (continued)

a. Because of its proximity to commercial development as well as to cottage development, use of the parcel for apartments would appear to be appropriately transitional.

b. Recent expansion of nearby commercial facilities has probably been adequate to serve present local needs and the needs of residents of the proposed apartments. Therefore, the present B.L. zoning of the subject parcel is probably excessive.

c. There is only a limited amount of rental housing in the Ruxton-Riderwood area. In view of trends throughout the metropolitan area, there would appear to be some degree of need for apartments here. There is doubt in our minds that the recent apartment development across Bellona Avenue has fully satisfied this need.

(3) With regard to the Special Exception for the filling station, we feel strongly that every effort must be made by the County, the petitioner and the future owner of the station to make the use harmonize with surrounding development if the special exception is to be granted. Particular care will be required to insure that no more of the overall parcel is devoted to this use than is necessary, that all activities which can be conducted enclosed within the building will be kept inside, and that truly adequate landscaping and screen planting will be used. Grading and access points also must be clarified.

(4) In view of the above, it is requested that a decision on these petitions be postponed until the various problems noted are solved, and also until approval has been secured from all appropriate State and County agencies.

MICROFILMED

January 18, 1965

#65-220R
MAP #9
SEC. 3-C

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
COUNTY OFFICE BUILDING
TOWSON 4, MARYLAND

Mr. T. Bayard Williams, Jr. Esq.
6732 Holabird Avenue
Baltimore, Maryland 21222

SUBJECT: Reclassification From BL and R-10 Zone to RA Zone for Joseph J. Martin located on the E/S of Bellona Ave between Malvern and Ruxton Rd, 9th District

(NW-9B NW-10B)

The Zoning Advisory Committee has reviewed the subject petition makes the following comments:

OFFICE OF PLANNING AND ZONING: An on-site vehicular access should be provided between the main entrance off Bellona Avenue and the proposed gas station site.

STATE ROADS COMMISSION: The entrance off Bellona Avenue as indicated is subject to a change of location. This entrance was approved on a previous preliminary plan which proposed the development of this property for a shopping center.
Site distance to this tract as it now exists is considerably poor considering the grades along the frontage of Bellona Avenue, this condition can only be eliminated by the proposed re-alignment and construction of Bellona Avenue as indicated on the petitioners plans.

FIRE BUREAU--Plans review; See attached comments.

TRAFFIC ENGINEERING: This bureau will make an on-site inspection and submit comments at a later date.

The following members have no comments to offer with regard to the proposed development plans:

Bureau of Engineering
Board of Education
Buildings Department
Industrial Commission
Health Department

cc: Albert Quimby-Office of Planning & Zoning
John Duerr-State Roads Commission
Lt. Charles F. Morris-Fire Bureau
C. R. Moore-Traffic Engineering

Yours very truly,

JAMES E. DYER
Chief of Permit and
Petition Processing

MICROFILMED

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

TELEPHONE 823-3000 — No. 28506 — DATE 1/25/65

To: Mr. Joseph J. Martin, [illegible], Baltimore, Md. [illegible]
BILLED BY: Zoning Department of Balto. Co.
DEPOSIT TO ACCOUNT NO. 01-622

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Petition for Reclassification #65-220-R	50.00

PAID — Baltimore County, Md. — Office of Finance
1-2565 9454 • 28506 TIP- 50.00
MICROFILMED

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

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

TELEPHONE 823-3000 — No. 28561 — DATE 2/16/65

To: Mr. Joseph J. Martin, [illegible] Road, Baltimore 21, Md.
BILLED BY: Zoning Department of Balto. Co.
DEPOSIT TO ACCOUNT NO. 01-622

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT $95.50 / COST
	Advertising and posting of property #65-220-R	95.50

PAID — Baltimore County, Md. — Office of Finance
2-1965 [illegible] • 28561 TIP- 95.50
MICROFILMED

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

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

TELEPHONE 823-3000 — No. 30581 — DATE [illegible]

To: T. Bayard Williams, Esq., [illegible] Holabird Avenue, Baltimore, Maryland [illegible]
BILLED BY: Office of Planning & Zoning, 119 County Office Bldg., Towson, Maryland [illegible]
DEPOSIT TO ACCOUNT NO. 01-622

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Cost of posting Jos. J. Martin property for appeal hearing No. 65-220-R	10.00

PAID — Baltimore County, Md. — Office of Finance
5-1365 5141 • 30581 TIP- 10.00
MICROFILMED

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

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

TELEPHONE 823-3000 — No. 28654 — DATE [illegible]

To: Joseph J. Martin, [illegible] Rd., Baltimore 21, Md.
BILLED BY: Zoning Department of Balto. Co.
DEPOSIT TO ACCOUNT NO. 01-622

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Posting of property #65-220-R	20.00

PAID — Baltimore County, Md. — Office of Finance
3-2965 2504 • 28654 TIP- 20.00
MICROFILMED

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

6-12-70

ZONING PETITION NO. 65-202-R
Petition of JOSEPH D. MARTIN, et al
Bellona and Malvern Avenues

* BEFORE THE COUNTY BOARD OF
* APPEALS

* *

MEMORANDUM ON BEHALF OF PROTESTANTS

This Memorandum is submitted pursuant to leave of the Board at the conclusion of the testimony in the above matter. It is the intention of this Memorandum to outline first, certain general statements concerning the application, secondly, the history of this property, third, a summary of the evidence and finally a discussion of the legal principles involved.

IN GENERAL

The property here involved, hereinafter referred to as the subject property, binds upon the east side of Bellona Avenue, the north side of Malvern Avenue, the south side of Ruxton Road and is bounded on the east by the property of Mr. J. W. Middendorf, one of the Protestants. The subject property, as illustrated by Petitioner's Exhibit No. 1, is said to consist of a gross acreage of 6.329 acres. The entire ownership is, however, somewhat considerably larger since there is carved out of this application the southeast corner of Ruxton Road and Bellona Avenue. This corner is admittedly in the same ownership but is the subject of an additional application for a Special Exception for a gasoline service station presently pending but unscheduled before the Board.

Of the 6.329 acres here involved it was testified that the Bellona Avenue frontage of the subject property is zoned B. L. for a depth of 300 feet and consists of approximately 3.38 acres, that going easterly there is a 1.0 acre parcel zoned R. A. fronting on Ruxton Road and that continuing further to the east and to the south there is a "pan handle" of 2.0 acres zoned as R-10.

The Board's attention is again called to the southwest corner of Ruxton Road and Bellona Avenue where there is pending the application for a Special Exception on a portion of this same tract for a gasoline service station. This application is known as Zoning Case No. 65-219-X and according to the records before this Board, of which notice should be taken, comprises 0.813 acres.

Still by way of general background, the subject property is presently owned by Joseph J. Martin and under contract with respect to the instant application to James Keelty and Company. There is also an outstanding contract on the above mentioned southeast corner of Ruxton Road and Bellona Avenue to the Texas Company.* Mr. Keelty testified basically, that his contract was entirely contingent upon the rezoning here requested and additionally, that he had the option to acquire the southeast corner of Ruxton Road and Bellona Avenue in the event that the Texas Company application for a Special Exception should be denied. To use Mr. Keelty's own terms, he had "the opportunity but not the obligation" to acquire that corner if its use was precluded for a gas station.

The Martin property likewise is in what is generally known as the Ruxton area of Baltimore County. At present it is unimproved except for an old residence situate on the property and which all witnesses stated to be located within the existing R. A. portion of the tract. The land falls generally from the common or Middendorf boundary line toward Bellona Avenue.

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* It is significant, perhaps, that no evidence was given as to the cost of Mr. Martin's acquisition. Similarly, no testimony is in the record as to the resale prices to Keelty and Texaco.

HISTORY OF SUBJECT PROPERTY

The Applicants' witnesses identified the property as that involved in McBee v. Baltimore County, 221 Md. 312, decided five and one-half years ago. A review of McBee indicates the property was originally in an A residential zone and, as early as 1947, the then owner sought a commercial classification which was ultimately denied. By virtue of the March 30, 1955 regulations the A residence zone automatically became an R-6 zone. As part of the comprehensive map adopted in late 1955 and finally approved in January 10, 1956, the Bellona Avenue frontage was classified as B. L. (Business local) and the balance of the tract was shown on the map as R-10. The following quotation from McBee demonstrates conclusively that the immediate area has remained unchanged from 1955 to the present:

> "The . . . property in question, containing about four acres of ground, is located on the east side of Bellona Avenue, in what is known as Ruxton, between its intersections with Malvern Avenue and Ruxton Road. To the east, adjoining the property reclassified, the [Applicant owns] property on which is a substantial residence. Just south of the . . . property and across Bellona Avenue is an Esso gas station. Parallel to Bellona Avenue and to the west thereof is the main line of the Pennsylvania Railroad to Harrisburg. Across the tracks and to the west is the L'Hirondelle Club, with its swimming pool and tennis courts. Immediately to the north of the . . . property, separated by Ruxton Road, is an Amoco gas station; next to it to the north, a building used by a cleaning and dyeing concern; next, the Ruxton Pharmacy, and a blacktop parking area. Facing this area are: the Wilmington Country Store, the Ruxton Hardware Store, a snack shop, a dress shop, and a dentist's office. Immediately to the north, across La Belle Avenue, are: a cleaning establishment, a beauty shop, a bakery store, a liquor store, a grocery store and two small parking areas, one in front of and one to the north of these establishments. Existing parking facilities for the commercial establishments described above are inadequate, there being a deficiency, according to one witness, of from forty to sixty spaces . . ." (221 Md. at 314).

The above quotation is virtually identical with the description given in this proceeding save for the change in use of several stores.

McBee also illustrates the basic nature and purpose of this comprehensive zoning:

> "The appellants' claim that the action of the County Commissioners was arbitrary seems to be based on a contention that factually and legally it was no more than a rezoning of a single tract. We do not agree. The Commissioners made a comprehensive study and revision of a large portion of the Ninth Election District zoning boundaries, as a part of a larger revision of the maps and uses covering the entire county. Indeed, it would appear that more careful consideration was given in 1956 to future needs, in the light of zoning experience and the marked changes in population, transportation, business and industrial needs, than could possibly have been the case in 1945.
>
> The fact that no changes were made in this particular section other than an extension of a commercial area earmarked in 1945, does not establish that the action taken was piecemeal or spot zoning . . . In short, the County Commissioners were here exercising a plenary power, delegated by the General Assembly, to legislate a new zoning for the whole county. . . . When such a new map is adopted, it is entitled to the same presumption that it is correct as is an original zoning." (221 Md. 316,317.)

Between 1945 and the adoption of the new map one other application had been considered on this land. This is recited in Misc. Case Number 2112 in the Circuit Court, admitted in evidence herein. The petition filed under oath therein alleged a reclassification of one acre of the tract to an apartment zone on April 16, 1945. It was alleged that the new zoning map "inadvertantly failed" to include this zone (par. 6 of the petition). The answer of Baltimore County, verified by the Zoning Commissioner, admitted this allegation. The property was subsequently placed on the map pursuant to the issuance of writ of mandamus. All witnesses agreed that this area included the improvements which had been converted for multiple-family use.

No other use or change has occurred on the subject property, except for subsequently vacating the improvements. No change has occurred on any adjacent streets save for the construction of four homes on Malvern Avenue in accordance with the R-10 regulations. Indeed, two photographs from the record in McBee were introduced which depict the identical scene today on Ruxton Road and Malvern Avenue as in 1947 saving for the recent R-10 homesites.

STATEMENT OF FACTS

It is convenient, with this background in mind, to consider in some detail the testimony presented by the Applicants in this proceeding. The first of those was Mr. Joseph S. Keelty, who, over objection, was permitted generally to identify the proposed construction plan as set forth in Petitioner's Exhibit No. 1 and as was explained by him before the Board. The Protestants still insist that any testimony as to projected plans is inadmissible but, having been overruled by the Board, must consider the same. In substance Mr. Keelty referred to the possible construction of six three-story apartment buildings housing a total of 101 apartment units, 18 parking spaces for which would enter directly upon Malvern Avenue and the remainder of which would presumably use a so-called main entrance onto Bellona Avenue.

The next witness was Mr. Donald L. Brown, a surveyor in the employ of Mr. Keelty's company. Mr. Brown was likewise permitted, again over objection, to testify as to general plans which the Board recognized were not binding upon the Applicant. It is submitting that the only factual testimony of Mr. Brown is that Bellona Avenue has 20 feet of paving, that Malvern is only 17 feet wide and that Ruxton Road is only 18 feet wide. Even assuming that changes in road width or construction were admissible, which the Protestants likewise deny, it is nonetheless seen that any widening would occur solely along the perimeter of the Applicant's property. In other words, no general plans for any major road improvements feasible of completion with reasonable certainty were presented. It must in fairness be noted that Mr. Brown did testify to some limitation on sewer capacity in 1955 and 1956. Against this vague characterization, there must be measured the effect of his admission that he had no idea and made no study of sewer capacity in 1955 and 1956 or indeed at the present time. With respect to water facilities, he readily admitted that he made no study for the requirements for fire flows but (with particular respect to the present R-10 portion) the fire flow requirements for cottages are far less than those needed for apartment construction. Finally, he admitted that any limitation on utilities in 1955 and 1956 were imposed on the outlying areas which were placed in an R-40 zone, which manifestly did not apply to the present property.

The third witness produced by the Applicant was Mr. George E. Gavrelis, the Director of Planning. The nature and extent of Mr. Gavrelis' testimony is best seen by reviewing his written comments. Although he claimed that apartment zoning might be "logical" the following factors appeared uncontradicted from his written report:

> (a) "We are unconvinced that the present plans are entirely satisfactory."
>
> (b) Questions exist with respect to proposed grading of the said property.
>
> (c) Questions exist concerning internal circulation of traffic for the property.
>
> (d) The proposed 101 apartment units crowded on the proposed land coverage pose "design problems requiring submission of more detailed information."
>
> (e) "A decision on the petitions [should] be postponed until the various problems noted are solved."

Next, testimony was presented by Mr. Joseph D. Thompson concerning traffic conditions. While the Protestants do not dispute his traffic counts, attention is called to his admissions as to traffic hazards. At the intersection of Malvern with Bellona Avenue there is sight to the south of only 100 feet and to the north of 150 feet. At Ruxton Road, vision is only 200 feet in each direction. Admittedly, no improvements in front of the subject property can increase sight distance either southerly from Malvern or northerly from Ruxton Road. The witness admitted that Malvern Avenue is a dangerous intersection. The plans call for 18 units using Malvern as compared to 3 or 4 R-10 lots using it. Contrasted with this, the Protestants called Mr. Risa of the Traffic Division who stated that a minimum safe sight-stopping distance in a 30 mile zone is 275 feet. Mr. Risa also noted a hill crest on Malvern Avenue approximately 60 feet east of the subject property which obscures vision and objected to any traffic increase on Malvern.

The Applicant's remaining witnesses, Messrs. Klaus and Willemain, can be considered jointly. Each testified to essentially the same alleged "changes" and gave the same adjectival claim of a "need" for apartments.

Five zoning "changes" were mentioned, two of which were special exceptions which the Board indicated would be given no weight in this proceeding. A third was the R. A. parcel on the subject tract which, as noted, was created as far back as 1945, was inadvertently left off the map but restored by way of mandamus. A fourth was the Harrington classification in File No. 5002. Applicant's witnesses agreed this was simply the adjustment of a zoning line to a lot line and comprised a triangular strip 30 feet wide at one end and tapering to zero at the other. This small strip was the rear of the existing commercial area and by virtue of intervening structures must not even be visible from Mr. Martin's land.

The final zoning case was File No. 5559, being the "Ruxton Township" located on the far side of the railroad and north of the Ruxton Road bridge. It is now improved by 24 units described by one witness as "townhouses" in appearance rather than apartments. The photographs demonstrate they are not clearly visible from the subject tract. From the file itself it is apparent that rezoning was granted on the basis that existing improvements would be converted for an office and architectural drawings were presented in that respect. After the use was changed, the Zoning Commissioner wrote on April 4, 1965 ". . . I know of no other zoning that has distressed me more." On November 11, 1963, he wrote to the original applicant ". . . Under no circumstances would I have granted the zoning if I had not believed what you had said (as to conversion for office use)."

The Applicants' planning expert stated that none of the zoning changes have any "compulsive" effect on rezoning in the instant matter.

The remainder of the expert testimony consisted of road changes more than a mile away (Jones Falls Expressway and Burke Avenue) and a claim of need for apartments. As to the latter, no market study was made nor was there even any effort to review census data as to population trends, age categories, earning power or the like. Perhaps of greater importance, neither witness knew or considered apartment vacancies within any given radius of this tract and neither knew or considered the amount of vacant unimproved apartment land available for building.

Without going into detail the Protestants produced testimony to the following effect:

> (a) Traffic conditions in the area are hazardous.
>
> (b) No changes have occurred except for the modernization of Harrington's and Ruxton Township.
>
> (c) Ruxton Township, under rental for 1 1/2 years, is one-third to one-half vacant. Ruxton Towers also has vacancies.
>
> (d) There is no need for additional apartments in the area.
>
> (e) There is, conversely, a need for further neighborhood shops which could be satisfied here.
>
> (f) Rezoning here would constitute a major change in Ruxton, directly affect the neighborhood adversely and lead to the threat of a further breakdown in zoning (three or four tracts of similar size were described within a thousand feet of the subject tract).
>
> (g) B. L. traffic would not coincide with residential peak hours of traffic while apartments traffic would so coincide.

Finally, no claim of confiscation or economic hardship on the part of the owner is claimed. This is demonstrated by the following portion of the Transcript herein:

> Q (By Mr. Murray) Now in the event both [applications] were approved, does any part of the purchase price of the Texas Company pass to your company, or does it go directly on to Martin?
>
> MR. SMITH: I object to this.

MR. MURRAY: Unless the applicant wants to stipulate there is no claim of any economic hardship with respect to this property.

MR. BALDWIN: He hasn't claimed that in his case, - unless I misunderstood; in all of counsel's line, I haven't heard anything as to hardship here.

MR. MURRAY: You are making no claim that the present zoning so restricts the use, some reasonable economic use?

MR. SMITH: We are not saying he can't use it.

ARGUMENT

Despite recent comment occasioned by the dissent in McDonald v. Board of County Commissioners, 238 Md. 549, nevertheless the Court of Appeals has consistantly adhered to the doctrine that piecemeal rezoning may not be granted except upon a clear showing of original error or a general change in the character of the neighborhood. Likewise, the propriety of the original zoning is still entitled to a strong presumption of correctness and there is a heavy burden upon the proponent of change.

In this case, there seems to be no claim of error. Indeed, Mr. Gavrelis specifically declined to make any such claim. In any event the correctness of the existing zoning on the Martin tract is res judicata by virtue of the McBee case. The doctrine of res judicata has been applied to zoning cases in a variety of contexts. See, for example, Whittle v. Board of Zoning Appeals, 211 Md. 36 and Woodlawn Ass'n v. Board, 241 Md. 187.

This case presents, at most, a rather vague claim of changes in the neighborhood. First, with respect to utilities there was no testimony concerning any change in water lines, although it must be remembered with respect to the R-10 portion that the Applicant's own engineering witness testified that fire flow requirements would be greater for apartments then for individual homes and he confessed that he made no study along those lines.

As to sewer capacity the Applicant's planning witness admitted that the property both in 1955 and today could be developed in accordance with its present zoning with the use of septic tanks systems. On the other hand, to develop the entire tract into apartments presumably would require the use of Metropolitan facilities and it was stated that no right-of-way was available to cross the NorthernCentral Railroad nor is there a construction strip available across the L'Hirondale property. The evidence clearly demonstrates, therefore, a most unusual situation in that the property can be used as now zoned while there is no showing that it can be developed if rezoned!

It is appropriate to recall again the three zoning changes relied upon by the Applicant. One of these, the R. A. existing on the subject property, was demonstrated to be no change at all. It was, indeed, a rectification of an admitted oversight and a confirmation of zoning in existence as far back as 1945.

Much was said of the so-called expansion of the B. L. use at Harrington's. As noted above, this was a strip to the rear of the Harrington complex and merely straightened out zoning boundaries to coincide with lot lines. The file in that case, offered in evidence, also reveals that the area there involved had also been commercially zoned in 1945 and that the portion under consideration "was inadvertently omitted" from the new map. The effect of this minor adjustment of a boundary is minimal, if not nil. Attention is again called to the quotation from McBee above in which the description given of this area in 1955 is substantially the same today. Moreover, there is no evidence whatever that this insignificant expansion (if it can be called that in view of the 1945 zoning) diminished the need for B. L. uses on the Martin property. There is positive evidence, to the contrary, that the Martin property is usable and adaptable for many B. L. purposes.

Finally, the Ruxton Township townhouses do not support the change in neighborhood test. It is obvious that these townhouses were adapted to a difficult site location not desirable for individual homes. A review of that file, likewise offered in evidence, conclusively demonstrates that the reclassification was predicated on a remodeling of the old station and its conversion to an office. The Zoning Commissioner has gone on record in stating that he would not have granted this zone if he had known the nature of the improvements that were ultimately made. His letter of April 1, 1966, to the Applicant in that proceeding, indicates that the Ruxton-Riderwood-Lake Roland Area Improvement Association had also been led to believe that the sole purpose of the same was to convert the existing station structure. Laying aside these considerations, the fact remains that the townhouses are separated from the subject property by Bellona Avenue, the railroad and the Ruxton Road bridge. Indeed, they are not clearly visible from the subject property and cannot, by any stretch of the imagination, affect its use for B. L. purposes. Bearing in mind the premise upon which that zoning was granted, it is well settled that the existence of an ill-advised exception cannot be considered as grounds for granting further exceptions or for repeating the wrong. As said in Easter v. Mayor and City Council, 195 Md. 395, 400: "If that were not so one variation would sustain if it did not compel others, and thus the general regulation would eventually be nullified."

It is submitted that the only conceivable evidence of any change whatsoever in the general Ruxton area is with respect to the Ruxton townhouses, which as noted, were ill-advised, granted on a false premise and which do not affect the subject property. One of the Applicant's own witnesses stated that the townhouses have no "compulsive" effect on rezoning the Martin property.

The balance of the Applicant's case revolves around a general, vague, nebulous claim of a "need". Such generalizations clearly appear to have no weight and no relevance whatever to the issue of whether there has been in fact a change in the neighborhood with respect to this particular tract. It has already been noted that no witnesses gave any factual information to support this claim and no studies were made in connection with it. Such a claim must be completely rejected for the lack of any factual foundation given to support it. In Miller v. Abrahams, 239 Md. 263, 273 the Court of Appeals held an expert's opinion to be of no greater value "then the soundness of his reasons given therefore." Here, neither reasons nor facts were given whatsoever.

This case is but another example of a desire to rezone for a more profitable use. The quotation from the transcript set forth above admits that this is not a case of confiscation and furthermore is a concession that the property can be reasonably used under existing zoning. The mere fact that the proposed apartment use would be more profitable is legally insufficient to sustain any change in classification. See: McDonald v. Prince Georges County, 238 Md. 549; Shadynook Improvement Association v. Molloy, 232 Md. 265, 272; Alvey v. Michaels, 231 Md. 22; Rockville v. Cutler, 230 Md. 335; Renz v. Bonfield Holding Co., 223 Md. 34, 43; Hardesty v. Board of Zoning Appeals, 211 Md. 172; Hoffman v. Baltimore, 197 Md. 294.

Beyond any question, there is no substantial evidence in this case of any change in the neighborhood. As has been stated time and again:

> "The well-established rule in Maryland is that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning, and that to sustain a piecemeal change therefrom, there must be strong evidence of mistake in the original zoning or in the comprehensive rezoning or else of a substantial change in conditions." Shadynook Improvement Association v. Molloy, 232 Md. 265, 270; Hewitt v. Baltimore County, 220 Md. 48, 57; Trustees of McDonogh, Etc. v. Baltimore County, 221 Md. 550, 560-61; Town of Somerset v. Montgomery County, 229, Md. 42, 48; George F. Becker Co. v. Jerns, 230 Md. 541, 545.

Perhaps the most informative cases dealing with the legal sufficiency of evidence of change are those applying the principle of res judicata. This is for the simple reason that to defeat the application of that rule there must be shown a change in conditions between the first and second applications. In Whittle, supra, the property involved was located at 7400 York Road and the intervening "changes" relied upon were:

(1) Construction of an additional filling station 400 feet south of the property,

(2) Increased population and, as a result, a "need" for the specific use sought,

(3) Decreased objection, and

(4) Attaching additional conditions to the granting of the special exception applied for.

It is significant that with respect to the construction of the filling station only 400 feet away the Court of Appeals observed that this did not "show any substantial change or increase in commercialization between 1949 and 1954." That aspect of the Whittle case was certainly far stronger than the change at Harrington's relied on here.

In Woodlawn Association the Applicant relied, in particular, also on a so-called "need for apartments." It is significant that the Court in rejecting this claim pointed out the "lack of specific testimony in the record as to any greater need in 1963-64 then in 1961-62 and of land already zoned for apartment use and unavailed of." Also in Woodlawn Association the Court rejected as insufficient evidence of "rezoning to commercial of two small road side areas." It was said that these small areas "did not seem to have changed the character of the neighborhood." This observation would likewise apply again to the Harrington application and applies with equal force to the townhouses which for all practical purposes are screened from the subject property and which were not shown to have any effect upon the suitability of its use in accordance with present zoning.

In the final analysis, this application is more nearly akin to a request for a variance then anything else. It was shown by the Applicant that the property can presently be used for 81 apartment units, while the requested change is to achieve a higher return by way of constructing 101 units. In substance, this case then is a request for increased density of approximately 20 per cent. As expressed by one of the Protestants, if this application is granted, it would make the situation 20 per cent worse and 20 per cent more objectionable. On the other hand there is nothing to show or even suggest that the Applicant cannot proceed to a reasonable use and get a reasonable return from 81 units. Indeed, this would serve the same so-called "need" (if in fact any need does exist), would achieve the same transitional purpose suggested by Mr. Willemain while preserving at the same time the R-10 portion and preventing any change on the zoning map.

Considering the application as analogous to a variance, the following principles are pertinent:

> (a) A change in density will be permitted only on grounds of extraordinary, unnecessary hardship which affects and is peculiar to the property and is not common to the neighborhood. Mayor and City Council v. Polakoff, 233 Md. 1 and the cases therein cited and reviewed.
>
> (b) A zoning change to increase density cannot be justified for the sole convenience of the applicant to make it more profitable. Mayor and City Council v. Polakoff, 233 Md. 1.
>
> (c) Where property is purchased with full knowledge of its zoning classification, an applicant is estopped from claiming unnecessary hardship so as to warrant a change in density because his hardship is the result of his own action. Mayor and City Council v. Polakoff, 233 Md. 1. Where one purchases a property with the intention to apply for a variance from the restrictions imposed by the zoning ordinance, he cannot thereafter contend that such restrictions cause him such a peculiar hardship as would entitle him to the special privileges which he seeks. Gleason v. Keswick Improvement Association, 197 Md. 48.

In addition to the above, it is submitted that the Applicant's own case demonstrates that the requested rezoning would aggravate the existing hazardous conditions of traffic both at Malvern Avenue and Ruxton Road. That traffic hazards exist is evidenced from all of the testimony in this case and it is further conceded that apartment traffic would coincide with the peak traffic hours while whatever traffic would be generated from commercial uses would be spread over the remaining hours of the day. These observations apply with even greater force to the R-10 portion which would generate traffic from only three or four residences as opposed to 18 apartment units.

CONCLUSION

For the above reasons it is submitted that:

(1) The Board should deny this application and,

(2) That it must deny the application because of the evidence produced is legally insufficient to testify piecemeal rezoning.

Respectfully submitted,

Richard C. Murray

PETITION FOR
RECLASSIFICATION

9th DISTRICT

ZONING: From R-10 to B.L. Zones to R-A Zone.
LOCATION: North-east corner of Bellona and Malvern Avenues.
DATE & TIME: WEDNESDAY, FEBRUARY 17, 1965 at 1:00 P.M.
PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

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

Present Zoning: R-10 and B.L. Zones.

Proposed Zoning: R-A.

All that parcel of land in the Ninth District of Baltimore County.

FROM R-10 TO R-A

Beginning for the same at the end of the first line of the second parcel of land as described in a deed from John McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and recorded among the Land Records of Baltimore County in Liber W.J.R. 3851, Folio 349 said point of beginning being also on the centerline of Malvern Avenue, running thence binding reversely on all of the said first line of the second parcel and running with and binding on part of the fifth line of the first parcel of land in the above described deed and also binding on the centerline of said Malvern Avenue South 81 degrees 06 minutes 34 seconds West 237.00 feet, thence leaving said Malvern Avenue and running for lines of division the three following courses and distances viz: first, North 8 degrees 53 minutes 26 seconds West 274.52 feet; second, North 80 degrees 39 minutes 10 seconds East 155.81 feet, and third, North 9 degrees 20 minutes 50 seconds West 280.00 feet to intersect the third line of the third parcel of land in the above described deed at a distance of 79.77 feet from the beginning thereof thence binding reversely on part of the said third line of the third parcel of land and in the bed of Ruxton Road North 88 degrees 36 minutes 00 seconds East 79.77 feet, thence leaving said Ruxton Road and binding reversely on the second line of the said third parcel of land and binding reversely on the second line of the second parcel of land South 1 degrees 20 minutes 50 seconds East 545.67 feet to the place of beginning.

Containing 1.991 Acres of land more or less.

Being parts of the first, second and third parcels of land as described in a deed from John McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and recorded among the Land Records of Baltimore County in Liber 3851, Folio 349.

FROM B-L TO R-A

Beginning for the same at the beginning of the first parcel of land as described in a deed from John McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and recorded among the Land Records of Baltimore County in Liber W.J.R. 3851, Folio 349 said point of beginning being at the point formed by the intersection of the centerline of Bellona Avenue with the centerline of Malvern Avenue and running thence binding in the bed of said Bellona Avenue and binding on all of the first line and part of the second line of the said first parcel of land the two following courses and distances viz: first, North 15 degrees 38 minutes 26 seconds West 346.50 feet and second, North 6 degrees 23 minutes 26 seconds West 30.06 feet, thence leaving the bed of said Bellona Avenue and running for lines of division the two following courses and distances viz: first, North 85 degrees 35 minutes 35 seconds East 160.18 feet and second, North 0 degrees 39 minutes 45 seconds East 207.57 feet to intersect the fifth line of the third parcel of land in the above described deed at a distance of 163.91 feet from the beginning of said fifth line, running thence binding reversely on part of the said fifth line and in the bed of Ruxton Road North 82 degrees 06 minutes 00 seconds East 135.30 feet, thence leaving the bed of Ruxton Road and running for a line of division South 8 degrees 53 minutes 26 seconds East 563.97 feet to intersect the fifth line of the said first parcel of land at a distance of 290.00 feet from the end of said fifth line and also to intersect the centerline of said Malvern Avenue running thence binding on part of the said fifth line of the first parcel of land and binding also on the centerline of said Malvern Avenue South 81 degrees 06 minutes 34 seconds West 290.00 feet to the place of beginning.

Containing 3.323 Acres of land more or less.

Being part of the first and part of the third parcels of land as described in a deed from John McC. Mowbray, Assignee, to Joseph J. Martin dated June 9, 1961 and recorded among the Land Records of Baltimore County in Liber W.J.R. 3851, Folio 349. Being the property of Joseph J. Martin and Kathryn F. Martin, as shown on plat plan filed with the Zoning Department.

Hearing Date: Wednesday, February 17, 1965 at 1:00 P.M.

Public Hearing: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

By Order Of
John G. Rose
Zoning Commissioner Of
Baltimore County

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD., January 28, 1965

THIS IS TO CERTIFY, That the annexed advertisement was published in THE TIMES, a weekly newspaper printed and published in Baltimore County, Md., once in each of one sucessive weeks before the 17th day of February, 1965, the first publication appearing on the 28th day of January 1965.

THE TIMES,

Manager.
John R. Martin

Cost of Advertisement, $17.50

Purchase Order A6290
Requisition No. P0606

TELEPHONE 823-3000

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

No. 28653

DATE 3/29/65

TO: T. Bayard Williams, Esq.
6732 Holabird Ave.
Baltimore 22, Md.

BILLED BY: Zoning Department of Balto. Co.

DEPOSIT TO ACCOUNT NO. 01-622

TOTAL AMOUNT $95.50

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
—	Advertising and posting of property for Jos. Martin	95.50
	#65-220-R	
	PAID — Baltimore County, Md. — Office of Finance	
	4-2965 2507 * 28653 TIP—	95.50
4	MICROFILMED	

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

TELEPHONE 823-3000

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON 4, MARYLAND

No. 28697

DATE 4/21/65

TO: T. Bayard Williams, Jr., Esq.
6732 Holabird Avenue,
Baltimore, Maryland 21222

BILLED BY: Office of Planning & Zoning
111 County Office Bldg.,
Towson, Maryland 21204

DEPOSIT TO ACCOUNT NO. 01-621

TOTAL AMOUNT $70.00

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
—	Cost of appeal - Property of Jos. J. Martin No. 65- 220-R	$70.00
	PAID — Baltimore County, Md. — Office of Finance	
	4-2265 3844 * 28697 TIP—	70.00
4	MICROFILMED	

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

January 20, 1965

T. Bayard Williams, Jr., Esq.
6732 Holabird Ave.
Baltimore, Md. 21222

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

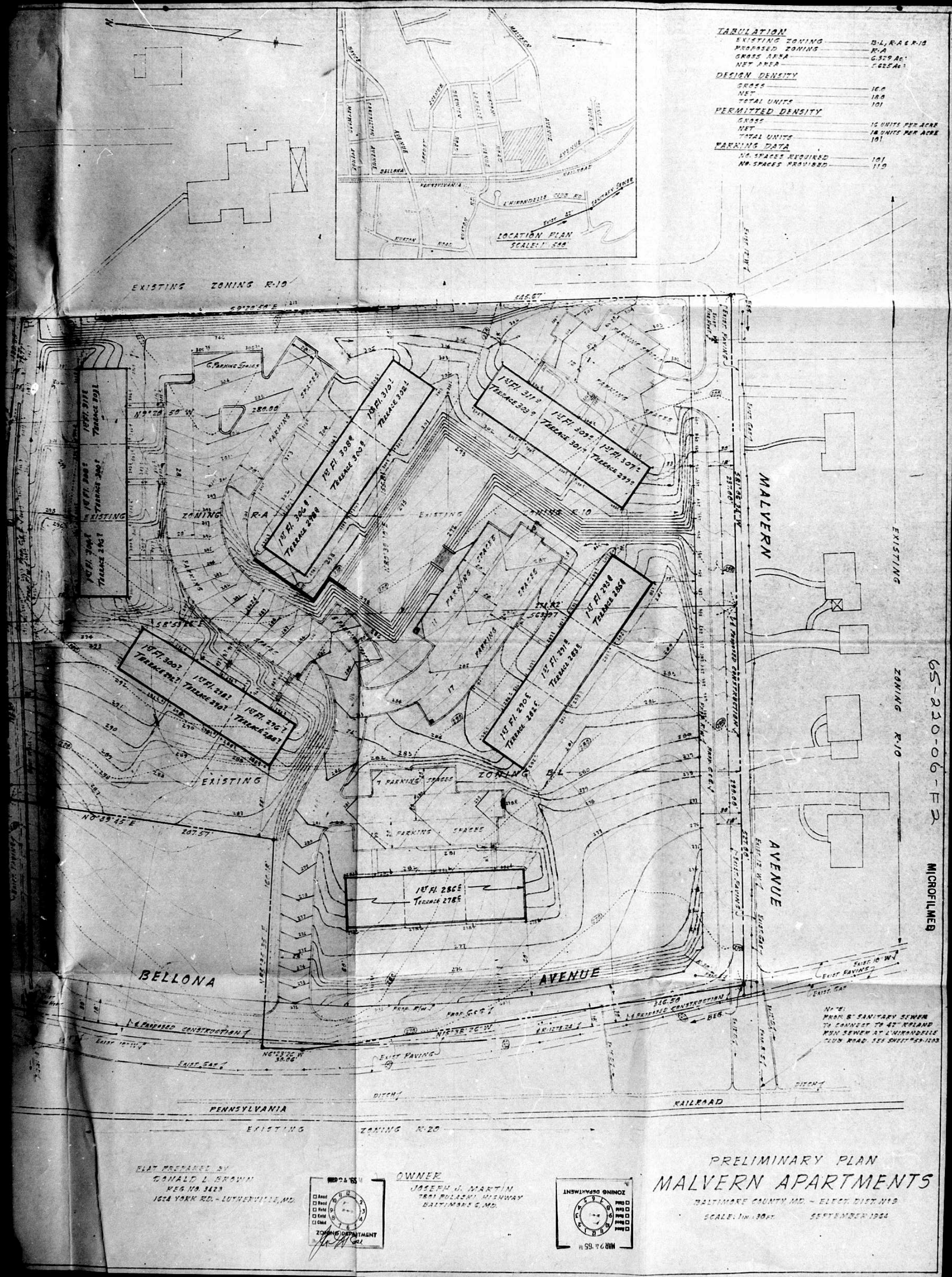
Your petition has been received and accepted for filing this
12th day of January, 1965

JOHN G. ROSE
Zoning Commissioner

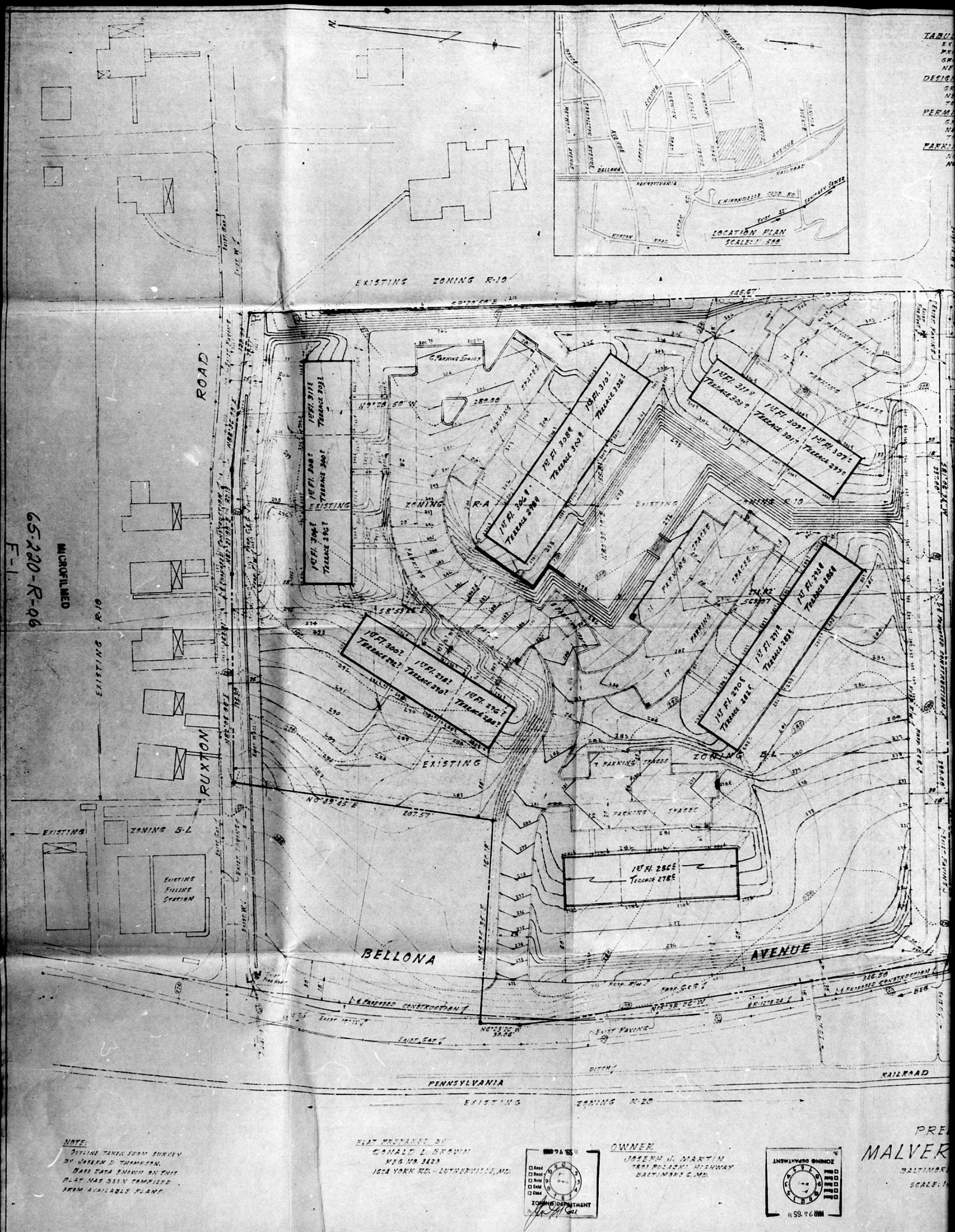
Owners Name: Joseph J. Martin

Reviewed by: James E. Dyer

MICROFILMED


TABULATION
EXISTING ZONING B-L, R-A & R-10
PROPOSED ZONING R-A
GROSS AREA 6.329 Ac±
NET AREA 5.625 Ac±
DESIGN DENSITY
GROSS 16.0
NET 18.0
TOTAL UNITS 101
PERMITTED DENSITY
GROSS 16 UNITS PER ACRE
NET 18 UNITS PER ACRE
TOTAL UNITS 101
PARKING DATA
NO. SPACES REQUIRED 101
NO. SPACES PROVIDED 119
LOCATION PLAN
SCALE: 1" = 500'
EXISTING ZONING R-10
MALVERN
AVENUE
BELLONA
AVENUE
PENNSYLVANIA
RAILROAD
EXISTING ZONING R-20
ZONING R-A
ZONING B-L
NOTE:
FROM 8" SANITARY SEWER TO CONNECT TO 42" ROLAND RUN SEWER AT L'HIRONDELLE CLUB ROAD. SEE SHEET #59-1203
PLAT PREPARED BY
DONALD L. BROWN
REG. NO. 3423
1624 YORK RD. - LUTHERVILLE, MD.
OWNER
JOSEPH J. MARTIN
7801 PULASKI HIGHWAY
BALTIMORE 6, MD.
ZONING DEPARTMENT
PRELIMINARY PLAN
MALVERN APARTMENTS
BALTIMORE COUNTY, MD. - ELECT. DIST. NO. 9
SCALE: 1 in. = 30 ft.
SEPTEMBER 1964
MICROFILMED

65-220-06-F2



NOTE:
OUTLINE TAKEN FROM SURVEY BY JOSEPH D. THOMPSON.
BASE DATA SHOWN ON THIS PLAT HAS BEEN COMPILED FROM AVAILABLE PLANS.

PLAT PREPARED BY
DONALD L. BROWN
REG. NO. 3423
1624 YORK RD. - LUTHERVILLE, MD.

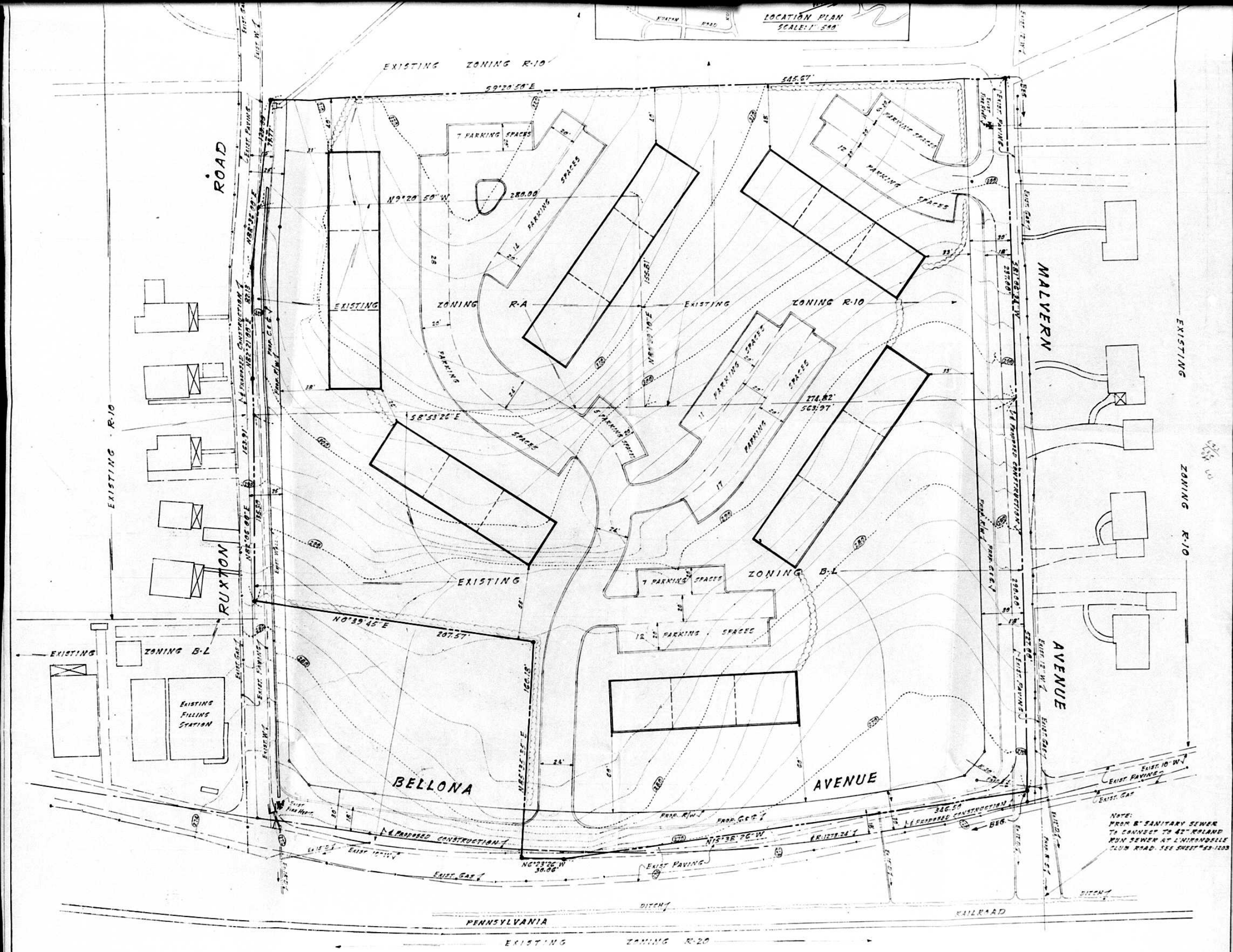
ZONING DEPARTMENT

OWNER
JOSEPH J. MARTIN
7801 PULASKI HIGHWAY
BALTIMORE 6, MD.

ZONING DEPARTMENT

PRE
MALVER
BALTIMORE
SCALE: 1

MICROFILMED
65-220-R-06
F-1.



NOTE:
OUTLINE TAKEN FROM SURVEY BY JOSEPH D. THOMPSON.
BASE DATA SHOWN ON THIS PLAT HAS BEEN COMPILED FROM AVAILABLE PLANS.

PLAT PREPARED BY
DONALD L. BROWN
REG. NO. 3423
1604 YORK RD. - LUTHERVILLE, MD.

OWNER
JOSEPH J. MARTIN
7801 PULASKI HIGHWAY
BALTIMORE 6, MD.

PRELIMINARY PLAN
MALVERN APARTMENTS
BALTIMORE COUNTY, MD. - ELECT. DIST. NO. 9
SCALE: 1 IN = 30 FT SEPTEMBER 1964

65-220-R-07-F1

MICROFILMED

65-220-R-07-F2

MICROFILMED

TABULATION

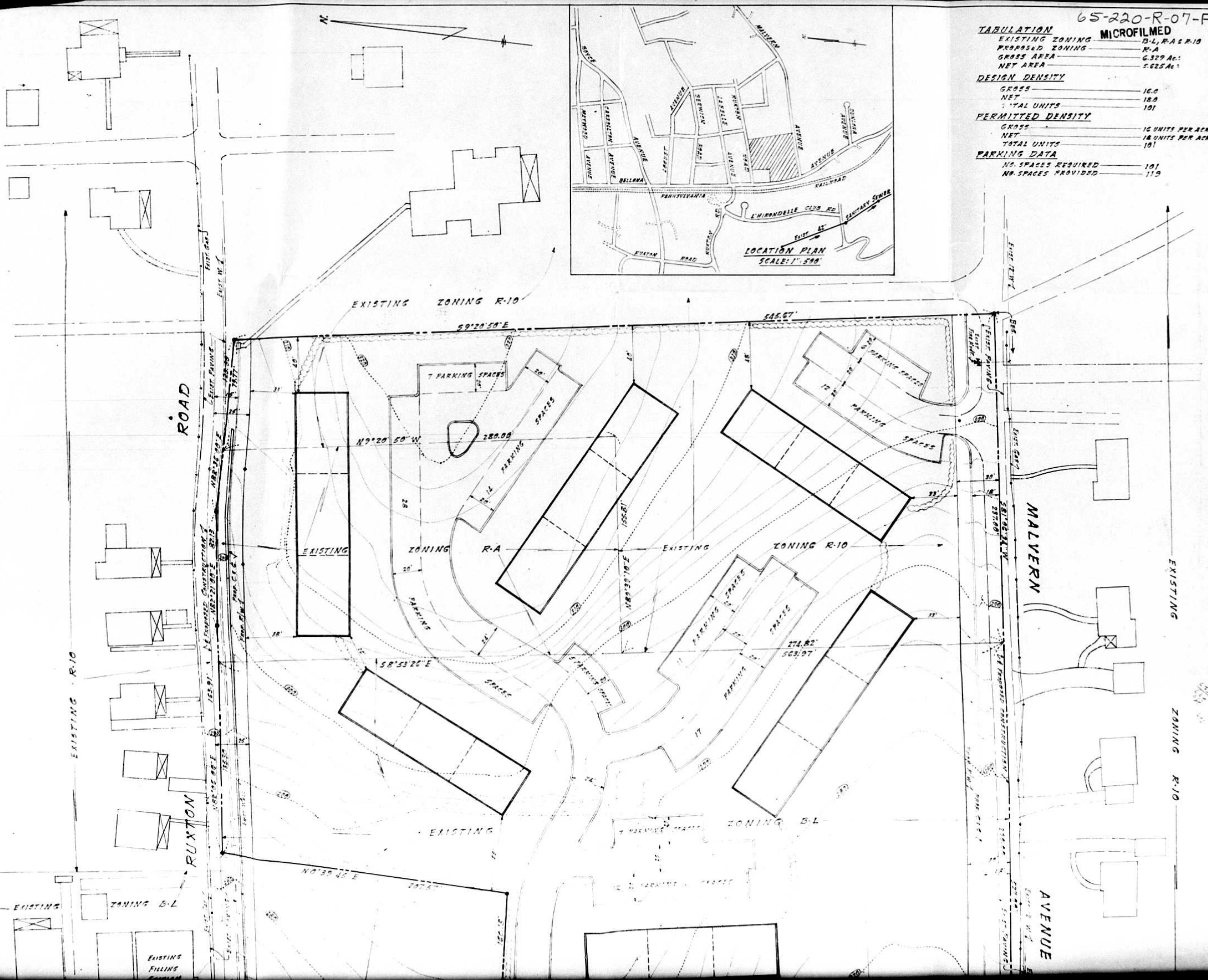
EXISTING ZONING	B-L, R-A & R-10
PROPOSED ZONING	R-A
GROSS AREA	6.329 Ac.
NET AREA	5.625 Ac.

DESIGN DENSITY

GROSS	16.0
NET	18.0
TOTAL UNITS	101

PERMITTED DENSITY

GROSS	16 UNITS PER ACRE
NET	18 UNITS PER ACRE
TOTAL UNITS	101

PARKING DATA

NO. SPACES REQUIRED	101
NO. SPACES PROVIDED	119