

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Damico & Samuel Damico, legal owners, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R-6 zone to an R-A zone; for the following reasons:
 Change in Character of neighborhood
 Error in original map

See Attached Description

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

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.

Contract purchaser Samuel Damico Legal Owner
 Address 8 Forrest Drive
 Baltimore, Maryland - 21228

A. Owen Hennegan, Jr.
 A. Owen Hennegan, Jr., Petitioner's Attorney

Address 406 Jefferson Building
 Towson, Maryland - 21204 Valley 5-7500
 ORDERED By The Zoning Commissioner of Baltimore County, this 18th day of February, 1966, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 1st day of April, 1966, at 2:00 o'clock P.M.



(over)

Mongelli, et al - #65-265-RX

the manufacture of metal products, concrete blocks, etc., which is apparently another non-conforming use.

Testimony was given that there is a definite need for this type of office building in the area, and the comments of Mr. George E. Gavrillis, Director of Planning and Zoning for Baltimore County, were to the effect that the composite guide plan shows R-A land use potentials for this frontage on Frederick Road, and it was his opinion that R-A zoning with this special exception would certainly be a reasonable use of this property while at the same time offering the desired amount of control over future developments in the area. He stated that his Staff was concerned with nonconforming uses along Frederick Road and were not in favor of outright commercial development but for uses consistent with the apartment use. He felt that the present application would amount to a logical use of the subject tract.

In addition to the above, there was testimony by Mr. James S. Spamer, an experienced engineer, that this property could be developed with adequate water and sewer supply for apartments, but could not be so used feasibly for any R-6 development. It would seem to be indicated that this lot could be used for construction of one large home, but inspection of the property and an examination of the plat plans and other exhibits leads us to the conclusion that it would be very difficult, if not impossible, to find any person who would wish to invest the amount involved in such use at this location.

Mr. Joseph D. Thompson, an engineer qualified in traffic matters, had made traffic counts on Frederick Road, on Overhill Road, and on the entrance road to the Montrose Apartments and gave his opinion, based on his factual investigation, that the present proposal could have no adverse effect on the traffic on Frederick Road, and certainly would not cause any undue congestion.

Mr. Frederick P. Klaus, an expert realtor and appraiser, testified, among other things as a result of his inspection and study of the property, that the proposed use would improve rather than hurt values of surrounding properties, and went so far as to say that, in his opinion, R-6 zoning here amounted to confiscation.

For the protestants there was testimony from Mr. P. T. Lemmon, a realtor and developer, who owns some commercially zoned property on Frederick Road one-third of a mile west of the subject property which he has not yet seen fit to develop, that he was in opposition because, in his opinion, there was no error in the original zoning and that the construction of this office building would "dilapidate" the neighborhood.

Expert witnesses for the protestants presented a plan under which was advanced as their opinion this property could be developed as four R-6 lots with a flood plain, meaning an open ditch for storm water drainage, where the existing stream is located as opposed to Mr. Spamer's site plan for the office building which has the storm water drain

JAMES S. SPAMER & ASSOCIATE
PROFESSIONAL ENGINEER & LAND SURVEYOR
406 YORK ROAD - TOWSON 4, MD

BY W. D. L.

DATE Nov. 25, 1964

Frederick Road at Overhill Road
District 1 - Catonsville

Description for Zoning Purposes

BEGINNING for the same at a point formed by the intersection of the north side of Frederick Road and the east side of Overhill Road, and running thence binding on the east side of Overhill Road, North 07°13' 50" West- 150.02 feet, thence parallel to Frederick Road, North 86°45' 25" East- 237.47 feet, thence South 05°15' 35" East- 150.13 feet to Frederick Road, thence binding on Frederick Road, South 86°45' 25" West- 243.00 feet to the place of beginning.

Containing 36,055 square feet of land more or less.

Being the same parcel of land which by a deed dated April 27, 1959 and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3518 folio 240 and which was conveyed by Elvan H. Clayton and wife to Danco Properties, Inc.

William O. Luette, L.S. & P.E. # 2005



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Mongelli, et al - #65-265-RX

completely enclosed in a box culvert. The expert, Mr. Hochader, said that he was not actually advocating his flood plain plan as the best system devisable but it "could be done".

Another expert for the protestants was Mr. Campbell V. Helfrich, a realtor and appraiser who was familiar with the subject property. He testified that the property could be sold for individual residential use based on a front foot price of \$24,000 per acre. It further appeared, on cross-examination, Mr. Helfrich had previously testified in a condemnation case related to a piece of property immediately east of the Ridgeway Inn, which is comparable to the subject tract, that the highest and best use for that property was R-A zoning, and also his testimony in the condemnation case was that apartment rezoning for that tract of land would be reasonably certain of outcome, and he was forced to admit that the same reasoning applies to the subject tract. He attempted to excuse this differential by stating that his previous testimony had been in a condemnation case and, therefore, the situation was different from the present case for rezoning and a special exception.

Several residents of the neighborhood appeared in protest and testified that they felt the proposed use would hurt the value of their property. The Board cannot agree with these opinions and we find, as a fact, from evidence, exhibits, and personal inspection of the property that the property should be rezoned to R-A because of an error in the original zoning, because of changes in the immediate neighborhood, primarily the construction of the apartment development and, further, find that the petitioner has met all the burdens of Section 502.1 of the Baltimore County Zoning Regulations with respect to the special exception.

The Order of the Deputy Zoning Commissioner will, therefore, be affirmed, and the property will be reclassified to an R-A zone and the special exception for an office building will be granted subject to the restrictions that any construction be in conformity with the architectural projections and site plans as presented in evidence and, of course, with site plan approval by the State Roads Commission, Bureau of Public Services, and the Office of Planning and Zoning.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of June, 1966 by the County Board of Appeals. ORDERED that the reclassification and special exception petitioned for, be and the same is hereby GRANTED, subject to the aforementioned restrictions.

CAMPBELL V. HELFRICH, et al.

vs.

WILLIAM S. BALDWIN,
W. GILES PARKER,
R. BRUCE ALDERMAN,
 Constituting the Baltimore
 County Board of Appeals

vs.

PETER J. MONGELLI, et al.

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUNTY

AT LAW

Misc. 8/110/3566

ORDER FOR APPEAL

MR. CLERK:

Enter an Appeal to the Court of Appeals on behalf of
 CAMPBELL V. HELFRICH, STASIA P. HELFRICH, CHARLES G. ZIESLER,
 BERDETTE ZIEGLER, HENRY H. HELFRICH, KATHRYN R. HELFRICH, JOHN C.
 HANDY and HILDA C. HANDY, Protestants-Appellants, from the Order
 entered in this action on January 14, 1967.

/s/ W. Lee Thomas
W. Lee Thomas
 Attorney for
 Campbell V. Helfrich, et al.

I HEREBY CERTIFY that on this 10th day of February, 1967, a copy of the foregoing Order for Appeal was mailed to
 A. Owen Hennegan, Esq., 406 Jefferson Building, Towson, Maryland,
 21204, Attorney for Peter J. Mongelli, et al., and to Baltimore
 County Board of Appeals, County Office Building, Towson, Maryland,
 21204.

W. Lee Thomas
W. Lee Thomas

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Mongelli, et al - #65-265-RX

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

R. Bruce Alderman

RE: PETITION FOR RECLASSIFICATION
 from an R-6 zone to an R-A zone
 and SPECIAL EXCEPTION for
 and Office Building
 NE corner Frederick Road and
 Overhill Road,
 1st District
 Peter J. Mongelli, Joseph and
 Samuel Damico, Petitioners

BEFORE
 COUNTY BOARD OF APPEALS
 OF
 BALTIMORE COUNTY
 No. 65-265-RX

OPINION

This is an application for reclassification from an R-6 zone to an R-A zone with a special exception for an office building on a tract of land on the north side of Frederick Road east of Overhill Road, and facing along Frederick Road in front of and contiguous to a fairly large parcel of R-A zoned land upon which has been constructed, in recent years, the Montrose Apartments, a large apartment development constructed, owned, and operated by the applicants in the present case. The present application is to use the subject property for a small office building. The tract contains approximately 36,000 square feet of land. The application was granted by the Deputy Zoning Commissioner after hearing on the 22nd of April, 1965.

As previously stated, directly north of the subject tract is an existing apartment project; across the street, to the south, is a Veterinarian Hospital and residence; directly east of the property, in the same block, are homes used for offices for an accountant and lawyer, a grocery store, and a large night club known as the Ridgeway Inn. Behind the Ridgeway Inn and adjoining the apartment project on the northeast side is a Nursing Home in active operation. The architect's rendering for the proposed office building shows a conservative and not unattractive two story building of a style of architecture to blend with the adjoining apartment houses which are of the garden type and are three stories each. Almost all of the aforementioned uses of the property in the neighborhood are nonconforming as for some reason the entire frontage in this block along Frederick Road was zoned R-6 on the map completely disregarding the existence of these uses and the large tract of R-A which has been developed back of the subject property.

A stream runs through the northwest corner of the subject property and for a small piece of land it is of a rather rough topography, and in its present condition could certainly be described as an eyesore being infested with fallen trees, debris in the stream bed, and other evidences of extensive run-off of storm water at one time or another. Almost any sensible use of this property would be an improvement, from an aesthetic point of view at least. The above determination derives from a physical inspection by the Board.

To the west of the property, on the other side of Overhill Road, is an old cottage in bad repair and a large residence with extensive out buildings presently used for



P. T. LEMMON

[Handwritten signature]

CAMPBELL V. HELFRICH and
SEAN P. HELFRICH, CHARLES G.
ZIEGLER and BERNARD ZIEGLER,
HENRY H. HELFRICH and KATHERINE H.
HELFRICH, and JOHN G. RANDY and
MELDAG, MANDY
vs
WILLIAM S. BALDWIN, W. GERS
PARKER, P. BRUCE ALDERMAN, Com-
missioner of the COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
vs
PETER J. MONGELLI
JOSEPH DAMICO
SAMUEL DAMICO

MEMORANDUM OPINION

This is an application for reclassification from R6 to RA with appended
special exception for construction of an office building for a tract of land 36,000
square feet in area located at the northeast corner of Frederick Road and Overhill
Road in Baltimore County. The tract was zoned R6 under comprehensive zoning
ordinances adopted in April, 1960.

The requested reclassification was granted by the Board of Appeals
"because of error in the original zoning, (and) because of change in the immediate
neighborhood, primarily the construction of the apartment development. The
Board granted the special exception upon the ground that the burden imposed by
§503.1 of the zoning regulations had been met by the applicant.

The Petitioner Appellee defends the decision of the board upon the ground
that the evidence supports the conclusions stated by the Board, but also contends
that existing R6 zoning constituted "confiscation" as applied to the subject
property.

The Appellants contend that there is no showing of "confiscation", that
there is no "error", and that there was no "change" since the adoption of the
comprehensive zoning such as would make a change of classification a matter

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for reasonable debate.

CONFISCATION

It is unnecessary on this record to say more than that the Petitioner has not
met the burden to show that R6 zoning as applied to this property is the equivalent
of a denial of its use. The most that can be said is that the evidence shows that
it can be more profitably utilized for apartment zoning with a special exception for
office building construction. This is not enough. Baltimore v. Conn, 201 Md.
523, 530; Harmon v. Planning Board, 211 Md. 173, 178.

ERROR

This Court finds that there is not a scintilla of evidence to support the con-
clusion of the Board that the R6 zoning applied to the subject tract was the product
of a legislative error. The testimony makes it quite clear that R6 classification
was applied to the subject tract and to extensive frontage on both sides of
Frederick Road; that the classification included a number of non-conforming
commercial uses, with an intent and purpose to maintain residential status in the
area free from threat of further commercial exploitation. It is clear that this
intentional legislative course had achieved its purpose, in that all development
occurred within the constraints imposed by the comprehensive zoning and all
attempts to change zoning in the area have been unsuccessful (R - p. 90).

CHANGE

In keeping with consistent recent practice, the Board of Appeals has
grounded its decision conjunctively upon error and change. It would appear that
although such is the action of the Board its decision requires judicial acceptance
if the record shows no more than that there are "changes" of a nature such as
would make the issue of reclassification reasonably debatable. Dimock v. Hall,
241 Md. 221, 236.

This Court rejects the idea suggested by the Board's opinion that the con-
struction of apartments on the adjoining land (within that lands zoning constraints)
constitutes a change permitting reclassification. This is the zoning equivalent

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of lifting by one's own bootstraps. The Court has been referred to no case and
has found none which announces such a doctrine.

But the Board's opinion, in other parts, describes changes other than such
construction and this is supported by the record. Two of those changes are: a
widening of Frederick Road and changes in the commercially non-conforming
nearby Ridgeway Inn. The change in the latter facility was described as
"probably more like a re-building" (R - p. 93), and "a substantial investment in
structure, and certainly an improvement in terms of the parking facilities, since
the adoption of the map." (R - p. 94)

Other changes shown by the record appear in the course of cross-examina-
tion of the Appellant Helfrich. That witness had testified, in the course of a
condemnation trial, that the nearby Kerr property would reasonably be reclassi-
fied because of changes in the area. Included in the changes detailed in that
case was the introduction within the area of the Baltimore Campus of the
University of Maryland and Catonsville Community College, with the large
student influx incident thereto. Although contending that the changes outlined
by him as reasonably requiring reclassification of the Kerr tract were not so
weighty in the instant case, he conceded that they did have some application.
(R - p. 225)

It seems clear that the record does show that changes have occurred and
that they are such as make the question of zoning reclassification a matter for
reasonable debate.

The Appellants point out that there have been no successful zoning
reclassifications in the area in question, and that in the past two prior Board
reclassifications in the area were reversed, one by Chief Judge Hall Hammond,
then sitting at Alatzing, (Protestants Exhibit E), and one by Judge Barrett
(Protestants Exhibit F). On this record, however, both are distinguishable.

Chief Judge Hammond's decision was grounded upon absence of error
(with which, as heretofore stated this Court is in agreement). His opinion
stated that the parties stipulated that there were no changes in the neighborhood.

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Judge Barrett in his decision rejected (as this Court does) any error in zoning.
He also stated affirmatively that the record showed only two changes, both of
which were described and rejected as providing any substantial basis for reclassi-
fication. Neither of those suggested changes are included within the changes
heretofore referred to, and that record contained none of the changes herein-
before described. 65-265

Thus, in the instant case the Court concludes that the testimony shows
changed conditions such as require the County Board of Appeals to exercise its
expertise. It will may be that this reclassification and special exception can be
the collapsing domino that will set in motion a chain reaction destroying the
residential nature of the area; it will may be that this is the opening wedge to
create yet another commercial strip along a major artery, with blinking lights
assaulting the optic nerves; whose entrances and exits can produce a din and
clatter from contending vehicles as will traumatize the ear drums; and whose
drive-ins may cast forth noisome odors as will offend the olfactory nerves.
But these are things that the Court must assume carefully were considered by the
Board of Appeals when it granted the requested reclassification and special
exception.

The Board was made aware of the possible use of any decision made by it
as the opening wedge to further changes. (R - p. 220) It also had before it the
view of Gavrellis that all effect would not flow from the decision (R - p. 228, 50).
Only the passage of time and the action of this and other Boards will provide the
answer.

This Court cannot say, on this record, that the grant of this reclassification
upon the ground of "change" was an arbitrary abuse of the discretion vested in
the Board by Law. It is not permitted to question the wisdom of the Board's action.
John Corp. v. Rodgers Farm, 236 Md. 106.

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The requirements of §503.1 of the Zoning Regulations pertaining to the grant
of a special exception appear to have been met.

The decision is affirmed.

W. ALBERT MENCHINE, Judge

January 19, 1967

JOHN H. HESSEY
JOHN H. HESSEY, IV
MARLON W. HESSEY

HESSEY & HESSEY
ATTORNEYS AT LAW
FIDELITY BUILDING
BALTIMORE, MARYLAND 21201

May 18, 1965

County Board of Appeals
for Baltimore County
Court House
Towson, Maryland

Re: Petition for Reclassification
R-6 to RA Zone and Special Exception
For an Office Building N.E. corner of
Frederick Rd. and Overhill Rd. -
First District, Peter J. Mongelli -
Petitioner, #65-265-RX

Gentlemen:

I understand an appeal has been taken in the above
petition. Would you kindly enter my appearance for Rescom Land Leasing
Corporation, an aggrieved property owner in this community, and advise
me in advance of the hearing when scheduled.

Very truly yours,

John H. Hessey, IV

JHM:IV/el

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PROCTOR, ROYSTON & MUELLER
ATTORNEYS AT LAW
CAPITOL BUILDING
TOWSON, MARYLAND 21204

KENNETH C. PROCTOR
CARROLL W. ROYSTON
H. ANTHONY MUELLER
W. LEE THOMAS
JAMES L. REED, JR.
R. TAYLOR MUELLER
RICHARD A. REED
J. HARRISON STONE

Mr. John G. Rose, Zoning Commissioner
County Office Building
Towson, Maryland 21204

Re: Petition for Reclassification
R-6 to RA Zone and Special Exception
For an Office Building N.E. corner of
Frederick Rd. and Overhill Rd. -
First District, Peter J. Mongelli -
Petitioner, #65-265-RX

Dear Mr. Rose:

Please note an Appeal from the Order of your
Deputy, Edward D. Hardesty, dated April 22, 1965, on
the above captioned matter to the County Board of Appeals.

Enclosed is a check in the amount of \$70.00 to
cover said Appeal.

Very truly yours,

W. Lee Thomas, Attorney for
C. V. Helfrich
1816 Frederick Road
Baltimore, Md.

Dr. Charles G. Ziegler et al.
1707 Frederick Road
Baltimore, Md.

cc: Mr. F. T. Lemmon
Mr. Gordon M. Holland
A. Owen Hennegan, Jr., Esq.
Mr. C. V. Helfrich

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1ST Date of Posting: March 13, 1965
Posted for: Reclass. from R-6 to R.A. 3 p.m. Sept. 1964
Petitioner: Peter J. Mongelli
Location of property: N.E. corner of Frederick Rd. & Overhill Rd.
Location of Signs: 2 signs N.E. corner of Frederick Rd. & Overhill Rd.
Remarks: 4 signs
Posted by: J. Rose Date of return: March 15, 1965

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CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1ST Date of Posting: May 29, 1965
Posted for: Appeal
Petitioner: Peter J. Mongelli et al.
Location of property: N.E. corner of Frederick Rd. & Overhill Rd.
Location of Signs: 2 signs N.E. corner of Frederick Rd. & Overhill Rd.
Remarks: J. Rose
Posted by: J. Rose Date of return: June 3, 1965

MICROFILMED

RE: PETITION FOR RECLASSIFICATION
R-6 to R-4 Zone and Special
Exception for an Office Building
at corner of Frederick Road and
Overhill Road - 1st District
Peter J. Mongelli-Petitioner

BEFORE THE
DEPUTY ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 65-265-RX

The petitioners have requested rezoning of their property, consisting of 36,000 square feet, from an R-6 zone to an R-4 zone with a Special Exception to use the aforesaid property for an office building.

Directly north of the subject tract is an existing apartment project. Across the street and to the south is a veterinarian hospital and residence. Directly east of the property and in the same block are a home used as an office for an accountant and lawyer, grocery store and a large night club (the latter two being non-conforming uses).

There was testimony by James F. Spamer, civil engineer, to the effect that the subject tract cannot be used for R-6 purposes due to the prohibited costs in correcting a drainage problem on the subject tract. Although utilities are available and the topography is good, the land is only large enough to accommodate the construction of three homes which could not be possibly built and sold at a profit because of the aforementioned costs in providing adequate drainage.

There was testimony from various protestants as to the traffic aspect of Frederick Road. However, it was pointed out by Mr. Spamer there are definite plans for widening Frederick Road to a forty-eight foot paved artery. This would appear to alleviate any fears of the creation of a traffic hazard by the construction of an office building.

It is the opinion of the Deputy Zoning Commissioner that the petitioners have shown an error in the original zoning insofar as their property is concerned. It would appear that the most logical and appropriate use of the subject premises, considering the immediate neighborhood as above described, would be for the construction of an office building. The requirements of Section 502.1 of the Baltimore County Zoning Regulations have been met.

For the foregoing reasons, it is ORDERED by the Deputy Zoning Commissioner of Baltimore County this 22 day of April, 1965, that the herein described property or area should be and the same is hereby reclassified; from an R-6 zone to an R-4 zone; and a Special Exception for an Office Building should be and the same is granted, from and after the date of this order, subject to approval of the site plan by the State Roads Commission, Bureau of Public Services and the Office of Planning and Zoning.

Edward D. Hardesty
Deputy Zoning Commissioner of
Baltimore County

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

A. Owen Hennegan, Jr., Esq.
406 Jefferson Building
Towson, Maryland 21204

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

STATE ROADS COMMISSION: Although the State Roads has no objection to the Special Exception, all access onto the property should be made subject to the approval of the State Roads Commission. No further question the means of access from the private driveway immediately to the east of the subject property. There is sufficient frontage (40') to provide adequate turning movement and width of entrance.

OFFICE OF PLANNING AND ZONING: The rear and side yard setbacks as indicated on the plan are not adequate. The required rear yard setback in an R-4 zone is 30', the side yard setback is 25'; therefore the building must be re-located and a variance requested. Since Overhill Road is primarily used as a residential road, it is suggested that at least one entrance and possibly both entrances be removed and that all access be from Montross Manor Court.

TRAFFIC ENGINEERING: This office will review the revised plans and submit any comment as deemed necessary.

The following members had no comment to offer:

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

cc: Jack Duerr: State Roads Commission
Albert Quibby: Office of Planning and Zoning
Richard Moore: Traffic Engineering

Yours very truly,

James S. Dyer
Chief of Permit and
Petition Processing

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: March 10, 1965
FROM: George E. Grevell, Director
SUBJECT: 65-265-RX, R-6 to R-4, and a Special Exception for an Office Building.
Northeast corner of Frederick Road and Overhill Road. Being the property of Peter J. Mongelli, et al.
1st District
HEARING: Thursday, April 1, 1965 (2:00 P.M.)

The planning staff of the Office of Planning and Zoning has reviewed the subject petition and offers the following comments:

The Composite Guideplan will show R. A. land use potentials for this frontage along Frederick Road. The thinking of the planning staff here is that R. A. zoning will afford reasonable use of the property while at the same time offering the desired amount of control over future development. The subject proposal is consistent with our views in the matter.

PETITION FOR
RECLASSIFICATION AND
SPECIAL EXCEPTION
1st DISTRICT

ZONING: From R-6 to R-4
Zone. Petition for Special
Exception for an Office Building.
LOCATION: Northeast corner of
Frederick Road and Over-
hill Road.
DATE & TIME: THURSDAY,
APRIL 1, 1965 at 2:00 P.M.
PUBLIC HEARING: Room 104,
County Office Building, 111
W. Chesapeake Avenue,
Towson, Maryland

The Zoning Commissioner of
Baltimore County, by author-
ity of the Zoning Act and Reg-
ulations of Baltimore County,
will hold a public hearing:
Present Zoning: R-6
Proposed Zoning: R-4
Petition for Special Ex-
ception for an Office Build-
ing.

All that parcel of land in the
First District of Baltimore
County

Beginning for the same at a
point formed by the inter-
section of the north side of
Frederick Road and the east
side of Overhill Road, and
running thence binding on the
east side of Overhill Road,
North 63 degrees 15 minutes
30 seconds West 150.00 feet,
thence parallel to Frederick
Road, North 46 degrees 45
minutes 25 seconds East 237.67
feet, thence South 05 degrees
15 minutes 25 seconds East
150.15 feet to Frederick Road;
thence binding on Frederick
Road, South 46 degrees 45
minutes 25 seconds West
243.00 feet to the place of
beginning.
Containing 36,000 square
feet of land more or less.

Being the same parcel of
land which by a deed dated
April 27, 1959 and recorded
among the land records of
Baltimore County in Liber
W.J.R. No. 3518 folio 240
and which was conveyed by
Elmer H. Clayton and wife to
Danico Properties, Inc.

Being the property of Peter J.
Mongelli, et al as shown on
plat plan filed with the Zoning
Department.
Hearing Date, Thursday, April
1, 1965 at 2:00 P.M.
Public Hearing: Room 104,
County Office Building, 111
W. Chesapeake Avenue, To-
wson, Maryland
By Order Of
John G. Rose
Zoning Commissioner Of
Baltimore County

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD. March 11, 1965.
THIS IS TO CERTIFY that the annexed advertisement was
published in THE TIMES, a weekly newspaper printed and pub-
lished in Baltimore County, Md. once in each of
successive weeks before the 1st
day of April, 1965, the first publication
appearing on the 11th day of March
1965.

THE TIMES

Manager
John M. Martin

Cost of Advertisement \$ 22.00
Purchase Order A7677
Requisition No. R2662

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PETITION FOR
RECLASSIFICATION AND
SPECIAL EXCEPTION
1st DISTRICT

ZONING: From R-6 to R-4 Zone.
Petition for Special Exception for
an Office Building.
LOCATION: Northeast corner of
Frederick Road and Overhill
Road.
DATE & TIME: Thursday, April 1,
1965 at 2:00 P.M.
PUBLIC HEARING: Room 104,
County Office Building, 111 W.
Chesapeake Avenue, Towson, MD.
The Zoning Commissioner of Bal-
timore County, by authority of the
Zoning Act and Regulations of Bal-
timore County, will hold a public
hearing:
Present Zoning: R-6
Proposed Zoning: R-4
Petition for Special Excep-
tion for an Office Building.
All that parcel of land in the
First District of Baltimore County,
beginning for the same at a point
formed by the intersection of the
north side of Frederick Road and
the east side of Overhill Road,
and running thence binding on the
east side of Overhill Road, North
63° 15' 30" West-150.00 feet, thence
parallel to Frederick Road, North
46° 45' 25" East-237.67 feet, thence
South 05° 15' 25" East-150.15 feet
to Frederick Road; thence binding
on Frederick Road, South 46° 45'
25" West-243.00 feet to the place
of beginning.
Containing 36,000 square feet of
land more or less.
Being the same parcel of land
which by a deed dated April 27,
1959 and recorded among the land
records of Baltimore County in Li-
ber W.J.R. No. 3518 folio 240 and
which was conveyed by Elmer H.
Clayton and wife to Danico Prop-
erties, Inc.
Being the property of Peter J.
Mongelli, et al as shown on plat
plan filed with the Zoning De-
partment.
Hearing Date, Thursday, April 1,
1965 at 2:00 P.M.
Public Hearing: Room 104, County
Office Building, 111 W. Chesapeake
Avenue, Towson, Md.
By Order of
John G. Rose
Zoning Commissioner of Baltimore
County
Mar. 15.

CERTIFICATE OF PUBLICATION

TOWSON, MD. March 12, 1965
THIS IS TO CERTIFY that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper printed
and published in Towson, Baltimore County, Md. once in each of
of one time before the 1st
day of April, 1965, the first publication
appearing on the 12th day of March
1965.

THE JEFFERSONIAN

Manager
S. Leonard Stroup

Cost of Advertisement, \$.....

A. Owen Hennegan, Jr., Esq.
Jefferson Building
Towson, Md. BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
21204

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

Your petition has been received and accepted for filing this
16th day of February, 1965

JOHN G. ROSE
Zoning Commissioner

Owners Name: Peter Mongelli
Reviewed by: James S. Dyer

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

TO: M. Leo Thomas, Esq.,
Campbell Building
Towson, Maryland 21204

DATE: 5/20/65

DEPOSIT TO ACCOUNT NO. 01-422

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
	Cost of appeal - Peter Mongelli, et al No. 65-265	\$75.00
		70.00

4

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

TO: A. Owen Hennegan, Jr., Esq.,
Jefferson Building
Towson, Md. 21204

DATE: 5/23/65

DEPOSIT TO ACCOUNT NO. 01-422

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
	Advertising and posting of property for Peter J. Mongelli, et al 65-265-RX	\$6.50
		61.50

4

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

TO: M. Leo Thomas, Esq.,
Campbell Building
Towson, Maryland 21204

DATE: 5/23/65

DEPOSIT TO ACCOUNT NO. 01-422

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
	Cost of posting property of Peter Mongelli, No. 65-265	\$5.00
		5.00

4

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, MARYLAND 21204

TO: W. Leo Thomas, Esq.,
Campbell Building
Towson, Maryland 21204

DATE: 7/12/66

DEPOSIT TO ACCOUNT NO. 01-712

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
	Cost of certified documents - No. 65-265-RX Peter J. Mongelli, et al NE corner Frederick Road & Overhill Road 1st District	\$12.00
		12.00

4

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.

IN THE COURT OF APPEALS OF MARYLAND

No. 26
September Term, 1967

CAMPBELL V. HELFRICH, et al.

v.

PETER J. MONGELLI, et al.

Hammond, C. J.
Hornay
Marbury
McWilliams
Finan,

JJ.

Opinion by Finan, J.

Filed: January 18, 1968

The subject property in this zoning appeal consists of less than one acre, fronting on the north side of Frederick Road at Overhill Road, in the First Election District of Baltimore County. In April of 1959 appellees purchased the subject property along with a larger tract adjacent on the north. Subsequent to the purchase, hearings were held by the County Planning Board and the County Council prior to adoption of a comprehensive zoning map for the First Election District. During this time appellees requested and received R-A (Residence, apartments) classification for the larger tract. As to the small corner property appellees made no such request and it was classified R-6 (One and two-family residential). After the comprehensive map took effect in 1960, appellees sold the R-A zoned land and it was later developed into garden-type apartments.

In 1965 appellees petitioned for reclassification of the subject property from R-6 to R-A, with a special exception for the construction of a two story professional office building, which was to be architecturally in conformity with the adjacent apartment units. The application was granted by the deputy zoning commissioner, and the County Board of Appeals affirmed this decision, finding evidence of both original error and substantial change. Protestants appealed to the Baltimore County Circuit Court, which rejected petitioners' arguments of confiscation and original error, but found that the evidence before the Board was sufficient to establish a fairly debatable issue of substantial change in the neighborhood. Accordingly, it affirmed the Board of Appeals.

As is customary with zoning appeals, the Court must now engage in the somewhat arduous task of creating a verbal reproduction of the "neighborhood," within which the subject parcel is situated. At the outset, it must be noted that at the time the comprehensive map was adopted in 1960, several nonconforming uses existed on both sides of the subject property, both north and south of Frederick Road, and to a large degree they are still in use.

Directly east of the property is a small grocery store, then several residences, including the residence-offices of an accounting and law practice, then an insurance agency, and a restaurant-tavern known as the Ridgeway Inn, and behind the Inn, a nursing home. Opposite the property is an attractive and well kept animal hospital attached to the veterinarian's home.

Going west from the property, on the northwest corner of Frederick and Overhill Roads, is a cottage in state of disrepair, and west of that a large residence and an outbuilding used for light manufacturing. On the south side of Frederick Road are located several detached residences and further west the Five Oaks Swimming Pool, which at the time of the map adoption in 1960 was a nonconforming public pool, but subsequently became a private club. West of the pool is a restaurant, the Candle Light Lodge.

With one exception, all of the aforementioned uses lie on land zoned R-6 or R-10. The nursing home is situated on R-A land, however, it is a permitted special exception. The Ridgeway Inn, Candle Light Lodge, insurance office, manufacturing building and grocery store were all existing nonconforming uses, although testimony revealed that the insurance office has closed down. The professional offices-dwelling is a permitted use in a residential zone, and the animal hospital is a permitted special exception to

an R-10 zone. The only additions to the described uses existing in 1960 were a 1963 special exception and variance for the improvement of the nursing home and a 1960 special exception to enclose an existing porch on Ridgeway Inn.

The issues before the court below were threefold: (1) Was there a mistake in the original zoning of the subject tract when the comprehensive zoning map was adopted by the Baltimore County Council on April 5, 1960? (2) Has there been a change in the neighborhood sufficient to justify a zoning reclassification from R-6 to R-A? (3) Does the existing R-6 zoning classification so deprive the appellees of the use of their property as to amount to confiscation?

We have no difficulty in agreeing with the lower court's findings on the first issue that there was no mistake in the Comprehensive Zoning Map of 1960, and on the third issue to the effect that the existing classification does not amount to confiscation of the subject property. However, on the second issue of change in the character of the neighborhood, we think the lower court was in error and should be reversed.

We will first discuss issues one and three involving original error and confiscation, both of which the lower court correctly answered in the negative.

Error

Judge Menchine, in his opinion in the court below stated:

"This Court finds that there is not a scintilla of evidence to support the conclusion of the Board that the R6 zoning applied to the subject tract was the product of a legislative error. The testimony makes it quite clear that R6 classification was

applied to the subject tract and to extensive frontage on both sides of Frederick Road; that the classification included a number of non-conforming commercial uses, with an intent and purpose to maintain residential status in the area free from threat of further commercial exploitation. It is clear that this intentional legislative course had achieved its purpose, in that all development occurred within the constraints imposed by the comprehensive zoning and all attempts to change zoning in the area have been unsuccessful."

We agree with the lower court's finding that there was no error in the Comprehensive Zoning Map of 1960.

Confiscation

The appellees purchased the subject property for the purchase price of \$11,000 in 1960. Appellees' own witness testified that the property, if sold for development for residential purposes under the R-6 classification, should reasonably be expected to bring from \$7,500 to \$9,000. Other witnesses quoted estimates under R-6 classification from \$16,000 to \$19,000. These values are a far cry from confiscation.

The rear of the subject property is afflicted with a substantial flood plain which creates a drainage problem. At the hearing before the Board of Appeals, appellees produced a registered engineer who testified as an expert that before the property could be subdivided into three lots, the county would require extensive drainage improvements. Together with other expenses such as dedication of a

1. On many occasions this Court has stressed the onerous burden of proof on one seeking a zoning reclassification and the strong presumption of correctness favoring original zoning and comprehensive rezoning. See *Agneslane, Inc. v. Lucas*, 247 Md. 612, 618, 233 A.2d 757, 760 (1967); *Mack v. Grandell*, 244 Md. 193, 233 A.2d 248 (1966); *Pallace v. Inter City Land Co.*, 239 Md. 549, 212 A.2d 262 (1965); *Pahl v. County Board of Appeals*, 237 Md. 294, 206 A.2d 245 (1965); *Montgomery County v. Ertter*, 233 Md. 414, 197 A.2d 135 (1964); *Shadynook Improvement Assoc. v. Malloy*, 232 Md. 265, 269, 192 A.2d 502, 504 (1963); *Kracke v. Weinberg*, 197 Md. 339, 347, 79 A.2d 387, 391 (1951).

roadway and construction of gutter and curbs, the appellees would thus be forced to expend an estimated \$10,500 in engineering costs for less than one acre of residential land. For this reason, appellees contend that the Board would have been guilty of confiscation had it prevented the reclassification to R-A.

Undoubtedly, the appellees would enjoy a greater economic gain from the sale or use of the property under an R-A classification; however, this Court has repeatedly held that the fact that rezoning may result in the realization of greater profits from use of the land or that hardship may follow from the retention of the existing classification is not sufficient justification for rezoning. See *Agneslane, Inc. v. Lucas*, 247 Md. 612, 614, 233 A.2d 757 (1967); *Board of County Commissioners v. Kay*, 240 Md. 690, 695, 215 A.2d 206, 208 (1965); *Board of County Comm. of Prince George's County v. Edmonds*, 240 Md. 680, 689, 215 A.2d 209 (1965); *Baltimore City v. Borinsky*, 239 Md. 611, 622, 212 A.2d 508, 514 (1965); *Reiskin v. Montgomery County Council*, 229 Md. 142, 146, 182 A.2d 34 (1962).

Change

The lower court found sufficient evidence of change in the neighborhood in which the subject property is located to make the question of change of character of the neighborhood "fairly debatable"² and thus did not disturb the Board's reclassification from R-6 to R-A.

2. This Court has repeatedly held that if a zoning body has before it sufficient evidence of change in a neighborhood as to make the question of the change of character of the neighborhood fairly debatable, the finding of the zoning body will not be disturbed. See *Agneslane, Inc. v. Lucas*, 247 Md. 612, 619, 233 A.2d 757 (1967); *Ragan v. Hildesheim*, 247 Md. 609, 612, 233 A.2d 761, 763 (1967); *Board v. Turf Valley*, 247 Md. 556, 233 A.2d 753 (1967); *Bosley v. Hospital*, 246 Md. 197, 227 A.2d 746 (1967); *Finney v. Halle*, 241 Md. 224, 236, 216 A.2d 530, 536 (1966).

We think that finding should be reversed. The lower court indicated that the following changes had occurred in the neighborhood since the adoption of the Comprehensive Zoning Map of 1960: (1) the widening of Frederick Road; (2) changes in the already nonconforming Ridgeway Inn; (3) the development of the Baltimore campus of the University of Maryland; (4) the development of Catonsville Community College and (5) the acquisition by the Board of Education of the Kerr property for use as an elementary school.

The record shows that the widening of Frederick Road stopped about 200 feet from the subject property and that where it was widened it consisted of increasing the width from approximately 33 feet to 48 feet under a public works agreement. In addition, there was testimony that the State Roads Commission had plans for widening the road to 66 feet from the Baltimore City line to Ellicott City but there was also evidence that no one knew when funds might become available for this project.

Certainly the improvements to Frederick Road do not significantly alter the basic character of the neighborhood as did the vast improvements to Stevenson Lane in *Jobar Corp. v. Rodgers Forge*, 236 Md. 106, 202 A.2d 612 (1964). In *Jobar*, prior to the comprehensive map adoption in 1955, Stevenson Lane was a partially private 12 to 15 foot roadway, connected neither to York Road nor Bellona Avenue. In fact, it did not even exist in front of the subject property. At the time of the application in 1961, however, the road had become fully paved, extended from York Road to Charles Street and provided a 70 to 80 foot right-of-way. Conversely, the mere widening of an already existing paved thoroughfare, as in the

instant case, does not of itself constitute a basic change in the character of the neighborhood.

The changes in Ridgeway Inn, an already nonconforming use, consisted primarily of enclosing the porch. This amounts to no more than a permissible intensification of an existing nonconforming use³ and hardly amounts to a change that would affect the character of the neighborhood.

There is nothing whatsoever in the record to show the proximity, if any, of the subject property or the neighborhood in which it is situated, to the Baltimore campus of the University of Maryland or to Catonsville Community College, other than that they are in the general area.

The Kerr tract, condemned for the construction of an elementary school, is identified as being within two blocks of the subject property. We presume this means more than one block away and not more than two. The contention raised by the appellees that the construction of an elementary school will constitute a change affecting the character of the neighborhood is answered by the fact that schools constitute a permissive use under § 200.3 and § 200.6 of the Baltimore County Zoning Regulations. Cf. *Baker v. Montgomery County*, 241 Md. 178, 185, 215 A.2d 831, 835 (1966).

Certainly, the record, insofar as the location of the last three mentioned institutional uses are concerned, falls far short of the changes occasioned by the institutional uses found in *Meginnis v. Sheppard-Pratt*, 246 Md. 704, 229 A.2d 417 (1967), wherein the

3. *Kent County v. Abel*, 246 Md. 395, 405, 228 A.2d 247 (1967); *Jahnigen v. Staley*, 245 Md. 130, 225 A.2d 277 (1967).

Towson State College property was across the street from the subject property and The Greater Baltimore Medical Center almost directly south.

There is little to persuade us in the recounting of the number of nonconforming commercial uses in the neighborhood. The fact that they were in existence prior to the adoption of the Comprehensive Zoning Plan of 1960 would indicate a legislative intent to maintain the residential character of the neighborhood free from further commercial encroachment. The philosophy of zoning supports the theory that nonconforming uses will gradually be eliminated and not conversely that the neighborhood will eventually succumb to nonconforming domination. See Baltimore v. N.A.A.C.P., 221 Md. 329, 157 A.2d 433 (1960); Grant v. City of Baltimore, 212 Md. 301, 129 A.2d 363 (1957); Schiff v. Board of Zoning Appeals, 207 Md. 365, 114 A.2d 644 (1955); 2 Metzenbaum, Law of Zoning Ch. X-g (2d ed. 1955).

Appellees' witness, Mr. Gavrellis, replying to a question concerning change in the neighborhood stated:

"My recollection, without referring to a map, * * *, is that all development has occurred within the constraints imposed by the zoning map, and that several attempts to change the zoning have not been successful."

This would indicate that there have been only such changes in the subject area as were anticipated by those who enacted the comprehensive plan. See County Council v. Gendleman, 227 Md. 491, 177 A.2d 687 (1962); Serio v. City of Baltimore, 208 Md. 545, 119 A.2d 387 (1956).

MICROFILMED

We are of the opinion that the record in this case is so lacking in evidence of change affecting the character of the neighborhood as to render the question not "fairly debatable" and that the lower court was in error in affirming the decision of the Board granting reclassification.

ORDER REVERSED,
APPELLEES TO PAY COSTS.

MICROFILMED

INVOICE		BALTIMORE COUNTY, MARYLAND		No. 28590	
OFFICE OF FINANCE		Division of Collection and Receipts		DATE 3/4/65	
COURT HOUSE		TOWSON 4, MARYLAND			
TO: <u>Seaton, Inc.</u>		Billed By: <u>Seating Department of Seaton, Co.</u>		Seating	
605 Independence St.					
Baltimore, Md. 21205					
DEPOSIT TO ACCOUNT NO. 00-000					
QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE			TOTAL AMOUNT	
	Payment for <u>Reclassification & Special Exception for Peter J. Hargrett</u> <u>015-015-01</u>			50.00	
	MICROFILMED 3-505 1171 • 28590 TUP-			50.00	
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.					

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