PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY

I, or weFranklin Construction Continuo owner of the property situate in Baltimore	ning si
County and which is described in the description and plat attached her no and made a part hereof.	· 3A
County and which is described in the description and plat attached net no and make a part server, hereby petition (1) that the zoning starus of the herein described property be re-classified, pursuant	L
L	54-3F
to the Zoning Law of Baltimore County, from an R-10 none to an	54.4
BL rone: for the following reasons:	84
(a) From in coning on the grounds inver alia of practical impo	****
bility of development in accordance with present zoning; lack of pr	oper
study and evaluation of effect of adjoining and nearby uses, struct	cres
and facilities; virtually confiscatory character of present soming:	dis-
criminatory classification of present zoning unrelated to legitimat	e pur-
poses of zoning laws and regulations.	-
TOWN MAY TO SEE SEE STEEL SEE SEE SEE SEE SEE SEE SEE SEE SEE	

(b) Change of condition including inter alia rezoning for higher density use in immediate neighborhood across railroad track on west side of 310cmsbury Avenue

and (2) for a Special Exception under the said Zoning Law and Zoning Regulations of Baltimore

Property is to be nosted 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 roung

Ry ack Collective Tice Free. 207 W. Franklin St. Legal Owner Saltimore, Maryland 21201 Address.

Janes B. Cook
22 v. Pennsylvania Ave., Towson a.

Maldand, Sykes
Address 618 Nunery Building, Balto. 2. Petitioner's Attorneys

required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughrequired by the Zounty, that property be posted, and that the public hearing be had before the Zoung. Commissioner of Baltimore County in Room 106, County Office Building in Towson, Bultimore County, on the 2ndday of see 100.5 at 11100 o clock×

John Wine ne Commissioner of Baltimore County

FRANKLIN CONSTRUCTION CORP.

IN THE FRANKLIN CONSTRUCTION COMPANY, a body corporate, CIRCUIT COURT 202 WILLIAM S. BALDWIN, W. GILES PARKER, and R. BRUCE ALDERMAN, constituting the County Board of Appeals of Baltimore County, Appellees BALTIMORE COUNTY At LAW

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PETITION TO INTERVENE IN AN APPEAL FROM THE DECISION OF THE COUNTY BOARD OF APPEALS

The Petition of Goldsborough J. Welch, Roger L. Graft, Richard F. David, Herbert F. Willis, Ronald J. Cricchi and Oak ment Association, by Richard D. Payne, Payne and Henry, their attorneys, respectfully represents onto Your Honor:

That your Petitioners, with the exception of Oak sent Association, are all taxpayers of Baltimore that all Petitioners are residents of Baltimore County estants in the above entitled matter involved in this that said Petitioners were successful in their profore the County Board of Appeals of Baltimore County the said roning petition was denied by the said Board.

2. That your Petitioners have a direct and immediate interest in the subject matter of this appeal herein. Their est is sought to be adversely effected by these proceedings to their special harm and damage, and therefore they are desirous of intervening in these proceedings as Party Interveners to protect their direct and immediate interest therein.

WHEREFORE, your Petitioners respectfully pray that an Order De passed by this Honorable Court permitting them to inherDESCRIPTION OF PROPERTY ON SLOOMSBURY AVENUE TO BE REIONED FROM R-10 to BL

BEGINNING for the same at a railroad spike set at the intersection of the east side of Bloomsbury Avenue and the control of the east side of Bloomsbury Avenue and the act of Bloomsbury Avenue and the spike side of Siring Grove Lance where formerly stood a find a stone make side of Siring Grove Lance where formerly stood a find a find a secretary in the second of Bloomsbury Avenue and reversely second of Bloomsbury Avenue and reversely one portion of the fourth line, then the bind-north Si degrees 17 minutes cast Si.11 feet into of said Deed, north in greveraly one portion of the fourth line, then the bind-north Si degrees 17 minutes cast Si.11 feet into of said deed, north ing reversely one portion of the fourth line, then the bind-north Si degrees 17 minutes cast Si.11 feet to a pipe set in degrees 10 of way of the Catomsville Short Line Bailroad ventures proceedings of the Catomsville Short Line Bailroad ventures and strangers, manly; South 31 degrees on minutes ventures and distances, namely; South 31 degrees on minutes ventures and distances, manly; South 31 degrees on minutes ventures and the second of t

vene in these proceedings as Party Interveners.

I HERSBY CERTIFY, that a copy of the foregoing Petition to Intervene in an Appeal from the Decision of the County Board of Appeals and Order was sailed to w. Hamilton Whiteford, Sun Life Building Charles Center, Baltimore, Maryland 21201, Attorney for Appellant and the County Board of Appeals of Saltimore County, County Office Building, 111 west Chesapeake Avenue, iomson, Maryland 21204, to the attention of william S. Galdwin, Chairman, this

Reclassification from R-10 to B.L. Petition filed Reclassification DENIED by Z.C. Appealed to Board of Appeals

FRANKLIN CONSTRUCTION CO.

Dec. 12, 1966 5, 1967

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€√ Dec. 15

Dec. 31

NE/S Bloomsbury Avenue & Spring Grove Lone

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NO. 65-342-8

1st District

Appealed to Circuit Court by W. Hamilton Whiteford, Esq.

Appealed to Court of Appeals by W. Hamilton Whiteford, Esq. Attorney for Peritioner

Reclassification DENIED by the Board (Baldwin, Parker and Alderman)

Board AFFIRMED - Judge Proctor

Board AFFIRMED - Court of Appeals

Record of proceedings filed in Circuit Court

The courses in the above description all refer to the true meridian.

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IN THE CONSTRUCTION CIRCUIT COUR BALTIMORE CO R. BRUCS ALDERMAN, At Law Docket Folio

ORDER

Upon the foregoing Petition it is hereby ORDERED by the Circuit Court for Baltimore County this 274 day of 1967 that the Petitioners, Goldsborough J. Welch, Roger L. Graft, Richard F. David, Herbert F. Willis, Ronald J. Cricchi and Oak Spring Improvement Association, be and they are hereby permitted to intervene in these proceedings as Party Interveners.

JUDGE

PRAISELIN CONSTRUCTION

CINCUIT COURS 78.

COUNTY BOARD OF APPEALS OF SALTIMORE CON

BALTIMORE COUNTY 3664/1/159

MEDICAL OF APPEAL

MR. CLERKA

Please enter an appeal to the court of Appeals in the above captioned case on behalf of the Appellant from the Order of the Court dated January 3, 1963.

> W. Hamilton Whiteford Sun Life Building Baltimore, Haryland 21201 Plana 2-0987 Attorney for Appellant

I HEREDY CERTIFY that a copy of the aforegoing Notice of Appeal was sailed this Mt day of January, 1968, to County Board of Appeals of Baltimore County, attention William S. Saidwir, Chairman, 111 West Chesapente Avenue, Towson, Maryland 21204; Richard D. Fayne, Esquire, 28 West Fennsylvania Avenue, Towsca, Maryland 21204, Attornsy for Protestants; John P. Behelean, Jr., Esquire, 826 Frederick Avenue, Catensville, Maryland 21228, Attorney for Projestants: John H. Hessey, IV, Esquire, 1311 Fidelity Beilding, Baltimore, Maryland 21201, Attorney for Pro-

W. Hamilton Whiteford

Sent D. anderson a copy 110/68

COOK MUDD & HOWARD



June 3 1965

Manager Rose
Commissioner
Commissioner
Commissioner
Commissioner
Traspr Manager 1294

Re: Petition for Reclassification from R-10 Zone to B-1 Zone-NE f Roomsburg Ave. 8 Syring Grive Roc 6. 1st District - Frinklin Construct-tion Co. Petitioner -No. 63-347-R

Deat Mr. Bose

Will you kindly note an appeal to the County Board of A. case for Baltimore County from your Order of Jun. 2, 1985 beneating the reclassification petitioned for in the above captioned

Year, truly voors land Ark

Attorney for Petitione: JHC:rm c.c.: Melvin J. Sykes, Esquire Richard D. Fayne, Esquire

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10-13-70

ZONING .E NO. 65-342-R

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IN THE COURT OF APPEALS OF MARYLAND
No. 412

September Term, 1967

FRANKLIN CONSTRUCTION COMPANY

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GOLDSBOROUGH J. WELCH, et al

Hommond, D.J. Bornis Modfilians Pinas Pinas

J.

Opinion by Barnes, J.

Filad: December 31, 1968

This case involves an appeal by the Pranchin Construction Company (Pranchin), from an order of the directs Court for Beltimore County (Proctor, J.), dated Sensory 3, 1960, which affirmed a decision of the County Board of Appeals of Beltimore County (the Beard), dated December 12, 1966, denying the petition of Franklin to resons from an Ario cone (residential) one family, 10,000 square free year lot) to a B-L zone (business-local) a 7.3 save tract of land counce by Franklin in the Ostonaville area of the First Election District of Beltimore County (the subject property).

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The subject property has a frontage of approximately 340 feet on the east side of Bloomsbury Avenue. It is bounded on the south by Spring Grove Lane, on which it has a frontage of approximately 494 feet, on the southeast by the right-of-way of the Catonsville Short Line Reliroof for a distance of 715.8 feet, and on the north by the property of the German Caneral Crypan Kane for a distance of 949.37 feet. The subject property is improved by two ole residential buildings.

Innediately to the southeast of the relifical algorithms way lies the property of the Spring Grove Applia, the control priors of the Asylum being located at the intersection of Spring Grove Lane and the railread right-of-way. The Asylum operates an elevate open of the relificad for use in dumping coal for the priors of the present of the priors.

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The subject property slopes from the north to the couth with a grade varying between 10% to 15% and in some oasen as much as 20%. From west to east it slopes an average of 10%, with a drop of approximately 40 feet over a 500 foot distance.

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The subject property was moned R-10 by the County Council of Baltimore County in the comprehensive soming adopted on April 5, 1960. North of the subject property, on the same side of Bloomshows twenue the land in also zoned 3-10 and in used for institutional purposes by the German General Cryban Home. The eastern edge of the subject property abuts the large tract of land occupied by another institutional use, the Spring Grove State Hospital. To the south of the subject property between Spring Grove Lane and Holmas Avenue is a tract of land moned R-6 (residential, one and two-fimily, 6000 square feet per lot) and developed with several single family homes. South of Wolmes ivenue, between Holmes Avenue and the Catomaville Serior High School, the land is zoned R-10 and is so developed. heat of Bloomsbury Avenue the land is also comed R-10 with the exception of a small triangular treet of land segmeent to one subject property zoned R-A (residence, apartments, and an overed by garden apartments.

Bloomsbury Avenue had for some years, and at the present time has, a right-of-way of 30 feet of which 22 feet are paved. There is a proposal to expand its right-of-way to 50 feet with 44 feet of paving, but the uncontradicted testimony

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of Beorge E. Javrelle, Director of Planning in the Estricte County Office of Planning and Doming indicated that the "current county cepital progres, which extends through the year 1971, contains no specific program for improvement to Electrically Avenue, or any road in the very innesses area of the subject property."

Franklin acquired the subject property in 1984. In 1958, it applied for K-R (manufacturing-restricted) coming but the Board deried this application for rezoning principally an the ground that a traffic hazard would be created. On sever! to the Circuit Court for Baltimore County, the decision of the Board was affirmed on January 26, 1960. No appeal was tured to this Court. The present application for B-L toning, as changed, is for the erection of six buildings principally used for conmercial purcodes, offices and parking. Three of the promoted buildings, gamerally facing Spring Grove Lane, would have either eight or nine levels and would be 100 feet above Bloomsbury Avenue. The required parking would be for 645 vehicles. The development plan would provide for 104 parking spaces in Building No. 5, 104 parking spaces in pullding No. 6 and 4-8 surface parking spaces, a total of 650 appear, or five more than the required parking spaces. There would be approximately -...000 square feet in the proposed buildings for conteroisl use . 1. .0,000 square feet for office space. In the amended ampliparties there would be no spartments.

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Jack D. Chert of, a vice president and minority stockholder of Franklin was the principal witness for Franklin at the hearing before the Board. He is a consulting engineer and graduated from the Sincol of Engineering of the Johns Mapkins University in 1931. He testified in regard to the project, the terrain and surrounding property and also in regard to the traffic problem. He had personally made a traffic count and considered that the traffic situation was oritical. He testified further that there had been a severe traffic problem since 1947 and that it would remain critical until Baltimore County relieved it. He also testified that the operation of the project would increase the traffic to Bloomsbury Avenue," It was his opinion that if Bloomsbury Avenue were widened it would be of ample capacity to take core of the traffic which would be generated by the proposal. On the question of the use of the subject property under R-10 zoning, he testified: "It is not suitable; nothing is impossible, but I can't possibly picture anyone that would buy the property or build homes on an R-10 development plan.

David H. Wilson, an architect and site planner, testified on behalf of the applicant. He testified that after he had visited the subject property an analysis was cade at his office in regard to the traffic situation and other relevant

 Mr. Chertkof's father was the principal stockholder and president of Franklin at the time of the hearing before the Beard. matters. Mr. Wilson conceded that the subject property could be used for R-10 development but that, in his opinion, it was "less than iden!" and as a site planner he would advise a client not to build in the area under the R-10 roning. He further connected that the 10% slope was not excessive and although one would not pick a 10% slope for development "it correinly could be used for R-10 roning, there are many individual house-developments where 10% slopes and greater alopes have been adapted for use. " In regard to the traffic situation Nr. Wilson testified that he "couldn't but concur with the utationant that the road is inadequate. The traffic was heavy when we were there. The road appeared unsufe, and there was angestion * * * a half site morth of Frederic's Road."

Mr. Wilson was prepared to offer an opinion in regard to the proper and best use of the land but the Board revised to receive the evidence on the ground that Mr. Wilson was not qualified to give such an opinion. Counsel for the applicant node a proffer of what would be Nr. Wilson's testinony and the proffer was refused, counsel taking an exception to this ruling.

Dr. W. Worthington Ewell, a well-qualified traffic count, was called as a witness for the applicant. Dr. Ewell countries a traffic study of the area. We testified that beginning in the year 19th there had been approximately a 35% increase in the amount of traffic on Eleomatury Avenue value in a correct traffic as an incredinate increase so far as the road is directly as an further that Eleomatury Avenue "during the peak hour of the training is constantly jamed." We further testified that applicated institutional construction in the neighborhood would

"undoubtedly proofe more traffic" and that even development of the subject property on the basis of R-10 soning would create more traffic problems. It was his opinion that if Bloomsbury Avenue were widened to the contemplated 44 feet, it would have a capacity to handle traffic generated by the proposed development.

Mr. Gavecile testified for the protestants and pointed out that the planning department of Baltimore Dounty had reconmended that the proposed reconing should not b. greated. The occments of the planning staff were as follows:

"1. Property adjacent to the subject percel generally is moved RelD or is unconed public land. The surrounding area is developed recidentially or with institutional uses. From a planning viewpoint, the recleatification requested would result in the creation of a spect come.

spot come.

72. Accessibility to the subject parcel in extremely poor. Bloombury Avenue, which is the principy process, and the principy process, and the principy process, and the principy process, and the process connections. Thus, the size is indecusably prevented for any Business Local uses at all, much less for uses of the scale shown or the petitioner's plat. The latter is a good example of the grossly out-of-proportion limiture potentials which this property Would have development shown on the plat would be appropriate in a town center, permaps hear an expressive intercentage, or possibly integrated with a large industrial parky by no stretch of the inspiration of the subject location.

75. It is our o middened ordinary functions funct District Comprehensive District May will extract a about 6, and that there have been no sharper in the area of the subject property that well a justify any change in the present coming.

MICHORELLINE

Mr. dayrels / terrified that, in his opinion, he would not say that the obliger property was no longer deall as 8-10 and stated '8-10 was recommended as a sone that Will allow hais property to develop in some fair harmony with its meignours, at a density of somewhere around three to the sore. He further testified that he was "not taking a position that objily improving a read per se is going to necessarily justify other elternate land use coming classifications."

A number of neighboring priperty owners testified in opposition to the granting of the opplication. Their testimony principally desit with the dangerous read conditions on Disconbury Avenue and with the ever increasing danger to consol children and bedocatrians.

As already indicated, the Found denied the application. After describing the subject property and reviewing the past coming history of the property, the Board, in its opinion, stateds

"Enter any one wirtually no change in the midneymri since 1800 that would justify the reliacoliteation aught here. The patriture increase in the resident aught here. The patriture is nearly congened, and that it is a subject to the previous rening request. Nevere, he saw may be the patritude of the previous rening request. Nevere, he saw meet the rether unique angument that by outlook of the bountyle failure to improve the property tweet of any reasonable use of the property.

"The Board cannot agree with this contention as the property can certainly be used in its present classification. Further,

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Works Board connot find, from the syldence. "The Board connot tind, Irod, has evidence, that there has been any change in conditions between 1960 and the present time and, there fore, feels constrained to follow Judge Contract decision in the previous case and finds that the pretition here is again premature."

As we have stated, Judge Proctor in the Circuit Court for Baltimore County affirmed the Board's aption. Judge Proptor filed an opinion substantially concurring in the findings of the County Board that there was no change in the area and no substantial evidence in the record which would justify the reconing in this case and that the Board's action was not arbitrary, unressonable, illegal or capricious. We agree with Judge Proctor's conclusion and will affirm the order affirming the Board's action in ----

Pranklin makes two principal contentions:

- to The present R-10 zoning combined with the failure on the part of Baltimore County for a number of years to provide an adequate access road deprived Franklia of all beneficial use of the property and results in an unconstitutional taking of its
- 2. There are neighborhood changes and an error in original coming which justify the requested recoming.

Pranklin also argues that the Eogra erred in rejection certain evidence proffered to it by Pranklin at the coming hearing.

In our opinion the evidence offered by Franklin does not establish that the subject property may not reasonably be developed under the present R-10 zoning.

Mr. Chartkof did not categorically testify that it was impossible to develop the land for single dwellings under the R-10 coming out stated that in his opinion it "was not suitable." On the other hand. Mr. Wilson testified that the 10% slope was not excessive and that the subject property "could be used for R-10 development." In short, Pranklin's own groof does not even establish, prima facia, any taking of its property for a public purpose without compensation as prohibited by Article III, Section 40 of the Constitution of Maryland, When the testimony of Mr. Gavrelis was also considered, it seems clear to us that there has been no proof sufficient to establish an unconstituetional taking of Franklin's property; on the contrary, there was substantial evidence that the subject property can be used under the present R-10 zoning. The burden on an applicant to establish an unconstitutional taking under the soning law is a heavy one and not only must the applicant for rezoning show that a particular use of the property cannot be made under the existing coming but that the subject property cannot reasonably be used for any of the uses permitted in the existing goning. Tauber v.

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As we view the evidence, the issues before the Board were at least fairly debatable2 and when this is the situation, the Courts do not substitute their judgment for that of the Board or hold that the action of the Board was arbitrary, unreasonable and capricious. Mantgomery County v. Shiental, supra, Brouillett v. Eudewood Shopping Plaza, The. 249 Md. 606, 608, 241 A.2d 404, 405 (1968)

Pranklin argued that the Board was in error in refusing the proffer of the opinion xxx evidence of Mr. Wilson which we have already mentioned and also in refusing to permit Franklin to introduce into evidence an official publication made by the authorities of Baltimore County concerning the development plans for the Catonsville area.

Assuming, without deciding, that the Board was in error in refusing to admit this evidence, our review of it indicates to us that, in any event, Pranklin was not prejudiced by the rulings as the evidence if admitted would not, in our opinion, have changed the result which the Board reached. An erroneous ruling on the admission of evidence will not justify a reversal unless there has been prejudice resulting from the ruling. <u>Fennell v. G.A.C. Finance Corp.</u>, 242 Md. 209, 218 A.26 492 (1966); Space Aero Products Co. v. R. E. Darling Co., 436 Md.

2. We have held that the recommendation of the Technical Staff spains that proposed recoming in a well reasoned report is accessing to a proposed recoming to a well reasoned report is accessing in 1992, but the Search, Winterporty Company (1997) and contain of recoming by the Search, Winterporty Company (1998) and Shiemtel, 2-9 Mc. 19-, 199-200, 238 ALES 912, 913 (1988) and comes ofted in the opinion in that cases ofted in the opinion in that cases.

93, 208 A.2d 74 (1965) cert. den. 382 U. S. 843, 86 S.Ct. 77. 15 L.Ed.2d 83; Maged v. Yellow Cab Co., 237 Md. 340, 206 A.2d 257 (1965); Marlow v. Davis, 227 Md. 204, 176 A.2d 215 (1961); Mughes v. Averza, 223 Md. 12, 161 A.2d 671 (1960).

> ORDER AFFIRMED, THE APPELLANT TO PAY THE COSTS.

Montgomery County Courcil, 244 Md. 332, 223 A.2d 615 (1966): Mayor and City Council of Baltimore v. Borinsky, 239 Md. 611, 212 A.2d 508 (1965). As the uses as permitted and as limited in the R-40 zone are permitted in the R-10 zone, Franklin would have to establish that the subject property could not be used for these parmitted ages in addition to the single family development use. Franklin made no attempt to do this.

Pranklin urges the novel contention that if the Board did grant the requested B-L zoning, the great addition of motor traffic on Bloomsbury Avenue would force the county officials to proceed with the widening of that rood and that for this rescon, the requested coming should be granted. It is clear to as that the determination of county policy in regard to the widening of roads - a policy which involves a consideration of many factors, financial and otherwise - is not committed to the Board but to the executive and legislative branches of the county government and it would have been improper for the Board to have granted the requested soning on this theory. The Board was confined to the consideration of the traffic problem as it existed at the time of the hearing and it is undisputed that the granting of the requested zoning and the construction of the project would substantially increase the present traffic hozard.

Franklin urges that the granting of the R-A coming for the small triangle adjacent to the subject property and on which the Westridge Apartments (garden-apartments) were subsequently built, with other factors, constitute changes in the

2.

neighborhood sufficient to justify the requested recoming of the subject property to B-L. Franklin also suggests that since the R-10 coming represented an unconstitutional taking, there was error in original zoning. In regard to the latter contention we have already indicated that, in our opinion, there was and is no unconstitutional taking so that this suggested ground for error in the original soning is not

Assuming, without deciding, that the changes on which Premittin relies would have been sufficient to have justified the Board in granting the requested B-L coming, it is clear from our prior decisions that the change in conditions in the neighborhood of the property in question does not fit live the Board to grant the requested reconing. Agreelens, Inc. v. jungs, 247 Md. 612, 620, 233 A.2d 757, 761 (1967); Furnace France Lord Co. v. Board of County Commiss, 232 Md. 536, 539, 194 A.2d 640, 6-2 (1963). When the Board denied the requested recoming netwithstanding changes in conditions which might justify such reconing, the question is whether or not the Resmits action was arbitrary, increasonable and capricious. Montgomery County Council v. Sciencel, 249 Md. 194, 199, 238 A.26 912, 914-15 (1968); Agnesiane, Int. v. Lucae, supra; Courty Council for Montgonery County v. Serileran, 227 Md. 491, 438, 177 4.26 687, 690 (1962).

Order of Appeal was mailed to William S. Baldwin, W. Giles Parker and R. Bruce Alderson, 111 Most Chesanophe Avenue, Towers, Marve land 21204, Richard D. Payne, Esquire, 26 West Pennsylvania ue, Towern, Haryland 21204, John H. Hessey, IV, Esquire, Pas 1311 Fidelity Building, Baltimore, Maryland 21201.

W. Hamilton Whiteford

Please enter an armeal to the Circuit Court for re County on behalf of Franklin Construction Company from the Order of the County Board of Appeals of Baltimore County denying reclassification from R-10 soning to a B-L soning of property at the northeast side of the intersection of Bloomsbur Avenue and Spring Grove Lane in the Pirst District of Baltimore

> W. Hamilton Whitefore Sun Life Building Charles Center Baltimore, Maryland 21201 Plaza 2-0987 Attorney for Appeliant

I HEREBY CERTIFY that a copy of the aforegoing

10-13-70

See & 1/5/07

if we were to accept this argument, any person, for example, with a large tract of land situated in a remote until area not arread with public utilities, bould use the assessment that he was being deprived of the use of his land by reason of the County's failure to extend utilities to he property.

The Spard cannot find, from the evidence, that there has been any change in conditions from the state of the

As we have stated, Judge Proctor in the Circuit Jourt for Baltimore County affirmed the Board's action. Judge Proctor filed an opinion substantially concurring in the findings of the Jounty Board that there was no change in the area and no substantial evidence in the record which would justify the recording in this case and that the Board's action was not arbitrary, unreasonable, illegal or capricious. We agree with Judge Proctor's conclusion and will affirm the order affirming the Board's action in this case.

Franklin makes two principal contentions:

- The present R-10 soring combined with the failure on the part of Saltimore County for a number of years to provide an osquare seless road deprives Franklin of all beneficial use of the property and results in an unconstitutional taking of its providity.
- There are neighborhood changes and an error in original coming which justify the requested reconing.

Promklin also argues that the Board erred in rejecting certain evidence proffered to it by Pranklin at the coming hearing.

In our opinion the evidence offered by Pranklis, does not establish that the subject property may not reasonably be developed under the present R-10 coning.

Mr. Cherthof did not categorically testify that it was impossible to develop the land for single dwellings under the R-10 coming but stated that in his opinion it "was not suitable." On the other hand, Mr. Wilson testified that the 105 slong was not excessive and that the subject property "could be used from R-10 development." In short, Franklin's own proof coes hat even establish, prime facie, any taking of its property for a cubicpurpose without compensation as promibited by Article III, Section -0 of the Constitution of Maryland. When the testimony 1. Mr. Dayrelis was also considered, it seems plear to us that there has been no proof sufficient to establish an unconstitutional taking of Pranklin's property; on the contrary, there was substantial evidence that the subject property can be used under the present R-10 zoning. The burden on an applicant to establish an unconstitutional taking under the coming law is a heavy one and not only must the applicant for rezoning show that a namedcular use of the property cannot be made under the existing coming but that the subject property cannot reasonably be used for any of the uses permitted in the existing zoning. Touber v.

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Assuming, without deciding, that the changes on which Pranklin relies would have been sufficient to have justified the Board in granting the requested B-1 soning, it is clear from our prior decisions that the change in conditions in the neighborhood of the property in question does not require the Board to grant the requested retoning. Attetlant, Inc. v. Lucas. 247 Md. 612, 620, 233 A.26 757, 761 (1967); Purnage Branch Land Co. v. Board of County Country, 232 HJ. 534, 529, 194 A.25 540, 642 (1963). When the Board denied the requested recoming notwithstanding changes in conditions which might justify such resoning, the question is whether or not the Board's action was arbitrary, unresectable and espricious. Fontgomery County Council v. Shiental, 249 Md. 194, 199, 238 4.26 912, 914-15 (1968); Agneslane, Inc. v. Lucas, Supply County Council for Montgomery County v. Gendleman, 207 No. 491, 498, 177 A.2d 687, 690 (1962).

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W. Elmilton Whiteford

As we view the evidence, the traces before the Board were at least fairly debatable, and when this is the situation, the Courts do not substitute their judgment for that of the Board or hold that the action of the Board was arbitrary, unreasonable and capticious. <u>Mentionery County v. Shiencal. supre. Brouillest v. Budewood Shooping Place. The.</u> 249 Md. 606, 606, 201 ALCS 404, 405 (1965).

Franklin argued that the Board was in error in refusing the profer of the opinion xxx evidence of Nr. Vilson which we have already mentioned and also in refusing to permit Promitin to introduce into evidence an official publication tack by the authorities of Baltimore Crunty concerning the development plans for the Ostonaville area.

Assuming, without deciding, that the Board was in error in refusing to admit this evidence, our review of it indicates to us that, in any event, Pranklin was not prejudiced by the rulings as the evidence if admitted would not, in our opinion, have changed the result which the Board reached. An erroneous ruling on the admission of evidence will not justify a reversal unless there has been prejudice resulting from the ruling. Pennell v. 0.4.0. Pinance Corp., 242 Mc. 209, 215 A.26. 492 (1966); Space Apro Products Do. v. B. E. Parking Dr., 134 Mc.

2. We have held that the resisonmendation of the Peannical Scoff Exhibit the proposed resistant the Peannical Scoff Exhibit the proposed region is affirmed in the Peannical Pea

93, 208 A.2d 74 (1965) cert. den. 382 U. S. 843, 86 S.Ct. 77, 15 L.Ed.2d 83; Naged v. Yollow Cab Co., 237 Md. 340, 206 A.2d 257 (1965); Narlew v. Bevis, 227 Md. 204, 176 A.2d 215 (1961); Naghes v. Averes, 223 Md. 12, 161 A.2d 671 (1960).

> ORDER AFFIRMED, THE APPELLANT. TO PAY THE COSMS.

m. G.272

Please enter an appeal to the Circuit Court for Baltimore County on behalf of Franklin Construction Company from the Order of the County Board of Appeals of Baltimore County denying reclassification from R-10 moning to a B-L moning of property at the northeast side of the intersection of Bloomsbury Avenue and Spring Grove Lane in the First District of Baltimore County.

> W. Samilton Whiteford Sun Life Building Charles Center Baltimore, Maryland 21201 Flaza 2-0987 Automey for Appellant

: WYERRY CERTIFY that a copy of the aforegoing

Le L /5/17

10-13-70

entin 15-342

PRANKLIN CONSTRUCTION COMPANY

IN THE CIRCUIT COURT vs. FOR BALTIMORE COUNTY COUNTY BOARD OF APPEALS 3664/8/159 OF BALTIMORE COUNTY

OPINION

Franklin Construction Company (herein called Petitioner) is the owner of a tract of land having a frontage of approximately 340 feet on the east side of Bloomsbury Avenue and being bounded on the south by Spring Grove Lane, on the southeast by the rightof-way of the Catonsville Short Line Railroad and on the north by property of the German General Orphan Asylum. The tract contains approximately 7.3 acres and is in the First Election District of Baltimore County, On April 6, 1965, Petitioner filed a petition with the Zoning Commissioner of Baltimore County requesting that this tract be reclassified from an "R-10 Zone" to an "BL Zone".

On June 2. 1965, John G. Rose, Zoning Commissioner, denied the requested reclassification, finding that Petitioner had "failed to prove error in the Zoning Map, or that sufficient change had taken place to warrant the requested resoning".

An appeal was prosecuted from this order to the County Board of Appeals which, on December 12, 1966, affirmed the order of the Coming Commissioner. The Board found that the subject tract is adjoined on two sides by institutional uses, vin., the German General Orphan Home and Spring Grove State Hospital; that on the south side of the property and directly across Bloomsbury Avenue, the land is coned either "R-6" or "R-10" and is so developed with the exception of a small triangular tract of land adjacent to

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Richard Payne &

subject property which is zoned "R-A"; that northerly from the property and on the west side of Bloomsbury Avenue is located the Catonsville Senior High School.

The Director of Planning for Baltimore County opposed the reclassification before the board and testified that in his ominion it would be "spot zoning". The Board referred to the fact that in 1958 the same petitioner had requested that the tract be reclassified from an "R-10 Zone" to an "M-R Zone", which had been refused by the Board, which refusal had been affirmed by Judge Gontrum on January 26, 1960. The hoard went on to say "there have been virtually no changes in the neighborhood since 1960 that would justify the reclassification sought here." The Board disagreed with Petitioner's contention that the property could not be used in its present classification.

An appeal has been taken to this Court which is opposed by owners of adjacent properties. Supplementing this appeal, Petitioner, on the day of argument, filed a petition asking the Court to remand these proceedings to the County Brand of Appeals for the purpose of taking addicional testimony. It is stated that such additional testimony will show concrete plans for substantial improvements in the road pattern in the immediate area which will greatly improve ingress to and egress from this tract.

The Court concurs in the finding of the County Board of Appeals concerning change. There is no substantial evidence in the record which would support a contention that changes in the area would justify this reclassification. As a matter of fact, the main thrust of Petitioner's case is that the land cannot be developed under its present zoning and, therefore, the present classification is confiscatory and the Zoning Map erroneous. The Court cannot find that the determination of the

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Board that the land could be developed under its present classification is either arbitrary, capricious or illegal. Examination of the aerial photographs in evidence clearly shows the surrounding land and the Court can observe nothing that would militate against successful development of this treet for residential purposes of one kind or another

Pinally, in the opinion of the Court, the reclassification sought by Potitioner would be clearly illegal because it would be "spot moning". In Cannel et ux. v. Mayor and City Council of Baltimore, 195 Md. 348, 355, spot coming is defined as "arbitrary and unreasonable devotion of a small area within a moning district to a use which is inconsistent with the use to which the rest of the district is redistricted * * * " The Court went on to say "Moreover, increase in 'spot zoning' in course of time would subvert the original soundness of the comprehensive plan and tend to produce conditions almost as chaptic as existed before moning. It is, therefore, universally held that a 'spot soning' ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is morely for private gain. (citing cases)". Such is the case here. Reclassification of this tract for any use permissible in an "M-L Mone" would be inconsistent with the comprehensive plan for the area. See also Eckes v. Board, 209 Nd. 432,439.

For the reasons stated, the Court will sign an order affirming the order of the County Board of Appeals for Baltimore County and dismissing the petition wherein it is requested that

The petitioner in this case seeks a reclassification from an R-10 zone to c

The zoning and land uses surrounding the tract are as follows: North of

property, on the same side of Bloomsbury Avenue, the property is zoned R-10

The petitioner alleges that the property is unuseable in its present R-10

OPINION

B-L zone of a 7.3 acre tract of ground on the east side of Bloomsbury Avenue in the First

and is used for institutional purposes; namely, the German General Orphan Home; the

tastern edge of the property abuts a large tract of land which is occupied by the Spring

Grave State Hospital; the property to the south of the subject property, between Spring

Grove Lane and Holmes Avenue, is zoned R-6 and is developed with several cottages; the

School, is zoned R-10 and is so developed; the land west of Bloomsbury Avenue is zoned

classification and that, in his opinion, the proper use for the property would be a combina-

tion of stores, offices, and apartments and, therefore, he is requesting Business-Local

land south of Holmes Avenue, between Holmes Avenue and the Catansville Senior High

R-10 with the exception of one small triangular tract of ground which is zoned R-A.

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BEFORE

COUNTY BOARD OF APPEALS

OF

No. 65-342-k

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RE: PETITION FOR RECLASSIFICATION

from an P-10 zone to a B-L zone, NE/5 Bloomsbury Avenue and Spring Grove Lane,

Election District of Baltimore County

the case be resended to the County Doard of Appeals, because such remand would serve no purpose, in view of this secision,

Judge

ATTORNEYS AT LAW THE LAW BUILDING

County Board of Appeals County Office Building Towson, Maryland 21204

Petition for Reclassification NE/S Bloomsbury Ave. & Spring Grove Road, Lst District -Prankin Construction Co., Petitioner - Zoning Dase No. 45-30-28

Gentlemen:

Thank you for your cooperation.

Very truly yours.

heread -

0 Franklin Construction Co. - 65-342-R

firmed by the Circuit Court for Baltimore County on January 26, 1960 (see Petitioner's There have been virtually no changes in the neighborhood since 1960 that would justify the reclassification sought here. The petitioner admits that the traffic on Bloomsbury Avenue is heavily congested, and that it is undoubtedly more congested now than in 1960 when the Court affirmed the Board's denial of the previous zoning request owever, he advances the rather unique argument that by virtue of the County's failure to improve Bloomsbury Avenue, the County is depriving the property owner of any re

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ard cannot agree with this contention as the property can certainly be used in its present classification. Further, if we were to accept this argument, any person, for example, with a large tract of land situated in a remote rural area not served with public utilities, could use the same argument that he was being deprived of the use of his land by reason of the County's failure to extend utilities to his property.

The Board cannot find, from the evidence, that there has been any change between 1960 and the present time and, therefore, feels constrained to follow Judge Gontrum's decision in the previous case and finds that the petition here is again prematura

For the reasons set forth in the aforegoing Opinion, it is this 12 Thomas of December, 1966 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby DENIED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 3 of Maryland Rules of Procedure, 1961 edition.

> COUNTY BOATD OF APPEALS OF BALTIMORE COUNT

All parties in the case agree that Bloomsbury Avenue, - it presently exists. esidential street incapable of carrying the present traffic much less any additional traffic that would be generated by commercial zoning on the subject tract. There are some plant to improve Bloombury Avenue, however, there are no funds presently allocated and the needed improvement could be as far away as 1971. George E. Gavrelis. Director of Planning for Baltimore County, restified

in apposition to the reclassification and stated that I'm his pointing. It would definitely be spot zoning; that the accessibility to the subject tract is extremely poor, and mot there had been no changes in the neighborhood that would justify changing the present

This same parcel of ground was the subject of a zoning petition for a reclassification from an R-10 zone to an M-R zone by the same petitioner in 1958. That petition was turned down by the Board of Apocals, and the donial was subsequently

Sept 22nd, 1967 held Sub Curia.)) Dec. 15, 1967 O appeals fd.) Jan. 3, 1968 Ord County Board of J TD F. DAVID HESB D J. GRICCHI And C PENENT ASSOCIATION TWONORS) S. BALDWIN,
S. PARKER, and
E ALDERMAN, constituting
nty Board of Appends of
re County ? Incorporated 1967 Potition P. Zebelean, interve for the 00 a Jan. 30, 1967 petition fd. 27, 1967 d Order of) App. of he and McH , 16, 1967 5 1967 Interv granting Transcrip! Certificate 70 County 5 same

August 5, 1965

I represent the protestant in the above entitled case, and I would approxiate your entering my appearance and notifying me when the case is scheduled for a hearing.

MACDANIEL AND PAYNE

Richard D. Payne

10-13-70

IN THE MATTER OF

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THE PETITION OF PRANKLIN CONSTRUCTION CO. COUNTY BOARD OF APPRAIS POR BALTIMORE COUNTY

Case No. 65-342-P.

PRTITICATER'S BRIEF

Because of the fact that there was virtually no dispute on the more important factors in this case, reference to these factors will not be extended.

PROPERTY IS NOT NOW NOR WAS IT AT THE TIME OF THE ADOPTION OF THE ZONING MAP ADAPTABLE TO R-10.

The topography of the ground, the adjacency of the Spring Grove Institute, the unattractiveness of the coal tipple and large smoke stack of that latter institute, the noise emanating from the power house at Spring Grove, the railroad track, all lead to the inescapable conclusion that the land is not adaptable to those present coming restrictions. Dr. David H. Wilson, a highly reputable architect in the community, testified he would not advise a client to try to adapt the land to R-10 usage and that economically it would not be feasible. Mr. Jack Chertkof, himself an expert in the land planning field in addition to being an officer of the petitioner corporation, testified in like respect. Even one of the protestants, Mr. P. T. Lemmon, gave convincing reasons as to the unadaptability of the land as presently zoned. Judge Gontrum in his opinion of some years ago reiterated that fact.

Hence the Petitioner has been paying taxes to Baltimore County for a number of years on property to which he cannot put

to use for the only use allowed under the zoning map. This is ant to basic legal confiscation

The Court of Appeals in the case of Baltimore vs. Cohn 204 Md. 523, has characterized a like situation in the followin language

> "A zoning restriction will be regarded as arbitrary and unreasonable as to a property owner who is unable to use his property for any of the permitted purposes and is therefore deprived of beneficial use thereof. Thus we reaffirm the doctrine that a zoning ordinance mently so restricts the use of property that it cannot be used for any reasonable purpose goes beyond permissible regulation, and must be regarded as a taking of property without

> THERE HAVE BEAN METGHBORHOOD CHANGES JUSTIFYING CHANGE IN ZOKING.

In recent years an adjacent land owner has been granted RA zoning. The building of new scholastic institution such as the nearby University of Maryland Catonsville campus will produce upon the neighborhood new pressures, new demands and necessities for additional concentrated living quarters for faculty and students and for the accessory retail outlets Apartment units are obviously the type of concentrated houses which will be needed for faculty and out-of-town students at the university. New traffic patterns are being generated. Additionally, the deterioration of the business area of Catomsville as testified to by various witnesses not only demonstrates neighborhood changes but highlights the necessity for the type of community service that the Petitioner proposes to give

> 3 HISTORICAL RACKIROUND JUSTIFUS CHANGE IN ZONING Seven or eight years ago when the Petitioner

endeavored to reclassify its land to MR there was testimony by the then and now Director of the Office of Planning for Baltimore County which indicated that even at that time the authorities realized that the R-10 zoning on this tract should not remain static. Mr. Gravelis in his testimony in July 1958 need the following expressions: "A reclassification use at the present time would be premature." Note that he did not say it was undesirable but he related the problem of traffic about which there will be further discussion. Again quoting Mr. Gravelis: "The classification has been recommended based primarily on the lot sizes on the west side of Bloomsbury Road." Since the date of his testimony there has been a change in the lot sizes on the west side of Bloomsbury Road (the RA zoning previously alluded to). Mr. Gravelis: "I believe our memorandum **** sugcested that a future use of this property for MR would be proper and logical." "If Bloomsbury Road were the proper width to handle the traffic, we might recommend the change to WP but we would like to see the road there first." The then Board of Zoning Appeals rejected the petition for rezoning because of traffic and the case then went before Judge Gontrum whose opinion is part of the evidence in this case. Judge Gontrum had no difficulty in finding that the land was not adaptable for residential purposes, that the use to which the Petitioner wanted to put it to was in keeping with the surrounding area, but that because of the existing traffic situation he, Judge Gontrum, did not believe he should overrule the Board.

There have been no events in the intervening eight

years which alters the situation as it then existed, namely; that the land was not fit for R-10 zoning, that some form of commercial usage would be the highest and best use for the land; and that the accessory road, Bloomsbury Road, is undersized and overburdened.

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The Petitioner has had to sit by for these eight years and although Baltimore County completed its engineering plans for the widening of Bloomsbury Road and even at one time had funds a)located for that purpose, nothing happened. The land has remained virtually unoccupied, the County has been deprived of potential revenue which a reassessment after building would bring, the land owner has been paying taxes and receiving no interest or yield on the value of the property, neighbors must still travel a minimal distance of one-half a mile to shop at retail outlets in a deteriorating neighborhood

Mearly a year ago Petitioner becoming desperate with this moribund situation and after consultation with counsel and experts, endeavored to file a petition for reclassification to BL boning with accessory residential uses. This application was to be accompanied by prepared development plans for 40,000 square feet accessory businesses, 60,000 square feet offices and approximately 130 apartments. These preparations were not hurried or made without consultation with experts but represented the nost advisable use of the land. Mr. Cherkof testified that the Zoning Commissioner, Mr. Rose, refused to accept this application because there was no such classification in the Zoning Code

It is Petitioner's position that it is not the function of the authorities preparing, interpreting and administering the

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Zoning Code to resist or take a negative attitude in a situation which relief from the present zoning is obviously equitable and urgent. It is rather their obligation as we conceive it to be pliable to take proper measures to correct an obvious wrong. Whether or not this Board has ever exercised its amendatory powers under 501.7, we urge this is a situation for which 501.7 was specifically patterned. We set forth the regulation.

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*501 7 -- The decision and order of the County Sol.7--The decision and order of the Count Board of Appeals may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner, or may modify the order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to zoning regulations and restrictions."

It is a matter of no consequence to the Petitioner as to how procedurally it is released from the iron bounds of F-10 so long as an appropriate procedure is found. We suggest any of the following procedures:

- (a) A modification to BL with residential usage
- (b) A modification to RA with a special exception and
- (c) The granting of the present petition.
- 4. TRAFFIC

Assuming that the Board is convinced that it is not to the best advantage of Baltimore County or the surrounding neighborhood or the Petitioner that the land be continued R-10, the remaining problem for the Board is obviously a traffic situation. After the original case, in which the Petitioner's request for rezoning was denied entirely because of traffic congestion, traffic on Bloomsbury Road has become worse, the road has become

overburdened to the point where it is a menace. Testimony of the PTA, neighborhood associations and many other witnesses, including even Potitioner's traffic expert, amply demonstrate this situa-The road is a hazard for school children who must traverse it. All these factors have been called to the attention of the County authorities time and again, but the County having done all the necessary engineering and even appropriating money more than half a dozen years ago, has chosen to use the money elsewhere. The question is a simple one. Must Petitioner and others who may be in the same position as Patitioner lose the use of their land for an indefinite period of time until the County's conscience is shocked by some possible tragic accident to a school child or children which belatedly will cause the County to implement its planning of many years for the widening of the road? We contend that it is an indefensible position for the County to assess a land owner, collect taxes over a lengthy period of time, and not utilize some of this cash for the modernization of the familities bordering the land. We contend from a practical point of view that if this zoning is granted and if the County authorities are apprised of the fact that the rezoning will generate more traffic that this coupled with the many protests which have been heard in evidence previously made to the County with regard to the condition of Bloomsbury Road will spark the action that is needed to correct this overburdened and dangerous road.

Authorities on this point are difficult to find outside of generalizations. For example, in <u>Muhly</u> vs. <u>County Council</u>. 218 Md. 543, at 547, the Court in discussing the recommendation

for a new road upon which the subject property would border had this to say:

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"The Appellants contend that the Council laid too much stress on the proposed new road, which was no more than a 'gleem in the Councilsioner's eye'"****. But in Melson we, Monteomery County we pointed out that the Council had properly we pointed our that the townell had properly considered the widening of Spring Street to be an immediate prospect, and relative to the question of traffic congestion on the main artery. Indeed held in that case that the Council prope climed a request of the Planning Commissi delay action on the application until it had pleted its study of a revised plan for street highways, because delay would be upreasonable

It is believed that it would be quite difficult to find another reported situation of an owner of substantial property being denied the highest and best use of his own land because o an accessory traffic condition when engineering plans had been made to alleviate the situation and still be faced with the sam traffic problem eight years later when he again attempted to recone. This inertia on the part of those responsible for the widening of roads and the correcting of traffic situations might exist for countless years in the future. Obviously and as was said by an American statesman. "The best way to judge the future is by what has happened in the past." Certainly there is nothing in the past history of the road planners which indicates that they without sufficient pressure will get around to widening Bloomsbury Road in the foreseeable future

In the past dozen years courts have courageously pioneered new judicial concepts to fit changing needs. Despite the meagerness of existing precedents we believe that this Board should courageously in this case pioneer the philosophy that the land

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be put to its best use even if the then traffic situations are inadequate with the expectations; that the founty road planning authorities must then necessarily correct inadequacies.

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W. Bamilton Whiteford Attorney for Petitioner

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TH THE MATTER OF

BEFORE THE

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THE PETITION OF COUNTY BOARD OF APPEALS PRANKLIN CONSTRUCTION CO FOR BALTIMORE COUNTY

o Case No. 65-342-R

PROTESTANTS' MEMORANDID

The property which is the subject of this hearing is located on Sloomsbury Avenue between Rolling Road and Frederick Road in Gatonsville at the heart of a residential area. Adjacent to the property is the General German Orphan Home all of its land heing zoned as R-10. The subject property is located approximately two (2) blocks from the Catonsville Junior High School to the north and the Catomyville Senior High School to the south. All of these insuitution are of the type which are usually located, because of necessity, in residential zones to serve the residents

The Petitioner has requested reclasification of approxinately seven (7) acres of land located in the neart of this residential district from R-10 zone to B-L zone. He bases his reclassication on the following:

ERROR IN ORIGINAL ZONING AND/OR CHANGE OF CONDITIONS IN THE NEIGHBORHOOD

As far as error in original zoning is concerned, the Maryland Courts nave consistently stated their position as they did in MacDorald v. Board of County Commissioners of Prince George's County 210 A. 2d 325 238 Mg. 500

"es have repeatedly held that there is a strong presumption of the correctness of original zoning presumption business placesmal change tenefrom, there must outside a placesmal change tenefrom, there must condition and estimate of mistake in the original zoning or a gent of a substantial change in conditions."

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hey refer to the cases of Greenblatt v. Tony Schloss Properties Corp., 235 Md. 9, 13, 200 A. 2d 70 (1964); Shadynook

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Rec'd 11-14-66

It was brought out coc inually throughout the hearing by expert testimony, that traffic conditions on Bloomsbury Avenue at the present time are rapidly reaching a state of maximum capacity. Any further development of land along Bloomsbury Avenue such as suggested by the Petitioner, would result in a condition that would be highly injurious to the health, safety and welfare of the community. It was also revealed that there are no plans in the foreseeable future for the expansion or widening of Bloomsbury Avenue.

The Petitioner seems to be suggesting that the present overcrowded facilities be further overcrowded by the erention of the complex of buildings which are being proposed. He is suggesting that if these highway facilities are sufficiently overprowded, the County will be required to expand the facilities to meet the needs of the Petitioner. Very little regard has been iven, by the Petitioner, for the public safety of the school children who daily use Bloomsbury Avenue as the main artery to and from Catonsville Junior and Senior High School The law seems to be clearly defined as laid down in the case of Furnace Branch Land Company v. Board of County Commissioners of Anne Arundel County 194 A. 2d 640 232 Md. 536. In the Farnece Branch Land Company case the Petitioner was able to show change in the neighbor nood, which has not been shown in this case, but was unable to get the rezoning he desired because of inadequate sewage facilities in the area. The Court said:

"Change in conditions may justify the amendment of the extating condag ordinance to reclassify a par-ticular property, but in the consequence of the compelit. Even as in original to the condag must be in the general public interface of the promotion of the mealth, safety and welfars of the community, as well as in the individual interest of the land owner." Gode (1957), Art. 64B, Sec. 21;

The Court of Appeals confirming the ruling of the lower Court in the Furnace Branch wase denied the proposed rezoning. The Court

Imp. Assn. v. Molloy, 232 Md. 265, 192 A, 2d 502 (1963).

The evidence presented by the Petitioner does not prove any error in original zoning. The only person who stated that there was error in original zoning was Kr. Jack Chertkof, President of Franklin Construction Company, testifying in his own behalf. After cross-examination, it was revealed that Mr. Chertkof had never developed any residential property, and therefore his experience with residential property was limited and could not be considered as expert testimony. The only other expert called by the Petitioner was Dr. David H. Wilson, an architect, who could not qualify as a competent land planner and developer, and was unable to state an opinion as to R-10 usage, but could only comment upon the plans developed by Mr. Chertkof.

The Protestants, however, produced the testimony of Mr. George E. Gavrelis who had testified some eight (8) years before that this property was properly zoned for residential uses, and he felt that there was nothing now which would in any way change his mind and that the property in accordance with Planning Department's report was suitable for R-10 development and could so be used. Mr. Charles Steinbock, who qualified as an expert, testified to his familiarity with the particular property involved and the general neighborhood. He testified that the property was eminently suited for R-10 development and that there was a critical need for R-10 lead in this area. The area itself is residential in nature and has been for many years prior to the adoption of the Land Use Map. No change in the area has occurred to make the land other than residential. The Protestants also produced the testimony of er. Ralph Earlich, a realtor with nine years of experience in the area in question, who stated that there was a dire need for residential development in the area, and that in his opinion this piece of land could be readily developed as residential property.

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commenting on the inadequate sewage facilities stated:

... that inadequate facilities for the disposal of sewage had been a long continued, dangerous and incr aing problem which the government of Anne Arundel County had not been able to solve

Based upon the above the Court of Appeals felt that there was

sufficient evidence to deny the processed rezoning of the area or

the bases that it was detrimental to the general health, safety

Traffic Engineer, testified that the proposed use would generate

Avenue as to make it a true danger to the seneral health, safety

and welfare of Baltimore County. We respectively submit that

upon this basis alone the Petition of Franklin Construction Co.

NEED FOR THE PROPOSED USE

It was developed through the Protestants' expert

witnesses that there were available a number of unused buildings

of demand, these facilities were not being mented or lessed. The

Petitioner, nimself, testified that he owned two and one-half (2)

acres of land at the interesection of Frederick Road and Beaumont

Avenue which was vacant at that time. The Petitioner protests bitterly that by not granting the resoning it is tantamount to

legal configration, yet the Petitioner has never attempted to

develop this land for R-10 use -- though there is a severe scarcity

of R-10 land in this area. Further, Mr. Howard H. Walsh, Pres-

and some vacant land in the Catonsville business section which

were suitable for office and re' ill use: however, due to lack

Six Hundred (600) additional care an hour on Bloomsbury Avenue

in peak traffic periods. This would so overburden Bloomsbury

and welfare of the community. Mr. Eugene J. Clifford, County

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should be denied.

The Petitioner refers to a service buildier located on the Spring Grove Hospital property which is quite a distance to the rear of the subject property. The service building has bean referred to by the Petitioner as a steam plant Although this service building is clearly visible in some aerial photographs, presented by the Protestants, from the ground level all that can be seen from any point on Bloomsbury Avenue is the top of a smokestack. The current operations at Spring Grove Hospital are identical at the present time with their past operations which were practiced before the Land Use Map was adopted in April of 1960. A number of residents who live on Holmes Avenue and Milltop Road, which are extremely close to the sayving building. testified that they purchased their homes about ten (10) to firteen (15) years ago, and that the conditions were the same then as they are at the present time. They felt that the operations at Spring Grove Hospital have not in any way hampered the enjoyment or use of their land or homes. Further testimony revealed ther during this ten (10) to fifteen (15) year period to homes in the immediate area of Spring Grove Hospital have been vacant or unsold for a long period of time. One resident testified that during his residence of eleven (11) years in the neighborhood, to his knowledge only three (3) homes in the area had changed hands during that time.

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The General German Orphan Home, which is adjacent to the subject property, is zoned R-10 and exhibts a well-landscaped piece of property having visible only building which are of a residential nature. Among the residential buildings there is a very attractive individual some built about five (5) years are for the Superintendent of the General German Orphan Home. This home was built in such a way as to coincide with the residential

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character of the neighborhood.

The past record of the neighborhood, and the testimony presented, reveals that there has been no chause in this neighbor hood since the adoption of the Land Use Map in April of 1960, further it was revealed that the neighborhood has remained substatutially the same over a period of many years prior to the adoption of the Land See Man. Spring Loove Hospital located in the general area of the subject property is operating now (20) years. The General German Orohan Home has been located in this area for approximately forty (40) years, and it too has continued to operate in the same manner as in the past. The Petitioner refers to the location of the new University of Mary land Campus as a change in the neighborhood. The location of the University of Maryland Campus, however, is too far removed from the immediate area to be considered a chance in the area. The Petitioner rests his case heavily upon the fact that Mr. Rroest J. Hesse has built some garden-type apartments directly soross the street from the subject property. The testimony produced during the hearing developed that there had been a number of apartments in a large residential home located on the site, and that Mr. Hesse had bod the area zoned R. A. for the construction of garden-type apartments. This merely amounted to an expansion of the nonconforming use that had existed for some time in the eres but was not a change in the area.

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The Petitioner is proposing to build a complex of many office buildings, inside garages and retail stores. Since there is not at the present time any office building or retail establishment existing in the immediate area, such a complex would be snot zoning in its worse possible form.

> The Petitioner also bases his reclassification on TRAPPIC

Petitioner has attempted to modify, change, enlarge and even to abandon portions of his original request for resoning after the zoning hearing and after conclusion of the testimony before the County Board of Appeals.

The Protestants, therefore, respectively request that the Petitioner has not met the burden of proof in any one of the

That there is no error in original zoning as decided by this board previously nereto and substantiated by expert

ident of the Board of Directors of General German Orphan Home, testified that within the last few months Mr. Chertkof had been in contact with the General German Orphan Home offering to buy more of this R-10 land which adjoins the Patitionents treat of land. If he were sincere in his plea that he cannot use the land certianly he would not be attempting to buy more.

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By the relief requested in the Petitioner's Brist, the

There is a procedure established which protects the community, the County and the Petitioner by requiring the innovation of any zoning before the Zoning Commissioner and the right of the Board to review his decision, but certainly it was never the intent, implied or expressed, that the County Board of Appeals had complete freedom to retone land, by wranting to petitioners classifications which were not petitioned for, and plans for which the Baltimore County Planning Department never had an opportunity to review and the general public rever had an opportunity to defend themselves against. Certainly if the Petitioner has a change of heart as to how he now wishes to use the land, we west initiate a new proceedings in due course before the Zoning Commissioner.

That there has been no change in the area since the adoption of the Land Use Map in April of 1940.

testimon; at the time of this hearing.

That granting of this Petition would create a severe nazard and danger to the general health, safety and welfare of the community.

- 6 -

And for these reasons, we respectively request that the Petition of Franklin Construction Co. for reclassification from R-10 some to B-L some be denied.

Respectively submitted.

Richard DN Payne
MacDaniel and Payne
25 W. Pennsylvania Aven
Towson, Maryland 21204 Attorneys f > Protestants

I HERESY CERTIFY, that on this 11 th day of November 19th, a copy of the foregoing Protestants' Memorandum was mailed to W. Hamilton Whiteford, Esq., Counsel for Petitioner, Sun Life Building, Baltimore, Maryland, 21201; John P. Zebelean, Jr., Bug. Counsel for Protestants, 826 Frederick Road, Catonsville, Maryland, 21228; and John H. Hessey IV, Esq., Counsel for Protestants 1311 Fidelity Building, Baltimore, Maryland, 21201.

Richard D. Payne Attorney for Protestants

4 65- 34 212

Date. ... March 23, 1955

HESSEY & HESSEY

Annuar 17, 1965

Baltimore County Board of Appeals County Office Building Towson, Maryland 21204

Re: Petition 05-342-9 - East side Bloomsbury Avenue Franklin Construction Corp., Petitioner Franklin Construction Corp., Petitioner Request for reclassification from R-10 to B-L

An appeal. I understand, has been filed in the above matter. I represent Vestridge apartments, Inc., owner of the property streetly across the street from the above land. This company intends to protest this soning reclassification.

would you simply enter my appearance and advise with

Stuffener

PTIFMMON

Tery truly yours,

V. J. Domino 1. 1.V

MPP 1

#1 SEC. 2-A

BALTIMORE COUNTY. MARYLAND

INTER-OFFICE CORRESPONDENCE

TO. Mr. Jomes A. Dyer - Chairsas. Soning Advisory Committee

FROM. 11. Charles F. Morris, Sr. Fire Bureau - Plans Review

SUBJECT Property Owner - Franklin Construction Corporation E/S Bloomsbury Avenue and N of Spring Grove Lane District lst Section 2 - A - SW 3 and 4 F Present Boning R - 10 Proposed Boning B. I. Wo. Acres: 7.3

- 1. Location of proposed hydrants and size of water mains shall be location of proposed symmetrs and size of water mains shall be indicated on proposed symmetrs and size of vater mains, secrets, and dive bytemate shall be of an approved the part of the state of the symmetry Standard [res and intelled in accordance with the Saltimore County Standard [res in Namal, 1965] Bittions, Spacing of purmants shall be 500 feet distance spart as newspared along an improved read, and within 300 feet from any deelling. Formants shall be located in a pattern approved by the Saltimore County Fire Surear.
- Parking shall be designed so as to give emergency vehicles an improved radius for turning at end of parking areas.

CYM/mji

April 7, 1965 #65-392E

HALF DIGGE COUNTY OFFICE OF PLANNING AND ECGLING

COUNTY OFFICE BUILDING

TOWSON L. MARCHAND

5W-2F necleosification from B 110 to Bala for Promitin Constr. Co., Necestral on the L/S Blemblury Area to of Spring Brown Labo

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

The following comments are not intended to indicate the appropriateness of the Zening action requested, but he seem's that all parties are not seem of place or problems that may have a bearing on this case. The firester major board problems that can have been appropriated and the problems of the requested Zening of Loye before the Zening Commentations are propregated and the Zening Commentations of the requested Zening to Joya before the Zening Commentations of the requested Zening to Joya before the Zening Commentations of the requested Zening to Joya before the Zening Commentations of the Propregated Zening Commentations of the Propregated Zening Commentations of the Propregated Zening Commentation of the Zening Zeni

TRAFFIC EMBINEERING: This office is presently studying the traffic situation in the area and will submit detailed comments at a later chic.

OFFICE OF PLANETIC AND ZORING: The potitioner's development plan indirects that a total of 945 parking spaces used to be reserved for the offices and recall attreas proposed. It is the opinion of this office that 6% delitional useful as useful tend to over-load Bloomabory Assume, which is presently improved with 22 feet of parking an 30 foot right of may.

The plans also indicate that 208 of the 645 perking spaces will be induces, how the plans does not indicate how this perking will function i.e. interfer parking arrangement, ingress and agrees, etc., therefore, this office is vanied to essuant as to the feasibility or adequacy of the proposed index parking.

FIRE BUREAU: She attached comments.

BUMEAU OF ENGINEERING: Utilicios: Mater-Existing 8" in Bloomsbury Adamon existing 6" in Spring Brown Lane. Ad of mater to be determined by the Dawn

Shour: Existing S" in Sibomsbury Avanue, Absencey of be detrowled by the Daveloper or Engineer, Stocks Shoumsbury Avenue to he a winimum 40° curb S gutter paving on 50 right of way. Yours very truly,

James B. Dyer Chief of Permit and Petition Processin

DUE, WHITEFORD, TAYLOR & PRESTON

BALTIMORE, MARYLAND

September 14, 1966

Zoning Commetssioner of Baltiv & County County Office Building 111 West Chesapeake Avenue Towson, Maryland 21204

> Re: No. 65-342-R Franklin Construction Co. Our File: C-4382

Dear Sir:

Please enter my appearance as

counsel for Petitioner, Franklin Construction Co., in the above matter.

Very truly yours,

W. HAMILTON WHITEFORD

WHIN - TIME

· Grida. 15.66

BALT TORE COUNTY, MAR LAND No. 28595 OFFICE OF FINANCE MICROFILMED -86 1320 · 28595 118-

IMPORTANTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWS.
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REM

BALTIMORE COUNTY, MARY AND Na. 30652 OFFICE OF FINANCE 25.00 (1997) - British Crosty, MA - Office of Page MICROFILMED \$579 . 30652 HP-1650

IMPORTANTI 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.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CURRESPONDENCE

465-312R map / TO. Mr. John G. Rose, Zoning Commissione: Date, May 20, 1965 321.2-A

FROM George E. Govrelis, Director of Planning SURUP Equition No. 65-342-8. *8-10 to B.L. Zone Northeart side of Bloombury Avenue and Spring Grove Lane Seing the property of Franklin Construction Lorp. * S.W. 4.F.

Wednesday, June 2, 1965 (11:00 A.M.)

The planning staff of the Office of Planning and Zoning has reviewed the subjec-1. Property adjacent to the subject parcel generally is coned R-10 or is

unzoned public land. The surrounding area is developed residentially or with institutional uses. From a planning viewpoint, the reclassification requested would result in the creation of a spot zone.

2. Accessibility to the subject parcel is extremely poor. Bloomsbury Are use, which is the primary road serving in property, has only a thiry foot right-of-way, with a twenty-two-fact-wide powerent. There are east-west cross connections. Thus, the till is indeed, postly served for any Business Local uses at all, much less for use of the state shown on the printinger's plan. The latter is a good example of the greatly controlled. proponion land-use potentials which this property would have we're the proportion families parenties which this property would have which me reclassification to be granted. The development shown on the plat would be appropriate in a town center, perhaps near an expressively interchange, or possibly integrated with a large industrial parks by no stretch of the imagination could it be considered appropriate at the subject location.

2. It is our considered spinion that the First District Comprehensive Zoning Map was correct as adopted, and that there have been no changes in the area of the subject property that would justify any change in the present zoning.

MICROFILMED

BALTI ORE COUNTY, MARY AND Ma.41076 OFFICE OF FINANCE DATE DALAS COURT HOUSE TOWSON, MARYLAND 21204 * *\$1076 TO . 600 600 BETARTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND

BALTIMORE COUNTY, MARYLAND Ma. 30669 OFFICE OF FINANCE -2-1000 7051 . 30669 ISP-1000 MICROFILMED

REPORTANTI MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON & MARY, AND PLEASE RETURN UPPER SECTION OF TH.) BILL WITH YOUR REMITTANCE.

Minte A. Spirit for Sections 2, sale April 13, 1965

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building 111 W. Chesopeake Avenue Towar 4. Maryland

Your patition has been received and accepted for filling this

ROFILMED Promot Production Compared by Street Compa

A ROSE Commissioners Commissio

CERTIFICATE OF POSTING. ZONING DEPARTMENT OF BALTIMORE COUNTY Towns. Marriand

Districtlat	Date of Posting
Posted for Appeal	
Petitioner Franklin Construction Co	
Location of property No.4-3-Bloomsbury-Ave	t-spring Grove-lane
Loration of Signa T. A.E. Car. Algernation of Signa T. A.E. Clarenthony, Roc. 125 W. Remarks	lin o Spin Jose Lane. Li Jawy John Lone
Posted by Separate	Date of return 5/24/65

65-342-R

CERTIFICATE OF POSTING

			=	Man 15 1965
District		from R-10	To B L	May 15,1965
Posted for . Kold	Mes grandes	J.T. Care.		
Posted for 1020 Petitioner £34	man La	Marin Lay	& Spring fre	ve stane
Loration of Signs:	ON/s Jenny	Gron Lane W	ut of Catments	West Line RR
@NE. Cor. A	enny June Sa	erse & Alsony	Asset MI WELL	O.C.s. Aleemhog bi
1. 3.8E	NE. 4.4	ину Унжил	Date of return.	May 20 1965
Posted by	Senter		Mic Cittle	0
(3 Signo		

CERTIFICATE OF PUBLICATION

TOWSON, MD. 18.67.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Raltimore County, Md., 6800: in-each of the first publication appearing on the library of the first publication appearing on the library of the first publication appearing on the library of the first publication.

THE JEFFERSONIAN, Manager.

Cost of Advertisement, S.

CERTIFICATE OF PUBLICATION

BALTIMORE COUNTY, MD. Nov 13 19 65.
THIS IS TO CERTIFY. That the annexed advertisement was published in TRE TIMES a weekly assented printed and pub-

successive weeks before the 2005

65

THE TIME

Cost of Advertisement 8

Perchase Order 20110 Requisition No. 7450

