

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Lafayette L. Pierpont, legal owner, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R-6 zone to an W-2C zone; for the following reasons:

error in original zoning and genuine change in conditions

See Attached Description

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

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above reclassification and or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract purchaser
Address Lafayette L. Pierpont
Windsor Mill Road & Clarke Avenue
Baltimore, Md.
W. Lee Harrison, Esq.
Attorney
Address 607 Loyola Federal Building
Towson 4, Md. 823-1200

ORDERED BY The Zoning Commissioner of Baltimore County, this 20th day of April, 1965, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 100 County Office Building in Towson, Baltimore County, on the 29th day of June, 1965, at 11:00 o'clock.



Zoning Commissioner of Baltimore County

INTER-OFFICE CORRESPONDENCE DIVISION OF TRAFFIC ENGINEERING Baltimore County, Maryland Towson 4, Maryland

Date: April 29, 1965

TO: Mr. James S. Dyer
FROM: Eugene J. Clifford
SUBJECT: Item 7 - ZAC - April 14, 1965 - Northwest corner of Windsor Mill Road and Woodlawn Avenue

Review of the subject plat dated March 23, 1965 results in the following comment:

At the intersection of Windsor Mill Road and Woodlawn Avenue, the County has a fully-actuated signal with magnetic detectors in the pavement. If a service station is constructed the driver leaving the station will be at the intersection of the signalized intersection and increases the accident potential. This is undesirable because it reduces the efficiency of the signalized intersection and increases the accident potential.

Eugene J. Clifford
County Traffic Engineer

BJC:CRN:mr
Enclosure

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James S. Dyer, Jr.
John C. Dyer, Jr.
George W. Dyer, Jr.
Robert W. Dyer, Jr.
Edward W. Dyer, Jr.
James F. Dyer, Jr.
Paul S. Dyer

PAUL CHILDS & ASSOCIATES, INC.
Engineers & Surveyors - Site Planners
3100 Russell Blvd. E. - Towson, Md. 21204
(410) 281-1000

DESCRIPTION

2.3168 ACRE PARCEL, WINDSOR MILL ROAD AND CLARKE AVENUE, SECOND ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

Present Zoning - R-6
Proposed Zoning - BL

Beginning for the same at the westernmost end of the gusset line that connects the northwest side of Clarke Avenue, 70 feet wide, and the northeast side of Windsor Mill Road, 55 feet wide, thence binding along the northeast side of Windsor Mill Road N. 53° 00' 00" W - 137.41 feet, thence leaving said Windsor Mill Road N. 40° 53' 10" E - 535.30 feet to the property of The Woodlawn Cemetery Co., thence binding on part of the southeast side of the cemetery S. 48° 36' 50" E - 205.45 feet, thence leaving said cemetery S. 40° 02' 35" W - 209.01 feet to the said northwest side of Clarke Avenue, thence binding thereon the two following courses and distances: (1) southeasterly by a line curving to the left with a radius of 735.00 feet the distance of 76.36 feet (said arc being subtended by a chord bearing S. 52° 27' 35" W - 76.33 feet) and (2) S. 49° 29' 00" W - 221.79 feet to the easternmost end of the aforementioned gusset line, thence binding thereon S. 88° 15' 15" W - 31.18 feet to the place of beginning.

Containing 2.3168 Acres of land.

ES/jc

J.O. #2187-S

2/15/65



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James S. Dyer, Jr.
John C. Dyer, Jr.
George W. Dyer, Jr.
Robert W. Dyer, Jr.
Edward W. Dyer, Jr.
James F. Dyer, Jr.
Paul S. Dyer

PAUL CHILDS & ASSOCIATES, INC.
Engineers & Surveyors - Site Planners
3100 Russell Blvd. E. - Towson, Md. 21204
(410) 281-1000

DESCRIPTION

0.5772 ACRE PARCEL, WINDSOR MILL ROAD AND CLARKE AVENUE, SECOND ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND.

Present Zoning R-6

Proposed Zoning BL with Special Exception

Beginning for the same at the westernmost end of the gusset line that connects the northwest side of Clarke Avenue, 70 feet wide, and the northeast side of Windsor Mill Road, 55 feet wide, thence binding along the northeast side of Windsor Mill Road N. 53° 00' 00" W - 137.41 feet, thence leaving said Windsor Mill Road N. 40° 53' 10" E - 535.30 feet, thence by a line parallel to the aforesaid northeast side of Windsor Mill Road S. 53° 00' 00" E - 180.44 feet, to a point on the aforesaid northwest side of Clarke Avenue, thence binding thereon S. 49° 29' 00" W - 133.64 feet to the easternmost end of the aforementioned gusset line, thence binding thereon S. 88° 15' 15" W - 31.18 feet to the place of beginning.

Containing 0.5772 Acres of land.

ES/jc

J.O. #2187-A

2/15/65



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

W. Lee Harrison, Esq.
607 Loyola Federal Building
Towson, Maryland 21204

Reclassification from R-6 zone to a business local zone, and a Special Exception for a Filling Station, for Lafayette L. Pierpont, located on the Northeast corner of Windsor Mill Rd. and Woodlawn Ave. 2nd District

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 zoning action requested, but to assure that all parties are made aware of plans or problems that may have a bearing on this case. The Director and/or the Deputy Director of the Office of Planning and Zoning will submit recommendations on the appropriateness of the requested zoning 10 days before the Zoning Commissioner's hearing.

OFFICE OF PLANNING AND ZONING: The proposed development plan does not provide an off-street connection or service drive between the gasoline station and the proposed retail store. This means that if the zoning were granted, that vehicles leave the retail store area, and desiring service at the gasoline station, would be required to use Woodlawn Avenue and would cause additional traffic congestion in the area.

TRAFFIC ENGINEERING: The Bureau of Traffic Engineering will review the subject development plan and submit comments at a later date.

BUREAU OF ENGINEERING: Adequacy of existing water and sewer facilities - Existing 12" in Windsor Mill Rd. Adequacy of existing water and sewer facilities - Existing 8" in Windsor Mill Rd. to be determined by developer or his engineer. Roads - Woodlawn Drive is an existing improved road; Windsor Mill Road to be a minimum 40' curb and gutter street. Storm Drains - There are existing drains in Woodlawn Drive and Windsor Mill Rd. However, these drains may not be adequate to serve commercial development.

The following members had no comment to offer:
Board of Education Industrial Commission
Fire Department Buildings Department
Health Department State Roads Commission

Yours very truly,

cc: Albert Quinby, Office of Planning and Zoning
Richard Moore, Traffic Engineering
Carlyle Brown, Bureau of Engineering

James S. Dyer, Jr.
Chief of Permit and
Petition Processing

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EDWARD J. JENKINS and
JWA LEE JENKINS, his wife
2215 Maple Hill Court
Baltimore County, Maryland 21207
FOR
BALTIMORE COUNTY
IN LAW
WILLIAM S. BALDWIN, W. HILAS
JANER and JOHN A. SLOVAK,
constituting the County Board
of Appeals of Baltimore County
Zoning Case No. 65-355-RX

ORDER OF APPEAL

MR. CLARK:

Please enter an Appeal on behalf of Edward J. Jenkins and his wife Jenkins from the decision of the County Board of Appeals of Baltimore County, Case No. 65-355-RX rendered on September 8, 1967 in the case of the Petition for Reclassification filed by Lafayette L. Pierpont.

Victor McFarland

LARRY L. LOCKHART
1650 Security Blvd
Baltimore, Maryland 21207
Attorney for Applicant

I hereby certify that on this _____ day of October, 1967, a copy of the foregoing Order for Appeal was served upon the County Board of Appeals of Baltimore County.

Attorney for Applicant

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: May 26, 1965
FROM: George E. Gosselink, Director of Planning

SUBJECT: Petition No. 65-355-RX, R-6 to B-L Zone and Special Exception for Filling Station Northwest corner of Windsor Mill Road and Woodlawn Avenue Being the property of Lafayette L. Pierpont

2nd District

HEARING: Wednesday, June 9, 1965 (11:00 A.M.)

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

1. The Comprehensive Rezoning Map for the Western Planning Area was based on careful, realistic evaluations of present and projected growth patterns. Ample areas in convenient locations were set aside for present and future commercial development and for commercial expansion. Less than a block away from the subject property is a neighborhood shopping district; a major shopping center has been established at Security and Clarke Boulevards, only a short, easy drive from the site under consideration. There would appear to be no need for additional commercial facilities in this vicinity. We believe that the map was correct as adopted and that conditions have not changed in such a way to justify the rezoning requested.

2. The petitioner's plan does not show any possibility of on-site circulation between the requested service station and retail store.

3. In view of the above considerations, we can only state that the subject proposal would be in total conflict with County planning policy.

GP

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Board v. Oak Hill Farms, 232 Md. 274 p. 283, stated at pages 371-372 as follows:

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

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

See also the following cases: Flannery v. Halls, 241

Md. 224 (decided Feb. 2, 1966); Hill v. The Johns Corp., 242 Md. 16 (decided March 15, 1966); Rennie View Club v. Glass, 242 Md. 46 (decided March 22, 1966); Bath Station v. Blum, 242 Md. 84 (decided March 29, 1966); Board v. Faye, 242 Md. 351 (decided April 26, 1966); and Vogel v. McDonough, 242 Md. 371 (decided April 28, 1966).

This Court is constrained to hold that a reasoning mind could reasonably have reached, upon a fair consideration of the entire record, the same conclusion as that of the Board, and hence its action was not arbitrary or capricious or illegal, but, on the other hand, was fairly debatable. Having determined this, the Court has fulfilled and exhausted its limited judicial function in reviewing a zoning appeal.

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JAMES D. NOLAN
LAW OFFICE
TOWSON, MARYLAND

June 9, 1965

The Honorable John G. Rose,
Zoning Commissioner for Baltimore County
County Office Building
Towson 4, Maryland

Dear Mr. Rose:

Please enter the appearance of Francis X. Gallagher, and myself, as attorneys for Woodlawn Cemetery in the matter of the application of Lafayette L. Pierpont for reclassification from R-6 to B-1, with special exception of a portion of the property for filling station.

Very truly yours,

James D. Nolan

JDN:ebc

CC: Francis X. Gallagher, Esq.

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CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 2ND Date of Posting: May 22, 1965
Posted for: Reclassification from R-6 to B-1, special exception
Petitioner: Lafayette L. Pierpont
Location of property: W. corner of Windsor Mill Rd. & Woodlawn Ave.
Remarks: 3 signs to be placed on property
Posted by: J. D. Nolan Date of return: May 27, 1965

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For the reasons stated and in conformity with the foregoing Opinion, it is this 22nd day of May, 1965, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals of Baltimore County dated September 6, 1967, be and the same is hereby affirmed.

John M. Maguire
John M. Maguire
JUDGE

copies: Marvin Singer, Esq.
C. Victor McFarland, Esq.
W. Lee Harrison, Esq.
Hon. R. Bruce Alderman, County Solicitor
Board of Appeals for Baltimore County
Hon. John G. Rose, Zoning Commissioner
Misc. File 3836
Misc. File 3832

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CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 2ND Date of Posting: July 17, 1965
Posted for: REPEAL
Petitioner: Lafayette L. Pierpont
Location of property: W. corner of Windsor Mill Rd. & Woodlawn Ave.
Location of Signs: on W. corner of Windsor Mill Rd. & Woodlawn Ave.
Remarks: 3 signs
Posted by: J. D. Nolan Date of return: July 22, 1965

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W. Lee Harrison, Esq.
667 Loyola Federal Building
Towson, Md. 21204

April 20, 1965

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your petition has been received and accepted for filing this
13th day of April, 1964

Owners Name: Lafayette L. Pierpont
Reviewed by: J. D. Nolan

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CERTIFICATE OF PUBLICATION

TOWSON, MD. 21204, 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. on the 21st day of June, 1965, before the 21st day of June, 1965, the 21st publication appearing on the 21st day of June, 1965.

THE JEFFERSONIAN,

Cost of Advertisement \$...

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LAW OFFICES
W. LEE HARRISON
667 LOYOLA FEDERAL BUILDING
22 WEST PENN. AVENUE
TOWSON, MARYLAND 21204
June 21, 1965
MAY 23 1965
ZONING DEPARTMENT

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

Re: Petition for Reclassification from R-6 Zone to B-1 Zone and Special Exception for Filling Station - N.W. corner Windsor Mill Road and Woodlawn Avenue, 2nd District - Lafayette L. Pierpont, Petitioner - No. 65-355-X

Dear Mr. Rose:

Please note an appeal to the County Board of Appeals from your Order and Decision dated June 16, 1965 denying the reclassification and special exception in connection with the above captioned matter on behalf of the Petitioner, Lafayette L. Pierpont.

I enclose herewith my check in the amount of \$75.00 to cover the costs of the same.

Very truly yours,

W. Lee Harrison

b
Enc

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INVOICE		BALTIMORE COUNTY, MARY AND		No. 41097	
OFFICE OF FINANCE		Division of Collection and Receipts		DATE 10/25/67	
COURT HOUSE		TOWSON, MARYLAND 21204			
TO: Marvin L. Singer, Esq.		BILL TO: County Board of Appeals			
1507 Court Square Building		(Zoning)			
Baltimore, Md. 21202					
REPORT TO ACCOUNT NO. 61-712		DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE		TOTAL DUE \$14.38	
QUANTITY	1	Cost of Certified Documents - File No. 65-355-X			
		Lafayette L. Pierpont			
		Windsor Mill Road & Woodlawn Avenue (NW corner)			
		2nd District			

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, MARY AND		No. 41093	
OFFICE OF FINANCE		Division of Collection and Receipts		DATE 10/11/67	
COURT HOUSE		TOWSON, MARYLAND 21204			
TO: Larry Landman, Esq.		BILL TO: County Board of Appeals			
6666 Security Blvd.		(Zoning)			
Baltimore, Md. 21207					
REPORT TO ACCOUNT NO. 61-712		DETAILS UPPER SECTION AND RETURN WITH YOUR REMITTANCE		TOTAL DUE \$25.00	
QUANTITY	1	Cost of certified documents - File No. 65-355-X			
		Lafayette L. Pierpont			
		NW corner Windsor Mill Road			
		& Woodlawn Avenue			
		2nd District			

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.

OPINION

Woodlawn Drive is at the present time a major highway in Baltimore County and runs all the way from Johnnycake Road to its junction with Wynn Oak Avenue east of the subject property. It is now a paved highway 48 feet wide on a 70 foot right of way, as may be seen from the pictures in evidence (Petitioner's Exhibit No. 2), the land for its construction having been taken from Mr. Pierpont by the County in 1964. Part of his land was also taken in 1964 for the widening of Windsor Mill Road, which is now 38 feet wide on a 55 foot right of way. Prior to the construction of these two roads, i.e., in 1962 at the time of the map adoption, what is now Woodlawn Drive and what was then Pierpont Lane may be clearly seen on Petitioner's Exhibit No. 3-H. It would be hard to find a better example of change in the character of roads than those surrounding Mr. Pierpont's property.

There are in the neighborhood other numerous changes in land use since the adoption of the map represented by the construction or planned construction of apartments. There is a large area of R-A zoning so designated on the map substantially directly across Windsor Mill Road from the subject property, upon which the "Clarke Manor Apartments"

Mr. Alvin Snyder, the contract purchaser, who proposes to develop the property, testified to his plans to construct one free standing super market on the premises, and stated that he had abandoned his plans for constructing a filling station, and, in fact no evidence was presented to support the requirements for the granting of such a special exception. The owner of the property adjoining the Pierpont property testified that he had no objection to the proposed application, and felt that the proposed use would not affect

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Mr. Frederick P. Klaus, a qualified witness in the real estate and appraisal field, testified at length as to the many changes in the neighborhood and as to the existing local commercial developments and non-conforming uses on Windsor Mill Road between Gwynn Oak Avenue and Featherbed Lane, and presented in evidence Exhibits Nos. 2-A to C, i.e. various photographs of the area which point up graphically the testimony of the various witnesses. He also testified to the fact that there have been two or three reclassifications to manufacturing zones on tracts of land abutting on Windsor Mill Road just outside the Baltimore County Beltway, which undoubtedly affect the demand for more apartments and shopping facilities in the vicinity of Windsor Mill Road. It was his opinion that the present map does not contain sufficient commercial areas to meet the need caused by the increased density of population which has followed apartment zoning, individual zoning and extensive R-6 development. He pointed out that the present shopping center in Woodlawn is now obsolete and could not even be built today under present zoning and building regulations, and that the parking facilities are thoroughly inadequate. He also expressed his opinion that there have been more than sufficient changes in the neighborhood to warrant the rezoning of this property, and also that the Pierpont property was not feasible for R-6 development because of the proximity of the fire house, school, telephone building and apartment construction. The photographs indicate the beauty of the Pierpont property when viewed from outside, which stands in stark contrast to the view outward from the Pierpont property looking at any of the adjoining areas. He further expressed the opinion that any of the other homes in the immediate vicinity, on smaller lots, may have been affected in the same way by the proximity of apartments, schools, the fire house, etc., but that he did not believe that the present application would cause any detrimental effect on land values in the area. He felt that at the time of the map adoption in 1962 the present B-L zoning only recognized existing uses, and that no other was considered except the large B-M zone on Security Boulevard, which is a considerable distance away. He also pointed out that Woodlawn Drive has not

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There was one expert realtor who testified for the protestants, Mr. William S. Guy, Jr., an able and eminent appraiser for whose opinions the Board has the greatest respect, who stated that this is a mixed neighborhood, and that although he believed

On the basis of the evidence as outlined above, the Board finds as a fact that there have been sufficient changes in the neighborhood since 1962 to warrant the granting of the reclassification requested, which will, therefore, be granted; and in the

John A. Slepian

TELEPHONE 833-2000		INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON 4, MARYLAND		No. 30667 DATE 6/2/68	
T. E. Lee Hardware, Inc. 107 North Calverton Towson, Md. 21204		BILL TO The Acting Superintendent of Police, Inc.			
REPORT TO ACCOUNT ON 68-228		DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE			
QUANTITY —	Description and posting of property for Intelligence & Research AD-228-21 FBI — Baltimore County, Md. — Office of Finance 6-10-68 09:11 • 30667 HP-				PRICE \$2.00
4		MICROFILMED			
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.					

ZONING FILE #65-355-RX

LINWOOD WELLS

v.

LAFAYETTE L. PIERPONT

Hammond, C.J.
Harbury
Barnes
Newkirk
Finan
Singlesy,

33.

Dissenting Opinion by Barnes, J.

Filed: May 27, 1969

Barnes, J., dissenting:

I dissent because, in my opinion, there was sufficient evidence before the Board to make "fairly debatable" its finding that there had been sufficient change in conditions in the neighborhood to justify the rezoning of the subject property from R-6 (Residence, One and Two-Family) zone to the B-1 (Business-Local) zone.

If there was "substantial evidence" before the Board to support its decision, then the issue was "fairly debatable" and we should affirm the Circuit Court's order affirming the decision of the Board. As Judge Singley, for the Court, recently stated in *Winkman v. Montgomery County Council*, 251 Md. 273, 277-78, 247 A.2d 255, 258 (1968), quoting with approval from the opinion of the trial court:

"The 'substantial evidence' test has been further defined and refined in later cases, including *Board v. Oak Hill Farms*, 252 Md. 27, 192 A.2d 704 (1962); and *Winkman v. City of Baltimore*, 254 Md. 443, 160 A.2d 330 (1964). 'Substantial evidence' is held to be 'more than a scintilla' and such evidence 'as a reasonable mind might accept as adequate to support a conclusion' and 'enough to justify, if the trial were to a jury, a refusal to direct a verdict.' *Board v. Oak Hill Farms*, supra. In *Winkman*, supra, the Court said: 'Inter alia, the nature of the fact finding process often is the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. The court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported. The test is reasonableness, not wisdom.' *Winkman*, supra. (Administrative Law Treatise (1958)), Sec. 29.05, p. 139."

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taken in October, 1962 (approximately one month before the comprehensive zoning map was adopted on November 15, 1962) which clearly indicated this narrow country road shaded on both sides by trees which in many places met overhead to form an arch. In 1964, land was acquired from Mr. Pierpont to convert this country road into the present four lane, 48 foot paved public highway on a 70 foot right-of-way now known as Woodlawn Drive. The proposed highway was indicated on the comprehensive zoning map, approved November 15, 1962 as Clarke Avenue. Part of the Pierpont land was also acquired in 1964 for the widening of Windsor Mill Road, which is now 39 feet wide on a 55 foot right-of-way.

Mr. Klaus was of the opinion that:

"... the greatest impact on the subject property is that Woodlawn Drive has moved the center of Woodlawn in a northerly direction. It is a very wide street, as has been testified by the engineer, and it connects into large complexes of industry, and the Social Security operation, and by the construction of this road as a cross and feeder road, it has actually moved the traffic pattern from the old Woodlawn area to an area where the Pierpont property is."

After pointing out that Windsor Drive was constructed through the Pierpont property and that prior to that time the Pierpont property had access to Windsor Mill Road by means of a private lane, Mr. Klaus testified:

"... the whole pattern of movement has changed by the construction of Woodlawn Drive, and moves this property, of course, much more accessible for commercial use than the heart of Woodlawn, which, as has been testified to, is an older area, which we have had in Hagerstown, in Cockeysville, and Towson - but by the construction of new feeder roads, business has moved toward these roads because it has much better access."

The Board, in my opinion, properly found:

"Prior to the construction of these two roads, in 1962 at the time of the map adoption, what is now Woodlawn Drive and what was then Pierpont Lane may be clearly seen on Petitioner's Exhibit No. 3-B. It would be hard to find a better example of change in the character of roads than these surrounding Mr. Pierpont's property."

The majority indicates that because the proposed location of Woodlawn Drive appeared on the comprehensive zoning map, adopted November 15, 1962, Mr. Klaus' testimony in this regard "has no validity in the context of the instant case." I do not agree with this conclusion. The mere drawing of lines on a map indicating the location of a future proposed road cannot, in itself, forecast in any definitive way what will be the ultimate effect of that road upon the neighborhood if, when and as the rights-of-way are acquired, the road actually constructed, and then used by the general public under the conditions existing in the future. The impact upon the neighborhood and upon the individual property owner in that neighborhood occurs when the right-of-way are actually acquired, the road construction actually takes place and the road is then used by the public. It is only then that it can be determined whether or not there has been a change in the character of the neighborhood as a result of the construction

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In *Winkman*, we held that three reclassifications of land, one approximately 1000 feet, and the other two, approximately 6000 feet, from the property under consideration in that case, made subsequent to the adoption of the comprehensive zoning ordinance constitute substantial evidence sufficient to support the rezoning.

In the instant case, the record indicates that there are existing apartments immediately behind the properties across Windsor Mill Road from the subject property. Some two blocks west of the subject property on Windsor Mill Road, 22.47 acres of land were rezoned on June 26, 1964 (subsequent to the adoption of the comprehensive zoning map on November 15, 1962) from the R-6 zone to an R-A zone which allowed the construction of 350 apartment units on that land. To the north of the 22.47 acre tract, and contiguous to it, a 25.0 acre tract was rezoned from R-6 to R-A on November 23, 1965, allowing the construction of approximately 400 apartment units, which were under construction at the time of the hearing before the Board. The 25.0 acre tract is some three blocks from the subject property. The land of Walter J. Crisner & Son, Inc. on the west side of Swaymole Avenue, consisting of 13.5 acres, was rezoned from R-6 to R-A on January 20, 1964, and allows the erection of 250 apartment units. This tract is approximately 300 feet from the subject property "as the crow flies."

On September 10, 1964, 63.75 acres of land were in part for the Olyn Oak Amusement Park and on the same side of Woodlawn Drive as the subject property and about one-half mile

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and use of the road. There might be no such change or there may be a change, depending upon the facts presented to the Board at the time it considers a rezoning application. In my opinion, "change in the character of a neighborhood" is a fact, not a theory. The presence of the proposed road in the zoning map is a factor to be considered by the Board but it is by no means conclusive. All of the facts presented at the hearing are relevant to the issue, and may be considered and weighed by the Board in reaching its decision. This conclusion was implicit in our decision in *Finney v. Wells*, 241 Md. 224, 216 A.2d 530 (1966), in which we held that the first and most important factor indicating a change in conditions in the neighborhood was the construction of the Baltimore County Beltway and its effect upon the property involved in that case. Although in *Winkman*, the comprehensive zoning map, approved April 15, 1959, did not show the proposed Beltway, the Baltimore County authorities knew at the time of the approval of the map, the general location of the proposed Beltway. An even stronger case is *Johns Ferry v. Rogers' Farm Development Ass'n*, 256 Md. 100, 202 A.2d 512 (1964). In *Johns Ferry*, Stevenson Lane appeared on the comprehensive zoning map, approved April 15, 1959, but at that time it had not been settled whether or not that road would ever be constructed to connect two areas of land. At the time of the approval of the map, in 1959, Stevenson Lane was a single 12 to 16 foot road, and was, in part, a private drive. It was extended and widened in 1961 and 1962

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northwest of the subject property was rezoned from the R-10, the R-6 and the R-4 zones to the R-A zone, with a special exception for an amusement park. Prior to this rezoning, the amusement park use was a non-conforming use with the entire 63.75 acre tract available for development for the uses permitted in the R-A zone. These permitted commercial uses include those permitted in the B-1 zone (various types of stores, dry cleaning establishments, hand laundry employing not more than 5 persons, photographic studio, offices and office buildings); those permitted in the B-M zone (automobile sales rooms, billiard and pool rooms, commercial recreational enterprises, including dance halls, service garage, night clubs, pawn shops, second-hand store, theatre, including driving and warehouse - sales and storage); but also, among others, a soft drink bottling establishment, motel or motor court, greenhouse, laboratory and, if 50 feet from the residential zone boundaries at the ends of the commercially zoned frontage, building materials storage and sales yard, kennel, lumber yard, stone or monument work and tire retreading or resapping.

In addition to the zoning reclassifications mentioned, all made subsequent to the adoption of the comprehensive zoning map, there have been drastic changes, in fact, in road conditions in the neighborhood of the subject property. When the comprehensive zoning map was adopted on November 15, 1962, Pierpont Lane, which was used as an entrance to the subject property and to a portion of Mr. Pierpont's property sold by Mr. Pierpont in 1918, was a narrow private road. Introduced into evidence was a photograph

so that at the time of the hearing before the Board, it was a fully paved 40 to 44 foot bituminous concrete road with a 70 to 80 foot right-of-way. It allowed 14 feet for traffic in each direction and formed a major traffic artery between York Road and Charles Street and Bellona Avenue. The experts produced by the applicant before the Board in *Johns Ferry* testified that this change in the character of Stevenson Lane which "perhaps more than any other land use consideration" would effect the character of the immediate neighborhood of the property involved in that case. We sustained the rezoning in *Johns Ferry* and, in my opinion, the decision in that case should require us to sustain the rezoning in the present case in view of the close similarity between the situation in regard to the change in the character of the roads in the respective cases.

The majority discounts the effect of the rezoning subsequent to November 15, 1962, of substantial areas of land in the neighborhood from R-6 to R-A and the construction of apartments on part of the rezoned R-A land, quoting a dictum of the Court in *Finney v. Wells*, 241 Md. 224, 216 A.2d 530, 546 (1966), that "a mere increase in population does not prove a change in the character of the neighborhood to justify another type of zoning." It is clear, however, that an increase of population may under certain facts and with proper findings of the Board be an important factor in indicating a sufficient change in the

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neighborhood to justify a rezoning of a commercial area to care for the needs of the increased population. Indeed, this is indicated in the opinion of the Court in Reynolds immediately following the quotation mentioned, where Judge (later Chief Judge) Henderson stated, for the Court:

"It was also argued that because of the increase in population a need for additional shopping facilities was demonstrated. But there was precise testimony that shopping facilities in the neighborhood were more than adequate, and the testimony as to public need was based upon general conclusions from population figures that were not even put in evidence. The protestants argued, with some force, that the increase in shopping facilities and service stations in the area defined exceeded the increase in population. The Board made no finding of fact on this point but only a general finding that 'conditions have changed'. (230 Md. at 572, 187 A.2d at 845)

The clear indication is that if the necessary proof had been forthcoming and if the necessary finding by the Board had been made, the result would have been different. Our later decisions indicate that a substantial change in population density in a neighborhood can be an important factor in indicating a sufficient "change in conditions" to justify a Board in rezoning a property for commercial purposes to satisfy the needs of the then existing population. As we stated in Boyle v. Board of Zoning Appeals, 246 Md. 191, 204, 227 A.2d 746, 750 (1967):

"Moreover, the rezoning changes subsequent to November 1955, previously discussed, were important changes in the law and resulted in substantial changes in the character of the neighborhood even though all of the rezoning

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changes were to more intensive residential use by an increase in density from R-6 or R-10 to R-4. The substantial development of housing units and the concurrent growth in population could reasonably lead to need for additional commercial zoning in the area to supply the wants of the increased population. At least, reasonable men could conclude - as the Board concluded - that these changes in conditions in the area could justify the rezoning of the subject property to the B-1 zone. The Courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence and the issue before the Board was fairly debatable. Yonah v. Board of Zoning Appeals of Baltimore County, 242 Md. 371, 313 A.2d 89 (1967); See Minor v. Board of Zoning Appeals of Baltimore County, 241 Md. 224, 216 A.2d 530 (1966); See also Reid v. Board of Zoning Appeals of Baltimore County, 240 Md. 297, 194 A.2d 260 (1964). See also Baltimore County Board of Appeals for Baltimore County, Md.

These reclassifications for apartment house use were substantial. William B. Guy, Jr., an expert for the protestants, testified that there was zoning for an additional 1000 apartments of which about 700 had been built to the north and south of the subject property.

Another zoning change subsequent to the adoption of the comprehensive zoning map on November 15, 1962, was the reclassification of the 63 acre tract on the same side of Woodlawn Drive, the rear end of which has been occupied by the Guyton Oak Amusement Park for a number of years. It already has been indicated, this amusement park on November 15, 1962, was a non-conforming use and the entire tract was R-10, R-6 and B-1 zoning classifications. On September 10, 1964, this entire tract was rezoned to B-R (Business-Residential) and at the same time, a special exception

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was granted for amusement park use. The conversion of this commercial non-conforming use, to a conforming use was a significant change which had direct bearing on the "character of the neighborhood." The prevailing zoning theory is that non-conforming uses, which are incompatible with the general character of the neighborhood, will ultimately "wither on the vine" and disappear so that ultimately in the future the entire area will be in conformity with the generally established use in the neighborhood. Minor v. Board of Zoning Appeals, 242 Md. 198, 197, 249 A.2d 159, 165 (1969); See Minor v. Board of Zoning Appeals, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); See Minor v. Board of Zoning Appeals, 207 Md. 365, 368, 114 A.2d 644, 645 (1955); See Colata v. Jarcot, 186 Md. 652, 657, 47 A.2d 613, 615 (1946). Obviously the rezoning of the R-10 and R-6 portions of the 63 acre tract to the B-R zone is a recognition by the Board that commercial development in the neighborhood is in the public interest and the granting of the special exception for the continuation of the heretofore non-conforming amusement park (thereby making it a conforming commercial use) is entirely consistent with that concept and is not, in my opinion, compatible with the concept that the neighborhood is to remain and be developed as an R-6 zone. The permitted commercial uses in the B-R zone which have already been set forth, in part, are hardly compatible with the development of the neighborhood as a R-6 zone for single family houses.

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There seems little doubt, in my opinion, that the 63 acre tract is within the "neighborhood," although the majority states it is "reluctant" to hold that it is. As Chief Judge Hammond aptly stated, for the Court, in Rowan v. Baltimore County Board of Zoning Appeals, 251 Md. 638, 644, 248 A.2d 379, 383 (1968):

"The matter of the reaches of a neighborhood in a given case and how near a change must be to affect its character are primarily for the Board to determine."

In the present case, the Board determined that the changes mentioned above were within the reaches of the neighborhood and affected its character. It is clear to me that the Board was correct in these determinations. At least, the determinations were "fairly debatable."

The Board properly considered that the 63 acre tract was within the "neighborhood" and our prior decisions indicate that it was correct in so doing. See Myman v. Montgomery County Council, supra.

The substantial addition to the firehouse building subsequent to the adoption of the comprehensive zoning map with its new kitchen facilities and larger facilities for social functions is an additional factor the Board could properly consider in reaching its conclusion that there had been a change in the character of the neighborhood in question. Instead of a "small, old building" there is a larger modern structure which can be and is now used for "club feasts, oyster roasts and other social functions." Many of the objectionable features of the use

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of the newly constructed facilities at the firehouse did not exist when the comprehensive zoning map was adopted on November 15, 1962. "The increased noise and traffic resulting from these new activities do indeed, in fact, change the "character of the neighborhood" and give that neighborhood a commercial, rather than a residential, character."

In my opinion, a closer look at the testimony of William B. Guy, Jr., an expert who testified for the protestants, should be taken.

In the first place, Mr. Guy, who is a well qualified real estate expert, agreed with Mr. Klaus that the neighborhood (but not the particular block) had a "mixed character." He stated: "There had, admittedly, been a number of changes in the neighborhood." In essence, it was his opinion that the changes in the neighborhood justified a rezoning classification, from the existing R-6, but he was of the opinion that the rezoning should be B-1 instead of B-1. He stated in his testimony:

"I think it would be very hard to make an argument against the rezoning of this to apartments, to R-4, in view of the fact apartments were constructed about a half a block away, and there was a change, and there have been other changes."

"Q. (Mr. Barker [a member of the Board]) On a tract this size, 2.32 acres, for apartments? A. I think it could be developed in apartments. I wouldn't feel that it was bad zoning to put apartments here."

"Q. (Mr. Baldwin [a member of the Board]) Do you feel that the present R-6 zoning is incorrect? A. I don't think it was incorrect when the map was produced, but the changes

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that have been made in the neighborhood might make it incorrect now. Now, where have you seen changes? I think the street itself is a more substantial change, and the apartment building which have been erected previously. (Emphasis supplied)

On cross-examination, he stated:

"Q. (Mr. Harrison) You felt it was enough change to make the present zoning incorrect, and the only question is whether it should be zoned B-1 or should be zoned R-4, is that correct? A. Yes, sir."

Secondly, Mr. Guy stated that in his opinion there was insufficient parking at the center of Woodlawn, stating:

"I think it is self-evident the parking in the center of Woodlawn is not sufficient by modern standards."

Finally, a comparison of the photographs of October 1962, showing the rural, bucolic character of the subject property at Pierpont Lane at or about the time the comprehensive zoning map was adopted, with the photographs showing the same location today can hardly fail, in my opinion, to indicate clearly and conclusively that the present urban, high-speed character of the neighborhood represents a substantial change in the character of the neighborhood, justifying the rezoning of the subject property from the R-6 to the B-1 zone.

The Board filed a comprehensive and well-considered opinion indicating that there had been sufficient evidence of a substantial change in the neighborhood and that the application for B-1 rezoning should be granted. This decision was affirmed by the Circuit Court which also filed a comprehensive and well-

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considered opinion, reviewing our prior cases and holding that the question was at least "fairly debatable." It properly, in my opinion, affirmed the decision of the Board. I would affirm.

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BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COUNTY HOUSE
TOWSON, MARYLAND 21284

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REPORT: 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

LINWOOD WELLS
vs.
WILLIAM S. BALDWIN, CHAIRMAN,
W. GILES PARKER, and
JOHN A. SLOWIK, constituting
the COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
AND
EDWARD J. JENKINS, and
IRMA LEE JENKINS, his wife
vs.
WILLIAM S. BALDWIN,
W. GILES PARKER, and
JOHN A. SLOWIK, constituting
the COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

MEMORANDUM OPINION
AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Baltimore County, which by its Order dated September 6, 1967, granted a reclassification of the property described in this proceeding from an R-6 (Residence - 1 and 2 family) to a B-L zone, apparently to be used for a "Free Standing Super Market". The Zoning Commissioner of Baltimore County, by his Order dated June 16, 1965, denied the reclassification from an R-6 zone to a B-L zone, and a Special Exception for a Filling Station, setting forth in his opinion that the zoning map which was adopted in November 1962 "was not in error and there are no changes on the zoning map that in any way indicate that the subject property should be rezoned".

The testimony of Mr. Frederick P. Klaus, an expert realtor, having offices in Baltimore County, indicates that the neighborhood is a mixed one, with an older commercial area, and with lack of off-street parking; also homes and open land, apartment developments, a cemetery, and an amusement park. Mr. Klaus is of the opinion that there had not been sufficient commercial reclassification to keep pace with the residential changes, and that the commercial areas now in Woodlawn are not adequate. He was of the opinion that there had been sufficient changes to justify the reclassification of the subject property. Furthermore, Mr. William B. Guy, Jr., an expert realtor for the protestants, in his testimony, believed that changes might be sufficient to make R-6 zoning of this property improper now, and his only problem was whether to change it to R-A or B-L. The feasibility of R-A on 2 1/3 acres is doubtful, and economically unsound.

The Director of Planning of Baltimore County, Mr. George Gavrellis, who was a witness for the protestants, testified that people prefer to shop where they live, rather than where they work. There is a large shopping center approximately one mile from the subject property known as the Security Shopping Center, which apparently satisfies the needs of the Social Security employees, but is not contiguous to the Woodlawn residential area.

The Court is cognizant of the general proposition that there is a strong presumption of correctness of original zoning, or comprehensive rezoning, and that to sustain a

When the matter came before the County Board of Appeals on appeal, the request for a Special Exception for a Filling Station was abandoned, by permission of the Board, and the only matter before the Board was the application for reclassification from an R-6 to a B-L zone. By way of comment, the Court, after research of the Baltimore County Zoning Regulations, finds that the County Board of Appeals has the authority to permit the applicant to amend his application. However, if there was a change in the application, asking for an entirely different type of zoning, the Court questions the authority of the County Board of Appeals to do this; but in this case, the only change was the special exception for a filling station--the change in zoning still was from R-6 to B-L.

The Petitioner in the Application for Reclassification is Lafayette L. Pierpont, who is over eighty years of age, and who has occupied a fourteen room frame house on the property in question since 1914. The size of the property is approximately 2.316 acres, which is the subject of this application. The parcel of land is located on the northwesterly corner of Windsor Mill Road and Woodlawn Drive. The property is serviced by public sewer and water, and immediately available to the site. Directly to the west and northwest of the property is Maple Hill, a development of homes, some of which are contiguous to the subject property.

Woodlawn Drive is at the present time a major highway in Baltimore County, and was increased from a 48 foot width to a 70 foot right-of-way after the adoption of the

Zoning Map (map adopted November 1962). Testimony indicates that land was obtained from the Petitioner by Baltimore County for the widening of this road. Further, property was obtained from the Petitioner by Baltimore County in 1964 (after the adoption of the Map) for the widening of Windsor Mill Road, which abuts the subject property on the north, this widening being from 39 feet to 55 feet. This obviously constitutes a complete change in the character of these roads since the adoption of the Map, although the physical widening of Windsor Mill Road has not taken place as of this date. Directly to the east of the subject property, across Woodlawn Drive, is the Woodlawn Elementary School, which is completely surrounded by a high wire fence. Continuing eastwardly, and abutting the school property, are several tracts of land which were zoned B-L at the time the Map was adopted, and thereafter, many commercial enterprises sprung up in the Woodlawn Shopping District.

South of the hereinbefore referred to commercial area are additional occupied commercial properties of the Woodlawn Shopping District; i.e., on the south side of Windsor Mill Road, east of Woodlawn Drive. As a result, both sides of Windsor Mill Road, east of Woodlawn Drive, are many commercial establishments, some of which existed prior to the Map in 1962 and some since the Map of 1962. On the southeast corner of Woodlawn Drive and Windsor Mill Road is a new Baltimore County Fire Station, which was completely renovated and rebuilt in 1964. Continuing west on Windsor Mill Road, north

of Woodlawn Drive, is a building built and occupied by the C. and P. Telephone Co., which was a special exception in a residential zone. Further to the north of the subject property is the Woodlawn Cemetery, and to the north of that property is the Gwynn Oak Amusement Park.

The record indicates numerous changes in the use of the land since the adoption of the Map in November 1962. On the west side of Woodlawn Drive south of Windsor Mill Road, and across from the subject property, are the Clarke Manor Apartments, containing 220 units. North of the subject property is a large apartment house development under construction containing 400 similar units, and the reclassification was granted in 1965. Further, another apartment reclassification has been granted in 1963, approving an additional 360 units. Thus, a total of 980 apartment units have been built or are under construction, since the adoption of the zoning map in 1962.

Directing your attention to the proposed use of the subject property, i.e., "Free Standing Super Market", the proposed store will have 18,750 square feet of store space, and provision for 104 parking spaces. There is 1,000 feet of sight distance on Woodlawn Drive in both directions, and there will be no access on Windsor Mill Road. Furthermore, there is a traffic light at the intersection of Windsor Mill Road and Woodlawn Drive. Apparently, from the testimony, there is no traffic problem.

Piecemeal change therefore, there must be proof of mistake or a substantial change in the character of the neighborhood. (See Wemink v. Bd. of Zoning Appeals, 205 Md. 489; Kroen v. Board of Zoning Appeals, 209 Md. 420; Reese v. Mandel, 224 Md. 411; Johar Corp. v. Rodgers Forge, 236 Md. 106; MacDonald v. County Board, 238 Md. 549; and Miller v. Abrahams, 239 Md. 263. This general rule does not mean, however, that zoning, once established, is static and eternal. This was observed in the case of Missouri Realty, Inc. v. Ramer, 216 Md. 442, wherein Judge Prescott, speaking for the Court, at page 44, said:

"It is a principle of universal recognition that zoning, once imposed, is not static. If it could not be altered with the changing conditions that surround us in the world today, progress would be retarded, and many of the advantages, logically expected from zoning, would be lost. Restrictions on the use of property that are reasonable today may be so unreasonable under different conditions in the future as to amount to confiscation. Zoning officials, when properly authorized, have the authority to alter zone lines from time to time when there are substantial changes in conditions and such alteration has a reasonable relation to the public welfare. Offutt v. Board of Zoning Appeals, supra, 204 Md. 557."

The only question for the Court to determine is: Did the evidence before the Board make the question of whether there has been a sufficient change in the neighborhood since the original zoning to warrant the reclassification. The County Board of Appeals did not consider proof of fairly debatable. This Court is of the opinion that the evidence presented requires an affirmative answer to this question. There was certainly substantial evidence of extensive change that has taken place since the adoption of the Map, namely the development or proposed development of 980 apartment units.

The development of Woodlawn Blvd. and the proposed widening of Windsor Mill Road is a substantial change in the neighborhood, and many cases have said that construction of highways and widening of highways amount to sufficient change for reclassification. This was clearly developed in the case of Johar Corp. v. Rodgers Forge, 236 Md. 106. This case further set forth the rule by which this Court is to be governed in a decision in the instant case, and it was clearly stated on Pages 120-121:

"It is obvious that the Board could have been more specific and definite in its findings of fact; however, it is certain that the Board found that there had been change in the neighborhood and error in the original zoning sufficient to justify the reclassification (its other findings clearly meet the test of being fairly debatable, so it will be unnecessary to discuss them further). We have stated time after time that it is not the function of the courts to zone or rezone, and the courts will not substitute their judgments for that of the expertise of the zoning officials. It is only where there is no room for reasonable debate or where the record is devoid of substantial supporting facts that the courts are justified in reversing a decision of the Board, or declaring its actions arbitrary or capricious. See Montgomery County Council v. Scrimegeour, 211 Md. 307; Wemink v. Board, 205 Md. 489; and West Ridge, Inc. v. McManis, 222 Md. 448, for three of the many Maryland cases so holding. Therefore, we must apply these tests to the evidence produced before the Board in order to determine the case at bar."

It is not the province of this Court, moreover, to resolve the various conflicts in the evidence before the Board if there was, in fact, any evidence of a substantial nature supporting and justifying the Board's action. In Wetherhead v. Bd. of Comm'rs, 240 Md. 365 (decided November 18, 1965), the Court in quoting from Judge Hammond's opinion in

Board v. Oak Hill Farms, 232 Md. 274 p. 283, stated at pages 371-372 as follows:

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

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

See also the following cases: Farrar v. Halle, 241 Md. 224 (decided Feb. 2, 1966); Dill v. The Jobar Corp., 242 Md. 16 (decided March 15, 1966); Bonnie View v. Glass, 242 Md. 46 (decided March 22, 1966); Beth Tz'vah v. Blum, 242 Md. 84 (decided March 29, 1966); Board v. Farr, 242 Md. 351 (decided April 26, 1966); and Wong v. McHugh, 242 Md. 371 (decided April 28, 1966).

This Court is constrained to hold that a reasoning mind could reasonably have reached, upon a fair consideration of the entire record, the same conclusion as that of the Board, and hence its action was not arbitrary or capricious or illegal, but, on the other hand, was fairly debatable. Having determined this, the Court has fulfilled and exhausted its limited judicial function in reviewing a zoning appeal.

LINWOOD WELLS
vs.
WILLIAM S. BALDWIN, CHAIRMAN,
W. GILES PARKER and
JOHN A. SLOWIK, constituting
the COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
AND
EDWARD J. JENKINS, and
IMJ LEE JENKINS, his wife
vs.
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the COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Misc. Docket 8, fol. 245
Case No. 3836

Misc. Docket 8, fol. 243
Case No. 3832

MEMORANDUM OPINION
AND ORDER OF COURT

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The Director of Planning of Baltimore County, Mr. George Gavrellis, who was a witness for the protestants, testified that people prefer to shop where they live, rather than where they work. There is a large shopping center approximately one mile from the subject property known as the Security Shopping Center, which apparently satisfies the needs of the Social Security employees, but is not contiguous to the Woodlawn residential area.

The Court is cognizant of the general proposition that there is a strong presumption of correctness of original zoning, or comprehensive rezoning, and that to sustain a

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The Petitioner in the Application for Reclassification is Lafayette L. Pierpont, who is over eighty years of age, and who has occupied a fourteen room frame house on the property in question since 1914. The size of the property is approximately 2.316 acres, which is the subject of this application. The parcel of land is located on the northwesterly corner of Windsor Mill Road and Woodlawn Drive. The property is serviced by public sewer and water, and immediately available to the site. Directly to the west and northwest of the property is Maple Hill, a development of homes, some of which are contiguous to the subject property.

Woodlawn Drive is at the present time a major highway in Baltimore County, and was increased from a 48 foot width to a 70 foot right-of-way after the adoption of the

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Piecemeal change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood. (See Tenmink v. Bd. of Zoning Appeals, 205 Md. 469; Green v. Board of Zoning Appeals, 209 Md. 420; Reese v. Mandel, 224 Md. 121; Johar Corp. v. Rodgers Forge, 236 Md. 106; MacDonald v. County Board, 238 Md. 549; and Miller v. Abrahams, 239 Md. 263. This general rule does not mean, however, that zoning, once established, is static and eternal. This was observed in the case of Missouri Realty, Inc. v. Ramey, 216 Md. 442, wherein Judge Prescott, speaking for the Court, at page 44, said:

"It is a principle of universal recognition that zoning, once imposed, is not static. If it could not be altered with the changing conditions that surround us in the world today, progress would be retarded, and many of the advantages, logically expected from zoning, would be lost. Restrictions on the use of property that are reasonable today may be so unreasonable under different conditions in the future as to amount to confiscation. Zoning officials, when properly authorized, have the authority to alter zone lines from time to time when there are substantial changes in conditions and such alteration has a reasonable relation to the public welfare. Offutt v. Board of Zoning Appeals, supra, 204 Md. 557."

The only question for the Court to determine is: Did the evidence before the Board make the question of whether there has been a sufficient change in the neighborhood since the original zoning to warrant the reclassification. The County Board of Appeals did not consider proof of error in the Map. This Court is of the opinion that the evidence presented requires an affirmative answer to this question. There was certainly substantial evidence of extensive change that has taken place since the adoption of the Map, namely the development or proposed development of 980 apartment units.

Zoning Map (map adopted November 1962). Testimony indicates that land was obtained from the Petitioner by Baltimore County for the widening of this road. Further, property was obtained from the Petitioner by Baltimore County in 1964 (after the adoption of the Map) for the widening of Windsor Mill Road, which abuts the subject property on the north, this widening being from 30 feet to 55 feet. This obviously constitutes a complete change in the character of these roads since the adoption of the Map, although the physical widening of Windsor Mill Road has not taken place as of this date. Directly to the east of the subject property, across Woodlawn Drive, is the Woodlawn Elementary School, which is completely surrounded by a high wire fence. Continuing eastwardly, and abutting the school property, are several tracts of land which were zoned B-L at the time the Map was adopted, and thereafter, many commercial enterprises sprung up in the Woodlawn Shopping District.

South of the hereinbefore referred to commercial area are additional occupied commercial properties of the Woodlawn Shopping District; i.e., on the south side of Windsor Mill Road, east of Woodlawn Drive. As a result, both sides of Windsor Mill Road, east of Woodlawn Drive, are many commercial establishments, some of which existed prior to the Map in 1962 and some since the Map of 1962. On the southeast corner of Woodlawn Drive and Windsor Mill Road is a new Baltimore County Fire Station, which was completely renovated and rebuilt in 1964. Continuing west on Windsor Mill Road, north

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The development of Woodlawn Blvd. and the proposed widening of Windsor Mill Road is a substantial change in the neighborhood, and many cases have said that construction of highways and widening of highways amount to sufficient change for reclassification. This was clearly developed in the case of Johar Corp. v. Rodgers Forge, 236 Md. 106. This case further set forth the rule by which this Court is to be governed in a decision in the instant case, and it was clearly stated on Pages 120-121:

"It is obvious that the Board could have been more specific and definite in its findings of fact; however, it is certain that the Board found that there had been change in the neighborhood and error in the original zoning sufficient to justify the reclassification (its other findings clearly meet the test of being fairly debatable, so it will be unnecessary to discuss them further). We have stated time after time that it is not the function of the courts to zone or rezone, and the courts will not substitute their judgments for that of the expertise of the zoning officials. It is only where there is no room for reasonable debate or where the record is devoid of substantial, supporting facts that the courts are justified in reversing a decision of the Board, or declaring its actions arbitrary or capricious. See Montgomery County Council v. Scrimgeour, 211 Md. 307; Tenmink v. Board, 212 Md. 6; and West Ridge, Inc. v. McNamara, 222 Md. 448, for three of the many Maryland cases so holding. Therefore, we must apply these tests to the evidence produced before the Board in order to determine the case at bar."

It is not the province of this Court, moreover, to resolve the various conflicts in the evidence before the Board if there was, in fact, any evidence of a substantial nature supporting and justifying the Board's action. In Mathershead v. Bd. of Comm'rs, 240 Md. 365 (decided November 18, 1965), the Court in quoting from Judge Hammond's opinion in

of Woodlawn Drive, is a building built and occupied by the C. and P. Telephone Co., which was a special exception in a residential zone. Further to the north of the subject property is the Woodlawn Cemetery, and to the north of that property is the Gwynn Oak Amusement Park.

The record indicates numerous changes in the use of the land since the adoption of the Map in November 1962. On the west side of Woodlawn Drive south of Windsor Mill Road, and across from the subject property, are the Clarke Manor Apartments, containing 220 units. North of the subject property is a large apartment house development under construction containing 400 similar units, and the reclassification was granted in 1965. Further, another apartment reclassification has been granted in 1963, approving an additional 360 units. Thus, a total of 980 apartment units have been built or are under construction, since the adoption of the zoning map in 1962.

Directing your attention to the proposed use of the subject property, i.e., "Free Standing Super Market", the proposed store will have 18,750 square feet of store space, and provision for 104 parking spaces. There is 1,000 feet of sight distance on Woodlawn Drive in both directions, and there will be no access on Windsor Mill Road. Furthermore, there is a traffic light at the intersection of Windsor Mill Road and Woodlawn Drive. Apparently, from the testimony, there is no traffic problem.

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Board v. Oak Hill Farm, 232 Md. 274 P. 283, stated at pages 371-372 as follows:

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

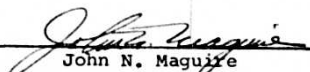
"In the cases dealing with consideration of the weight of the evidence, the matter seems to have come down to whether, all that was before the agency considered, its action was clearly erroneous, or to use the phrase which has become standard in Maryland zoning cases, not fairly debatable."

See also the following cases: Finney v. Halle, 241 Md. 224 (decided Feb. 2, 1966); Pill v. The Johar Corp., 242 Md. 16 (decided March 15, 1966); Bonnie View Club v. Glass, 242 Md. 46 (decided March 22, 1966); Beth Frissh v. Blum, 242 Md. 84 (decided March 29, 1966); Board v. Farr, 242 Md. 351 (decided April 16, 1966); and Ward v. McCann, 242 Md. 371 (decided April 28, 1966).

This Court is constrained to hold that a reasoning mind could reasonably have reached, upon a fair consideration of the entire record, the same conclusion as that of the Board, and hence its action was not arbitrary or capricious or illegal, but, on the other hand, was fairly debatable. Having determined this, the Court has fulfilled and exhausted its limited judicial function in reviewing a zoning appeal.

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For the reasons stated and in conformity with the foregoing Opinion, it is this 22nd day of May, 1968, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals of Baltimore County dated September 6, 1967, be and the same is hereby affirmed.


John N. Maguire
JUDGE

copies: Marvin Singer, Esq.
C. Victor McFarland, Esq.
W. Lee Harrison, Esq.
Hon. R. Bruce Alderman, County Solicitor
Board of Appeals for Baltimore County
Hon. John G. Rose, Zoning Commissioner
Misc. File 3836
Misc. File 3832

LEGEND

R
A
G

1-9

R
A
A

10-11

A-ANCHOR BASE STEEL STRAIN POLE
B-CONTROLLER
C-MAGNETIC DETECTOR

SEQUENCE

PHASE	A	B	C	FLASH
1	G	A	R	R
2	A	R	R	R
3	A	R	R	R
4	A	R	R	R
5	A	R	R	R
6	A	R	R	R
7	A	R	R	R
8	A	R	R	R
9	A	R	R	R
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92	A	R	R	R
93	A	R	R	R
94	A	R	R	R
95	A	R	R	R
96	A	R	R	R
97	A	R	R	R
98	A	R	R	R
99	A	R	R	R
100	A	R	R	R

NOTE: AFTER FIRE PHASE MOTOR PHASE, CONTROLLER WILL RETURN TO PHASE 1A.

CLARKE

ROAD

MAC DRIVE

AVENUE

PARKING AREA

FIRE HOUSE

BILL OF MATERIALS

DESCRIPTION QUANTITY

TWO PHASE FULL AUTOMATIC ELECTRONIC CONTROLLER WITH
FIRE PRE-EMPTOR PHASE, COMPLETE WITH FLEASER, R.I.F.
SIGNAL SWITCH, MANUAL CONTROL, CONVENIENCE OUTLET,
MOUNTED IN DOOR IN DOOR OR INST. MOUNTED FEDERAL
YELLOW.
ONE WAY THREE SECTION SPAN WIRE MOUNTED SIGNAL
ONE WAY THREE SECTION POST MOUNTED SIGNAL
MAGNETIC VEHICLE DETECTOR
STEEL POST 4"
ANCHOR BASE STEEL STRAIN POLE A.D.E. 11" X 11"
MISC. CABLE, SPAN WIRE, ANCHOR BOLTS, HANGERS, CABLE RINGS
GROUND RODS, METER ROD, ETC.
WIND POLE

10
14
14

MILL
WINDSOR

± 65-355RX

NOTE: IN TWO PHASE AUTOMATIC SIGNAL TO
BE USED IN PRELIMINARY
WATER WORK.

REVISION	BY	DATE
1		
2		
3		
4		
5		
6		

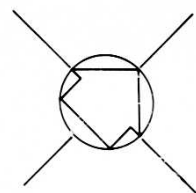
BALTIMORE COUNTY MARYLAND
TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC SAFETY

SIGNAL PLAN
CLARKE AVE & WINDSOR MILL RD

SCALE 1"=50'
DRAWN BY E. J. JONES DATE 11/1/66 S-93
CHECKED BY DATE
APPROVED DATE

MICROFILMED

MAPLE HILL
GLD 21-40



✓
DRAFTING ROOMS
10/10/10

MAP
2-B
WESTERN
AREA
NW-3-F
~~BL-*~~

1. TOTAL ACCEGE OF TRACT EQUALS 23168 ACRES
2. EXISTING ZONING OF TRACT "R-2"
3. EXISTING USE OF TRACT "RESIDENTIAL"
4. PROPOSED ZONING OF TRACT "DL" WITH A "SPECIAL EXCEPTION" PER IN 0.5772 ACRE PARCEL FOR SERVICE STATION USE.
5. PROPOSED USE OF TRACT "RETAIL USE" AND "SERVICE STATION"
6. TOTAL RETAIL FLOOR AREA EQUALS 18,750 SQ. FT.
7. REQUIRED PARKING (20:20) EQUALS 94 CARS
8. PROPOSED PARKING (20:20) EQUALS 104 CARS
9. EXISTING BUILDINGS ON TRACT TO BE REMOVED.

MICROFILMED

MATZ, CHILDS & ASSOCIATES
1000 CROMWELL BRIDGE RD.
BALTIMORE, MARYLAND 21204

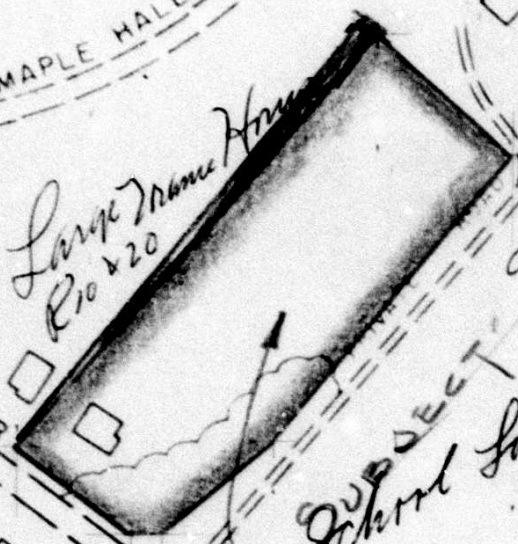
WOODLAWN
CEMETERY

#65-355RX

MAP
2-B
WESTERN
AREA
NW-3F

BL

MAPLE HALL CT



Large Home
R10 & 20

SUSPECT SITE
School Lot.

WINDSOR

WALNUT

MILL

GWYN

OAK

126

E PARK

MICROFILMED