# PETITION FOR ZONING RE-CLASSIFICATION # 55-355 FX 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 Majo County and which is described in the description and plat attached hereto and made a part between 2.13 hereby petition (1) that the zoning status of the herein described property be re-class zone to an AREA NW-3-F B-L zone; for the following reasons: BL-X error in original zoning and genuine change in conditions 6/7/05

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 Regulation Property is to be posted and advertused as prescribed by coming negatiations.

Low we, agree to pay experies 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 roning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore

Address 607 Loyola Federal Building

TOWSON 4, Md. 823-1200
ORDERED By The Zoning Commissioner of Baltimore County, this. 20th day ..... 196. 5, that the subject matter of this petition be advertised, as ofApril

required by the Zoning Law of Baltimore County, is two newspapers of general circulation throughout Baltimore County, that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 100, County Office Building in Towson, Baltimore 1945 at 11100o'clock County, on the 9th 1911 are PH deep of June

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LeFayette L. Pierpengal Owner idre : Sindser Mill Read & Clarke Avanue Raltimore, ary and

Protestant's Attorne

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Buch

Date. April 26, 1965

Mr. James E. Dyor

Eugene J. Clifford

SUBJECT: Item 7 - ZAC - April 14, 1965 - Northwest corner of Windsor Mill Road and Woodlawn Avenue

INTER-OFFICE CORR

Saltimore County. Marplan

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 fully-actuated signal with aspectic detectors in the pavenue. If a service station is constructed the driver leads the station will be at the mercy of other vehiclar account to actuate the signal. See enclosed or the signal seements of the Articles of the Articles of the Articles of the Signal Seement of the Signal Seement of the Signal Seement Potential.

EJC:CRM:nr

NATZ CHILDS & ASSOCIATES, INC. Engarrie - Sur 1994 - Sur Planers 1-20 Central Bedge Ed. - Towns, MJ 21200

DESCRIPTION

2. 3168 ACRE PARCEL, WINDSOR MILL ROAD AND CLARKE AVENUE, SECOND ELECTION DISTRICT.

BALTIMORE COUNTY, MARYLAND.

Present Zoning - R-c

WESTER AREA Beginning for the same at the westernmost end of the gusset line th Beginning for the same at the westernmost end of the gusser line to the Nav. 3 F connects the northwest side of Clarke Avenue, 70 feet wide, and the northwest 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 southwest side of the cemetery S.48° 36' 59" E -205, 45 feet, thence leaving said cornetery S. 40° 02° 35" W - 209, 01 feet to the said northwest side of Clarke Avenue thence binding thereon the two following courses and d stances (1) southwesterly by a time 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 3,52° 27' 35" W - 76,33 fee.) 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, 3108 Acres of land.

. O. #62187-S

2/15/65

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SATA CHILDS & ASSOCIATES, INC. tops Connect Bedge Rd - Towns, Mil 21201

DESCRIPTION

0.5772 ACRE PARCEL, WINDSOR MILL ROAD AND CLARKE AVENUE, SECOND ELECTION DISTRICT,

BALTIMORE COUNTY, MARYLAND.

Present Zoning R-t Proposed Zoning BL with Special Exception

MAP Wester ARIA NW-3F BL-X

Beginning for the same at the westernmost end of the gusset time that connects the northwest side of Clarke Avenue, 70 feet wide, as d 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 - 150, 35 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. #62187-A 2/15/65

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HALTIFORE COUNTY OFFICE OF PLANNING AND ZONING

COUNTY OFFICE BUILDING

TOWSON L, MARGIAND

Reclassification from N=6 some to a business local sons, and SURJECT, Special heavytime for a Fill-ing Station for Lafayette L. Pierport, located on the Hortheast corner of Windows Will Ndo and Woodlawn ave. Ind

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

The following communits are not intended to indicate the appropriateness of the moning action requested, but to assure that all parties are made source of parties are made source of problems that any have a bearing on this case. The interest made to the oppy bractor of the Orifice of Flanning and Loning will reduct recommendations on the supporting the requested souning 10 days before the Loning Contisionarie's bearing.

OFFICE OF FLANTION AND LONDER: The proposed development plan does not provide an off-sivest commettion or service drive between the gaseline station and the proposed retail stores. This means that if the soring were pranted, that whichies leave the retail store area, and desiring service at the gaseline station, would be required to use itselfam arreas and would come softitional traffic congration in the area.

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

FRENU OF ENGINEERING:
DELITIONS WHERE - Existing 12° in Mindsor Mill Rd.) Adequacy of existing rater and severe
DELITIONS Where - Existing 12° in Mindsor Mill Rd.) engineering by developer or his
Encels Woodlawn Drive is an existing improved road; Mindsor Mill Rad to be a minimum
80° curb and cutter street.
Storm Drain - Barra are existing drains in Woodlamn Drive and Mindsor Mill Rd. However,
these drains may not be deducate to serve conserveind development.

The following numbers had no comment to offers House of Education History Department Health Papartment State Roads Commission

Yours very truly,

James B. Dyer hief of Permit and Petition Processing

LARRY L LOCKHART



Petition for Reclassification from A-5 Come to S-1 Come and Special Exception for Filling Station-MAY for Winisor Mill

Tear Mr. Rose:

These or appearance as counsel for it. Idward J. Jenkine, 2015 Maple Will Stort, Faithform T. Maryland in the above entitled matter.

Twee tente cours.

"": "r. Edward ". Tenkins put Tamle "ill Court "altiture ", "aryland

EDMARD J. JENKINS and IMA LEE JENKINS, his wife 2215 Maple Hill Court Baltimore County, Maryland 21207 IN THE CIRCUIT COURT BALTIMUME COUNTY WILLIAM S. BALDWIN, W. GILES ARKER and JOHN A. SLOWIK, Toning Case No. 65-355-RX

ORDER OF APPEAL

Please enter an Appeal on behalf of Edward J. Jenkins and Ima lee Jenkins from the decision of the County Board of Appeals of Baltimore County, Case To. 65-355-MK rendered on September 6, 1967 in the case of the Petition for Reclassification filed by Lafagette L. Pierpont.

Tarr I. Tockhart (660 Security Slvd Raltimore, Waryland 21207 946-4676 Atternays for Appellant

I hereby certify that on this \_\_\_\_\_ day of uctuber, 1967, a copy of the foregoing Order for Appeal was served upon the county Hoard of Appeals of Halffaora County.

Attorney for Ippellant

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

May 26, 1965 TO. Mr. John G. Rose, Zoning Commissioner Date.....

FROM. ... George E. Gavrelis, Director of Planning

SURJECT, Petition, No., 65-355-8X., 18-6 to 8.L. Zone and Special Except on for Filling Snation. Northwest corner of Windsor Mill Road and Woodlawn Avenue. Being the property of Lafeye'te L. Pierpont."

2nd District

Wednesday, June 9, 1965 HEARING:

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 N stem Planning Area was based on careful, reciliatic evaluations of greatest and projected growth patterns. Ample areas in convenient excellent were set aside for present and further commercial development of commercial expansion. Less that at black every fixed better property is a neighborhood shapping content by a beautiful as neighborhood shapping content has been established at Security and content of the security and conten

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

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

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(11:00 A.M.)

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

as not to substitute their judgments for that of the spency and not to choose between equally permissible inferences or make independent determinations of fact, because to do so would be exercising a nonjudicial role. Eather, they have attempted to decide whether a ressoning mind could reasonably have resched the result the spency reached upon a fair consideration of the fact picture paired by the entire record.

fair consideration or the rate pattern by the entire record.

"in the cases derium with consideration of the weight of the widence, the matter seems to have created on to whether, all that was before the space considered, the weight of the weight of the seems of the parameters which has become standard in Maryland rooff cases, not fairly debatable".

See also the following cases: Finney v. Halls, 241
Md. 224 (decided Feb. 2, 1966); Dill v. The John Corps.

242 Md. 16 (decided March 15, 1966); Ronnis View Club y. Glass.

242 Md. 46 (decided March 22, 1966); Reth Triloh v. Riws.

242 Md. 84 (decided March 29, 1966); Rosnd v. Fall.

242 Md. 351 (decided April 26,1966); and Yoosl v. McCosh.

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 soning appeal.

242 Md. 371 (decided April 28,1966).

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JAMES D. NOLAN
LAW OFFICES
TOWNON ALMANYLAND

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. Piespont for reclassification from R-6 to B L, with special exception of a portion of the property for filling station.

Very truly yours

James D. Nolan

JDN:ebe

CC: Francis X. Gallagher, Esq.

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( 65-355-X

CERTIFICATE OF POSTUME
MINIS DEPARTMENT OF BALTIMORE COUNTY
Tomas, Marriad

For the ressons 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. Maguate

copies: Marvin Singer, Esq.
C. Victor McFarland, Esq.
W. Lee Barrison, Esq.
Hon. R. Bruce Alderman, County Solicitor
Bearl of Appeals for Baltimore County
Hon., John G. Rose, Toning Commissioner
Micc. File 3832

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05-335X

CERTIFICATE OF POSTURE IG DEPARTMENT OF BALTIMORE COUNTY

District 2"3 Posted for APPEAL	Date of Posting July 1741.764
Posted for Secretary	1 <del>*</del>
Petitioner 2447ettt	(E)(C
Location of property: NW. Lete. WAN dee	v. Mill. Rel. 4. Nordann M. L.
Loration of Signac N.W. Lev. W. Landre	i mill Rd & Woodlawn ave.
parameter of ages.	,
Remarks:	( -: 191 -
Posted by Signature	Date of return why 72 1965
1 21	m
J.	MICROFILMED

ti, has Harrison, Car. 667 Loyala Federal Building Tungen, Nd. 21204 April 29, 1965

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

our petition has been received and accepted for filing this

1445 day of April

- HEREN 1965

Owner Name: Lafayette L. Plerpent

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JOHN G. ROSE

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The Stating Commissioner of Salteners County, by politority of the Sading Art and Separateurs of Sal-Santra County, will bead a politi-

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CERTIFICATE OF PUBLICATION

THE JEFFERSONIAN.

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65-355-RX Mill Road &

Vindson Cf L. Pierp

ning File 7 cor. Wi District syette L. W. LEE HARRISON

W. LEE HARRISON

SO LOYOLA FEDERAL BUILDING

WENT FERN TIVANIA AVENUE

TOWNON, MANUAND SINGL

June 21, 1965



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Mr. John G. Rose Zoning Commissioner County Office Building Towson. Maryland 2:204

Re: Petition for Reclassification from R-6 Zone to B-1. Zone and Special Exception for Filing Station - N W corner Windsor Mill Road and Woodiswn Avenue 2nd District - Lafayette L. Pierpont, Petitioner - No. 55-355-RN

Dear Mr. Ros

Please note an appeal to the County Board of Appeals from your Order and Decision dated June 16, 1955 denying the reclassification and special exception in connection with the above captioned matter on behalf of the Petitioner, Lafayette L. P'erpont.

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

Very truly yours

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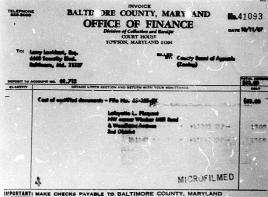
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THE COURT WEL

TELEPHONE
BALTIT PRE COUNTY, MARY AND
OFFICE OF FINANCE
Detains of Collections of Resigns
TOWSON, MARYLAND 212.4

JO: March 1. Street, Eq.
TOWSON, MARYLAND 212.4

MILITARY TO ADMINISTRATION OF THE BILL WITH YOUR MENTITARY AND AMARYLAND PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR RESITTARY.



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

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RE: PETITION FOR RECLASSIFICATION from R-6 Zone to B-L Zone, and SPECIAL EXCEPTION for a SPECIAL EACEMENT OF THE SPECIAL PACE PLANT O

REFORE COUNTY BOARD OF APPEAL OF No. 65-355-R

### . . . . . . OPINION

This case arises from an application for rezoning from an R-6 residential classification to B-L (Business Local), and for a special exception to use part of the property for a gasoline filling station. The applicant, Lafayette ! . Pierpont, who is over eighty years of age, has occupied the fourteen room frame house on this beautifully landscaped lot of approximately two and one-third acres since 1914. It is located on the northeasterly corner of Window Mill Road and what was formerly a narrow private road known as Pierpont Lane, and subsequently it appears on the zoning map as Clarke Avenue and is now designated as Woodlawn Drive. At the time of the adoption of the zoning map in November of 1962 the tract was zoned R-6 and has remained so until the present application It is presently planned by the contract purchaser to construct one individual free standing super market on the property, subject, of course, to rezoning to the Business Local classification

Woodlawn Drive is at the present time a major highway in Baltimora County and runs all the way from Johnnycake Road to its junction with Viwynn 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 i'. 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 39 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 1 1/24

No. 65-355-RX - Lafayette L. Pierpont - 5

in the past been considered a natural boundary for zoning, and in fact it runs right through the middle of the Clarke Manor Apartments, which are on both sides of the street, and almost all of the zoning changes in the area have been north and west of Clarke Avenue rather than near the location of the present B-L zone, and that most of the R-6 land in the area has been pretty thoroughly developed. The photographs - Petitioner's Exhibits Nos. 3-A to H - very graphically illustrate what the area was like in 1962 as compared with the 1966 photographs represented by Patitioner's ExhibitsNos. 2-A to G and Protestants' Exhibits Nos. A-I. 2 and 3.

The protestants' case consisted of the testimony of a number of resident of the neighborhood who seem fearful of traffic congestion and were opposed to the granting of any special exception for a gasoline service station. Mrs. Florence Gardner, of the Woodlawn Gaiden Club, stated that her group felt that any change in Mr. Pierpont's property would spoil the beauty of the neighborhood. Incidentally, the Woodlawn Garden Club has received several awards for its efforts to beautify this vicinity, and the Board would agree with her as to the effect of <u>any</u> development on Mr. Pierpont's property. She herself admitted, on cross-examination, that if the property were stripped and eight semi-detached homes erected, the beauty would be destroyed just the same, which development could take place with no change in zoning. In passing, the Board might state that nerhaps the developer of this property could really make a name for himself by constructing his retail facility without destraying all of the large tree; and shrubbery on the property, as is now being done in Baltimore County by a number of forward looking apartment developers and I am sure he could count upon the cooperation of the Woodlawn Garden Club in their praiseworthy endeavors to maintain as least some part of the natural beauty of privately owned property in the face of inevitable development for more intensive use, which, of course, in Baltimore County is not limited to the Woodlawn area

There was one expert realtor who testified for the protestants, Mr. William b. 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

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No. 65-355-RX - Lafayette L. Pierpont - 2 -

On the apposite side of Woodlawn Drive is prosenty used by the Woodlawn Elementary School for a playground, which playground is separated from the road by a high wire fence. The Board of Education's property is roughly L-shaped, and next to it going easterly is a tract of land which was zoned B-L at the time of the map adoption, and which recognized the existing uses in 1962 for stores and other commercial Road there is also some 3-L land occupied by stores, and it is to be noted that all of these commercial uses in this area are without adequate parking space by modern standards and inadequate to properly serve the community. On the scutin side of Windsor Mill Road east of Woodlawn Drive there are a number of uses, for example, an undertaking establishmen which in effect makes both sides of Windsor Mill Road commercial all the way from the school property to Gwynn Oak Avenue, a distance of about one long block. On the southeasterly corner there is a large and modern fire house which was rebuilt to its preser size and condition in 1964, and which according to testimony in the case has an extremely loud siren which presents considerable difficulties and annoyance to the neighbors, and particularly to Mr. Pierpont, who lives directly across from it. On the south side of Windsor Aill Road going west there is a large building used and occupied by the Telephon Company for commercial purposes, as a special exception in a residential zone, which to been recently constructed. The fire house mentioned above also is the subject of a special exception in a residential zone, and it may be seen in Petitioner's Exhibit No. 2-8

Back of Mr. Pierpont's property there is a large tract of land occupied b. Woodlawn Cemetery, and beyond that is the property of Gwynn Ook Amusement Par which was the subject of a zoning change in 1964 from a melange of R-10, R-6 and 8-L to a B-R zone, with a special exception for an amusement park, which is located north of Gwynn Oak Avenue east of its intersection with Woodlawn Drive

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 Manar Apartments

No. 65-355-RX - Lafayette L. Pierpont - 6 -

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the changes might be sufficient to make R-6 zoning improper now, he would suggest a change to R-A zoning rather than B-L for this piece of land. On cross-examination, however, it was brought out that the 2-1/3 acres would only be big enough for 35 to 37 apartment units, which would probably not be economically feasible and which even he himself would not generally want to finance. He did feel that Woodlawn Drive should be a natural boundary.

Mr. Bernard Willemain, an expert city planner, stated that he had studied the property and thought that the change should not be granted because there was no mistake in the original zoning. He stated that he felt that the proximity of the cemetery and the school playground were no detriment to the Pierpont property and vice versa. However, on cross-examination it was brought out that he testified in the Walke Land Company case referred to above as a change from R-6 to R-A occurring since the adoption of the map, that R-6 homes would be difficult to sell next to a cemetery, and that therefore the Walker property should have been rezoned for apartments

Mr. George E. Gavrelis, the Director of the Department of Planning and Zoning for Baltimore County, testified that he had previously made comments (two or three years ago) which were now "dated", although he admitted there have been many changes in zoning and in land use since the map adoption. He felt that granting the present application would further "dilute" the economic use of the old Woodlawn Shapping Center, and further admitted that there should be some kind of a buffer between the fire station and the other R-6 arear, but also that the subject property is much closer to the increased population density than the Security Boulevard Shopping Center or the old Wood lawn area, which was and is deficient in parking facilities. The Board might agree with his opinion that there was no error in the original zoning, but is definitely of the opinion that there have been more than sufficient changes in the area to warrant the particular

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

No. 65-355-RX - Lafayette L. Pierpont - 3 -

have been built containing 220 family units. North of the subject properly there is an area known as the Walker Land Company property, upon which apartment houses are now under construction, containing 400 family units, and upon which the zoning classification was granted in 1965. There is another piece of apartment land now in the preliminary stages of development for which 360 units have been approved, and which was the subject of a zoning reclassification granted in 1963. This amounts to a total of 980 apartment units built or under construction on these three areas alone, all of which have occurred since the adoption of the zoning map in 1962. 
There are other zoning changes not quite so close to the subject property which appear in evidence, all of which merely point up the vast changes in land use and population growth in this immediate vicinity since the adoption of the map in 1962.

As stated by Mr. Pierpont in his 'estimony - "If the inhabitants of Woodlawn Cemetery were raised, they would not recognize the place".

The testimony of an expert witness, Mr. Alfred Robinson, a qualified sanitary and planning engineer of Matz, Childs & Associates, was to the effect that there was no problem involving sewer, water and other sanitary provisions in connection with the subject property, which was undisputed, and that traffic problems would not represent any particular hazard in view of the widening and improving of the two roads contiguous to the property; that the sight distance for traffic was in excess of 1,000 feet on Woodlaws Drive; and that under the plat plans for development there would be no ver cular access to Windsor Mill Road. There are adequate traffic light controls at the intersection, with special provisions to take care of emergency traffic coming from the fire house.

Mr. Alvin Snyder, the contract purchaser, who proposes to sevelop 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 vas 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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No. 65-355-RX - Lafayette L. Pierpont - 4 -

the value of his property one way or another.

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 old 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 G, 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 Baltway, 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 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 adjoin-He further expressed the opinion that cry 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 siren, etc., but that he did not believe that the presen 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 8-M zone on Security Boulevard, wnich is a considerable distance away. He also pointed out that Woodlawn Drive has not

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No. 65-355-RX - Lafayette L. Pierpont - 7 -

absence of any testimony to support the application for a special exception for a gasoline station, the application for such will be denied.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 6th day of September, 1967, by the County Board of Appeals ORDERED, that the reclassification petitioned for be and the same is hereby GRANTED, subject to site plan approval by the Department of Planning and Zoning and the Bureau of Public Services; and it is FURTHER ORDERED, that the special exception petitioned for be and the same is hereby DENIED.

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

> COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

William S. Baldwin, Chairma W Cilar Parlan

John A. Slowik

BALT YORE COUNTY, MAP LAND 30594 OFFICE OF FINANCE PART - Bettrac Courts Mil - Office 478 > 1465 32+6 . 30594 TIP-MICROFILMED IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4.
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE. 30667

BALT IORE COUNTY, MA' LAND OFFICE OF FINANCE

FAIR - Ballions Concre Sed -- OS 6-10% 6 9 8 1 . 30667 RP-MICROFILMED

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

Sentember Term. 1968

ZONING FILE #65-355-RX

LINWOOD WELLS

LAFAYETTE L. PIERPONE

Hammond, C.J. Marbury Barnes McWilliams Finan Singley,

37.

Dissenting Opinion by Barnes, J.

Filed: May 27, 1969

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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-L (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 Kirkman 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:

mion of the trial court:

""The "substantial evidence" test has been further defined and refined in later cases, or include a refined and substantial evidence" is held to be "more than a scintilla" and such evidence "as a reasonable mind might accept as adequate to support a convict of the substantial evidence" is held to be "more transition of the substantial evidence" is a reasonable mind might accept as adequate to support a convert of the fact funding process often is the drewing support, in Court said, inter said, "The near of the fact finding process often is the drewing of the fact finding process often is the drewing of the fact finding process often is the drewing of the fact finding process often is the drewing of the fact finding process often is the drewing of the fact finding process often is the drewing of the fact finding process often is the drewing of the fact finding process often is the drewing of the fact finding process of the fact findin finding process of the fact finding process of the fact finding

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In Kirkman, 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 spartments 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 360 spartment units on that land. To the north of the 22.47 acre tract, and contiguous to it, a 26.0 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 25.6 acre tract is some three blocks from the subject property. The land of Walter J. Crismer & Son, Inc. on the west side of Swynndale Avenue, consisting of 18.5 acres, was resoned from R-6 to R-A on January 20, 1964, and allows the erection of 296 apartment units. This truct is approximately 3000 feet from the subject property "as the crow files !

On September 10, 1964, 63.75 acres of land used in part for the Gwynn Oak Amusement Bank and on the care ofde of Woodland Drive as the subject property and about one-half mile

northwest of the subject property was rezoned from the R-10, the R-6 an and the 3-L zones to the B-R rone, with a special exception for an anuscreant park. Prior to this resoning, the assessment park use eiter the reasning it became a conforming use was a non-conforming used with the entire 63.75 acre tract available for divelopment for the uses permitted in the B-R zone. These permitted commercial uses include those permitted in a B-L zone (various types of stores, dry cleaning establishments, hand laundry employing not more than 5 pursons, photographic studio, offices and office buildings); those permitted in the B-M zone (automobile tales rooms, billiard and pool rooms, commercial recreational enterprises, including dunce halls, service garage, night clubs, tewn shops, second-hand store, theatre, including drive-in 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 recapping.

In addition to the zoning reclassifications mentioned. all made subsequent to the adoption of the comprehensive soning 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

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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 scning 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

Mr. Klaus was of the opinion that:

\*\* A such was to the openion that's paperty is that heedland Drive has neved the center of heedland Drive has neved the center of heedland in a northerly direction. It is a very wide street, as has been teatified by the engineer, and it connects into large complores of industry, and the Social Security operation, and by the construction of a country operation, and by the construction of setuply moved the traffic price in the center of the center

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

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"+ \* \* the whole pattern of movement has changed "\* \* \* the whole pattern of movement has cramped by the construction of Moodlawn Drive, and maked this property, of course, much more accessible for commercial used than the heart of Woodlawn, which, as has been testified to, is an older armon, which we have had in Reinterstoken, in Cockeypatia, and Towach - but by the countraction of new location reads, business has moved toward these reads berause it has much better access

The Board, in my opinion, properly found:

"Prior to the construction of these two roads, Prict to the constructed the man adoption. Let in 1960 at the time of the man adoption, what is now Woodland over and what was then what is now Woodland over and what was then possible No. 3-H. It would be hard to find a best example of change in the character of roads than those surrounding Mr. Plerpont's property.

The majority indicates that because the proposed location of Woodlawn Drive appeared on the comprehensive zoning map, adopted Nevember 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 read actually constructed, and then used by the general public under the conditions existing in the future. The inpact upon the neighborhood and upon the individual property owner in that neighborhood occurs when the rights-of-key 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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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 ut 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 Jecision. This conclusion was implicit in our decision in Finney v. Helle, 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 <u>construction</u> of the Beltimore County Beltway and its effect upon the property involved in that case. Although in Finney, the comprehensive moning map, approved April 15, 1959, did not show the proposed Beltway, the Baltimora County authorities knew at the time of the approval of the man, the general location of the proposed Beltway. An even stronger case is Johar Corp. v. Regers! Force Community Ass'n, 236 Md. 106, 202 A.2d 612 (1964). In Seban, Stevenson lane appeared on the comprehensive coming map, appreved April 15, 1955, but at that time it had not been settled tenthe? of new that read weald even be extended to remeet New York had atta policie decime, in the time to the opposite of the map, in 1955, Stevenson Lane was a small 12 to 15 feet read, and was, in part, a private drive. It was extended and wider in 1961 and 1962

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so that at the case of the hearing before the Board, it was a fully payed +2 to -- foot bituminous concrete road with a 70 to 80 feet right-of- by it allowed 14 feet for traffic in each direction and learns a major traffic artery between York Road and Charles states and Bellona Avenue. The experts produced by the applicant before the Board in Johan testified that this change in the character of Stevenson Lane which "perhaps more than any class land use consideration" would effect the character of the installed neighborhood of the property involved in that case. We executived the resoning in Johan and, in my opinion, the division in that case should require us to sustain the resenting in the present case in view of the close similarity between the situation in regard to the change in the character of the route in the respective cases.

The majority discounts the effect of the rezoning subcommunity November 15, 1962, of substantial areas of land in ... neighborhood From R-6 to R-A and the construction of spart-...... on part of the resoned R-A land, quoting a dictum of the Court in County Cormirs of Jame Spundel County V. Fairwinds Beach Club, Inc., 250 Md. 569, 572, 187 A.24 845, 846 (1963), that "a more increase in population does not prove a change in the sharacter of the neighborhood to justify another type of coning." 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 resenting of a commorcial area to care for the needs of the increased population. Indeed, this is indicated in the opinion of the Court in <u>Pairwinds</u> immediately following the quotation mentioned, where Judge (later Chief Judge) Renderson stated, for the Court:

"It was also argued that because of the increase in population a mood for additional shopping facilities was demonstrated. But there was precise testiment what shopping facilities in the neighborhood were more than adequate, and the restimenty as to public need was based upon general county of the production of the restimenty as to public need was based upon general county of the restiment acquest, with some force, that the increase in shopping facilities and sorvice stations in the area defined exceeded the increase in population. The Board made no finding of face or this peach but only a good at 15 and 172, 187 a. 26 at 846.

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 reaching a property for commercial purposes to satisfy the needs of the then extering population. As we stated in Boaley v. Respital for Consumptives, 246 Mt. 197, 204, 227 A.20 746, 750 (1967):

"No.wover, the rezoning changes subsequent to November 1655, 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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intigos were to move intensive residential use by an increase in density from he of male to see it in the substantial development of bounts units and the concurrent growth in population could reasonably lead to need for additional commercial rening in the area to supply the wants of the increased population. At least, reaconable some sould exclude - as the board in the area to supply the wants of the increased population. At least, reaconable some sould exclude - as the board in the area could justify the resoning of the subject property to the B-L zene. The Gourts may not substitute their judgment for that of the Board when the board's decision in supported by substantial evidence and the insue before the SEA MI. 371, 204 At 38 (1960). East Finory V. Halle, 281 Mi. 284, 210 At 28 53 (1960); Supple V. Board of Zouling Absoule of Baltisore Country.

Those reelassifications for spartment house use were substantial. William B. Guy, Tr., an expert for the protestants, testified that there was soning for an additional 1000 spartments of which about 700 had been built to the north and south of the subject property.

Another roming change subsequent to the adoption of the comprehensive coming map on November 15, 1962, was the reclassification of the 63 acre tract on the same side of Woodlewn Drive, the near end of which has been occupied by the Osyan Cak Amisement Park for a number of yours. As already has been indicated, this amisement park on November 15, 1962, was a non-conforming use and the entire tract has R-10, R-6 and B-L tening classifications. Ch. Leptember 10, 1964, this entire tract was resoned to B-R (Business-Readside) and at the same time, a special exception

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was granted for amusement park use. The conversion of this conmercial non-conforming use, to a conforming use was a significant change which had direct bearing on the "character of the neighborhood." The prevailing soming 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. Shifflett, 252 Md. 158, 167, 249 A.2d 159, 165 (1969); Stieff v. Collins, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); Schiff v. Board c. Zoning Appeals, 207 Md. 365, 368, 114 ...26 644, 545 (1955); Colati v. Jircut, 186 Md. 652, 657, 47 A.2d 613, 615 (1946). Obviously the rezoning of the R-10 and R-6 portions of the 63 Lere 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 therefofore 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

for single family houses

compatible with the development of the neighborhood as a R-6 zone

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There seems little doubt, in my opinion, that the 63 sere tract is within the "neighborhood," although the majority states it is "reluctant" to hold that it is. As Chief Judge Harmond aptly stated, for the Court, in Gouener Callere v. DeWolfe, 251 Md. 638, C44, 248 A.2d 379, 383 (1560):

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

In the present car, the No \*\* tetermined that the changes mentioned above were within the reaches of the neighborhood and affected its character. It is their to be that the brand was correct in these determinations. At least, the determinations were "fairly debrable."

The Board properly considered that the 63 cere tract was within the "neighborhood" and our prior decisions indicate that it was correct in so doing. See <u>Wirkman v. Nontromery County</u> Council, supre

The substantial addition to the firehouse building subsequent to the adoption of the comprehensive sening map with its new hitchen facilities and larger facilities for social functions is an additional factor the Board could properly consider in recohing its conclusion that there had been a change in the churacter 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 "cush feasts, oyster reasts 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 moning map was adopted on November 13, 1962. The increased noise and treffic resulting from these new activities do indeed, in feet, 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 export, <u>acroed</u> with Mr. Klaus that the <u>neighborhood</u> (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 resoning classification, from the existing R-G, but he was of the opinion that the reconing should be R-A instead of B-L. He stated in his testimony:

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

on a tract this size, 2.32 cores, for spartments? A. I think it could be developed in apartments. I wouldn't real that it was bad zoning to put agartments here.

"Q. (Mr. Baldwin [a member of the Board]) Do you feel that the present R-6 moning 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 maintherhood mirest table 15 incorract new year. There have been taken oranges. The property of the value of semittedly, and the operations; also which have been cited proviously. (Emphasis supplied)

On cross-examination, he stated:

"Q. (Mr. Harrison) You felt it was enough change to make the present souling incorrect, and the only question is whether it should be somed H-L or should be somed R-L, it 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."

Pinally, a comparison of the photographs of Cotober 1908, showing the tural, bucolic character of the subject property of Piorport Lane at or about the time the comprehensive zoning map has adopted, with the photographs showing the same location today and markly fail, in my opinion, to indicate clearly and concludivity that the present urban, high-speed character of the noighbornood, represents a substantial change in the character of the neighbornood, faillying the resenting of the subject property from the Ref. to the Pt. 1819.

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

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. BALTIMORE COUNTY, MARTILAND

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	vs.		Misc. Docket N	o. <u>8</u>
	LIAM S. BALDWIN,	,	Folio No.	245
	CILES PARKER and HN A. SLOWIK,		file No.	3836
con	stituting the			
	UNTY BOARD OF APPEALS BALTIMORE COUNTY			

COURT FOR BALTIMORE COUNTY AND CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

Mr. Clerks

Please file, &c.

MURIEL E. BUDDEMEIER COUNTY BOARD OF APPEALS OF BALTIMBRE COUNTY

LINWOOD WELLS	*	
6508 Windsor Mill Road Baltimore, Maryland 21207	*	CIRCUIT COURT
va.	*	FOR
WILLIAM S. MALDWIN, CHAIRMAN,	*	BALTIMORE COUNTY
W. GILES PARKER AND JOHN A SLOWIK, constituting the		
County Board of Appeals of Baltimore County	*	

## PETITION TO EXTEND THE TIME TO COMPLY WITH LOCAL RULE 2.3

\*\*\*\*\*\*\*\*\*

To the Homorable, the Judge of said Court:

The Petition of Linwood Wells, Appellant, by Marvin I Singer, his attorney, hereby requests an extension of time to comply with Local Rule 2.3 Administrative Appeals of the Local Rules of the Circuit Court for Baltimore County and for reasons state:

- 1. That the transcript of the hearing before the County Board of Appeals for Baltimore County is comprised of approximately 261 pager and thus being very lengthy in nature, it has taken your petitioner a great amount of rome analyzing the said transcript in order to comprise a memorandum with a citation of particular portions of the record transcript to support the Appellant's position, as required in Local Rule 2.3 (3), thus necessitating this request by your petitioner for an additional fifteen (15) days to prepare the proper memorandum.
- 2. That because of the complexity of the issues and because of the Appellant's desire to submit to the court a concise

EDWARD J. JENKINS and	1	1	IN THE CIRCUIT CO	URT
IMA LEE JENKINS, his wife				
2215 Maple Hill Court			FOR BALTIMORE CO	PINTY
Baltimore County, Maryland 21207			AT LAW	
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JOHN A. SLOWIK,				
constituting the			File No.	3832
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### TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William 5. Baldwin, W. Giles Parker and John A. Slowik, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certifier copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

#### No. 65-355-RX

April 14, 1965 Petition of Lafayette L. Plerpont for reclassification from an R-6 zone to a B-L zone, and a special exception for a filling station on property located on the northwest comer of Windsor Mill Road and Woodlaws Avenue, 2nd District - filed

\* 20 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for June 9, 1965 at 11,00 a.m.

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and informative memorandum, the Appellant will request an additional fifteen (15) days to comply with the subject rule.

WHEREFORE, your Petitioner prays:

That this Honorable Court pass its Order extending the time for this Appellant to comply with Local Rule 2.3 of the Local Rules of the Circuit Court for Baltimore County and an additional fifteen (15) days up to and including the 16.4 day of December, 1967.

AND AS IN DUTY BOUND, ETC.

Marvin 1. Singer 1507 Court Square Building Saltimore, Maryland 21202 MUlberry 5-1111

Attorney for Appellant

a copy of the aforegoing Petition to Extend the Time to Comply Mith Local Bull 2.1 was nailed on VILLins B. Baidwin, Chairman, W. Ciles Parker and John A. Slowin, constituting the Councy Board of Appeals of Baitines Source, Source Office building. Board of Appeals of Bal Towson, Maryland 21204.

Order of Appeal to County Board of Appeals from Order of Zoning May 2, 1967 Hearing on appeal before County Board of Appeals Continued hearing " " " - case held sub curie Order of County Board of Appeals granting reclassification and denying Order for Appeal filled in Circuit Court for Baltimore County by C. Victor McFarland, Esq. and Larry L. Lockhart, Esq., attomeys for Edward J. Jeckins and Bra Lee Jenkins, his wife, appellants Oct. 2 Certificate of Notice sent to all interested parties Order for Appeal filed in Circuit Court for Baltimore County by Marvia I. Singer, Esq., attorney for Linwood Wells, appellant Petition to accompany Order for Appeal of Linwood Wells filed in the Circuit Court for Baltimore County Certificate of Notice sent to all interested parties \* 11 Petition to accompany Order for Appeal of Edward J. Jenkins, or actified in Circuit Court for Baltimore County Transcript of testimony filed Petitioner's Exhibit #1 - Plat. 3/23/65, by Matz, Childs & Associates 2A- Photos - Woodlown Ave & Windsoi Mill Road Wooklawn Ave & Windsor MM Road From subject toward Firs House Board of Education property Looking south from Woodlawn Looking west toward old commercial area of Woodlawn 'RE - . 25 - Mausoleum in cemetery 26 - Clerke Manor south from subject A, B, C, D, E, F, G, & H Photos of Plerpone property before rook
 widenings, dated 10/1/62

No. 65-355-RX

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May 21, 1965 Certificate of Publication in newspaper - filed

" Posting of property - filed

At 11 a.m. hearing held on petition by Zoning Commissioner - case

Order of Zoning Commissioner denying reclassification and special

No. 65-355-8X

Protestents' Exhibit "A" - (1, 2 & 3) - Photographs " "5" - Minutes of Woodlawn Carden Club, 11/4/65

Nov. 1, 1967 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are nermanent records of the Zoning Department of Baltimore County, as are also the use district maps. and your Respondents respectively success that it would be innd insporporiate to file the same in this proceeding, but your Remens at the hearing on this setition, or whenever directed to do so by this fourt.

Respectfully submitted,

Muriel E. Buddemeier County Board of Appeals of Baltimore County

CERTIFICATE OF PUBLICATION LIMES

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11/30/67

IN THE CIRCUIT COURT LINWOOD WELLS FOR BALTIMORE COUNTY WILLIAM S. BALDWIN. CHAIRMAN. AT LAW WILLIAM S. BALDWIN, CHAIRMAN, W. GILES PARKER and JOHN A. SLOWIK, constituting the COUNTY BOARD OF APPEALS OF Misc. Docket E. fol. 245 Case No. 3836 BALTIMORE CO'NTY AND EDWARD J. JENKINS, and IMA LEE JENKINS, his wife

vs. WILLIAM S. BALDWIN, W. GILES PARKER, and JOHN A. SLOWIK, constituting the COUNTY BOARD OF APPEALS OF

BALTIMORE COUNTY

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

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 apr. 2 family) to a B-L zone, apparently to be used for a "Free Standing Super Mar.et". 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"

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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 coming 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 Gavrelis, 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 R-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 -2-

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piecemeal change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood. (See Yemmink v. Bd. of Zoning Appeals, 205 Md. 489; Kroen v. Board of Zoning Appeals, 209 Md. 420; Roese v. Mandel, 224 Md. 141; 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, nowever, 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 pate 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 retarmed, 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 confincation. Zoning officials, when properly authorized, have the authority of alter zone innes from time to time when there are "It is a principle of universal recognition zone lines from time to time when there ar 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 Beard of App wals did not consider proof of
error in the May.
fairly debatable. This Court B 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 be ng 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-

South of the hereinbefore referred t 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 he 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

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 Mothershead 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  $\varepsilon$ residential zone. Further to the north of the subject property is the Woodlawn Cemetery, and to the north of that property is the Owynn Cak 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 Woodlavm Drive south of Windsor Mill Road, and across from the subject p. sperty, are the Clarke Manor Apartments, containing 220 units. North of the surject 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 spartment 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 testimon, there is no traffic problem.

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

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

See also the fo lowing cases: Figray v. Halle, 241 Md. 224 (decided Feb. 2, 1966): Dill v. The Jobar Corp., 242 Md. 16 (decided March 15, 1966): Bonnie View 'ub v. Glass, 242 Md. 46 (decided March 22, 1966); Beth Tf(loh v. Blum, 242 Md. 84 (decided March 29, 1966); Board v. Farr, 242 Md. 351 (decided April 26,1966); and Voqel v. McCosh, 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 illogal, but, on the other hand, was fairly debatable. Having determined this, the Court has fulfilled and exhausted its limited judicial function in reviewing a roning appeal.

OBMITTEE ...

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IN THE CIRCUIT COURT LINWOOD WELLS vs. FOR BALTIMORE COUNTY WILLIAM S. BALDWIN, C'AIRMAN, AT LAN W. GILES PARKER and JOHN A. SLOWIK, constituting the COUNTY BOARD OF APPEALS Misc. Docket 8, fol. 245 BALTIMORE COUNTY AND EDWARD J. JENKINS, and IMP LEE JENKINS, his wife vs. WILLIAM S. BALDWIN, fol. 243 W. GILES PARFER, and JOHN A. SLOWIK, constituting the COUNT' BOARD OF APPEALS OF Misc. Docket 8, Case No. 3832

> MEMORANDUM OPINION AND ORDER OF COURT

BALTIMORE COUNTY

This case involves an appeal from the County Board of Appeals of Baltimere County, which by its Order dated September 6, 1967, granted a reclassification of the property described in this proceeding from in 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".

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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 Clanning of Baltimore County,
Mr. George Gavrelis, 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 rezonin, 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 sire of the property
is approximately 2.316 acres, which is the subject of this
application. The parcel of land is located on the northwesterly
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piecemeal change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood.

(See Temmink v. Bd. of Zening Appeals, 205 Md. 489; Kreen v. Board of Zening Appeals, 209 Md. 420; Reese v. Mandel, 224 Md. 121; Jobar 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 pate 44, said;

"It is a principle of universal recognition that zoning, once imposed, is not abite. If it could not be altered with the changing conditions that surround us in the world today, progress would be retarmed, and many of the advantages, ledically 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. Offittle, Board of Zening Apperlin, appra. 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
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"It is obvious that the Board could have been more specific and defaulte in its findings of fact; however, it is certain that the Board found that there had been change in the Board found that there had been change in the Board found error in the criginal zoning sufficient to justify the reclassification (its other findings clearly) most 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 rerone, 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 experts of the zoning officials. It is only where there is no room for reasonable debate or facts are counted in the second is devoid of substantial, supporting facts for the county of the board are quantified in reversing a decision of the Board are quantified in reversing a decision of the Board are quantified in reversing a council v. Scrimpour, 211 Md. 307. Deciminal Reard, 212 Md. 408, for three of the many Maryland cases se holding, therefore, we must apply those tests to the evidence produced before the Board in order to determine the case at but."

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 <a href="Mailtonian Red Red Red Revember 18">Mailtonian Red Red Revember 18</a>, 1965), the Court in quoting from Jadge Harmond's epinion in

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This Court is constrained to held 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 illecal, but, on the other hand, was fairly debatable. Having determined this, the court has fulfilled and exhausted its limited judicial function in reviewing a zening 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

copies: Marvin Singer, Esq.
C. Victor McFarland, Esq.
W. Lee Harrison, Esq.
Hon. R. Bruce Alderman, County Solicitor
Board of Appeals for Baltimore County

Board of Appeals for Baltimore County Hon. John G. Rose, Zoning Commissioner Misc. File 3836 Misc. File 3832

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