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PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION AND VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Joseph F. Zienski
I, or we, Helon Zienski, legal owners of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an B-L zone to a B-R zone; for the following reasons: Lumber Yard.

Variance to Section 236.3 to permit a lumber yard within 35' of the south residential boundary line instead of the required 50'.
Variance to Section 238.2 to permit a side yard 0. 25' along the North property line instead of the required 30'.

See attached description

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

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

I, or we, agree to pay expenses of above re-classification and/or Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Herman Kahn
Contract purchaser
Address: 809 Eastern Boulevard
Baltimore, Md. (21221)

Joseph F. Zienski
Helon Zienski
Legal Owner
Address: 1329 Eastern Boulevard
Baltimore, Md. (21221)

Robert J. ...
Petitioner's Attorney

Protestant's Attorney

Address: 809 Eastern Boulevard
Baltimore, Md. (21221)

ORDERED BY THE Zoning Commissioner of Baltimore County, this 21st day of September, 1965, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of October, 1965, at 10:00 o'clock

Zoning Commissioner of Baltimore County.

(over)

RE: PETITION FOR RECLASSIFICATION : BEFORE
From B-L zone to a B-R zone, : COUNTY BOARD OF APPEALS
5/6 of Eyring Avenue at : OF
Franklin Avenue : BALTIMORE COUNTY
15th District : No. 66-104-RA
Joseph F. Zienski, :
Petitioner :
ZONING COMMISSIONER :
OF :
BALTIMORE COUNTY :
No. 66-104-RA

The petitioners request reclassification of property, from B-L zone to B-R zone, at the southeast corner of Eyring and Franklin Avenues, in order to establish a Lumber Yard; also a variance to Section 236.3 of the Baltimore County Zoning Regulations to permit a lumber yard width of 35 feet on the south residential boundary line instead of the required 50 feet and a variance to Section 238.2 to permit a side yard of 25 feet along the north property line instead of the required 30 feet.

Residents in close proximity to the subject property do not object to B-L uses, but they do object to the heavier B-R uses.

The Office of Planning & Zoning in a memorandum dated October 15, 1965 commented that "the reclassification requested under the subject petition is in accord with the recommendation embodied in the Comprehensive Zoning Map for the Eastern Planning Area."

Since this matter and other changes will be considered by the Baltimore County Council and since the residents should be given an opportunity to express themselves before the County Council at a public hearing the entire matter could be considered at that time rather than piecemeal at present.

For the above reasons the reclassification should not be granted and the variances requested should not be granted.

It is this 21st day of October, 1965 by the Zoning Commissioner of Baltimore County ORDERED that the above reclassification should be and the same is hereby continued as and to remain a B-L zone; and thereinafter be and the same are hereby continued.

Zoning Commissioner of Baltimore County

B. Anderson
2-77A

RE: PETITION FOR RECLASSIFICATION : BEFORE
From a B-L zone to a B-R zone, : COUNTY BOARD OF APPEALS
5/6 of Eyring Avenue at : OF
Franklin Avenue : BALTIMORE COUNTY
15th District : No. 66-104-RA
Joseph F. Zienski, :
Petitioner :
ZONING COMMISSIONER :
OF :
BALTIMORE COUNTY :
No. 66-104-RA

OPINION

This case comes before the Board of Appeals on the petition of Joseph F. Zienski for the reclassification from B-L to B-R of 1.53 acres of land on the southeast side of Eyring Avenue at Franklin Avenue in the Fifteenth Election District of Baltimore County, and for a variance from Sections 236.3 and 238.2 of the Baltimore County Zoning Regulations. During the course of the hearing the petitioner, through counsel, formally withdrew that phase of his petition seeking the aforesaid variance so that only the matter of the proposed reclassification from B-L to B-R remains before the Board.

The subject property is bounded on the north by Franklin Avenue (which is only a paper street). To the north of this is a Car Wash, and a Ford automobile dealership exists on the north side of the Car Wash. This Ford dealer is directly on Eastern Avenue and across Eastern Avenue, to the north, is a rather large commercial development known as the Middlesex Shopping Center. To the south of the subject property are five or six residential homes and one vacant lot. To the west, and across Eyring Avenue, is the parking lot of a Thom Moan shoe store, and to the east of subject property are additional residences which front on Essex Avenue.

The contract purchaser of the subject property, Mr. Herman Kahn, is a lumber dealer presently operating his lumber yard on

- 2 -
Joseph F. Zienski - No. 66-104-RA

the corner of Eastern Avenue and Mace Avenue (in the heart of Essex). His present location comprises only approximately one-third of an acre and his testimony is that he is in dire need of more space. The purpose of the reclassification sought here is to enable him to build and operate a lumber yard on the subject property.

The Board is in agreement with testimony submitted by petitioner that the area surrounding the subject property has been constantly changing over the last eight years and becoming more commercial in nature. Most of the persons testifying in protest of the subject petition did not dispute that fact but based their protest primarily against the type of commercial use sought; namely, a lumber dealer.

It is the opinion of the Board that there has been a sufficient change in the character of the neighborhood since the adoption of the zoning map in question (1945) to justify and warrant the reclassification sought by petitioner. It might be well to point out that the property directly to the north of the subject property on which a seven day a week Car Wash is operated was reclassified from B-L to B-R less than four years ago and, further, that none of the protestants appearing in this case could testify that they had appeared to object to the reclassification from B-L to B-R of that property or against its use as a Car Wash.

George H. Gavrelis, Director of Planning and Zoning for Baltimore County, submitted comments pertaining to the proposed reclassification on October 15, 1965. Mr. Gavrelis, upon the summons of the petitioners in this case, appeared to testify and

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Joseph F. Zienski - No. 66-104-RA

His aforesaid remarks were incorporated into the record of the hearing. Mr. Gavrelis testified that the reclassification requested under the subject petition is in accord with the recommendations embodied in the comprehensive zoning map for the Eastern Planning Area, and further stated that the B-R zone for the subject location represented the best present thinking of the Planning Board and the Planning Staff.

It is, therefore, the feeling of the Board that there have been substantial changes in the character of the neighborhood and that the subject property should be reclassified from B-L to B-R.

ORDER

For the reasons set forth in the aforesaid Opinion, it is this 14th day of April, 1966, by the County Board of Appeals, ORDERED that the reclassification petitioned for be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
William S. Baldwin, Chairman
W. Otis Parker
R. Bruce Alderman

WILLARD M. LEE
4604 MAIDFIELD AVENUE
BALTIMORE 14, MARYLAND
Phone: - MA 6-2813

August 20, 1965

S.E.C. Eyring Avenue and Franklin Avenue
15th District Baltimore County, Maryland

Beginning for the same at the corner formed by the intersection of the east side of Eyring Avenue with the south side of Franklin Avenue and thence running and binding on the east side of Eyring Avenue south 6 degrees 14 minutes East 150 feet thence leaving Eyring Avenue for lines of division as follows:- North 83 degrees 46 minutes East 145 feet to the west side of a 10 foot alley thence binding on the west side of said alley North 6 degrees 14 minutes West 5 feet to the north side of said alley thence binding on the north side of said alley North 83 degrees 46 minutes East 310 feet to the west side of a 10 foot alley thence running and binding on the west side of said alley North 6 degrees 14 minutes West 145 feet to the south side of Franklin Avenue and thence running and binding on the south side of said Franklin Avenue South 83 degrees 46 minutes West 455 feet to the place of beginning.

Containing 1.53 acres of land.



RE: PETITION FOR RECLASSIFICATION : BEFORE
From a B-L zone to a B-R zone, : COUNTY BOARD OF APPEALS
5/6 of Eyring Avenue at : OF
Franklin Avenue : BALTIMORE COUNTY
15th District : No. 66-104-RA
Joseph F. Zienski, :
Petitioner :
ZONING COMMISSIONER :
OF :
BALTIMORE COUNTY :
No. 66-104-RA

OPINION

This case comes before the Board of Appeals on the petition of Joseph F. Zienski for the reclassification from B-L to B-R of 1.53 acres of land on the southeast side of Eyring Avenue at Franklin Avenue in the Fifteenth Election District of Baltimore County, and for a variance from Sections 236.3 and 238.2 of the Baltimore County Zoning Regulations. During the course of the hearing the petitioner, through counsel, formally withdrew that phase of his petition seeking the aforesaid variance so that only the matter of the proposed reclassification from B-L to B-R remains before the Board.

The subject property is bounded on the north by Franklin Avenue (which is only a paper street). To the north of this is a Car Wash, and a Ford automobile dealership exists on the north side of the Car Wash. This Ford dealer is directly on Eastern Avenue and across Eastern Avenue, to the north, is a rather large commercial development known as the Middlesex Shopping Center. To the south of the subject property are five or six residential homes and one vacant lot. To the west, and across Eyring Avenue, is the parking lot of a Thom Moan Shoe Store, and to the east of subject property are additional residences which front on Essex Avenue.

The contract purchaser of the subject property, Mr. Herman Kahn, is a lumber dealer presently operating his lumber yard on

- 2 -
Joseph F. Zienski - No. 66-104-RA

the corner of Eastern Avenue and Mace Avenue (in the heart of Essex). His present location comprises only approximately one-third of an acre and his testimony is that he is in dire need of more space. The purpose of the reclassification sought here is to enable him to build and operate a lumber yard on the subject property.

The Board is in agreement with testimony submitted by petitioner that the area surrounding the subject property has been constantly changing over the last eight years and becoming more commercial in nature. Most of the persons testifying in protest of the subject petition did not dispute that fact but based their protest primarily against the type of commercial use sought; namely, a lumber dealer.

It is the opinion of the Board that there has been a sufficient change in the character of the neighborhood since the adoption of the zoning map in question (1945) to justify and warrant the reclassification sought by petitioner. It might be well to point out that the property directly to the north of the subject property on which a seven day a week Car Wash is operated was reclassified from B-L to B-R less than four years ago and, further, that none of the protestants appearing in this case could testify that they had appeared to object to the reclassification from B-L to B-R of that property or against its use as a Car Wash.

George H. Gavrelis, Director of Planning and Zoning for Baltimore County, submitted comments pertaining to the proposed reclassification on October 15, 1965. Mr. Gavrelis, upon the summons of the petitioners in this case, appeared to testify and

66-104-RA
MAP
15-B
E.P.

Joseph P. Ziemiński - No. 66-104-RA

As aforesaid remarks were incorporated into the record of the hearing. Mr. Gavrelis testified that the reclassification requested under the subject petition is in accord with the recommendations embodied in the comprehensive zoning map for the Eastern Planning Area, and further stated that the B-R zone for the subject location represented the best present thinking of the Planning Board and the Planning Staff.

It is, therefore, the feeling of the Board that there have been substantial changes in the character of the neighborhood and that the subject property should be reclassified from B-L to B-R.

ORDER

For the reasons set forth in the aforesaid Opinion, it is this 14th day of April, 1966, by the County Board of Appeals, ORDERED that the reclassification petitioned for be and the same is hereby GRANTED.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 8 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William G. Baldwin, Chairman

W. Miles Parker

W. Bruce Alderman

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. John G. Rose
Zoning Commissioner
TO: _____ Date: October 15, 1966
Mr. George E. Gavrelis
FROM: Office of Planning and Zoning

SUBJECT: Petition 66-104-RA, B.L. to B.R. Zone and Variance to permit a lumber yard within 35 feet of the south residential boundary line instead of the required 50 feet; to permit a side yard of 25 feet along the north property line instead of the required 30 feet. Southeast side of Eyring and Franklin Ave. Being the property of Joseph F. Ziemiński and Helen Ziemiński.

15th District
HEARING: Wednesday, October 27, 1965. (10:00 A.M.)

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

1. The reclassification requested under the subject petition is in accord with the recommendations embodied in the Comprehensive Rezoning Map for the Eastern Planning Area.
2. Current plans for the interchange between Eastern Avenue and the Southeast Expressway, which would be in the vicinity of the subject property, would require that Essex Avenue be made a dead-end or cul-de-sac street north of the Franklin Avenue right-of-way reservation. In order to prevent the intrusion of commercial traffic onto Essex Avenue, this office will recommend that Franklin Avenue easterly from the subject property not be opened. Whether or not the portion of Franklin Avenue abutting the subject property should be opened depends in some extent upon the disposition of the subject petition. We see the possibility of two types of site plan for the subject property, either of which we feel to be far superior to the plan proposed under the request before us.

One plan would call for the eventual legal abandonment of Franklin Avenue and the inclusion of all or a part of the street bed within the subject tract. In this way the 50-foot setback required by the Zoning Regulations on the south side of the property could be provided, and adequate space for vehicle access would be left on the north side, in the old Franklin Avenue road bed. Any variance that may then be required on the north side of the lot should be conditioned upon the provision of appropriate and effective screening and architectural controls on the south side, in order to provide maximum protection to adjacent residential properties.

Petition 66-104-RA.

Another plan - and the one we tend to favor as being both less complicated and inherently more effective - would involve the granting of a much greater variance on the south side of the lot so that the south wall of the proposed building would have the effect of a protective screen. This variance should be conditioned upon the construction of additional screening wall for the remaining length of the property. The result would be a solid wall along one entire side of the lot. With appropriate controls as to material and height of the wall, the best protection for adjacent residential properties would obtain.

BEFORE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 66-104-RA

The petitioners request reclassification of property, from B-L Zone to B-R Zone, at the southeast corner of Eyring and Franklin Avenue, in order to establish a Lumber Yard also a variance to Section 236.2 of the Baltimore County Zoning Regulations to permit a lumber yard width of 3' feet on the south residential boundary line instead of the required 50 feet and a variance to Section 238.2 to permit a side yard of 25 feet along the north property line of the required 30 feet.

Residents in close proximity to the subject property do not object to B-L uses, but they do object to the heavier B-R uses.

The Office of Planning & Zoning in a memorandum dated October 15, 1965 commented that "The reclassification requested under the subject petition is in accord with the recommendation embodied in the Comprehensive Zoning Map for the Eastern Planning Area."

Since this matter and other changes will be considered by the Baltimore County Council and since the residents should be given an opportunity to express themselves before the County Council at a public hearing the entire matter should be considered at that time rather than presently.

For the above reasons the reclassification should not be had and the variances requested should not be granted.

It is this 15th day of October, 1965 by the Zoning Commissioner of Baltimore County ORDERED that the above reclassification should be and the same is hereby DENIED and the above property area be and the same is hereby continued as and to remain a P-L zone and therefor to and the same are hereby DENIED.

Zoning Commissioner of
Baltimore County

ZONING FILE 66-104-RA - JOS. F. ZIEMSKI

ANNIE D. MITCHELL, et al
v.
JOSEPH F. ZIEMSKI
HELEN ZIEMSKI, his wife,
and HERMAN KAHN
THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. Docket 8
Folio 95
Case No. 3532

ORDER OF APPEAL

MR. CLERK:

Please enter an Appeal to the Court of Appeals of Maryland on behalf of ANNIE D. MITCHELL, NELSON B. FLEMING, WILLIAM FLEMING, FRANK SMITH, THEODORE V. RANOSKI, MRS. THEODORE V. RANOSKI, ARNOLD ROSSILL, MRS. ARNOLD ROSSILL, ROBERT SAUERWALD, MRS. ROBERT SAUERWALD, LOUETTA BRADSHAW, JENNIFER KINER, JOSEPH FORD, MRS. JOSEPH FORD, WILLIAM E. BROWN, MRS. WILLIAM BROWNE, VIRGINIA MITCHELL, MRS. ALBERTA FURCH, PHILLIP SMITH, PASQUALE CUCCHIPELLA, LOUIS NYITARI, MRS. LOUIS NYITARI, JOHN W. DROMMELHAUSER, MRS. JOHN W. DROMMELHAUSER, HAROLD SNOW and FRED F. CREEH from the Order of the Circuit Court of Baltimore County dated the 27th day of July, 1966, confirming the Order of the County Board of Appeals of Baltimore County.

WALLACE DANN

BREGEL & BREGEL
1900 One Charles Center
Baltimore, Maryland, 21201
539-2744

Attorneys for Petitioners

Filed 8-26-66
p-33 dsm

I HEREBY CERTIFY that on this 25th day of August, 1966,

a copy of the foregoing Order of Appeal was mailed to The County Board of Appeals of Baltimore County.

WALLACE DANN

JOSEPH F. ZIEMSKI, ET AL
SE/S Eyring & Franklin Avenues

66-104-RA

15th District

Reclassification from B.L. to B.R. (1.53 Acres)
Variance from Sections 236.3 and 238.2

- Sept. 21, 1965 Petition Filed
- Oct. 29 Dec. & Variances DENIED by Z.C.
- Nov. 5 Order of Appeal filed
- Apr. 14, 1966 Reclassification GRANTED by the Board
Variances withdrawn by petitioner at hearing
before the Board
- May 11 Order for Appeal filed in Circuit Court
- July 27 Board AFFIRMED - Judge Jenifer
- Aug. 25 Order for Appeal filed in Court of Appeals
- Oct. 10 Order of Dismissal filed in Court of Appeals

RECLASSIFICATION

GRANTED

VARIANCES

WITHDRAWN BY PETITIONER

No. 66-104-RA -- Jos. F. Ziemiński,

November 10, 1965

Petition, description of property, Order of Zoning Commissioner
Certificate of posting
Certificate of advertisement
Comments of Plans Review Section
Comments of Office of Planning I sign
Copy of appeal
Plat: filed with petition

Robert J. Romo, Esq.,
509 Eastern Boulevard
Baltimore, Maryland 21221

Counsel for petitioner

Mr. Nelson S. Fleming,
7 Eyring Avenue
Baltimore, Maryland 21221

Protestant

Mrs. August F. Knaster,
1315 Dorsey Avenue,
Baltimore, Maryland 21221

"

Mr. Robert Sauerwald,
108 North Essex Avenue,
Baltimore, Maryland 21221

"

ANNIE D. MITCHELL, et al. *
vs. *
JOSEPH F. ZIEMSKI, *
HELEN ZIEMSKI, his wife, *
and HERMAN KAHN *
(Interveners) *
THE COUNTY BOARD OF *
APPEALS OF BALTIMORE COUNTY *

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW
Misc. Docket # 2
File # 95
Case No. 3532

MEMORANDUM OPINION
AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Baltimore County (hereinafter referred to as the "Board"), which by its Order dated April 14, 1966, granted a reclassification of the property described in this proceeding from a B.L. Zone (Business, Local) to a B.R. Zone (Business, Roadside). The Zoning Commissioner of Baltimore County, by his Order dated October 29, 1965, had denied the reclassification requested and the variances then sought for the sole reason that since comprehensive rezoning for the entire area, including the subject property, was to be considered by the Baltimore County Council and that the matter of reclassification should await decision by the Council rather than dealing with the area in a piecemeal manner by deciding individual applications for reclassification. The Board found that the evidence produced before it showed a sufficient change in the character of the neighborhood since the adoption of the original zoning map in 1945 to justify and warrant the reclassification and granted the same rather than to await action by the County Council on comprehensive rezoning of the entire area in which the subject property is located.

The Petitioners in the application for reclassification are Joseph F. Ziemski and Helen Ziemski, his wife, legal owners, and Herman Kahn, contract purchaser of the parcel of land in question. The property contains 1.53 acres of land, more or less, and is presently unimproved. It is rectangular in shape,

having a frontage on the east side of Eyring Avenue of 150 feet with an even depth of 45 feet. The property is bounded on the north by a 50-foot unopened paper street known as Franklin Avenue and on the south by a 10-foot alley, the first 145 feet of which lies within the metes and bounds of the property. A similar 10-foot alley is the rear or easternmost boundary line of the lot. The parcel is situated about one-quarter of a block south of the intersection of Eyring Avenue and Eastern Boulevard. Eyring Avenue is a short street about 1,000 feet in length running between Eastern Boulevard and Old Eastern Avenue. It is improved with 43 feet of macadam paving running southerly from Eastern Boulevard to a point near the southern boundary of the subject property. Between this point and Old Eastern Avenue, the paving of Eyring Avenue is that of crusher run which has been treated with some sort of oil surface.

The subject property appears on the Land Use Map for Part of the Fifteenth Election District of Baltimore County adopted by the County Commissioners of Baltimore County on January 2, 1945. At the time of the adoption of this map, the property was placed in an "E" Commercial classification which is the same as the present B.L. category. The same zoning classification was adopted for the remaining property between Franklin Avenue and Eastern Boulevard, which remaining property, at the time of the adoption of said map, was also placed in the same "E" Commercial classification. This land, lying between Franklin Avenue and Eastern Boulevard, had been reclassified to a B.R. Zone prior to the filing of the Petition in the instant case on September 21, 1965. The land at the intersection of Eastern Boulevard and Eyring Avenue was reclassified to B.R. by the Zoning Commissioner of Baltimore County on August 27, 1959, and, subsequently, by the County Council on September 22, 1959. (See zoning file 4472 - Petitioners' Exhibit 5.) It is now used and occupied by King Ford Sales and Service. The other parcel between the King Ford property and Franklin Avenue was reclassified from B.L. to B.R. under date of December 2, 1961, by the Deputy Zoning Commissioner of Baltimore County. (See zoning file 63-4592 Petitioners' Exhibit 4.) The Petitioners in this case seek the same zoning

classification as was granted for the 2 parcels last referred to. From an examination of the 1945 Land Use Map, there have been numerous other commercial reclassifications in the immediate neighborhood, including the Middlesex Shopping Center which is located on Eastern Boulevard.

There were 7 other zoning files introduced before the Board at the time of the hearing on February 23, 1966, namely file No. 2547 (Petitioners' Exhibit 7) and file No. 4009 (Petitioners' Exhibit 8). File No. 2547 was a reclassification from a R-6 Zone (Residence, 1 and 2 Family) to an "E" Commercial Zone of the land bordering on the south side of Eastern Boulevard, the west side of Eyring Avenue and the southwest side of Essex Avenue, which reclassification was granted by the Zoning Commissioner of Baltimore County on June 18, 1957. File No. 4009 was a reclassification from a R-6 Zone to a B.L. Zone of the remaining land situated on the west side of Eyring Avenue and the north side of Old Eastern Avenue, directly opposite the subject property and which reclassification was granted by the Zoning Commissioner of Baltimore County on February 6, 1957, and, subsequently, by the County Council on March 19, 1957. These 2 parcels comprise the 6-acre tract referred to in the testimony before the Board and are now improved by the Thom McAn Shoe Store and parking lot.

Between the subject property and Dorsey Avenue, fronting on Eyring Avenue, are 3 - 50-foot lots owned by the applicants, Mr. and Mrs. Ziemski, presently zoned R-6 and which are unimproved. Fronting on the north side of Dorsey Avenue, east of the 3 lots just referred to and extending to the 10-foot alley there situated, are 6 lots zoned R-6 for individual residences. None of these owners appeared in protest of the reclassification requested, and the owner of one of these lots, which adjoins the subject property and on which he plans to construct a home, appeared in favor of the application. Between Dorsey Avenue and Old Eastern Avenue are individual homes zoned R-6 as well as on the west side of Essex Avenue abutting the 10-foot alley forming the rear

property line of the subject property.

In the original application, the Petitioners sought not only a reclassification from B.L. to B.R. but also variances for side yard setbacks. During the course of the testimony before the Board, however, that portion of the Petition relating to variances was abandoned, this being accomplished by reducing the width of the proposed building and extending its length to provide the same square foot area. (See transcript, pages 35-38.)

The Petitioner, Herman Kahn, contract purchaser of the property, presently operates a hardware and lumber business in the heart of the Essex area on Maca Avenue known as the Essex Lumber Company. This business is now conducted on a lot containing one-third of an acre, and Mr. Kahn desires to move his business to this larger one and one-half acre location. The proposed building will be of metal construction, and the front portion thereof will be conducted as a hardware store and his offices in connection with the business. The rear portion of the building proper will be occupied for storage of lumber, paneling and the like and to the rear thereof will be an outdoor lumber yard. Operations will be confined to the hours of 9:00 a.m. to 5:00 p.m. 5 days a week and one-half day on Saturday. Trucks used in the transportation of lumber and supplies will be stored within the building overnight and traffic lanes will be provided in a circular manner around the building and lumber yard. A fence would be constructed around the entire perimeter of the building for security reasons. Provision has been made for ample parking in front of the building for customers of the retail trade. It is conceded that adequate water and sewerage facilities are available to the property as well as other utilities such as gas and electricity.

It is undoubtedly true that the subject property is essentially oriented toward the businesses on Eastern Boulevard which is only one-quarter of a block away, and the contemplated use of the property is more closely related to the businesses uses situated to the north and west thereof than to the residential properties situated to the south and separated by a 10-foot alley. There

was testimony offered on behalf of the Petitioners that the proposed use would not be detrimental to property values in the neighborhood and would not create any traffic hazard. Witnesses for the Protestants to the contrary stated that in their opinions the proposed use would be detrimental to the value of their properties. Some of them admitted, however, that there would be no traffic problem created and that the proposed use would not in any way affect the health of the neighborhood.

The Petitioners produced in support of the application George E. Gavrellis, Director of Planning for Baltimore County. He testified that the petition for reclassification had been submitted to his office and that the Planning Board favored the zoning change requested. He further stated that the B.R. classification was in accord with the Eastern Area Master Plan Rezoning Map for the area in question. At pages 8 and 9 of the transcript, he testified as follows:

"A Our comment simply said the reclassification requested under the subject petition is in accord with the recommendations embodied in the Comprehensive Rezoning Map for the Eastern Planning Area, meaning that the map, as then recommended and as now recommended, in terms of comprehensive rezoning for this portion of the county, would contain a Business-Roadside zoning classification for this property, among others."

Mr. Gavrellis did testify that his office had some question about the site plan for the development of the property with particular reference to the variances requested. There was no hesitancy on his part in concluding, however, that the proposed reclassification was proper and in keeping with the commercial development in the area since the adoption of the Land Use Map in 1945. He further stated that it was proposed on the Comprehensive Rezoning Map to classify as B.R. land the entire corridor extending from Eastern Boulevard to Old Eastern Avenue with the exception of the frontage along Eastern Avenue which would be maintained in a B.L. Zone in keeping with existing uses, and the area presently improved with individual residences.

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 piecemeal change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood. (See Tammink v. Board of Zoning Appeals, 205 Md. 489 p. 494 - decided November 13, 1954; Froan v. Board of Zoning Appeals, 209 Md. 420 p. 426 - decided March 16, 1956; Reese v. Mandel, 224 Md. 121 p. 123 - decided January 13, 1961; Jobar Corp. v. Board of Zoning Appeals, 239 Md. 108 p. 121 - decided July 24, 1964; MacDonald v. County Board of Zoning Appeals, 238 Md. 549 p. 555 - decided May 25, 1965; and Muller v. Abraham, 239 Md. 283 p. 272 - decided June 23, 1965.) 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 this Court, at page 447, 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."

It is important to note, moreover, that the reclassification requested in the instant case is from one business or commercial subcategory to another, namely from B.L. to B.R. Such a change in use does not have the same degree of impact as would a request to reclassify property from residential use to commercial use. This factor was noted in Missouri Realty, Inc. v. Ramey, supra, at page 449 in the following language:

"It should be noted here that this case involves an application for reclassification from one residential subcategory to another: that the removal of the land from the use category in which it was placed when originally zoned, as was the situation in many of the cases presented to this Court. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial."

The sole question presented to the Court for determination, therefore, is: Did the evidence before the Board make the question of whether there had been a sufficient change in the neighborhood since the original zoning of 1945 to warrant the reclassification 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 extended commercial development in the immediate area over this 20-year period since the adoption of the original Land Use Map, and the 2 properties immediately adjacent to the subject property were reclassified to the same zone as is herein sought. This change was of such a nature as to dictate to the Planning Board, on its own initiative, not only the subject property to a B.R. Zone, but also additional adjoining properties on the proposed comprehensive rezoning map for this area.

The question of change in conditions was before the Court of Appeals in Jobar Corp. v. Board of Zoning Appeals, supra, wherein the rule by which this Court is to be governed in a decision in the instant case was clearly stated at 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. Scripps Corp., 211 Md. 307, Tammink v. Board of Zoning Appeals, 212 Md. 6, and West Ridge, Inc. v. McGinnis, 222 Md. 445, 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 Motherhead v. Bd. of Comm'rs, 240 Md. 368 (decided November 19, 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 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 case 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 recent cases: Finney v. Halls, 241 Md. 224 (decided February 2, 1966); Dill v. The Jobar Corp., 242 Md. 16 (decided March 15, 1966); Bonnie View Club v. Clague, 242 Md. 46 (decided March 22, 1966); Rath Thion v. Blum, 242 Md. 84 (decided March 29, 1966); Board v. Farr, 242 Md. 351 (decided April 26, 1966); and Yonel v. McCaughy, 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.

For the reasons stated and in conformity with the foregoing Opinion, it is this 27th day of July, 1966, by the Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals of Baltimore County dated April 14, 1966, be and the same is hereby affirmed.

/s/ Walter M. Jenifer
Walter M. Jenifer
JUDGE

Annie D. Mitchell, et al vs. William S. Baldwin, W. Giles Parker and H. Bruce Alderman, constituting the County Board of Appeals of Baltimore County Joseph Zienski, et al Intervenor

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY No. 66-104-PA

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

TO THE HONORABLE, THE JUDGE OF SAID COURT: The Petition of Joseph P. Zienski, et al, by Robert J. Romadka, their attorney, respectfully represents unto your Honor:

FIRST: That your Petitioners own the property in Baltimore County, Maryland, involved in this appeal and were the successful applicants in the proceedings before the County Board of Appeals of Baltimore County.

SECOND: That your Petitioners have direct and immediate interest in the subject matter of the appeal herein, which interest is sought to be adversely affected by these proceedings to their special harm and damage, and are therefore desirous of intervening in these proceedings as parties defendants-appellees to protect their direct and immediate interest herein.

WHEREFORE, your Petitioners respectfully pray an Order of this Honorable Court permitting them to intervene in these proceedings as parties defendants-appellees.

Robert J. Romadka Attorney for the Petitioners

I HEREBY CERTIFY, That on this 14th day of May, 1966, a copy of this Petition to Intervene in Appeal from Decision of County Board of Appeals was mailed to John Thomas Welsh, Suite 24, Jenifer Building, 44 W. Chesapeake Avenue, Towson, Maryland (21284).

Robert J. Romadka

ANNIE D. MITCHELL 207 N. Essex Avenue Baltimore, Maryland NELSON B. FLEMING ELIZABETH FLEMING 7 Eyring Avenue Baltimore, Maryland FRANK SMITH 107 N. Essex Avenue Baltimore, Maryland MR. THEODORE V. KAROWSKI MRS. THEODORE V. KAROWSKI 1403 Franklin Avenue Baltimore, Maryland MR. ASHLEY BOSSELL MRS. ASHLEY BOSSELL 109 N. Essex Avenue Baltimore, Maryland MR. ROBERT SAUERWALD MRS. ROBERT SAUERWALD 108 N. Essex Avenue Baltimore, Maryland MRS. LORETTA BRIGGS 104 N. Essex Avenue Baltimore, Maryland MR. JENNINGS KINER MRS. JENNINGS KINER 100 N. Essex Avenue Baltimore, Maryland MR. JOSEPH FORD MRS. JOSEPH FORD 202 N. Essex Avenue Baltimore, Maryland WILBUR E. BROWN 1319 Dorsey Avenue Baltimore, Maryland MRS. WILLIAM DOLTHOFF 205 N. Essex Avenue Baltimore, Maryland MRS. VIRGINIA MITCHELL 1404 Franklin Avenue Baltimore, Maryland MRS. ALBERTA PUGH 843 Middlesex Road Baltimore, Maryland

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

MAP 15-B BR

66-104-PA

Rec'd 11/66 9:35am

Annie D. Mitchell, et al vs. William S. Baldwin, W. Giles Parker and H. Bruce Alderman, constituting the County Board of Appeals of Baltimore County Joseph Zienski, et al Intervenor

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY No. 66-104-PA

ORDER

UPON the foregoing Petition, it is hereby ORDERED by the Circuit Court for Baltimore County, this ____ day of May, 1966, that the Petitioners, Joseph Zienski, et al, be and they are hereby permitted to intervene in these proceedings as parties defendants-appellees.

JUDGE

PHILIP KLEIN 920 Ashbridge Drive Baltimore, Maryland PASQUALE CUCCHIELLA 102 N. Essex Avenue Baltimore, Maryland MR. LOUIS NYITASI MRS. LOUIS NYITASI 203 N. Essex Avenue Baltimore, Maryland MR. JOHN W. DROMMELHAUSER 110 N. Essex Avenue Baltimore, Maryland MRS. JOHN W. DROMMELHAUSER 110 N. Essex Avenue Baltimore, Maryland HARLAND SNOW 106 N. Essex Avenue Baltimore, Maryland FRED F. CECH 323 Dorsey Avenue Baltimore, Maryland

Appellants

v.

THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Towson, Maryland

Appellee

66-104-PA MAP 15-B BR

be granted.

WALLACE DANN BREGEL & BREGEL 1900 One Charles Center Baltimore, Maryland, 21201 539-2744 Attorneys for Appellants

ORDER OF APPEAL

MR. CLERK: Please enter an appeal to the Circuit Court of Baltimore County from the Order of the County Board of Appeals of Baltimore County, dated April 14, 1966, ordering that the reclassification petitioned for in Case No. 66-104-PA, viz: Petition For Reclassification from a B-L zone to a B-R zone, SE/8 of Eyring Avenue at Franklin Avenue, 15th District, Joseph F. Zienski, Petitioner,

HOWARD CALVERT BREGEL CALVERT BROS BREGEL ATTORNEYS AND COUNSELORS AT LAW 1900 ONE CHARLES CENTER BALTIMORE, MARYLAND 21201

October 10, 1966

County Board of Appeals of Baltimore County Court House Towson, Maryland, 21284

Re: Annie D. Mitchell, et al v. Joseph F. Zienski, et al

Dear Sirs: I am enclosing herewith a copy of the Order of Dismissal which I have filed in the above-entitled matter.

Very truly yours, BREGEL & BREGEL Wallace Dann

WDC/te Enclosure

ANNIE D. MITCHELL, et al vs. JOSEPH F. ZIENSKI, his wife, and HERMAN JUDIN THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW Misc. Docket 85 Cost No. 3532

ORDER OF DISMISSAL

MR. CLERK: Please dismiss the above entitled case, without prejudice, upon payment of all costs.

WALLACE DANN BREGEL & BREGEL 1900 One Charles Center Baltimore, Maryland, 21201 539-2744 Attorneys for Protestants

I HEREBY CERTIFY, that on this ____ day of October, 1966, a copy of the foregoing Order was mailed to Robert J. Romadka, Esq., 809 Eastern Boulevard, Baltimore, Maryland, 21221, Attorney for Herman Kahn and County Board of Appeals of Baltimore County, Court House, Towson, Maryland, 21284.

WALLACE DANN

Rec'd 11/66 5:40pm

ANNIE D. MITCHELL
207 N. Essex Avenue
Baltimore, Maryland

NELSON B. FLEMING
ELIZABETH FLEMING
7 Eyring Avenue
Baltimore, Maryland

FRANK SMITH
107 N. Essex Avenue
Baltimore, Maryland

MR. THEODORE V. RAKOWSKI
MRS. THEODORE V. RAKOWSKI
1433 Franklin Avenue
Baltimore, Maryland

MR. ASHLEY BOSNELL
MRS. ASHLEY BOSNELL
109 N. Essex Avenue
Baltimore, Maryland

MR. ROBERT SAUERWALD
MRS. ROBERT SAUERWALD
108 N. Essex Avenue
Baltimore, Maryland

MRS. LORETTA BRIGGS
104 N. Essex Avenue
Baltimore, Maryland

MR. JENNINGS KINER
MRS. JENNINGS KINER
100 N. Essex Avenue
Baltimore, Maryland

MR. JOSEPH FORD
MRS. JOSEPH FORD
202 N. Essex Avenue
Baltimore, Maryland

WILBUR E. BROWN
1319 Dorsey Avenue
Baltimore, Maryland

MRS. WILLIAM HOLTTHOFF
205 N. Essex Avenue
Baltimore, Maryland

MRS. VIRGINIA MITCHELL
1414 Franklin Avenue
Baltimore, Maryland

MRS. ALBERTA PUGH
843 Middlesex Road
Baltimore, Maryland

PHILIP KLEIN
920 Ashbridge Drive
Baltimore, Maryland

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 8
Folio No. 93
File No. 3532

PASQUALE CUCCHELLA
102 N. Essex Avenue
Baltimore, Maryland

MR. LOUIS NYITASI
MRS. LOUIS NYITASI
203 N. Essex Avenue
Baltimore, Maryland

MR. JOHN W. DROMMELHAUSER
110 N. Essex Avenue
Baltimore, Maryland

MRS. JOHN W. DROMMELHAUSER
110 N. Essex Avenue
Baltimore, Maryland

HARLAND SNOW
106 N. Essex Avenue
Baltimore, Maryland

FRED F. CECH
323 Dorsey Avenue
Baltimore, Maryland

vs.
WILLIAM S. BALDWIN,
W. GILES PARKER and
R. BRUCE ALDERMAN,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Appellants
vs.
Appellee

ANSWER TO ORDER OF APPEAL TO CIRCUIT COURT FOR BALTIMORE COUNTY AND CERTIFIED COPIES OF PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND BOARD OF APPEALS OF BALTIMORE COUNTY

MR. CLERK:
Please file, & c.

Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County

ANNIE D. MITCHELL, ET AL
vs.
WILLIAM S. BALDWIN,
W. GILES PARKER, and
R. BRUCE ALDERMAN,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 8
Folio No. 93
File No. 3532

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William S. Baldwin, W. Giles Parker and R. Bruce Alderman, 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 certified 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. 66-104-8A
- Sept. 21, 1965 Petition of Joseph F. Ziemski, et al, for reclassification from a B-L zone to a B-R zone and variances from Sections 236.3 and 238.2 of the Zoning Regulations on property located on the southeast side of Eyring and Franklin Avenues, 15th District - filed
 - " " Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for October 27, 1965 at 10:00 a.m.
 - Oct. 7 Certificate of Publication in newspaper - filed
 - " 14 Certificate of Posting of property - filed
 - " 27 At 10:00 a.m. hearing held on petition by Zoning Commissioner - case held sub curia
 - " 29 Order of Zoning Commissioner denying reclassification and variances
 - Nov. 5 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner
 - Feb. 23, 1966 Hearing on appeal before County Board of Appeals - case held sub curia
 - Apr. 14 Order of County Board of Appeals granting reclassification (variances withdrawn by petitioner at hearing before the Board)
 - May 11 Order for Appeal filed in the Circuit Court for Baltimore County

May 12, 1966 Certificate of Notice sent to all interested parties
" 31 Transcript of Testimony filed - 1 volume

Petitioners' Exhibit No. 1 - Plat and Site Plan
" " 2 - Building Plan and Rendering of proposed building
" " 3 - Proposed Eastern Area Zoning Map
" " 4 - Zoning File #63-159-R (Car Wash)
" " 5 - Color Photos (a, b, c, d, e)
" " 6 - Zoning File #247 (King Ford)
" " 7 - Zoning File #2547 (Thom McAn)
" " 8 - Zoning File #409 (R-6 to B-L)

Protestants' Exhibit "A" - Photo 7-11 Store
" " "B" - Photos (1, 2, 3, 4)
" " "C" - Photo of rear yard of Essex Lumber Co.

June 2, 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 permanent records of the Zoning Department of Baltimore County and are also the use district maps and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations together with the zoning use district maps at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County

HOWARD CALVERT BRIGEL
CALVERT ROSS BRIGEL
ATTORNEYS AND COUNSELLORS AT LAW
SUITE 1800
ONE CHARLES CENTER
BALTIMORE, MARYLAND 21201

ASSOCIATES
WALLACE DANN
CALVIN L. BOWERS
BRYAN B. HADDOCK
DANIEL F. THOMAS
ROBERT G. CAMP

May 20, 1966

The County Board of Appeals
of Baltimore County
Towson, Maryland

Re: Mitchell, et al. v.
County Board of Appeals

Gentlemen:

I am enclosing herewith a copy of the Petition on Appeal from Decision of the County Board of Appeals of Baltimore County, which I have filed in the above matter.

Very truly yours,
BRIGEL & BRIGEL
Wallace Dann

WD/jc
Enclosure

Rec'd 5-24-66
3PM

HOWARD CALVERT BRIGEL
CALVERT ROSS BRIGEL
ATTORNEYS AND COUNSELLORS AT LAW
SUITE 1800
ONE CHARLES CENTER
BALTIMORE, MARYLAND 21201

ASSOCIATES
WALLACE DANN
CALVIN L. BOWERS
BRYAN B. HADDOCK
DANIEL F. THOMAS
ROBERT G. CAMP

May 18, 1966

Mrs. Muriel E. Buddemeier
County Board of Appeals
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland, 21204

Re: Joseph F. Ziemski, et al
File No. 66-104-8A

Dear Mrs. Buddemeier:

I am enclosing herewith check in the sum of \$8.00 to cover the cost of certified copies of necessary documents pursuant to your letter of May 11, 1966.

Very truly yours,
BRIGEL & BRIGEL
Wallace Dann

WD/jc
Enclosure

Rec'd 5-20-66
9:00 am

Wallace Dann, Esq.
c/o Messrs. Brigel & Brigel
1900 One Charles Center
Baltimore, Maryland 21201

to

Baltimore County, Maryland
c/o County Board of Appeals
County Office Building
Towson, Maryland 21204

May 11, 1966

Cost of certified documents filed in the matter of the reclassification from B-L zone to B-R zone, and for variance from Sections 236.3 and 238.2 of the Zoning Regulations, on property located on SE/3 Eyring and Franklin Avenues, in the 15th District of Baltimore County.

Joseph F. Ziemski, et al, Petitioner - #66-104-8A

\$8.00

March 11, 1966

Robert J. Romadka, Esq.
809 Eastern Boulevard
Baltimore, Maryland 21201

Re: Joseph F. Ziemski, et al
File No. 66-104-8A

Dear Mr. Romadka:

Notice is hereby given in accordance with the Rules of procedure of the Court of Appeals of Maryland that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,
Muriel E. Buddemeier

Encls.
cc: John Thomas Walsh, Esq.
Jennifer Building
Towson, Maryland 21204

May 11, 1966

Wallace Dann, Esq.
c/o Messrs. Bregel & Bregel
1900 One Charles Center
Baltimore, Maryland 21201

Re: Joseph F. Zienski, et al
File No. 66-104-RA

Dear Mr. Dann:

In accordance with Rule 1101(b) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the zoning appeal which you have taken to the Circuit Court for Baltimore County, in the above matter, within 30 days.

The cost of the transcript of the record must be paid by you. Certified copies of any other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the case to the Circuit Court not later than 30 days from the date of any petition you might file in Court, in accordance with Rule 1101(b).

Enclosed is a copy of the Certificate of Notice. Also bill in the amount of \$8.00 covering cost of certified copies of necessary documents.

Very truly yours,

Muriel P. Henderson

Encls.

ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(EASTERN FEDERAL BUILDING)
ESSEX, MARYLAND 21221
MURDER 6-8274

February 8, 1966

County Board of Appeals
County Court House
Towson, Maryland (21204)

ATTENTION: Mrs. Eisenhart

Dear Mrs. Eisenhart:

Would you please issue a subpoena for George E. Cavrelis, Director of Planning and Zoning, to appear before the Board of Appeals on behalf of the Petition of Joseph M. Zienski. The Petitioners case will be heard on Wednesday, February 23, 1966 at 10 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

Robert J. Romadka

RJR:clh

Mr. Sheriff:

Please issue summons in accordance with the above.

Edith T. Eisenhart
Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County

*Rec'd 2-7-66
9:00 AM*
*Copy sent
2-7-66*

PHONE 122-2700
122-2700

CABLE ADDRESS "HOW CAL"

HOWARD CALVERT BREGEL
CALVERT ROSS BREGEL
ATTORNEYS AND COUNSELLORS AT LAW
SUITE 900
ONE CHARLES CENTER
CHARLES AND LEWINGTON STREETS
BALTIMORE, MARYLAND 21201

August 25, 1966

County Board of Appeals
of Baltimore County
Court House
Towson, Maryland, 21204

Re: Annie D. Mitchell, et al
v. Joseph F. Zienski, et al

Gentlemen:

I am enclosing herewith a copy of the Order Of Appeal which I have filed in the above-entitled matter.

Very truly yours,

BREGEL & BREGEL

Wallace Dann
Wallace Dann

WD/sc
Enclosure

*Rec'd 8-26-66
9:30 AM*

November 16, 1965

Mr. Nelson B. Fleming,
7 Eyring Avenue,
Baltimore, Maryland 21221

Re: Petition for Reclassification
of property of Jos. F. Zienski,
5/8 Eyring Ave. and Franklin Ave.,
No. 66-104-RA

Dear Mr. Fleming:

Please be advised that an appeal has been filed from the decision of the Zoning Commissioner denying the reclassification in the above matter.

You will be duly notified of the date and time of appeal hearing when scheduled by the Board of Appeals.

Very truly yours

Zoning Commissioner

cc: Mrs. August F. Rooster,
1215 Dorsey Avenue,
Baltimore, Maryland 21221

Mr. Robert Sauerwald,
108 North Essex Avenue,
Baltimore, Maryland 21221

ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(EASTERN FEDERAL BUILDING)
ESSEX, MARYLAND 21221
MURDER 6-8274

November 5, 1965



November 16, 1965

Robert J. Romadka, Esq.
809 Eastern Boulevard
Baltimore, Maryland 21221

Re: Zoning File No. 66-104-RA
Joseph F. Zienski, et al

Dear Mr. Romadka:

- Number of witnesses you anticipate calling _____ 2
- How many of these witnesses will be "expert witnesses" _____ 1
- Fields to be covered by experts you intend to call - please check:
 Land Planner _____
 Real Estate _____
 Engineer _____
 Traffic _____
 Other _____

- Total time required (in hours) for presentation of your side of the case
 _____ 30 minutes

Robert J. Romadka
Attorney for Petitioners

*Rec'd 11-23-65
10:30 AM*

ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(EASTERN FEDERAL BUILDING)
ESSEX, MARYLAND 21221
MURDER 6-8274

November 5, 1965



Mr. John G. Rose
County Office Building
111 N. Chesapeake Avenue
Towson, Maryland (21204)

Re: Petition for Reclassification
and Variances to Zoning Regula-
tions - 2/2 Corner Eyring and
Franklin Aves., 15th District -
Jos. F. Zienski, et al
Petitioners - No. 66-104-RA

Dear Mr. Rose:

Please be advised as attorney for the petitioners in the above captioned case, I wish to file an appeal from your order dated October 29, 1965, denying the reclassification and variances requested in said petition.

Would you please therefore forward all papers for said hearing to the County Board of Appeals.

I have enclosed my check in the amount of \$138.00 to cover the cost of said appeal, plus cost of advertising and posting the property.

Very truly yours,

Robert J. Romadka
Robert J. Romadka

RJR:clh
Enclosure

October 29, 1965

Robert J. Romadka, Esq.,
809 Eastern Boulevard,
Baltimore, Maryland 21221

Re: Petition for Reclassification
and Variances to Zoning Regula-
tions - 2/2 Corner Eyring and
Franklin Aves., 15th District -
Jos. F. Zienski, et al
Petitioners - No. 66-104-RA

Dear

I have today passed my Order denying the reclassification and variances requested in the above matter for reasons stated in the attached copy of said Order.

Very truly yours

Zoning Commissioner

cc: Mr. Nelson B. Fleming,
7 Eyring Avenue,
Baltimore, Maryland 21221

TO: James A. Dyer, Chairman
Zoning Advisory Committee
Date: September 15, 1965

FROM: Paul H. Reliance, Captain
Plans Review Section

SUBJECT: Joseph Ziemski
35/Corner Eyring & Franklin Avenues
District 15

The subject property, if zoning is favorable, shall be subject to Fire Prevention Regulations of Baltimore County concerning storage of lumber. We take no exception at this present time in reference to fire hydrants or water supply, however, the final design may require additional hydrant spacing according to the B.B.P.M. water supply requirements for the structures involved.

PHR:js

Mr. John G. Rose
Zoning Commission
Date: October 15, 1965

TO: Mr. George E. Cavrellis
FROM: Office of Zoning and Planning

SUBJECT: Petition 66-104-RA, E.L. to B.R. Zoning and Variance to permit a lumber yard within 50 feet of the south residential boundary line instead of the required 50 feet; to permit a side yard of 25 feet along the north property line instead of the required 30 feet. Southeast side of Eyring and Franklin Ave. Being the property of Joseph F. Ziemski and Helen Ziemski.

15th District
HEARING: Wednesday, October 27, 1965. (10:00 A.M.)

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

1. The rezoning requested under the subject petition is in accord with the recommendations embodied in the Comprehensive Zoning Map for the Eastern Planning Area.
2. Current plans for the interchange between Eastern Avenue and the Southeast Expressway, which would be in the vicinity of the subject property, would require that Essex Avenue be made a dead-end or cul-de-sac street north of the Franklin Avenue right-of-way reservation. In order to prevent the intrusion of commercial traffic onto Essex Avenue, this office will recommend that Franklin Avenue enter from the subject property not be opened. Whether or not the portion of Franklin Avenue abutting the subject property should be opened depends to some extent upon the disposition of the subject petition. We see the possibility of two types of site plan for the subject property, either of which we feel to be far superior to the plan proposed under the request before us.

One plan would call for the eventual legal abandonment of Franklin Avenue as the location of all or a part of the street and within the subject tract. In this way the 50-foot setback required by the Zoning Regulations on the south side of the property could be provided, and adequate space for vehicle access would be left on the north side, in the old Franklin Avenue road bed. Any variance that may be required on the north side of the lot should be conditioned upon the installation of appropriate and effective screening and architectural controls on the south side, in order to provide maximum protection to adjacent residential properties.

Another plan - and the one we tend to favor as being both less complicated and inherently more effective - would involve the granting of a much greater variance on the south side of the lot so that the south wall of the proposed building would have the effect of a protective screen. This variance should be conditioned upon the construction of additional screening wall for the remaining length of the property. The result would be a solid wall along one entire side of the lot. With appropriate controls as to material and height of the wall, the best protection for adjacent residential properties would obtain.

TO: James A. Dyer, Chairman
Zoning Advisory Committee
Date: September 15, 1965

FROM: Paul H. Reliance, Captain
Plans Review Section

SUBJECT: Joseph Ziemski
35/Corner Eyring & Franklin Avenues
District 15

The subject property, if zoning is favorable, shall be subject to Fire Prevention Regulations of Baltimore County concerning storage of lumber. We take no exception at this present time in reference to fire hydrants or water supply, however, the final design may require additional hydrant spacing according to the B.B.P.M. water supply requirements for the structures involved.

PHR:js

Petitioner's Exhibits

- ✓ Ex 1 Plat and Site Plan
- ✓ Ex 2 ~~Site~~ Plan & Landmark of proposed lobby
- Ex 3 Proposed Eastern Area Zoning Map
- Ex 4 Case # 63-157-R. Releasf. B.L. 12/13/52 wash. Car
- ✓ Ex 5 A, B, C, D, E Released Color Photos
- Ex 6 Case # 4472 Releasf. B.L. 8/27/58 King Ford
- Ex 7 Case # 554; Releasf. R.L. to DL 6/18/53 Thom. McLean
- Ex 8 Case # 4129 Releasf. R.L. to B.L. 2/17/57

Proprietor's Exhibits

- ✓ Ex A Photo 7-11 Store
- ✓ Ex B 12, 3, 4 Photos
- ✓ Ex C Plat of rear yard of Lane Lumber Co.

April 14, 1966

Robert J. Romadka, Esq.
809 Eastern Boulevard
Baltimore, Maryland 21221

Re: Joseph F. Ziemski -
No. 66-104-RA

Dear Mr. Romadka:
Enclosed herewith is a copy of the Opinion and Order passed by the County Board of Appeals today in the above entitled case.

Very truly yours,

Muriel M. Saldemeyer

Encl.
cc: John Thomas Welch, Esq.
Mr. Rose
Mr. Cavrellis
Board of Education

ROBERT J. ROMADKA
ATTORNEY AT LAW
809 EASTERN BOULEVARD
(JENNINGS FEDERAL BUILDING)
ESSEX, MARYLAND 21221
HUWOOD 6-8274

May 16, 1966

Board of Appeals of
Baltimore County
County Court House
Baltimore, Maryland (21204)

Gentlemen:

Please find enclosed herewith Petition to Intervene in Appeal from Decision of County Board of Appeals filed in the Circuit Court for Baltimore County on Case No. 66-104-RA.

I trust you will find the enclosure in proper order.

Very truly yours,

Robert J. Romadka

RJR:elh
Enclosure

Rec'd 5-17-66
4:26 AM

April 14, 1966

Robert J. Romadka, Esq.
809 Eastern Boulevard
Baltimore, Maryland 21221

Re: Joseph F. Ziemski -
No. 66-104-RA

Dear Mr. Romadka:
Enclosed herewith is a copy of the Opinion and Order passed by the County Board of Appeals today in the above entitled case.

Very truly yours,

Muriel M. Saldemeyer

Encl.
cc: John Thomas Welch, Esq.
Mr. Rose
Mr. Cavrellis
Board of Education

ANNIE J. MITCHELL
207 N. Essex Avenue
Baltimore, Maryland

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ELIZABETH FLEMING
7 Eyring Avenue
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205 N. Essex Avenue
Baltimore, Maryland

MRS. VIRGINIA MITCHELL
1404 Franklin Avenue
Baltimore, Maryland

MRS. ALBERTA PUGH
843 Middlesex Road
Baltimore, Maryland

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

PHILIP KLEIN
920 Ashbridge Drive
Baltimore, Maryland

PAQUALE CUCCHIELLA
102 N. Essex Avenue
Baltimore, Maryland

MR. LOUIS NYITASKI
MRS. LOUIS NYITASKI
203 N. Essex Avenue
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MRS. JOHN W. DROMMELHAUSER
110 N. Essex Avenue
Baltimore, Maryland

HARLAND SHOW
106 N. Essex Avenue
Baltimore, Maryland

FRED F. CECI
323 Dorsey Avenue
Baltimore, Maryland

Appellants

v.

THE COUNTY BOARD OF APPEALS
C/O BALTIMORE COUNTY
Towson, Maryland

Appellee

PETITION ON APPEAL FROM DECISION OF THE
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

The Petition of ANNIE J. MITCHELL, MELSON B. FLEMING,
ELIZABETH FLEMING, FRANK SMITH, MR. AND MRS. THEODORE V.
RAKOWSKI, MR. AND MRS. ASHLEY BOSHELL, MR. AND MRS. ROBERT
SAUERWALD, MRS. LORETTA BRIDGE, MR. AND MRS. JENNINGS KIRER, MR.
AND MRS. JOSEPH FORD, MR. WILSON E. BROOKS, MRS. WILLIAM HOLTHOFF,
MRS. VIRGINIA MITCHELL, MRS. ALBERTA PUGH, PHILIP KLEIN, PAQUALE
CUCCHIELLA, MR. AND MRS. LOUIS NYITASKI, MR. AND MRS. JOHN W.
DROMMELHAUSER, HARLAND SHOW AND FRED F. CECI, by WALLACE DANN

and BROGEL & BROGEL, their attorneys, respectfully represents:

1. That your Petitioners are taxpayers of Baltimore County and reside at the respective addresses shown in the heading, and they, and each of them, being aggrieved by the action of the County Board of Appeals of Baltimore County by its Order dated April 14, 1966, ordering that the reclassification petitioned for in Case No. 66-104-BA, viz: Petition For Reclassification from a B-1 zone to a B-R zone, SE/4 of Eyring Avenue at Franklin Avenue, 15th District, Joseph F. Zieski, Petitioner, have appealed.
2. That the County Board of Appeals of Baltimore County erred in determining that there had been a change in the character of the neighborhood since the original zoning.
3. That there was no legally sufficient evidence adduced to disclose an error in the original zoning.
4. That the action of the County Board of Appeals of Baltimore County was arbitrary, capricious and unreasonable in that: (a) the reclassification was granted to accommodate the needs of the Petitioner for more space; and (b) sufficient weight was not given to the testimony presented by the citizens and residents of the area whose property will be adversely affected by the granting of the reclassification.
5. That the granting of the reclassification and the operation of a lumber yard business in the location petitioned for would create a traffic hazard. There would be additional commercial vehicles transporting lumber and other large bulk items as well as an increased flow of automobiles.
6. That the establishment of a lumber yard would create, or tend to create, a health hazard and a potential

breeding place for disease. It would provide a comfortable and attractive dwelling place for rodents, termites and other unwelcome disease bearing creatures.

7. That it would create, or tend to create, a fire hazard, which, in turn, would result in a possible or potential or likely increase in fire insurance rates for your Petitioners.
8. That it would depreciate the value of the Petitioners' property.
9. That the neighborhood, at present, is an attractive residential community free of noise and other disturbances and the operation of the lumber yard would destroy the peace, quiet and enjoyment of your Petitioners' property.
10. The additional traffic generated by the use of the lumber yard would endanger the safety of school children at various school bus stops and in crossing streets.
11. That the establishment of the lumber yard as petitioned for would adversely affect the health, safety and general welfare of your Petitioners and the community as a whole.

WHEREFORE, your Petitioners pray:

- (a) That the County Board of Appeals of Baltimore County be required to return the original papers acted upon by it, including a transcript of the testimony presented at the hearing held before it, copies of plats and exhibits filed with said Board and a certified copy of its minutes relating to Appeal No. 66-104-BA.
- (b) That the decision of the County Board of Appeals of Baltimore County dated April 14, 1966 be reversed and that your Petitioners be allowed to present further and additional

I, WALLACE DANN, that on this 26th day of May, 1966, a carbon copy of the foregoing Petition was mailed to the County Board of Appeals of Baltimore County, Towson, Maryland, Appellee.

WALLACE DANN

testimony at the trial of this case.

(c) And for such other and further relief as the nature of the Petitioners' case may require.

WALLACE DANN

BROGEL & BROGEL
1900 One Charles Center
Baltimore, Maryland, 21201
539-2744

Attorneys for Petitioners

October 27, 1962

Robert J. Rosada, Esq.
809 Eastern Blvd.
Baltimore, Md. 21221

Re: Petition for Reclassification & Variance for Joseph F. Zieski #66-104-BA

Dear Sir:

This is to advise you that \$62.30 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Md. and remit to Mrs. Anderson, Room 121, County Office Building.

Yours very truly,

JOHN G. ROSE
ZONING COMMISSIONER

JGR/da

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21286

September 20, 1965

Robert J. Rosada, Esq.
809 Eastern Boulevard
Baltimore, Maryland 21221

Dear Sir:

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

FIRE BUREAU, PLANS REVIEW: See attached comments.

BUREAU OF ENGINEERING:
Water - Existing 8" water in Eyring Avenue
Sewer - Existing 8" sewer in Eyring Avenue
Adequacy of existing utilities to be determined by developer or his engineer.
Road - Eyring Avenue is to be developed as a minimum 12' curb and gutter road on a 60' right of way. If development of Franklin Avenue becomes necessary, it shall be improved with a 30' curb and gutter cross-section on a 50' right of way.

OFFICE OF PLANNING AND ZONING, ZONING ADMINISTRATION DIVISION: The petitioner's site plan does not meet with the requirements as set forth in Section 22-6, which states that a lumber yard must be located at least 50 feet from residential zone boundaries. Also, the proposed building as indicated on the site plan does not meet with the side yard setback requirements of 30 feet. A variance will be necessary for the construction of the proposed lumber yard as it is proposed on the petitioner's site plan. Also, the plan does not indicate how circulation for vehicular traffic will be provided to the rear of the building. This office is withholding a hearing date until such time as the above situation is rectified.

The above 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.

The following members had no comment to offer:

Board of Education	Bureau of Traffic Engineering
Health Dept. at	State Roads Commission
Industrial Development Commission	Office of Planning and Zoning,
Buildings Department	Project Planning

Very truly yours,
James E. Dyer
James E. Dyer, Chief
Petition and Permit Processing

CC: Lieut. Morris, Fire Bureau
Mr. C. Brown, Bur. of Eng.
Mr. Herman Kahn,
c/o Essex Lumber Co.
1 N. Face Ave. (2121)

ANNIE D. MITCHELL
207 N. Essex Avenue
Baltimore, Maryland

NELSON B. FLEMING
ELIZABETH FLEMING
7 Eyring Avenue
Baltimore, Maryland

FRANK SMITH
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205 N. Essex Avenue
Baltimore, Maryland

MRS. VIRGINIA MITCHEL
1414 Franklin Avenue
Baltimore, Maryland

MRS. ALBERTA PUGH
843 Middlesex Road
Baltimore, Maryland

PHILIP KLEIN
920 Ashbridge Drive
Baltimore, Maryland

66-104-RA

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW

Misc. Docket No. 8

Folio No. 93

File No. 3532

PASQUALE CUCCHIELLA
102 N. Essex Avenue
Baltimore, Maryland

MR. LOUIS NYITASI
MRS. LOUIS NYITASI
203 N. Essex Avenue
Baltimore, Maryland

MR. JOHN W. DROMMELHAUSER
110 N. Essex Avenue
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HARLAND SNOW
106 N. Essex Avenue
Baltimore, Maryland

FRED F. CECH
323 Dorsey Avenue
Baltimore, Maryland

Appellants
vs.
WILLIAM S. BALDWIN,
W. GILES PARKER and
R. BRUCE ALDERMAN,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Appellee

ANSWER TO ORDER OF APPEAL TO CIRCUIT
COURT FOR BALTIMORE COUNTY AND
CERTIFIED COPIES OF PROCEEDINGS BEFORE
THE ZONING COMMISSIONER AND BOARD
OF APPEALS OF BALTIMORE COUNTY

MR. CLERK:

Please file, &c.

Edith Y. Eisenhart, Secretary
County Board of Appeals of Baltimore County

Zoning File No. 66-104-RA - Joseph F. Ziemski, et al. appealed 5/11/66

ANNIE D. MITCHELL
207 N. Essex Avenue
Baltimore, Maryland

NELSON B. FLEMING
ELIZABETH FLEMING
7 Eyring Avenue
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IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Misc. Docket No. 8

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323 Dorsey Avenue
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Appellants
vs.
WILLIAM S. BALDWIN,
W. GILES PARKER and
R. BRUCE ALDERMAN,
constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 1101-5(h) of the
Maryland Rules of Procedure; William S. Baldwin, W. Giles Parker
and R. Bruce Alderman, constituting the County Board of Appeals
of Baltimore County, has given notice by mail of the filing of
the appeal to the representative of every party to the proceeding
before it; namely, Robert J. Romada, Esq., 809 Eastern Boulevard,
Baltimore, Maryland, 21221, Attorney for the Petitioner, and
John Thomas Welsh, Esq., Suite 24, Jenifer Building, 44 W.
Chesapeake Avenue, Towson, Maryland, 21204, and Wallace Dann, Esq.
1900 One Charles Center, Baltimore, Maryland, 21201, Attorneys

- 2 -

for the Protestants, a copy of which notice is attached hereto
and prayed that it may be made a part thereof.

Muriel E. Buddemeier
County Board of Appeals of
Baltimore County
County Office Building
Towson, Maryland 21204
Valley 3-3000, Ext. 570

I hereby certify that a copy of the foregoing Certificate
of Notice has been mailed to Robert J. Romada, Esq., 809 Eastern
Boulevard, Baltimore, Maryland, 21221, Attorney for the Petitioner,
and John Thomas Welsh, Esq., Suite 24, Jenifer Building, 44 W.
Chesapeake Avenue, Towson, Maryland, 21204, and Wallace Dann, Esq.,
1900 One Charles Center, Baltimore, Maryland, 21201, Attorneys
for the Protestants, on this 12th day of May, 1966.

Muriel E. Buddemeier
County Board of Appeals of
Baltimore County

RE: PETITION FOR RECLASSIFICATION : BEFORE
from a B-L zone to a B-R zone, : COUNTY BOARD OF APPEALS
843 1/2 of Eyring Avenue at :
Franklin Avenue : OP
15th District : BALTIMORE COUNTY
Joseph F. Ziemski, :
Petitioner : No. 66-104-RA

OPINION

This case comes before the Board of Appeals on the petition
of Joseph F. Ziemski for the reclassification from B-L to B-R
of 1.53 acres of land on the southeast side of Eyring Avenue at
Franklin Avenue in the Fifteenth Election District of Baltimore
County, and for a variance from sections 236.3 and 238.2 of the
Baltimore County Zoning Regulations. During the course of the
hearing the petitioner, through counsel, formally withdrew that
phase of his petition seeking the aforesaid variance so that
only the matter of the proposed reclassification from B-L to
B-R remains before the Board.

The subject property is bounded on the north by Franklin
Avenue (which is only a paper street). To the north of this is
a Car Wash, and a Ford automobile dealership exists on the north
side of the Car Wash. This Ford dealer is directly on Eastern
Avenue and across Eastern Avenue, to the north, is a rather
large commercial development known as the Middlesex Shopping
Center. To the south of the subject property are five or six
residential homes and one vacant lot. To the west, and across
Eyring Avenue, is the parking lot of a Thom Moan Shoe Store,
and to the east of subject property are additional residences
which front on Essex Avenue.

The contract purchaser of the subject property, Mr. Herman
Kahn, is a lumber dealer presently operating his lumber yard on

Joseph F. Ziemski - No. 66-104-RA

the corner of Eastern Avenue and Mace Avenue (in the heart of
Essex). His present location comprises only approximately one-
third of an acre and his testimony is that he is in dire need
of more space. The purpose of the reclassification sought here
is to enable him to build and operate a lumber yard on the sub-
ject property.

The Board is in agreement with testimony submitted by
petitioner that the area surrounding the subject property has
been constantly changing over the last eight years and becoming
more commercial in nature. Most of the persons testifying in
protest of the subject petition did not dispute that fact but
based their protest primarily against the type of commercial use
sought; namely, a lumber dealer.

It is the opinion of the Board that there has been a
sufficient change in the character of the neighborhood since the
adoption of the zoning map in question (1945) to justify and
warrant the reclassification sought by petitioner. It might be
well to point out that the property directly to the north of the
subject property on which a seven day a week Car Wash is operated
was reclassified from B-L to B-R less than four years ago and,
further, that none of the protestants appearing in this case
could testify that they had appeared to object to the reclassifi-
cation from B-L to B-R of that property or against its use as a
Car Wash.

George E. Gavrellis, Director of Planning and Zoning for
Baltimore County, submitted comments pertaining to the proposed
reclassification on October 15, 1965. Mr. Gavrellis, upon the
summons of the petitioners in this case, appeared to testify and

Joseph F. Ziemski - No. 66-104-RA

His aforesaid remarks were incorporated into the record of the
hearing. Mr. Gavrellis testified that the reclassification re-
quested under the subject petition is in accord with the recom-
mendations embodied in the comprehensive zoning map for the
Eastern Planning Area, and further stated that the B-R zone for
the subject location represented the best present thinking of the
Planning Board and the Planning Staff.

It is, therefore, the feeling of the Board that there have
been substantial changes in the character of the neighborhood
and that the subject property should be reclassified from B-L
to B-R.

ORDER

For the reasons set forth in the aforesaid Opinion, it
is this 14th day of April, 1966, by the County Board of
Appeals, ORDERED that the reclassification petitioned for be and
the same is hereby GRANTED.

Any appeal from this decision must be in accordance with
Chapter 1100, subtitle 2 of Maryland Rules of Procedure, 1961
edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman
W. Giles Parker
R. Bruce Alderman

- 3 -

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION AND VARIANCES

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, **Joseph F. Ziemski** 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 **B-1** zone to an **B-R** zone; for the following reasons: **Lumber Yard.**

Variance to Section 236.3 to permit a lumber yard within 35' of the south residential boundary line instead of the required 50'.
Variance to Section 238.2 to permit a side yard of 25' along the North property line instead of the required 30'.

See attached description

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

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

Herman Kahn Contract purchaser
Joseph F. Ziemski Legal Owner
Address: One North Maca Avenue, Baltimore, Md. (21221)
Address: 1309 Eastern Boulevard, Baltimore, Md. (21221)

Robert J. Romadka Petitioner's Attorney
Robert J. Romadka Protestants' Attorney

Address: 808 Eastern Boulevard, Baltimore, Md. (21221)

ORDERED By The Zoning Commissioner of Baltimore County, this **21st** day of **September**, 1966, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the **27th** day of **October**, 1966, at **10:00** o'clock **A. M.**

Joseph F. Ziemski
Herman Kahn
Zoning Commissioner of Baltimore County

WILLARD H. LEWIS
1506 MCINTOSH AVENUE
BALTIMORE 14, MARYLAND

Phone: BA-2813

August 20, 1965

S.W.C. Byring Avenue and Franklin Avenue
15th District Baltimore County, Maryland

Beginning for the same at the corner formed by the intersection of the east side of Byring Avenue with the south side of Franklin Avenue and thence running and binding on the east side of Byring Avenue South 6 degrees 14 minutes East 150 feet thence leaving Byring Avenue for lines of division as follows: North 83 degrees 40 minutes East 145 feet to the west side of a 10 foot alley thence binding on the west side of said alley North 4 degrees 10 minutes West 5 feet to the north side of said alley thence binding on the north side of said alley North 83 degrees 40 minutes East 310 feet to the west side of a 10 foot alley thence running and binding on the west side of said alley North 6 degrees 14 minutes West 145 feet to the south side of Franklin Avenue and thence running and binding on the south side of said Franklin Avenue South 83 degrees 40 minutes West 455 feet to the place of beginning.

Containing 1.53 acres of land.



CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: **15-C** Date of Posting: **10-7-65**
Posted for: **Byring Ave. Oct. 27-65 at 10:00 A.M.**
Petitioner: **Joseph Ziemski**
Location of property: **SE corner of Byring and Franklin**
Location of sign: **On Byring Ave. Opposite 39' front lot line on Franklin Ave. 100' from Franklin Ave. 30' from Byring Ave.**
Posted by: **Robert J. Romadka** Date of return: **10-4-65**

ROBERT J. ROMADKA
ATTORNEY AT LAW
808 EASTERN BOULEVARD
TOWSON, MARYLAND 21286
MURDOCK 4-8274

September 16, 1966

Board of Appeals
County Court House
Towson, Maryland (21204)

ATTENTION: Mrs. Eisenhart

Dear Mrs. Eisenhart:

As per your request, I have enclosed herewith copies of the Memorandum Opinion and Order of Court filed by Judge Walter M. Jenifer in the Ziemski and Englert cases.

I trust you will find the enclosures in proper order.

Very truly yours,

Robert J. Romadka

RJR:slh
Enclosures (2)

*Rec'd 9:00-66
7:30 am*

ZONING FILE #66-104-RA - JOS. F. ZIEMSKI

ANNIE D. MITCHELL, et al : IN THE CIRCUIT COURT
vs. : FOR BALTIMORE COUNTY
JOSEPH F. ZIEMSKI : AT LAW
HELEN ZIEMSKI, his wife, : Misc. Docket :
and HERMAN KAHN : Folio : 95
THE COUNTY BOARD OF : Case No. : 3532
APPEALS OF BALTIMORE COUNTY :

ORDER OF APPEAL

MR. CLERK:
Please enter an Appeal to the Court of Appeals of Maryland on behalf of **ANNIE D. MITCHELL, HELEN D. FLEMING, ELIZABETH FLEMING, FRANK SMITH, THEODORE M. LANGFORD, WIFE, THEODORE V. DANZON, ANNEK WISHELL, WIFE, NANCY ROSS, WIFE, ROBERT LANGFORD, MRS. ROBERT SAUERHOLD, LORETTA BEIGER, JENNINGS WINE, JOSEPH FORD, MRS. JOSEPH FORD, MILBURN R. BROSIG, MRS. WILLIAM HOLTZOFF, WIFE, VIRGINIA HICKEY, WIFE, ALBERTA FIVH, PHILIP LEON, PARLOUNE CRONHILL, LOUIS HYKASI, MRS. LOUIS HYKASI, JOHN H. BARTSCHMANN, MRS. JOHN H. BARTSCHMANN, PARANAT SIGN and FRED F. SGOI** from the Order of the Circuit Court of Baltimore County dated the 27th day of July, 1966, confirming the Order of the County Board of Appeals of Baltimore County.

WALLACE DASH

BREGEL & BREGEL
1500 One Charles Center
Baltimore, Maryland, 21201
539-2744

Attorneys for Protestants

ANNIE D. MITCHELL, ET AL : IN THE
vs. : CIRCUIT COURT
WILLIAM S. BALDWIN, : FOR
W. GILES PARKER, and : BALTIMORE COUNTY
R. BRUCE ALDERMAN : AT LAW
constituting the : Misc. Docket No. : 8
COUNTY BOARD OF APPEALS : Folio No. : 93
OF BALTIMORE COUNTY : File No. : 3532

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William S. Baldwin, W. Giles Parker and R. Bruce Alderman, 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 certified 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. 66-104-RA
Sept. 21, 1965 Petition of Joseph F. Ziemski, et al, for reclassification from a B-L zone to a B-R zone and variances from Sections 236.3 and 238.2 of the Zoning Regulations on property located on the southeast side of Byring and Franklin Avenues, 15th District - filed
" " Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for October 27, 1965 at 10:00 a.m.
Oct. 7 Certificate of Publication in newspaper - filed
" 14 Certificate of Posting of property - filed
" 27 At 10:00 a.m. hearing held on petition by Zoning Commissioner - case held sub curie
" 29 Order of Zoning Commissioner denying reclassification and variances
Nov. 5 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner
Feb. 23, 1966 Hearing on appeal before County Board of Appeals - case held sub curie
Apr. 14 Order of County Board of Appeals granting reclassification (variances withdrawn by petitioner at hearing before the Board)
May 11 Order for Appeal filed in the Circuit Court for Baltimore County

May 12, 1966 Certificate of Notice sent to all interested parties
" 31 Transcript of Testimony filed - 1 volume
Petitioners' Exhibit No. :
" 1 - Plat and Site Plan
" 2 - Building Plan and Rendering of proposed building
" 3 - Proposed Eastern Area Zoning Map
" 4 - Zoning File #63-159-R (Car Wash)
" 5 - Color Photos (a, b, c, d, e)
" 6 - Zoning File #447 (King Ford)
" 7 - Zoning File #2547 (Thom McAn)
" 8 - Zoning File #409 (R-6 to S-L)
Protestants' Exhibit "A" - Photo 7-11 Store
" " "B" - Photos (1, 2, 3, 4)
" " "C" - Photo of rear yard of Essex Lumber Co.
June 2, 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 permanent records of the Zoning Department of Baltimore County as are also the use district maps and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations together with the zoning use district maps at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

Edith T. Eisenhart, Secretary
County Board of Appeals of Baltimore County

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION AND VARIANCE

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

Joseph F. Zienski
I, or we, Helen Zienski legal owners of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an BL zone to an BR zone, for the following reasons: Lumber Yard.

Variance to Section 236.3 to permit a lumber yard within 35' of the south residential boundary line instead of the required 50'.
Variance to Section 238.2 to permit a side yard of 25' along the North property line instead of the required 30'.

See attached description

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

Property is to be posted and advertised as prescribed by Zoning Regulations.
I, or we, agree to pay expenses of above 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.

Herman Kahn
Contract purchaser
Address: 210 North Hanes Avenue, Baltimore, Md. (21221)
Joseph F. Zienski
Legal Owner
Address: 1309 Eastern Boulevard, Baltimore, Md. (21221)

Robert J. Romadka
Attorney
Address: 609 Eastern Boulevard, Baltimore, Md. (21221)
Protestant's Attorney

ORDERED By The Zoning Commissioner of Baltimore County, this 21st day of September, 1966, that the subject matter of this petition be advertised as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of October, 1966, at 10:00 o'clock.

[Signature]
Zoning Commissioner of Baltimore County

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND
TOWSON, MARYLAND 21204

July 27, 1966

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

Re: Mitchell et al. v. County Board of Appeals
Misc. Docket 8, Folio 95, Case No. 4532
Zoning File No. 66-104-RA

Dear John:

I am enclosing copy of Memorandum Opinion and Order of Court which I have today filed in the above zoning appeal case.

With kind regards, I am

Sincerely,
[Signature]
Walter M. Jenifer

WMJ/mvo

Enclosure

cc: Mr. George E. Cavreitis
Director of Planning for Baltimore County



WILLIAM M. LEE
4604 MAINFIELD AVENUE
BALTIMORE 14, MARYLAND
Phone: HA 4-2813

August 10, 1965

S.E.C. Myring Avenue and Franklin Avenue
15th District Baltimore County, Maryland

Beginning for the same at the corner formed by the intersection of the east side of Myring Avenue with the south side of Franklin Avenue and thence running and binding on the east side of Myring Avenue South 6 degrees 14 minutes East 150 feet thence leaving Myring Avenue South 6 degrees 14 minutes East 150 feet thence leaving Myring Avenue for lines of division as follows: North 83 degrees 40 minutes East 145 feet to the west side of a 10 foot alley thence binding on the west side of said alley North 6 degrees 14 minutes West 5 feet to the north side of said alley thence binding on the north side of said alley North 83 degrees 40 minutes East 110 feet to the west side of a 10 foot alley thence running and binding on the west side of said alley North 6 degrees 14 minutes West 145 feet to the south side of Franklin Avenue and thence running and binding on the south side of said Franklin Avenue South 83 degrees 40 minutes West 455 feet to the place of beginning.

Containing 1.53 acres of land.



RE: PETITION FOR RECLASSIFICATION AND/OR SPECIAL EXCEPTION AND VARIANCE
FROM BL ZONE TO BR ZONE
1/2 SIDE MYRING AND FRANKLIN AVENUE
JOE F. ZIENSKI AND HELEN ZIENSKI
PETITIONERS
VARIANCE TO SEC. 236.3 AND 238.2 OF ZONING REGULATIONS
DEFEND
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 66-104-RA

The petitioners request reclassification of property from BL zone to BR zone, at the southeast corner of Myring and Franklin Avenues, in order to establish a lumber yard also a variance to Section 236.3 of the Baltimore County zoning Regulations to permit a lumber yard width of 35 feet on the south residential boundary line instead of the required 50 feet and a variance to Section 238.2 to permit a side yard of 25 feet along the north property line instead of the required 30 feet.

Residents in close proximity to the subject property do not object to BL zone, but they do object to the transfer BR zone.

The Office of Planning & Zoning in a memorandum dated October 15, 1965, concluded that "the reclassification requested under the subject petition is in accord with the recommendations set forth in the Comprehensive Zoning Map for the Eastern Planning Area."

Since this matter and other changes will be considered by the Baltimore County Council and since the residents should be given an opportunity to express themselves before the County Council at a public hearing the entire matter could be considered at that time rather than placement at present.

For the above reasons the reclassification should not be had and the variance requested should not be granted.

It is this 21st day of October, 1966 by the Zoning Commissioner of Baltimore County, that the above reclassification should be and the same is hereby ordered and the above property is hereby placed in the BR zone and the same is hereby ordered.

[Signature]
Zoning Commissioner of Baltimore County

Annie D. Mitchell, et al
vs.
William S. Baltwin,
W. Elias Parker and
R. Bruce Alderman,
constituting the
County Board of Appeals
of Baltimore County
Joseph Zienski,
Helen Zienski, his wife
and Herman Kahn
Intervenor
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
No. 66-104-FA

ANSWER OF INTERVENING APPELLEES TO PETITION OF APPEAL

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Now comes Joseph Zienski, Helen Zienski, his wife and Herman Kahn, Intervening Appellees, by Robert J. Romadka, their attorney, and for answer to the Petition of Appeal hereinbefore filed in this cause, say:

FIRST: That answering the first paragraph of said Petition, your petitioners have no knowledge of the allegations contained in the first part of said paragraph and further admit that the County Board of Appeals of Baltimore County, by its Order dated April 14, 1966, did order that the Reclassification Petition in case no. 66-104-FA be reclassified from a BL zone to a BR zone.

SECOND: That your petitioners deny the allegations contained in paragraphs 2, 3, 4 and each separate lettered paragraph thereof in paragraph 4 and ask strict proof thereof.

THIRD: That your petitioners deny the allegations contained in paragraphs 5, 6, 7, 8, 9, 10 and 11 of said Petition.

FOURTH: Answering said Petition generally, the Intervening Appellees say that the action, decision and order of the

ROBERT J. ROMADKA
ATTORNEY AT LAW
609 EASTERN BLVD.
BALTIMORE, MD.

County Board of Appeals of Baltimore County, dated April 14, 1966, pertaining to the reclassification of the property from BL zone to BR zone fully complies with the zoning laws and regulations applicable in Baltimore County; is not arbitrary or capricious, but fully supported by substantial evidence produced at the hearing before said Board, and there is consequently no basis upon which this Honorable Court can substitute its judgment, or the valid, proper, and wholly legal administrative determination herein.

WHEREFORE, the Intervening Appellees, having fully answered the Petition of Appeal, pray that same may be dismissed with costs.

[Signature]
Robert J. Romadka
Attorney for Intervening Appellees

I HEREBY CERTIFY, That on this 14th day of June, 1966, a copy of this Answer to Petition of Appeal was mailed to Wallace Dann, Esquire, Suite 1900, One Charles Center, Baltimore, Maryland (21201), and the Baltimore County Board of Appeals.

[Signature]
Robert J. Romadka

ROBERT J. ROMADKA
ATTORNEY AT LAW
609 EASTERN BLVD.
BALTIMORE, MD.

PETITION FOR RECLASSIFICATION AND VARIANCE

15th DISTRICT

ZONING: From BL to BR Zone.
Petition for Variance four and side yards.
LOCATION: Southeast side of Myring and Franklin Avenues.
DATE & TIME: WEDNESDAY, OCTOBER 27, 1965 at 10:00 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland

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

Present Zoning: BL.
Proposed Zoning: BR.
Petition for Variance to the Zoning Regulations of Baltimore County to permit a lumber yard within 35 feet of the south residential boundary line instead of the required 50 feet; to permit a side yard of 25 feet along the north property line instead of the required 30 feet.

The Zoning Regulation to be exempted as follows:

Section 236.3 - 50 feet from residential side boundaries.
Section 238.2 - Side and Rear Yards - 30 feet.

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

Being the property of Joseph F. Zienski and Helen Zienski as shown on plat plan filed with the Zoning Department.

Hearing Date: Wednesday, October 27, 1965 at 10:00 A.M.
Public Hearing Room 106, County Office Building, 111 W. Chesapeake Avenue, Towson, Md.

BY ORDER OF
JOHN G. ROSE
ZONING COMMISSIONER OF
BALTIMORE COUNTY

Board of Appeals of
Baltimore County
County Court House
Towson, Maryland (21204)

Gentlemen:

Please find enclosed herewith Answer of Intervening Appellees to Petition of Appeal filed in the Circuit Court for Baltimore County on Case No. 66-104-FA.

I trust you will find the enclosure in proper order.

Very truly yours,

RJR:clh
Enclosure

Rec'd 6-16-66

#66-104-RA
MAP
15-B
BR
10/14/65

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND
TOWSON, MARYLAND 21286

July 27, 1966

Mr. Wallace Denn
Bregal & Bregal
1900 One Charles Center
Baltimore, Maryland 21201

Mr. Robert J. Romedra
809 Eastern Boulevard
Baltimore, Maryland 21221

Re: Mitchell et al. v. County Board of Appeals
Misc. Docket 9, Fall 23, Case No. 3331

Gentlemen:

I am enclosing copy of Memorandum Opinion and Order of Court which I have today filed in the above zoning appeal case.

With kind regards, I am

Sincerely,

Walter M. Jenifer
Walter M. Jenifer

WMJ/mvo

Enclosure

ANNIE D. MITCHELL, et al.

vs.

JOSEPH F. ZIEMSKI,
HELEN ZIEMSKI, his wife,
and HERMAN KAHN
(Intervenors)

THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
AT LAW

Misc. Docket
Fall 95
Case No. 3532

MEMORANDUM OPINION
AND ORDER OF COURT

This case involves an appeal from the County Board of Appeals of Baltimore County (hereinafter referred to as the "Board"), which by its Order dated April 14, 1965, granted a reclassification of the property described in this proceeding from a B.L. Zone (Business, Local) to a B.R. Zone (Business, Roadside). The Zoning Commissioner of Baltimore County, by his Order dated October 29, 1965, had denied the reclassification requested and the variances then sought for the sole reason that since comprehensive rezoning for the entire area, including the subject property, was to be considered by the Baltimore County Council and that the matter of reclassification should await decision by the Council rather than dealing with the area in a piecemeal manner by deciding individual applications for reclassification. The Board found that the evidence produced before it showed a sufficient change in the character of the neighborhood since the adoption of the original zoning map in 1945 to justify and warrant the reclassification and granted the same rather than to wait action by the County Council on comprehensive rezoning of the entire area in which the subject property is located.

The Petitioners in the application for reclassification are Joseph F. Ziemski and Helen Ziemski, his wife, legal owners, and Herman Kahn, contract purchaser of the parcel of land in question. The property contains 1.53 acres of land, more or less, and is presently unimproved. It is rectangular in shape.

*Rec'd 9/26/66
9:30 AM*

having a frontage on the east side of Eyring Avenue of 150 feet with an even depth of 455 feet. The property is bounded on the north by a 50-foot unopened paper street known as Franklin Avenue and on the south by a 10-foot alley, the first 145 feet of which lies within the metas and bounds of the property. A similar 10-foot alley is the rear or easternmost boundary line of the lot.

The parcel is situated about one-quarter of a block south of the intersection of Eyring Avenue and Eastern Boulevard. Eyring Avenue is a short street about 1,000 feet in length running between Eastern Boulevard and Old Eastern Avenue. It is improved with 43 feet of macadam paving running southerly from Eastern Boulevard to a point near the southern boundary of the subject property. Between this point and Old Eastern Avenue, the paving of Eyring Avenue is that of crusher run which has been treated with some sort of oil surface.

The subject property appears on the Land Use Map for Part of the Fifteenth Election District of Baltimore County adopted by the County Commissioners of Baltimore County on January 2, 1945. At the time of the adoption of this map, the property was placed in an "E" Commercial classification which is the same as the present B.L. category. The same zoning classification was adopted for the remaining property between Franklin Avenue and Eastern Boulevard, which remaining property, at the time of the adoption of said map, was also placed in the same "E" Commercial classification. This land, lying between Franklin Avenue and Eastern Boulevard, had been reclassified to a B.R. Zone prior to the filing of the Petition in the instant case on September 21, 1965. The land at the intersection of Eastern Boulevard and Eyring Avenue was reclassified to B.R. by the Zoning Commissioner of Baltimore County on August 27, 1958, and, subsequently, by the County Council on September 22, 1958. (See zoning file 4472 - Petitioners' Exhibit 6.) It is now used and occupied by King Ford Auto Sales and Service. The other parcel between the King Ford property and Franklin Avenue was reclassified from B.L. to B.R. under date of December 2, 1963, by the Deputy Zoning Commissioner of Baltimore County. (See zoning file 63-4592 Petitioners' Exhibit 4.) The Petitioners in this case seek the same zoning

classification as was granted for the 2 parcels last referred to. From an examination of the 1945 Land Use Map, there have been numerous other commercial reclassifications in the immediate neighborhood, including the Middlesex Shopping Center which is located on Eastern Boulevard.

There were 2 other zoning files introduced before the Board at the time of the hearing on February 23, 1966, namely file No. 2547 (Petitioners' Exhibit 7) and file No. 4009 (Petitioners' Exhibit 8). File No. 2547 was a reclassification from a R-6 Zone (Residence, 1 and 2 Family) to an "E" Commercial Zone of the land bordering on the south side of Eastern Boulevard, the west side of Eyring Avenue and the southwest side of Essex Avenue, which reclassification was granted by the Zoning Commissioner of Baltimore County on June 18, 1953. File No. 4009 was a reclassification from a R-6 Zone to a B.L. Zone of the remaining land situate on the west side of Eyring Avenue and the north side of Old Eastern Avenue, directly opposite the subject property and which reclassification was granted by the Zoning Commissioner of Baltimore County on February 6, 1957, and, subsequently, by the County Council on March 19, 1957. These 2 parcels comprise the 6-acre tract referred to in the testimony before the Board and are now improved by the Thom McAnn Shoe Store and parking lot.

Between the subject property and Dorsey Avenue, fronting on Eyring Avenue, are 3 - 50-foot lots owned by the applicants, Mr. and Mrs. Ziemski, presently zoned R-6 and which are unimproved. Fronting on the north side of Dorsey Avenue, east of the 3 lots just referred to and extending to the 10-foot alley there situate, are 6 lots zoned R-6 for individual residences. None of these owners appeared in protest of the reclassification requested, and the owner of one of these lots, which adjoins the subject property and on which he plans to construct a home, appeared in favor of the application. Between Dorsey Avenue and Old Eastern Avenue are individual homes zoned R-6 as well as on the west side of Essex Avenue abutting the 10-foot alley forming the rear

property line of the subject property.

In the original application, the Petitioners sought not only a reclassification from B.L. to B.R. but also variances for side yard setbacks. During the course of the testimony before the Board, however, that portion of the Petition relating to variances was abandoned, this being accomplished by reducing the width of the proposed building and extending its length to provide the same square foot area. (See transcript, pages 35-38.)

The Petitioner, Herman Kahn, contract purchaser of the property, presently operates a hardware and lumber business in the heart of the Essex area on Mace Avenue known as the Essex Lumber Company. This business is now conducted on a lot containing one-third of an acre, and Mr. Kahn desires to move his business to this larger one and one-half acre location. The proposed building will be of metal construction, and the front portion thereof will be conducted as a hardware store and his offices in connection with the business. The rear portion of the building proper will be occupied for storage of lumber, paneling and the like and to the rear thereof will be an outdoor lumber yard. Operations will be confined to the hours of 8:00 a.m. to 5:00 p.m. 5 days a week and one-half a day on Saturday. Trucks used in the transportation of lumber and supplies will be stored within the building overnight and traffic lanes will be provided in a circular manner around the building and lumber yard. A fence would be constructed around the entire perimeter of the building for security reasons. Provision has been made for ample parking in front of the building for customers of the retail trade. It is conceded that adequate water and sewerage facilities are available to the property as well as other utilities such as gas and electricity.

It is undoubtedly true that the subject property is essentially oriented toward the businesses on Eastern Boulevard which is only one-quarter of a block away, and the contemplated use of the property is more closely related to the business uses situate to the north and west thereof than to the residential properties situate to the south and separated by a 10-foot alley. There

was testimony offered on behalf of the Petitioners that the proposed use would not be detrimental to property values in the neighborhood and would not create any traffic hazard. Witnesses for the Protestants to the contrary stated that in their opinions the proposed use would be detrimental to the value of their properties. Some of them admitted, however, that there would be no traffic problem created and that the proposed use would not in any way affect the health of the neighborhood.

The Petitioners produced in support of the application George E. Cavrelis, Director of Planning for Baltimore County. He testified that the Petition for reclassification had been submitted to his office and that the Planning Board favored the zoning change requested. He further stated that the B.R. classification was in accord with the Eastern Area Master Plan Zoning Map for the area in question. At pages 8 and 9 of the transcript, he testified as follows:

"Our comment simply said the reclassification requested under the subject petition is in accord with the recommendations embodied in the Comprehensive Rezoning Map for the Eastern Planning Area, meaning that the map, as then recommended and is now recommended, in terms of comprehensive rezoning for this portion of the county, would contain a Business-Roadside zoning classification for this property, among others."

Mr. Cavrelis did testify that his office had some question about the site plan for the development of the property with particular reference to the variances requested. There was no hesitancy on his part in concluding, however, that the proposed reclassification was proper and in keeping with the commercial development in the area since the adoption of the Land Use Map in 1945. He further stated that it was proposed on the Comprehensive Rezoning Map to classify as B.R. land the entire corridor extending from Eastern Boulevard to Old Eastern Avenue with the exception of the frontage along Eastern Avenue which would be maintained in a B.L. Zone in keeping with existing uses, and the area presently improved with individual residences.

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 piecemeal change therefrom, there must be proof of mistake or a substantial change in the character of the neighborhood. (See Tennant v. Bd. of Zoning Appeals, 205 Md. 489 p. 494 - decided November 18, 1954; Kroon v. Board of Zoning Appeals, 209 Md. 420 p. 426 - decided March 16, 1955; Reese v. Manley, 224 Md. 121 p. 178 - decided January 13, 1951; Jobar Corp. v. Rodgers Forge, 236 Md. 106 p. 121 - decided July 24, 1964; MacDonald v. County Board, 239 Md. 549 p. 555 - decided May 25, 1965; and Miller v. Abraham, 239 Md. 263 p. 272 - decided June 23, 1965.) 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, 316 Md. 442, wherein Judge Prescott, speaking for the Court, at page 447, 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."

It is important to note, moreover, that the reclassification requested in the instant case is from one business or commercial subcategory to another, namely from B.L. to B.R. Such a change in use does not have the same degree of impact as would a request to reclassify property from residential use to commercial use. This factor was noted in Missouri Realty, Inc. v. Ramey, supra, at page 449 in the following language:

"It should be noted here that this case involves an application for reclassification from one residential subcategory to another; not the removal of the land from the use category in which it was placed when originally zoned, as was the situation in many of the cases presented to this Court. In this respect, the situation is, to a certain degree, different from the application to reclassify property zoned as residential to commercial or industrial."

The sole question presented to the Court for determination, therefore, is: Did the evidence before the Board make the question of whether there had been a sufficient change in the neighborhood since the original zoning of 1945 to warrant the reclassification 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 extended commercial development in the immediate area over this 20-year period since the adoption of the original Land Use Map, and the 2 properties immediately adjacent to the subject property were reclassified to the same zone as is herein sought. This change was of such a nature as to dictate to the Planning Board, on its own initiative, to reclassify, not only the subject property to a B.R. Zone, but also additional adjoining properties on the proposed comprehensive zoning map for this area.

The question of change in conditions was before the Court of Appeals in Jobar Corp. v. Rodgers Forge, supra, wherein the rule by which this Court is to be governed in a decision in the instant case was clearly stated at 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 Biology County Council v. Springwood, 211 Md. 307; Tennant v. Board, 212 Md. 6; and West Ridge, Inc. v. McNamara, 222 Md. 441, 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

TELEPHONE
923-3000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 40685

DATE 10/10/66

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

TO: Eugene R. Smith, Esq.,
1035 Maryland National Bank Building
Baltimore Maryland 21202

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

DEPOSIT TO ACCOUNT NO. 01-621

TOTAL AMOUNT

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	COST
	Cost of posting Stefanowicz property for appeal hearing No. 66-104-R	\$10.00
	PAID - Baltimore County, Md. - Official Receipt	
	10/10/66 319 * 40685 TFP-	10.00

4

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

PHONE
923-3000
EXT. 387

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 42948

DATE 1/17/67

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

BILLED BY:

TO: Robert J. Romadka, Esq.,
809 Eastern Boulevard
Baltimore, Maryland 21221

Office of Planning & Zoning
119 County Office Bldg.,
Towson, Maryland 21204

DEPOSIT TO ACCOUNT NO. 01-622

TOTAL AMOUNT

QUANTITY	DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	COST
	Cost of admission posting property of Jos. Zlanski for appeal hearing	\$5.00
	#66-104-RA	
	PAID - Baltimore County, Md. - Official Receipt	
	1-17-67 * 42948 TFP-	5.00
	1-17-67 * 42948 TFP-	5.00

4

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

