

PETITION FOR SPECIAL HEARING

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

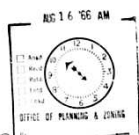
I, or we, MILLARD L. CUNSEY and MARIAN W. CUNSEY, his legal owners of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a special hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve amendments to the order of the County Board of Appeals in Case No. 2969-XA dated October 19, 1958.

See attached description

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

Contract Purchaser: Marian W. Cunsey
Address: 102 Melancthon Avenue
Lutherville, Maryland
Petitioner's Attorney: John A. Slawik
Address: 34 W. Chesapeake Avenue
Towson, Maryland 21204

ORDERED By the Zoning Commissioner of Baltimore County, this 16th day of August, 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 newspapers of general circulation throughout Baltimore County, 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 29th day of September, 1966, at 10:00 o'clock a.m.



Edward D. Hardisty
Deputy Zoning Commissioner of Baltimore County

(over)

BEGINNING for the same at an iron pipe now planted on the South side of Stevenson Lane at a point in the fourth or North 88 degrees 37 minutes 00 seconds West 917 feet 8 inches line of that tract of land which by Deed dated June 14, 1917 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 484 folio 24 etc., was conveyed by Wilbur P. Morgan and wife to Alonzo G. Decker and wife, said pipe being distant 43 feet South 84 degrees 19 minutes 38 seconds West from a concrete monument heretofore planted at the beginning of that part of land which by Deed dated June 30, 1956 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2966 folio 138 etc., was conveyed by Zanny F. Decker, Widow, to Joshua W. Rowe and wife, said point of beginning being at the end of the first line of the lastly described Deed; and running thence from said beginning and binding on the South side of Stevenson Lane and on a part of the fourth line of said Deed from Morgan to Decker, as now surveyed, South 84 degrees 19 minutes 38 seconds West 290-72/100 feet to a cross cut heretofore made in a stone wall there erected, at the beginning of the first line of the firstly described Deed from Morgan to Decker; thence leaving the South side of Stevenson Lane and running with and binding on the first line of said firstly described Deed as now surveyed, South 7 degrees 00 minutes 21 seconds West 297-70/100 feet to an iron pipe heretofore planted at the end of said first line and in the Northern outline of Stoneleigh; thence running with and binding on a part of the second line of said firstly described Deed and passing over pipes and concrete monuments heretofore planted in the Northern outline of Stoneleigh, North 86 degrees 04 minutes 02 seconds East 356-25/100 feet to an iron pipe now planted in said lines at the end of the second line of the secondly described Deed from Decker to Rowe; thence leaving the second line of the firstly described Deed from Morgan to Decker and the Northern outline of Stoneleigh; and running with and binding on the said second line of said secondly described Deed reversely, North 5 degrees 40 minutes 22 seconds West 301-34/100 feet to the place of beginning; containing 2-201/1000 acres of land, more or less, as surveyed by Thompson, Grace and Mays, Registered Civil Engineers and Surveyors, on September 21, 1956.

DANIEL A. WILLIS, et al
vs.
WILLIAM S. BALDWIN,
M. GILES PARKER and
JOHN A. SLOWIK, Constituting
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
and
MILLARD L. CUNSEY and
MARION W. CUNSEY (Intervenors)

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Misc. #3783/8/219

ORDERED, that the order of the County Board of Appeals of Baltimore County dated June 30, 1967 as amended by its order of May 16, 1968, be and the same is hereby affirmed.

John A. Slawik
JUDGE

RE: PETITION FOR SPECIAL HEARING
to Amend Order of County Board of
Appeals dated October 16, 1958,
S/S Stevenson Lane 158' East of
Oxford Road
9th District
Millard L. Cunsey, et al
Petitioners

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 67-66-SF-1

OPINION

The property involved in this case is located on the south side of Stevenson Lane and Oxford Road, in the 9th District of Baltimore County. Following previous hearings, the Zoning Commissioner and this Board granted a special exception for a nursing home, subject to certain restrictions. The final Order was dated October 16, 1958 and the nursing home has been operated on this property ever since in complete accord with the said restrictions. The present application is for amendments to the previous Order specifically as to the restrictions which forbid expansion of the nursing home operation.

This nursing home has operated since approximately 1958 in a manner not detrimental to the neighborhood, and there is substantial testimony to indicate that it has passed all tests required upon inspection by the Baltimore County and State Departments of Health, the Department of Public Safety, and in fact has been the recipient of a Certificate of Award from the Fire Prevention Bureau for its outstandingly safe operation.

The present application is to increase the size of the nursing home from its present twenty-three beds to one capable of caring for forty-five patients by the building of a wing attached to the present building of substantially similar architecture in appearance. According to the testimony, this has been necessitated to a large extent by the requirements of the Medicare Program for patients under the program known as "Extended Care", which requires, among other things, a minimum number of registered nurses, elevators, bathroom rooms, dining rooms, and rooms for medical examination and therapy.

Millard L. Cunsey, et al - 67-66-SPH -2-

It is clear that the present number of patients will not support the facilities as required, and under present conditions which did not exist at the time of the original application this, as well as most other nursing homes, would be out of business within a short time despite the fact that there is a desperate need for more nursing home facilities in Baltimore County, and particularly in better neighborhoods.

The proposed addition consists of a building to be added to the back of the existing facility, which years ago had been occupied as a home by the Decker family. The Petitioners' Exhibits #1 and #2 indicate the extent of the proposed addition on the present lot, which is one of over two acres, completely screened, and with a minimum of 75 foot setbacks from existing roads and abutting properties. The present nursing home, as well as the proposed addition, is completely surrounded by large trees, extensive plantings of shrubbery and lawns and gardens, which present no problem whatever to the aesthetic atmosphere of the neighborhood. Incidentally, the neighborhood is one of lovely homes in an area zoned R-6, but in which the individual lots are almost all larger than required by that classification, and there has been no objection in all these years to the manner of operation of the existing present nursing home.

Mr. Jackson P. Ketcham, an architect and senior partner in the well-known and distinguished architectural firm of Ketcham & Myers, testified and produced site plans and schematic drawings of the proposed addition (Petitioners' Exhibits #1 and #2). It is proposed that the addition be architecturally compatible with the present building, to be constructed of matching stone or a combination of matching stone and stucco, with a slate roof to match that of the existing building, and it appears from the exhibits and the testimony that the proposed building would be as well screened from view as the existing one, which can hardly be seen from anywhere on the perimeter of the property.

Further testimony was heard from Captain Paul H. Reincke, of the Baltimore County Fire Bureau, from Mr. Joseph D. Thompson, Engineer and Traffic Expert, Mr.

Millard L. Cunsey, et al - 67-66-SPH -3-

Howard F. Baldwin, Division of Medical Facilities Development of the State Health Department; Mr. Samuel Fallestri, Chief of the Sanitary Sewer Division of the Baltimore County Public Works Department; Mr. John F. Loos, Chief of the Water Design Group of the Public Works Department, as well as two experienced real estate appraisers, Mr. R. Paul Donovan and Mr. M. Ronald Lipman, of the Robert V. McCurdy Company. Without going into exhausting details of their testimony, it is obvious from the record that neither the present use nor the proposed expansion of this use would:

- Be detrimental to the health, safety or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein;
- Create a potential hazard from fire, panic or other dangers;
- Tend to overcrowd land and cause undue concentration of population;
- Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public improvements, conveniences or improvements;
- Interfere with adequate light and air.

which are the requirements of Section 502.1 of the Zoning Laws and Regulations of Baltimore County with respect to special exceptions, and the Board so finds as a fact.

The petitioners consisted of residents of the general vicinity, and testified in brief that they feared any addition to the present use might hurt the value of their property, and that they are thoroughly dissatisfied with present traffic conditions on Stevenson Lane. The latter seemed to be the principal objection as expressed by the petitioners, and it may very well be that the traffic pattern presents a serious problem in this vicinity, but if so it is the finding of the Board that such conditions have not been caused, nor will they be aggravated by the granting of the present petition. It appears to the Board that if there is a serious traffic problem it may be the result of the development at the corner of York Road and Stevenson Lane, the general expansion and development of the residential neighborhood, and the use of Stevenson Lane by the

Millard L. Cunsey, et al - 67-66-SPH -4-

increased traffic from the Country Club which is located on Stevenson Lane east of the subject property. It is also to be noted that Stevenson Lane is a through road and extensively used by traffic from Charles Street to Burke Avenue-Hillman Road at its northern end, none of which conditions can be blamed upon the small nursing home operated by the petitioners in this case.

Two realtor-experts who testified for the petitioners, i.e. Mr. Hugh E. Gelston and Mr. Ramsey W. J. Flynn (who lives in the vicinity), for both of whom the Board has the greatest respect, nevertheless testified that property values in the neighborhood had gone up over a period of the last few years at about the same rate as other comparable values in Baltimore County, and apparently the presently existing use of the property has had no effect on this trend in this vicinity, and the Board cannot find that the proposed expansion could have any more detrimental effect, if any, than the existing use.

For the above reasons the aforesaid petition will be granted and the original Order of October 16, 1958 granting the special exception will be amended by striking out all of the provisions for restrictions and substituting the following therefor:

- That the screening as it exists shall be kept in its present state;
- That there shall be no vehicular access to the alley on the west side of the nursing home property;
- That the plot filed herewith entitled "Addition and Alteration to Holly Hill Manor", prepared by Ketcham & Myers (Petitioners' Exhibit #1) shall become a part of this Order, and any construction must be carried out as shown thereon;
- That the architecture of the addition shall be of masonry with stone to match insofar as possible the existing building, and with a slate roof substantially similar to that on the existing building;
- Any building permit to be issued shall be subject to the approval of the site plan and architectural details by the Department of Planning and Zoning of Baltimore County, and that all road access and drive-ways proposed shall be subject to the approval of the proper County authorities.

Millard L. Cunsey, et al - 67-66-SPH -5-

ORDER

For the reasons set forth in the foregoing Opinion, it is this 30th day of June, 1967, by the County Board of Appeals ORDERED, that the restrictions to the presently existing special exception shall be amended to be as stated in the Opinion.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin
William S. Baldwin, Chairman

M. Giles Parker
M. Giles Parker

John A. Slawik
John A. Slawik

DANIEL A. WILLIS, ET AL
Appellants
vs.
CIRCUIT COURT FOR BALTIMORE
COUNTY - AT LAW
Misc. Docket No. 8
Folio No. 219
File No. 3783)
Appellees

SUPPLEMENTARY OPINION AND AMENDED ORDER

Under date of June 30, 1967 the County Board of Appeals filed an Order in the above entitled case amending the restrictions theretofore imposed upon a special exception.

The Order of the Board was appealed to the Circuit Court for Baltimore County, and under date of April 25, 1968 was remanded to the Board by the Honorable W. Albert Machine, the Judge of said court, with the direction that the Board reconsider and make a determination in connection with the fifth restriction stated in paragraph nine of the Board's previous Opinion.

The Board has considered this matter on the basis of the evidence and exhibits in the case, and after due consideration find, as a fact that the location of access roads and driveways, as shown on Petitioner's Exhibit No. 1, meets with all the requirements of Section 502.1 of the Baltimore County Zoning Regulations, and specifically that the road access, driveways and parking area proposed in said Exhibit will not offend against any of the provisions of the said Section 502.1. Therefore, the previous Order and Opinion of the Board is hereby amended by striking out restriction #5 of paragraph nine of the Opinion.

ORDER

For the reasons set forth in the foregoing Supplementary Opinion, it is

Daniel A. Willis, et al (Remanded) - 2 -

this 16 day of May, 1968, by the County Board of Appeals ORDERED, that the previous Order filed in this case be amended by striking out section 5 of the ninth paragraph of the previous Order.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin
William S. Baldwin, Chairman
W. Giles Parker
W. Giles Parker
John A. Slowik
John A. Slowik

Gordon G. Power, Esquire
34 W. Pennsylvania Avenue
Towson, Maryland 21204

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this

16 day of August, 1968.

Petitioner Willard L. Cursey et al

Petitioner's Attorney Gordon G. Power

Reviewed by James E. Ryan
Chairman of
Advisory Committee

RE: PETITION FOR SPECIAL HEARING :
Pertaining to approval of :
Amendments to Order of Board :
of Appeals - S/S Stevenson :
Lane 158' E. Oxford Road, :
9th District - Willard L. :
and Marlan W. Cursey, :
Petitioners :
BEFORE :
ZONING COMMISSIONER :
OF :
BALTIMORE COUNTY :
No. 67-66-SPH

A hearing was held on September 26, 1966, in the above entitled matter, to determine whether or not the Zoning Commissioner, or Deputy Zoning Commissioner, has authority to approve amendments to an Order of the County Board of Appeals in case No. 3969-XA, dated October 16, 1958.

After an examination of the Baltimore County Zoning Regulations, it is the opinion of the Zoning Commissioner that neither he nor the Deputy Zoning Commissioner have such authority.

John G. Power
John G. Power
Zoning Commissioner of
Baltimore County

Dated Oct 11 1966

TELEPHONE:
223-3000

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 42252

DATE 11/15/66

TO: Gordon G. Power, Esq.,
34 West Chesapeake Avenue
Towson, Maryland 21204

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

REPORT TO ACCOUNT NO. 01-482

QUANTITY

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

UNIT

TOTAL AMOUNT

COST

Cost of appeal - Willard L. Cursey, et al, petitioners

No. 67-66-SPH

posting

\$35.00

5.00

\$40.00

11/15/66 211-42252 TWP-000

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.

TELEPHONE 223-3000

INVOICE

BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE

Division of Collection and Receipts

COURT HOUSE

TOWSON, MARYLAND 21204

TO: Robert G. Power and Marlan W. Cursey
34 W. Chesapeake Ave.
Towson, Md. 21204

REMARKS: Zoning Dept. of Baltimore Co.

REPORT TO ACCOUNT NO. 02-478

QUANTITY

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

UNIT

TOTAL AMOUNT

COST

Advertising and posting of property for Willard L. Cursey

67-66-SPH

\$35.00

75.00

11/15/66 211-42252 TWP-7287

IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

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

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Towson, Md. 21204

REMARKS: Zoning Dept. of Baltimore Co.

REPORT TO ACCOUNT NO. 02-478

QUANTITY

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

UNIT

TOTAL AMOUNT

COST

Petition for Special Hearing for Willard Cursey

67-66-SPH

\$35.00

75.00

11/15/66 211-42252 TWP-7287

IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

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REPORT TO ACCOUNT NO. 02-478

QUANTITY

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

UNIT

TOTAL AMOUNT

COST

Petition for Special Hearing for Willard Cursey

67-66-SPH

\$35.00

75.00

11/15/66 211-42252 TWP-7287

IMPORTANT! MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND

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TOTAL AMOUNT

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67-66-SPH

\$35.00

75.00

11/15/66 211-42252 TWP-7287

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67-66-SPH

\$35.00

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67-66-SPH

\$35.00

75.00

11/15/66 211-42252 TWP-7287

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67-66-SPH

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67-66-SPH

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11/15/66 211-42252 TWP-7287

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QUANTITY

DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE

JOHN A. MILLER, JR. vs. WILLIAM S. BALDWIN, W. GILES PARKER and JOHN A. BROWN, JR., Constituting COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY AND WILLIAM L. CURSEY and MARION W. CURSEY (Intervenor)

DECLARATORY JUDGMENT

This is an appeal by protestants from a decision of the County Board of Appeals of Baltimore County after a petition for special hearing under Section 500.7 of the Zoning Regulations of Baltimore County. The petition had been filed by William L. Cursey and Marion W. Cursey, his wife, and sought elimination or alteration of the conditions and restrictions imposed in connection with the grant of a special exception authorizing use of property as a convalescent home. The property comprises 2.2 acres on the south side of Stevenson Lane with improvements initially used as a large and handsome dwelling.

The property lies approximately in the center of the practically completed residential community, with "Hillside" on the north and "Stonelight" on the south. The only commercial uses nearby are located on the east side of the York Road about 1,000 feet away.

Knowledge of earlier zoning controversy is required for understanding of the present proceedings. In 1956, Fanny Decker, with Lewis J. J. J. as contract purchaser, filed a petition for the grant of a special exception for a convalescent home. The petition was granted by the County Zoning Commissioner, subject to the following conditions:

1. That the screening as it exists shall be kept in its present state;
2. That there shall be no outside alterations to change the appearance of the existing structure;
3. That the plan submitted by the petitioner showing off-street

Board of Appeals of Baltimore County, ORDERED that the order of the Zoning Commissioner be and the same is hereby affirmed, subject to compliance with the following provisions:

1. That the screening as it exists shall be kept in its present state;
2. There shall be no additional buildings for convalescent purposes including patients' or nurses' dormitories;
3. That the plan filed herewith entitled "Holly Hill Manor Proposed Parking Area and Eastern Border Fence" become a part of this order and must be maintained as shown thereon;
4. That there shall be erected and maintained along the eastern boundary a solid type half round wood stockade fence not less than six feet six inches high for a distance of 200 feet from Stevenson Lane, and a rustic picket fence not less than four feet high for 104.2 feet;
5. There shall be no addition or additions to the existing structure, nor shall there be any outside alterations thereto which would change their appearance, except fire escapes as required; this, however, is not to prevent enclosing existing porches on the main dwelling house on the premises.

No appeal was taken from the decision of Judge Barrett nor from either of the orders subsequently passed by the Board. The property in question has continued to be utilized as a convalescent home down to the present. The present proceedings seek an intensification of that use on an approximately doubled scale, to be accomplished by construction that will more than double the size of the building in which the enterprise would be conducted. To accomplish this purpose the petitioners seek elimination of some and change of some of the conditions and restrictions initially imposed.

The petition was filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations providing that: "The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided."

The County Board of Appeals is authorized to impose conditions and

parking and ingress and egress shall become part of order, and that since there is a fence around the property with the exception of along the eastern boundary line, the said eastern boundary line shall be enclosed in like manner.

An appeal was taken by the protestants to the then Board of Zoning Appeals which, after hearing, passed its order on January 25, 1957 affirming the Zoning Commissioner.

An appeal from the Board's decision was taken to the Circuit Court for Baltimore County. After hearing, Chief Judge Lester L. Barrett (then Associate Judge) filed an opinion affirming the action of the Board, without specific reference to the conditions and restrictions.

On August 13, 1957, appealing protestants filed a motion for rehearing, opposed by the contract purchaser of the land. After argument, Judge Barrett granted the motion for rehearing. On November 8, 1957, Judge Barrett filed an opinion adopting his earlier view but noting that the property should be bound by "certain restrictions which are to apply to the special exception, as will be set forth * * *."

The amended opinion of Judge Barrett then continued as follows:

"In the course of the proceedings before the Board of Zoning Appeals, counsel for the applicant referred to a letter of the Hillside Improvement Association, which is filed in these proceedings, and in which letter the Association set forth seven restrictions which it urged should be applied to the use of the property in the event the special exception should be granted. Counsel for the applicant, in referring to the seven restrictions, stated to the Board (Record Page 86):

"and they have seven things that have already been done by Mr. Stapf, or which he is perfectly agreeable to have an Order passed including each and every one of these seven considerations."

One of the considerations so mentioned was that there be no major changes to the exterior of the house, and no enlargements thereto or additional institutional buildings on the grounds now or in the future. The Board in its Order of January 25, 1957 imposed a restriction that there shall be no outside alterations to change the appearance of the existing structure, but failed to include the fact that there would be no enlargements or additional buildings for institutional purposes permissible to the property under consideration. It seems obvious to the Court that if the Board were not to allow any outside alterations to

restrictions upon the grant of a special exception by Section 502.2 of the Zoning Regulations, which reads in appropriate part as follows: "In granting any special exception the zoning commissioner or the County Board of Appeals, upon appeal, shall impose such conditions, restrictions, or regulations as may be deemed necessary or advisable for the protection of surrounding or neighboring properties * * *." The validity of such conditions or restrictions early was recognized by the Court of Appeals. *Quaker v. Board*, 20 Md. 397, 406.

There appears to be no specific section of the zoning regulations authorizing removal or amendment of such conditions or restrictions. If such a course is permissible, it would appear that a petition for special hearing under Section 500.7 would be the appropriate method for its determination.

What legal test will govern that inquiry? There is a marked distinction between the law applicable to petitions for a zoning classification on the one hand and petitions for special exceptions on the other. In *Caban v. Mayor*, 243 Md. 516, Judge Barnes pointed this out at page 543 of the opinion. This distinction related, however, to original petitions for zoning reclassification (requiring application of the "change-mistake" rule) and initial consideration of special exceptions (presumptively authorized within the zoning classification applied to the particular property).

In *Knappery Co. v. Mosburg*, 220 Md. 555, 560, it was suggested that the acceptance of a conditional special exception might bar subsequent alteration but the issue was not decided. This case compels decision of the question.

Manifestly, it would be unfair to impose certain lands with restrictions and conditions as the single example of zoning in perpetuity.

Equally manifestly, it would be unwise to permit amendment of restrictions and conditions imposed as an incident to the grant of a special exception at the whim or caprice of a later board as the single example of completely transient zoning.

change the appearance of the existing structure in order to protect the surrounding property owners, it certainly must have inadvertently overlooked the provision that there should be no additional buildings for institutional purposes to be erected on the property, which restriction was agreed to by the applicant as heretofore set forth. See *Cursey v. Board of Zoning Appeals*, 204 Md. Page 397 at Pages 405-406.

The Court will therefore remand this case to the Board of Appeals and hereby orders that it delete Restriction No. 2 as set forth in its Order of January 25, 1957, and to substitute in its place and stand the following provisions: "There shall be no additional buildings for convalescent purposes including patients' or nurses' dormitories." The Court also orders that the following restriction, which shall be known as Restriction No. 3, be added to the said Order of the Board: "There shall be no addition or additions to the existing structure, nor shall there be any outside alterations thereto which would change their appearance, except fire escapes as required; this, however, is not to prevent enclosing existing porches on the main dwelling house on the premises."

Thereafter, the County Board of Appeals of Baltimore County (successor Board) passed the following order:

"It is, therefore, this 22nd day of November, 1957, by the County Board of Appeals of Baltimore County, ORDERED that the Order of the Zoning Commissioner be and the same is hereby affirmed, subject to compliance with the following provisions:

1. That the screening as it exists shall be kept in its present state;
2. There shall be no additional buildings for convalescent purposes including patients' or nurses' dormitories;
3. That the plan submitted by the petitioner showing off-street parking and ingress and egress shall become a part of this Order;
4. That since there is a fence around the property with the exception of along the eastern boundary line, the said eastern boundary line shall be enclosed in like manner, and
5. There shall be no addition or additions to the existing structure, nor shall there be any outside alterations thereto which would change their appearance, except the escapes as required; this, however, is not to prevent enclosing existing porches on the main dwelling house on the premises."

Subsequently, after apparent compliance with conditions imposed with respect to parking and fencing, the Board passed the following Order:

The plain language of Section 502.2 makes clear that imposed conditions and restrictions were in addition to and supplementary of a grant under Section 502.1, and intended for the protection of surrounding and neighboring properties. If unreasonable or unreasonable alteration of such conditions and restrictions is permitted, the protection accorded by them would be a mockery.

If any meaningful effect is to be given to the provisions of Section 502.2 and to the legislative purpose declared therein, reasoned analogy compels the conclusion that the presumptive finality attaching to initial zoning classifications should apply with equal force to conditions and restrictions imposed upon the initial grant of a special exception.

Accordingly, the original conditions and restrictions initially imposed in the instant case will be accorded the presumption of reasonableness and constitutional validity. It will be presumed that they were well planned; designed to be permanent; and to be amended or removed only when there was a mistake in their original imposition, or when such substantial change has occurred that their elimination or amendment is reasonably justified.

INITIAL ERROR

It is suggested by the applicant that the initial conditions and restrictions were unlawful because of the manner of their imposition. It is argued that they were the product of an improper judicial usurpation of a discretion vested solely in the County Board of Appeals. The contention is without merit. The conditions and restrictions spelled out in specific detail in the amended opinion of Judge Barrett and incorporated in the subsequent orders of the Board were such that the applicant agreed upon proper limitations upon a commercial use in this otherwise wholly residential community. The fact that their precise form resulted from the hearing and decision of the Circuit Court was in no sense a judicial usurpation of zoning power. It is crystal clear that the specific language of the conditions and restrictions ultimately imposed was merely to correct ambiguity in the initial order of the Board. Judge Barrett's amended opinion expressly stated that the Board "must have inadvertently overlooked the provision that there should be no additional

"The subject property is located on the south side of Stevenson Lane, east of Oxford Road, in the Ninth Election District of Baltimore County. It consists of 2.20 acres of land improved with a two-story, nine room, stone dwelling and a detached masonry garage. The grounds are beautifully landscaped with magnificent trees and shrubbery and when the trees and shrubbery are in full foliage the property is quite secluded and protected from public gaze.

The testimony showed that there is a great need for convalescent homes in Baltimore County and this Board finds from the evidence that the granting of a special exception permitting the subject property to be used for this purpose will not:

- a. Be detrimental to the health, safety or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alleys therein;
- c. Create a potential hazard from fire, panic or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public improvements, conveniences or improvements;
- f. Interfere with adequate light and air.

That the case was reviewed by the Circuit Court for Baltimore County and remanded to said Board of Appeals by said Court on November 7, 1957, with instructions.

That said order in Restriction No. 3 called for the plan as submitted by the Petitioner, showing off-street parking and ingress and egress, shall become a part of the order, and Restriction No. 4, that a fence was to be constructed along the eastern boundary line in like manner as the other boundaries, although there are three different types of fence.

That the Petitioner's successor in title, namely, Mrs. Elva C. Miller, who has been licensed by the State Department of Health to conduct a nursing home on said property, appeared before the Board of Appeals represented by an attorney, and that the protestants, by a representative and their attorney, also appeared before the Board of Appeals on May 1, 1958, and that the respective attorneys and parties have come to an agreement in regard to the parking and the enclosure of the eastern boundary.

For the above reason the aforesaid petition should be and the same is hereby granted with the following amendments to the original order dated January 25, 1957, by the Board of Zoning Appeals of Baltimore County, and the order of November 22, 1957 of the Board of Appeals of Baltimore County.

It is therefore this 15th day of October, 1958, by the County

buildings for institutional purposes to be erected on the property, which restriction was agreed to by the applicant." [Balance supplied] The uncontradicted evidence shows that the change in the wording of the restrictions was in full accord with the initial intention of the Board and was specifically agreed to by the original applicant. These appellants knew what the restrictions were when they acquired the property (see Transcript p. 165). They are bound to precisely the same extent. There was no error either in the terms of the initial conditions and restrictions or in the manner of their imposition.

There is no showing here that effective use of the subject property within its existing zoning classification is prevented. See *Baltimore v. Cohen*, 204 Md. 523; *DePaul v. Board*, 237 Md. 221; *Baltimore v. Berkusky*, 239 Md. 611. Compare: *Northwest Lighthouse Terminal v. Board*, 191 Md. 171.

It seems apparent, therefore, that there was no error, in the legal sense, in the initial imposition of the conditions and restrictions.

CHANGE

The decision of the Board announces findings of fact by the Board in its several paragraphs that may be summarized as follows:

In Paragraph 1 -- that the property was utilized under the special exception in complete accord with the restrictions of October 16, 1958.

In Paragraph 2 -- that the convalescent home has been extremely well conducted.

In Paragraph 3 -- that unless the size of the facility was increased in accordance with the present application it could not continue to exist as a nursing home, despite a desperate need for such homes in Baltimore County, particularly in better neighborhoods.

In Paragraph 4 -- that the proposed addition would in no way disturb the aesthetic atmosphere of the neighborhood of lovely homes on individual lots larger than required by the assigned zoning classification.

In Paragraph 5 -- that the proposed addition will be architecturally

compatible and well screened from view.

In Paragraph 5 -- that the property meets the requirements of Zoning Regulation Section 502.1.

In Paragraphs 7 and 8 -- (a) the contention that the value of their properties may be damaged is without substantial support because values in the neighborhood increased in the course of the last years at the same rate as other properties within Baltimore County, and values will not be detrimentally effected by the proposed expansion; and (b) that the fear by protesters that enlargement of the facility will create added traffic problems along Stevenson Lane was not true because "such conditions have not been caused, nor will they be aggravated by the granting of the present petition."

There is substantial evidence to support each such finding of fact. In such circumstances the question whether new legislation that has caused changed conditions relating to the care and treatment of convalescent patients and to the structural requirements of the institutions within which such care and treatment must be accorded is a matter for the exercise of the expertise of the Board of Appeals. The Court is not permitted to substitute its own judgment for that of the Board.

In the presence of an affirmative finding that amendment of the initial conditions and restrictions would not produce conditions forbidden by Section 502.1, the evidence of urgent need supports the finding of the Board. In Board of County Commissioners v. Edmonds, 340 Md. 500, it was said at page 609: " * * * whether there is a need is generally another way of looking at whether there has been a substantial change." It would appear, therefore, that the basic decision herein must be affirmed.

There is, however, one facet of the Board's decision that is illegal.

In the 5th paragraph of the Board's opinion it incorporated within the fifth of the new conditions and restrictions imposed upon the property under the special exception the following language: "that all road access and driveways proposed

shall be subject to the approval of the proper County authorities. (Italics supplied)

This is an unlawful delegation of its duty by the Board. It must consider the actual road access and the actual driveways to be used in the enlarged facility and make a determination whether such actual construction will offend against the provisions of Section 502.1.

The case is remanded to the Board for the purpose of making such determination.

April 25, 1966

PETITION FOR SPECIAL HEARING
AND DEED
JONING Petition for Special Hearing to amend order of the County Board of Appeals.
LOCALITY: South side of Stevenson Lane 138 feet East of Calver Road.
DATE: 7 THIRSDAY MONDAY, SEPTEMBER 26, 1966 at 10:30 A.M.
PUBLIC HEARING: Room 106, County Office Building, 111 N. Chesapeake Avenue, Towson, Maryland.
The Deputy Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the petition for special hearing to amend order of the County Board of Appeals, to determine whether or not the Zoning Commission should approve amendments to the order of the County Board of Appeals in Case No. 289A-1, dated October 15, 1965.
All that parcel of land is the North District of Baltimore County.
BRIEFING for the same at the iron pipe now planted on the South side of Stevenson Lane at a point 27 minutes 00 seconds West 917 feet 1 inch line of that tract of land which by Deed dated June 14, 1957 and recorded among the Land Records of Baltimore County in Liber C.L.B. No. 266 folio 128 etc., was conveyed by James P. Decker, Widow, to Joshua W. Howe, and wife, said point of beginning being at the end of the first line of the last described Deed, and running thence from said beginning and binding on the South side of Stevenson Lane and on a part from Morgan to Decker, as now surveyed, South 84 degrees 19 minutes 28 seconds West 290.72/100 feet to a cross cut hereafter made in a stone wall there erected, at the beginning of the first line of the first described Deed from Morgan to Decker; thence leaving the South side of Stevenson Lane and running with and binding on the first line of said first described Deed as now surveyed, South 7 degrees 00 minutes 21 seconds East 207.78/100 feet to an iron pipe hereafter planted at the end of said first line and in the Northern outline of Stonely, thence running with A.J. binding on a part of the second line of said first described Deed and passing over pipes and concrete monuments hereafter planted in the Northern outline of Stonely, North 86 degrees East 200.25/100 feet to an iron pipe now planted in said line at the end of the second line of the second described Deed from Decker to Rowe; thence leaving the second line of the first described Deed from Morgan to Decker and the Northern outline of Stonely, and running with and binding on the said second line of said second described Deed reversely, North 5 degrees 40 minutes 22 seconds West 201.21/100 feet to the place of beginning, containing 2-28/1000 acres of land, more or less, as surveyed by Thompson, Grace and May, Registered Civil Engineers and Surveyors, on September 21, 1964.
Being the property of Millard L. Currey and Marian W. Currey as shown on plat plan filed with the Zoning Department.
Hearing Date: Monday, September 26, 1966 at 10:30 A.M.
Public Hearing: Room 106, County Office Building, 111 N. Chesapeake Avenue, Towson, Md.
BY ORDER OF
EDWARD D. HARDESTY,
DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY.
Sgt. 8

DUPLICATE

CERTIFICATE OF PUBLICATION

TOWSON, MD. 19--66

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each 3-3 Time successive weeks before the 19--66 day of September, 19--66, the first publication appearing on the 05th day of September, 19--66.

THE JEFFERSONIAN

L. Frank Struthers
Manager

Cost of Advertisement, \$.....

ORIGINAL

OFFICE OF THE BALTIMORE COUNTY

THE COMMUNITY NEWS
Baltimore, Md.

THE HERALD - ARGUS
Catonville, Md.

No. 1 Newburg Avenue

CATONSVILLE, MD.

September 12, 1966.

THIS IS TO CERTIFY, that the annexed advertisement of Edward D. Hardesty, Deputy Zoning Commissioner of Baltimore County

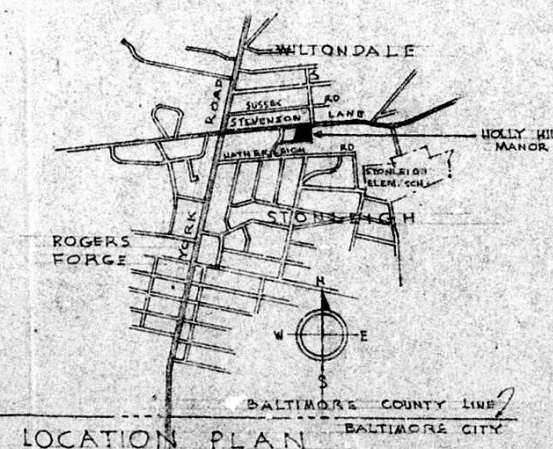
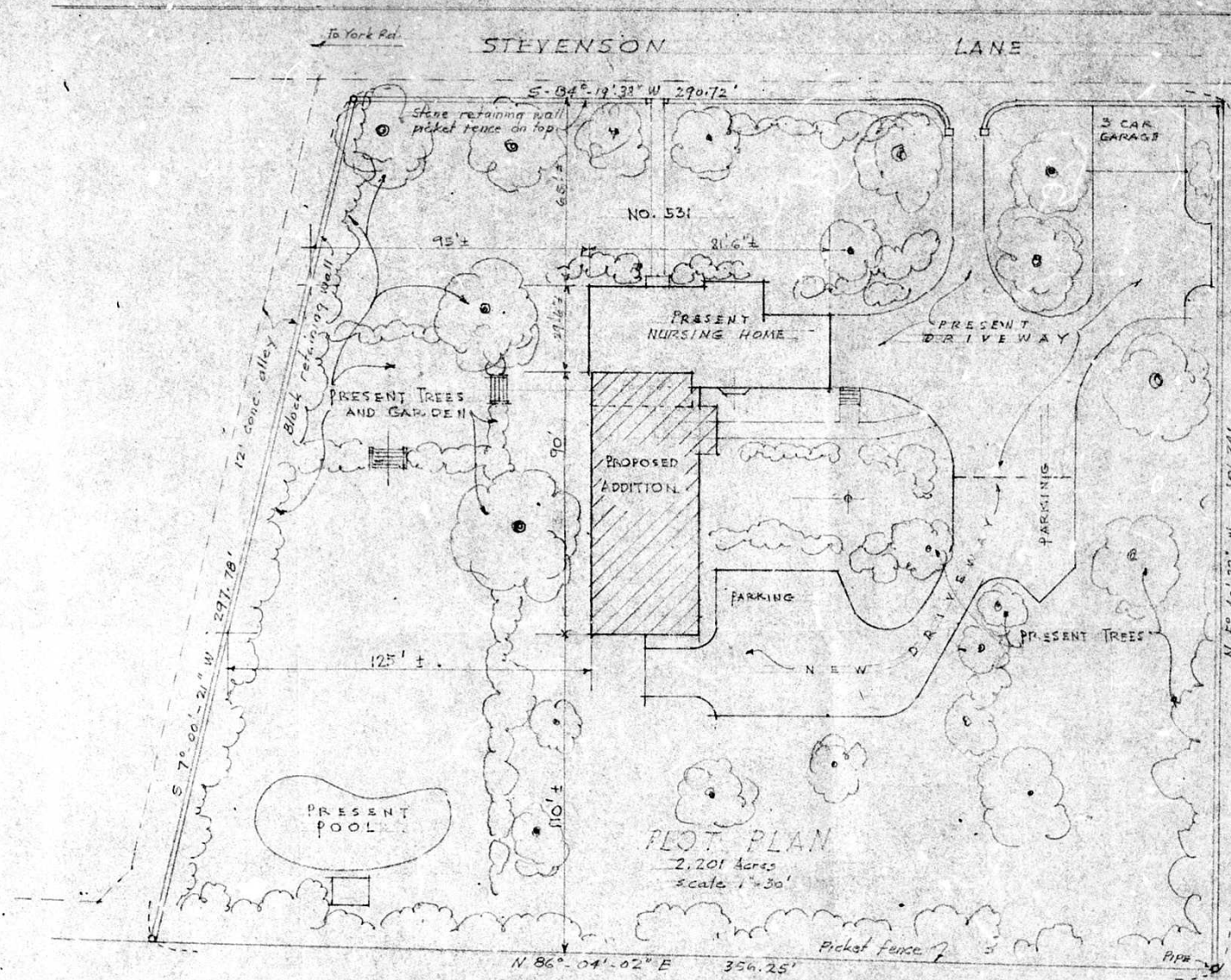
was inserted in THE BALTIMORE COUNTRY, a group of these weekly newspapers published in Baltimore County, Maryland, once a week for One successive weeks before the 12th day of September, 1966, that is to say the same was inserted in the issues of

September 8, 1966.

THE BALTIMORE COUNTRY

By *Paul J. Morgan*
Editorial Manager

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AND DEED
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Sgt. 8



PLOT PLAN SCALE 1" = 30'	
ADDITION & ALTERATION TO HOLLY HILL MANOR 531 STEVENSON LA. BALTIMORE, MD. 21204.	
KETCHAM & MYERS ARCHITECTS 1020 ST. PAUL STREET BALTIMORE, MD. 21202	
COMM. NO. 6506	DRAWING NO. P-1
DATE 3-1-66	