

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Lighthouse Enterprises, Inc., of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R-6 zone to an RA zone, for the following reasons:

1. Change in character of the neighborhood
2. Error in original zoning

See attached description

Application for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for JACKWATER ELEVATOR APARTMENT, BUILDING AND OFFICE BUILDING, OFFICES AND OFFICE BUILDING, PROPERTY IS TO BE POSTED AND ADVERTISED AS PRESCRIBED BY ZONING REGULATIONS. I, or we, agree to pay expenses of above re-classification and of 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.

LIGHTHOUSE ENTERPRISES, INC.

By: William Andrew, Legal Counsel

Address: 411 Lee Drive, Baltimore, Maryland - 21228

A. Owen Hennegan, 406 Jefferson Bldg., 21204

Fred E. Waldrop, Registrar's Attorney, Masonic Building, Towson, Maryland - 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 9th day of November, 1969, 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 5th day of January, 1970, at 2:00 o'clock P.M.

Zoning Commissioner of Baltimore County

Description to Accompany Zoning Petition from R-6 to R-A William Andrew and Wife Rolling Road and Old Frederick Road with Special Exception for one 4 story Elevator Apartment Beginning for the same on the west side of Rolling Road as proposed to be widened at a point distant 900 feet more or less measured southerly from the south side of Baltimore National Pike, said point of beginning being on the second or North 89° 16' 10" West 495.72 foot line of the land described in a deed dated October 6, 1958, from Henry C. Hoffman et al to Lighthouse Enterprises, Inc. and filed among the Land Records of Baltimore County in Liber G.L.B. 3428, folio 296 at a point distant 12 feet more or less from the beginning of said second line and running thence binding on the remainder of said second line North 89° 16' 10" West 484 feet more or less, thence North 70° 48' 50" West binding for part of the distance on the third or North 70° 48' 50" West 282.16 foot line in said deed and binding for part of the distance on fifth or North 70° 48' 50" West 600.66 foot line of the land described in a deed dated October 6, 1958, from Lee W. Wolf et al to Lighthouse Enterprises, Inc. and filed among the Land Records of Baltimore County in Liber G.L.B. 3428 folio 299 in all 862.82 feet thence binding on the sixth and seventh lines in said last mentioned deed and binding for part of the distance on the east side of Lee Drive, 50 feet wide South 4° 13' West 531.27 feet, thence leaving the east side of said Lee Drive and binding on the first, second and third lines in said last mentioned deed the three following

October 18, 1966

Description to Accompany Zoning Petition from R-6 to R-A William Andrew and Wife Rolling Road and Old Frederick Road with Special Exception for one 4 story Elevator Apartment courses and distances viz: first South 89° 09' East 170.29 feet, second South 4° 13' West 47.30 feet and third North 77° 11' 22" East 425.83 feet, thence binding on the sixth through the tenth and part of the eleventh lines of the above first mentioned deed the six following courses and distances viz: first South 3° 58' 15" West 279.55 feet, second North 78° 07' East 169.08 feet, third North 3° 11' 30" East 68.38 feet, fourth North 88° 47' 30" East 417.61 feet, fifth North 6° 57' 30" East 89.50 feet and sixth South 81° 01' 50" East 147 feet more or less to the west side of said Rolling Road as proposed to be widened thence binding on the west side of said Rolling Road North 6° 11' 50" East 300 feet more or less to the place of beginning.

October 18, 1966
Sheet 2

Containing 12.33 acres of land more or less.

Being all of that parcel of land described in a deed dated October 6, 1958, from Lee W. Wolf et al to Lighthouse Enterprises, Inc. and filed among the Land Records of Baltimore County in Liber G.L.B. 3428 folio 299 and part of that parcel of land described in a deed dated October 6, 1958, from Henry C. Hoffman et al to Lighthouse Enterprises, Inc. and filed among the Land Records of Baltimore County in Liber G.L.B. 3428, folio 296.



Description to Accompany Petition for Special Exception for Offices in an R-A Zone William Andrew and Wife Rolling Road and Old Frederick Road Beginning for the same on the west side of Rolling Road as proposed to be widened at a point distant 900 feet more or less measured southerly from the south side of Baltimore National Pike, said point of beginning being on the second or North 89° 16' 10" West 495.72 foot line of the land described in a deed dated October 6, 1958, from Henry C. Hoffman et al to Lighthouse Enterprises, Inc. and filed among the Land Records of Baltimore County in Liber G.L.B. 3428, folio 296 at a point distant 12 feet more or less from the beginning of said second line and running thence binding on the remainder of said second line North 89° 16' 10" West 390 feet more or less, thence for a line of division South 04° 57' 05" West 375 feet, more or less to intersect the ninth line of said deed, and thence binding thereon and on the tenth and part of the eleventh line of said deed the three following courses and distances viz: first North 88° 47' 30" East 224 feet more or less, second North 06° 57' 30" East 89.50 feet, and third South 81° 01' 50" East 147 feet, more or less to the west side of said Rolling Road as proposed to be widened, thence binding on the west side of said Rolling Road North 06° 11' 50" East 300 feet more or less to the point of beginning.

Containing 3.00 acres of land, more or less.

HENRY HOFFMAN, JR. ET AL
Appellants
VS.
WALTER A. REITER, JR. AND JOHN A. MILLER, CONSTITUTING A MAJORITY OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Appellees
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AS LAW
Misc. Docket 8/458/4361
The Petition of Henry Hoffman, Jr., Raymond W. Brown, Anthony Vete Ian Uzzi and Theodore Barnes by C. Victor McFarland, Treuth & McFarland, their attorneys, pursuant to the Maryland Rules of Procedure, respectfully represent:

1. That the Petitioners are all owners of properties located in the same neighborhood and community as the Appellees and as such either appeared, testified or both before the County Board of Appeals of Baltimore County in the instant case known as County Board of Appeals Case No. 67 131 RK, Petition of Lighthouse Enterprises, Inc.
2. That on or about July 15, 1969 the Appellants duly filed an appeal from the adverse decision of a majority opinion of the County Board of Appeals granting the reclassification from R-6 to an RA zone.
3. That the Appellants are "parties in interest because of the location of their properties in the close proximity of the Lighthouse Enterprises Inc. property sought to be reclassified to RA and "aggrieved parties" because of the Board of Appeals decision adverse to their interest as property owners and taxpayers.

4. That the said majority Order of the County Board of Appeals dated June 24, 1969 was improper, an abuse of Administrative discretion, was illegal, arbitrary, capricious and contrary to law for the following reasons:

- (a) That the Decision and Order of the County Board of Appeals is inconsistent with and contrary to the weight of all the evidence as disclosed by the entire record.
- (b) That the Decision and Order is against the competent substantial and material evidence as disclosed by the entire record.
- (c) That said Decision and Order constitutes an arbitrary and capricious act, and a gross abuse of administrative discretion in view of the entire record.
- (d) That the decision of said County Board of Appeals in denying the requested reclassification is not supported by any substantial testimony in the record pertinent to the issue.
- (e) That the said County Board of Appeals misinterpreted the evidence before them and misapplied the law in reaching their decision.
- (f) That there was no evidence to justify a conclusion that a substantial change had occurred in the neighborhood as to justify a reclassification from R-6 to R-A, with special exception.
- (g) That there was competent evidence that the property could be developed R-6.
- (h) That there was evidence sufficient to prove that the reclassification will present a hazard to the health, safety and welfare of the community.
- (i) For other and further reasons which will be set forth at the time of the argument on this Appeal.

5. That the Appellee failed to meet the burden of proof of substantial change in the neighborhood.

WHEREFORE, the Appellants-Petitioners respectfully request that the aforesaid Order of the County Board of Appeals dated June 24, 1969 be reversed, set aside and annulled.

C. VICTOR MCFARLAND
TREUTH & MCFARLAND
922 Frederick Rd., Balto. Md. 21204
744 0921

Attorneys for Petitioners

I HEREBY CERTIFY that a copy of the foregoing Petition of Appeal was mailed by me this 10th day of July, 1969 to Fred E. Waldrop, Esquire and A. Owen Hennegan, Esquire, Attorney for Appellee, County Board of Appeals, County Office Building and R. Bruce Alderman, Esquire, County Solicitor for Baltimore County, County Office Building, Towson, Maryland.

C. VICTOR MCFARLAND

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Koss, Zoning Commissioner Date: December 21, 1969
FROM: George E. Gurelis

SUBJECT: Petition 67-131-RK, Petition for reclassification from R-6 to R-A Zone. Special Exceptions for Elevator Apartments and Offices and Office Building. West side of Rolling Road 900 feet South of the Baltimore National Pike. Being the property of Lighthouse Enterprises, Inc.

In District

HEARING: Thursday, January 5, 1970 (2:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification to R-A, zoning together with a Special Exception for offices. It notes that a similar petition (64-79-R) was denied earlier by the Zoning Commissioner and the Board of Appeals. From a planning viewpoint, conditions have not changed substantially since decision was reached in the earlier case to warrant reconsideration.

GEG:ams

HENRY HOFFMAN, JR., et al.,
Appellants
v.
LIGHTHOUSE ENTERPRISES, INC.,
Appellee
CASE NO. 4261

Attorney for Appellants: C. Victor Hoffman
Attorney for Appellee: J. A. Owen Hennigan

STATEMENT OF FACTS

The subject property, owned by Lighthouse Enterprises, Inc., contains approximately 12 acres of land, located on the west side of Rolling Road, about 900 feet south of U.S. Route 40. The property is presently improved by an old house, which is rented, and the balance of the tract is wooded, and is generally level, but well drained, sloping generally downward right through the middle of the property in the westerly direction away from Rolling Road.

It is bounded on the north by a large shopping center, and on the west and south by residential areas zoned for single family dwellings. Directly across Rolling Road on the east is a large tract of vacant land zoned for R.6 residential use and referred to by the witnesses as the Garvey tract. The tract of land on the east side of Rolling Road between the Garvey tract and U.S. Route 40 is the Montgomery Ward Department Store property.

The Zoning Map for a Portion of First Election District, of which the subject property is a part, was approved by the County

Council on April 5, 1950. Bill No. 44, 1950 Session. The subject property is within a larger area zoned on the map as R.6 Residence Zone, One and Two Family, but the boundaries of the subject property were not delineated on the map when it was adopted.

In the year 1954, the legal owner of the subject property (Lighthouse Enterprises, Inc.) applied to the Zoning Commissioner for a reclassification of the zoning status of the subject property from an R.6 Residence Zone to an R.A. Residence Zone, Apartments. After a public hearing, the Zoning Commissioner found that the testimony did not indicate that there were any changes in the character of the neighborhood since the adoption of the map, and he found further that the County Council was not in error in zoning the large area (of which the subject property was an undivided part) as R.6 Residence Zone.

On appeal, at a public hearing before the Board of Appeals, the owner's application for a reclassification of his property was considered de novo.

On March 5, 1955 the Board found, as a fact, that the petitioner's case was completely lacking in sufficient evidence to show error in the original zoning or any change in the character of the neighborhood, since 1950, enough to warrant rezoning at this time. Lighthouse Enterprises, Inc. v. William F. Baldwin, Jr. Giles Foster and R. Bruce Alderman, constituting the Board of Appeals, Miscellaneous Case No. 7, Folio 401, Case No. 1217, of this Court.

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The full text of the Board's opinion filed March 5, 1955 in said case is as follows:

"This case is an application for a change from R.6 zoning to R.A. of a tract of land on the west side of Rolling Road south of Route 40 in the Garveyville community. This tract has been zoned R.6 since the adoption of the land use map on April 15, 1950. The petitioners desire to construct garden-type apartment houses on the tract.

"Between the subject property and U.S. Route 40 is located a shopping center on land that is commercially zoned as is a large part of the Route 40 frontage in the vicinity. The petitioner bases his application on a theory that the original zoning was in error because it denied his 'reasonable use of his property', and because there was a reasonable lack of apartment zoning in the map area which fails to meet a basic need for rental housing.

"Testimony was presented to show that while traffic conditions are overcrowded at present the situation could be remedied by the widening of Rolling Road, and that although there was no rooming available when the petitioner bought the property in 1950, the construction of new rooms and under way would solve this problem. The petitioner's expert witnesses also indicated that he felt that nearby R.A. and R.R. zones might make the subject property objectionable for residential use. The Board can see no reason why such continuous zoning should be any more objectionable to R.6 development than to other residential use including zoning for apartments.

"This application was denied by the Zoning Commissioner and this Board finds, as a fact, that his decision was correct in that the petitioner's case is completely lacking in sufficient evidence to show error in the original zoning or any change in the character of the neighborhood since 1950 enough to warrant rezoning at this time, and further finds, as a fact, that the physical condition of the property and its location present no substantial reason why it cannot be developed as presently zoned under uses as permitted in an R.6 classification.

"To have not yet submitted the respondents' evidence which consisted of testimony by a number of property owners in the neighborhood that rezoning

here would affect adversely the value of their properties, and that there had been no substantial changes in the neighborhood, and that this tract responds as is best of the adjoining residential property. One of the witnesses for the respondents, Mr. Davis S. Ryan, a qualified expert witness in the planning field, presented very impressive testimony to this effect.

"The application in this case will, therefore, be denied and the subject property is hereby continued as and to remain in an R.6 Zone."

For the reasons set forth in its opinion (supra) the Board ordered, on March 5, 1955, that the reclassification from R.6 to R.A. "be and the same is hereby denied."

The property owner (Lighthouse Enterprises, Inc.) appealed to this Court on March 29, 1955, for a reversal of the Board's order, but did not press the appeal. About 17 months later, on August 23, 1956, the appeal to this Court was dismissed by the property owner.

Thus, the date of the comprehensive zoning of the subject property was April 5, 1950, and the first petition for reclassification was denied by final order of the County Board of Appeals on March 5, 1955.

A new petition for reclassification was filed with the Zoning Commissioner on November 9, 1956, which was more than 10 months from the date of the final order on the earlier petition.

Section 500.14 of the Baltimore County Zoning Regulations provides that no new petition for reclassification shall be entertained by the Zoning Commissioner in any case which has been denied by the County Board of Appeals until the expiration

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of 18 months from the date of the final order thereon.

The final order was not stayed by the pendency of the appeal. Lighthouse Enterprises, Inc. v. Board of Appeals, decided June 23, 1970, published in the Daily Record of July 30, 1970. Accordingly, the 18-month period of delay mandated in Section 500.12 of the Zoning Regulations commenced on or March 5, 1955, the date of the final order of the Board.

The new petition requested that the zoning of the subject property be reclassified from an R.6 zone to an R.A. zone for the following reasons:

- (1) Change in character of neighborhood;
- (2) Error in original zoning; and

The new petition also requested a special exception to use the subject property for elevator apartment building and office and office building.

When the new petition came on for public hearing before the Zoning Commissioner, (he having jurisdiction to hold the public hearing under and by virtue of the powers vested in him by sections 22-22 and 22-23 of the Baltimore County Code, 1955), the petitioner offered no testimony, whereupon the Zoning Commissioner denied the reclassification and denied the special exception requested in the petition.

The petitioner (Lighthouse Enterprises, Inc., owner) then appealed to the County Board of Appeals under the provisions of Section 500 of the Baltimore County Charter, and Section 20-27 of the Baltimore County Code, 1955.

When the matter came on for a public hearing de novo before the County Board of Appeals on January 15, 1959, the respondents at the outset moved to limit the issue before said Board to the sole question of change in the character of the neighborhood between March 5, 1955 (the date of the final order of the Board under the previous petition) and January 15, 1959.

The motion was granted, and an exception was reserved to the property owner.

Before the public hearing was over, the property owner (petitioner) withdrew its request for special exceptions for elevator apartment building and for office and office building, thus narrowing the case to the one issue of whether or not there was a change in the character of the neighborhood since March 5, 1955.

The Board by a vote of two to one decided that there had been a substantial change in the character of the neighborhood since March 5, 1955, to warrant the reclassification of the subject property from R.6 Residence Zone, One and Two Family, to R.A. Residence Zone, Apartments.

The respondents timely filed an appeal to this Court. The petitioner, Lighthouse Enterprises, Inc., filed no cross-appeal.

Under the decision of the Court of Appeals in the case of Baldwin v. Baltimore County Board of Appeals, 260 Md. 187, it seems that the Board of Appeals acted properly in holding the issue before it to be the sole question of change in the character of the neighborhood since March 5, 1955. The property owner, at least, cannot be aggrieved, because it did not appeal.

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The respondents argued, at the hearing before this Court on July 27, 1970, that the decision of the Board of Appeals should be reversed on the ground that the petitioner failed to prove that a change in the character of the neighborhood had occurred since March 5, 1955.

The property owner proved that there were three zoning changes in the neighborhood, and also a number of physical changes.

The respondents do not deny the fact that these changes occurred, but they raise the question on this appeal of the legal sufficiency of the changes, individually or collectively, to establish a "substantial change in the character of the neighborhood".

Judge Barnes, in the case of King, Charles Villano, et al. v. Montgomery County Council, decided May 6, 1970, and published in the Daily Record of June 27, 1970, stated for the court:

"What can be determined by the Circuit Court and by us on appeal, however, is whether or not there was any evidence before the District Council sufficient to enable it to find that the necessary change in the character of the neighborhood had occurred. Wills v. Montgomery, 263 Md. 554, 233 A.2d 746 (1968) and prior cases cited in the opinion in that case. As we stated in Smith v. Board of County Commissioners of Howard County, 258 Md. 240, 263-268, 249 A.2d 765, 773 (1969):

"On numerous occasions, this Court has held that 'if the Board of Appeals has found that there was a change in the character of the neighborhood since the date of the original zoning, the Board of Appeals is not required to find that there was a change in the character of the neighborhood since the date of the original zoning'."

Respondent or else a substantial change in the neighborhood. Wills v. Montgomery, 263 Md. 554, 233 A.2d 746, 750, citing Greenleaf v. Board of Appeals, 235 Md. 5, 203 A.2d 77, 78, citing Shelton v. Board of Appeals, 233 Md. 205, 207 A.2d 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

"The burden of proof is upon the applicant making a zoning appeal to establish all of the elements of his case. Wills v. Board of Appeals, 247 Md. 618, 638, 233 A.2d 757, 758 (1957).

In case at bar, the Board of Appeals decided that the petitioner had proved the following "changes":

1. Zoning reclassification of a parcel to the north of the subject property from R.6 to R.A. for Rolling Road Realty Co.
2. Zoning reclassification of the portions of the tract to the northeast of the subject property from R.6 and public land to R.A. for Montgomery Ward Co.
3. Zoning special exception of a filling station site to north of subject property, for Shell Oil station on north side of Rolling Road.
4. Construction of Montgomery Ward complex of buildings to northeast of subject property.

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It may reasonably be inferred from this testimony that the plans for widening of Rolling Road were considered by the County Council when in 1950 it zoned the land on both sides of Rolling Road "R-6 Residential Zone, One and Two Family," including the subject property. The burden is upon the petitioner to prove that the County Council did not consider the widening of Rolling Road when it adopted the comprehensive zoning map of 1950. *Shaw-Cook v. Village of Mount Prospect*, 111 Ill. App. 2d 570, decided May 5, 1970, published in the Daily Record of June 27, 1970.

The widening of Rolling Road previously was envisioned in the comprehensive zoning map adopted by the legislative body in 1950. As was said in *Shaw-Cook v. Mount Prospect*, decided May 14, 1970, published in the Daily Record of July 14, 1970, by Judge Smith for the Court:

"So as to the network of highways here existent, evidence of change in the neighborhood quality, for example, ignores the fact that delivery of a network of highways was laid down on the plan when the zoning map was adopted. Surely, it was contemplated that some changes would come about as a result of these highways. In other words, the change in change that was contemplated at the time the map was adopted."

A controlling precedent on this point is the case of *Miller v. Philadelphia*, 257 Md. 126, wherein, on page 131, the following language appears:

"Substantial evidence, although not conclusive, that the character and quality of the neighborhood has actually been changed in such a manner as to require a change in conditions which in turn, effected a substantial change in the character of the neighborhood. The word 'substantial' in respect of an abstract identical situation was used, and rejected. In *Miller v. Philadelphia*, 257 Md. 126."

OPINION

This petition came before the Board on a decision of the Zoning Commission denying a reclassification of the subject property from R-6 to R-4, with a special exception for elevator apartments and office building. The petitioner offered little evidence concerning the special exception, and some will not be further considered. The subject property contains 12.33 acres and is located on the west side of Rolling Road, approximately 900 feet south of the Baltimore National Pike (U. S. Route 40), in the First Election District of Baltimore County. The tract is mostly wooded and improved by an old dilapidated frame dwelling.

The zoning and land use surrounding the property are generally as follows: Abutting the north boundary of the subject property is a B.R. zoned tract running from this contiguous line northward to U. S. Route 40, presently improved by a large suburban shopping center, including a gasoline filling station, and moving and storage warehouse facilities. The western and southern boundaries of the subject property are developed as single family residences. On the east side of Rolling Road, immediately across from the subject property, is a large undeveloped tract of R-6 land, which abuts the B.R. zoned corner of U. S. Route 40 and Rolling Road. This land was recently purchased, and is now being developed by the Montgomery Ward Company.

It might be noted that this same property was the subject of a similar petition for reclassification from R-6 to R-4, which was denied by this Board on March 5, 1965. The petitioner took no appeal from this decision.

Counsel for the protestants filed with this Board a Preliminary Motion, moving that any testimony concerning error in the original map is not admissible; the Board having decided in the previous case involving the same property in March of 1965, that the R-6 zoning on the property was not error. The Board agrees with counsel for the protestants and ruled that no testimony would be heard with regard to error in the original zoning, and that the only testimony that would be heard with regard to change in the neighborhood would be changes that occurred after the last hearing day of case 64-79-R. Therefore, the Board considered in this case no evidence and/or arguments as to original error, nor did the Board consider any evidence and/or argument concerning change in the neighborhood occurring prior to the last hearing date in the previous case.

It seems clear to this Court that the widening of Rolling Road, completed in July of 1950, would not have been considered a change which would constitute a "substantial" change in the character of the neighborhood of the subject property. It is a change in the character of the neighborhood of the subject property.

Mr. Gervais, the Director of Planning and Zoning, testified that as a result of the filing of the petition, his office made a study of the proposed rezoning, and the written opinion of his Office was:

"The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification to R-4, zoning together with a special exception for offices. It notes that a similar petition, 64-79-R, was denied earlier by the Zoning Commission and the Board of Appeals. From a planning viewpoint, conditions have not changed substantially since decision was reached in the earlier case to warrant reconsideration."

He testified that the subject property could be subdivided for single family R-6 development in a conventional way. He testified that the reclassification of the lot adjoining the subject property on the north, for Rolling Road Realty Company, did not change the character of the neighborhood. He characterized the change as an adjustment of the zone boundary to reflect property ownership.

He testified that the only other changes in the very immediate area, adjacent to the subject property, were changes which occurred within the context of the rezoning as he testified, and all was subsumed in the decision process leading to the adoption of the zoning map for the area.

The petitioner's expert in his written memorandum filed in this case on July 1, 1970, stated that "substantial evidence of change in the character of the neighborhood" was the decision of the Board "fairly debatable", citing the testimony of Frederick P. Klaus and Bernard Williams, experts, among others. These two gentlemen testified in the case at bar, before the Board, on January 15, 1965, and they are mentioned in the opinion rendered in the case of *Miller v. Philadelphia*, 257 Md. 126.

If there existed some evidence of a substantial change in the character of the neighborhood, an affidavit of the Board's decision would be required, on the ground that it is "fairly debatable" whether the neighborhood had acquired a new character after March 5, 1965.

However, this Court is fully persuaded, on this record, that there is no evidence which can be relied upon to make the issue fairly debatable (to borrow a phrase from the end of Judge McMillen's opinion for the Court of Appeals in the case of *Robinson v. Spillbury*, decided June 3, 1970, and published in the Daily Record of July 13, 1970).

For the reasons hereinbefore set forth, the decision of the Board of Appeals is reversed by this Court, this 21st day of August, 1970.

/s/ Walter R. Haile
JUDGE

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to an R-4 zone,
and SPECIAL EXCEPTION for :
Elevator Apartment Building and :
Office and Office Building, :
W/S Rolling Road 900' S. of :
Baltimore National Pike, :
1st District :
Lighthouse Enterprises, Inc., :
Petitioner :
No. 67-131-4X

OPINION

I, a member of the Board respectfully dissent from the Opinion of the majority in this case.

There is no point in this Opinion in going into the details of the surrounding zoning, land use, etc. as this has been more than adequately covered in the Majority Opinion of the Board. I agree with the majority of the Board that there have been changes that have occurred in the immediate neighborhood since March of 1965, and particularly the proposed construction of a large shopping center on the southeast corner of the Baltimore National Pike and Rolling Road, and the improvements to Rolling Road at the subject site that have occurred since March of 1965. However, these changes, and others cited in the Majority Opinion, are not in my opinion substantial enough to grant the requested reclassification.

I feel constrained to follow the Board's decision in the prior case which involved the identical property, being case No. 64-79-R decided by the Board on March 5, 1965 and, therefore, would deny the petition for reclassification and special exception.

Walter R. Haile, Chairman

Date: June 24, 1969

- 2 -

Lighthouse Enterprises, Inc. - 67-131-4X

The first expert witness to testify for the petitioner was the well-known traffic consultant, Dr. W. W. Ewell. Impressive to this Board was Dr. Ewell's testimony that Rolling Road has been physically widened to 48 feet, paved, on a 70 foot right-of-way from U. S. Route 40, 1500 feet south beyond the entrance to the subject property. It was also noted that some dualization, and construction of a median strip has taken place. This change physically widened the road in front of the subject property from 24 feet, without curbs and gutters, to the above mentioned 48 feet paved surface on the 70 foot right-of-way with curbs, gutters, dualized area, and median strip. This physical change has taken place since the conclusion of the prior case. This traffic expert further stated it was his judgment that, as a result of this widening, any traffic generated by the proposed apartment would have a great tendency to turn northward onto this dualized road to U. S. Route 40 and the Baltimore Parkway, rather than southward toward a primarily residential section. The Board agrees with this conclusion.

The next expert called by the petitioner was Bernard Williams, a noted City Planning Site Planner and Zoning Consultant, who has qualified to testify before this Board on many occasions. Mr. Williams went into great detail to describe the shopping center immediately north of the subject property. He also testified that subsequent to the last hearing, the Montgomery Ward Company had purchased the corner on the east side of Rolling Road, northeast of the subject property, and that a building permit was acquired from Baltimore County on January 2, 1969 for a 250,000 square foot structure and auto service center, which will be one of the largest commercial complexes in the east. He further testified that to the north of the subject property, towards the 40 West Shopping Center, a zoning reclassification was acquired by the Rolling Road Realty Company, Case No. 66-259, which changed that parcel from R-6 to B.R. This reclassification is on the south side of Geispe Road, and is contiguous to the subject property. Mr. Williams also indicated that water and sewer are now available to the subject site, and concluded that this, along with the widening of Rolling Road; the change of the contiguous land from R-6 to B.R.; the development and building of the Montgomery Ward complex; and certain special exceptions which were granted subsequent to the last hearing, are significant changes in the character of the neighborhood, and that the rezoning of the subject property would be a good transitional change.

The next expert witness called by the petitioner was Frederick W. Klaus, a noted real estate expert, broker, and appraiser. He cited the various changes that have occurred within the area or immediate neighborhood since January 26, 1965, the last date of the prior hearing before this Board. His testimony basically corroborated that of the prior witnesses, that the physical development of the surrounding neighborhood has significantly changed the character of the neighborhood, and that the proposed rezoning

- 3 -

Lighthouse Enterprises, Inc. - 67-131-4X

would not depreciate the homes in the immediate area.

The last witness for the petitioner was James Petrice, a consulting engineer, who testified that the entire subject tract was severable by gravity. In October, 1965, a sewer line in this area was extended through to the Millers Run Station, and that as a result of same, in his judgment, this property "is one of the easiest properties to sewer that I have seen in a long time".

George E. Gervais, Director of Planning for Baltimore County, opposed the petition, and stated that the subject property was never formally planned by his department as public sewer was not then available to the subject site. It was also his opinion that, from a planning viewpoint, conditions have not changed substantially since the decision was reached in the earlier case to warrant reconsideration. However, he admitted under cross-examination that it had been one year since he had seen the subject property. In response to a question from a member of the Board, Mr. Gervais stated that, from a land use standpoint, R-4 is an acceptable transitional zone between a developed shopping center and individual lots. Further, he stated that ordinarily this property would meet the criteria for such a transitional zone.

The other protestants opposing the petition generally felt that it would create traffic congestion on streets in the neighborhood; that it would constitute a change in the neighborhood that might lead to further requests for change; and that their property might be depreciated by the apartment project.

David G. Hyman, a registered engineer and land utilization expert, testified that in his opinion the property could be developed in its present R-6 classification, and that in his judgment the highest and best use of the property would be R-6. He further gave argument that generally rebutted that of the witnesses for the petitioner.

The Board's hearing consisted of two full days of testimony from numerous witnesses, and it is impossible in this opinion to go into the testimony of each and every witness. However, the Board has reviewed all of the testimony and exhibits, and has concluded that there has been substantial change in the character of the neighborhood to warrant the reclassification of the subject property from R-6 to R-4. The Board further finds that the zoning of the subject property to apartments could well serve the area as a transitional zone between the existing R-6 residential property to the south, and the contiguous commercial to the immediate north of the subject property.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of June, 1969 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, and

FURTHER, that the special exception petitioned for, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Walter A. Keller, Jr.

John A. Miller

INVOICE FOR RECLASSIFICATION AND SPECIAL EXCEPTION TO ZONING

CERTIFICATE OF PUBLICATION

TOWSON, MD. 21204
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on the 19th day of January, 1967, the first publication appearing on the 19th day of January, 1967.

THE JEFFERSONIAN
Manager

Co. of Advertisement, \$.....

Being the property of Lighthouse Enterprises, Inc., as shown on plat filed with the Zoning Department, Baltimore County, Maryland, on the 12th day of January, 1967, at 1:30 P.M. Hearing Date: Thursday, January 19, 1967, at 1:30 P.M. Public Hearing Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland. By order of: Zoning Commissioner of Baltimore County.

TELEPHONE 823-3000 EXT. 387

INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204
To: C. Victor McFarland, Esq.
922 Frederick Avenue
Catonville, Md. 21228
BILLED: County of Appeals (Zoning)
No. 57818
DATE 7/22/68
TOTAL AMOUNT \$12.00
QUANTITY 1
REMITTANCE TO ACCOUNT NO. 01-622
Cost of certified documents - Case No. 47-131-RX \$12.00
Lighthouse Enterprises, Inc.
W/S Rolling Rd. 900' S. of Baltimore National Pike
1st District

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

TELEPHONE 823-3000 EXT. 387

INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204
To: Light House Enterprises, Inc.
481 Lee Drive
Baltimore, Md. 21228
BILLED: Zoning Dept. of Baltimore County
No. 42933
DATE Jan. 11, 1967
TOTAL AMOUNT \$137.25
QUANTITY 1
REMITTANCE TO ACCOUNT NO. 01-622
Advertising and posting of property for Lighthouse Enterprises, Inc.
667-131-RX \$137.25

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

67-131-RX

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland
District: 131 Date of Posting: 6-29-68
Posted for: Light House Enterprises, Inc.
Petitioner: Light House Enterprises, Inc.
Location of property: W/S Rolling Rd. 900' S. of Baltimore National Pike
Location of Sign: W/S Rolling Rd. 900' S. of Baltimore National Pike
Remarks: (Signature)
Posted by: (Signature)

Date of return: 7-2-68

TELEPHONE 823-3000 EXT. 387

INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204
To: C. Victor McFarland, Esq.
922 Frederick Avenue
Catonville, Md. 21228
BILLED: County of Appeals (Zoning)
No. 57818
DATE 7/22/68
TOTAL AMOUNT \$12.00
QUANTITY 1
REMITTANCE TO ACCOUNT NO. 01-622
Cost of certified documents - Case No. 47-131-RX \$12.00
Lighthouse Enterprises, Inc.
W/S Rolling Rd. 900' S. of Baltimore National Pike
1st District

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

TELEPHONE 823-3000 EXT. 387

INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204
To: A. Owen Hennegan, Jr., Esq.
Jefferson Building
Towson, Md. 21204
BILLED: Zoning Dept. of Baltimore County
No. 42280
DATE 12/6/66
TOTAL AMOUNT \$50.00
QUANTITY 1
REMITTANCE TO ACCOUNT NO. 01-622
Petition for Reclassification - Special Exception for Lighthouse Enterprises, Inc.
667-131-RX \$50.00

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.

67-131-RX

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland
District: 131 Date of Posting: Jan. 16, 1967
Posted for: Light House Enterprises, Inc.
Petitioner: Light House Enterprises, Inc.
Location of property: W/S Rolling Rd. 900' S. of Baltimore National Pike
Location of Sign: W/S Rolling Rd. 900' S. of Baltimore National Pike
Remarks: (Signature)
Posted by: (Signature)

Date of return: Jan. 15, 1967

TELEPHONE 823-3000 EXT. 387

INVOICE BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204
To: A. Owen Hennegan, Jr., Esq.
Jefferson Building
Towson, Md. 21204
BILLED: Zoning Dept. of Baltimore County
No. 42280
DATE 12/6/66
TOTAL AMOUNT \$50.00
QUANTITY 1
REMITTANCE TO ACCOUNT NO. 01-622
Petition for Reclassification - Special Exception for Lighthouse Enterprises, Inc.
667-131-RX \$50.00

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.

67-131-RX

TELEPHONE 823-3000 EXT. 387

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland
District: 131 Date of Posting: Feb. 2, 1967
Posted for: Light House Enterprises, Inc.
Petitioner: Light House Enterprises, Inc.
Location of property: W/S Rolling Rd. 900' S. of Baltimore National Pike
Location of Sign: W/S Rolling Rd. 900' S. of Baltimore National Pike
Remarks: (Signature)
Posted by: (Signature)

Date of return: Feb. 2, 1967

67-131-RX

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland
District: 131 Date of Posting: Jan. 16, 1967
Posted for: Light House Enterprises, Inc.
Petitioner: Light House Enterprises, Inc.
Location of property: W/S Rolling Rd. 900' S. of Baltimore National Pike
Location of Sign: W/S Rolling Rd. 900' S. of Baltimore National Pike
Remarks: (Signature)
Posted by: (Signature)

Date of return: Jan. 15, 1967

TELEPHONE 823-3000 EXT. 387

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DATE 12/6/66
TOTAL AMOUNT \$50.00
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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.

67-131-RX

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No. 42280
DATE 12/6/66
TOTAL AMOUNT \$50.00
QUANTITY 1
REMITTANCE TO ACCOUNT NO. 01-622
Petition for Reclassification - Special Exception for Lighthouse Enterprises, Inc.
667-131-RX \$50.00

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.

67-131-RX

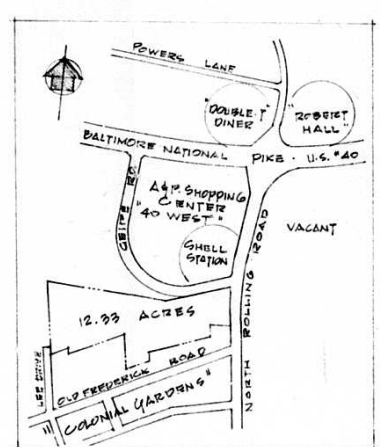
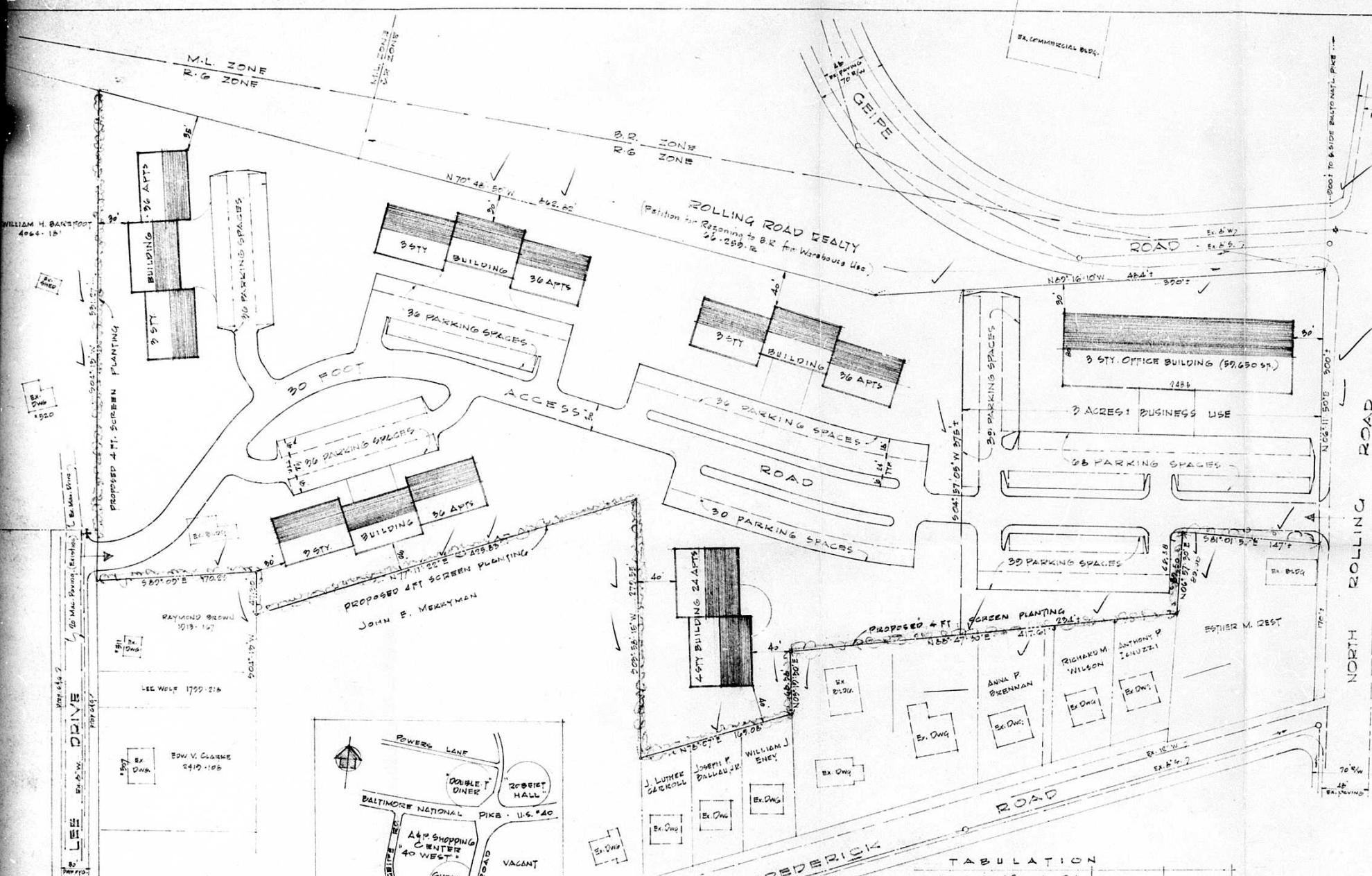
OFFICE OF BALTIMORE COUNTY
THE HERALD - ARGUS
Catonville, Md.

CATONVILLE, MD.
December 11, 1966

CERTIFY, that the annexed advertisement of the Baltimore County, Maryland, is a group of papers published in Baltimore County, Maryland, on the 19th day of January, 1967, that it is to say in the issue of the 19th day of January, 1967.

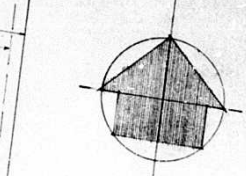
THE BALTIMORE COUNTIAN

By Paul J. Morgan, Editor and Manager

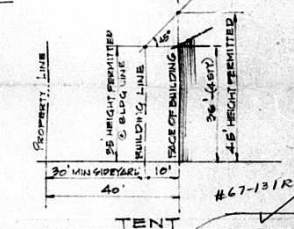


TABULATION

Existing Zoning of Property: R.G.	R.A.	S.E./Office
Proposed Zoning of Property: E.A.		
Present Use of Property: Vacant		
Proposed Use of Property: 3 & 4 story Apts.		
Gross Area of Property: 12.33 Ac.	2.96 Ac.	3.83 Ac.
Net Area of Property: 12.33 Ac.	2.99 Ac.	3.00 Ac.
Total No. of Apts. Allowed:		
Gross: (1012) x 12.33	168	
Net: (1012) x 12.33	166	
Total No. of Apts. Provided:	106	
Apartment Parking required: 106		
Apartment Parking provided:	174	
Office Building Area		19,889.4
Parking required, First Floor, 1/2000		66
Parking required, 2nd & 3rd fl. 1/2000		80
Parking provided:		146
Open Area Remaining: 340,130.60 sq. ft. - 19,889.4 - (8000 x 146 + 43,800 sq. ft.) = 107,453 sq. ft.		



#67-1312X
OFFICE COPY



MAP #1
SEC. 2-A
SW-2-G
RA-X

OFFICE COPY

PLAT TO ACCOMPANY PETITION
FOR REZONING FROM R.G. TO R.A.
12.33 ACRE TRACT
ROLLING ROAD SOUTH OF BALTO. NATIONAL PIKE
AND SPECIAL EXCEPTIONS, FOR
ONE 4 STORY ELEVATOR APARTMENT BLDG.
AND A 3 ACRE OFFICE SITE
ELECTION DISTRICT #1 BALTO COUNTY, MD.
Scale: 1" = 50' October 15, 1966

LIGHTHOUSE ENTERPRISES INC.
OWNER:
JEROME B. WOLFF & ASSOCIATES, INC.
CONSULTING ENGINEERS

