

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I or we, Brenbrook Construction Co., legal owner of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, from an R-6 to the Zoning Law of Baltimore County, from an R-6 to an R-6 and

R.A. _____, for the following reasons:

- 1) Error in zoning map.
- 2) Change in neighborhood.

See attached description

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

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

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

BRENBROOK CONSTRUCTION CO.

BY: Herbert A. Thaler, Vice Pres.

Herbert A. Thaler, Legal Owner

Address: 3612 Ford Lane
Baltimore, Md. 21215

Contract purchaser
Address: 3612 Ford Lane
Baltimore, Md. 21215

Address: Masonic Building, Towson, Md. 21204
828-5588

ORDERED By The Zoning Commissioner of Baltimore County this 2nd day of February, 1967, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 27th day of March, 1967, at 1:00 o'clock P. M.

Zoning Commissioner of Baltimore County.

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to an R-6 zone
E/S and W/2 of Brenbrook Drive
south of Meadow Heights Road,
2nd District
Brenbrook Construction Co.,
Petitioner
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 67-184-R

OPINION

The petitioner in this case seeks a reclassification from an R-6 zone to an R-6 zone of a 17.45 acre parcel of ground situated on both the east and west sides of Brenbrook Drive south of Meadow Heights Road, in the Second Election District of Baltimore County.

The petitioner proposes to erect on the property 242 garden type apartment units consisting of approximately sixty percent one bedroom units, thirty-five percent two bedroom units, and five percent three bedroom units. The property is part of a larger tract of land which was purchased by the petitioner in 1961. The balance of the original tract, which consists of approximately the same acreage as the subject tract, has been developed by the petitioner in cottage residences which sold for approximately \$18,000 with the development name of "Chelsea".

The zoning and land use surrounding the property is presently R-5. The subject property is bisected in a north-south direction by Brenbrook Road, a street which is proposed by the County to be a major arterial road carrying traffic in a north-south direction from Liberty Road to McDonagh Road. It is also bisected in an east-west direction by a 110 foot wide storm drain area in the center of which is the Scotts Level Branch.

Morris Sugarman, President of Brenbrook Construction Company, the petitioner, testified that the cost of developing the subject tract for R-6 housing would be prohibitive, and that the only feasible residential use of the tract would be for apartments. To substantiate this he testified that in order to develop the subject tract he is required to leave undeveloped a 110 foot wide storm drain reservation for the Scotts Level Branch, and pay twenty-five percent of the cost of the bridge over this storm drain reservation for the construction of Brenbrook Road. His testimony indicated that when he originally contemplated the development of the entire thirty-nine acre tract he did not anticipate that the Scotts Level storm system would have to be channelized, and he was not aware of this until 1964. His testimony further indicated that the estimated land development costs per lot for the subject tract would be \$4,000 while the normal land development cost for an R-6 lot is \$1,500 per lot.

Pursuant to the advertisement, posting of property, and public hearing on the above petition and it appearing that by reason of _____

the above Reclassification should be had; and it further appearing that by reason of _____

a Special Exception for a _____ should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this _____ day of _____, 1967, that the herein described property or area should be and the same is hereby reclassified from a _____ zone to a _____ zone, and/or a Special Exception for a _____ should be and the same is granted, from and after the date of this order.

Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property and public hearing on the above petition and it appearing that by reason of failure to show error in the original zoning map or change in the character of the neighborhood _____

the above reclassification should NOT BE HAD, and it is further ordered that _____

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this _____ day of _____, 1967, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain a _____ zone, and/or a Special Exception for a _____ should be and the same is granted, from and after the date of this order.

DEPUTY Zoning Commissioner of Baltimore County

HARVIN DANHE
A. J. CYGANOWSKI
LLOYD E. LIPIN
BETTY ARNUS, ET AL

Protestants-Appellants

W. GILES PARKER
W. GILES PARKER and
WALTER A. REITER, JR.,
being and constituting the
County Board of Appeals
for Baltimore County

Appellees

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

AT LAW

Misc. Docket No. _____

Folio No. 278

File No. 3901

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

Mr. Clerk

Please file, &c.

Muriel E. Buddenmeyer
County Board of Appeals of Baltimore County

Brenbrook Construction Co. - No. 67-184-R Appd. 1/5/68

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. _____
Folio No. 278
File No. 3901

Protestants-Appellants
vs.
WILLIAM S. BALDWIN
W. GILES PARKER and
WALTER A. REITER, JR.
being and constituting the
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY

Appellees

CERTIFICATE OF NOTICE

Mr. Clerk:
Pursuant to the provisions of Rule 1101-5(4) of the Maryland Rules of Procedure, William S. Baldwin, W. Giles Parker and Walter A. Reiter, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it, namely, Fred E. Waldrop, Esq., Masonic Building, Towson, Maryland, 21204, Attorney for the Petitioner, and Harry S. Swartzwelder, Jr., Esq., 341 St. Paul Place, Baltimore, Maryland, 21202, Attorney for the Protestants, a copy of which Notice is attached hereto and prayed that it may be made a part thereof.

Muriel E. Buddenmeyer
County Board of Appeals of Baltimore County
County Office Building, Towson, Md. 21204
Valley 3-3000, Ext. 570
I hereby certify that a copy of the foregoing Certificate of Notice has been mailed to Fred E. Waldrop, Esq., Masonic Building, Towson, Maryland, 21204, Attorney for the Petitioner, and Harry S. Swartzwelder, Jr., Esq., 341 St. Paul Place, Baltimore, Maryland, 21202, Attorney for the Protestants, on this _____ day of January, 1968.

Muriel E. Buddenmeyer
County Board of Appeals of Baltimore County

Brenbrook Construction Co. - #67-184-R

under existing zoning, can be developed with approximately 100 semi-detached houses which in view of the petitioner's testimony that in his experience apartments only generate one third of the school children as cottages, it is apparent that the project would, if anything, have less school children than an equivalent R-6 development.

With regard to the protesters' fears of increased traffic, the Board finds that these fears are not justified as the testimony given by traffic experts indicated that the existing roads are more than adequate to handle any increased traffic. Further, the construction of Brenbrook Drive through the subject property, in conjunction with the development of this project, with a 42 foot paved width on a 70 foot right of way will alleviate the existing traffic condition in that it will provide easy access from a point north of the present Chelsea development southerly to Allenswood Road. The Board also finds from the testimony of the petitioner's expert real estate witness that the proposed garden apartments will not depreciate the surrounding nearby residential property.

The petition was opposed by the Director of Planning for Baltimore County in that he felt that the subject tract did not meet the locational criteria of his department. He did agree, however, that there were several other apartment projects that were placed on the Western Area map which were completely surrounded by R-6 and K-10 zoning, and that the County considers Brenbrook Road, when completed, will be a major arterial road.

The Board finds that the excessive land development costs make the subject tract unuseable in its present zoning, and that there have been sufficient changes in the character of the neighborhood to warrant the reclassification sought by the petitioner.

ORDER

For the reasons set forth in the foregoing Opinion, it is this _____ day of December, 1967 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, subject to site plan approval by the Department of Planning and Zoning, Bureau of Public Services and all other applicable County and State agencies.

Brenbrook Construction Co. - #67-184-R

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of the Maryland Rules of Procedure, 1951 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

Walter A. Reiter, Jr.

Brenbrook Construction Co. - #67-184-R

Expert engineering witnesses, testifying on behalf of the petitioner, indicated that the existing water distribution system in the area is marginal but that apartment use being less than cottage house use, the proposed project here would have a lesser effect on the water distribution system in the area than its development in an R-6 classification. Testimony further indicated that while Baltimore City is not now approving any new subdivisions because of the water pressure problem, this apartment project would be approved because the land has been platted as an R-6 subdivision since prior to 1961 and the apartment water use would be less than that of an R-6 development.

Robert Czaban, a traffic expert appearing on behalf of the petitioner, testified that the existing roads in the area are more than adequate to handle the proposed apartment project. Further testimony indicated that Brenbrook Road will be a major arterial collector street and portions of it are presently improved with 42 feet of paving on a 70 foot right of way, and that with the development of the subject property Brenbrook Road will be connected as a major collector arterial street to Allenswood Road, which is a major east-west collector street with 40 feet of paving on a 60 foot right of way. The County intends to dead end McDonagh Road west of the property on both sides of Scotts Level Branch, and when this is done Brenbrook Road will be the major north-south thoroughfare connecting Liberty Road and McDonagh Road to the north of the subject property.

An expert realtor, testifying for the petitioner, stated that the Western Area map did not make allowances for sufficient rental housing, and cited some nine zoning reclassifications from less intensive land use to more intensive land uses. Some of these cases were too far from the subject property, in the Board's opinion, to directly affect the property. However, three cases, #65-375-S, #66-54, and #64-44, were in the immediate vicinity of the subject property and were reclassifications to more intensive land uses. He further stated that, in his opinion, garden apartments will not depreciate the surrounding residences, but felt that the construction of semi-detached housing on the subject property (allowed in an R-6 zone) might depreciate the nearby cottage housing.

The protesters' main objections to the proposed apartment project were that the schools in the area are presently overcrowded and the granting of this petition would lead to further overcrowding, increased traffic in the area, and the fear that apartment construction might depreciate their homes.

The Board finds that 242 apartment units here would have less effect on the school system than the development of the property in its present R-6 zone. The property,

MICROFILMED



MATZ, CHILDS & ASSOCIATES, INC.
CONSULTING
ENGINEERS
1020 Cromwell Bridge Rd., Baltimore, Md. 21204, Tel. 301/823-0900

DESCRIPTION

17.4482 ACRES OF LAND SOUTH OF MEADOW HEIGHTS ROAD AND EAST OF
MCDONOUGH ROAD.

Present Zoning R-6

Proposed Zoning R-7

Beginning for the same at a point on the west side of Brenbrook Drive 70 feet wide S 14°22'05"E - 89.00 feet from the intersection of the west side of Brenbrook Drive extended and the south side of Meadow Heights Road 50 feet wide extended, thence leaving said west side of Brenbrook Drive (1) N 70°18'34"E - 70.50 feet to the east side of Brenbrook Drive thence leaving said east side of Brenbrook Drive for the three following courses and distances, (2) N 75°17'55"E - 115.00 feet, (3) N 14°22'05"W - 187.50 feet, and (4) N 0°19'00"E - 214.37 feet to the south side of Meadow Heights Road 60 feet wide, thence binding on said south side of Meadow Heights Road (5) easterly by a curve to the right with the radius of 470.00 feet the distance of 100.94 feet which arc is subtended by a chord bearing S 87°10'04"E - 100.75 feet, (6) S 80°41'00"E - 6.84 feet, thence along a quarter line there laid out, (7) S 15°41'00"E - 11.31 feet to a point on the west side of Nemo Road, 60 feet wide, thence binding thereon (8) S 19°19'00"W - 4.56 feet, thence leaving said west side of Nemo Road, (9) S 45°07'26"E - 73.76

Water Supply - Sewerage - Drainage - Highways - Railroads - Electric Lines - Gas Lines - Telephone - Cable - Other



- 2 -

feet to the east side of Nemo Road, thence binding thereon, (10) S 09°19'00"W - 46.00 feet, thence leaving said east side of Nemo Road for the thirteen following courses and distances, (11) S 80°41'00"E - 79.33 feet, (12) S 32°10'04"E - 64.80 feet, (13) S 16°41'06"W - 62.65 feet, (14) S 16°00'00"E - 65.00 feet, (15) S 29°19'56"E - 76.93 feet, (16) S 86°50'42"E - 141.62 feet, (17) S 45°07'28"E - 335.40 feet, (18) S 33°27'25"W - 209.34 feet, (19) N 72°02'55"W - 97.97 feet, (20) S 19°12'55"E - 245.00 feet, (21) N 70°47'05"W - 1324.91 feet, (22) N 26°54'15"E - 28.27 feet, and (23) N 63°05'45"W - 437.00 feet to the centerline of McDonough Road thence binding thereon (24) N 26°54'15"E - 197.79 feet thence leaving said centerline for the six following courses and distances, (25) S 58°05'45"E - 431.25 feet, thence (26) southeasterly by a curve to the left with the radius of 1055.00 feet the distance of 233.64 feet said arc being subtended by a chord bearing N 64°26'45"E - 233.17 feet, (27) S 70°47'05"W - 281.97 feet, (28) N 19°12'55"E - 110.00 feet, (29) N 01°00'00"W - 80.07 feet and (30) N 75°37'55"E - 120.19 feet to the place of beginning.

Containing 17.4482 acres of land.

EG:gc

J. O. #61026

1/6/67



PETITION FOR RECLASSIFICATION

2nd DISTRICT

ZONING: From R-6 to R-A Zone.
LOCATION: East and west sides of Brenbrook Run Drive South of Meadow Heights Road.
DATE & TIME: MONDAY, MARCH 27, 1967 at 1:00 P.M.
PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing.
Present Zoning: R-6
Proposed Zoning: R-A
All that parcel of land in the Second District of Baltimore County

Being the property of Brenbrook Construction Company, as shown on plot plan filed with the Zoning Department.

Hearing Date: Monday, March 27, 1967 at 1:00 P.M.
Public Hearing: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Md.

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

March 3, 1967

PETITION FOR RECLASSIFICATION

Re: Petition for Reclassification for Brenbrook Construction Co.
#67-184-R

DATE: 1:00 P.M.
DATE: Monday, March 27, 1967
PLACE: ROOM 108 COUNTY OFFICE BUILDING, 111 W. CHESAPEAKE AVENUE, TOWSON, MARYLAND

JOHN G. ROSE
ZONING COMMISSIONER OF
BALTIMORE COUNTY

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: March 17, 1967
FROM: George E. Gervella

SUBJECT: Petition #67-184-R, Reclassification from R-6 to R-A Zone. East and West side of Brenbrook Drive South of Meadow Heights Road. Being the property of Brenbrook Construction Company.

2nd District

HEARING: Monday, March 27, 1967 (1:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-6 to R-A zoning and has the following advisory comments to make with respect to pertinent planning factors:

- The subject property is part of a larger tract which has been processed for subdivision approval by the Office of Planning and Zoning under the Hils Springfield. Our subdivision file number is 11-95. Tentative approval for the overall subdivision plan was granted in June of 1962 and portions of the development were given file approval and recorded thereafter. The developer chose to consider regrading the natural flood plain along Scotts Level Branch thereby achieving development potentials along the south side of the stream. A single family lot plan was tentatively approved as part of the overall plan.
- The subject property is not adjacent to any tract which has zoning for intensive residential usage nor is it even close to the commercial tracts along Liberty Road or in Randalltown center. The tract enjoys none of the locational advantages which the Planning Board deemed essential for apartment zoning. Even though it lies astride Brenbrook Drive, apartment development here would constitute an incongruous land use - in fact, apartment zoning here from a planning viewpoint would constitute spot zoning. The Planning staff is opposed to this petition.

EG:gc

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

March 20, 1967

COUNTY OFFICE BUILDING
111 W. CHESAPEAKE AVE.
TOWSON, MD. 21204
EX. 8-2071

GEORGE E. GERVELLA
DIRECTOR
JOHN G. ROSE
ZONING COMMISSIONER

Fred E. Waldrop, Esq.
Masonic Building
Towson, Md. 21204

Dear Sir:

The enclosed memorandum is sent to you in compliance with Section 23-22 of the 1961 Supplement of the Baltimore County Code.

Any questions of correspondence in regard to the enclosed subject matter must be directed to the Director of Planning and Zoning (or his Deputy) and NOT to the Zoning Commissioner.

If you desire to have a member of the Planning Staff testify, it will be necessary for you to summons him through the Sheriff's Office.

Yours very truly,

JOHN G. ROSE
ZONING COMMISSIONER

JGR/ba

encl:

March 17, 1967

Fred E. Waldrop, Esq.
Masonic Building
Towson, Maryland 21204

Re: Petition for Reclassification for Brenbrook Construction Co.
#67-184-R

Dear Sir:

This is to advise you that \$100.00 is due for advertising and posting of the above property.

Please make check payable to Baltimore County, Md. and remit to Mrs. Anderson, Room 119, County Office Building before the hearing.

Yours very truly,

JOHN G. ROSE
ZONING COMMISSIONER

JGR/ba

PETITION FOR RECLASSIFICATION

2nd DISTRICT

ZONING: From R-6 to R-A Zone.
LOCATION: East and west sides of Brenbrook Run Drive South of Meadow Heights Road.
DATE & TIME: MONDAY, MARCH 27, 1967 at 1:00 P.M.
PUBLIC HEARING: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing.
Present Zoning: R-6
Proposed Zoning: R-A
All that parcel of land in the Second District of Baltimore County

Being the property of Brenbrook Construction Company, as shown on plot plan filed with the Zoning Department.

Hearing Date: Monday, March 27, 1967 at 1:00 P.M.
Public Hearing: Room 108, County Office Building, 111 W. Chesapeake Avenue, Towson, Md.

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

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., once in each of successive weeks before the day of the month of 1967, the first publication appearing on the day of the month of 1967.

THE JEFFERSONIAN

H. Leach Smith
Manager

Cost of Advertisement \$

**PETITION FOR
RECLASSIFICATION**
2nd DISTRICT
ZONING: From R-5 to R.A.

Location: East and west
sides of Broadbrook Drive south
of 13th Avenue Heights Road.
DATE & TIME: MONDAY,
MARCH 17, 1967 at 1:00 P.M.
PUBLIC HEARING: Room
108, County Office Building,
111 W. Chesapeake Avenue,
Towson, Maryland.
The Zoning Commissioner of
Baltimore County, by au-
thority of the Zoning Act and
regulations of Baltimore
County, will hold a public
hearing.

Present Zoning: R-5.
Proposed Zoning: R.A.
All that parcel of land in
the Second District of Bal-
timore County.

Beginning for the same at
a point on the west side of
Broadbrook Drive 70 feet wide
S 14 degrees 27'00" E - 20.00
feet from the intersection of
the west side of Broadbrook
Drive extended and the south
side of Middlebrook Court 50
feet wide extended, thence
leaving said east side of
Broadbrook Drive (1) S 75
degrees 10'00" E - 70.00 feet to
the east side of Broadbrook
Drive, thence leaving said east
side of Broadbrook Drive for
three following courses and
distances, (2) N 75 degrees
27'00" E - 115.00 feet, (3)
N 14 degrees 27'00" E -
187.50 feet, and (4) N 80
degrees 18'00" E - 214.37 feet
to the south side of Middle-
brook Drive 40 feet wide,
thence leaving on said south
side of Middlebrook Drive (5)
S 80 degrees 17'00" E - 81.61 feet,
thence along a curved line
there laid out, (7) S 39 de-
grees 41'00" E - 113.31 feet to
a point on the west side of
Nemo Road, 60 feet wide,
thence leaving thereon (8) S
08 degrees 19'00" W - 45.50
feet, thence leaving said west
side of Nemo Road, (9) S 45
degrees 07'00" E - 72.76 feet
to the east side of Nemo Road,
thence leaving thereon, (10)
S 08 degrees 19'00" W - 45.50
feet, thence leaving said east
side of Nemo Road for the fol-
lowing courses and dis-
tances, (11) S 80 degrees
17'00" E - 80.33 feet, (12) S
2 degrees 10'00" E - 48.40
feet, (13) S 16 degrees 14'00"
W - 42.65 feet, (14) S 16 de-
grees 09'00" E - 63.00 feet,
(15) S 29 degrees 07'00" E -
76.53 feet, (16) S 46 degrees
30'00" E - 161.62 feet, (17)
S 45 degrees 07'00" E - 130.46
feet, (18) S 35 degrees 27'
00" W - 208.34 feet, (19) S
72 degrees 02'00" W - 97.91
feet, (20) S 19 degrees 12'00"
E - 215.00 feet, (21) S 78 de-
grees 47'00" W - 121.91
feet, (22) S 26 degrees 14'
19" E - 28.27 feet, and (23)
S 08 degrees 05'00" E - 175.00
feet to the centerline of Je-
dburgh Road thence leaving
thereon (24) S 24 degrees 31'
12" E - 107.75 feet thence
leaving said centerline for the
41 following courses and dis-
tances, (25) S 24 degrees 02'
45" E - 111.23 feet, thence (26)
southeasterly by a curve to
the left with the radius of
1955.00 feet the distance of
235.64 feet said curve being in-
tersected by a chord bearing
S 64 degrees 20'43" E - 235.17
feet, (27) S 78 degrees 47'
03" E - 281.97 feet, (28) S
18 degrees 12'00" E - 110.00
feet, (29) N 81 degrees 00'
00" W - 107.67 feet and (30)
N 75 degrees 37'00" E - 128.19
feet to the place of beginning,
Containing 12.4485 acres of
land.

Being the owner of Broad-
brook Construction Company,
as shown on plat plan filed
with the Zoning Department,
Hearing Date: Monday,
March 27, 1967 at 1:00 P.M.
Public Hearing Room 108,
County Office Building, 111 W.
Chesapeake Avenue, Towson,
Md.

BY ORDER OF
JOHN G. BONE,
ZONING COMMISSIONER
OF BALTIMORE COUNTY,
March 6,

**OFFICE OF
THE BALTIMORE COUNTY**

THE COMMUNITY NEWS
Baltimore, Md.

THE HERALD - ARGUS
Catonville, Md.

No. 1 Newburg Avenue

CATONVILLE, MD.

March 12, 1967.

THIS IS TO CERTIFY, that the annexed advertisement of
John G. Bone, Zoning Commissioner
of Baltimore County

was inserted in THE BALTIMORE COUNTY, a group of
three weekly newspapers published in Baltimore County, Mary-
land, once a week for One successive weeks before
the 13th day of March, 1967, that is to say
the same was inserted in the issues of
March 9, 1967.

THE BALTIMORE COUNTY

By *Paul J. Morgan*
Editor and Manager

TELEPHONE
823-3000
EXT. 387

**INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE**

No. 44322

DATE: MAR 3, 1967

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

To: *Fred E. Waldrop, Esq.*
Masonic Building
Towson, Md. 21204

BILLED
Zoning Dept. of Balto. Co.

REPORT TO ACCOUNT NO. 01-522

QUANTITY

Petition for Reclassification for Broadbrook Construction Co.
67-184-R

RETURN THIS PORTION WITH YOUR REMITTANCE

DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS

TOTAL AMOUNT

COST

\$50.00

\$0.00

\$0.00

\$0.00

\$0.00

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**INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE**

No. 44398

DATE: 4/20/67

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

To: *Fred E. Waldrop, Esq.*
Masonic Building
Towson, Maryland 21204

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

REPORT TO ACCOUNT NO. 01-522

QUANTITY

Cost of appeal - Broadbrook Construction Co.

No. 67-184-R

4 signs

70.00

20.00

\$90.00

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

TELEPHONE
823-3000
EXT. 777

**INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE**

No. 44365

DATE: APR 26, 1967

Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

To: *J.H.H. Construction Co., Inc.*
3812 Fords Lane
Baltimore, Md. 21215

BILLED
Zoning Dept. of Balto. Co.

REPORT TO ACCOUNT NO. 01-522

QUANTITY

Advertising and posting of property for Broadbrook Constr. Co.

67-184-R

RETURN THIS PORTION WITH YOUR REMITTANCE

DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS

TOTAL AMOUNT

COST

\$100.00

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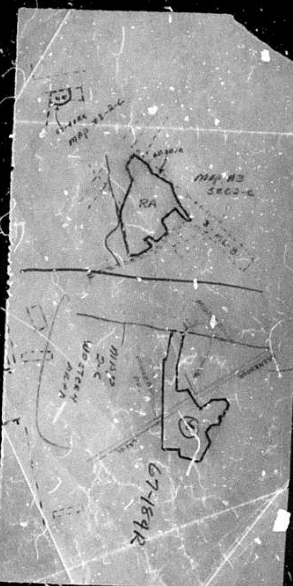
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April 20, 1967

No. 67-184-R - Brenbrook Construction Co.

Petition, description of property and Order of Deputy Zoning Commissioner

Certificate of map posting

Certificates of advertisement

Comments of Project Planning and Traffic Engineering

Comments of Baltimore County Five Bureau

Comments of Office of Planning

List of residents who attended zoning hearing

Order of appeal

Pencil sketch

Plat filed with petition

Fred E. Waldrop, Esq.,
Masonic Building
Towson, Maryland 21204

Counsel for petitioner

Harry S. Schwartzwelder, Esq.,
1709 Munsey Building
Baltimore, Maryland 21202

" " protestants

April 20, 1967

Harry S. Schwartzwelder, Jr., Esq.,
1709 Munsey Building
Baltimore, Maryland 21202

Re: Petition for Reclassification
E. & W. Sides Brenbrook
Drive S. Meadow Heights Ave.
2nd Dist. Brenbrook Construction
Co., Petitioner - No. 67-184-R

Dear Mr. Schwartzwelder:

An appeal has been filed from the decision of the Deputy Zoning Commissioner rendered in the above matter.

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

Very truly yours

Zoning Commissioner

FRED E. WALDROP
ATTORNEY AT LAW
MASONIC BUILDING
TOWSON, MARYLAND 21204
682-5688



April 14, 1967

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

Re: Petition for Reclassification
East and West sides of Brenbrook Drive
South of Meadow Heights Road
Second District
Brenbrook Construction Company,
Petitioner
Case #67-184-R

Dear Mr. Rose:

Please enter an Appeal from the decision rendered in the above and transmit all papers and records to the Board of Appeals.

Very truly yours,

Fred E. Waldrop
Counsel for petitioner

FEWak
cc: Harry S. Schwartzwelder, Jr., Esq.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James A. Dyer, Chairman
Zoning Advisory Committee
D. in. February 27, 1967
FROM: Lieutenant Charles F. Morris, Jr.
Baltimore County Five Bureau
SUBJECT: Property owned: Brenbrook Construction Co.
Location: E. & W. Sides of Brenbrook Drive, 69' S.W. of Nicholson St.
District: 2nd District
Present zoning: R-6
Proposed zoning: R-4

1. It will be necessary to provide water mains and fire hydrants in accordance with the Baltimore County Standard Design Manual, 1964, edition, pages M2 - M3.

Please contact this writer or Capt. Paul A. Linke for any information.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

JAMES E. DYER
TO: Zoning Office
Date: February 21, 1967
FROM: ALBERT V. QUIMBY, Office of Planning
Project: RICHARD MOORE, Traffic Engineering

SUBJECT: BRENBROOK CONSTRUCTION CO.
W/S Brenbrook Drive
Second Election District

- Brenbrook Road is designed as a collector road to serve land developed on an R-6 basis. It serves this area by connecting with Winans Road on the north and Liberty Road on the south. Standards for this type of road restrict intersections to at least 100 feet apart. Due to land ownership lines, this standard has not been met in this area.
- Under R-6 development proposals, Springbrook Road was an expedient forced by land ownership lines and was turned into Maplebrook Road to eliminate an intersection with Brenbrook Road. The elongated parcel served by Springbrook Road under R-6 plan would contain about 14 units generating approximately 110 trips per day. Under proposal of this plan some 188 units generating 376 trips per day would cover this strip. It is the inescapable conclusion here that the land south of Scotts Level Branch on both sides of Brenbrook Road cannot be served by a joint intersection therewith. The alternative of connecting Springbrook Road to Maplebrook Road is undesirable because the latter is an R-6 type roadway of 36 foot width, while apartments are served by a 40 foot roadway on a 60 foot right-of-way. At the same time, McDonough Road, which will be dead-ended on both sides of Scotts Level Branch, presently exists as an 18 foot roadway. Any improvements thereto depend upon the rate at which the adjoining land develops.
- We consider now that portion of petitioner's land north of Scotts Level Branch. Some Road is one of two neighborhood collector roads in the subdivision known as Imperial Gardens, and is set up as a 36 foot roadway on a 60 foot right-of-way. It must be so continued to Winterbrook Road. Under the approved R-6 plan, this area contained 11 lots, 250 trips per day, while under this proposal 132 units, including 860 trips per day, would result.

AVQ:vh

Albert V. Quimby, Chief
Project Planning Division
Richard Moore
Traffic Engineering

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

Public: 2nd
Posted for: Reclassification from R-6 to R-4 zone
Petitioner: Brenbrook Construction Co.
Location of property: E. & W. Sides of Brenbrook Dr. S. of Winans
Maple Rd
Location of Signs: On N. East end of Brenbrook Dr. (3' South end of Brenbrook Dr. (3' S. of McDonough Rd. 5' S. of Scotts Level Branch (over)
Remarks: 6 signs
Posted by: J. H. Jones
Date of posting: March 16, 1967

Fred E. Waldrop, Esquire
Masonic Building
Towson, Maryland 21204

RE: Petition for Reclassification
East and West sides of Brenbrook
Drive South of Meadow Heights Road
2nd District
Brenbrook Construction Company,
Petitioner
NO. 67-184-R

Dear Mr. Waldrop:

I have this date passed my Order denying the above captioned matter by reason of failure to show error in the original zoning map or change in the character of the neighborhood.

Very truly yours,

EDWARD D. HAREESTY
Deputy Zoning Commissioner

EDH/jdr

cc: Harry S. Schwartzwelder, Jr., Esquire
1709 Munsey Building
Baltimore, Maryland 21202

HARRY S. SCHWARTZWELDER, JR.
ATTORNEY AT LAW

1709 MUNSEY BUILDING
BALTIMORE, MD. 21202
737-4229

3700 WILSON AVENUE
BALTIMORE, MD. 21207
850-7538
28 COURTLAND WEST
BAL. MD. 21201
838-8143

April 5, 1967

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

Dear Mr. Rose:

I am enclosing a list of the protestants who appeared in Case No. 67-184-R, which was heard on Monday, March 27, 1967.

Very truly yours,

Harry S. Schwartzwelder, Jr.

HSS/mm

enc.
cc: Fred E. Waldrop, Esq.

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
COUNTY OFFICE BUILDING
TOWSON, MD. 21204

Fred E. Waldrop, Esquire
Mason's Building
Towson, Maryland 21204
February 28, 1967
Dear Sir:

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

BUREAU OF ENGINEERING - Water and sewer exist as shown on the submitted plan. Adequacy of existing utilities to be determined by developer or his engineer. Road - Brenbrook Road is to be developed as a 42' road on a 70' R/W.

COMBINED TRAFFIC ENGINEERING AND PROJECT PLANNING - These Offices will review and make any necessary comments at a later date.

FIRE BUREAU - It will be necessary to provide water mains and fire hydrants in accordance with the Baltimore County Standard Design Manual, 1964, edition, pages W2-W3. Please contact this writer or Capt. Paul A. Ritchie for any information.

STATE ROADS COMMISSION - Since there are no state roads involved, this Office has no comment.

HEALTH DEPARTMENT - Since public water and sewer are available to this site, this Office has no comment.

ZONING ADMINISTRATION DIVISION - It is our understanding that the storm drainage reservation is to be taken in fee by the County. In this event, the building located on the SE corner of Winterbrook and Brenbrook Drive will not have a sufficient rear yard setback. It is suggested some thought be given to locating the swimming pool in this area. This change will remove the swimming pool from the vicinity of the individual dwellings on the SW side of Meadow Heights Road.

The above comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems that may have a bearing on this case. The Director and/or the Deputy Director of the Office of Planning and Zoning will submit recommendations on the appropriateness of the requested zoning 10 days before the Zoning Commission's hearing.

The following members had no comment to offer: Building Engineer, Board of Education, Industrial Development.

Very truly yours,
James E. Dyer
JAMES E. DYER, Principal
Zoning Technician

JED/jdr

cc: Carlyle Brown, Bureau of Engineering, Richard Moore, Traffic Engineering; Albert Quimby, Project Planning; John Mayers, State Roads Commission, Lt. Morris, Fire Bureau; Mr. Greenway, Health Department.

ZONING FILE #17-184-2
BRENBOOK CONSTRUCTION CO.

MARVIN DANNIE ET AL
VS
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Misc #3901

MEMORANDUM OPINION

This is an appeal from an Order of the County Board of Appeals for Baltimore County granting reclassification of approximately 17.45 acres of land in the Randallstown area of the Second Election District of Baltimore County, from an R-6 zone to an R-A zone. The Appellants are home-owners whose properties are adjacent or close to the tract in question.

As recited in the Board's opinion, the parcel which is the subject of this petition lies south of Meadow Heights Road and is bisected in a north-south direction by Brenbrook Road, a street which is proposed by the County to be a major arterial road carrying traffic in a north-south direction from Liberty Road to McDonough Road, and in an east-west direction by a 110 foot wide storm drain area in the center of which is the Scotts Level Branch. The zoning and land use surrounding the property is R-6 for a considerable distance in all directions, but not specifically delineated in the record.

The subject parcel on which Petitioner proposes to erect two hundred forty-two garden type apartment units is part of a larger tract of land purchased by the Petitioner in 1961. The balance of the original tract, which consists of approximately the same acreage as the subject tract has been developed by the Petitioner in cottage residences which sold for approximately \$10,000.00 with the development name of "Chelsea".

The Court of Appeals has repeatedly held that there is a strong presumption of the correctness of original zoning. Board of County Commissioners vs. Monahan, 240 Md 680; Shadynock Improvement Association vs. Molloy, 232 Md

Although the Court of Appeals has held that the Board is entitled to consider projects that are "reasonably probable of fruition in the foreseeable future", John Corporation vs. Rodgers Forge, 236 Md 106, such prospective projects must constitute a basic change in the character of the neighborhood. There is no testimony, and the Board makes no finding in its Opinion, that the extension of Brenbrook Road significantly alters the basic character of the neighborhood as did the vast improvements to Stevenson Lane in Jabar.

Mr. Supeman, the President of Brenbrook Construction Company, testified that it would cost \$4,500.00 per lot for the development of the proposed 33 lots of Section 3, Springbrook, and \$4,000.00 per lot for the proposed 24 lots of Section 4, which development costs he maintains are basically prohibitive. (T. 4 and 5). Although the Petitioner, in effect, in his memorandum, concedes that practical difficulties and economic hardship in the development of the land will not, in itself, justify a change in the classification of property, he urges that it is a factor which must be considered by the zoning authorities.

In Halliday vs. Monahan, 240 Md 498, Petitioner-Appellee claimed that he would be forced to expend an estimated \$10,500.00 in engineering costs for less than one acre of residential land. For this reason, he contended that the Board would have been guilty of confiscation had it prevented the reclassification to R-A. The Court of Appeals in reversing the Order of the Circuit Court which affirmed the decision of the Board, stated on Page 502:

"Undoubtedly, the Appellees would enjoy a greater economic gain from the sale or use of the property under an R-A classification; however, this Court has repeatedly held that the fact that rezoning may result in the realization of greater profits from use of the land or that hardship may follow from the retention of the existing classification is not sufficient justification for rezoning." See Board of County Commissioners vs. Kay, 240 Md 650; Baltimore City vs. Boring, 239 Md 611.

It has been consistently stated that the courts may not substitute their judgment for that of the Board when the Board's decision is supported by

200; Greenblatt vs. Toney Schloss Properties Corporation, 235 Md 9, and that before a Zoning Board rezones a property there must be substantial evidence either of mistake in original zoning or that the character of the neighborhood has changed to such an extent that such reclassification ought to be granted. Board of County Commissioners vs. Turf Valley Associates, 247 Md 556; Pahl vs. County Board of Appeals, 237 Md 294.

Mr. Frederick P. Klaus, called on behalf of the Petitioner, testified as to error on Pages 130-131 of the transcript:

"I signed one thing, as I have found in other cases in this general area, that at the adoption of the land use map properties were zoned for every business use and every residential use except at that time the Planning people omitted to place sufficient land on the land use map for residential apartments."

As I testified before, in other cases, I found that at that time, and I also find it now, this was a gross error committed in that land use map, and this was borne out by the fact that many petitions have come, through administrative authority, through this Board, and through the courts, and some have gone to Annapolis, to the Court of Appeals, where this zone has been requested, and in some instances granted, to help correct this fault which was made in 1962."

The testimony of Mr. Klaus was the only testimony presented by the Petitioner on the issue of error in original zoning. On cross-examination, however, Mr. Klaus admitted that he did not know what percentage of the land in the western planning area was now zoned for apartments. (T. Page 143) When questioned about the possibility that the percentage of total land area in the western planning area was approaching twenty-two percent in apartment usage, Mr. Klaus in reply that he did not know if this was possible, stated "I have not made a comprehensive study." (T. Page 142)

Mr. George E. Cavellis, the Director of Planning in the Baltimore County Office of Planning and Zoning, was called as a witness on behalf of the appellants and testified as follows: (T. Page 185)

The subject property is not adjacent to any tract which has zoning for intensive residential usage, nor is it even close to the commercial tracts along Liberty Road or in Randallstown center. The tract enjoys none of the locational advantages which the Planning Board deemed essential for apartment zoning. Even though it lies

substantial evidence and the issue before the Board was fairly debatable. Boyle vs. Hospital Board Commissioners, 246 Md 197. See also Agneslane, Inc. vs. Johns, 247 Md 612. However, the Court will, where the record is so devoid of substantial supporting facts as to be incapable of raising a debatable issue, declare the legislative or administrative action invalid. France vs. Shapiro, 243 Md 325.

For the reasons heretofore set forth, this Court finds that the economic difficulties inherent in developing the subject tract under the existing R-6 zoning are not sufficient justification for rezoning. The Court further finds that there is no legally sufficient evidence of original mistake or substantial change in the character of the neighborhood to grant Petitioner's application for reclassification. Therefore, the Board's decision is found to be arbitrary and lacking, in the record, legally sufficient evidence of change or error in original zoning to sustain it and thus without substantial evidence to present a reasonably debatable question for the discretion of the Board.

It is, therefore, this 23rd day of October, 1968, by the Circuit Court for Baltimore County Ordered that the Order of the County Board of Appeals, dated December 14, 1967, be and the same is hereby reversed.

LESTER L. BARRETT
Judge

October 24, 1968

-3-

astrie Brenbrook Drive, apartment development here would constitute an incongruous land use - in fact, apartment zoning here from a planning viewpoint would constitute spot zoning. The planning staff is opposed to this petition."

Mr. Cavellis was asked on Page 206 of the transcript:

"Q. (By Mr. Baldwin) In your opinion, is this the R-6 zoning on the property erroneous, Mr. Cavellis?"

A. No, the R-6 zoning is not erroneous. It is correct.

Q. Are you speaking as of the present time?

A. I am speaking as of the present time.

Q. In your opinion, was it erroneous when it was placed on the property in 1962?

A. The placement of R-6 on the map in 1962 was not erroneous."

The testimony of Mr. Klaus, standing alone, therefore, does not amount to substantial evidence to support a finding of error in original zoning, and it is to be noted that the Board in its opinion made no such finding of error in original zoning.

The Board summed up its conclusions in the final paragraph of its Opinion:

"The Board finds that the excessive land development costs make the subject tract unusable in its present zoning, and that there have been sufficient changes in the character of the neighborhood to warrant the reclassification sought by the Petitioner."

The findings of the Board will be considered in the reverse order.

The testimony on behalf of the Petitioner on the issue of substantial change in the neighborhood was presented by Mr. Klaus who stated on page 131 of the transcript:

"The area generally is one that has gone through a great deal of change, not only in the widening of Liberty Road, to provide proper access to those properties, but also it has gone through change in the fact that a great deal of petitions that have been requested, have been granted, to bring the map up-to-date."

-1-

Q. (By Mr. Parked) Change to R-A zoning?

A. No, I didn't say to R-A. I said there have been zoning changes to higher density, to correct the errors that were committed in 1962."

As far as the widening of Liberty Road is concerned, which is argued by the Appellants as a material change, the testimony indicates that Liberty Road is a third of a mile from the subject tract (T. Page 145) and as a result is too far from the property in question to constitute change affecting the character of the neighborhood of the subject tract. The Board made no mention of Liberty Road relative to substantial change in its Opinion.

As to reclassification to R-A zoning, the testimony indicates such were located at a distance of about one and one half miles from the subject property. (T. Page 146), and thus, were too far from the subject parcel to directly affect the property and such was the Board's opinion.

The only other testimony bearing on the issue of change in zoning presented by the Record refers to reclassification from R-20 and R-10 residential zoning to R-6 residential zoning, which was the original zoning of the subject tract before the reclassification in this case. Such cannot be considered a substantial change in the character of a neighborhood which is totally in the R-6 classification. See Baker vs. Montgomery County, 241 Md 178.

Robert Casaban, a traffic expert, appearing on behalf of the Petitioner, testified that with the development of the subject property Brenbrook Road will be connected as a major collector arterial street to Allenswood Road, which is a major east-west collector street with forty feet of paving on a sixty foot right-of-way, and that the county intends to dead-end McDonough Road west of the property on both sides of Scotts Level Branch. When this is done, Brenbrook Road will be the major north-south thoroughfare connecting Liberty Road and McDonough Road. (T. Page 82)

-5-

-6-

Rec'd 10/25/68
9:30 am

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to an R-A zone
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 67-184-R

OPINION

The petitioner in this case seeks a reclassification from an R-6 zone to an R-A zone of a 17.45 acre parcel of ground situated on both the east and west sides of Brenbrook Drive south of Meadow Heights Road, in the Second Election District of Baltimore County.

The petitioner proposes to erect on the property 242 garden type apartment units consisting of approximately sixty percent one bedroom units, thirty-five percent two bedroom units, and five percent three bedroom units. The property is part of a larger tract of land which was purchased by the petitioner in 1961. The balance of the original tract, which consists of approximately the same acreage as the subject tract, has been developed by the petitioner in cottage residences which sold for approximately \$18,000 with the development name of "Chelsea".

The zoning and land use surrounding the property is presently R-6. The subject property is bisected in a north-south direction by Brenbrook Road, a street which is proposed by the County to be a major arterial road carrying traffic in a north-south direction from Liberty Road to McDonogh Road. It is also bisected in an east-west direction by a 110 foot wide storm drain area in the center of which is the Scotts Level Branch.

Morris Sugerman, President of Brenbrook Construction Company, the petitioner, testified that the cost of developing the subject tract for R-6 housing would be prohibitive, and that the only feasible residential use of the tract would be for apartments. To substantiate this he testified that in order to develop the subject tract he is required to leave undeveloped a 110 foot wide storm drain reservation for the Scotts Level Branch, and pay twenty-five percent of the cost of the bridge over this storm drain reservation for the construction of Brenbrook Road. His testimony indicated that when he originally contemplated the development of the entire thirty-nine acre tract he did not anticipate that the Scotts Level storm system would have to be canalized, and he was not aware of this until 1964. His testimony further indicated that the estimated land development costs per lot for the subject tract would be \$4,590 while the normal land development cost for an R-6 lot is \$1,500 per lot.

Brenbrook Construction Co., - #67-184-R

Expert engineering witnesses, testifying on behalf of the petitioner, indicated that the existing water distribution system in the area is marginal but that apartment use being less than cottage house use, the proposed project here would have a lesser effect on the water distribution system in the area than its development in an R-6 classification. Testimony further indicated that while Baltimore City is not now approving any new subdivisions because of the water pressure problem, this apartment project would be approved because the land has been platted as an R-6 subdivision since prior to 1961 and the apartment water use would be less than that of an R-6 development.

Robert Czanon, a traffic expert appearing on behalf of the petitioner, testified that the existing roads in the area are more than adequate to handle the proposed apartment project. Further testimony indicated that Brenbrook Road will be a major arterial collector street and portions of it are presently improved with 42 feet of paving on a 70 foot right of way, and that with the development of the subject property Brenbrook Road will be connected as a major collector arterial street to Allenswood Road, which is a major east-west collector street with 40 feet of paving on a 60 foot right of way. The County intends to dead end McDonogh Road west of the property on both sides of Scotts Level Branch, and when this is done Brenbrook Road will be the major north-south thoroughfare connecting Liberty Road and McDonogh Road to the north of the subject property.

An expert realtor, testifying for the petitioner, stated that the Western Area map did not make allowance for sufficient rental housing, and cited some nine zoning reclassifications from less intensive land use to more intensive land uses. Some of these cases were too far from the subject property, in the Board's opinion, to directly affect the property. However, three cases, #65-375-R, #66-54, and #64-44, were in the immediate vicinity of the subject property and were reclassifications to more intensive land uses. He further stated that, in his opinion, garden apartments will not depreciate the surrounding residences, but felt that the construction of semi-detached housing on the subject property (allowed in an R-6 zone) might depreciate the nearby cottage housing.

The protestant's main objections to the proposed apartment project were that the schools in the area are presently overcrowded and the granting of this petition could lead to further overcrowding; increased traffic in the area; and the fear that apartment construction might depreciate their homes.

The Board finds that 242 apartment units here would have less effect on the school system than the development of the property in its present R-6 zone. The property,

Brenbrook Construction Co., - #67-184-R

under existing zoning, could be developed with approximately 100 semi-detached houses which in view of the petitioner's testimony that in his experience apartments only generate one third of the school children as cottages, it is apparent that the project would, if anything, have less school children than an equivalent R-6 development.

With regard to the protestants' fears of increased traffic, the Board finds that these fears are not justified as the testimony given by traffic experts indicated that the existing roads are more than adequate to handle any increased traffic. Further, the construction of Brenbrook Drive through the subject property, in conjunction with the development of this project, with a 42 foot paved width on a 70 foot right of way will alleviate the existing traffic condition in that it will provide easy access from a point north of the present Chelsea development southerly to Allenswood Road. The Board also finds from the testimony of the petitioner's expert real estate witness that the proposed garden apartments will not depreciate the surrounding nearby residential property.

The petition was opposed by the Director of Planning for Baltimore County in that he felt that the subject tract did not meet the locational criteria of his department. He did agree, however, that there were several other apartment projects that were placed on the Western Area map which were completely surrounded by R-6 and R-10 zoning, and that the County considers Brenbrook Road, when completed, will be a major arterial road.

The Board finds that the excessive land development costs make the subject tract uneconomic in its present zoning, and that there have been sufficient changes in the character of the neighborhood to warrant the reclassification sought by the petitioner.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 14th day of December, 1967 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED, subject to site plan approval by the Department of Planning and Zoning, Bureau of Public Services and all other applicable County and State agencies.



MATZ, CHILDS & ASSOCIATES, INC.
CONSULTING ENGINEERS
1020 Cromwell Bridge Rd., Baltimore, Md. 21204 Tel. 301/893-0900

DESCRIPTION

17.452 ACRES OF LAND SOUTH OF MEADOW HEIGHTS ROAD AND EAST OF
MCDONOGH ROAD.

Present Zoning R-6
Proposed Zoning R-A

Beginning for the same at a point on the west side of Brenbrook Drive 70 feet wide S 14°22'05"E - 89.00 feet from the intersection of the west side of Brenbrook Drive extended and the south side of Middlebrook Court 50 feet wide extended, thence leaving said west side of Brenbrook Drive (1) N 70°18'34"E - 70.30 feet to the east side of Brenbrook Drive thence leaving said east side of Brenbrook Drive for the three following courses and distances, (2) N 75°37'15"E - 115.00 feet, (3) N 14°22'05"W - 187.50 feet, and (4) N 09°19'00"W - 214.37 feet to the south side of Meadow Heights Road 60 feet wide, thence binding on said south side of Meadow Heights Road (5) easterly by a curve to the right with the radius of 470.00 feet the distance of 100.94 feet which arc is subtended by a chord bearing S 87°10'04"E - 100.75 feet, (6) S 80°41'00"E - 6.84 feet, thence along a gusset line there laid out, (7) S 35°41'00"E - 11.31 feet to a point on the west side of Nemo Road, 60 feet wide, thence binding thereon (8) S 09°19'00"W - 4.56 feet, thence leaving said west side of Nemo Road, (9) S 45°07'28"E - 73.76

Water Supply ■ Sewerage ■ Drainage ■ Highways ■ Structures ■ Developments ■ Planning ■ Reports



MATZ, CHILDS & ASSOCIATES, INC.

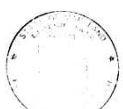
feet to the east side of Nemo Road, thence binding thereon, (10) S 09°19'00"W - 46.00 feet, thence leaving said east side of Nemo Road for the thirteen following courses and distances, (11) S 80°41'00"E - 89.33 feet, (12) S 32°10'04"E - 64.80 feet, (13) S 16°14'06"W - 62.65 feet, (14) S 16°00'00"E - 65.00 feet, (15) S 29°19'56"E - 76.93 feet, (16) S 86°00'42"E - 161.62 feet, (17) S 45°07'28"E - 335.40 feet, (18) S 33°27'25"W - 279.34 feet, (19) N 72°02'55"W - 97.97 feet, (20) S 19°12'55"E - 245.07 feet, (21) N 70°47'05"W - 1324.91 feet, (22) N 26°54'15"E - 28.27 feet, and (23) N 63°05'45"W - 437.00 feet to the centerline of McDonogh Road thence binding thereon (24) N 26°54'15"E - 197.79 feet thence leaving said centerline for the six following courses and distances, (25) S 58°05'45"E - 431.25 feet, thence (26) southeasterly by a curve to the left with the radius of 1055.00 feet the distance of 233.54 feet said arc being subtended by a chord bearing N 64°26'45"E - 233.17 feet, (27) S 70°47'05"E - 281.97 feet, (28) N 19°12'55"E - 110.00 feet, (29) N 01°00'00"W - 80.07 feet and (30) N 75°37'55"E - 120.19 feet to the place of beginning.

Containing 17.4482 acres of land.

EG:gc

J. O. #61026

1/6/67



67-184-R

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 2ND Date of Posting: March 11, 1967
Posted for: Reclassification from R-6 to R-A zone
Petitioner: Brenbrook Construction Co.
Location of property: E & W sides of Brenbrook Dr. S. of Meadow Heights Rd.
Location of Signs: On dead end Brenbrook Dr. S. of Meadow Heights Rd. at intersection of Brenbrook Dr. S. of Meadow Heights Rd. S. of McDonogh Rd. S. of Scotts Level Branch.
Remarks: 6 signs
Posted by: [Signature] Date of return: March 16, 1967

67-184-R

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 2ND Date of Posting: May 18, 1967
Posted for: Appeal
Petitioner: Brenbrook Construction Co.
Location of property: E & W sides of Brenbrook Dr. S. of Meadow Heights Rd.
Location of Signs: On dead end McDonogh Rd. S. of Scotts Level Branch. On dead end of Brenbrook Dr. S. of Meadow Heights Rd. S. of McDonogh Rd. S. of Scotts Level Branch.
Remarks: 11 signs
Posted by: [Signature] Date of return: May 18, 1967

Brenbrook Construction Co., - #67-184-R

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

William S. Baldwin, Chairman

W. Giles Parker

Walter A. Reiter, Jr.

INVOICE		No. 49251	
BALT MORE COUNTY, MARYLAND		DATE March 13, 1968	
OFFICE OF FINANCE		County Board of Appeals (Zoning)	
Division of Collection and Receipts		COURT HOUSE	
TOWSON, MARYLAND 21204		FILED	
TO:	Henry S. Schwartz, Jr., Esq. 340 St. Paul Place Baltimore, Md. 21202	RECEIVED TO ACCOUNT NO. 01.712	17.00
Cost of Certified Documents - File No. 67-184-R		Brenbrook Construction Co. E/S and W/S of Brenbrook Dr. S. of Meadow Heights Road 2nd District	
IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204			

MARVIN DAHNE
A. J. CYGANOWSKI
LLOYD S. LIPIN
BETTY ARMS, et al

Protestants - Appellants

vs.

WILLIAM S. BALDWIN,
W. GILLES PARKER and
WALTER A. REITER, JR.,
being and constituting the
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY,

Appellees

and
BRENBROOK CONSTRUCTION CO.

Intervenor

ORDER FOR APPEAL BY
BRENBROOK CONSTRUCTION CO., INTERVENOR

MR. CLERK:

Please enter an Appeal to the Court of Appeals on behalf of
BRENBROOK CONSTRUCTION CO., Intervenor, from the Judgment entered
in this action on October 23, 1968.

ADELBERG, ADELBERG & NUDON

HARRY ADELBERG
10 Light Street - 12th Floor
Baltimore, Maryland 21202
539-5195
Attorneys for Intervenor

LAW OFFICE
ADELBERG, ADELBERG
& NUDON
1200 WESTLAWN NATIONAL
BANK BUILDING
407 FOWLER, BALTIMORE
21201
JAMES EDWIN REY
688-6100

CERTIFICATE OF MAILING

I HEREBY CERTIFY, this 20 day of November, 1968,
that a copy of the foregoing ORDER FOR APPEAL BY BRENBROOK
CONSTRUCTION CO., INTERVENOR, was mailed to Harry S.
Swartzwelder, Jr., Esquire, 1709 Monsey Building, Baltimore,
Maryland 21202, Attorney for Protestants.

HARRY ADELBERG

C
O
P
Y

MARVIN DAHNE ET AL : IN THE CIRCUIT COURT
VS : FOR BALTIMORE COUNTY
COUNTY BOARD OF APPEALS : Misc. #3901
OF BALTIMORE COUNTY :

MEMORANDUM OPINION

This is an appeal from an Order of the County Board of Appeals
for Baltimore County granting reclassification of approximately 17.45 acres of
land in the Randallstown area of the Second Election District of Baltimore County,
from an R-6 zone to an R-A zone. The Appellants are home-owners whose prop-
erties are adjacent or close to the tract in question.

As recited in the Board's opinion, the parcel which is the subject
of this petition lies south of Meadow Heights Road and is bisected in a north-south
direction by Brenbrook Road, a street which is proposed by the County to be a
major arterial road carrying traffic in a north-south direction from Liberty Road
to McDonough Road, and in an east-west direction by a 110 foot wide storm
drain area in the center of which is the Scotts Level Branch. The zoning and
land use surrounding the property is R-6 for a considerable distance in all
directions, but not specifically delineated in the record.

The subject parcel on which Petitioner proposes to erect two
hundred forty-two garden type apartment units is part of a larger tract of land
purchased by the Petitioner in 1961. The balance of the original tract, which
consists of approximately the same acreage as the subject tract has been
developed by the Petitioner in cottage residences which sold for approximately
\$18,000.00 with the development name of "Chelaca".

The Court of Appeals has repeatedly held that there is a strong
presumption of the correctness of original zoning. Board of County Commissioners
vs Edwards, 240 Md 680; Shadybrook Improvement Association vs McVoy, 232 Md

265; Greenblatt vs. Toney Schloss Properties Corporation, 235 Md 9, and that
before a Zoning Board reasons a property there must be substantial evidence
either of mistake in original zoning or that the character of the neighborhood
has changed to such an extent that such reclassification ought to be granted.
Board of County Commissioners vs Turt Valley Associates, 247 Md 556; Fahl vs
County Board of Appeals, 237 Md 294.

Mr. Frederick P. Klaus, called on behalf of the Petitioner, testified
as to error on Pages 130-131 of the transcript:

"I found one thing, as I have found in other cases in
this general area, that at the adoption of the land
use map properties were zoned for every business
use and every residential use except at that time
the Planning people omitted to place sufficient land
on the land use map for residential apartments."

As I testified before, in other cases, I found that
at that time, and I also find it now, this was a gross
error committed in that land use map, and this was
borne out by the fact that many petitions have come,
through administrative authority, through this Board,
and through the courts, and some have gone to
Annapolis, to the Court of Appeals, where this zone
has been requested, and in some instances granted,
to help correct this fault which was made in 1962."

The testimony of Mr. Klaus was the only testimony presented
by the Petitioner on the issue of error in original zoning. On cross-examination,
however, Mr. Klaus admitted that he did not know what percentage of the land
in the western planning area was now zoned for apartments. (T. Page 113)
When questioned about the possibility that the percentage of total land area
in the western planning area was approaching twenty-two percent in apartment
usage, Mr. Klaus in reply that he did not know if this was possible, stated:
"I have not made a comprehensive study." (T. Page 145)

Mr. George E. Cavellis, the Director of Planning in the Baltimore
County Office of Planning and Zoning, was called as a witness on behalf of the
protestants and testified as follows: (T. Page 185)

"The subject property is not adjacent to any tract which
has zoning for intensive residential usage, nor is it even
close to the commercial tracts along Liberty Road or in
Randallstown center. The tract enjoys none of the lo-
cational advantages which the Planning Board deemed
essential for apartment zoning. Even though it lies

astride Brenbrook Drive, apartment development here
would constitute an incongruous land use - in fact,
apartment zoning here from a planning viewpoint would
constitute spot zoning. The planning staff is opposed
to this petition."

Mr. Cavellis was asked on Page 206 of the transcript:

Q. (By Mr. Baldwin) In your opinion, is this the
R-6 zoning on the property erroneous, Mr. Cavellis?

A. No, the R-6 zoning is not erroneous. It is correct.

Q. Are you speaking as of the present time?

A. I am speaking as of the present time.

Q. In your opinion, was it erroneous when it was placed
on the property in 1962?

A. The placement of R-6 on the map in 1962 was not erroneous."

The testimony of Mr. Klaus, standing alone, therefore, does not
amount to substantial evidence to support a finding of error in original zoning,
and it is to be noted that the Board in its opinion made no such finding of
error in original zoning.

The Board summed up its conclusions in the final paragraph of its
Opinion:

"The Board finds that the excessive land development costs
make the subject tract unsuitable in its present zoning, and
that there have been sufficient changes in the character of
the neighborhood to warrant the reclassification sought
by the Petitioner."

The findings of the Board will be considered in the reverse order.

The testimony on behalf of the Petitioner on the issue of substantial
change in the neighborhood was presented by Mr. Klaus who stated on Page 131
of the transcript:

"The area generally is one that has gone through a great
deal of change, not only in the widening of Liberty Road,
to provide proper access to these properties, but also
it has gone through change in the fact that a great deal
of petitions that have been requested, have been granted,
to bring the map up-to-date."

Q. (By Mr. Parker) Change to R-A zoning?

A. No, I didn't say to R-A. I said there have been
zoning changes to higher density, to correct
the errors that were committed in 1962."

As far as the widening of Liberty Road is concerned, which is
argued by the Appellees as a material change, the testimony indicates that
Liberty Road is a third of a mile from the subject tract (T. Page 145) and as
a result is too far from the property in question to constitute change affecting
the character of the neighborhood of the subject tract. The Board made no
mention of Liberty Road relative to substantial change in its Opinion.

As to reclassification to R-A zoning, the testimony indicates such
were located at a distance of about one and one half miles from the subject prop-
erty. (T. Page 146), and thus, were too far from the subject parcel to directly
affect the property and such was the Board's opinion.

The only other testimony bearing on the issue of change in zoning
presented by the Record relates to reclassification from R-20 and R-10 residential
zoning to R-6 residential zoning, which was the original zoning of the subject
tract before the reclassification in this case. Such cannot be considered a sub-
stantial change in the character of a neighborhood which is totally in the R-6
classification. See Baker vs Montgomery County, 241 Md 178.

Robert Casaban, a traffic expert, appearing on behalf of the
Petitioner, testified that with the development of the subject property Brenbrook
Road will be connected as a major collector arterial street to Allenswood Road,
which is a major east-west collector street with forty feet of paving or a sixty
foot right-of-way, and that the county intends to dead-end McDonough Road
west of the property on both sides of Scotts Level Branch. When this is done,
Brenbrook Road will be the major north-south thoroughfare connecting Liberty
Road and McDonough Road. (T. Page 87)

Although the Court of Appeals has held that the Board is entitled
to consider projects that are "reasonably probable of fruition in the foreseeable
future", Johar Corporation vs Rodgers Forge, 236 Md 106, such prospective
projects must constitute a basic change in the character of the neighborhood.
There is no testimony, and the Board makes no finding in its Opinion, that the
extension of Brenbrook Road significantly alters the basic character of the
neighborhood as did the vast improvements to Stevenson Lane in Johar.

Mr. Sugan, the President of Brenbrook Construction Company,
testified that it would cost \$4,500.00 per lot for the development of the proposed
33 lots of Section 3, Springbrook, and \$4,000.00 per lot for the proposed 24 lots
of Section 4, which development costs he maintains are basically prohibitive.
(T. 4 and 5). Although the Petitioner, in effect, in his memorandum, concedes
that practical difficulties and economic hardship in the development of the land
will not, in itself, justify a change in the classification of property, he urges
that it is a factor which must be considered by the zoning authorities.

In Holfrich vs Monnell, 248 Md 498, Petitioner-Appellee claimed
that he would be forced to expend an estimated \$10,500.00 in engineering costs
for less than one acre of residential land. For this reason, he contended that
the Board would have been guilty of confiscation had it prevented the reclassification
to R-A. The Court of Appeals in reversing the Order of the Circuit Court
which affirmed the decision of the Board, stated on Page 502:

"Undoubtedly, the Appellees would enjoy a greater economic
gain from the sale or use of the property under an R-A classi-
fication; however, this Court has repeatedly held that the
fact that re zoning may result in the realization of greater
profits from use of the land or that hardship may follow from
the retention of the existing classification is not sufficient
justification for re-zoning." See Board of County Commissioners
vs Kay, 240 Md 600; Baltimore City vs Borlase, 239 Md 611.

It has been consistently stated that the courts may not substitute
their judgment for that of the Board when the Board's decision is supported by

substantial evidence and the issue before the Board was fairly debatable.
Boyle vs Hospital Board Commissioners, 246 Md 197. See also Agnew vs. Inc.
vs Lucas, 247 Md 612. However, the Court will, where the record is so devoid
of substantial supporting facts as to be incapable of raising a debatable issue,
declare the legislative or administrative action invalid. France vs Shapiro,
248 Md 335.

For the reasons heretofore set forth, this Court finds that the
economic difficulties inherent in developing the subject tract under the existing
R-6 zoning are not sufficient justification for re zoning. The Court further finds
that there is no legally sufficient evidence of original mistake or substantial
change in the character of the neighborhood to grant Petitioner's application
for reclassification. Therefore, the Board's decision is found to be arbitrary
and lacking. In the record, legally sufficient evidence of change or error in
original zoning to sustain it and thus without substantial evidence to present
a reasonably debatable question for the discretion of the Board.

It is, therefore, this 23rd day of October, 1968, by the Circuit
Court for Baltimore County Ordered that the Order of the County Board of Appeals,
dated December 14, 1967, be and the same is hereby reversed.

LESTER A. BARNETT
Judge

October 24, 1968

y.

MARVIN LAMKE, et al.

Harmond, C.J.
Marbury
Barnes
Finan
Smith,
J.J.

Opinion by Barnes, J.

FILED: July 1, 1963

ZONING FILE #67-14-R

This appeal is from an order of the Circuit Court for Baltimore County (Barrett, C.J.), dated October 23, 1968, reversing an Order of December 14, 1967 of the County Board of Appeals for Baltimore County (the "Board") which had granted the application of the appellant, Brennebeck Construction Company (Brennebeck or Petitioner) for the rezoning of approximately 17.45 acres of land located on Brennebeck Drive in the Second Election District of Baltimore County (the subject property) from the R-6 (Residence, one or two family, lot area 6000 square feet) zone to the R-4 (Residence, Apartments) zone. The protestors before the Board, who were respondents in the lower court and appellees in this Court, are homeowners whose properties are adjacent or nearby the subject property. The lower court was of the opinion that there was no legally sufficient evidence before the Board of either original mistake in the comprehensive zoning or of substantial change in the character of the neighborhood to justify the requested rezoning and, those issues being not fairly debatable, the decision of the Board granting the rezoning was legally arbitrary and capricious. Our review of the record and consideration of the briefs and arguments of the respective parties indicate to us that the decision of Chief Judge Barrett was correct and that the Order of October 23, 1968 should be affirmed. We adopt the opinion of the lower court as the opinion of this Court, as follows:

"As recited in the Board's opinion, the parcel which is the subject of this petition lies south of York and Highway 2 and is bisected in a north-south direction by Liberty Road, a street which is proposed by the County to be a major arterial road carrying traffic in a north-south direction from Liberty Road to McPherson Road, and in an east-west direction by a 140 foot storm drain area in the center of which is the proposed waterway. The soil and land use surrounding the parcel is suitable for a considerable distance in all directions, but not specifically delineated in the record.

"The subject parcel on which Petitioner [the Appellant, Ebenbrook] proposes to erect two hundred for the garden type apartment units is part of a larger tract of land purchased by the Petitioner in 1961. The balance of the original tract, which consists of approximately the same acreage as the subject tract has been developed by the Petitioner in cottage residences which sold for approximately \$18,000.00 with the development name of "Chelsea".

"The Court of Appeals has repeatedly held that there is a strong presumption of the correctness of original zoning. Board of County Commissioners v. Shoeness, 240 Md. 601, 215 A.2d 209 (1965); Board of County Commissioners v. Weller, 232 Md. 404, 195 A.2d 142 (1963); Universal v. Conely Shells Processors Corporation, 232 Md. 404, 195 A.2d 142 (1963). The Board of Zoning Ordinance v. (1965), and that before a zoning board evidence of a mistake in original zoning or that the character of the neighborhood has changed is not sufficient to require a modification ought to be granted. Board of County Commissioners v. Rural Village Associates, 247 Md. 1, 230 A.2d 100 (1968); Board of County Commissioners v. Shoeness, 240 Md. 601, 215 A.2d 209 (1965).

"Mr. Frederick P. Klaus, called on behalf of the Petitioner, testified as to error:

"I found one thing, as I have found in other cases in this general area, that at the adoption of the land use map properties were zoned for every business use and every residential use except at that time the Planning people omitted to place sufficient land on the land use map for residential apartments.

"Although the Court of Appeals has held that the Board is entitled to consider projects that are 'reasonably probable of fruition in the foreseeable future', Jaber Corporation v. Rodgers Morris Community Ass'n, Inc., 330 F.2d 140, 42 AFR2d 61 (1964), such a finding does not require that there be a change in the character of the neighborhood. There is no testimony, and the Board makes no finding in its opinion, that the extension of Broadway Road significantly alters the basic character of the neighborhood as did the vast improvements to Stevenson Lane in Jaber."

"Mr. Sugrman, the President of Brenbrook Construction Company, testifies that it would cost \$8,500.00 per lot for the development of the proposed 33 lots of Section 3, Springbrook, and \$8,000.00 per lot for the proposed 33 lots of Section 4. The development costs he maintains are basically prohibitive. Although the Petitioner, in effect, in his memorandum, concedes that practical development of the land will not, in itself, justify a change in the classification of property, he urges that it is a factor which must be considered by the zoning board as

"In Holfreigh v. Monnelly, 248 Md. 498, 237 A.2d 474 (1968), Petitioner-Appellee claimed that he would be forced to expend an estimated \$10,500.00 in engineering costs for less than one acre of residential land. For this reason, he contended that the Board would have been guilty of confiscation had it prevented the reclassification to R-A. The Court of Appeals in reversing the Order of the Circuit Court which affirmed the decision of the Board, stated on page 502-03, 237 A.2d at 457:

'Undoubtedly, the Appellees would enjoy a greater economic gain from the sale or use of the property under an R-A classification; however, this Court has repeatedly held that

"As I testified before, in other cases, I found that at that time, and also find it now, this was a gross error committed in that land use map, and this was borne out by the fact that many petitions have come, through administrative authority, through this Board, and through the courts, and have gone to Annapolis, to the Court of Appeals, where this zone had been requested, and in some instances granted, to help correct this fault which was made in 1962."

"The testimony of Mr. Klaus was the only testimony presented by the defendant on the issue of error in original zoning. He testified that he did not know, however, Mr. Klaus admitted that he did not know what percentage of the land in the western portion of the city was zoned for apartments. When questioned about the proper zoning for the percentage of total land as in the western planning area was approaching twenty-two percent in apartment usage, Mr. Klaus in replying that he did not know if this was true, stated 'I have not made a comprehensive study'.

"Mr. George E. Gavrelis, the Director of Planning in the Baltimore County Office of Planning and Zoning, was called as a witness on behalf of the protestants and testified as follows:

"The subject property is not ed-
ge to any area which has been zoned
for intensive residential use, nor
is it even close to the commer-
cial streets along Liberty Road or
in Randallstown center. The tract
enjoys none of the locational advan-
tages which the Planning Board deemed
essential for apartment development.
Even though it lies straddle Brennen-
brook Drive, apartment development
would constitute an incongruous land
use - in fact, apartment zoning here
is a manifestly inappropriate and
unjustified spot zoning. The planning
staff is opposed to this petition."

"Mr. Gavrelis was asked:

the fact that rezoning may result in the realization of greater profits from use of the land or that hardship may follow from the retention of the existing classification is not sufficient justification for rezoning.

See Board of County Commissioners v. May, 240 Md. 690, 215 A.2d 206 (1965); Mayor and City Council of Baltimore v. Borinsky, 239 Md. 611, 212 A.2d 508 (1965).

"It has been consistently stated that the courts may not substitute their judgment for that of the Board when the Board's decision is supported by substantial evidence. The issue before the Board was fairly established by the evidence before it for Convictives, 246 M. 1, 227 A.2d 861 (1967); 246 M. 335, 235 A.2d 785 (1968). However, the Court's supporting action as to be incapable of raising a debatable issue, because the legislative or administrative action invalid. Prince v. Shiner, 246 M. 335, 235 A.2d 785 (1968).

"For the reasons heretofore set forth, this Court finds that the economic difficulties inherent in developing the subject tract under the existing R-6 zoning are not sufficient justification for R-6 rezoning. The Court further finds that there is no legal evidence of original mistake or substantial change in character of the neighborhood to grant Petitioner's application for reclassification. Therefore, the Board's decision to deny the application is arbitrary and capricious. The Court finds that there is no evidence of change or error in original zoning to sustain it and thus without substantial evidence to sustain a decision. It is a debatable question for the discretion of the Board.

ORDER OF OCTOBER 23, 1968 AFFIRMED. THE APPELLANT TO PAY THE COSTS.

Q. (Mr. Baldwin) In your opinion, is this the H-O zoning on the property erroneous, Mr. Cavalieri? A. No, the H-O zoning is not erroneous. It is correct.

Q. Are you speaking as of the present time? A. I am speaking as of the present time.

19. In your opinion, was it erroneous when it was placed on the property in 1962? A. The placement of R-6 on the map in 1962 was not erroneous.

"The testimony of Mr. Maus, standing alone, therefore, does not amount to substantial evidence to support a finding of error in original sentencing, and it is to be noted that the Board in its opinion made no such finding of error in original sentencing.

"The Board summed up its conclusions in the final paragraph of its Opinion:

"The Board finds that the excessive land development costs make the subject tract unusable in its present zoning, and that there have been sufficient changes in the character of the neighborhood to warrant the reclassification sought by the Petitioner."

The findings of the Board will be considered in the reverse order.

"The testimony on behalf of the Petitioner on the issue of substantial change in the neighborhood was presented by Mr. Klaus who stated:

"The area generally is one that has gone through a great deal of change, not only in the widening of Liberty Road, to provide proper access to these properties, but also it has gone through change in the fact that a great deal of petitions that have been requested, have been granted, to bring the map up-to-date.

17. (Mr. Parker) Change to A-A
section? A. No, I didn't say to

R-A. I said there have been zoning changes to higher density, to correct the errors that were committed in 1962.

"As far as the widening of Liberty Road is concerned, which is argued by the Appellants as a radical change, the testimony indicates that Liberty Road is a third of a mile from the subject tract and as a result is too far from the property in question to constitute change affecting the character of the neighborhood of the subject tract. The Board made no mention of Liberty Road relative to substantial change in its opinion.

"As to reclassification to R-A zoning, the testimony indicates such were located at a distance of about one and one half miles from the subject property, and thus, were too far from the subject parcel to directly affect the property and such was the Board's opinion.

"The only other testimony bearing on the issue of change in zoning is presented by the Record refers to reclassification from R-20 [Residence, one-family, lot area 20,000 square feet] and R-20 [Residence, one-family, lot area 20,000 square feet] residential zoning to R-60 [Residence, one-family, lot area 60,000 square feet] residential zoning. ~~There is no testimony~~ which was the original zoning of the subject tract before the reclassification in this case. Such cannot be considered a substantial change in the character of a neighborhood. See Boyer v. Board of Community Council, 241 Md. 170, 245 A.2d 93 (1969).

"Robert Czaban, a traffic expert, appearing on behalf of the petitioner, testified that when the department learned of the subject property at Brookbrook Road, it was known as a major collector arterial street to the main thoroughfare, which is a major east-west collector street with forty feet of paving on a sixty foot right-of-way, and that the county intends to dual and repave Brookbrook Road west of the property on both sides of Scotts Level Branch. When this is done, Brookbrook Road will be the major north-south thoroughfare connecting Liberty Road and Brookbrook Road.