

R-4 to M-L. - (2.437 acres)
Variance from Sections 255.1, 243.1, 243.2, 243.3, 243.4, 243.5, 248.1
July 31 1967

No. 67-221-RA Herman H. Baylus
N/5 Riderwood-Lutherville Drive 20' W. of Green Spring Drive,
8th District

Petition, description of property Order of Deputy Zoning Commissioner

Certificate of posting

Certificates of advertisement

Comments of Traffic Engineering

" " Industrial Development Commission

" " Office of Planning

Copy of appeal 7/26/67 2 signs

Plat filed with petition

Frank E. Ciccone, Esq., counsel for petitioner
1st National Bank Bldg.,
Baltimore, Maryland 21204

*John W. Hessian, III, Esq., for protestants
117 Allegheny Avenue
Towson, Maryland 21204 VA-6-6440
Earl S. Jones, et al

Mr. Robert E. Dahl,
13 Pickett Road
Lutherville, Maryland 21093
protestant

6/28/67 - D.Z.C. GRANTED rec. of lots 10 thru 19 and six variances
DENIED " " 22, 23 & 24, and variance from Sec. 248.1

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Herman H. Baylus, legal owner... of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an R-6 zone to an M-L zone; for the following reasons:
To delete 100 ft. restrictive strip as required in Section 255.1

Change in the neighborhood
Variance from Section 255.1 - To permit a 30 foot restrictive strip instead of the req. 100 feet.
Section 243.1 - To permit a front yard of 30 feet instead of the req. 35 feet.
Section 243.2 - To permit a side yard of 30 feet instead of the req. 50 feet.
Section 243.3 - To permit a rear yard of 30 feet instead of the req. 50 feet.
Section 243.4 - To permit a structure to be located within 30 feet of a residential zone instead of the required 125 feet.
Section 243.5 - To permit a F.A.R. of 2, instead of the permitted .4.
Section 248.1 - To permit uses normally permitted in an M-L zone to be located within 30' of a residential zone instead of the 100' from residential zone of the R-6 zone.

County, to use the herein described property, for:

see attached descriptions

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.

Contract purchaser
Address
Legal Owner

Protestant's Attorney

ORDERED BY The Zoning Commissioner of Baltimore County, this 11th day of April, 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 had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 15th day of May, 1967, at 11:00 o'clock A.M.

Zoning Commissioner of Baltimore County.

ROBERT E. DAHL and
EVELYN R. DAHL, his wife
and
ROBERT D. BECKY and
MARILYN W. BECKY, his wife
vs.
JOHN A. SLOWIK,
WALTER A. REITER, JR., and
JOHN A. MILLER, constituting
the County Board of Appeals
of Baltimore County

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
Misc. Docket No. 8
Folio 384
Case No. 4073

NOTICE OF APPEAL

MR. CLERK:

Please note an appeal on behalf of the Protestant-Appellants to the Court of Appeals of Maryland in the above entitled matter.

John W. Hessian, III
Attorney for Protestant-Appellants
102 West Pennsylvania Avenue
Towson, Maryland 21204
Valley 3-8440

I HEREBY CERTIFY, That a copy of the foregoing Notice of Appeal was mailed this 10th day of October, 1969, to Frank E. Ciccone, Esq., 121 W. Susquehanna Avenue, Towson, Maryland 21204, attorney for the Appellees.

John W. Hessian, III

IN THE COURT OF APPEALS OF MARYLAND

No. 306

September Term, 1969

67-221-RA

ROBERT E. DAHL
et al.

v.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

and

HERMAN H. BAYLUS

Hammond, C.J.
Barnes
McWilliams
Finan
Singles
Smith
Digges,
JJ.

Opinion by Finan, J.

Filed: May 11, 1970

ROBERT E. DAHL and
EVELYN R. DAHL, his wife
and
ROBERT D. BECKY and
MARILYN W. BECKY, his wife
vs.
JOHN A. SLOWIK,
WALTER A. REITER, JR., and
JOHN A. MILLER, constituting
the County Board of Appeals
of Baltimore County

IN THE CIRCUIT COURT

FOR BALTIMORE COUNTY

AT LAW

Misc. Docket 8, Folio 384
Case No. 4073

MEMORANDUM OPINION AND ORDER OF COURT

This case comes on appeal from the decision of the County Board of Appeals of Baltimore County rendered on the 11th day of September, 1968. The Board granted the zoning reclassification from R-6 to M-L of two parcels of land located on the north side of an undeveloped "paper" street known as Riderwood-Lutherville Drive, 20 feet west of Green Spring Drive, in the 8th Election District of Baltimore County. One parcel comprises lots 10 to 19 inclusive of Block AA on the recorded plat of Talbot Manor, and the other parcel comprises lots 22, 23 and 24. Separating the two parcels are lots 20 and 21, zoned R-6, which are in a different ownership and are not a part of this case. Also granted by the Board were six of seven requested variances (petitioner having abandoned one) which the Board found to be "reasonable and essential to prevent practical difficulty and unnecessary hardship in developing the property."

Protestants-appellants (Dahl and Beckey) raised

four issues in their appellate memorandum (which memorandum is required by Local Rule 2.3 for the Circuit Court for Baltimore County) but in oral argument did not press contention #2 involving a distinction between "use" and "area" variances. They first contend that the Board had no jurisdiction to reclassify lots 22, 23 and 24 on the appeal from the Deputy Zoning Commissioner's ruling because the Deputy Commissioner had denied reclassification of these lots and they were therefore not specifically enumerated on appeal; i.e., protestants did not wish to disturb the ruling as to those lots. The answer to this contention is found in an examination of the nature of any appeal to the Board as outlined in the Administration and Enforcement section of the Baltimore County Zoning Regulations. Section 501.3 says in part that "all decisions by the County Board of Appeals shall be made after notice and opportunity for hearing de novo upon the issues before said Board". The possible ambiguity contained in the end of the portion quoted is clarified by Section 501.6 which reads in pertinent part "appeals from the Zoning Commissioner shall be heard by the County Board of Appeals de novo". A trial de novo would mean a completely new hearing of the entire petition. Speaking in general of trial de novo 73 C.J.S. Public Administrative Bodies and Procedure Section 204, says

Where a trial de novo is authorized or required, the appeal from the administrative determination does not partake of the nature of a certiorari, nor, it has been held, does the Court act as a reviewing or appellate court in any sense; but a trial is conducted in the same manner as though the action had originated in the court. On such a review, the court is not bound by the administrative body's fact findings or

conclusions of law, and it is required that the court exercise its own independent judgment as to both the law and the facts on the evidence presented to it and the record made before it. The issues to be determined are those raised by the pleadings and not those raised before the officer or body.

The third contention by the Protestants is that the Board improperly excluded testimony regarding restrictions placed upon a prior rezoning of adjacent property. From the record before this Court, it does not appear that the Board acted arbitrarily in excluding such evidence as irrelevant or immaterial.

The fourth contention, that the Board erred in granting the requested rezoning and particularly that with regard to lots numbers 22, 23 and 24, has been addressed in part by the above. It is also satisfied generally by the Board's findings and their factual basis as set forth in the Board's opinion as well as by the record upon which it is based. The subject property is bounded on the north by an 80 acre industrial park zoned M-1, on the east by land which is zoned M-L and on the west and south by R-6 1-4. The Board found that it was appropriate to change the zone in line with prior M-L zoning changes thus placing the subject property with the industrial area, leaving Riderwood-Lutherville Drive, which runs between the subject property and the protestants' R-6 property, as "a logical buffer strip between the industrial and residential areas."

The standard to be applied by this Court in this type of case is whether a reasoning mind could reasonably have reached, after a fair consideration of the entire record, the

conclusion that the (Board) did, or in other words, was its action clearly erroneous and therefore not fairly debatable." Board v. Matlack, 239 Md. 144 (1965). The Court here feels that this test has been passed. Further the Board does not appear to have acted arbitrarily or capriciously in the legal sense. Montgomery County v. Maryland Club, 202 Md. 279 (1952). Having determined this, the Court has fulfilled its limited judicial function in reviewing a zoning appeal.

For the reasons stated and in conformity with the foregoing opinion, it is this 15th day of September, 1969, by the Circuit Court for Baltimore County ORDERED that the order of the County Board of Appeals of Baltimore County dated September 11, 1968, be and the same is hereby affirmed.

John M. Maguire
JUDGE

September 15, 1969

RE: PETITION FOR RECLASSIFICATION
from R-6 to M-L zone, and
VARIANCE from Sections 255.1,
243.1, 243.2, 243.3, 243.4, 243.5
and 248.1
N/S Riderwood-Lutherville Drive 20'
West of Green Spring Drive
8th District
Herman M. Baylus
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 67-221-RA

OPINION

The Petitioner in this case, after withdrawing a request for a Variance from Section 248.1 of the Zoning Regulations, is seeking a reclassification on 2.1 acres from an R-6 zone to an M-L zone, and for six variances thereon as follows:

- 1) From Section 255.1 to permit a 30 foot restrictive strip instead of the required 100 feet.
- 2) From Section 243.1 to permit a front yard of 30 feet instead of the required 75 feet.
- 3) From Section 243.2 to permit a side yard of 30 feet instead of the required 50 feet.
- 4) From Section 243.3 to permit a rear yard of 30 feet instead of the required 50 feet.
- 5) From Section 243.4 to permit a structure to be located within 30 feet of a residential zone instead of the required 125 feet.
- 6) From Section 243.5 to permit a floor area ratio of 2. instead of the permitted .4.

The petitioned property is located on the north side of an undeveloped "paper" street known as Riderwood-Lutherville Drive, 20 feet west of Green Spring Drive, in the 8th Election District of Baltimore County, as shown on plat in Petitioner's Exhibit I. It is bounded on the north by an 80 acre industrial park zoned M-L; on the

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east by land which is zoned M-L resulting from a petitioned reclassification in Case No. 5496; on the west by R-6 land, and on the south by R-6 land of a largely undeveloped residential sub-division recorded as Talbot Manor, and now known as Country Club Park.

The recorded plat of Talbot Manor is entered in this case as Petitioner's Exhibit II. The petitioned property is shown thereon in Block AA. One parcel comprises lots 10 to 19 inclusive, and the other parcel comprises lots 22, 23 and 24. Separating the two parcels are lots 20 and 21, zoned R-6, which are in a different ownership and are not a part of this petition. Lots 10 to 19 form a rectangular shaped parcel of land 500 feet wide by 140 feet deep. Lots 22, 23 and 24 form an irregular rectangular shaped parcel 218 feet wide by depths varying from 85 feet to 125 feet.

Mr. Augustine Mueller, a recognized civil engineer, testified that the reclassification and variances sought should be granted. His opinion was that the County Council erred by retaining an R-6 classification on the subject property when they adopted the zoning map on November 14, 1955. He believed they failed to take into consideration the condition of the property, and that its logical development should have been oriented northward to the 80 acres that were zoned M-L. He stated it was more reasonable and more economical to develop the subject property in this manner than to construct new streets linking the subject property to Talbot Manor. He felt that the variances were essential to prevent practical difficulty and unnecessary hardship.

As to changes, he cited that the contiguous property to the east, shown on Talbot Manor plat Exhibit I as lots 1 to 9 inclusive, had been reclassified by petition from R-6 to M-L on September 3, 1962 in Case No. 3496. He stated that there were thirty or more industrial uses in the adjacent eighty acre industrial park.

He also testified that public sewer and water utilities are available to develop the subject in an M-L category without creating any problems of capacity and/or pressure.

Mr. Christian Anderson, one of the principals, is a realtor, appraiser and builder of twenty years' experience. He testified that he was largely instrumental in the development of the adjacent industrial park. His intention would be to develop the

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ject similarly in like conformity and orient it toward the industrial park, utilizing existing streets for traffic movement. Because of the pleasing aesthetics required by modern industrial plants, he could foresee no adverse effects that the rezoning could have on surrounding properties.

Mr. Frederick Klaus, realtor and appraiser, testified on behalf of the Petitioner. He was one of the original entrepreneurs in assembling the plat for the eighty acre industrial park, but no longer owns an interest in it. He substantially corroborated the testimony of Messrs. Mueller and Anderson.

Mr. Robert Dahl protests the granting of the petition. He testified that he purchased a homestead in March 1966 within 186 feet of the subject, and is constructing his home there. His total investment in house and land is expected to be around \$34,000.00. He stated that he would not have made this investment if the subject property had not been zoned residential. He was fully aware of the presence of the contiguous industrial park, which had about twenty buildings completed at the time he purchased his lots. He believes that granting the petition will adversely affect his investment due to a loss of screening and an increase in hearing the noise emanating from the industrial park.

Mr. Robert Beckey protests the granting of the petition. He testified that he purchased a house in the Spring of 1966 within 350 feet of the subject. He hears much noise from the existing industrial park and is fearful of a possible increase in traffic and the possibility of cars being parked on the residential streets.

Other protestants' testimony expressed opposition to granting the petition, fearing that the subject property may generate traffic through the residential development of Talbot Manor.

The tests of error and change in the zoning map have been proven to the Board's satisfaction by the testimony that was given. The Board believes that it is proper to orient the subject property away from the residential area and toward the industrial

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complex to the north. Riderwood-Lutherville Drive is a logical buffer strip between the industrial and residential zones.

The Board finds as a fact that the variances sought are reasonable and essential to prevent practical difficulty and unnecessary hardship in developing the property. Based on the testimony given, the Board unanimously concurs that the petitioned reclassification and variances sought should be granted.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 11th day of September, 1967, by the County Board of Appeals ORDERED that the reclassification and variances petitioned for be and the same are hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John A. Slawik, Acting Chairman
Walter A. Reiter, Jr.
John A. Miller

FROM THE OFFICE OF
GEO. W. WILLIAM STEPHENS, JR. & ASSOCIATES, INC.
100 ALLEGHENY AVENUE, TOWSON, MARYLAND 21204

✓ #67-221-RA
MAP
#9
SEC. 3-C
NW-13A
N1L-A

April 6, 1967

Description to Accompany
Zoning Application R-6 to M-L
And Requesting Deletion of Section 255.1
Titanium Industrial Park

Beginning for the same on the north side of Riderwood-Lutherville Drive 40 feet wide at a point distant 20 feet easterly from the extension northerly of the west side of Green Spring Drive 40 feet wide as shown on a plat of Talbot Manor, said plat being filed among the Plat Records of Baltimore County in Plat Book G.H.K. 13, Folios 71 & 72, said point of beginning being also the southeast corner of Lot #10 Block AA as shown on said plat and running thence blinding on the north side of said Riderwood-Lutherville Drive as now surveyed the two following courses and distances viz: First, South 75° 34' 16" West 500.00 feet and Second, westerly along a curve to the right with a radius of 579.89 feet an arc distance of 345.94 feet said curve being subtended by a chord bearing North 87° 20' 19" West 340.83 feet to the westernmost corner of Lot #24 on said plat of Talbot Manor thence blinding on the northwest side of said Lot #24 as now surveyed North 19° 43' 06" East 124.37 feet to the outline of said plat, thence blinding on the outlines of said plat as now surveyed and blinding also on the land described in zoning description R-M-L-1 the two following courses and distances viz: First, South 20° 15' 43" East 63.38 feet and Second, North 75° 34' 16" East 749.45 feet to the northeast corner of said Lot #10 thence blinding on the east side of said Lot #10 as now surveyed and blinding also on west side of the land zoned M-L in Zoning case #5496 South 15° 25' 44" East 140.00 feet to the place of beginning.

Containing 2.437 acres of land more or less.

Saving and excepting lots 20 and 21 as shown on the above mentioned plat of Talbot Manor.

FROM THE OFFICE OF
GEO. W. WILLIAM STEPHENS, JR. & ASSOCIATES, INC.
100 ALLEGHENY AVENUE, TOWSON, MARYLAND 21204

✓ #67-221-RA
MAP
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Containing 2.437 acres of land more or less.

Saving and excepting lots 20 and 21 as shown on the above mentioned plat of Talbot Manor.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Ross, Zoning Commissioner Date: May 5, 1967
FROM: George F. Carroll

SUBJECT: Petition #67-221-RA. Reclassification from R-6 to M-L. Variance to permit a 30 foot restrictive strip instead of the required 75 feet and to permit side yards of 30 feet instead of the required 50 feet and to permit a rear yard of 30 feet instead of the required 50 feet and to permit a structure to be within 30 feet of a residential zone instead of the required 125 feet and to permit a P.A.R. of 2. instead of the permitted .4 to permit use normally permitted in an M-L Zone to be located within 30 feet of a residential zone instead of the required setback of 100 feet from said residential zone boundary. Being the property of Herman M. Baylus, et al. Northside of Riderwood-Lutherville Dr. 20 feet more or less, West of Green Spring Drive, 8th District

HEARING: Monday, May 15, 1967 (11:00 A.M.)

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

1. In commenting on Petition #5496, under which property easterly from the subject property was reclassified as M-L, we commented, in part, as follows:

1. The Eighth District Zoning Map confirmed the validity of industrial zoning at the southeasterly quadrant of the Harburg Expressway-Titanium Road interchange. That zoning map also affirmed the validity of residential zoning for the recorded residential development immediately to the south. It is the opinion of the Planning staff that the zoning map affirmed and established a proper boundary line between the two zones. This line is at the rear of the lots in the Talbot Manor subdivision which front on Riderwood-Lutherville Drive, a paper street.
2. The Planning staff is of the opinion that extension of industrial use potentials southerly to Riderwood-Lutherville Drive would have the effect of upsetting the validity of the Eighth District Zoning Map as it applies to this locale and would adversely affect the orderly development of the Talbot Manor Subdivision in accordance with its residential zoning.
3. Extension of industrial zoning southerly from its present boundary would affect also the traffic pattern in the residential area. Green Spring Avenue (northerly section) is now well past the desirable maximum length for a dead-end industrial feeder street. Further extension into the residential area to the south would require alternate means of ingress and egress to the industrial area and ultimately would lead to the need for a road connection serving industrial traffic from Sarnary Avenue. The Planning staff deems that the introduction of industrial traffic into this residential area would be undesirable.

The above comments are also applicable to the subject petition, particularly in that the subject

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Ross, Zoning Commissioner Date: May 5, 1967
FROM: George F. Carroll

SUBJECT: Petition #67-221-RA. (continued)

8th District

HEARING: Monday, May 15, 1967 (11:00 A.M.)

page -2-

tract is larger.

2. We note that the subject petition requests a number of variances which would substantially weaken the industrial-residential transitional controls set forth in the Zoning Regulations. The variance requests make the reclassification even more suspect, in that proper zoning classification of a property - such as the present classification of the subject property - seldom results in any need for variances.
3. One of the variances requested in the petition is a variance to "Section 248.1" of the zoning regulations. It is our opinion that this provision comes under Section 248 and is a use regulation. Section 307, however, prohibits variances from use regulations.
4. The proposed reclassification applies to two parcels of land - it does not include lots 20 and 21 shown on the petitioner's plat. From a planning viewpoint, reclassification as requested would result in a clearly irrational pattern of land use.

This case is before us on appeal from an order of the Circuit Court for Baltimore County which affirmed an order of the County Board of Appeals for Baltimore County granting a petition seeking the reclassification of two parcels of land. The parcels front on the north side of a paper street known as "Riderwood-Lutherville Drive" and are part of the Talbot Manor subdivision. The two parcels are separated by two intervening lots which are zoned residential. All of the lots in both parcels are contiguous to industrially zoned land to the north.

This dispute began when Herman Baylus, appellee, petitioned for the reclassification of the two parcels from residential R-6 zoning to industrial M-L zoning. He also asked that the set-off and area restrictions, which are generally applicable to industrially zoned property which abuts on residential, be relaxed. The Deputy Zoning Commissioner allowed the M-L rezoning for the easternmost parcel along with the requested variances. However, he denied the rezoning for the other parcel.

The easternmost and largest parcel consists of Lots 10 through 19 of the Talbot Manor subdivision and is also contiguous to industrially zoned property directly on the east. The smaller and westernmost parcel consisting of Lots 22, 23 and 24 of the subdivision abuts at the front and on the east and west on residential

Section 500.13 of Baltimore County Zoning Regulations provides that the Deputy Zoning Commissioner shall have authority to exercise the same duties as the Zoning Commissioner.

We must also take into consideration the language of Section 501.6 which in referring to appeals, states:

"Appeals from the Zoning Commissioner shall be heard by the County Board of Appeals *de novo*. * * * We think that the context in which the term *de novo* is used in Section 501.6 and 501.3 (both quoted above) means that on appeal there shall be a *de novo* hearing on those issues which have been appealed and not on every matter covered in the application. In this sense *de novo* means that the Board of Appeals may hear testimony and consider additional evidence pertaining to the issue or issues presented on appeal. See Vol. 2, *The Law of Zoning and Planning*, Rathkopf, ch. 65-30, §7. The original nature of a *de novo* hearing with its quality of newness is in contrast to a review upon the record as exists where matters are heard on certiorari. 73 C.J.S. *Public Administrative Bodies and Procedure*, § 204.

Both parties to this appeal agree that there appears to be no Maryland case adjudicating the question of whether the *de novo* review power of the Board of Appeals is to be limited to those portions of the Zoning Commissioner's decision from which an appeal has been taken. However, in *Deen v. Baltimore Gas & Electric Company*, 240 Md. 317, 214 A.2d 146 (1965), this question briefly surfaced but then disappeared. There, a utility company desired to construct a high tension transmission line over a segment of an abandoned railroad right of way 5.1 miles in length. Three areas were involved. At the hearing the Zoning Commissioner granted the utility company's request for its intended use in the third segment, but denied its

property. The protestants, appellants, live in the immediate area. John Young resides on Lot No. 26 and there is a residence constructed on Lot No. 25. Another protestant, Becky, resides approximately 350 feet from the easternmost parcel. The protestant Dahl at the time of the hearing, was in the process of constructing his home approximately 189 feet from the easternmost parcel and he valued his property at approximately \$33,000. There is another residence between the Dahl home and the easternmost parcel. The variances in the Baltimore County Zoning regulations sought by the petitioner were six in number as follows:

1. Reduction of the required restrictive strip of 100 feet to 30 feet (section 255.1).
2. Reduction of the required front yard from 75 feet to 30 feet (section 243.1).
3. Reduction of the required side yard from 50 feet to 30 feet (section 243.2).
4. Reduction of the required rear yard from 50 feet to 30 feet (section 243.3).
5. Reduction of the required set back for a structure from 125 feet to 30 feet (section 243.4).
6. Reduction of the required floor area ratio from 1.4 to 2. (section 243.5 and section 101).

The appellants filed an appeal to the County Board of Appeals for Baltimore County. Mr. Baylus, petitioner appellee, filed no cross-appeal. At the hearing, the Board heard testimony as to the content of zoning of both parcels of land although the appellants contend that since no cross-appeal had been filed, the Deputy Commissioner's denial of industrial zoning for the westernmost parcel was final. The Board

petition regarding the first and second segment. The utility company appealed to the Board from that portion of the Commissioner's order which required the underground installation of the transmission lines. The Board affirmed the Commissioner's order as to the overhead construction of lines as to the second segment but reversed the Commissioner as to the first segment. Thereafter the utility company took an appeal to the circuit court from the denial of its request for the construction of overhead lines as to the first segment, and the property owners appealed the Board's granting of overhead construction of lines for the second segment. At the hearing in the circuit court, the utility company contended that there was no issue before the Board concerning the authorized construction of overhead facilities in the third segment because the property owners had failed to appeal from the decision. However, the circuit court was of the opinion that the matter before it dealt with the "general subject of 'overhead' vs. 'underground' transmission lines" and considered the appeal to the Board as encompassing the entire distance of the line. The specific issue as to the scope of the appeal before the Board was not raised in this Court on appeal. Although *Deen* does illustrate that appeals may logically be taken from a portion of an order of the Commissioner, it falls short of establishing any precedent as to what may be the scope of a *de novo* hearing.

In the absence of any precedent to guide us, we think the more sensible interpretation of the meaning of the scope of a *de novo* hearing as used in relation to an appeal heard by the County Board of Appeals, from a decision of the Zoning Commissioner, is that it

held that both properties should be classified industrial M-L and as to them granted the requested variances. On appeal by the appellants, the Circuit Court upheld the Board's decision.

The issues raised on this appeal are:

1. Did the County Board of Appeals have jurisdiction to consider the appellee's request for a review of the Deputy Zoning Commissioner's denial of the petition for rezoning and variances for Lots Nos. 22, 23 and 24, the westernmost parcel, in view of the fact that the petitioner had taken no appeal from the Zoning Commissioner's decision.
2. Did the County Board of Appeals err in reversing the Zoning Commissioner's denial of the rezoning and variances as to Lots 22, 23 and 24, the westernmost parcel.
3. Did the County Board of Appeals err in affirming the action of the Zoning Commissioner in granting the rezoning and variances for Lots 10 through 19, the easternmost parcel.

I and II

After a public hearing, the Deputy Zoning Commissioner passed an order granting the rezoning and variances sought by the petitioners for Lots 10 through 19 but denied the rezoning and variances sought for Lots Nos. 22, 23 and 24. On July 26, 1967, the protestants filed a timely appeal; however, it must be noted that the petitioners did not file any appeal. It certainly makes no sense or logic to argue that the protestants in perfecting their appeal intended to take an appeal from any action of the Deputy Commissioner other than that portion of his opinion granting the

is restricted to the specific issue or issues resolved by the Commissioner from which an appeal has been taken. By exclusion, this may not encompass all issues which may have been resolved by the Commissioner in his decision, when more than one issue is involved. We think it is consonant with the concept of appeal, that it be co-extensive with those issues concerning which the moving party or parties feel aggrieved. We are also buttressed in our reasoning on this matter by the knowledge that such hearings are adversary in nature and are oftentimes complicated. Furthermore, we are of the strong belief that an orderly procedural disposition of these matters requires specificity of the adverse ruling concerning which the aggrieved party seeks review.

Accordingly, we are of the opinion that the County Board of Appeals did not have jurisdiction to review the Deputy Zoning Commissioner's denial of the petition for the reclassification in variances pertaining to Lots Nos. 22, 23 and 24, and that it was error to reverse his decision concerning this westernmost parcel.

III

The petitioners argued that the evidence presented to the Board brought the application for the rezoning classification under the "change-mistake rule." *Helfrich v. Monagelli*, 248 Md. 495, 237 A.2d 454 (1968), and numerous cases cited in footnote 2, page 503 of that opinion. See also *Jobar Corp. v. Rodgers Forge*, 236 Md. 106, 202 A.2d 612 (1964).

The original zoning map covering the area in which the subject parcels are located was adopted by the County Council in November 1955. In an effort to prove a mistake in original zoning

rezoning and variances to Lots 10 through 19, for the simple reason that the issues involving Lots Nos. 22, 23 and 24 were resolved in their favor. The wording of the following notice of appeal filed by the protestants with the Zoning Commissioner supports this reasoning:

"Please note an Appeal from the portions of said Order granting the requested rezoning and variances to the Board of Appeals of Baltimore County on behalf of Earl S. Jones, et al., residents and protestants." (Emphasis supplied.)

Section 500.10 of the ordinance, which is the general provision regulating appeals, provides in pertinent part:

"Any person or persons, jointly or severally or any taxpayer, or any official, officer, department, board or bureau of Baltimore County, feeling aggrieved by any decision of the Zoning Commissioner shall have the right to appeal therefrom to the County Board of Appeals. * * *

The above Section should also be considered in conjunction with Section 501.3 which provides in pertinent part:

"* * * All decisions of the County Board of Appeals shall be made after notice and opportunity for hearing *de novo* upon the issues before said Board. * * * (Emphasis supplied.)

We think it significant to note that Section 501.3 refers to "issues" and does not use the term decision. Issue connotes a matter which lends itself to a separate finding or separate holding, that is, something which involves a separate point. *Webster's New World Dictionary* (College Edition) defines "issue" as: "a point, matter or question to be disputed or decided * * *."

the petitioner presented testimony through expert witnesses Augustine J. Muller and Frederick P. Klaus. We think the most favorable interpretation that can be given this testimony is that, on second thought, it would appear that Riderwood-Lutherville Drive, a paper street in 1955, would have made a more logical buffer zone than the boundary adopted. At the time of the original zoning, the southerly boundary of the 80 acre tract which has now been developed into an industrial park, was adopted as the boundary between the M-L and residential zones. The petitioners' witnesses also discounted the desirability of the use of the property bordering Riderwood-Lutherville Drive for residential purposes.

Hindsight might dictate that Riderwood-Lutherville Drive may have been a better choice for the boundary between M-L zone and the residential zone; however, this desirability falls far short of substantiating its adoption as error. In the case *Greenblatt v. Teney Schloss Properties Corporation*, 235 Md. 9, 200 A.2d 70 (1964), the expert witness stated that there had been error in the 1957 comprehensive rezoning plan because the legislative body had used the boundary lines of a tract of land rather than a natural drainage course as a dividing line between an R-40 and an R-20 zone. After reaffirming the strong presumption attending original zoning and comprehensive rezoning, citing *Shadybrook Inn. Assn. v. Halloway*, 238 Md. 265, 269, 192 A.2d 502 (1963), we stated: "The use in 1957 of a property line which was then proper and appropriate * * * was not error simply because it is now revealed that subsequent events (the manner of development of contiguous lands, have made it more logical or desirable or economically profitable that the division line be a natural contour line * * *." 235 Md. at 14.

The protestants have also testified that Ridewood-Lutherville Drive has been improved to the extent that the improved portion now extends 100 feet in front of Lots Nos. 22, 23 and 24, and that utilities are now available for residential development within several hundred feet of the subject properties. Viewing the evidence offered in totality and recognizing the strong presumption of correctness which attaches to original zoning, Shadbrook v. Assn., supra, we do not think the evidence as to mistake was sufficiently strong as to render that question "fairly debatable." Dill v. Johar Corp., 242 Md. 16, 23, 217 A.2d 564 (1966); Bohde v. County Bd. of Annapolis, 234 Md. 299, 199 A.2d 216 (1964); and Overton v. Co. Commissioners, 225 Md. 212, 219, 170 A.2d 172 (1961). See also the discussion in Jack v. Grandell, 244 Md. 193, 198, 199, 223 A.2d 248 (1966).

With regard to the question of change in the character of the neighborhood, we reach a different conclusion. The original zoning map having been adopted in 1955, the evidence in the record reveals that in September of 1962, Lots Nos. 1 through 9 of the Talbot Manor, which are contiguous and immediately east of Lots Nos. 10 through 19 were rezoned from R-6 to M-L. This in effect enlarges the industrial park area. There has been considerable building in the industrial park itself and we are of the opinion that the evidence does render the question of change in the character of the neighborhood as fairly debatable and hence we must not disturb the finding of the Board on this issue. Brentwood Constr. Co. v. Doherty, 254 Md. 443, 450, 255 A.2d 32 (1969); Hunter v. County Commissioners, 252 Md. 305, 250 A.2d 81 (1969); and cases cited therein at page 309.

Facts on properties lying along side of each other, we hold to be arbitrary and capricious conduct. Accordingly the trial court should have affirmed the denial of the M.L. zoning and should have reversed the granting of the M.L. zoning.

ORDER AFFIRMED IN PART AND REVERSED IN PART AND CASE REMANDED FOR PASSAGE OF AN ORDER IN CONFORMITY WITH THIS OPINION: APPELLEES TO PAY THE COSTS.

However, we differ with the lower court in its affirmation of the action of the Board in granting the requested variances as to Lots Nos. 10 through 19. Section 307 of the Zoning Ordinance expressly provides that, "the Zoning Commissioners of Baltimore County and the Board of Appeals *** shall have *** the power to grant variances from height and area regulations, *** only in cases where strict compliance with the Zoning Regulations in Baltimore County would result in practical difficulty or unreasonable hardships. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area *** regulations, and only in such manner as to grant relief without substantial injury to public health, safety, and general welfare. ***"

The Board predicated its granting of the variances on the basis that they were "reasonable and essential to prevent practical difficulty and hardship in developing the property." However, there is nothing in the record which would indicate the exact type of structure that the petitioners intended to construct on Lots 10 through 19, other than that it would be in keeping with the general architectural scheme prevalent in the industrial park.

We cannot overlook the fact that in the instant case there are substantial residential properties within the immediate area. The appellant Becky resides 350 feet from Lots 10 through 19. The appellant Daihl is constructing a \$33,000 home, 106 feet from Lots 10 through 19. There is another residence between Daihl's home and

Lots 10 through 19. Appellant Young resides on Lot No. 26. The evidence is such as would lead a reasonable man to the belief that the granting of these variances may well affect the aesthetic ambience of the residentially zoned properties which lie in the immediate area. For this reason we are of the opinion that the granting of these variances would be in disharmony with the "spirit and intent *** of *** the regulations ***."

The "difficulties" and "hardships" to which the Board referred, although not spelled out, obviously were thought to be of such a nature that, if not overcome, would have resulted in the petitioners sustaining some financial hardship in their efforts to develop the property and in their future use of it. In Foster v. The Mayor and City Council of Baltimore, 195 Md. 395, 406, 73 A.2d 491 (1950) we said: "The mere fact that the variance would make the property more profitable is not a sufficient ground to justify a relaxation of setback requirements. Garden View Homes v. Board of Adjustment, 137 N.J.L. 44, 57 A.2d 677." In that same opinion Judge Henderson, later Chief Judge, also stated: " *** but we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan." See also Burns v. Baltimore City, 251 Md. 554, 556, 248 A.2d 103 (1966), and City of Baltimore v. Polakoff, 233 Md. 1, 194 A.2d 819 (1963). As we view the law, we think the granting of the variances by the Board was arbitrary and capricious.

On the basis of what we have said in this opinion we affirm the decision of the lower court in sustaining the Board's action with

regard to the rezoning of Lots 10 through 19 from R-6 to M-L (light manufacturing), and reverse the decision with respect to the court's affirming of the granting of the variances as to Lots 10 through 19 and the rezoning and variances as to Lots 22, 23 and 24.

ORDER AFFIRMED IN PART AND REVERSED IN PART AS SET FORTH IN THIS OPINION, APPELLEES TO PAY COSTS.

TELEPHONE 623-3000 EXT. 397

INVOICE No. 57814 DATE 4/9/69

BALTIMORE COUNTY, MARY AND OFFICE OF FINANCE

Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204

To: John W. Daihl, Jr., Esq. 182 W. Pennsylvania Avenue Towson, Md. 21204

County Board of Appeals (Zoning)

AMOUNT DUE \$11.00

Cost of certified documents - Case No. 67-221-RA

Important: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND MAP. TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON, MARYLAND 21204

67-221-RA

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 8th Date of Posting Aug 19, 1967

Posted for: Appraisal

Petitioner: Herman M. Bayless

Location of property: N/4 of Ridewood-Lutherville Drive, Sec. 20, W. of Green Spring Drive

Location of Sign: East side of Ridewood-Lutherville Dr. @ North Road, south from Spring Dr.

Remarks: J. B. Davis

Posted by: J. B. Davis

Date of return: Aug 19, 1967

2 signs

PETITION FOR RECLASSIFICATION AND VARIANCES

THE BALTIMORE COUNTEAN

THE COMMUNITY NEWS

No. 1 Newburg Avenue

CATONSVILLE, MD.

May 1, 1967

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

was inserted in THE BALTIMORE COUNTEAN, a group of weekly newspapers published in Baltimore County, Maryland, once a week for the last day of May, 1967, that is to say the same was inserted in the issues of April 27, 1967.

THE BALTIMORE COUNTEAN

By: Paul J. Morgan Editor and Manager

ORIGINAL

OFFICE OF THE BALTIMORE COUNTEAN

THE HERALD - ARCHER

CATONSVILLE, MD.

May 1, 1967

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

was inserted in THE BALTIMORE COUNTEAN, a group of weekly newspapers published in Baltimore County, Maryland, once a week for the last day of May, 1967, that is to say the same was inserted in the issues of April 27, 1967.

THE BALTIMORE COUNTEAN

By: Paul J. Morgan Editor and Manager

67-221-RA

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District 8th Date of Posting May 1, 1967

Posted for: Reclassification & Variance

Petitioner: Herman M. Bayless

Location of property: N/4 of Ridewood-Lutherville Drive, Sec. 20, W. of Green Spring Drive

Location of Sign: East side of Ridewood-Lutherville Dr. @ North Road, south from Spring Dr.

Remarks: J. B. Davis

Posted by: J. B. Davis

Date of return: May 1, 1967

1 sign

SMALKIN & HESSIAN

100 WEST PENNSYLVANIA AVENUE TOWSON, MARYLAND 21204

PAUL J. MORGAN

February 18, 1969

The County Board of Appeals and Board of Appeals of Baltimore County, Maryland

Enclosed herewith please find a copy of a petition and order for extension of time which I file with the Circuit Court for Baltimore County in the above entitled matter.

Very truly yours,

JOHN W. DAIHL, JR. Esq.

Enclosure

10-17-70

