

RE: PETITION FOR RECLASSIFICATION : IN THE
from an R-6 zone to a B.L. zone : CIRCUIT COURT
N/S Old Court Road 580 42' : FOR
East of Three Oaks Road : BALTIMORE COUNTY
2nd District :
Albert Abrahams, Petitioner :
Zoning File No. 67-259-R :
Bernard H. Miller, :
Protestant-Appellant : AT LAW
A. Sec. Docket No. 8
Folio No. 386
File No. 4117

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, 5 c.

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

APPEAL 12/22/68

RE: PETITION FOR RECLASSIFICATION : IN THE
from an R-6 zone to a B.L. zone : CIRCUIT COURT
N/S Old Court Road 580 42' : FOR
East of Three Oaks Road : BALTIMORE COUNTY
2nd District :
Albert Abrahams, Petitioner :
Zoning File No. 67-259-R :
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File No. 4117

CERTIFICATE OF NOTICE

Mr. Clerk:

Pursuant to the provisions of Rule 1101-3 (4) of the Maryland Rules of Procedure, William S. Baldwin, W. Giles Parker and John A. Slowik, 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 its meeting. W. Lee Harrison, Esq., 306 W. Joppa Road, Towson, Maryland 21204, Attorney for the Petitioner, and Walter I. Self, Jr., Esq., Suite 1608 Court Square Building, Baltimore, Maryland 21202, and Allan J. Melstater, Esq., 1010 One Charles Center, Baltimore, Maryland 21201, and Marvin I. Singer, Esq., 1010 One Charles Center, Baltimore, Maryland 21201, Attorneys for the Protestants, a copy of which notice is attached hereto and prayed that it may be made a part thereof.

Edith T. Elsenhart, Secretary
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 W. Lee Harrison, Esq., 306 W. Joppa Road, Towson, Maryland 21204, Attorney for the Petitioner, and Walter I. Self, Jr., Esq., Suite 1608 Court Square Building, Baltimore, Maryland 21202, and Allan J. Melstater, Esq., 1010 One Charles Center, Baltimore, Maryland 21201, and Marvin I. Singer, Esq., 1010 One Charles Center, Baltimore, Maryland 21201, Attorneys for the Protestants, on this 20th day of December, 1968.

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

cc: Solicitor
Zoning
Mr. Perkins

RE: PETITION FOR RECLASSIFICATION : BEFORE
from an R-6 zone to a B.L. zone : COUNTY BOARD OF APPEALS
N/S Old Court Road 580 42' :
East of Three Oaks Road : OF
2nd District :
Albert Abrahams, Petitioner : BALTIMORE COUNTY
No. 67-259-R

OPINION

The petitioner in this case requests reclassification of a small (5.2 acres) tract of ground on the north side of Old Court Road, in the Second Election District of Baltimore County, from an R-6 zone to a B.L. (Business Local) zone.

The parcel is triangular in shape, and is situated on the north side of Old Court Road approximately one-half the distance between the Reisterstown Road and the Liberty Road. Across the street from the subject property is the newly constructed Rolling Road extended. The petitioner, if successful, proposes to construct on the subject property a small neighborhood shopping center, primarily designed to serve the residents in the immediate vicinity.

This property has been the subject of extensive litigation over the zoning placed on the tract by the County Council. The comprehensive zoning map for this area that established the present R-6 zoning was adopted by the County Council in November of 1962. Prior to 1962 this tract had been designated and set aside for commercial use as a neighborhood shopping center in connection with the development of the surrounding residential area. The staff of the Department of Planning and Zoning and the Planning Board of Baltimore County recommended B.L. zoning for the subject property to the County Council in 1962, and indeed the subject parcel is still designated on the Planning staff's Master Plan as a suitable location for commercial zoning. The Minutes of the County Council meeting of October 16, 1961 disclosed that "the Council moved to accept the Planning Board's recommendation of R-6 zoning" for the subject property, and as a result the property was placed on the map as R-6. The owner filed a petition with the zoning authorities on January 14, 1963 to reclassify the property to B.L., alleging that the County Council had committed an error in adopting the R-6

Albert Abrahams - #67-259-R

zoning for the property. The allegation of error was the only legal ground available to the petitioner in support of his request within the two year period following the map's adoption by the Council (Section 500.3 b - Baltimore County Zoning Regulations).

This Board granted the requested B.L. zoning and this action was affirmed by the Circuit Court for Baltimore County, but subsequently reversed by the Court of Appeals of Maryland (in a split opinion) in the case of Miller vs. Abrahams, 239 Md. 263. The owner of the property then filed this petition requesting a reclassification on the grounds of change in conditions of the neighborhood, so that the case before the Board at this time involves only the question of whether or not there have been sufficient changes in the character of the neighborhood since 1962 to warrant the change to a B.L. classification, the question of error in the original zoning having been finally adjudicated by the Court of Appeals in the case cited above.

The petitioner, through various witnesses, produced testimony that there have been numerous zoning changes in the area to a higher density classification; that there has been a substantial change in the roads in the immediate vicinity since 1962; and that there is a need for a neighborhood shopping center to serve the increased residential population of the community. Since 1962, Old Court Road has been realigned to eliminate a dogleg in the road, the construction of Old Court Road with 42 feet of paving on a 60 foot right-of-way, and the construction of Rolling Road extended, opposite the subject property, have divided the original tract owned by the petitioner into three separate parcels. Rolling Road, which has been constructed opposite the subject property, is proposed to be a major traffic artery, carrying traffic from Old Court Road south to U.S. Route 40.

The Board, being bound by the decision of the Court of Appeals with regard to error in the original zoning, will endeavor to follow the guide lines and criteria as set out by the Court in the case of West Ridge vs. MacNamara, 224 Md. 446, which has been followed by the Court on a number of occasions in later decisions; for example, Levitt vs.

Albert Abrahams - #67-259-R

The Board, 233 Md. 186. Since 1962, some of the changes occurring in the neighborhood that have a direct bearing on the petitioner's request to reclassify the subject property to B.L. are:

- The substantial increase in population in the immediate area; an increase of as much as 65% to 70% between 1962 and 1968 (Petitioner's Exhibit #3).
- All of this substantial increase has occurred within the past six years.
- The access to the subject property has substantially changed in that Old Court Road has been realigned and widened; a new intersection constructed immediately in front of the property; and the above mentioned construction of Rolling Road as a major route to U. S. Route 40. Further, the location of the subject property approximately halfway between the two nearest shopping areas which exist in the vicinity of Old Court and Liberty Roads, and Old Court and Reisterstown Roads; both heavily congested areas.
- There has been a substantial increase in building permits issued for the immediate vicinity (see Petitioner's Exhibit #5). The Planning Staff felt in 1962 that there was a need for a small commercial area here to serve the community, and this need has been increased by the substantial increase in the population in the area since 1962.
- There have been a large number of zoning reclassifications to higher densities than provided for on the maps adopted in 1962 in the immediate area (see Petitioner's Exhibit #6).
- The rapid build-up of residential development in the area which creates a need for additional commercial zoning.
- The testimony of the petitioner, and his witnesses, indicated a genuine need for a small shopping center within walking distance of the surrounding residential developments.

Albert Abrahams - #67-259-R

(b) The Board heard uncontradicted testimony that there are public utilities available at the subject property in sufficient capacity to serve the proposed shopping center, and that the roads in the area are more than adequate to handle any additional traffic generated by the proposed shopping center.

The protestants fear that the reclassification of the subject property for commercial uses would upset the residential character of the neighborhood. The Board finds that the reclassification of this small parcel of land will not upset the essentially residential character of the neighborhood, but would fill a need for a small neighborhood shopping facility in the community. An expert witness, testifying on behalf of the protestants, stated that the proposed shopping center would have no adverse effect on the property across Old Court Road, and that the only adverse effect would be on those houses that adjoin the subject property, or in the very immediate vicinity of the subject property. He did agree, however, that proper screening of the shopping center would minimize any adverse effect on these properties. The Board finds that any adverse effect would be further minimized by reason of the fact that in plotting the subdivision of Belle Farm Estates, which adjoins the subject property, the lots adjoining this tract were allotted extra depth because of the proposed commercial use on this tract (see the testimony of George E. Gavelis, Director of Planning and Zoning for Baltimore County).

The Board finds, from all of the evidence, that there have been sufficient changes in the character of the neighborhood, since the adoption of the comprehensive map in 1962, to justify the reclassification of this property to Business Local as requested by the petitioner.

Albert Abrahams - #67-259-R

ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of November, 1968 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

John A. Slowik

RE: PETITION FOR RECLASSIFICATION : BEFORE THE
N/S Old Court Road 580 42 feet E of : DEPUTY ZONING COM-
Three Oaks Road - 2nd District : MISSIONER OF
Albert Abrahams, Petitioner : BALTIMORE COUNTY
NO. 67-259-R

The Petitioner has requested the rezoning of his property, consisting of 5.2 acres of land from an R-6 zone to a B.L. zone. Plans call for the construction of a shopping area consisting of approximately 45,000 square feet. The tract is located on Old Court Road at a point where the proposed Rolling Road will intersect.

Without reviewing the evidence in detail, the Deputy Zoning Commissioner is of the opinion the Petitioner failed to show error in the original zoning map or such substantial changes in the neighborhood warranting the rezoning requested.

For the foregoing reasons, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 3 day of July, 1967, that the above reclassification be and the same is hereby DENIED and that the above described property area be and the same is hereby continued as and to remain an R-6 zone.

Edward D. Hurd
DEPUTY ZONING COMMISSIONER

ORDER RECEIVED FOR
DATE July 3, 1967
BY [Signature]

JGR/ba

OFFICE OF
THE BALTIMORE COUNTEY
THE COMMUNITY NEWS
Riverview, Md.
THE HERALD-ARGUS
Catonsville, Md.

No. 1 Newburg Avenue
CATONSVILLE, MD.

June 21, 1967.

THIS IS TO CERTIFY, that the annex advertisement of
John W. Rose, Zoning Commissioner of Baltimore County
was inserted in THE BALTIMORE COUNTEY, a group of weekly news-
papers published in Baltimore County, Maryland, once a week for two
successive weeks before the 1st day of June, 1967, that is to
say the same was inserted in the issues of
June 9, 1967.

THE BALTIMORE COUNTEY
By: *Paul J. Morgan*
Zoning Commissioner

67-259-R

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: *2*
Posted for: *Reclassification from R-6 to R-1*
Petitioner: *Albert Abraham*
Location of property: *1/2 Old Court Rd. 580.42' E. of Three Oaks Rd.*
Location of signs: *1/2 Old Court Rd. 580.42' E. of Three Oaks Rd.*
2 1/2 Old Court Rd. and proposed Rolling Rd.
1 1/2 Old Court Rd. 1325' E. of Three Oaks Rd.
Posted by: *J. Rose*
Date of return: *June 15, 1967*
3 signs

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 44256
DATE: 6/19/67

TO: *W. Lee Harrison, Esq.,
Loyola Federal Bldg.,
Towson, Md. 21204*

REPORT TO ACCOUNT NO. *61-22*

QUANTITY	DETAILS	UNIT PRICE	TOTAL AMOUNT
1	Cost of appeal - property of Albert Abraham	70.00	70.00
1	Sign	5.00	5.00
			75.00

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

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 44220
DATE: June 26, 1967

TO: *W. Lee Harrison, Esq.,
Loyola Federal Bldg.,
Towson, Maryland 21204*

REPORT TO ACCOUNT NO. *61-22*

QUANTITY	DETAILS	UNIT PRICE	TOTAL AMOUNT
1	Cost of advertising and posting property of Albert Abraham	84.25	84.25

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

PETITION FOR RECLASSIFICATION
ZONING: From R-6 to R-1.
LOCATION: North side of Old Court Road 134.11 feet East of Three Oaks Road.
DATE & TIME: Monday, June 26, 1967 at 11:00 A.M.
PUBLIC HEARING: Room 103, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland.

CERTIFICATE OF PUBLICATION
TOWSON, MD. June 9, 1967.

THIS IS TO CERTIFY, that the annex advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once a week at 11:00 A.M. successive weeks before the 26th day of June, 1967, the first publication appearing on the 19th day of June, 1967.

THE JEFFERSONIAN
John A. Harrison
Manager

Cert of Advertisement, \$.....

IN THE MATTER OF
THE PETITION OF
ALBERT ABRAHAM
CHANGE OF CLASSIFICATION
FROM R-6 TO R-1
App. #67-259-R

Mr. Commissioner:
Please issue a Subpoena Duces Tecum for:
George W. Gavrells
Planning Commissioner
County Office Building
Towson, Maryland

to produce any and all records, charts, graphs, maps, comments and other data relative to the property in question on the north side of Old Court Road, opposite Old Court Junior High School in the Second Election District of Baltimore County.

Please make same returnable to the Zoning Commissioner, Room 103 County Office Building, Towson, Maryland, on Monday, June 26, 1967 at 11:00 A.M.

RECEIVED
JUN 16 PM 2:17
SHERIFF'S OFFICE
BALTIMORE CO.

Walter J. Seif, Jr.
Attorney for Petitioner
1695 Court Square Building
Baltimore, Maryland 21202
Plaza 2-0515

Please issue summons in accordance with the above.

John A. Harrison
Zoning Commissioner of Baltimore County

67-259-R

Wm. Purdom
Cautious Engineer - 5.2 acres - vacant land - A in shape - fronts on Old Ct. Rd (abandoned) (under construction) - Rolling Rd will intersect O.C.Rd. right in front of this tract - water & sewer line available & adequate - see File 5802 - facts were the same in that case as in this one - 45,000 sq ft shopping area - 226 parking spaces - A shape of land makes it difficult to develop as R-6 - could build about 15 homes in cul-de-sac arrangement -

Mr. Abraham
Owner - since 1962 - tract is 1/2 way between highway & Recreation Rd. - ~~25,000 sq ft~~ - cited various zoning changes - most of them are about one mile distant -

Mr. Gavrells
see his comments - feels this is a good location for R-6 -

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON, MARYLAND 21204

No. 45581
DATE: June 26, 1967

TO: *W. Lee Harrison, Esq.,
22 W. Tanna, Ave.,
Towson, Md. 21204*

REPORT TO ACCOUNT NO. *61-22*

QUANTITY	DETAILS	UNIT PRICE	TOTAL AMOUNT
1	Petition for Reclassification for Albert Abraham #67-259-R	52.00	52.00

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

NOTICE OF HEARING
Re: Petition for Reclassification for Albert Abraham #67-259-R

TIME: 11:00 A.M.
DATE: Monday, June 26, 1967
PLACE: Room 106 COUNTY OFFICE BUILDING, 111 W. Chesapeake TOWSON, MARYLAND

John A. Harrison
ZONING COMMISSIONER OF BALTIMORE COUNTY

July 11, 1967

No. 67-259 -- Albert Abrahams

Petition, description of property, Order of Deputy Zoning Commissioner
Certificate of posting
Certificates of advertisement
Comments of Fire Bureau
Comments of Office of Planning
Order of appeal
Plat filed with petition

signs
2 signs

W. Lee Harrison, Esq.
Loyola Federal Building
Towson, Maryland 21204

Counsel for petitioner

LAW OFFICES
W. LEE HARRISON
507 LOYOLA FEDERAL BUILDING
200 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

Area Four (10)
1000-1000

July 5, 1967

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

Re: Petition for Reclassification N/S Old Court Road 580.42 feet E of
Three Oaks Road - 2nd District, Albert Abrahams, Petitioner
No. 67-259-R

Dear Mr. Rose:

Please note an appeal to the County Board of Appeals for Baltimore
County from the decision and Order dated July 3, 1967, denying the above
reclassification on behalf of the Petitioner.

I enclose herewith my check in the amount of \$75.00 to cover the costs
of the same.

Very truly yours,

W. Lee Harrison

Enc.



BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

June 16, 1967

County Office Building
115 W. CONSUMERS AVE.
TOWSON, MD. 21204

GEORGE C. GAVELIN
DIRECTOR
JOHN G. ROSE
ZONING COMMISSIONER

W. Lee Harrison, Esq.
22 W. Fennell Ave.
Towson, Md. 21204

Dear Sirs:

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:

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: June 16, 1967

FROM: George F. Gorman

SUBJECT: Petition 67-259-R. Reclassification from R-6 to S.L. North side of
Old Court Road 580.42 feet east of Three Oaks Road. Being the
property of Albert Abrahams.

2nd District

HEARING: Monday, June 26, 1967 (11:00 A.M.)

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

1. In commenting on an identical petition in March of 1963, the planning staff
said - "Based on staff recommendations, the Planning Board proposed in its
Master Plan for the Western Planning Area that the subject property be zoned
S.L. This proposal was based on the fact that Old Court Road was proposed to
be relocated in the manner shown on the petitioner's site plan and because the
ultimate extension of Rolling Road northerly from Liberty Road would intersect
Old Court Road in front of the subject property. Old Court Road serves here
as a neighborhood divider road. The absence of commercially-zoned land be-
tween Reisterstown and Liberty Road made the subject property a logical
location for a small neighborhood service shopping facility. The subdivision plan
for Belle Farm Estates contemplated commercial development here by providing
extra deep lots backing on to the subject property from Bonnie Brae Road.

After public hearings on the Western Planning Area Zoning Map, the County
Council affirmed the prior R-6 zoning of the subject property."

2. In that case, the reclassification was granted by the Board of Appeals, the
granting was affirmed by the Circuit Court, but was reversed by the Court of
Appeals.

GEG:dms

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: July 3, 1967

FROM: Mr. Edward D. Hardesty

SUBJECT: Petition 67-259-R. Reclassification from R-6 to S.L.

North side of Old Court Road 580.42 feet east of Three Oaks Road. Being the
property of Albert Abrahams.

2nd District

The staff of the Office of Planning and Zoning has reviewed the subject petition
for reclassification from R-6 to S.L. zoning. It has the following advisory comments
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for Belle Farm Estates contemplated commercial development here by providing
extra deep lots backing on to the subject property from Bonnie Brae Road.

After public hearings on the Western Planning Area Zoning Map, the County
Council affirmed the prior R-6 zoning of the subject property."

2. In that case, the reclassification was granted by the Board of Appeals, the
granting was affirmed by the Circuit Court, but was reversed by the Court of
Appeals.

July 3, 1967

W. Lee Harrison, Esquire
22 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Petition for Reclassification
N/S Old Court Road 580.42 feet
E of Three Oaks Road - 2nd Dist.
Albert Abrahams, Petitioner
No. 67-259-R

Dear Mr. Harrison:

Order in the above captioned matter.
attached.

I have this date passed my
Copy of said Order is

Very truly yours,

EDWARD D. HARDESTY
Deputy Zoning Commissioner

EDH/jdr

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

W. Lee Harrison, Esq.
22 W. Pennsylvania Ave.
Towson, Maryland 21204

SUBJECT: Reclassification from R-6 to S.L.
for Albert Abrahams, located
north side of Old Court Rd.,
1/4 of Three Oaks Road
2nd District
(Item 3 May 23, 1967)

Dear Sir:

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

BUREAU OF ENGINEERING

Water - Existing 10" water in present location of Old Court Road
Adequacy of existing utilities to be determined by developer or his engineer.
Sewer - Existing 8" sanitary sewer at Old Court Road and Parkfield Road.
Roads - As a 10' road, the owner has already dedicated, at no cost to the County, the
necessary 60' R/W to make these improvements.

FIRE PREVENTION: It shall be required to meet all fire department regulations pertaining
to shopping centers. It will be necessary to provide water main and approved fire
hydrants in accordance with the Baltimore County Standard Design Manual, 1964 edition.

TRAFFIC ENGINEERING: Old Court Road has been designed as a residential collector of
15' pavement on a 60' R/W. Bids are now being received for the construction of Old
Court Road. Therefore, if this zoning is granted, the developer should be required
to provide 15' R/W and additional 1/4 along the frontage of the property so as
to allow for complete channelization of the intersection of Old Court Road and Rolling
Road. The main entrance to the shopping center must be opposite Rolling Road. The
developer will be responsible for a portion of the cost for signalization at Rolling
Road and Old Court Road, at such time as the Bureau of Traffic Engineering may deem
necessary. If the above conditions are met the Bureau of Traffic Engineering would
have no objection to this S.L. zoning, provided this is the limit to S.L. in this
area.

ZONING ADMINISTRATION DIVISION: If the petition is granted, no occupancy may be made
until such time as plans have been submitted and approved and the property inspected
for compliance to the approved plan.

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

The following members had no comment to offer:

Project Planning Division Board of Education
Health Department Industrial Development
State Parks Commission
Building Engineer

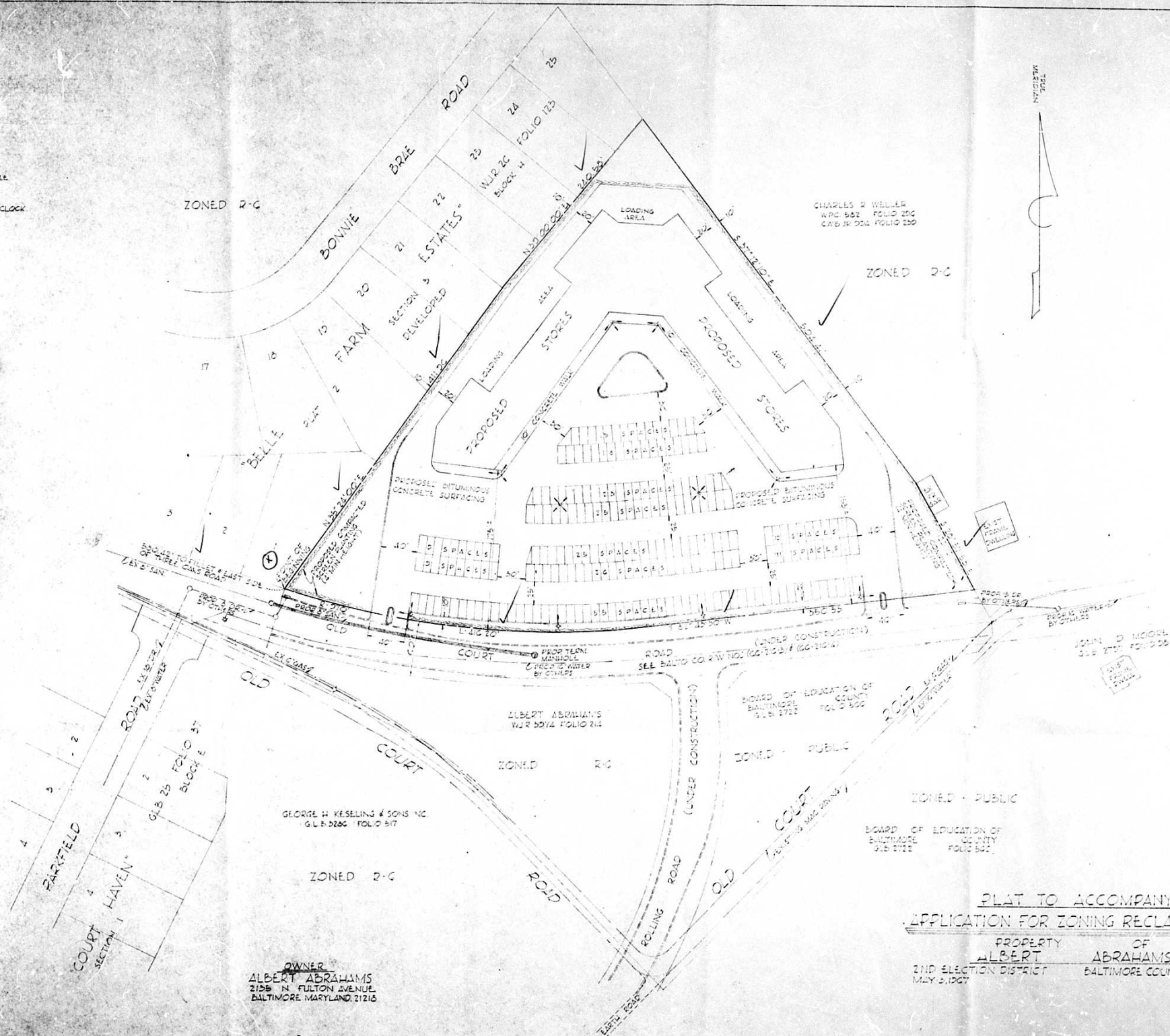
Very truly yours,

James E. Fitch, Principal
Zoning Technician

cc: Carlisle Rose-Sur. of Eng'g.
Lt. Charles Morris-Fire Prevention
C. Richard Moore-Bureau of Traffic Eng'g.

GENERAL NOTES

1. GROSS AREA OF TRACT - 5.2 ACRES
2. PRESENT ZONING - R-C
3. PRESENT USE - VACANT
4. PROPOSED ZONING - BUSINESS, LOCAL
5. PROPOSED USE - SHOPPING CENTER
6. PARKING DATA
USE - SHOPPING CENTER
TOTAL FLOOR AREA - 45,000
NO. OF SPACES REQUIRED - 225
NO. OF SPACES PROVIDED - 225
ALL SPACES - 5' X 20'
7. LIGHTING
LOW INTENSITY (ONE HALF FOOT CANDLE
POWER); FLOODLIGHTS (SHIELDED TO
CONTROL GLARE)
SHOWN PLUS 0 -
OPERATING HOURS - DUSK TO NINE O'CLOCK



OFFICE
COPY

MAP
2-C
WESTERN
AREA
NW-7-G
BL

PLAT TO ACCOMPANY
APPLICATION FOR ZONING RECLASSIFICATION

PROPERTY OF
ALBERT ABRAHAMS
2ND ELECTION DISTRICT
MAY 2, 1927
BALTIMORE COUNTY, MARYLAND
SCALE: 1" = 50'

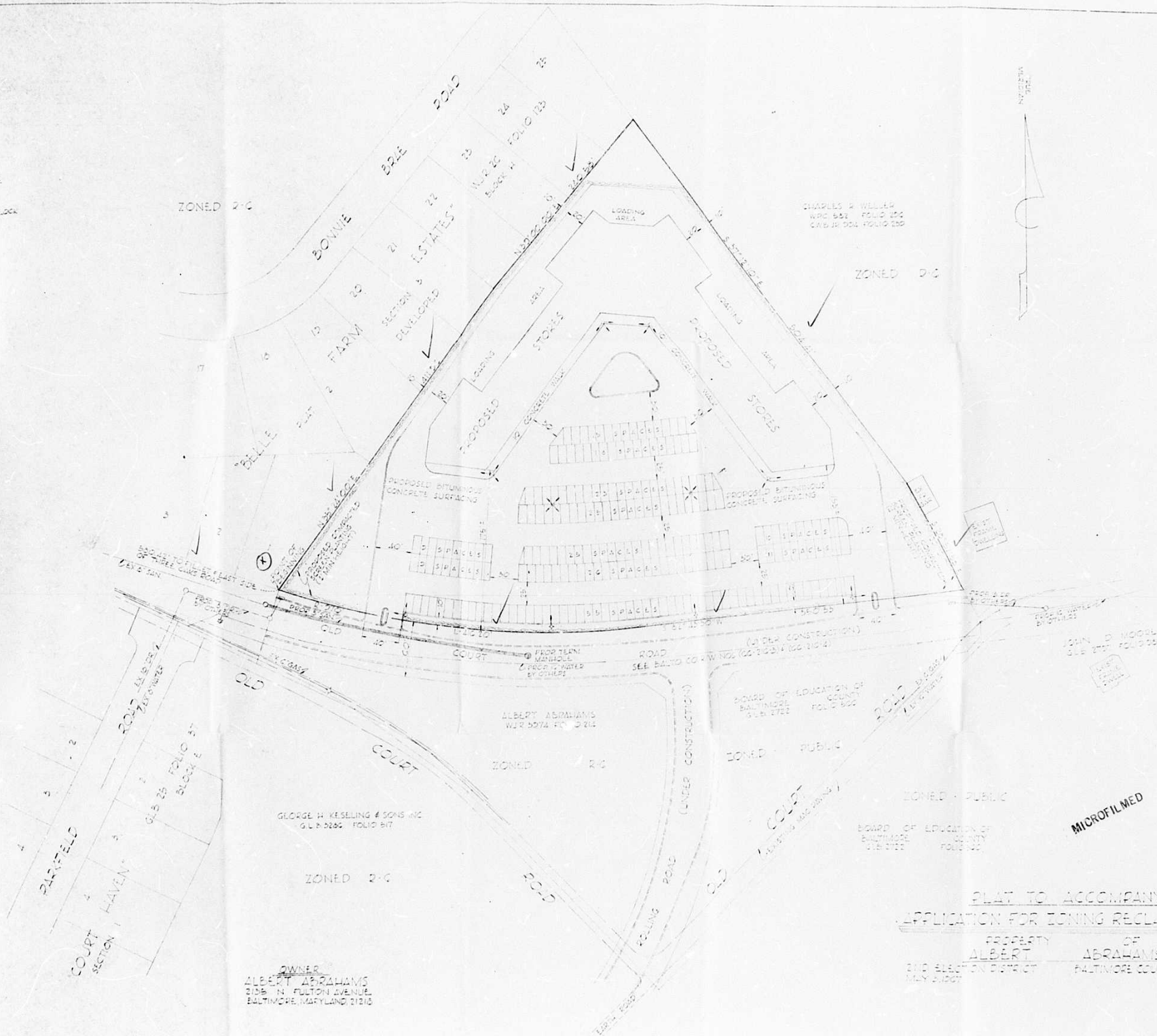


PURDUM & JESCHKE
CONSULTING ENGINEERS &
LAND SURVEYORS
1215 MARYLAND AVENUE
BALTIMORE, MARYLAND 21216

OWNER
ALBERT ABRAHAMS
2155 N. FULTON AVENUE
BALTIMORE, MARYLAND 21218

GENERAL NOTES:

1. GROSS AREA OF TRACT - 5.2 ACRES
2. PRESENT ZONING - R-C
3. PRESENT USE - VACANT
4. PROPOSED ZONING - BUSINESS, LOCAL
5. PROPOSED USE - SHOPPING CENTER
6. PARKING DATA:
USE - SHOPPING CENTER
TOTAL FLOOR AREA - 45,000
NO. OF SPACES REQUIRED - 215
NO. OF SPACES PROVIDED - 220
ALL SPACES - 5' X 20'
7. LIGHTING:
LOW INTENSITY (ONE HALF FOOT CANDLE POWER) FLOODLIGHTS (SHIELDED TO CONTROL GLARE)
SHOWING TIMES 8-11
OPERATING HOURS - DUSK TO NINE O'CLOCK



OFFICE COPY

MAP
2-C
WESTERN
AREA
NW-7-G

BL

MICROFILMED

PLAN TO ACCOMPANY
APPLICATION FOR ZONING RECLASSIFICATION

PROPERTY OF
ALBERT ABRAHAM
2ND ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND
MAY 1967
SCALE 1" = 50'



BURDUM & JESCHKE
CONSULTING ENGINEERS &
LAND SURVEYORS
2415 MARYLAND AVENUE
BALTIMORE, MARYLAND 21216

OWNER
ALBERT ABRAHAM
2156 N. FULTON AVENUE
BALTIMORE, MARYLAND 21216

LAW OFFICES
SULLIVAN & PITTIER
1010 ONE CHARLES CENTER
CHARLES & EADINGTON STREETS
BALTIMORE, MARYLAND 21201

TELEPHONE
750-1122
AREA CODE 410

August 9, 1967

Hon. William S. Baldwin, Chairman
County Board of Appeals for Baltimore County
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Application of Albert Abrahams
for a Business-Local Zoning --
Old Court Road and Three Oaks Road
Our File No. 8611

Dear Mr. Baldwin:

As counsel for one of the protestants, Mr. Bernard Miller, at the public hearing before Deputy Zoning Commissioner Edward D. Hardesty, we herewith enter our appearance in the appeal which has been taken from Mr. Hardesty's order denying the requested reclassification from "B-6" to "B-1".

While our appearance was entered below, we did not receive a copy of the Notice of Appeal in this matter.

Respectfully yours,

Allan J. Malster
Allan J. Malster

cc- W. Lee Harrison, Esq.
Walter I. Seif, Jr., Esq.
Mr. Bernard Miller

LAW OFFICES
WALTER I. SEIF, JR.

SUITE 200 COURT SQUARE BLDG.
BALTIMORE, MARYLAND 21204

Phone 2-9131
August 3, 1967

County Board of Appeals
County Office Building
Towson, Maryland 21204

Re: Petition of Albert Abrahams
Change of Classification
from R-6 to B-1
Old Court & Three Oaks Road
Application No. 67-259-R

Gentlemen:

Please enter my appearance as Attorney for the Protestants and notify me of the hearing date.

Very truly yours,

Walter I. Seif, Jr.
WALTER I. SEIF, JR.

WIS:ajj

Rec'd 8/3/67
FIVE PM

INVOICE		No. 57804	
BALT MORE COUNTY, MARY AND		DATE 1/23/69	
OFFICE OF FINANCE		BILLED BY: County Board of Appeals (Zoning)	
Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204			
TO: Marvin I. Singer, Esq. 1010 One Charles Center Baltimore, Md. 21201			
REPORT TO ACCOUNT NO. 01.712	RETURN THIS PORTION WITH YOUR REMITTANCE	TOTAL AMOUNT \$12.00	
QUANTITY	DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	COST	
Cost of certified documents - Case No. 67-259-R		\$12.00	
Albert Abrahams N/S Old Court Rd. 280.42' E. Three Oaks Rd. 2nd District			

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

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 2ND Date of Posting July 27, 1967
Posted for: Appraisal
Petitioner: Albert Abrahams
Location of property: N/S Old Court Rd. 580.42' E. of Three Oaks Rd.
Location of Signs: N/S Old Court Rd. 580.42' E. of Three Oaks Rd.
N/S Old Court Rd. 905.2' E. of Three Oaks Rd.
Remarks:
Posted by: *J. Seif* Signature Date of return: July 27, 1967

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 2ND Date of Posting June 9, 1967
Posted for: Reclassification from R-6 to B-1
Petitioner: Albert Abrahams
Location of property: N/S Old Court Rd. 580.42' E. of Three Oaks Rd.
Location of Signs: N/S Old Court Rd. 580.42' E. of Three Oaks Rd.
N/S Old Court Rd. and proposed Parkway Rd.
Remarks: N/S Old Court Rd. 1325' E. of Three Oaks Rd.
Posted by: *J. Seif* Signature Date of return: June 15, 1967

BERNARD H. MILLER
4620 Old Court Road
Baltimore, Maryland 21208

IN THE

vs.

CIRCUIT COURT

WILLIAM S. BALDWIN, CHAIRMAN,
W. GILES PARKER AND JOHN A.
SLOWIK, constituting the
County Board of Appeals of
Baltimore County.

FOR BALTIMORE COUNTY

PETITION FOR APPEAL

To the Honorable, the Judge of said Court:

The Petition of Bernard H. Miller, by Marvin I. Singer, his attorney, pursuant to Maryland Rule 82a, respectfully represents unto Your Honor:

- 1) That this is an Appeal from the decision of the County Board of Appeals of Baltimore County, rendered on the 29th day of November, 1968, in Case No. 67-259-R, which granted the zoning reclassification of a certain tract of land comprising approximately 5.2 acres located on the north side of Old Court Road, approximately half the distance between Reisterstown Road and Liberty Road, in the Second Election District of Baltimore County, Maryland, from an R-6 Zone to a B-L (Business Local) Zone.
- 2) That your Appellant was a protestant and a party of record before the County Board of Appeals in said Case No. 67-259-R.
- 3) That subsequent to the hearing before the County Board of Appeals, said Board, filed a written Opinion and Order,

dated November 29, 1968, wherein it made certain findings of fact and granted rezoning from "R-6" to "B-L", a copy of said Opinion and Order is attached hereto, marked Exhibit "A" and is to be made a part hereof.

4) That the Appellant filed his Order for Appeal within thirty (30) days of said Order and Opinion of the County Board of Appeals and filed this Petition simultaneously with the said Order for Appeal.

5) That the aforesaid Opinion and Order of the County Board of Appeals of Baltimore County, in granting the aforesaid reclassification, is erroneous, invalid, illegal, arbitrary, capricious, discriminatory and without support of any evidence or factual basis, for the following reasons:

- a) That the testimony and evidence adduced by the Petitioner for reclassification did not establish the legal requisites for reclassification.
- b) That the testimony and evidence offered on behalf of Petitioner for the reclassification were inadequate in substance and insufficient in law to provide a substantial basis for the decision rendered by the County Board of Appeals.
- c) That the action of the County Board of Appeals is against the evidence and against the weight of the evidence.
- d) That there was no legally sufficient evidence to support the finding by the Board that "there have been sufficient changes in the character of the neighborhood, since the adoption of the comprehensive map in 1962, to justify the reclassification of this property to Business Local as requested by the petitioner."

- 2 -

WHEREFORE, your Petitioner prays:

- a) That this Honorable Court pass its Order reversing the Order of the County Board of Appeals of Baltimore County dated November 29, 1968, in Case No. 67-259-R.
- b) That the County Board of Appeals be required to file in these proceedings, the original or certified copies of the original papers, documents, reports, plats, exhibits, records and memoranda acted upon by it.
- c) That your Petitioner may be permitted to take additional testimony at the discretion of this Honorable Court.
- d) And for such other and further relief as the nature of this case may require.

AND AS IN DUTY BOUND, ETC.

Marvin I. Singer
Suite 1010, One Charles Center
Baltimore, Maryland 21201
752-1122

Attorney for Appellant

I HEREBY CERTIFY that on this 28th day of December, 1968, a copy of the foregoing Petition for Appeal was mailed to William S. Baldwin, Chairman, W. Giles Parker and John A. Slowik, constituting the County Board of Appeals of Baltimore County, County Office Building, Towson, Maryland 21204.

Marvin I. Singer
Marvin I. Singer

- 3 -

RE: PETITION FOR RECLASSIFICATION
from an R-6 zone to a B.L. zone
N/S Old Court Road 580.42'
East of Three Oaks Road
2nd District
Albert Abrahams, Petitioner

BEFORE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 67-259-R

OPINION

The petitioner in this case requests reclassification of a small (5.2 acres) tract of ground on the north side of Old Court Road, in the Second Election District of Baltimore County, from an R-6 zone to a B.L. (Business Local) zone.

The parcel is triangular in shape, and is situated on the north side of Old Court Road approximately one-half the distance between the Reisterstown Road and the Liberty Road. Across the street from the subject property is the newly constructed Rolling Road extended. The petitioner, if successful, proposes to construct on the subject property a small neighborhood shopping center, primarily designed to serve the residents in the immediate vicinity.

This property has been the subject of extensive litigation over the zoning placed on the tract by the County Council. The comprehensive zoning map for this area that established the present R-6 zoning was adopted by the County Council in November of 1962. Prior to 1962 this tract had been designated and set aside for commercial use as a neighborhood shopping center in connection with the development of the surrounding residential area. The staff of the Department of Planning and Zoning and the Planning Board of Baltimore County recommended B.L. zoning for the subject property to the County Council in 1962, and indeed the subject parcel is still designated on the Planning Staff's Master Plan as a suitable location for commercial zoning. The Minutes of the County Council meeting of October 16, 1961 disclosed that "the Council moved to accept the Planning Board's recommendation of R-6 zoning" for the subject property, and as a result the property was placed on the map as R-6. The owner filed a petition with the zoning authorities on January 14, 1963 to reclassify the property to B.L., alleging that the County Council had committed an error in adopting the R-6

Albert Abrahams - #67-259-R

zoning for the property. The allegation of error was the only legal ground available to the petitioner in support of his request within the two year period following the map's adoption by the Council (Section 500.3 b - Baltimore County Zoning Regulations).

This Board granted the requested B.L. zoning and this action was affirmed by the Circuit Court for Baltimore County, but subsequently reversed by the Court of Appeals of Maryland (in a split Opinion) in the case of *Miller vs. Abrahams*, 739 Md. 263. The owner of the property then filed this petition requesting a reclassification on the grounds of change in conditions of the neighborhood, so that the case before the Board at this time involves only the question of whether or not there have been sufficient changes in the character of the neighborhood since 1962 to warrant the change to a B.L. classification, the question of error in the original zoning having been finally adjudicated by the Court of Appeals in the case cited above.

The petitioner, through various witnesses, produced testimony that there have been numerous zoning changes in the area to a higher density classification; that there has been a substantial change in the roads in the immediate vicinity since 1962; and that there is a need for a neighborhood shopping center to serve the increased residential population of the community. Since 1962, Old Court Road has been realigned to eliminate a dogleg in the road, the construction of Old Court Road with 42 feet of paving on a 60 foot right-of-way, and the construction of Rolling Road extended, opposite the subject property, have divided the original tract owned by the petitioner into three separate parcels. Rolling Road, which has been constructed opposite the subject property, is proposed to be a major traffic artery, carrying traffic from Old Court Road south to U.S. Route 40.

The Board, being bound by the decision of the Court of Appeals with regard to error in the original zoning, will endeavor to follow the guide lines and criteria as set out by the Court in the case of *West Ridge vs. MacPherson*, 224 Md. 448, which has been followed by the Court on a number of occasions in later decisions; for example, *Levitt vs.*

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Albert Abrahams - #67-259-R

The Board, 233 Md. 186. Since 1962, some of the changes occurring in the neighborhood that have a direct bearing on the petitioner's request to reclassify the subject property to B.L. are:

- (a) The substantial increase in population in the immediate area; an increase of as much as 65% to 70% between 1962 and 1968 (Petitioner's Exhibit #3).
- (b) All of this substantial increase has occurred within the past six years.
- (c) The access to the subject property has substantially changed in that Old Court Road has been realigned and widened; a new intersection constructed immediately in front of the property; and the above mentioned construction of Rolling Road as a major route to U. S. Route 40. Further, the location of the subject property approximately halfway between the two nearest shopping areas which exist in the vicinity of Old Court and Liberty Roads, and Old Court and Reisterstown Roads; both heavily congested areas.
- (d) There has been a substantial increase in building permits issued for the immediate vicinity (see Petitioner's Exhibit #5). The Planning Staff felt in 1962 that there was a need for a small commercial area to serve the community, and this need has been increased by the substantial increase in the population in the area since 1962.
- (e) There have been a large number of zoning reclassifications to higher densities than provided for on the map as adopted in 1962 in the immediate area (see Petitioner's Exhibit #6).
- (f) The rapid build-up of residential development in the area which creates a need for additional commercial zoning.
- (g) The testimony of the petitioner, and his witnesses, indicated a genuine need for a small shopping center within walking distance of the surrounding residential developments.

Albert Abrahams - #67-259-R

(h) The Board heard uncontradicted testimony that there are public utilities available at the subject property in sufficient capacity to serve the proposed shopping center, and that the roads in the area are more than adequate to handle any additional traffic generated by the proposed shopping center.

The protestants fear that the reclassification of the subject property for commercial uses would upset the residential character of the neighborhood. The Board finds that the reclassification of this small parcel of land will not upset the essentially residential character of the neighborhood, but would fill a need for a small neighborhood shopping facility in the community. An expert witness, testifying on behalf of the protestants, stated that the proposed shopping center would have no adverse effect on the property across Old Court Road, and that the only adverse effect would be on those houses that adjoin the subject property, or in the very immediate vicinity of the subject property. He did agree, however, that proper screening of the shopping center would minimize any adverse effect on these properties. The Board finds that any adverse effect would be further minimized by reason of the fact that in plotting the subdivision of Belle Farm Estates, which adjoins the subject property, the lots adjoining this tract were allotted extra depth because of the proposed commercial use on this tract (see the testimony of George E. Gavrielis, Director of Planning and Zoning for Baltimore County).

The Board finds, from all of the evidence, that there have been sufficient changes in the character of the neighborhood, since the adoption of the comprehensive map in 1962, to justify the reclassification of this property to Business Local as requested by the petitioner.

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Albert Abrahams - 67-259-R

ORDER

For the reasons set forth in the foregoing Opinion, it is this 29th day of November, 1968 by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

John A. Slawik

BARNARD H. MILLER
v.
WILLIAM S. BALDWIN, CHAIRMAN,
v. GILES PARKER, AND JOHN A.
SLAWIK, constituting the
County Board of Appeals of
Baltimore County.

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 29th day of November, 1968, in case No. 67-259-R. The Board granted the zoning reclassification of a certain tract of land comprising approximately 5.2 acres located on the north side of Old Court Road, at about the halfway point between Reisterstown Road and Liberty Road, in the Second Election District of Baltimore County, Maryland from an R-6 zone to a B-L (Business Local) zone.

Protestant-appellant (Miller) has not complied with Local Rule 2.3 for the Circuit Court for Baltimore County entitled Administrative Appeals. This rule requires appellant to file a memorandum of law within thirty days of the transmission of the record of the administrative agency to this Court. Under the rule, appellee's memorandum is then due fifteen days after the receipt of appellant's memorandum. Appellee's memorandum was received by this Court at the time of the hearing on May 16, 1969. The issue of whether or not appellant's failure to comply with

the rule is fatal becomes moot in light of the remainder of this opinion.

A recent case filed May 27, 1969 by the Court of Appeals of Maryland, Halla v. Pierpont, No. 184, September Term, 1968, closely parallels the case at bar. There the County Board of Appeals granted the zoning reclassification from R-6 to B-L and this Court affirmed the Board. A change in the character of the neighborhood was said to have resulted from an alteration of the adjacent roadway and other nearby zoning reclassifications to business and higher density residential zones. The Court of Appeals reversed the Board and this Court, saying there was no substantial change in the neighborhood subsequent to the adoption of the R-6 classification in 1962. That decision is distinguishable from the case at bar on its facts. There the changes in the roadway were contemplated by the zoning map as adopted in 1962, there were commercial areas within a mile of the subject property, and the other zoning reclassifications in the area were more distant from the subject property than here.

In the Halla case, the Court of Appeals focused on the onerous burden of proof to be met by one who would overcome the presumption of correctness of comprehensive rezoning by a showing of substantial change in the character of the neighborhood. AGRESTI-DELO, INC. v. LUDWIG, 247 Md. 612 (1967). But in that case those things held out as constituting the substantial change in the neighborhood were contemplated

-2-

by the map in 1962 and the burden of proof was not met. This Court feels that the Halla case was in the nature of a borderline factual situation, such that in the case at bar, certain additional factors make it imperative that the Board be upheld.

The 5.2 acre parcel of land with which we are concerned is familiar to this Court as well as to the Court of Appeals, see Miller v. Abrahams, 239 Md. 263 (1965). As the question of mistake in the 1962 map was settled by that case, the sole issue here and the only one sought to be litigated is whether there has been a substantial change in the character of the neighborhood since 1962. It is not necessary to cite authority for the proposition that the criterion for sustaining the findings of the Board is that the evidence upon which they acted was enough to make the matter "fairly debatable." It is sufficient to comment here on the limited scope of judicial review of the administrative action. "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." Bowley v. Hospital for Consumptives, 246 Md. 197 (1967). AGRESTI-DELO, INC. v. LUDWIG, supra, said "The test to be applied on appeal to the Circuit Court, when the evidence before a zoning appeal board presents material facts which are fairly debatable, was aptly stated by Judge Hammond (now C.J.) when speaking for the Court in

-3-

Bowley v. G.A. Hill Farms, Inc., 232 Md. 274, 283, 192 A.2d 761, 766 (1963):

"...whether a reasoning mind could reasonably have reached the result the agency reached upon a fair consideration of the fact picture painted by the entire record."

The testimony in this case supports the Board's findings of fact, as set out in its opinion and the conclusion "that the reclassification of this small parcel of land will not upset the essentially residential character of the neighborhood, but would fill a need for a small neighborhood shopping facility in the community." The Board found a population increase in the immediate area. Though the testimony seems unable to narrow the area in which the increase occurred beyond the second district in general, and might therefore be objectionable for lack of specificity, a census is necessarily general and not local. There have been zoning changes to higher density residential classifications of large tracts 700, 1,200, and 2,100 feet from the subject property and of several other larger tracts whose proximity to the 5.2 acres is unclear but which are presumed to be relevant. In any case, the effect would be an intensified density of the population in the immediate area. The substantial increase in building permits for the vicinity would have the same effect. The Board also found a change in the adjacent roadway and the creation of a new intersection opposite the subject property. The road has been straightened and widened. The record indicates that the 1962 map did not contemplate this change and the Planning Board's suggestion of a zoning change at that time in line

with the proposed road pattern was rejected.

Although "a mere increase in population does not prove a change in the character of the neighborhood to justify another type of zoning," County Commissioners v. Fairwinds Beach Club, 230 Md. 569 (1963) and a change in a road alone may not be a substantial change in a neighborhood, Board of Co. Commissioners v. Kings, 239 Md. 119 (1965), the combination of factors present on the record here are sufficient to be substantial and are in the neighborhood. "The term neighborhood in zoning law is a flexible and relative term which may vary from case to case." Hawman v. Mayor and City Council, 251 Md. 92 (1968). The zoning changes here occurred within a half mile of the subject tract in contrast to the Halla case above. In addition, the road change, not contemplated on the '62 map, and various other findings of the Board indicate to a reasoning mind the need and suitability of the B-L zoning.

The character of the neighborhood may have become no less residential, but the Court of Appeals said in Haller v. Shifflett, 252 Md. 159 (1968) that there are certain exceptions to "spot zoning" recognized, such as the creation of small districts within a residential zone for the operation of such establishments as grocery stores, drug stores, barber shops, and even gasoline stations, for the accommodation and convenience of the residents of the residential zone. In this case the nearest shopping facilities are all at least a mile away and at busy intersections both in terms of

traffic and commercial activity. A quotation from Bowley v. Hospital for Consumptives, supra, is appropriate.

"The substantial development of housing units and the concurrent growth in population could reasonably lead a need for additional commercial zoning in the area to supply the wants of the increased population. At least, reasonable men could conclude--as the Board concluded--that these changes in condition in the area could justify the rezoning of the subject property to the B-L zone."

Though the Court feels that the land of Baltimore County should be a natural resource and not a commodity for speculators who are able to obtain zoning changes, the need here is believable, the change has been substantial, and any harm will hopefully be negligible.

For the reasons stated and in conformity with the foregoing Opinion, it is this 2d day of July 1969, by The Circuit Court for Baltimore County ORDERED that the Order of the County Board of Appeals for Baltimore County dated November 29, 1968 be and the same is hereby affirmed.

John H. Maguire
JUDGE

July 3, 1969

-5-

LOW OFFICES
SULLIVAN & PITTLER
1010 ONE CHURCH CENTER
CHARLES & LEONARD STREETS
BALTIMORE, MARYLAND 21201

March 19, 1968

The Honorable William S. Baldwin, Chairman
County Board of Appeals for Baltimore County
Baltimore County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Application of Albert Abrahams
for a Business-Local Zoning --
Old Court Road and Three Oaks
Road - Our file no. 8411.

Dear Mr. Baldwin:

In accordance with the understanding reached during the hearing of the above captioned, between counsel and the Board, we enclose herewith a true, complete and current copy of the subdivision regulations of Baltimore County, which apply to R-6 development and respectfully request that same be made a part of the record in the Abrahams case and marked as "Protestant's Exhibit".

Respectfully yours,

Allan J. Maester

AJM/rca

cc: W. Lee Harrison, Esquire

3/20/69 - Called Harrison's
office re this letter. He said
to have no recollection of an
agreement at the time of hearing
that this could be included as an
exhibit ETC

No. 216

September Term, 1969

79-67-284-8

BERNARD H. MILLER

v.

ALBERT ABRAHAMS

Hansford, C.J.
McWilliams
Finan
Singley
Smith,
JJ.

Opinion by McWilliams, J.

Filed: March 3, 1970



This is indeed a twice-told tale. The first telling will be found in *Miller v. Abrahams*, 239 Md. 263 (1965). In this, the second telling, the parties are the same; the property is the same; the same reclassification is being sought; the Zoning Commissioner again denied the petition; the Board of Appeals repeated its reversal of the Commissioner; the circuit court once more affirmed the action of the Board of Appeals; and, as we did before, we shall reverse the order of the trial court.

In March 1962 the appellee (Abrahams) paid \$46,000 for a 9.1967 acre tract of R-6 (Residential, 6000 square feet minimum) land on the north side of Old Court Road in the Second Election District of Baltimore County, about midway between Liberty Road and Reisterstown Road. For some months before Abrahams bought the property the Planning Board had been engaged in the preparation of a preliminary map delineating the recommendations it proposed to make to the County Council for the impending Comprehensive Rezoning of the Western Planning Area. As shown on that map, Old Court Road was relocated so as to eliminate a "dog-leg" and widened from 16 feet to 60 feet. As relocated Old Court Road bisected the 9.1967 acre tract. The zoning classification indicated on the map for the 5.2 acre portion on the north side of the road was B-L (Business-Local). The portion on the south side was itself bisected by the proposed extension of Rolling Road which, as shown, would intersect relocated Old Court

Road. Abrahams was aware of all this and there is no doubt that, in deciding to acquire the property, he found it quite persuasive. The Council, however, rejected the Planning Board's zoning recommendation and when, on 15 November 1962, it adopted the comprehensive zoning map the R-6 classification was continued. Two months later Abrahams sought the reclassification of the 5.2 acre parcel to B-L claiming original mistake. The details of his unsuccessful campaign will be found in *Miller v. Abrahams*, *supra*. In May 1967 Abrahams embarked on another sortie to obtain the B-L classification, this time claiming change in the character of the neighborhood. The Zoning Commissioner denied his petition; the Board of Appeals reversed the Commissioner; the court below affirmed the Board; and here we all are again.

It is conceded that the only issue before us is whether Abrahams has produced evidence of a change in the character of the neighborhood sufficient to justify, i.e., make fairly debatable, a reclassification from R-6 to B-L. If not conceded, at least no one disagrees that the area between Liberty Road and Reisterstown Road, in the vicinity of the Abrahams property, has been and is now devoted almost exclusively to residential use. About the only exception is a service station at Old Court Road and Church Lane, a mile or so from the Abrahams property. Newly constructed Old Court Junior High School and a \$300,000 church are on the south side of Old Court Road, now 60 feet wide and built in the precise location shown on the 1962 map. The appellant (Miller) still lives on the five acre tract adjoining Abrahams' property to the west.

reclassifications, said to be significant, seven of which were from R-6 to R-A (Residence-Apartments). The first was 700 feet from the Abrahams property; the second was 1200 feet distant; the third, 2100 feet. The rest were a mile or more away. Although most of the properties had been reclassified several years before the hearing none of them had been built upon and no one could say when construction of any kind would be commenced. Although Mr. Willemain insisted the apartment zoning would bring no people to the area, thereby creating a need for commercial facilities, he conceded the residential character of the neighborhood; he even went so far as to say that the reclassification of Abrahams' property to B-L would not change its character.

We think it is quite clear that further comment in respect of the significance of these reclassifications has been made unnecessary by our decisions in *Wells v. Pierpont*, 253 Md. 554 (1969), and *Randolph Hills v. Whitley*, 249 Md. 78 (1968).

Abrahams contends, albeit halfheartedly, that the realignment and widening of Old Court Road, as actually accomplished in 1966, contributed in large measure to a change in conditions which, in turn, effected a substantial change in the character of the neighborhood. The same argument in respect of an almost identical situation was made, and rejected, in *Wells v. Pierpont*, *supra*. See also *Dorf v. Rullendore*, 255 Md. 367 (1969).

Once more we repeat that

"[i]t is now firmly established that there is a strong presumption of the correctness of . . . comprehensive rezoning, and that to sustain a piecemeal change there-

from there must be produced strong evidence of . . . substantial change in the character of the neighborhood, . . . [and] the burden of proof facing one seeking a zoning reclassification is quite onerous." *Wells v. Pierpont*, *supra* at 557.

As Abrahams failed to sustain the burden of proving mistake in the "first telling," so has he failed here to sustain the burden of proving a substantial change in the character of the neighborhood. As we said at the outset, Judge Maguire's order will be reversed.

ORDER REVERSED.
COSTS TO BE PAID BY APPELLEE.

Clerk, Circuit Court
for Baltimore County
Court House
Towson, Maryland 21204

Re: Bernard H. Miller vs. County Board of Appeals of Baltimore County, Misc. Case No. 4117, docket 8, folio 38.

Dear Sir:

Please file the enclosed Order of Appeal to the Court of Appeals in the above entitled case.

Yours very truly,

Marvin I. Singer

MIS:je

Enclosure

cc: W. Lee Harrison, Esquire

Council should know that the quotation from *Cassell* is mere comment, well below the level of *quid dictum*. Indeed we held, in *Cassell*, that the reclassification of a single property so as to allow its use as a funeral home in a residential area was "spot zoning," especially since there was no showing of a public need for it. See *Minor v. Shifflett*, 252 Md. 158 (1969). In *Booley* the construction of Coucher Boulevard and Prince Road, the locations of which had not been determined when the zoning map was adopted, effected a dramatic change in the character of the neighborhood; moreover, there was proof of a need for additional commercial zoning. In the record before us the "evidence" of public need is little more than wishful thinking and, in our judgment, too thin to make the issue fairly debatable. In fact, it was conceded that there are "extensive shopping facilities of all kinds on Liberty Road [2 1/4 minutes away] and on Reisterstown Road [3 to 3 3/4 minutes away]." Much was made of the notion that residents of the area would be able to walk to Abrahams' shopping center. The short and melancholy answer to this is the common knowledge that it is a poor and disadvantaged citizen indeed who walks to a shopping center in this day and age. xxxxxx Mr. W. Worthington Ewell, testified to that general effect.

Frederick P. Klaus and Bernard Willemain, familiar names in the folklore of zoning,¹ testified, as experts, in respect of eight

¹ See, e.g., *Wells v. Pierpont*, 253 Md. 554 (1969); *Caray v. Martin*, 251 Md. 446 (1968); *Booley v. Smith*, 250 Md. 1 (1967); *Prince v. Shapley*, 248 Md. 335 (1965); *Abrahams v. Miller*, 247 Md. 612 (1967); *Imbert v. Benhold*, 246 Md. 562 (1967); *Booley v. Smith*, 245 Md. 197 (1967); *Finney v. Hollie*, 244 Md. 225 (1967).

Rec'd 7-28-69
10/1/69