

RE: PETITION FOR RECLASSIFICATION : IN THE
 from an R-10 zone to B-R, and R-A : CIRCUIT COURT
 zones, and SPECIAL HEARING FOR : FOR
 OFF-Street Parking : BALTIMORE COUNTY
 Northeast Corner of York and Ridgely Roads, : AT LAW
 8th District :
 Lawrence Cardinal Shehan, :
 Petitioner :
 Zoning File No. 68-29-R-SPH :
 Vincent W. Gallo, et al :
 Petitioners-Appellants :
 Mac. Docket No. 8
 Folio No. 384
 File No. 4113

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come William S. Baldwin, W. Giles Parker and John A. Slowik, constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 68-29-R-SPH
 June 27, 1967 Petition of Lawrence Cardinal Shehan, Roman Catholic Archbishop of Baltimore, for reclassification from an R-10 zone to B-R, and R-A zones, and special hearing for off-street parking in a residential zone on property located on the northeast corner of York and Ridgely Roads, 8th District - filed
 27 Order of Zoning Commissioner directing advertisement on posting of property - date of hearing set for August 2, 1967 at 1:00 p.m.
 July 17 Certificate of Publication in newspaper - filed
 20 Certificate of Posting of property - filed
 Aug. 2 At 1:00 p.m. hearing held on petition by Zoning Commissioner
 17 Continued hearing held by Zoning Commissioner - case held sub curia
 Sept. 5 Order of Zoning Commissioner denying reclassification and special permit for off-street parking
 6 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner

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RE: PETITION FOR RECLASSIFICATION : BEFORE
 from an R-10 zone to B-R and R-A : COUNTY BOARD OF APPEALS
 zones, and SPECIAL HEARING FOR : OF
 OFF-Street Parking : BALTIMORE COUNTY
 Northeast Corner of York and :
 Ridgely Roads :
 8th District :
 Lawrence Cardinal Shehan :
 Petitioner :
 No. 68-29-R-SPH

OPINION

The petitioner in this case seeks a reclassification of a 22.74 acre parcel of land situated at the northeast corner of York and Ridgely Roads, in the Eighth Election District of Baltimore County. The property is owned by the Catholic Church and titled in the name of Lawrence Cardinal Shehan, and the Contract Purchaser of the property is the Ford Leasing Development Company. Hereafter in this Opinion the above two mentioned parties will be referred to as the "Church" and "Ford".

The property in question was purchased by the Church about 1953 prior to the adoption of the present Comprehensive Zoning Map for the area by the County Commissioners on November 14, 1955. The tract is a vacant wooded lot, and the present zoning on the entire tract is R-10. It is roughly rectangular in shape except for the western boundary, has approximately 700 feet of frontage on the east side of the York Road north of Ridgely Road, and approximately 1800 feet of frontage on the north side of Ridgely Road. For purposes of this hearing the petitioner has divided the tract of ground into 3 parcels and seeks reclassification as follows:

Parcel No. 1 consists of 8.72 acres, and is nearly square, having 640 feet of frontage along the York Road and 523 feet of frontage along Ridgely Road. The petitioner request for this parcel a reclassification from R-10 to B-R (Business Roadside).

Parcel No. 2 consists of 13.21 acres and has 1220 feet of frontage along Ridgely Road, a depth of approximately 650 feet and a north property line of approximately 600 feet. The east property line curves in an arc to the southeast along the west side of Vista Lane, and thence southerly along the west side of Charmuth Road. The petitioner requests a reclassification from an R-10 zone to an R-A (Residential Apartment) zone for this portion of the property.

April 25, 1968 Hearing on appeal before County Board of Appeals
 30
 May 29
 June 4
 11
 Nov. 19 Order of County Board of Appeals granting reclassification to B-R, on Parcel #1 and special permit for off-street parking in a residential zone, and denying reclassification to R-A on Parcel #2
 Dec. 20 Order for Appeal filed in the Circuit Court for Baltimore County
 23 Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County
 20 Certificate of Notice sent to all interested parties
 Jan. 18, 1969 Petition for a 60 Day Change of Time within which to file Record of Proceedings and Order granting same - filed
 Mar. 12 Petition for a 30 Day Additional Change of Time within which to file Record of Proceedings and Order granting same - filed
 28 Transcript of Testimony filed - 5 Volumes
 Petitioners' Exhibit No. 1 - Map (topo) by Spamer, 10/14/66 Revised 5/8/67
 2 - Outline plot of subject property by Spamer
 3 - Site development plan by Ratcliffe, Revised 3/29/67
 4 - Architect's photo rendering of proposed Lincoln-Mercury agency building
 5 - Drawing - elevation of proposed building
 6 - Engineering Report by Spamer on utilities
 7-A - Aerial Photos (in Board of Appeals office)
 7-B - Explanation list of itemized zoning changes
 8 - Official County Maps and Photogrametrics:
 Towson NE-11A
 Hanpton NE-12A
 Lutherville NW-12A
 Timonium NW-13A
 Timonium NW-14A
 9 - (A through K) Photos of area taken by F. Hines
 10 - List of zoning changes on York Rd., Timonium to Warren Rd.
 11 - Plat - File Copy VNH-31-B, Tentatively approved Baltimore County, November 18, 1953

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Parcel No. 3 is a narrow strip of land to the north of Parcel No. 1, and is 60 feet wide and approximately 557 feet in depth. No reclassification is sought for this parcel. However, the petitioner requests an off-street parking permit for parking in a residential zone in conjunction with the proposed commercial activity on Parcel No. 1 of the tract.

The zoning and land uses surrounding the property are as follows: East of the subject property, across Charmuth Road, the land is zoned R-10 but is occupied by the Havenwood Presbyterian Church, an institutional use. To the northeast and north of the subject property the land is zoned R-10 and is occupied by the Northampton development, a residential community consisting of single family dwellings generally in the \$25,000.00 to \$35,000.00 price range. The land west of the York Road, across from the subject property, is zoned M-R (Manufacturing Restricted) and B-L (Business Local). The M-R property on the west side of the York Road immediately to the north of the subject property is developed with a small industrial park, while the B-L property directly across the York Road is improved with a large highly successful shopping center known as the York Ridge Shopping Center. The southwest corner of York and Ridgely Roads is zoned B-L and is improved with a shopping complex consisting of a gasoline station, food store, hardware store and some other commercial uses. Immediately to the south of this sizeable tract of B-L zoning is the Lutherville Elementary School 900 feet from the Ridgely Road and immediately south of the School the land is zoned B-M (Business Major) and is the site of the Chevrolet Pontiac Automobile Sales Agency. The southeast corner of York and Ridgely is zoned R-6 and is occupied with a development of cottage houses known as Havenwood.

The petitioner, if successful in his request for rezoning, proposes to construct two automobile sales agencies on the front portion of the property nearest the York Road, and a garden apartment development on the rear portion of the property, containing 223 apartment units.

In support of his request the petitioner alleges both error in the original zoning and changes in the character of the neighborhood sufficient to justify the requested re-

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classification. The York Road is a heavily travelled north-south traffic artery leading from Baltimore City to Pennsylvania. The general area along both sides of the York Road from the Baltimore County Beltway north to Cockeysville has undergone phenomenal growth in the past ten to fifteen years. In 1955, at the time of the map adoption, the population by census of the Eighth Election District of Baltimore County was 8,700, while in 1968 this population had grown to 35,500. Bernard Willemain, an expert land planner, testified on behalf of the petitioner, stating that in 1955 the Baltimore County Planning Department's projected population estimates for the Eighth and Ninth Election Districts was 80,000 persons by the year 1980, while the actual population of these districts by the end of 1967 had reached 137,000 persons.

The York Road from the Beltway north to Timonium Road, a distance of approximately 8,500 feet, has undergone tremendous change since 1955. Almost without exception all of the changes occurring along the York Road in this distance have been changes to commercial uses. One of the witnesses for the petitioners testified that he had checked the York Road frontage from the Beltway to Evans Avenue (Evans Avenue being some 1300 feet north of the subject property), and that thirty-two percent of the frontage on the east side of the York Road is zoned commercial, while seventy-three percent of the frontage along the west side of the road is zoned commercial. Another petitioners' witness, Mr. C. Gordon Gilbert, a real estate appraiser and developer, admitted that he knew of no new residential developments binding on the York Road that have been started in the last thirteen years from the Beltway to Cockeysville.

Robert V. McCurdy, an expert witness appearing for the petitioner, stated that in his opinion sooner or later all of the York Road frontage from the Beltway to Timonium will be zoned for commercial use. He further stated that the requested reclassification here would have no detrimental effect on the houses on the east side of the York Road, both north and south of the subject property, because they have already been subject to any impact caused by the existing commercial uses; that is, the two large shopping complexes on the west side of the York Road directly opposite the subject property. He testified that his study indicated that from the Beltway to Timonium Road the great

Protestants' Exhibit A-1 - 4/22/68 letter addressed to William S. Baldwin
 A-2 - Resolution of Timonium P.T.A.
 B - 6/23/67 letter to Dwyer from Cliffler
 C - Newspaper picture 3/3/68 (for identification only)
 D-1 - Resolution of Havenwood Home Improvement Association
 D-2 - Resolution of Greater Timonium Community Improvement Ass'n.
 E - (1 to 6) Photos
 F - Copy of Baltimore County zoning map colored yellow and red for subject area
 G - Plat - proposed R-10 layout
 H - Letter, June 7, 1968 from U.S. Dept. of Agriculture
 I - (1 to 12) Photos
 J - List of Protestants' signatures -- in attendance

April 14, 1969 Record of proceedings filed in the Circuit Court for Baltimore County

Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, and are also the use district maps, and your respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your respondents will produce any and all such rules and regulations, together with the zoning use district maps, at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

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

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Defendants:

 ORDER FOR APPEAL

MR. CLERK:

Please enter an Appeal to the Circuit Court for Baltimore County, on behalf of each of the above listed sixty-two (62) property owners from the Order of the County Board of Appeals of Baltimore County dated November 19, 1968, being Case No. 68-29-R-SPH and titled in the PETITION FOR RECLASSIFICATION from an R-10 zone to B-R and R-A zones, and SPECIAL HEARING for Off-Street Parking, Northeast Corner of York and Ridgely Roads, 8th District, Lawrence Cardinal Shehan, Petitioner.

BOUNDS, SCHOELLER & SHORT

Warner G. Schoeller
 Medical Center West
 6650 Baltimore National Pike
 Baltimore, Maryland 21228
 Telephone - 744-9200
 Attorney for Plaintiff

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal has this 17th day of December, 1968, been mailed to the County Board of Appeals of Baltimore County, County Office Building, Towson, Maryland, 21204.

Warner G. Schoeller,
 Attorney for Plaintiff

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majority of the York Road frontage is zoned commercially or used for uses that are other than residential. In support of his opinion that the reclassification here would not have a detrimental effect on residential values in the neighborhood, he cited five sales of residential properties in the immediate area of the subject tract made within the last year after this petition for rezoning had become public knowledge. He further stated that in his opinion the highest and best use of the subject property is for commercial along the York Road front, and for residential apartments to the rear of the property.

Another expert real estate witness for the petitioner stated that in his opinion the County failed to foresee the rapid growth in the area and did not provide enough commercially zoned land along the York Road. He stated that in his opinion there are more than sufficient changes to justify the granting of the petitioner's request, and cited some thirty-six zoning changes along the York Road from the Beltway to Timonium Road since 1955. The witness had prepared two exhibits, 7-A and 7-B, which will show the exact location of these changes in reference to the subject property; therefore, we will not go into detail in this Opinion as to each change cited by the witness. However, an examination of Exhibits 7-A and 7-B clearly delineates them. He also felt that the 1955 map is erroneous in that it provided for no apartments north of the Baltimore County Beltway.

Bernard Willemain testified that in his opinion the present R-10 zoning on the property is erroneous and that there has been a definite change in the character of the neighborhood that justifies the requested reclassification. He agreed with the other witnesses' testimony as to original error, and cited population statistics that have been previously referred to in this Opinion. He stated that the York Road is definitely the major north-south business road in the north central section of Baltimore County, and that the increase of population in the immediate neighborhood creates a need for additional commercial zoning along the York Road. He further testified (see petitioner's Exhibit No. 10) to twenty-five additional zoning changes that have occurred along the York Road frontage from Timonium Road north to Padenia Road, citing these additional changes to support his opinion that the York Road has been recognized and designated as a commercial area by Baltimore County. He also stated that in laying out the Havenwood development, the F. H. A., before

giving their approval to the development plan, required a service drive along the south side of Ridgely Road, a stockade fence along the east side of the York Road, and required that the houses along the York Road back up to the road rather than face it, recognizing that the property which is the subject of this petition, could be a logical place for future commercial development. In support of his opinion that it was an error to place this property in the R-10 classification, he stated that the County should have recognized two important zoning changes immediately prior to the adoption of the map; the first being the Lanham property (Case No. 2325), at the southwest corner of York and Ridgely Roads, from residential to commercial, and the second case (No. 2556) from residential to commercial, which is the property presently occupied by the York Ridge Shopping Center. He stated that in view of these two major reclassifications immediately prior to the adoption of the map, the County should have reappraised the situation before adopting the map and place commercial zoning on the front portion of the subject property and apartment zoning to the rear, as requested by the petitioner.

The protestors felt that the reclassification would create traffic congestion in the streets immediately around the property, and especially on the York Road, which is presently very heavily travelled and is approaching its capacity. Hugo Leim, a well qualified traffic engineer, testified that the York Road, while very heavily travelled, has not yet reached its capacity. He stated that the capacity of the York Road at the subject property is controlled by the traffic light at the intersection of York and Ridgely Roads, and that the existing northbound traffic at peak hours is three hundred and sixty vehicles per hour less than the capacity of the road, while the existing southbound York Road traffic is six hundred and twenty vehicles per hour, or three hundred and eighty vehicles less than the peak hour capacity of the road. He further testified that from his observation (though this was much disputed by the protestors) the intersection of York Road and Ridgely Road has not reached the point of congestion, since all the York Road traffic can get through the traffic light on one phase. He had studied traffic in and out of two other large automobile agencies, Tower Ford, a large Ford agency situated on approximately six acres of ground, and Norris Ford, which is situated on approximately seven acres of ground. Based

upon his study of these two agencies he projected that the two automobile agencies proposed on the subject property would generate eighty to eighty-five vehicular movements at peak hours, and that the roads as they presently exist are more than able to handle this additional traffic without reaching the point of congestion. Going one step further, and adding the traffic that would be generated by the automobile agencies to the traffic that would be generated by the proposed apartment project at peak hours, he arrived at a total projection of two hundred and twenty trips per peak hour, and while this additional traffic would bring York Road to near its capacity, it would not exceed it.

Richard Moore, a traffic engineer with the Baltimore County Traffic Bureau, stated that the York Road is presently carrying more traffic than it was designed for, and the two lane section of the road is now exceeding its designed capacity. However, the four lane section, where it has been completed, is operating at well under its designed capacity. He also stated that he had not specifically studied traffic generation by automobile sales agencies, and he accepted Mr. Leim's findings in this regard as correct.

The protestors strenuously objected to the reclassification in its entirety, stating that they felt the reclassification would depreciate their property values, create traffic congestion, and interfere with the health, safety and general welfare of the community. However, the Board does not find that their fears are completely justified.

One of the protestors, Vincent Gallo, who is engaged in the real estate business in the immediate neighborhood, testified that he purchased his home in July of 1965 and at that time he recognized the possibility of the York Road frontage being zoned commercially but was not particularly concerned because he thought that the commercial depth would probably not extend any deeper than two hundred feet. He further testified that he does not recall any sales of property along the York Road frontage between the Beltway and Titanium Road within the last three years for residential use.

C. Gordon Gilbert, a real estate expert for the protestors, stated that in his opinion the rezoning to commercial would have a detrimental effect on the residential properties to the south across Ridgely Road, but that this effect would be much less on the houses farther removed from the commercial. He also felt that the proposed apartment

project would have a detrimental effect on the houses to the east of the subject property across Vista Lane. He did state, however, that he had been involved in the development of Haverford, a single family cottage development approximately one-half mile north of the subject property on the east side of York Road, wherein the developer reserved thirty-two acres of the original tract for commercial development and constructed a shopping center immediately adjacent to the houses in the development. He further admitted that the houses immediately adjacent to the commercial area sold for the same price as those houses that were farther removed from the shopping center.

An expert land planner testifying for the protestors stated that in his opinion the petition should be denied, in that it is incompatible with the established character of the community. He felt that commercial zoning here would be more in the nature of strip zoning, which is frowned upon by modern planners, that the property could be physically developed in its R-10 classification, and that it would be economically feasible to do so. Without going into great detail as to all his testimony, the Board finds that it is not consistent with testimony given by the witness in another case before this Board involving similarly situated properties and land uses.

In view of the testimony given by several witnesses both for the petitioner and the protestors, it is inconceivable to us that this property would ever be developed in its present R-10 classification. As noted above in the Opinion, there has been no new residential construction started along the York Road since the adoption of the map in 1955. We further find that the rezoning of the 8.7 acre parcel to Business Roadside would have very little, if any, impact upon the nearby residential properties. Analyzing all of the evidence heard by the Board, we find as a fact that the original zoning of the property as R-10 directly opposite a large shopping center was erroneous. We further find that the extensive changes from residential uses to commercial uses along the York Road frontage justify, if not compel, the reclassification of Parcel No. 1 of the property.

With regard to the rear portion of the property on which the petitioner requests a reclassification to allow the construction of 223 apartment units, from the testimony given by the traffic experts, it is apparent that the reclassification of this tract would,

if not cause congestion, severely tax the capability of the York Road to handle the additional traffic generated by the reclassification of both parcels. We think that to extend the requested zoning 1800 feet east of the York Road into the residential community would be improper, and believe that the most logical use of this portion of the property would be that for which it was originally intended by the Church.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 19 day of November, 1968, by the County Board of Appeals ORDERED, that the reclassification of Parcel No. 1 from R-10 to B-R petitioned for, be and the same is hereby GRANTED; and it is

FURTHER ORDERED, that the special permit for off-street parking in a residential zone petitioned for be and the same is hereby GRANTED; and it is

FURTHER ORDERED, that the reclassification of Parcel No. 2 from R-10 to B-A petitioned for, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William S. Baldwin, Chairman

W. Giles Parker

John A. Slowik

RE: PETITION FOR RECLASSIFICATION OF AND SPECIAL HEARING BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY

This is a Petition by the Most Reverend Lawrence Cardinal Shehan, Roman Catholic Archbishop of Baltimore for the time being, and his successors in the Archiepiscopal See of Baltimore, according to the discipline and government of the Roman Catholic Church a corporation sole of the State of Maryland, legal owner and Ford Leasing Development Company, Dearborn, Michigan, contract purchaser, for a Reclassification from an R-10 Residence Zone, one family to a Business, Roadside zone and a Residence Apartments zone on property located at the NE corner of York Road and Ridgely Road in the 8th District of Baltimore County. Also there was Petition for off-street parking in a residential zone.

The BR portion has a frontage of 696 feet more or less on York Road with a depth of 557 feet more or less. Proposed two separate showrooms with their respective service buildings plus a large new car service area. There also will be used car sales.

From the rear of the BR zone line to Charmuta Road and to Vista Lane, apartments containing 223 units are proposed.

As is the custom in Baltimore County Planning and Zoning the Petitioner is required to comply with all technical requirements insofar as possible before the hearing. This was done.

The Protestant's attorney challenged the sufficiency of water distribution and summoned the Chief of Water Design Group for Baltimore County, John F. Lyons, Jr. His testimony buttressed that of Consulting Engineer, James S. Spamer and thoroughly convinced the Zoning Commissioner that the water and water pressure available to this site is as good or better as other areas where equivalent uses already exist.

The Petitioner provided the majority of the information made available and presented their information in a most impartial manner.

The Catholic Church by its Council, Joseph G. Finnerty, Jr., said very simply that St. Joseph's Parish at Texas had flourished instead of declining so that a facility was not now needed between St. Joseph's Parish and Towson. On September 9, 1961, the Archbishop acquired suitable property at Potpouring Road and Cinder Road for a church, school and convent. As the cross files, this is about a mile and a quarter away and about 600 feet away from existing St. Joseph's.

Robert V. McGourdy, an esteemed real estate counselor and President of the Real Estate Board of Baltimore, 1965, was retained by the Ford Motor Company to find them a site. He chose and recommended a site very much suited to the needs of the Ford Motor Company.

The witness who gave a complete history of the subject property and the early development of the surrounding land was Bernard M. Willemain, former Deputy Director of Planning for Baltimore County and since then a most reliable witness pertaining to zoning in Baltimore County. His testimony is well known up to and including the Court of Appeals of Maryland. Not having a crystal ball everyone felt their way along from 1948 to the present. Someone did have presence of mind to keep the shopping center across the street from the subject property below grade. A temporary contractors yard existed on Yorkridge Shopping Center in 1953, and it wasn't until August 11, 1955, the County Commissioners approved the shopping center. Archbishop Keroagh by his attorney Mr. Burke did object to the zoning of the southeast corner of Ridgely and York Roads.

Mr. Willemain, further testified that there had been 33 to 36 reclassifications on York Road from the north side of the Beltway to Titanium Road since 1955, and from there to Warren Road--23 changes. This was not disputed. There have also been improvements in the sewer and water system, and, of course, more are scheduled.

Eugene J. Clifford, Baltimore County Traffic Engineer's report is as follows:

Review of the subject site results in the following traffic comments.

On June 1, and June 15, 1967, traffic surveys were conducted during the peak hours at York and Ridgely Roads with the following conditions noted.

	Exist. Vol.	Level of Service
Northbound Approach - York Road	1050	"C"
Southbound Approach - York Road	1200	"D"
Eastbound Approach - Ridgely Road	300	"E"
Westbound Approach - Ridgely Road	220	"B"

Level of service "E" or Possible Capacity on each approach at the intersection of York Road and Ridgely Road is as follows:

	Capacity
Northbound Approach - York Road	1560
Southbound Approach - York Road	1430
Eastbound Approach - Ridgely Road	550
Westbound Approach - Ridgely Road	730

A check of State Roads Commission Traffic Count Station 13 located on York Road south of Warren Road indicates a rate of annual growth in excess of 10% for each of the past three years. Assuming this growth is to continue, the southbound approach will reach level of service "E" in two years.

The proposed site plan indicates 9.0 acres of B,R, zoning which could be expected to generate 6750 trips/day and 12.6 acres of R,A, zoning which could be expected to generate 150 trips/day. If the land is to remain B,R, it could generate 200 trips/day.

In summary and based on the above study, the intersection of York and Ridgely Roads is expected to reach level of service "E" or

Possible Capacity in two years. Therefore, the Bureau of Traffic Engineering considers it undesirable to increase the trip density in this area until such time as York Road is improved to handle anticipated volumes for the future.

Hugo O. Liem, Jr., Assistant Traffic Commissioner for Baltimore City had similar figures to that of Mr. Clifford but his conclusions were different. Mr. Clifford's report indicated BR would generate 6750 trips a day and Mr. Liem's testimony suggested 930 trips a day.

Mr. Liem suggested that Tower Ford, Inc., 3700 E. Monument Street in Baltimore City would be comparable to the proposed use. At the location one could expect 610 trips in ten hours. A personal visit disclosed a very large and elaborate operation. Next door was a large brick yard with many of the bricks piled up in the yard. To the rear is a railroad and the very large operation of Armino Steel Corporation. All in all the area would compare to a mixture of what in Baltimore County would be manufacturing light and manufacturing heavy. Also, Tower Ford, Inc. fronts on a dual highway. York Road has four lanes in front of the proposed site and the site nestles in a residential zone.

After listening to testimony both pro and con the question is just what should zoning authorities do. We must consider the change and error rule. Some consideration should be given to the general welfare and although zoning is not by plebiscite, surely the local welfare has some little standing. Then too consideration must be given to the highest and best use of the land.

A master plan or any plan for that matter is worth considering, but many different types of business and more important different methods of operation have come about since the adoption of a zoning map for this specific area. The very thing the Petitioner, Ford Leasing Development Company, wants to do by this Petition is an innovation and change of income. Gasoline service stations are becoming car centers. The dry cleaning business has changed. Manufacturing areas are built differently. The zoning regulations and the zoning maps are being up-dated, but not fast enough.

Up to the present both the east and west sides of York Road immediately north of the Beltway have been denied commercial use primarily for reasons of traffic safety. A car agency was desirous of location on the east side of York Road immediately north of the Beltway. This was denied.

The residential character of York Road and Croftly Road has been maintained. Stockside vs Barnard 239 Maryland at 948.

The record shows that the subject property lies on York Road almost midway between Seminary Avenue on the south and Bellona Avenue on the north. On the opposite side of York Road there have been some zoning applications granted for B-A classification. However, on the east side of York Road there have been no changes for over two blocks with the exception mentioned above at the corner of Thornhill Road. Judge Menchum in his colorful opinion cited Levy vs. Seven Slades, Inc., supra, and concluded that the Board had no reasonable basis in fact to support the denial and reversed the Board, thus allowing the applicant's petition for relief. He based his decision on the fact that several zoning changes had been granted in the area. But, an examination of the record shows that all except one of these changes were on the opposite, west side of York Road from the applicant's property. We have held in past cases that a street or

road may be a natural boundary line between two zones. Sapero vs. M. & C., 235 Maryland 1 209 A. 2d 14. In Shaysynock Imp. Assn. vs. Molloy 232 Maryland 265, 192 A. 2d 502. We held that the existence of apartment uses on one side of the street does not alter the use of the land on the opposite side, and therefore the street is an appropriate line of demarcation. Here, there was evidence before the Commissioner and the Board from which they reasonably could and did reach their conclusions. We therefore think that the questions before them were at least fairly debatable and that the trial court actually substituted its judgment for that of the Commissioner and the Board, and that in so doing, it exceeded the proper exercise of its powers.

Having reached this result we need not consider appellants' final argument that there was no evidence to justify appellee's request for a variance or special exception.

For the reasons set forth above, the order of the Circuit Court must be reversed with directions to restate the order of the Board denying the reclassification, special exception and variance.

Traffic conditions must be given prime consideration as set forth in Price vs Cohen 218 Maryland at 465. "As in changing zoning regulations, traffic conditions should be given material consideration and this was not done by the Board, its rezoning was arbitrary and an abuse of discretion as found by the trial judge and the order should be affirmed."

Large church properties are very difficult if not impossible around which to plan. Interested buyers will be quick to purchase as these large areas are usually in the very heart of things and of course all government agencies want to help a church of any denomination if possible. The Zoning Commissioner has zoned the Archbishop's property located at York Road and the City Line as a shopping center with one gasoline service station and one tire center.

The Mormon Church owns a large corner lot at Seminary and Dulaney Valley. The new Catholic Church site is only a few hundred feet from a fairly large commercial zoned area. The longer these churches stand vacant the greater their potential is for a use other than church purposes or residential purposes.

There was a time when many developers left a corner open for a grocery store to serve the community. Times have changed, but if ever, developer would just hold on to his corner lots and then claim they are worth too much to build homes on, zoning would soon be defeated.

The reasons for denying the Petition are the adverse traffic conditions; that the community of which this lot is a part is still a steadily zoned and residentially developed with time, well kept homes; and that York Road provides a dividing line between commercial and residential zoning. The changes to the north and to the south are not such changes as would warrant a reclassification.

The reasons for granting the rezoning are adequate sewer and water, excellent location for the proposed use from an economic point of view, and no further need for a church at this site exists.

The reasons for denial outweigh the reasons for granting, therefore, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 5th day of September, 1967, that the above reclassifications BK and RA be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain an R-10 zone, and the Special Permit for off-street parking in a residential zone is hereby DENIED.

John P. Nolan
Zoning Commissioner

PETITION FOR RECLASSIFICATION AND SPECIAL HEARING BEFORE THE ZONING COMMISSIONER
NE/Corner of York and Ridgely Roads 8th District
Most. Rev. Lawrence Cardinal Shehan
Petition NO. 68-29-RSPH BALTIMORE COUNTY

Please enter an appeal in the above-entitled matter to the County Board of Appeals, from the order of the Zoning Commissioner dated September 5, 1967, on behalf of the Most Reverend Lawrence Cardinal Shehan, Roman Catholic Archbishop of Baltimore for the time being, and his successors in the Archbishopric of Baltimore, according to the discipline and government of the Roman Catholic Church, a corporation sole of the State of Maryland.

James D. Nolan
James D. Nolan
204 West Pennsylvania Avenue
VA. 3-7800
Towson, Maryland 21204
Attorney for Petitioner



MICROFILMED

JAMES D. NOLAN
TOWSON, MD

THE COURT OF APPEALS—ANNAPOLIS, MARYLAND 21401

March 30, 1970

Werner G. Schoeler, Esq.
Attorney at Law
Medical Center West
6650 Baltimore National Pike
Baltimore, Maryland 21228

Dear Mr. Schoeler:

This is to acknowledge receipt of your petition (order) to dismiss the appeal, with prejudice, in the case of Vincent W. Gallo, et al. v. Lawrence Cardinal Shehan, Roman Catholic Archbishop of Baltimore, et al., No. 350, September Term, 1969.

In accordance with said order we have dismissed the appeal today and are forwarding the mandate and the original papers to the Circuit Court for Baltimore County.

A copy of the mandate is enclosed, together with the requested True Copies of the orders of dismissal.

Very truly yours,
J. LLOYD YOUNG
Clerk

JLY/6jr
Enclosure
cc: James D. Nolan, Esq.
R. Bruce Alderman, Esq.

INTER-OFFICE CORRESPONDENCE
BUREAU OF TRAFFIC ENGINEERING
Baltimore County, Maryland
Towson, Maryland 21204

Date: June 23, 1967

TO: Mr. James E. Dyar
FROM: Eugene J. Clifford
SUBJECT: Item 2 - Zoning Advisory Committee of May 23, 1967
Reclassification from R-10 to B.P. and R.A.
Northwest corner of York and Ridgely Roads

Review of the subject site results in the following traffic comments.

On June 1 and June 15, 1967, traffic surveys were conducted during the peak hours at York and Ridgely Roads with the following conditions noted.

Approach	Exist. Vol.	Level of Service
Northbound Approach - York Road	1050	mg
Southbound Approach - York Road	1200	mg
Eastbound Approach - Ridgely Rd.	500	mg
Westbound Approach - Ridgely Rd.	220	mg

Approach	Level of Service "E" or Possible Capacity at the intersection of York Road and Ridgely Road in as follows:	Capacity
Northbound Approach - York Road		1560
Southbound Approach - York Road		1450
Eastbound Approach - Ridgely Road		550
Westbound Approach - Ridgely Road		730

A check of State Roads Commission Traffic Count Station 13 located on York Road south of Warren Road indicates a rate of annual growth in excess of 10% for each of the past three years. Assuming this growth is to continue, the southbound approach will reach level of service "mg" in two years.

The proposed site plan indicates 9.0 acres of B.R. zoning which could be expected to generate 6750 trips/day and 12.6 acres of R.A. zoning which could be expected to generate 1350 trips/day. If the land is to remain R-10 it could generate 700 trips/day.

In summary and based on the above study, the intersection of York and Ridgely Roads is expected to reach Level of Service "mg" or Possible Capacity in two years. Therefore, the Bureau of Traffic Engineering considers it undesirable to increase the trip density in this area until such time as York Road is improved to handle anticipated volumes for the future.

EJC:GPM:ME
cc: Mr. John Meyers
Mr. George Gavrulis

MICROFILMED

Eugene J. Clifford
Eugene J. Clifford
County Traffic Engineer

BOARD OF EDUCATION OF BALTIMORE COUNTY
Alaburth Manor
Towson, Maryland 21204

Shehan Property: (Auto Showroom & Apts.)
Total Acres: 22.739
RA Acres: 12.663 (Net)
RA Units: 223

There isn't any difference in student yield if a zoning change to RA is allowed since (using the Briarcliff Apts to Cockeysville Elementary factor of .12) the resulting students would be 27 from RA zoning while the present zoning, R10, (using the area directly below Ridgely Junior High which has an elementary school yield of .43) the resulting students total 27.

Summary	
Zoning	Student Yield
R10	27
RA	27
	0

Elementary school districts of this area are Timonium and Lutherville. Lutherville is of the February enrollment figures is but 22 children over capacity due to taking a class from Timonium which is, with the class removed, presently 120 over capacity. However, relief is due next year by way of a 1 room addition.

May 19, 1967

MICROFILMED

TELEPHONE 823-3000 EXT. 387
BALTIMORE COUNTY, MARYLAND No. 44251
OFFICE OF FINANCE DATE July 10, 1967
Division of Collection and Receipts
COURT HOUSE TOWSON, MARYLAND 21204 BILLED BY Zoning Dept. of Balto. Co.

To: James B. Shon, Esq.
209 W. Penna. Ave.
Towson, Md. 21204

MICROFILMED

QUANTITY	DEBIT TO ACCOUNT NO. 01-622	DETAILS	RETURN THIS PORTION WITH YOUR REMITTANCE	TOTAL AMOUNT DUE
1	50.00	Petition for Reclassification & Special Hearing for Most Reverend Lawrence Cardinal Shehan, Roman Catholic Archbishop of Baltimore, et al., No. 350, September Term, 1969.		50.00

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

TELEPHONE 823-3000 EXT. 387
BALTIMORE COUNTY, MARYLAND No. 46412
OFFICE OF FINANCE DATE Aug. 11, 1967
Division of Collection and Receipts
COURT HOUSE TOWSON, MARYLAND 21204 BILLED BY Zoning Dept. of Balto. Co.

To: Ford Leasing Development Co.
P.O. Box 721
Baltimore, Md. 21201

QUANTITY	DEBIT TO ACCOUNT NO. 01-622	DETAILS	RETURN THIS PORTION WITH YOUR REMITTANCE	TOTAL AMOUNT DUE
1	204.25	Advertising and posting of property for The Most Reverend Lawrence Cardinal Shehan, et al., No. 350, September Term, 1969.		204.25

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

6-24-70

VINCENT W. GALLO, et al * IN THE CIRCUIT COURT
Plaintiffs/Appellants *
FOR BALTIMORE COUNTY
v. *
WILLIAM S. BALDWIN, * AT LAW
W. GILES PARKER and * Misc. Dockets: 8
JOHN A. SLOWIN, constituting * Folio: 384
the County Board of Appeals of *
Baltimore County * File: 413
Defendants/Appellees *

OPINION AND ORDER

Lawrence Cardinal Shehan, Roman Catholic Archbishop of Baltimore, and his successors in the Archbishopric See of Baltimore according to the Discipline and Government of the Roman Catholic Church, a corporation sole of the State of Maryland, hereinafter referred to as "Petitioner," originally filed for reclassification of a 23.74 acre parcel of land situate at the northeast corner of York and Ridgely Roads, in the Eighth Election District of Baltimore County, from an R-10 classification to the following:

- Parcel No. 1 consisting of 8.72 acres, having a 640 feet of frontage along the York Road and 523 feet of frontage along Ridgely Road to a B-R (Business Roadside) classification.
Parcel No. 2 consisting of 13.21 acres with 1220 feet of frontage along Ridgely Road, a depth of approximately 690 feet and a north property line of approximately 600 feet where the east property line curves in an arc to the southeast along

Red 10-5-69 9:30 AM

Board of Appeals was arbitrary, unreasonable or capricious in using its discretion. It is the burden of the Protestants to prove to the Court that the issues were not fairly debatable and that the County Board of Appeals was arbitrary, unreasonable or capricious in using its discretion.

The evidence presented to the County Board of Appeals as to whether or not there was error in original zoning, as to whether or not there were substantial changes in the neighborhood to warrant a change in zoning, as to whether or not the traffic conditions made any change prohibitive, as to whether or not a reclassification would be against the general well-being and welfare of the immediate neighborhood, was sufficient to make all these issues fairly debatable in front of the County Board of Appeals. The evidence produced by the Protestants to this Court falls short of establishing that the Board abused the discretion vested in it by law.

For these reasons the Order of the County Board of Appeals is hereby sustained.

H. Kemp MacDaniel
JUDGE

NOTED:
September 15, 1969

the west side of Vista Lane, and thence southerly along the west side of Charmuth Road to an R-A (Residential Apartment) classification.
Parcel No. 3, a narrow strip of land to the north of Parcel No. 1, 60 feet wide and approximately 557 feet in depth where the Petitioner requests an off-street parking permit in conjunction with the proposed commercial activity on Parcel No. 1 of the tract.

The Protestants are Vincent W. Gallo, et al, all residents in the immediate area surrounding the property proposed for reclassification, who will hereinafter be referred to as "Protestants."

After a hearing in front of the Zoning Commissioner an Order was passed on September 5, 1967, denying all of the requests for reclassification. An appeal was taken to the County Board of Appeals of Baltimore County and after a hearing it was ordered on November 19, 1968 by the County Board of Appeals that the reclassification of Parcel No. 1 from R-10 to B-R be granted, and that the special permit for off-street parking in a residential zone for Parcel No. 3 be granted, but that the reclassification of Parcel No. 2 from R-10 to R-A be denied. The Protestants then perfected an appeal to this Court from the Order of the County Board of Appeals granting the reclassification as stated above. A hearing was held in this Court on June 19, 1969, where argument was presented by counsel. Memorandums of counsel were also submitted. The Court has listened to the argument, read the memorandums of counsel, and completely reviewed the entire transcript of record from the County Board of Appeals and is

now in a position to make a ruling on this matter.

There have been fundamental principles repeated many times by the Court of Appeals with reference to the proper scope of review by the Courts in zoning appeals. This principle has most recently been repeated in C.F. Haldemann v. Board of County Commissioners of Howard County, Et Al., Md. (1969), The Daily Record, May 26, 1969, wherein the Court, in an opinion by Judge Single' said:

"We have often repeated the principles here applicable: courts have no power to reason and may not substitute their judgment for that of the expertise of the zoning authority. Kirkman vs. Montgomery County Council, 251 Md. 273, 247 A.2d 255 (1968); Roslav vs. Hospital for Consumptives, 246 Md. 197, 227 A.2d 746 (1967); Board of County Comm'rs for Prince George's County vs. Barr, 242 Md. 535, 218 A.2d 923 (1966). It has long been settled that the zoning authority's determination is correct if there were such legally sufficient evidence as would make the question fairly debatable. Ark. Road-Mix Concrete Corp. vs. Smith, 251 Md. 1, 246 A.2d 220 (1968); Mayor and City Council of Greenbelt vs. Bd. of County Comm'rs for Prince George's County, 247 Md. 670, 234 A.2d 24 (1967); Annapolis, Inc. vs. Lucas, 247 Md. 612, 233 A.2d 757 (1967). Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable or capricious. Kirkman vs. Montgomery County Council, supra; Annapolis, Inc. vs. Lucas, supra; Roslav vs. Hospital for Consumptives, supra; Mayor & City Council of Balto. vs. Barr, 230 Md. 291, 186 A.2d 884 (1962). The appellant's proof falls short of establishing that the Board abused the discretion vested in it by law."

It is with this principle in mind, of course, that the Court has read the transcript of record from the County Board of Appeals, read the memorandums presented by counsel, and listened to their arguments in open Court. The Protestants have pointed out to the Court that, in their opinion, there has been no error in original zoning and that there has been no change in the immediate neighborhood for the County Board of

Appeals to grant a reclassification. They have further pointed out that the traffic conditions would not warrant the changes requested and that York Road, where the property is located, is a natural boundary so that allowing reclassification of this property would strictly be "spot-zoning" or "strip-zoning." They have also cited economic reasons in stating that this would have a tremendously detrimental effect upon the property now surrounding this area, and that a change of this nature would in general be against the general welfare of the surrounding territory. The Petitioner contends that there was error in original zoning, that there has been substantial change in the neighborhood, and that this reclassification would in no way be detrimental to the health, safety and general welfare of the immediate surrounding neighborhood. It is the Petitioner's intention to place upon the front portion of the property two automobile sales agencies.

This Court must point out that from the transcript it can be shown that the County Board of Appeals had a long and thorough hearing in this matter with many, many witnesses, representing both the Petitioner and the Protestants. As to the questions presented it is quite evident in reading the transcript of record that in every instance there was testimony presented before the County Board of Appeals that made the issue fairly debatable. Although it is true that testimony by the Protestants in some instances disagreed with the testimony given by the expert witnesses for the Petitioner, this Court can only determine whether or not there was sufficient legal evidence presented to the County Board of Appeals to make the question fairly debatable. The Court then must make its determination as to whether or not the County

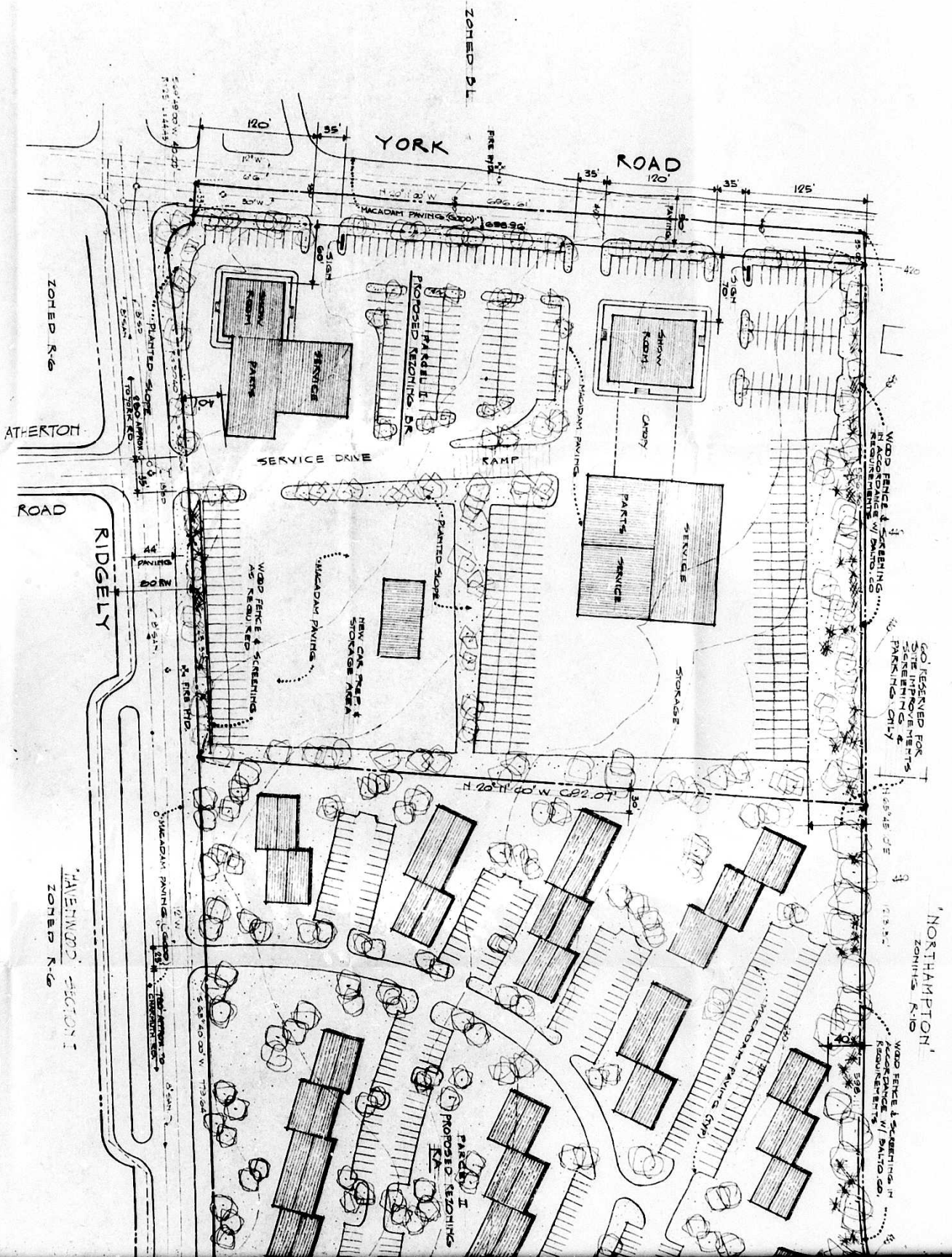
CERTIFICATE OF PUBLICATION

TOWNSON, MD. July 12, 19 67
THIS IS TO CERTIFY that the attached advertisement was published in THE JEFFERS MAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of 298 consecutive weeks before the 2nd day of August, 1967, the first publication appearing on the 11th day of July 19 67

THE JEFFERSONIAN
H. L. Leach, Attorney

MICROFILMED

Small print text at the bottom of the page, likely a legal notice or disclaimer.



LEGEND

PARCEL I

EXISTING ZONING R-10
 PROPOSED ZONING D-R
 0.529 AC. GROSS AREA
 0.379 AC. SID OF YORK ROAD
 0.000 AC. NET
 9,000 SPACES
 1 PER 200 SQ. FT. OF
 RETAIL SPACE
 25 TO 50 (VARY) FEET, AS
 DIRECTED TOWARD BUILDINGS
 ALL CONSTRUCTION IN
 ACCORDANCE WITH FIRE CODE
 REQUIREMENTS OF BALTO. CO.

LEGEND

PARCEL II

EXISTING ZONING R-10
 PROPOSED ZONING R-A
 15,210 AC. GROSS AREA
 0.547 AC. SID OF VISTA LANE
 AND CHICKSUH ROAD
 12,669 AC. NET
 15,210 AC. x 16 = 223,360 SQ. FT.
 15,210 AC. x 10 = 152,100 SQ. FT.
 TOTAL APPTS. = 223 UNITS
 9,200 SPACES
 1 PER 223 SPACES
 25 TO 50 (VARY) FEET, AS
 DIRECTED TOWARD BUILDINGS
 ALL CONSTRUCTION IN
 ACCORDANCE WITH FIRE CODE
 REQUIREMENTS OF BALTO. CO.

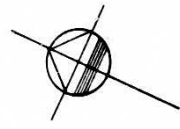
VOID FENCE & SCREENING
 IN ACCORDANCE WITH BALTO. CO.
 REQUIREMENTS W/ PARKING ONLY

NORTHAMPTON
 ZONING R-10
 VOID FENCE & SCREENING IN
 ACCORDANCE WITH BALTO. CO.
 REQUIREMENTS



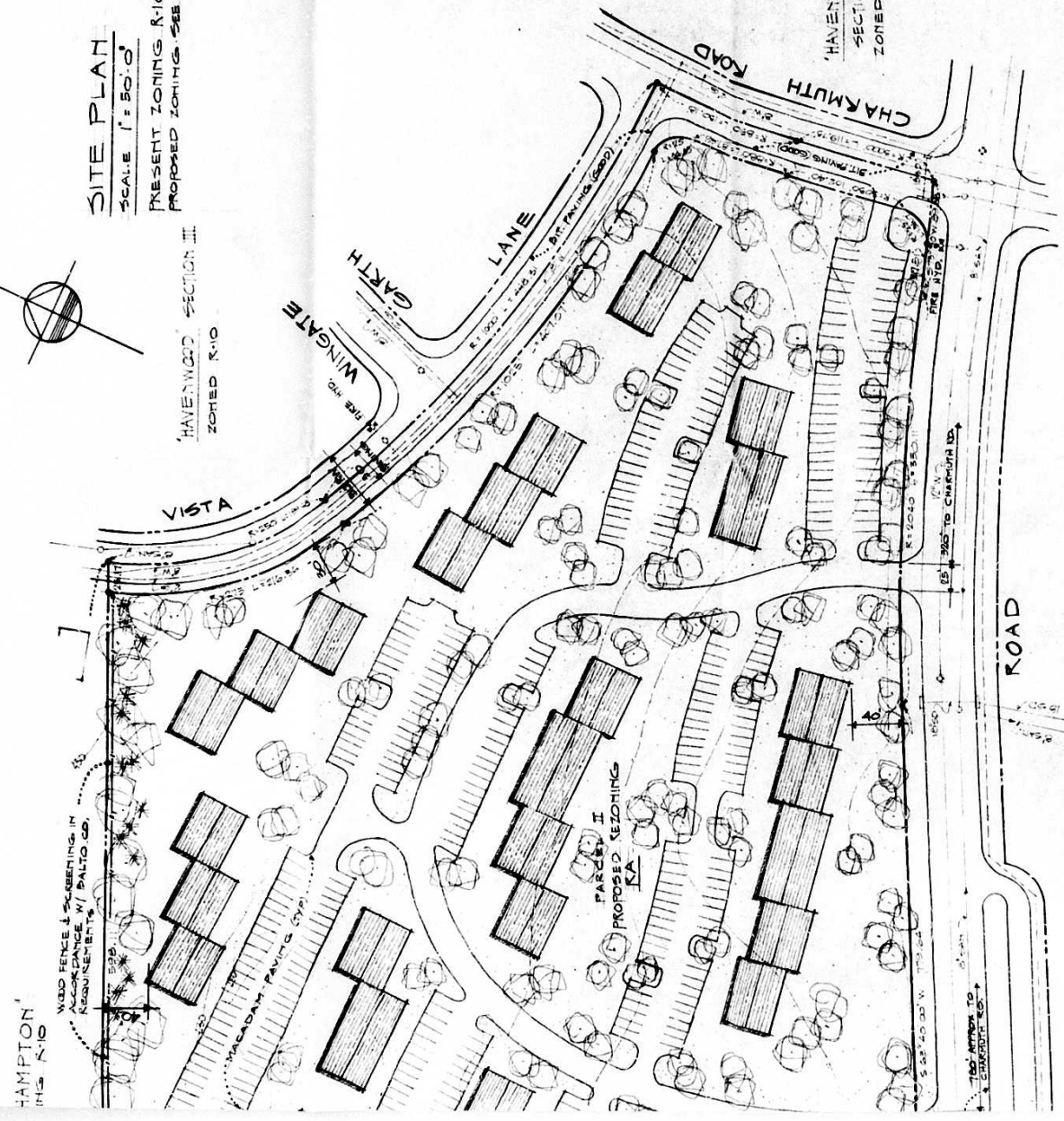
SITE PLAN

SCALE 1" = 50' 0"
PRESENT ZONING R-10
PROPOSED ZONING SSB PLAN



'HAVENWOOD' SECTION III
ZONED R-10

'HAVENWOOD'
SECTION II
ZONED R-10



PLAT FOR ZONING PURPOSE
FORD LEASING AND DEVELOPMENT CO.
DEALERSHIP FACILITIES AND APARTMENTS
YORK AND RIDGELY ROADS
8th ELECTION DISTRICT
BALTIMORE CO. MD

OFFICE OF
DONALD B. RATCLIFFE AIA
ARCHITECTS
BALTIMORE, MD.

DATE 5-4-67 SHEET Z-1

- 275 SPACES
- 250 SPACES
- 2 TOWARDS
- 2 TOWARDS
- ADDRESS
- 3 METERS



BEGINNING ⑤

NORTHAMPTON PLAT A

NORTHAMPTON PLAT B

NORTHAMPTON PLAT C

D-4-261 R-X

B.M. # X-5996
EL. 407.18

W 1901.91
N 89021.63

YORK ROAD

(STATE ROAD)

ROAD

N 20° 11' 00" W

N 06° 45' 10" E
539.04

N 65° 45' 10" E

1155.07

1213.32

B.M. EL.

① 82181.42
0.435 AC
82351.42-187

② 1500.42
1.500 AC
1500.42-187

Area:

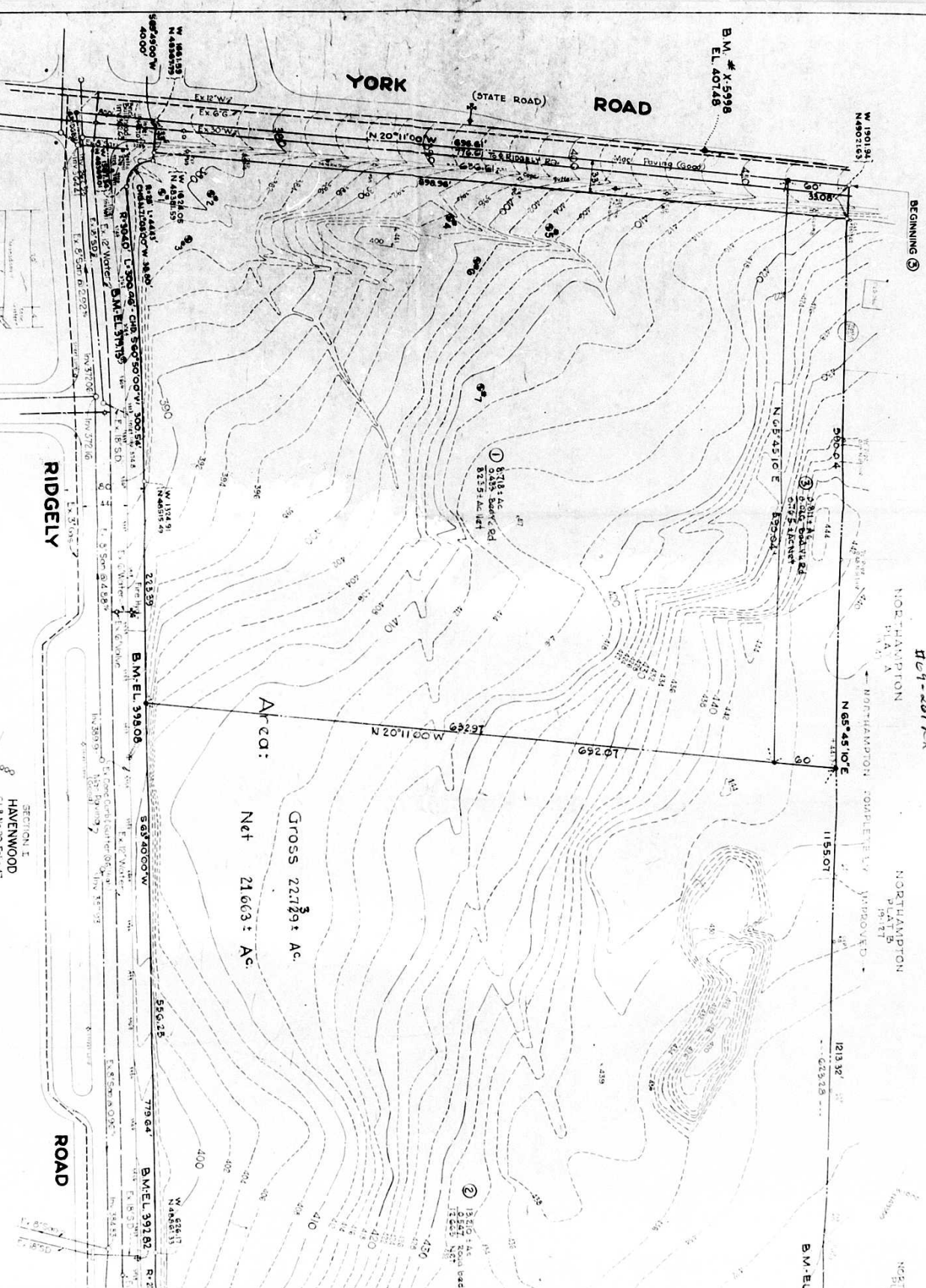
GROSS 22179± Ac.
Net 21603± Ac.

RIDGELY

ROAD

YORK ROAD
TYPICAL HALF SECTION
No. 8018

SECTION 1
HAVENWOOD
C.L.R. No. 20 Feb. 67



NOTES

The location and courses shown herein are based on the Baltimore County Metropolitan District Control and Sewer System. The location shown is for the purpose of showing the location of the proposed sewer lines and is not to be construed as a guarantee of the location of the sewer lines. The location of the sewer lines is shown on the site plan and is subject to change. The location of the sewer lines is shown on the site plan and is subject to change. The location of the sewer lines is shown on the site plan and is subject to change.

The sewer lines shown herein are shown as a general location and are not to be construed as a guarantee of the location of the sewer lines. The location of the sewer lines is shown on the site plan and is subject to change. The location of the sewer lines is shown on the site plan and is subject to change. The location of the sewer lines is shown on the site plan and is subject to change.

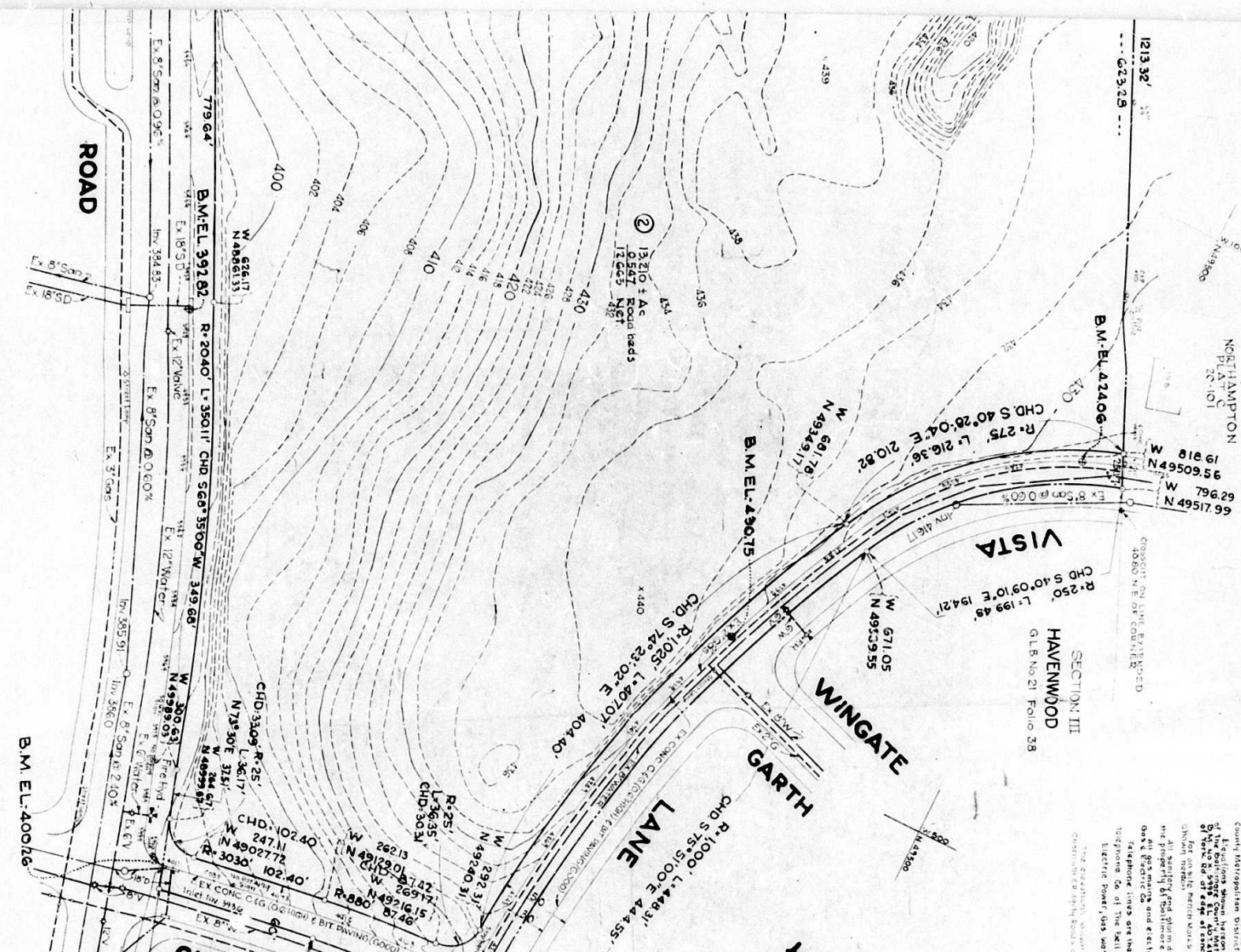


PROPERTY & TOPOGRAPHIC SURVEY

YORK AND RIDGELY ROADS

LOCATED
 8TH ELECTION DISTRICT BALTIMORE COUNTY, MD.
 OCTOBER 14, 1966
 REV. 5/8/67 - REVISION 1, 2, 3, 4 added

SCALE: 1" = 60'



This is to certify that the upper part encirclements, start and that all property lines are accurately measured as shown.

Wm O. Swartz
 Reg. P.E. & L.S. No. 2004

