

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Garden Construction Corporation, legal owners of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from an R-10 Classification to an R-A Classification, and, for the following reasons:

Change in the character of the surrounding property to such an extent that the development of the property, as originally zoned, would not be possible.

Basic for change is both error in original map and changes that have taken place since enactment of the map.

See attached description

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

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

INTERNATIONAL FUNDING COMPANY GARDEN CONSTRUCTION CORPORATION
By: (Mrs.) Shirley Brown, Agent

Contract purchaser Address: 1500 Massachusetts Avenue Washington, D. C. 20005
Legal Owner Address: 6707 Whitestone Road Baltimore County, Md. 21207
Protestant's Attorney John A. Pryor, Petitioner's Attorney 2406 Greenmount Avenue Baltimore, Maryland 21218

ORDERED By The Zoning Commissioner of Baltimore County, this 1st day of August, 1967, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building II, Towson, Baltimore County, on 5th day of September, 1967, at 1:00 o'clock P. M.

John A. Pryor
Zoning Commissioner of Baltimore County

Pursuant to the advertisement, posting of property, and public hearing on the above petition and the subject and sufficient change in the character of the neighborhood

the above Reclassification should be had, and the Special Exception should be granted.

IT IS ORDERED by the Zoning Commissioner of Baltimore County this 1st day of September, 1967, that the herein described property or area should be and the same is hereby reclassified, from an R-10 zone to an R-A zone.

and the Special Exception for the same should be and the same is hereby granted from and after the date of this order, subject to approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

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

the above reclassification should NOT BE HAD, and/or the Special Exception should NOT BE GRANTED.

IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 1st day of August, 1967, that the above reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain a R-10 zone; and/or the Special Exception for the same should be and the same is hereby DENIED.

Zoning Commissioner of Baltimore County

RE: PETITION FOR RECLASSIFICATION from an R-10 zone to an R-A zone N/S Monmouth Road, 1100' west of Carvel Road, 1st District Garden Construction Corp., Petitioner International Funding Co., Contract Purchaser

OPINION

The sole question in this case is whether or not an appeal was properly filed by the United States Government from the action of the Zoning Commissioner granting the reclassification from an R-10 zone to an R-A zone on September 6, 1967.

The Board had a hearing on December 7, 1967 solely for the purpose of determining whether or not the appeal was properly taken. Without going into detail in this Opinion as to the arguments of the government and the petitioner's attorneys, the Board finds that the appeal was not properly taken and, therefore, the action of the Zoning Commissioner is affirmed.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 18th day of January, 1968 by the County Board of Appeals, ORDERED that the Order of the Zoning Commissioner, be and the same is hereby affirmed.

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. Slawik

GARDEN CONSTRUCTION CORPORATION

6707 WHITESTONE ROAD - BALTIMORE, MARYLAND 21207

Please reply to: 2406 Greenmount Avenue Baltimore, Maryland 21218

November 1, 1967

CERTIFIED MAIL

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

Re: Reclassification from R-10 Zone to R-A Zone - 3/4 Monmouth Road 1100' W. Carvel Road 1st District Garden Construction Corporation Petitioner No. 68-53R International Funding Company Contract Purchaser

Dear Mr. Rose:

A copy of your letter dated October 31, 1967, addressed to Mr. W. H. Eastman, Public Building Service of General Services Administration, has been received.

Please be advised that on October 12, 1967, Case No. Civil 18823, the United States Government instituted condemnation proceedings in the Federal Court for the District of Maryland. The Honorable Judge Kaufman signed the order for the immediate surrender of possession of the property which is the subject of the above referenced zoning petition on October 12, 1967. Copy of the Order and Notice of condemnation was received by Garden Construction Corporation at 2:05 P.M. on October 25, 1967.

It is Garden's position that, in view of the United States Government's action in condemning this property, Garden is no longer the legal owner and conditions existing as of the Date of Taking files

John G. Rose, Esquire, Zoning Commissioner Baltimore County, Maryland

November 1, 1967

the conditions upon which the condemnation must proceed. Therefore, the United States Government, by their condemnation action, forfeited their right to appeal either your zoning decision or the decision that their appeal was not timely filed.

Very truly yours,

GARDEN CONSTRUCTION CORPORATION

John A. Pryor Counsel

JAP:mb

cc: Harris George, Esquire, Deputy County Solicitor County Office Building Towson, Maryland 21204

James D. Nolan, Esquire 204 Pennsylvania Avenue Towson, Maryland 21204

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

TO: U.S. General Services Administration Washington, D. C.

Cost of appeal - Case No. 68-53-R Garden Const. Corp. petitioner \$35.00

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

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

TO: U.S. General Services Administration Washington, D. C.

Cost of appeal - Case No. 68-53-R Garden Const. Corp. petitioner \$35.00

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

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

TO: Garden Construction Corp. 2406 Greenmount Ave. Baltimore 19, Md.

Petition for Reclassification 68-53-R \$0.00

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

Western Union

DATE: 10/19/67 TIME: 11:30

WHILE YOU WERE OUT

TO: General Services Administration Washington, D. C.

MESSAGE: General Services Administration Washington, D. C.

RECEIVED: 10/19/67

ZONING DEPARTMENT

MESSAGE

DATE: 10/19/67 TIME: 11:30

WHILE YOU WERE OUT

TO: General Services Administration Washington, D. C.

MESSAGE: General Services Administration Washington, D. C.

RECEIVED: 10/19/67

ZONING DESCRIPTION
SIX PARCELS OF LAND COLONIAL PARK ESTATES

BEGINNING for the first at a point on the north side of Monmouth Road, 40 feet wide, at the dividing line between lot Nos. 16 and 17, Block "F", all as shown on the Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337 said point of beginning being distant 1100 feet west of the west side of Carvel Road and running thence and binding on said dividing line and continuing along the dividing line between lot Nos. 16, 1, and 2, Block "F", as shown on said Plat and referring the courses of this description to the Baltimore County Metropolitan District Grid Meridian North 10 degrees 03 minutes 30 seconds East in all 431.00 feet to the south side of Sumter Road, 40 feet wide, as shown on said Plat and running thence and binding thereon the two following courses and distances northeasterly by a curve to the right with a radius of 310.85 feet the distance of 263.00 feet (the chord of the arc bears North 86 degrees 18 minutes 34 seconds East 255.12 feet) and South 89 degrees 27 minutes 10 seconds East 89.01 feet to the dividing line between lot Nos. 3 and 4, Block "F", as shown on said Plat, thence leaving the south side of Sumter Road and binding thereon South 10 degrees 03 minutes 30 seconds West 357.50 feet to the dividing line between lot Nos. 3 and 15, Block "F", as shown on said Plat, thence binding thereon North 79 degrees 56 minutes 30 seconds West 150.00 feet to the dividing line between lot Nos. 15 and 16, Block "F", as shown on said Plat and running thence and binding thereon South 10 degrees 03 minutes 30 seconds West 230.00 feet to the north side of Monmouth Road, herein referred to and running thence and binding thereon North 79 degrees 56 minutes 30 seconds West 150.00 feet to the place of beginning.

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Containing 2.9303 acres of land more or less.
BEING all of lot Nos. 2, 3 and 16, Block "F", as shown on Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337.
BEGINNING for the second at a point on the North side of Monmouth Road, 40 feet wide, at the dividing line between lot Nos. 11 and 12, Block "F", all as shown on the Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337 said point of beginning being distant 350 feet west of the west side of Carvel Road and running thence and binding on said dividing line and referring the courses of this description to the Baltimore County Metropolitan District Grid Meridian North 10 degrees 03 minutes 30 seconds East 230.00 feet to the dividing line between lot Nos. 5 and 12, Block "F", as shown on said Plat, and running thence and binding on said line and continuing along the dividing line between lot Nos. 5 and 13, Block "F", as shown on said Plat North 79 degrees 56 minutes 30 seconds West in all 300.00 feet to the dividing line between lot Nos. 4 and 5, Block "F", as shown on said Plat and running thence and binding thereon North 10 degrees 03 minutes 30 seconds East 359.52 feet to the south side of Sumter Road, 40 feet wide as shown on said Plat and running thence and binding thereon the three following courses and distances southeasterly by a curve to the right with a radius of 493.77 feet the distance of 155.27 feet (the chord of the arc bears South 62 degrees 57 minutes 44 seconds East 154.74 feet), Southeasterly by a curve to the left with a radius of 2286.00 feet the distance of 250.03 feet (the chord of the arc bears South 57 degrees 04 minutes 50 seconds East 243.90) and Southeasterly by a curve to

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the left with a radius of 695.00 feet the distance of 75.06 feet (the chord of the arc bears South 62 degrees 53 minutes 06 seconds East 73.03 feet) to the dividing line between lot Nos. 7 and 8, Block "F", as shown on said Plat, thence leaving the south side of Sumter Road and binding on said dividing line and continuing along the dividing line between lot Nos. 7, 9, 10, and 11, Block "F", as shown on said Plat South 10 degrees 03 minutes 30 seconds West in all 425.25 feet to the north side of Monmouth Road herein referred to and running thence and binding thereon North 79 degrees 56 minutes 30 seconds West 150.00 feet to the place of beginning.
CONTAINING 3.6818 acres of land more or less.
BEING all of lot Nos. 5, 6, 7, and 11, Block "F" as shown on Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337.
BEGINNING for the third at a point on the North side of Sumter Road 40 feet wide, at the dividing line between lot Nos. 7 and 15, Block "E", all as shown on the Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book No. J.W.S. No. 2, folio 337 said point being distant 1151.66 feet, west of the west side of Carvel Road, and running thence and binding on said dividing line and continuing along a part of the dividing line between lot Nos. 7 and 14, Block "E", as shown on said Plat and referring the courses of this description to the Baltimore County Metropolitan District Grid Meridian North 10 degrees 03 minutes 30 seconds East in all 258.17 feet to the south side of Security Boulevard, 120 feet wide, and running thence and binding thereon North 86 degrees 07 minutes 51 seconds East 92.34 feet to intersect the dividing line between lot Nos. 7 and 1, Block "E", as shown

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on said Plat, thence leaving the south side of Security Boulevard and binding on a part of said dividing line South 79 degrees 56 minutes 30 seconds East 60.37 feet to the dividing line between lot Nos. 1 and 8, Block "E", as shown on said Plat, and running thence and binding on a part of said line North 10 degrees 03 minutes 30 seconds East 14.97 feet to the south side of Security Boulevard herein referred to and running thence and binding thereon the two following courses and distances North 86 degrees 07 minutes 51 seconds East 288.44 feet and easterly by a curve to the right with a radius of 3340.00 feet the distance of 174.15 feet (the chord of the arc bears North 87 degrees 37 minutes 28.5 seconds East 174.13 feet) to intersect the dividing line between lot Nos. 4 and 5, Block "E", as shown on said Plat, thence leaving the south side of Security Boulevard and binding on a part of said dividing line and continuing along the dividing line between lot Nos. 10 and 11, Block "E", as shown on said Plat South 10 degrees 03 minutes 30 seconds West in all 312.51 feet to the north side of Sumter Road herein referred to and running thence and binding thereon the three following course and distances northwesterly by a curve to the left with a radius of 531.77 feet, the distance of 313.63 feet (the chord of the arc bears North 72 degrees 37 minutes 12.5 seconds West 309.14 feet), North 89 degrees 27 minutes 10 seconds West 91.01 feet and southwesterly by a curve to the left with a radius of 350.85 feet the distance of 233.97 feet (the chord of the arc bears South 70 degrees 57 minutes 10 seconds West 235.12 feet) to the place of beginning.
CONTAINING 3.0558 acres of land more or less.
SUBJECT to an "Easement Area" along the south side of Security Boulevard as shown on the Baltimore County Bureau of Rights of Way Drawings HRW 56-042 and HRW 56-043 and

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mentioned in a Deed for Security Boulevard, dated January 28, 1957, and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 3112, folio 309 from Charleston Hall Apartments, Incorporated, et al. to Baltimore County, Maryland.
BEING all of lot Nos. 9 and 10, and parts of lot Nos. 7, 8, 3, and 4, Block "E", as shown on the Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book No. J.W.S. No. 2, folio 337.
BEGINNING for the fourth at the intersection formed by the westernmost side of Carvel Road, 40 feet wide, with the northernmost side of Sumter Road, 40 feet wide, as shown on the Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337 and running thence and binding on the northernmost side of Sumter Road and referring the courses of this description to the Baltimore County Metropolitan District Grid Meridian the two following courses and distances northwesterly by a curve to the right with a radius of 755.00 feet the distance of 263.40 feet (the chord of the arc bears North 70 degrees 04 minutes 04 seconds West 262.10 feet) and northwesterly by a curve to the right with a radius of 2246.00 feet the distance of 98.23 feet (the chord of the arc bears North 58 degrees 57 minutes 36.5 seconds West 98.23 feet) to the dividing line between lot Nos. 11 and 12, Block "E", as shown on said Plat, thence leaving the north side of Sumter Road and binding on said dividing line and continuing along a part of the dividing line between lot Nos. 5 and 6, Block "E", as shown on said Plat, North 10 degrees 03 minutes 30 seconds East in all 405.43 feet to the south side of Security Boulevard, 120 feet wide, and running thence and binding thereon, easterly by a curve to the right with a radius of 3340.00 feet the distance of

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64.03 feet (the chord of the arc bears South 87 degrees 43 minutes 21 seconds East 64.02 feet) to the southwest side of Carvel Road herein referred to and running thence and binding on the southwest side of Carvel Road southeasterly by a curve to the right with a radius of 315.52 feet the distance of 390.26 feet (the chord of the arc bears South 39 degrees 25 minutes 12 seconds East 365.64 feet) to the dividing line between lot Nos. 16 and 17, Block "E", as shown on said Plat, thence leaving the southwest side of Carvel Road and binding on said dividing line North 79 degrees 56 minutes 30 seconds West 150.00 feet to the dividing line between lot Nos. 6 and 17, Block "E", as shown on said Plat, and running thence and binding on said dividing line and on the dividing line between lot Nos. 12 and 17, Block "E", as shown on said Plat, South 10 degrees 03 minutes 30 seconds West in all 130.00 feet to the dividing line between lot Nos. 17 and 18, Block "E", as shown on said Plat, and running thence and binding thereon South 79 degrees 56 minutes 30 seconds East 200.00 feet to the westernmost side of Carvel Road herein referred to and running thence and binding thereon South 10 degrees 03 minutes 30 seconds West 126.61 feet to the place of beginning.
CONTAINING 2.6733 acres of land more or less.
SUBJECT TO an "Easement Area" along the south side of Security Boulevard as shown on the Baltimore County Bureau of Rights of Way Drawing HRW 56-042 and mentioned in a Deed for Security Boulevard, dated January 28, 1957 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 3112, folio 309 from Charleston Hall Apartments, Incorporated, et al. to Baltimore County, Maryland.

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SUBJECT also to a 15 foot Right of Way for a storm drain across part of lot No. 9, Block "E", as shown on the Baltimore County Bureau of Rights of Way Drawing HRW 56-042 and severally mentioned in a Deed and agreement dated July 2, 1956 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 3026 folio 171 between Charlie A. Knott and wife, et al. and the County Commissioners of Baltimore County.
BEING all of lot Nos. 12, 16, and 18, and part of lot No. 6, Block "E", as shown on Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337.
BEGINNING for the fifth at the intersection formed by the northeast side of Plymouth Road, 40 feet wide, as shown on the Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337 with the westernmost side of Colonial Road, 50 feet wide, as shown on Baltimore County Bureau of Rights of Way drawing HRW 56-041 and running thence and binding on the northeast side of Plymouth Road and referring the courses of this description to the Baltimore County Metropolitan District Grid Meridian, the three following courses and distances Northwesterly by a curve to the left with a radius of 290.75 feet the distance of 218.44 feet (the chord of the arc bears North 58 degrees 25 minutes 05.5 seconds West 213.34 feet) northwesterly by a curve to the right with a radius of 1259.49 feet, the distance of 648.70 feet (the chord of the arc bears North 65 degrees 11 minutes 11.5 seconds West 641.56 feet) and northwesterly by a curve to the left with a radius of 355.52 feet the distance of 39.39 feet (the chord of the arc bears North 53 degrees 31 minutes 30.5 seconds West 38.37 feet) to the south side of Security Boulevard 120 feet wide, and running

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thence and binding thereon Easterly by a curve to the right with a radius of 3340.00 feet the distance of 551.77 feet, (the chord of the arc bears South 80 degrees 30 minutes 40.5 seconds East 551.74 feet) to intersect the dividing line between lot Nos. 7 and 15, Block "E", as shown on said Plat, thence leaving the south side of Security Boulevard and binding on said dividing line South 52 degrees 16 minutes 00 seconds East 117.05 feet to the dividing line between lot Nos. 7 and 8, Block "E", as shown on said Plat, and running thence and binding thereon North 10 degrees 03 minutes 30 seconds East 43.82 feet to the south side of Security Boulevard herein referred to and running thence and binding thereon southeasterly by a curve to the right, with a radius of 740.00 feet the distance of 171.39 feet (the chord of the arc bears South 64 degrees 16 minutes 26.5 seconds East 171.20 feet) and running thence South 23 degrees 35 minutes 24 seconds East 60.15 feet to the westernmost side of Colonial Road herein referred to and shown on said drawing and running thence and binding thereon South 9 degrees 57 minutes 01 second West 157.34 feet to the place of beginning.
CONTAINING 2.6820 acres of land more or less.
SUBJECT to an "Easement Area" along the south side of Security Boulevard and on the westernmost side of Colonial Road, as shown on the Baltimore County Bureau of Rights of Way Drawings HRW 56-041 and 56-042 and mentioned in a Deed for Security Boulevard and Colonial Road, dated January 28, 1957, and recorded among the Land Records of Baltimore County, in Liber G.L.B. No. 3112, folio 309 from Charleston Hall Apartments, Incorporated, et al. to Baltimore County, Maryland.

IN THE MATTER OF

RECLASSIFICATION FROM R-10 ZONE TO
RA ZONE - N/S MONMOUTH ROAD, 1100'
W. CARVEL ROAD, 1ST DIST., GARDEN
CONSTRUCTION CORP., PETITIONER
NO. 68-53-R, INTERNATIONAL FUNDING
CO., CONTRACT PURCHASER

BEFORE THE
BOARD OF ZONING APPEALS
BALTIMORE COUNTY

MEMORANDUM IN SUPPORT OF POSITION
TAKEN BY GARDEN CONSTRUCTION CORPORATION

I. PERTINENT FACTS

The Appellee feels that the pertinent facts outlined in the Appellant's Memorandum are essentially in accord with the Stipulated Facts outlined by the Chairman of the Board of Appeals at the hearing held on December 7, 1967.

II. QUESTIONS PRESENTED

Appellee concurs with the questions presented in the Appellant's Memorandum.

III. ARGUMENT

The Appellee feels that the intent of the Appellant as expressed in his letter of October 3, 1967 is exactly as stated therein. Zoning, as a phase of law, has developed certain terminology as a means of indicating parties to an issue. At a zoning hearing, parties in interest opposed to the zoning enter their protest after a decision has been issued, an appeal is taken. The Appellant in the aforementioned letter referred to a protest, nothing more, and to date, three (3) months after, an appeal is claimed; no fee in support of an appeal has been tendered. Surely at this late date, if a check

Read 11-14-68
11:30 AM

JOHN A. PRYOR
ATTORNEY AT LAW
8400 GREENMOUNT AVE.
BALTIMORE, MD. 21204

had been requested by the Appellant from the U. S. Treasury, it would at least be available.

The property in question was properly posted, a hearing held at which no protests were indicated (contrary to the contents of Appellant's letter of October 3, 1967) and a decision was rendered. The Appellant claims lack of knowledge, but Appellant, General Services Administration, has representatives located at the Social Security Building immediately adjacent to the subject property, also in downtown Baltimore City, and further this Agency had notice of the proposed use and reclassification of this property prior to the zoning application being filed as a result of correspondence and conversation with myself, as attorney for Appellee.

As indication of the intent of the zoning regulation, in filing an application for reclassification, the petition together with a filing fee is required or no action is taken by the Zoning Commissioner, therefore on an appeal, in order for it to be effective, the appeal must be in writing clearly indicating an appeal is intended together with the required fee of Eighty Five (\$85.00) Dollars must be paid. Neither of the required conditions precedent having been complied with, how can an appeal be perfected? The cases cited by the Appellant should not be controlling in the instant case for the following reasons:

WOOD vs. PETERSON FARMS COMPANY (3 P. 2d 922, 214 C.94 Calif.)

In this case the fee was paid prior to the running of the statute, but the counsel in the case, because of illness, was unable to function for a period of approximately four (4) months, and the court deemed this sufficient reason for extending the appeal period. Remember the fee had been given to the Clerk of the Court for the appeal.

JOHN A. PRYOR
ATTORNEY AT LAW
8400 GREENMOUNT AVE.
BALTIMORE, MD. 21204

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JOHNSON vs. CROSS (Civ. App. 131 S.W. 2d 1054, Texas)

The fees required in this case were reporter's fees. Law of Texas provided a question and answer transcript of proceedings can be filed in an appeal and cost of preparing transcript can be collected prior to delivery to requesting party. Requesting party would not pay because the law provided that opposing party had to approve; without this approval requesting party refused to accept transcript for filing. Court ordered requesting party to pay court reporter and court assumed the responsibility for obtaining opposition's approval. This case, again, is not in point.

PERMAN vs. EINCO (196 P. 2d 784, 114 Utah 16, Utah)

In this case the law of the State of Utah, Section 104-77-9 U.C.A. 1943 provided as follows:

"An appeal may be dismissed, on motion in the discretion of the court (Emphasis in case) for any of the following causes:

1. That papers were not filed in the district court,
2. The advanced fee required to be paid within thirty (30) days after the transcript was received by the court."

The court ruled that notice, as required in this case, was never furnished by the Clerk of the Court, therefore, the court allowed the appeal to be filed. Again, not in point because the law of Utah provided the rights of a party to an appeal.

All of the Federal cases cited would have no application because of the wording of 28 U.S.C.A. 2107 and 28 U.S.C.A. 1917, the former citation providing substantive right to appeal and the latter providing the cost and fees required on appeal. Federal law provides the right to appeal and after appeal has been filed, assesses the cost and fees to be paid. Regardless of Federal law, Baltimore County Zoning Regulations in Section 500.10 cited in Appellant's Memorandum provides the basis for an appeal and should be followed strictly on the wording of the Zoning Ordinance. Also, in Parissi vs. Telechron, Inc. 349 U.S. 46 (1955) cited by the

JOHN A. PRYOR
ATTORNEY AT LAW
8400 GREENMOUNT AVE.
BALTIMORE, MD. 21204

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Appellant, an appeal bond had been furnished.

Have been unable to locate any Maryland cases in point, but the Court of Appeals has repeatedly referred to the proposition that regardless of the meritorious nature of the facts of an appeal, if you have not timely filed your appeal, you are technically out of court.

The Appellee's position is that the Appellant's appeal was filed too late to have standing before the Zoning Appeal Board; the date of notice being after the business day on Friday, October 6, 1967, and the Appellee files it. Exhibit "A" as proof that the Zoning Office was open and the appeal could have been delivered, but even if delivery had occurred at the County Office Building, the failure to file the required appeal fee would nullify the appeal, keeping in mind even at this late date the fee has not been tendered. The Appellee respectfully requests that the Board reject the Appellant's appeal for the following reasons:

1. Not having been timely filed,
2. Required fee not having been posted.

JOHN A. PRYOR
ATTORNEY AT LAW
8400 GREENMOUNT AVE.
BALTIMORE, MD. 21204

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, That a copy of the foregoing was mailed this 1st day of January, 1968 by certified mail to STEPHEN H. SACHS, United States Attorney, and ARTHUR G. MURPHY, First Assistant United States Attorney, at the Post Office Building, Calvert and Fayette Streets, Baltimore, Maryland 21202.

JOHN A. PRYOR
Attorney for Garden Construction Corporation

JOHN A. PRYOR
ATTORNEY AT LAW
8400 GREENMOUNT AVE.
BALTIMORE, MD. 21204

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: August 23, 1967
FROM: George E. Gough, Director

SUBJECT: Petition 68-53-R. Reclassification from R-10 to R.A. North side of Monmouth Road 1100 feet West of Carvel Road. Being the property Garden Construction Corporation.

2nd District

HEARING: Wednesday, September 6, 1967 (1:00 P.M.)

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

From a planning viewpoint, the subject petition is invalid on its face: it requests rezoning of six separate parcels of land which happen to be in the same vicinity but which are completely isolated from each other and, if rezoned, would be adversely related to the unzoned properties between and among the subject parcels.

GEG:bm

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1st Date of Posting: Aug 19, 1967
Posted for: Reclassification from R-10 to R.A.
Petitioner: Garden Construction Corp.
Location of property: N/S of Monmouth Rd. near W of Carvel Rd.
Location of Signs: W/S of Monmouth Rd. 15' South of Plymouth Rd. (Proposed)
W/S of Colonial Rd. 50' South of Security
Remarks: W/S of Security Rd. 5' S of Carvel Rd. (Proposed)
Posted by: J. Gough over Date of return: Aug 24, 1967
Signature: H. Pryor

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

James D. Nolan, Esq.,
204 W. Pennsylvania Avenue
Towson, Maryland 21204

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 2nd day of August 1967

Petitioner: Garden Construction Corporation

Petitioner's Attorney: James D. Nolan

Reviewed by: John A. Pryor
Chairman of Advisory Com.

TELEPHONE
833-3000
EXT. 387

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE

No. 48456

DATE: Sept. 6, 1967

TO: James D. Nolan, Esq.,
204 W. Penna. Ave.
Towson Md. 21204

DEBIT TO ACCOUNT NO. 01-622

QUANTITY

Advertising and posting of property for Garden Construction Co.
68-53-R

TOTAL AMOUNT

300.25

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

Page 3.

SUBJECT also to a 20 foot Right of Way for a storm drain along part of the dividing line between lot Nos. 13 and 14, Block "K", as shown on the Baltimore County Bureau of Rights of Way Drawing HRW 56-041 and sixteenth mentioned in a Deed and Agreement dated July 22, 1956 and recorded among the Land Records of Baltimore County in Liber G.L.B., No. 3026, folio 171 between Charles A. Knott and wife, et al., to the County Commissioners of Baltimore County.

BEING all of lot No. 16 and parts of lot Nos. 8, 11, 12, 13 and 15, Block "K", as shown on Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 337.

BEGINNING for the sixth at the intersection formed by the southwest side of Plymouth Road, 40 feet wide, as shown on the Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. 2, folio 337 with the westernmost side of Colonial Road, 50 feet wide as shown on Baltimore County Bureau of Rights of Way Drawing HRW 56-041 and running thence and binding on the westernmost side of Colonial Road as shown on said Drawing and referring the courses of this description to the Baltimore County Metropolitan District Grid Meridian South 9 degrees 57 minutes 01 seconds West 58.36 feet to intersect the dividing line between lot Nos. 8 and 9, Block "L", as shown on said Plat thence leaving the northwest side of Colonial Road and binding on a part of said dividing line North 79 degrees 56 minutes 30 seconds West 138.69 feet to the dividing line between lot Nos. 7 and 9, Block "L", as shown on said Plat and running thence and binding thereon South 10 degrees 03 minutes 30 seconds West at 130.00 feet to the north side of Sumter Road, 40 feet wide, as shown on said Plat, and running thence and binding thereon North 79 degrees 56 minutes 30 seconds West 120.00 feet to the dividing line

Page 10.

between lot nos. 6 and 7, Block "L", as shown on said Plat thence leaving the north side of Sumter Road and binding on said dividing line North 10 degrees 03 minutes 30 seconds East 150.00 feet to the dividing line between lot nos. 5 and 7, Block "L", as shown on said Plat and running thence and binding thereon South 79 degrees 56 minutes 30 seconds East 120.00 feet to the dividing line between lot nos. 5 and 8, Block "L", as shown on said Plat, and running thence and binding thereon North 10 degrees 03 minutes 30 seconds East 136.00 feet to the southwest side of Plymouth Road herein referred to and running thence and binding thereon southeasterly by a curve to the right with a radius of 250.75 feet the distance of 229.18 feet (the chord of the arc bears South 53 degrees 45 minutes 30.5 seconds East 221.28 feet to the place of beginning.

CONTAINING 0.9899 acres of land more or less.

SUBJECT to an "Easement Area" along the westernmost side of Colonial Road, as shown on the Baltimore County Bureau of Rights of Way Drawing HRW 56-041 and mentioned in a Deed for Colonial Road, dated January 28, 1957 from Charleston Hall Apartments, Incorporated, et al., to Baltimore County, Maryland.

BEING all of lot No. 7 and Part of Lot No. 8, Block "L" as shown on Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. 2, folio 337.

The above parcels of land being part of those tracts which by confirmation Deed dated June 29, 1962 and recorded among the Land Records of Baltimore County in Liber W.L.R. No. 4035 folio 305 etc., was conveyed by Charleston Hall, Inc., to Garden Construction Corporation.

May 3, 1967
Robert E. Spillman, Registered Land Surveyor No. 4503

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: George A. Dyer
FROM: William A. Dyer
SUBJECT: Colonial Park Estates
Selection District 1

Reference is made to your request of July 29, 1967 for our opinion on the proposed sewer system for the subject property.

The property is adjacent to and south of Security Boulevard between Addison Drive and Highway 40, and the proposed sewer line is shown on the plat of the property. The sewer line is shown on the plat of the property. The sewer line is shown on the plat of the property.

It is recommended that the sewer be installed in the sewer trench shown on the plat of the property.

William A. Dyer
Surveyor

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: James Dyer
FROM: George A. Dyer
SUBJECT: Zoning Petition for Garden Construction Corporation
District 1

Our comments of June 1, 1967 concerning the above petition requested that a sanitary sewer study be submitted prior to scheduling of a hearing. Since this study has already been received and forwarded to the Sewer Design Section of the Bureau of Engineering we can see no reason to delay further the scheduling of the required hearing.

It is suggested that the Bureau of Engineering be notified of the date of hearing in order that they may have the study completed in time to present any evidence that may have a bearing on this case.

George A. Dyer
Surveyor

PETITION FOR RECLASSIFICATION

TO: THE BOARD OF ZONING

FROM: THE BALTIMORE COUNTY BUREAU OF RIGHTS OF WAY

SUBJECT: Colonial Park Estates

Selection District 1

Reference is made to your request of July 29, 1967 for our opinion on the proposed sewer system for the subject property.

The property is adjacent to and south of Security Boulevard between Addison Drive and Highway 40, and the proposed sewer line is shown on the plat of the property.

It is recommended that the sewer be installed in the sewer trench shown on the plat of the property.

William A. Dyer
Surveyor

Grid Meridian the two-hundred feet side of Security Boulevard 120 feet wide, and running thence westerly by a curve to the right with a radius of 250.75 feet the distance of 229.18 feet (the chord of the arc bears South 53 degrees 45 minutes 30.5 seconds East 221.28 feet to the place of beginning.

CONTAINING 0.9899 acres of land more or less.

SUBJECT to an "Easement Area" along the westernmost side of Colonial Road, as shown on the Baltimore County Bureau of Rights of Way Drawing HRW 56-041 and mentioned in a Deed for Colonial Road, dated January 28, 1957 from Charleston Hall Apartments, Incorporated, et al., to Baltimore County, Maryland.

BEING all of lot No. 7 and Part of Lot No. 8, Block "L" as shown on Plat of Colonial Park Estates recorded among the Land Records of Baltimore County in Plat Book J.W.S. 2, folio 337.

The above parcels of land being part of those tracts which by confirmation Deed dated June 29, 1962 and recorded among the Land Records of Baltimore County in Liber W.L.R. No. 4035 folio 305 etc., was conveyed by Charleston Hall, Inc., to Garden Construction Corporation.

Reference is made to your request of July 29, 1967 for our opinion on the proposed sewer system for the subject property.

The property is adjacent to and south of Security Boulevard between Addison Drive and Highway 40, and the proposed sewer line is shown on the plat of the property.

It is recommended that the sewer be installed in the sewer trench shown on the plat of the property.

William A. Dyer
Surveyor

CERTIFICATE OF PUBLICATION

TOWSON, MD., August 17, 1967.

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., on the 11th day of August, 1967, at the time and place before the 6th day of September, 1967, the said publication appearing on the 17th day of August, 1967.

THE JEFFERSONIAN

L. L. Smith
Manager

Cost of Advertisement, \$.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: JAMES DYER Date: August 21, 1967

FROM: C. E. FROM

SUBJECT: Zoning Petition
Garden Construction Company
N/S Monmouth Road
District 1

In our comments of May 25, 1967, relative to the subject petition, we requested the submission of a sanitary sewer study. This study has been received and reviewed by the Sanitary Sewer Section of the Bureau of Engineering. Please find attached hereto a copy of their comments.

Carlyle E. Brown
C. E. FROM
Bureau of Public Services

CEB:whl

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. James A. Dyer, Chairman
Zoning Advisory Committee
Date: May 23, 1967

FROM: Raymond Charles F. Harris, Jr.
Zoning Division

SUBJECT: Zoning Petition, Garden Construction Corp.
Location: N/S Monmouth Road
District 1
Present zoning: R-6
Proposed zoning: A-6 (Apartments)

- It shall be necessary to provide water mains and approved fire hydrants in accordance with the Baltimore County Standard Design Manual, 1964 edition.
- It shall be required to meet all fire department regulations pertaining to apartments.

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

Garden Construction Company (Part of Colonial Park Estates)
Total Acres: 16,0531
Potential Units: 271

There is no significant difference in student yield in this area if a zoning change is allowed since, with factors used from a previous study of the area, the yield from R6 zoning would be 19 pupils (Elem.) while with RA zoning, the yield would be 27 pupils, an increase of but 8 pupils.

Summary	
Zoning	Student Yield
RA	27
R6	19
	8 increase

The elementary school district of this area is Edmondson Heights. As per the February enrollment figures this school is now 93 students over capacity. However, relief is due this school next year by way of a 195 pupil 6 room addition.

May 19, 1967

IN THE MATTER OF

RECLASSIFICATION FROM R-10 ZONE TO
RA ZONE - N/S MOWMOUTH ROAD, 1100'
W. CARVEL ROAD, 1ST DIST., GARDEN
CONSTRUCTION CORP., PETITIONER
NO. 68-53-4, INTERNATIONAL FUNDING
CO., CONTRACT PURCHASER

BEFORE THE
BOARD OF ZONING APPEALS
BALTIMORE COUNTY

MEMORANDUM IN SUPPORT OF POSITION
TAKEN BY GENERAL SERVICES ADMINISTRATION

I. PERTINENT FACTS

The property involved in this case was rezoned from R-10 to R-A on or about September 6, 1967. On October 3, 1967, the General Services Administration forwarded a letter to Mr. John C. Rose, Zoning Commissioner of Baltimore County, protesting the rezoning and asking for reconsideration. (Appellant's Exhibit No. 1-A) October 3, 1967, was a Tuesday and this letter was received in Baltimore County the following day, October 4, 1967. The Zoning Commissioner did not reply to this letter until October 5, 1967. He indicated that the appeal had to be filed not later than 4:30 P.M., October 6, 1967, accompanied by a check in the amount of \$85.00. (See Appellant's Exhibit 1-B) This letter was received by the Government on October 6, 1967, the last day for filing the appeal, assuming but not admitting that the letter of October 3, 1967, did not under the regulations constitute an appeal. On October 6, 1967, General Services Administration requested that its October 3, 1967, letter be considered as an appeal from the action of the Zoning Commissioner. This communication was by telegram, prepared at 3:15 P.M., sent over by teletype at 3:47 P.M., and released in Washington, D. C., by Western Union at 4:30 P.M. It is admitted that apparently the office of the Zoning Commissioner was closed and that Mr. Rose was made aware of the contents of that telegram at home after 4:30 P.M. on that date and that a letter copy was not mailed to his office until Monday, October 9, 1967. It is also admitted for the purpose of this case that the \$85.00 fee did not accompany either the letter or the telegram and that this amount has not been paid as of this date.

This Board granted a hearing to determine the sole question as to whether, under these circumstances, the General Services Administration, an agency of the United States, should be allowed to appeal.

II. QUESTIONS PRESENTED

A. Was the letter of October 3, 1967, sufficient to constitute a notice of appeal under the regulations?

B. Assuming that it was, was the appeal properly perfected since the filing fee did not accompany that letter or the telegram of October 6, 1967?

III. ARGUMENT

A.

Section 500.10 of the Baltimore County Zoning Regulations provides that:

"Any person or persons *** feeling aggrieved *** shall have the right of appeal ***"

The regulations also provide that notice of such appeal shall be filed in writing with the Zoning Commissioner within 30 days from the date of any final order appealed from together with the required fee as provided in the Zoning Regulations. While the Board has taken the position that such appeal must reach the Zoning Commissioner's office by the close of the business day (4:30 P.M.), the regulation is silent as to any specific time and likewise does not require that any specific language be used in the notice. It is clear from reading the letter dated October 3, 1967, that the intent of the Government was to appeal from the action of the Zoning Commissioner. Therefore, that letter should be regarded as a timely notice of appeal since it was dated October 3, 1967, and received by the Zoning Commissioner on October 4, 1967, two days prior to the deadline. It, therefore, follows that the telegram of October 6, 1967, was merely a reiteration of the Government's position that its October 3, 1967, letter was sufficient to constitute an appeal.

B.

There is evidence in the record that it takes a minimum of three days for the Government to issue a check because of the administrative machinery necessary in the operation of our Government. Although Mr. Rose was aware that

the deadline for compliance with the Zoning Regulations expired on October 6, 1967, he made no effort to contact the officials of General Services Administration by telephone to inform them of the position taken by him as expressed in his letter of October 3, 1967. As a matter of fact, with the element of time being very important to the Government he did not forward a reply until October 5, 1967, which could not possibly be received by General Services Administration until October 6, 1967, the last day for filing the appeal in the manner desired by Mr. Rose.

The Government submits that this shortness of time is a valid excuse for not having submitted the \$85.00 filing fee with its communication of October 3, 1967, and naturally its telegram of October 6, 1967, since it was not until that date that it was aware of the required filing fee.

In addition thereto, the Government submits that the filing fee, assuming the letter of October 3, 1967, was sufficient notice, is merely perfunctory. No Maryland case in point has been found but where docketing fees and other fees and costs have been required to be prepaid or payment within the time fixed by statute, it has been held that late payment can be made where compliance with the statute is waived or a sufficient excuse is made for failure to comply. (Emphasis added.) See Wood v. Paterson Farm Company, (3 F.2d 922, 214 C.94, Calif.); Johnson v. Gross (Civ. App., 131 S.W. 2d 1054, Texas); Farmen v. Elmer Corp., (196 F.2d 984, 114 Utah 16, Utah).

By analogy, it has also been held that payment of a filing fee within the time allowed for filing a petition for review of the decision of a referee in bankruptcy was not a prerequisite to give the court jurisdiction to entertain the petition for review. 339 F.2d 676 (8th Cir. 1965). It has also been held that untimely payment of a filing fee does not vitiate the validity of a notice of appeal received within the thirty-day period provided by statute. Breanan v. U. S. Gypsum Company, 330 F.2d 728 (10th Cir. 1964).

In Parlett v. Telechron, Inc., 349 U.S. 46 (1955) which has been followed by other District Courts, it was held that receipt by the District Court Clerk of a notice of appeal within the thirty-day period prescribed by 28 U.S.C., 2107,

satisfied the requirements of that section; and untimely payment of the \$5.00 fee to be paid "upon the filing" of a notice of appeal required by statute (28 U.S.C. 1917) did not vitiate the notice of appeal.

For these reasons the Government contends that the letter of October 3, 1967, is a sufficient timely notice of appeal because the Zoning Regulations of Baltimore County do not require use of the magic word "appeal". Payment of the filing fee is merely perfunctory and the fact that it was not paid on October 3, 1967, or October 6, 1967, does not invalidate that appeal. In addition, the short notice by the Zoning Commissioner combined with the three-day requirement necessary to obtain a Government check constitutes a valid excuse for nonpayment of the filing fee with the notice of appeal.

Stephen H. Sachs
Stephen H. Sachs
United States Attorney

Arthur G. Murphy
Arthur G. Murphy
First Assistant U. S. Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT a copy of the foregoing was mailed this 21st day of December 1967 to John A. Fryor, Esquire, 2406 Greenmount Avenue, Baltimore, Maryland 21218, and to Allick A. Bannick, Esquire, One East Redwood Street, Baltimore, Maryland 21202, attorneys for Appellees.

Arthur G. Murphy
Arthur G. Murphy
First Assistant U. S. Attorney

SUMPTER APARTMENTS

SECURITY



CURVITY

BOULEVARD

CARVER ROAD

BLIMMOUTH ROAD

COLONIAL ROAD

1 BR BLDG
2 BR BLDG
GLASS SIDE



OFFICE

6-5-53 R

RB

OWNERS - GARDEN CONSTRUCTION CO.
2406 GREENMOUNT AVE.
BALTIMORE, MD.

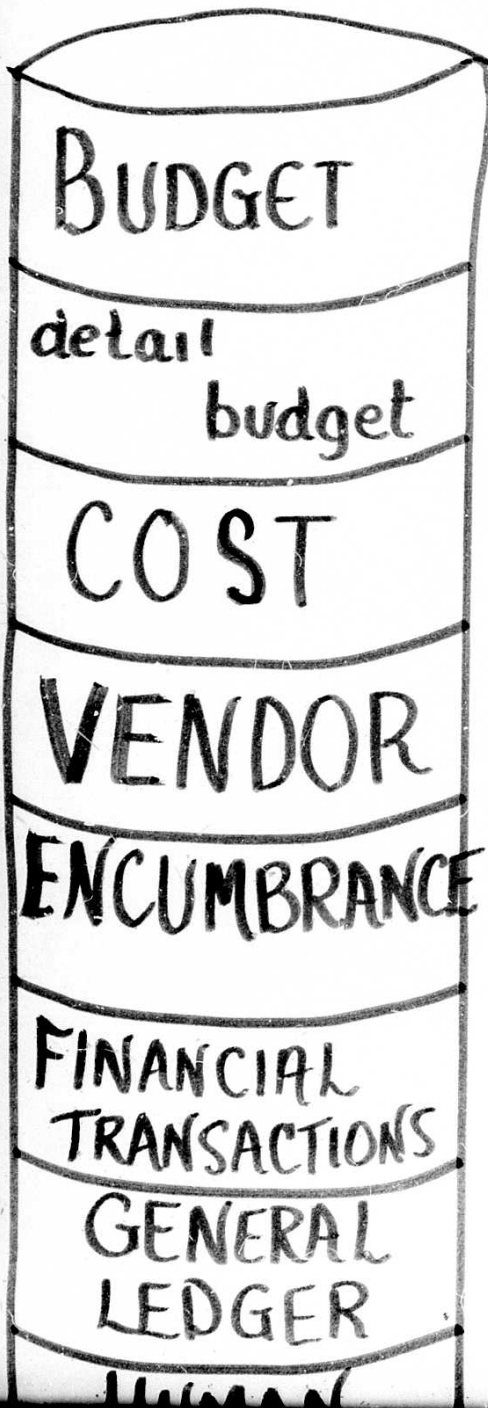
ENGINEERING - THOMPSON & ASSOC.
ENGINEERING - THOMPSON & ASSOC.

DESIGNED FOR 321 APTS.
PARKING FOR 348 CARS.
PLAN BY WILLEMANN & ASSOC.

EXISTING ZONING - R-10
PROPOSED ZONING - R-1A
GROSS ACREAGE - 19.04 AC
NET ACREAGE - 16.05 AC
NET DENSITY - 19.04 X 12 = 343 APTS.
NET DENSITY - 16.05 X 20 = 321 APTS.
(DENSITY BASED ON 1.45T BLDG)

APPROVED FOR THE CITY OF BALTIMORE
BY THE BOARD OF CITY PLANNING
ON MAY 15, 1953
AT THE REGULAR MEETING
Held at the City Hall
BALTIMORE, MD.

FILES



appropriation, transfer, this month's activity, y-t-d disbursements, open encumbrances

breakdown to 15 digits of the BUDGET file transactions

WORK ORDER No., Account# TO BE BILLED, Accum. cost, DATE ISSUED, DATE COMP.

Vendor name & address, total amount paid to vendor for current year

detail transactions of open encumbrances, those liquidated this month, partial liquidations

detail transactions (this month only) of direct payments, journal entries, cash receipts, & payroll transactions

total of journal entries, cash receipts, payments, & payroll for all asset, liability, revenue, & expense accounts ... for each month ...

name & address, total amount paid this year for