

66-277-R PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, **BLUE MOUNT CORPORATION**, legal owner, of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified pursuant to the Zoning Law of Baltimore County, from an **R-6** zone to an **M.H.** zone, for the following reasons:

1. Changes in the neighborhood since the adoption of the land use map.
2. Original zoning map in error.

See attached description

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

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above re-classification 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.

BLUE MOUNT CORPORATION

Contract purchaser

Chas. B. ...
Legal Owner

Address

Address: 201 Bayview Dam Rd.

Cockeysville, Md. 21030

...
Professional's Attorney

Address: Monocacy Blvd., Towson, Md. 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 16th day of April, 1968, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 22nd day of April, 1968, at 10:00 o'clock.



1/18/68

10/11/68
8/11/68
30-40
30-40

GRANDPOLDER YOUTH CUPS, et al
Appellants
VS.
THE BLUE MOUNT CORPORATION, et al
Petitioner
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
Misc. No. 4443

NOTICE OF APPEAL

MR. CLERK:

Please note an appeal to the Court of Appeals of Maryland on behalf of the Appellee herein, the Blue Mount Corporation, from the judgment of this Court dated August 31st, 1970, wherein this Court reversed the decision of the County Board of Appeals of Baltimore County.

L. Robert Evans
Attorney for Petitioner
414 Jefferson Building
Towson, Maryland 21204
825-8465

I HEREBY CERTIFY, that on this 10th day of September, 1970, I mailed a copy of the within Notice of Appeal to Austin M. Sridinno, Esquire, 22 W. Pennsylvania Avenue, Towson, Maryland, 21204; Francis N. Iglehart, Esquire, 102 W. Pennsylvania Avenue, Towson, Maryland, 21204; and Gordon G. Power, Esquire, 21 W. Susquehanna Avenue, Towson, Maryland, 21204; attorneys for Appellants.

L. Robert Evans

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to M.H. zone :
East Side of Big Falls Road 1535.23' :
South of Hicks Road :
7th District :
Blue Mount Corporation :
Petitioner :
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
No. 66-277-R

OPINION

This case comes before this Board on an appeal from an Order of the Zoning Commissioner granting a reclassification from an R-6 zone to an M.H. zone on a portion of the Petitioner's site.

The subject property is located in the 7th Election District of Baltimore County, same being on the east side of Big Falls Road approximately 1535 feet south of Hicks Road, in an area which may be better known as "Blue Mount". Said site is south of the community of Whitehall and north of Monkton, Maryland, same being approximately twenty-two miles due north of Towson. The property is bounded on the north and northwest by the Gun Powder State Park, on the west by the Gun Powder Youth Camp and a Youth Camp of the Salvation Army. To the east and west of the subject property are other acreages owned by the Petitioner. To the east of the subject property fronting on Hicks Road, are a few scattered relatively modern residences. All of the surrounding zoning is R-6, with the exception of a paperboard plant, which is now zoned M.L. The Gun Powder River flows through the subject tract. The area may be described as very rural in nature.

The Petitioner purchased the subject site several years ago. The total acreage involved was approximately 230 acres. The area covered by the petition contains approximately 106.43 acres (see Exhibit of subject property - Petitioner's Exhibit #1). Within the 106.43 acres are two deep quarry excavations now filled with crystal clear spring-fed waters. Same are identified on Petitioner's Exhibit #2 as quarries "A" and "B"; these cover an area of 21.12 acres and 8.77 acres respectively, for a total of 29.89 acres, and same range in depth from approximately 130 to more than 200 feet. The quarry operation

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which formed these huge holes extended over a period of fifty-four years; that is, from approximately 1910 to 1964. The stone quarried here is unique, being of very high quality and hardness, and is used primarily as an aggregate in highway and railroad bed construction.

Included in this sale to the present owner was a stockpile of approximately 60,000 tons of stone stored on the premises, which the Petitioner has been selling off during the past eighteen months. Mr. L. J. Duernsmith, Director of Geology and Quarrying Operations for the J. E. Baker Company, testified as an expert witness for the Petitioner. Mr. Duernsmith has served as the Curator of the Department of Mineralogy and Geology of Franklin-Marshall College for twenty-six years, and is the recipient of a Master's Degree in this field. It was his testimony that he has determined from test borings which were made in 1963 that there exists an estimated seven million tons of useable stone around the perimeter and floor of the old quarry holes which is economically feasible to extract.

Mr. L. B. Curry, a civil engineer also testifying as an expert witness for the Petitioner, corroborated Mr. Duernsmith's testimony that there are in fact large amounts of commercially useable rock remaining in these quarries. As a result of studies made in 1961, Mr. Curry made several proposals for the extraction of this rock, and he further stated that there is a market for this product.

Mr. John Hocheider, a well recognized and qualified civil engineer, and the President of George William Stephens Company, also testified for the Petitioner. Mr. Hocheider prepared the plans included in evidence as Petitioner's Exhibits Nos. 1 and 2. He testified that very steep grades of approximately twenty-eight percent exist on the subject tract, and that no more than ten percent grades are in any way practical for residential development. He further stated that the subject property lacks public sewerage and water, and is definitely not suitable nor can it be used for an R-6 development. Even large acreage lots would not be suitable for residential development, since it is likely that there would be inherent percolation problems for private septic sewerage disposal systems due to the impervious nature of the rock deposits; therefore, it was his opinion that the existing R-6 zoning is clearly erroneous. He further added that a spur of the Penn Central Railroad services the subject property and actually traverses this site between the two quarry

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excavations. On cross-examination Mr. Hocheider stated that it was his opinion that most other heavy industrial uses permitted as a matter of right in an M.H. zoning would clearly not be in any way feasible for the subject site due to the topography and the absence of public sewerage and water utilities. It was his judgment that at present the only use for the subject property would be that of a quarry operation, and that it would take approximately twenty-four years to exhaust the seven million tons of rock deposits.

Mr. Frederick Klaus, a real estate consultant and appraiser, testified on behalf of the Petitioner, and stated that no comprehensive use maps have actually been adopted for this area and that the Petitioner's Exhibit No. 4, as introduced into evidence through Mr. Klaus, is only a land use map (dated July 10, 1942) purporting to existing land uses as portrayed at that time, with the R-6 zoning being that of a residue or holding type classification. Mr. Klaus stated that an investigation of other quarry operations in the County revealed that same were not detrimental to nearby residential homes, and he further noted that many fine residences had been built, sold and occupied near working quarry operations well within the sound of their dynamiting operations.

This case consumed two days of testimony. The Protestants' testimony and the number of witnesses called were as lengthy as those of the Petitioner. Therefore, for the sake of brevity, the Board will attempt to summarize the more pertinent facts of the Protestants' testimony without reciting too much detail.

Primarily, the Protestants objected to the M.H. classification because of its wide range or permitted uses, including that of a sanitary landfill. Witness after witness stated that, in fact, they had no real objection to the continuance of a quarry operation with the proper setbacks and compliance with existing regulations. Most conceded that the quarry had been in operation before they moved into the area; that a former quarry owner was, in fact, a very good neighbor; and that the residents had even learned to tolerate and live with the quarry's use of explosives.

Mr. Hugh Gelston, a well known Baltimore County real estate broker and appraiser, testifying for the Protestants, stated that in his opinion, the proper zoning for the subject property would be the existing R-6 classification, with a special exception to permit its quarry operation. Mr. Gelston readily acknowledged that quarrying can

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only be accomplished where the stone is located. In this respect this Board, in its written opinion (Harry A. Smuck - Case No. 5166-X) stated:

"A precedent for this observation is found in the Circuit Court case of *A. A. Dyer Co. vs. Nathan H. Kaufman, et al*, Misc. Docket No. 6, folio 126, file No. 1937, where in a supplemental opinion dated December 5, 1958 the Court, by John E. Raine, Judge, said: 'A quarry area, unlike group housing areas, is self-contained. The location of quarries is fixed by nature. They are in a sense unique, and this aspect of the matter justifies unique treatment by the zoning authorities and by the courts.'"

There was testimony in this case that a sanitary landfill use had been considered by the Petitioner and that this idea has not been completely abandoned. Of course, this is a permitted use in an M.H. classification, and such use would be available to the Petitioner if the requested reclassification is granted. However, the Board wishes to specifically point out that any such use would be subject to the strict and stringent regulations of the Baltimore County Department of Health and Public Works and the Maryland State Department of Health, and the subsequent strict and stringent enforcement thereof.

From the testimony heard and from a personal field inspection of the subject property by this Board, it is the judgment of the majority of this Board that the existing R-6 zoning is erroneous. It seems abundantly clear to this Board that this quarry indeed "justifies unique treatment."

The majority of the Board was particularly impressed with the testimony and evidence concerning the placement of other similar quarries throughout the County in M.H. zones at the time use maps for their respective areas were adopted, examples of such being the Greenspring Quarry, the Marriottville Quarry, and the Texas Quarry. The written comments of the Department of Planning and Zoning would seem to summarize the opinion of the Board:

"In light of treatment afforded to quarries elsewhere in the County, wherein M.H. zoning was established or offered for such uses, the planning staff, with some concern, would not be adverse to M.H. zoning here."

Considering that all three of the above mentioned quarries are much nearer intensely urban developed areas, and apparently were so reviewed and studied at the time of the adoption of the representative comprehensive use map concerning same, it

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would seem that the existing R-6 zoning is erroneous and that M.H. would be the proper classification.

It is the opinion of the majority of this Board that the subject property, considering the existence of railroad facilities, its severe topography ranges and its distance from urban development, is quite distinguishable from the Dyer quarry in the Reisterstown area (Frank P. Dyer, et al, Case No. 65-378-RX), in which this Board recently denied a reclassification to M.H. and granted a special exception for the quarrying operation. The Board finds that the subject property is more comparable to the three previously cited quarries, which received M.H. classification at the time of the adoption of their respective area use maps.

Without further reviewing the evidence and testimony in this lengthy case, it is the judgment of the majority of this Board that the reclassification is justified. The Order of the Zoning Commissioner shall be affirmed and the reclassification limited to that area described in the Order of the Zoning Commissioner dated August 29, 1968.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of March, 1970, by the County Board of Appeals ORDERED, that the property be reclassified from an R-6 zone to an M.H. zone, saving and excepting all that portion of land west of Big Falls Road, and which is outlined in red on attached plat, said plat being marked Petitioner's Exhibit #1, attached to and made a part of this Order.

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

Walter A. Keller, Jr.
Walter A. Keller, Jr.
John A. Miller
John A. Miller

RE: Petition for Reclassification :
from an R-6 Zone to a MH Zone :
E/S of Big Falls Road 1535.23' :
S of Hicks Road - 7th District :
Blue Mount Corporation - :
Petitioner :
BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
No. 66-277-R

The Petitioner has requested a reclassification: from an R-6 Zone to a MH Zone for property on the east side of Big Falls Road south of Hicks Road in the Seventh District of Baltimore County, consisting of 106 acres, more or less. The property is served by a Pennsylvania Railroad Siding. The Gunpowder Falls flows through the property southwest to northeast.

This property has been used to quarry stone and was in operation until 1964. The quarry holes are now filled with water. Testimony of the former superintendent of the quarry, who had supervised operations for over thirty years, was to the effect that a three inch pump was used all the time to remove water, a six inch pump was used part of the time and a twelve inch pump was on standby in case of flood.

Buildings and equipment remain on the property, but are in need of repair.

The area surrounding the subject property is sparsely populated. Section 256.2 of the Baltimore County Zoning Regulations permits excavations, controlled, exclusive of those embodying use of explosives (See Section 403); in a MH Zone when located at least 300 feet from any residential zone or 270 feet from any business zone.

The matter of existing quarry property being reclassified to a MH Zone has been dealt with in detail by the Zoning Commissioner, the Baltimore County Board of Appeals and the Circuit Court in Case No. 65-178-RX and in Memorandum Opinions of Judge John E. Raine dated November 6, 1958, and December 5, 1958. Miscellaneous Docket No. 1937.

Most of this property is suitable for the quarrying of stone and there has been an error in not zoning most of this property MH.

For the above reasons the reclassification should be had.

It is this 29th day of August, 1968, by the Zoning Commissioner of Baltimore County, ORDERED that the property be reclassified from an R-6 Zone to a MH Zone, saving and excepting all that portion of land west of Big Falls Road and which is outlined in red on attached plat, said plat being marked Exhibit "A", attached to and made a part of this Order. The site plan is subject to approval of the Bureau of Public Services and the Office of Planning and Zoning.

John A. Miller
John A. Miller
Zoning Commissioner of
Baltimore County

ORDER RECEIVED FOR FILING

DATE 3/31/70

BY *John A. Miller*
John A. Miller
ADMINISTRATIVE ASSISTANT

RE: PETITION FOR RECLASSIFICATION :
from an R-6 zone to M.H. zone
East Side of Big Falls Road 1535.23' :
South of Hicks Road :
7th District :
Blue Mount Corporation :
Petitioner :
BALTIMORE COUNTY :
No. 68-277-R

DISSENTING OPINION

The undersigned dissents from the majority Opinion and Order of the Board issued by them in the referenced case for the following reasons:

Mr. George R. Moore, President of Blue Mount Corporation, Petitioner in this case, testified that he purchased the property on November 8, 1965 and intended originally to use it as a sanitary landfill, but that he subsequently abandoned the idea as being economically unfeasible but still subject to further study. He currently wishes to pursue a quarry operation there. He stated that the requested reclassification from R-6 to M.H. is now being sought so that any new equipment or new building construction could be replaced in event of their destruction, as by fire, rather than to rely on a possible non-conforming use status that he may have, although no case was made that he has a non-conforming use. Under cross-examination by John A. Slawik, Esq., he acknowledged he did not know that he would have such protection if he were to obtain a Special Exception use in his existing R-6 zone, as permitted under Section 403 of the Baltimore County Zoning Regulations. Section 403, in part, reads:

"...Any Special Exception granted hereunder may include the right to erect and operate buildings, machinery, and equipment for a temporary period, consistent with other provisions of the order of the Zoning Commissioner or the County Board of Appeals on appeal...."

Responding to additional cross-examination by Gordon Power, Esq., Mr. Moore further acknowledged that the use of explosives would be required to extract the rock from the quarry, and again he was not aware that he could not use explosives, even if he were successful in his petition to acquire the M.H. zoning, without also obtaining a Special Exception to permit their use. Governing this is Section 256.4 of the Zoning Regulations,

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which provides that "Excavations, controlled, when explosives are used" require a Special Exception in an M.H. zone. Only when explosives are not used may controlled excavations be permitted as a matter of right in the M.L., M.H. or M.L.R. zones. In all other zones, including the R-6 zone, "Excavations, controlled", with or without the use of explosives, are permitted by obtaining a Special Exception. (See Section 270 of the Zoning Regulations.)

The testimony of the Petitioner's expert witnesses, Messrs. Curry, Hocheder and Klaus, purports that the R-6 zoning classification on the subject property is erroneous, and that a quarrying operation is the proper feasible use for the property at this time, but that a sanitary landfill would be a good use also. Their testimony only briefly recited here cited the enormous supply of high quality rock deposits available for excavation; the impossibility of developing the site within its R-6 zoning because of extreme topography and soil percolation problems, and the improbability of utilizing the property for other heavy industrial uses permitted in an M.H. zone due to absence of public sewer and water utilities. Mr. Hocheder concurred that the use of explosives would be necessary to conduct a quarry operation, and further acknowledged that to do this the Petitioner would require a Special Exception permitting their use. Mr. Klaus sought to substantiate the petition by stating that the Petitioner needed the M.H. classification in order to have multiple uses for his buildings that he may enhance the possibilities of financing their construction. The contention may have some merit for financing, but this Board member does not consider it to be a sufficient reason to compel the reclassification. Also, Mr. Klaus' reasoning is somewhat weakened by Mr. Hocheder's testimony that other M.H. uses are not feasible at this time due to lack of public utilities.

It is my opinion that the Petitioner has shown that the R-6 zoning is in error, but I am also convinced that to grant M.H. zoning now would only replace one error in zoning with another error.

Although the Petitioner produced testimony that a quarry operation is planned and readily conceded that the use of explosives would be required to extract the rock, no

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request has been made by the Petitioner to obtain the necessary Special Exception which would authorize such use. Again, I will repeat that without the use of explosives the quarry cannot function and would be forced to close. Whether this was inadvertently or purposely omitted from the Petitioner's application is not clear in the testimony. In Falbo, Appeal Board case No. 69-104-RXA, the Board, in its unanimous decision, said:

"The Board is well aware that many zoning battles, and indeed much of the criticism regarding zoning reclassification, stems from the fact that the Petitioner often does not perform according to the high standards he proposes in his testimony. Once the zoning is obtained, he often substitutes minimum requirements that are allowed by the Code and does not perform as originally stated. Unfortunately, the Board has no control of this in reclassification cases, but fortunately we do have such control in granting special exceptions under Section 502.2, whereby we may impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties."

Certainly the majority Opinion and the testimony presented clearly emphasizes that the immediate objective of the petitioned reclassification is to permit a quarry operation. I thoroughly agree with the majority statement that indeed this quarry "justifies unique treatment". However, I think the subject should be treated just that way, as a quarry, and that way alone. A persuasive case has not been made warranting a reclassification to an M.H. zone, with its wide range of permitted uses. The record is devoid of any relevant testimony that there has been any substantial change in the character of the neighborhood to justify the M.H. reclassification. I believe, therefore, that the proper "unique treatment" for this quarry which the Petitioner is entitled to is to grant a special exception for a controlled excavation so that he may operate a quarry and use explosives to free the rock deposits. Such treatment is consistent with the Board's action permitting quarries, as in the Smuck case (No. 5166-X) and Dyr case (No. 65-378-RX), on which cases I served on the Board that decided them.

In order that the Board may grant a Special Exception, it must find that there would not be any violation of Section 502.1 of the Zoning Regulations. Section 502.1 is as follows:

"Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

Blue Mount Corporation -4-

- Be detrimental to the health, safety, or general welfare of the locality involved;
- Tend to create congestion in roads, streets or alleys therein;
- Create a potential hazard from fire, panic or other dangers;
- Tend to overcrowd land and cause undue concentration of population;
- Interfere with adequate provision for schools, parks, water sewerage, transportation or other public requirements, conveniences, or improvements;
- Interfere with adequate light and air."

In this respect Mr. Klaus testified that the quarrying operation will not be detrimental to the residential homes nearby. Buffer strips and dense woods will nullify the effects of dynamiting. He noted that many fine homes have been built near other working quarries within sound of their dynamiting. Protestants' own witnesses, Messrs. Gelston and Thompson, testified that quarrying was a proper use of the land; explosives had been tolerated by the area residents, and traffic was not unusually heavy.

Other witnesses on both sides of the case gave other testimony to further convince this Board member that the provisions of Section 502.1 would not be violated if a Special Exception were granted. I find, as a fact, that such provisions will not be violated.

A precedent for the Board to grant other than the petitioned zoning is found in the Albert J. Meekins case (No. 63-73), wherein the Board, in its majority Opinion: "Denied the M.L. zone requested, and under the prerogative of the Board granted a reclassification to M.L.R." On appeal to the Circuit Court this decision was affirmed by John E. Raine, Jr., Judge. (Misc. Docket No. 7, Folio 407, File No. 3063, dated June 22, 1965).

I am convinced that the M.H. reclassification sought is premature, improper and without justification at this time. I therefore must dissent from the majority decision and vote to deny the M.H. zoning requested, but to grant a Special Exception for Excavations, Controlled, on the 106.43 acre parcel as shown outlined on Petitioner's plat, Exhibit No. 1, subject to the following restrictions:

- The Special Exception for the quarrying operation will be allowed for a twenty-five (25) year period from the date of

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finality of this Order, or any appeal therefrom which may affirm this Order.

- All pertinent requirements of the Baltimore County Health Department Regulations and the Baltimore County Building Code shall be complied with.

- The site plan for the excavation of the subject property shall be subject to the prior approval of the Bureau of Land Development and the Office of Planning and Zoning.

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

John A. Slawik
John A. Slawik

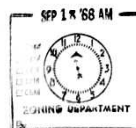
Dated: March 17, 1970

IN THE MATTER OF THE :
PETITION FOR RECLASSIFICATION :
FROM AN "R-6" ZONE TO AN :
"MH" ZONE - East Side of Big :
Falls Road - 1535.23 feet S. Hicks :
Road - 7th District - Blue Mount :
Corporation, Petitioner :
BEFORE THE :
ZONING COMMISSIONER :
OF BALTIMORE COUNTY :
No. 68 - 277 - R

ORDER FOR APPEAL BY ATTORNEY
FOR PROTESTANTS

Mr. Commissioner:

Please enter an appeal on behalf of the Protestants as per the attached list from your Order dated August 29, 1968.



John Bowe
JOHNSON BOWIE

Attorney for Protestants
22, W. Pennsylvania Avenue
Towson, Maryland 21204
283-6014

I HEREBY CERTIFY this 18 day of May, 1968,
that a copy of the foregoing Order for Appeal was mailed to Frederick E.
Waldrop, Masonic Building, Towson, Maryland 21204, Attorney for
Petitioner.

John Bowe
JOHNSON BOWIE
Attorney for Protestants

Description of Blue Mount

May 27, 1968

Beginning for the same at a point which is South 29° 17' 12" West 1535.23 feet from the intersection of the centerline of Big Falls Road and Hicks Road, thence for lines of division the fourteen following courses, viz: first South 60° 12' 42" East 136.38 feet, second South 70° 58' 38" East 61.35 feet, third South 89° 03' 11" East 295.04 feet, fourth North 60° 17' 33" East 442.33 feet, fifth North 72° 18' 33" East 608.79 feet, sixth South 86° 59' 14" East 190.20 feet, seventh South 64° 53' 07" East 176.71 feet, eighth South 41° 35' 01" East 180.82 feet, ninth South 25° 27' 48" East 232.59 feet, tenth South 1° 47' 24" East 190.38 feet, eleventh South 11° 04' 13" West 236.36 feet, twelfth South 42° 16' 31" West 165.85 feet, thirteenth South 55° 51' 51" West 356.41 feet, and fourteenth South 44° 26' 22" West 249.43 feet, thence binding on the outline of that parcel of land conveyed by The Arundel Corporation to Blue Mount Corporation by deed dated November 8, 1967 and recorded among the Land Records of Baltimore County in Liber O.T.G. 422 folio 24; the eight following courses, viz: first South 63° 44' 33" East 45.62 feet, second South 56° 30' 45" East 819.92 feet, third South 22° 00' 18" East 806.89 feet, fourth South 17° 14' 29" East 370.70 feet, fifth South 0° 14' 20" East 267.10 feet, sixth South 17° 43' 17" East 207.40 feet, seventh South 16° 36' 00" East 128.89 feet, and eighth South 77° 44' 19" West 109.36 feet; thence for a line of division South 77° 44' 19" West 60.72 feet; thence binding on the outline of the above heretofore mentioned deed the fifteen following courses, viz: first South 77° 44' 19" West 65.28 feet, second North 42° 45' 11" West 49.51 feet, third North 9° 03' 19" West 297.01 feet, fourth North 63° 03' 16" West 297.00 feet, fifth North 39° 23' 52" West 436.51 feet, sixth North 55° 03' 17" West 231.00 feet, seventh North 56° 03' 17" West 335.44

Description of Blue Mount

May 27, 1968

feet, eighth North 36° 33' 17" West 194.00 feet, ninth North 24° 18' 20" West 132.00 feet, tenth North 24° 18' 20" West 99.00 feet, eleventh North 24° 18' 20" West 306.83 feet, twelfth South 69° 14' 43" West 201.94 feet, thirteenth South 79° 14' 43" West 174.90 feet, fourteenth North 69° 45' 23" West 135.40 feet and fifteenth South 87° 14' 44" West 62.59 feet; thence for lines of division the eleven following courses, viz: first, North 37° 01' 26" West 368.88 feet, second North 73° 17' 09" West 347.89 feet, third North 53° 40' 23" West 211.01 feet, fourth North 17° 18' 31" West 223.20 feet, fifth North 7° 52' 59" East 196.86 feet, sixth North 15° 55' 43" East 298.48 feet, seventh North 40° 40' 40" East 164.13 feet, eighth North 64° 56' 51" East 177.12 feet, ninth North 32° 02' 19" West 112.02 feet, tenth North 17° 04' 10" West 88.01 feet and eleventh North 32° 41' 33" East 142.58 feet to the place of beginning.

Containing 106.43 Acres of land more or less.



AUG 24 1971

4443

Austin W. Brizendine
Francis N. Iglehart
Gordon G. Power, Jr.

LEWIS H. RICHENBERGER AND
DOROTHY C. RICHENBERGER
WM. HOLLAND WILMER, II and
LUCY W. P. WILMER
THE SALVATION ARMY
(Appellants)

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
(Appellees)

RE: PETITION FOR RECLASSIFICATION
from an R-6 zone to M.H.
zone, East Side of Big
Falls Road 1535-23' south
of Hicks Road, 7th District

BLUE MOUNT CORPORATION
Petitioner

(1) April 16, 1970- Protestant's
Order for Appeal from the decision
of the County Board of Appeals of
Baltimore County rec'd and fd.
App. of Austin W. Brizendine,
Francis N. Iglehart, and Gordon G.
Power for the Protestant's.

(2) April 17, 1970- Certificate of
Notice fd.

(3) April 24, 1970- Protestant's
Petition for Appeal fd.

(4) May 4, 1970 Answer from the
County Board of Appeals and
Transcript of Record fd.

(5) June 3, 1970- Appellants
Memorandum fd.

(6) June 5, 1970- Appearance of
Fred E. Waldrop for the Petitioner
Same day Petition to Intervene and
Order of Court granting same fd.
(KCP)

(7) June 18, 1970 Petitioner's
Petition for extension of time
to file Appellee's Memorandum
and Order of Court granting same
fd. (KCP)

(8) June 18, 1970 Petitioner's
Answer to Petition for Appeal fd.

(9) August 17, 1970 Appellees' Memorandum fd.

Continued To Docket 5 Folio 589

Ind. E. Hildy
S. Robert Evans

Record # 40.00

4443

GUNPOWDER YOUTH CAMPS, INC.
et al

THE BLUE MOUNT CORPORATION

FROM FOLIO 549

(10) Aug. 31, 1970 Upon review of all of the
exhibits and testimony in the within case
transmitted to the Court by the County
Board of Appeals of Baltimore County, review
of the memoranda filed by counsel to the
parties, argument thereon having been heard
in open Court on August 26, 1970, it is this
31st day of August, 1970 ORDERED that the
Order of the County Board of Appeals of
Baltimore County dated March 17, 1970
granting reclassification of certain portions of the property of the Blue
Mount Corporation, Petitioner, from R-6 to M.H. zoning be and it is hereby
reversed without modification, in view of the finding of this Court that there
was no substantial evidence of error in the original zoning of the subject
property and no evidence of a change in the character of the neighborhood,
the Court's oral Opinion to be transcribed and filed subsequent to the date
of this Order. fd. (KCP)

(11) September 24, 1970- Defendant's Order for appeal to the Court of Appeals
fd.

(12) Oct 14, 1970- Order of Court extending time for transmitting records fd.
(KCP)

(13) Oct. 29, 1970- Opinion from Judge Proctor fd.

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received and accepted for filing this
16th day of April, 1970.

JOHN G. ROSE
Zoning Commissioner

Reviewed by
Chairman of
Advisory Committee

APPEAL

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY

Towson, Maryland

2 SIDES.

District 7th

Posted for: Blue Mount Corporation

Location of property: R/S of Big Falls Rd. 1535-23' South of Hicks Road,

Location of Signs: (2) Posted on east side of Big Falls Road facing Big Falls Rd. Approx.
1535 Ft. So. of Hicks Road.

Remarks:

Posted by: MERL N. ROSE

Date of return: OCT. 10 1968

GUNPOWDER YOUTH CAMPS, et al

Appellants

VS.

THE BLUE MOUNT CORPORATION, et al

Petitioner

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

Misc. No. 4443

NOTICE OF APPEAL

MR. CLERK:

Please note an appeal to the Court of Appeals of Maryland on behalf
of the Appellee herein, the Blue Mount Corporation, from the judgment of this
Court dated August 31st, 1970, wherein this Court reversed the decision of the
County Board of Appeals of Baltimore County.

L. Robert Evans
Attorney for Petitioner
414 Jefferson Building
Towson, Maryland 21204
825-8465

I HEREBY CERTIFY, That on this 16th day of September, 1970, I mailed
a copy of the within Notice of Appeal to Austin W. Brizendine, Esquire, 22 W.
Pennsylvania Avenue, Towson, Maryland, 21204; Francis N. Iglehart, Esquire,
102 W. Pennsylvania Avenue, Towson, Maryland, 21204; and Gordon G. Power, Es-
quire, 21 W. Susquehanna Avenue, Towson, Maryland, 21204; attorneys for
Appellants.

L. Robert Evans

BLUE MOUNT CORPORATION

E/S of Big Falls Road 1535-23' S. of Hicks Road

Reclassification from R-6 to M.H.

7th District

106.463 acres

April 16, 1968 Petition filed

Aug. 29 Order of Zoning Commissioner: " * * * that the property be
reclassified from an R-6 zone to an M.H. zone, saving and
excepting all that portion of land west of Big Falls Road
which is outlined in red on attached plot, said plot being marked
Exhibit "A", attached to and made a part of this Order. * * * "

Sept. 18 Order of Appeal to County Board of Appeals

Mar. 17, 1970 Majority Opinion and Order of County Board of Appeals:
" * * * that the property be reclassified from an R-6 zone to an
M.H. zone, saving and excepting all that portion of land west
of Big Falls Road, and which is outlined in red on attached plot,
said plot being marked Petitioner's Exhibit #1, attached to and
made a part of this Order." (Reiter and Miller)

" 17 Dissenting Opinion filed by John A. Slowik

Apr. 16 Order for Appeal filed in the Circuit Court for Baltimore County

May 4 Record of proceedings filed in the Circuit Court

Aug. 31 Board of Appeal: Reversed (Proctor, J.)

Sept. 24 Order for Appeal to the Court of Appeals filed (Austin W. Brizendine, et al)

Sept. 22, 1971 Order to Dismiss Appeal filed by counsel and appeal DISMISSED

GUNPOWDER YOUTH CAMPS, INC.

P. O. Box 5870
Towson, Maryland 21204

ROBERT R. CHRISTY and
MARGARET CHRISTY
Big Falls Road
White Hall, Maryland 21161

JOHN L. MILLER and
DOROTHY MILLER
Hunter Hill Road
White Hall, Maryland 21161

LEWIS H. RICHENBERGER and
DOROTHY C. RICHENBERGER
Hunter Hill Road
White Hall, Maryland 21161

WM. HOLLAND WILMER, II and
LUCY W. P. WILMER
White Hall, Maryland 21161 and

THE SALVATION ARMY
2641 Maryland Avenue
Baltimore, Maryland 21218

Appellants

VS.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
County Office Building
Towson, Maryland 21204
Walter A. Reiter, Jr. and
John A. Miller constituting a
majority thereof

Appellees

RE: PETITION FOR RECLASSIFICATION
from an R-6 zone to M.H.
zone, East Side of Big
Falls Road 1535-23' south
of Hicks Road, 7th District

BLUE MOUNT CORPORATION
Petitioner

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

NOTICE OF APPEAL

MR. CLERK:

Please note an appeal by Gunpowder Youth Camps, Inc.,
Robert R. Christy and Margaret Christy, John L. Miller and Dorothy
Miller, Lewis H. Richenberger and Dorothy C. Richenberger, Wm.
Holland Wilmer, II and Lucy W. P. Wilmer, and The Salvation Army
from the Order of a majority of the County Board of Appeals of

Baltimore County dated March 17, 1970 granting reclassification
from R-6 zone to M.H. zone of certain property owned by the
Blue Mount Corporation on the east side of Big Falls Road as
is more particularly described in the aforementioned order.

Austin W. Brizendine
22 West Pennsylvania Avenue
Towson, Maryland 21204
Phone: 825-8445
Attorney for Gunpowder Youth Camps,
Inc., Appellant

Francis N. Iglehart
102 West Pennsylvania Avenue
Towson, Maryland 21204
Phone: 825-0711
Attorney for Mr. and Mrs. Robert R.
Christy, Mr. and Mrs. John L. Miller,
Mr. and Mrs. Lewis H. Richenberger,
and Mr. and Mrs. Wm. Holland Wilmer,
II, Appellants

Gordon G. Power
21 West Susquehanna Avenue
Towson, Maryland 21204
Phone: 825-1250
Attorney for The Salvation Army,
Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above Notice of Appeal
was personally served upon the County Board of Appeals for Baltimore
County this 16th day of April, 1970 and that a copy was mailed to
Fred E. Waldrop, Esquire, 202 Loyola Federal Building, Towson,
Maryland, 21204, Attorney for Blue Mount Corporation, petitioner.

Francis N. Iglehart

SERVICE ADMITTED this 16th day of April, 1970.

Ed. J. P. Smith
Secretary, County Board of
Appeals for Baltimore County

Delivered to
3/27/70

Law Offices
Baltimore, Maryland

INVOICE No. 55661 BAL MORE COUNTY, MARY AND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204 DATE: 5/4/70

To: Francis M. Light, Esq., 180 W. Pennsylvania Avenue, Towson, Md. 21204

County Board of Appeals (Zoning)

REPORT TO ACCOUNT NO. 01-422

QUANTITY: 1

Cost of certified documents - Blue Mount Corporation 1/3 of Big Falls Road 1535.23' 1/2 of Hicks Road, 7th District \$19.00

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

INVOICE No. 56250 BAL MORE COUNTY, MARY AND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204 DATE: 5/21/68

To: Cash

Advertising and posting of property for Blue Mount Corp. #68-277-R \$160.68

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

INVOICE No. 54333 BAL MORE COUNTY, MARY AND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204 DATE: April 30, 1968

To: Blue Mount Corp., 591 Beaver Run Road, Cockeysville, Md. 21030

County Board of Appeals (Zoning)

REPORT TO ACCOUNT NO. 01-422

QUANTITY: 1

Petition for Reclassification for Blue Mount Corp. #68-277-R \$50.00

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

CERTIFICATE OF PUBLICATION TOWSON, MD. MAY 2, 1968

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of one (1) successive week before the 22nd day of May, 1968, the first publication appearing on the 20th day of May.

THE JEFFERSONIAN, Manager.

Cost of Advertisement, \$.....

CERTIFICATE OF PUBLICATION TOWSON, MD. MAY 2, 1968

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of one (1) successive week before the 22nd day of May, 1968, the first publication appearing on the 20th day of May.

THE JEFFERSONIAN, Manager.

Cost of Advertisement, \$.....

INVOICE No. 56304 BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204 DATE: 5/24/68

To: Johnson Bowie, Esq., Loyola Federal Building, Towson, Md. 21204

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

REPORT TO ACCOUNT NO. 01-422

QUANTITY: 1

Cost of appeal - property of Blue Mt. Corp. \$70.00

No. 68-277-R 2 signs 10.00 \$80.00

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

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

TO: Mr. John G. Rose, Zoning Commissioner Date: May 10, 1968

FROM: George E. Gervelis, Director of Planning

SUBJECT: Petition #68-277-R. Reclassification from R-6 to M.H. East side of Big Falls Road 1535.23 feet south of Hicks Road. Being the property of Blue Mount Corporation.

7th District

HEARING: Wednesday, May 22, 1968 (2:00 P.M.)

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

1. In light of treatment afforded to quarries elsewhere in the County, wherein M.H. zoning was established or affirmed for such uses, the planning staff with some concern, would not be adverse to M.H. zoning here. However, buffer to project adjoining properties should be established, particularly at the easterly portion of the property where residence is set along Blue Mount Road by the Gunpowder River. Similarly, a clearly identified flood plain for the Gunpowder River should be established here so as to assure compatibility between uses of the quarry and the stream itself.

CERTIFICATE OF POSTING #68-277-R ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 7th

Date of Posting: July 26, 1968

Posted for: Heavy Wed. Aug. 14, 1968 @ 2:00 P.M.

Petitioner: Blue Mount Corp.

Location of property: E/S Big Falls Road 1535.23 S. of Hicks Road.

Location of Signs: (Blue Mount Corp. Big Falls Road approx. 1/2 mi. S. of Hicks Road)

Remarks: (None)

Posted by: (None)

Date of return: (None)

CERTIFICATE OF POSTING #68-277-R ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 7th

Date of Posting: May 24, 1968

Posted for: Heavy Wed. May 22, 1968 @ 2:00 P.M.

Petitioner: Blue Mount Corp.

Location of property: E/S Big Falls Road 1535.23 S. of Hicks Road.

Location of Signs: (Blue Mount Corp. Big Falls Road approx. 1/2 mi. S. of Hicks Road)

Remarks: (None)

Posted by: (None)

Date of return: (None)

INVOICE No. 56304 BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE Division of Collection and Receipts COURT HOUSE TOWSON, MARYLAND 21204 DATE: 5/24/68

To: Johnson Bowie, Esq., Loyola Federal Building, Towson, Md. 21204

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

REPORT TO ACCOUNT NO. 01-422

QUANTITY: 1

Cost of appeal - property of Blue Mt. Corp. \$70.00

No. 68-277-R 2 signs 10.00 \$80.00

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

1 GUNPOWDER YOUTH CAMPS, INC., IN THE CIRCUIT COURT
2 ET AL. FOR BALTIMORE COUNTY
3 vs. AT LAW
4 THE BLUE MOUNT CORPORATION, Misc. Case No. 4443
5 ET AL. Docket 8, Folio 549
6 64-217-12

7 August 28, 1970

8 BEFORE: HONORABLE KENNETH C. PROCTOR, JUDGE

9

10 APPEARANCES:

11 Austin W. Brisendine
12 on behalf of Gunpowder Youth Camps, Inc., Appellant
13 Francis M. Iglehart, Jr.
14 on behalf of Robert R. Christy, et al., Appellants
15 William F. Mowder
16 on behalf of Salvation Army, Appellant
17 L. Robert Evans
18 on behalf of The Blue Mount Corporation, Appellee

19 Reported by
20 Paul A. McNickle
21 Official Court Reporter
In the Circuit Court for Baltimore County

2

3 OPINION

4 THE COURT: As Judge O'Dunne in Baltimore City was
5 wont to say, his court was merely a way station to the
6 Court of Appeals. I suspect very strongly that's the
7 position of this Court in this case. Therefore, what I
8 have to say will have passing and temporary interest to
9 the parties, but will not be the final decision in this
10 case.

11 The law generally applicable to an appeal from an
12 administrative body, such as the County Board of Appeals,
13 in a zoning case, has been set forth time and time again
14 in a long list of decisions. One of these is a case re-
15 ferred to during the course of argument, Bonnie View
16 Country Club v. Glass, 242 Md. 46, at page 52, where the
17 Court of Appeals said: "A long line of decisions of this
18 Court has recognized that comprehensive zoning or rezoning
19 carries a strong presumption of correctness, and those who
20 attack the same bear a heavy burden in overcoming that pre-
21 sumption. It is also true that piecemeal rezoning granted
22 by the zoning authorities has a presumption of correctness,
23 although not so potent as the presumptions of comprehensive

3

4 zoning or rezoning. We have stated on so many occasions
5 that it is not the duty or the function of the courts to
6 zone or rezone, the statement has become trite. 'It is
7 only where there is no room for reasonable debate or where
8 the record is devoid of substantial, supporting facts that
9 the Courts are justified in reversing a decision of the
10 Board or declaring its actions arbitrary or capricious.'
11 Jobar v. Rodgers Forge, 236 Md. 106, 120." This was re-
12 iterated recently in Goucher College v. DeWolfe, 251 Md.
13 638, at 643 and 646; in Burkovich v. Doup, 258 Md. 263,
14 270; and also Crawwell v. Baltimore Aviation Service, Inc.,
15 257 Md. 712, 721. So that at the outset, it's clear that
16 this Court has no power to zone or rezone, no power to sit
17 as a zoning board or jury, that the Court must take the
18 record made before the County Board of Appeals, and that
19 record alone, in the light of the law applicable to the
20 case, and determine whether or not the evidence before the
21 Board on which its decision was based was so skimpy as to
22 amount only to a scintilla, or whether there was some sub-
23 stantial evidence before the Board justifying reclassification.

4

1 The only question presented to me in this case is,
2 was there an error or mistake in the original compre-
3 hensive zoning map for the area. As to what constitutes mis-
4 take or error, the Court of Appeals has discussed this on
5 several occasions. For example, in Hillier v. Abrams,
6 239 Md. 263, at page 266, the Court said: " * * * we are
7 not dealing with a matter of correcting a possible clerical
8 error, or establishing the motivating cause for the
9 Council's action, but with a matter of whether or not the
10 Council made a basic and actual 'mistake' as that term is
11 used in zoning law, at the time when it classified the
12 property as R-6. Therefore, no matter what reason prompt-
13 ed the Council's action, it was still incumbent upon the
14 petitioner, if he were to be successful, to meet the heavy
15 burden of establishing such a mistake in the classification
16 of his property." This quotation was cited with approval
17 in Burkovich v. Doup, (supra), p.271. Now that is the law
18 which is applicable to this case. The law is clear. How-
19 ever, many times application to a given set of facts is
20 not simple.

21 I have considered all the testimony in this case and

5

1 the exhibits, so that I can, in deciding this case, do so
2 upon the record which the Board of Appeals had before it.
3 One of the exhibits (Pet. Ex. No. 4) is a map which bears
4 this heading: Zoning District No. 7, Zoning Department,
5 Baltimore County, Use District Map, Seventh Election Dis-
6 trict of Baltimore County. Under such heading the follow-
7 ing legends are set forth: "A" Residence; "B" Residence;
8 "C" Residence; "D" Residence; "E" Commercial; "F" Indus-
9 trial; and Specials. Thereafter appears "See insets Nos.
10 1 to 9)." Finally in longhand: "Approved subject to re-
11 vision at hearing, John J. Timanus, Zoning Commissioner,
12 July 10, 1942." This map was prepared by Fred W. Hollenberg,
13 County Surveyor for Baltimore County, August 3, 1938. The
14 "insets" are of nine commercial zones and one industrial
15 zone (Federal Paper Board at White Hall) established on the
16 map for the district, and are enlargements of those areas
17 of the basic map, being on a scale of 200 feet to one inch,
18 whereas the basic map is on a scale of two inches to a mile.

19 The basic map shows that the Seventh District extends
20 from Finney Hill Road and Corbett Road on the south to the
21 Pennsylvania line on the north, from the Fifth and Sixth

6

1 Districts on the west to Harford County, and the Tenth Dis-
2 trict on the east. Other than the ten acres (nine commer-
3 cial and one light industrial, details of which are shown
4 by the insets), the entire district was zoned Residential.
5 The Court, I believe, can take judicial notice of the fact
6 that in 1942 when this map was promulgated, the Seventh
7 District was agricultural. It contained the towns of Har-
8 ford, Weisburg, Darkton, White Hall, and a few other cross-
9 roads, but was almost exclusively farming country at that
10 time. In July, 1942, I was still in the practice of law
11 (I hadn't gone into the service at that time), and I can
12 recall that everyone expected the area to remain country
13 for many many years.

14 The map shows piecemeal zoning in approximately
15 twelve or fifteen spots, maybe as many as twenty. Most of
16 these are in the vicinity of Harford, and a few are in other
17 places. It also shows one reclassification to light indus-
18 trial use, which bears the number 752, but does not show
19 what it is. However, I'm almost certain that is the prop-
20 erty which was operated as an industrial plant for a time
21 by Duncan Black, Jr., and is now operated by a company --

7

1 the name of which escapes me -- but owned by a man named
2 Thomas where he is manufacturing light bulbs. Other than
3 that and the Federal Paper Board property in White Hall,
4 there is no industrial zoning on the map of any kind.
5 The property itself was described by a number of
6 witnesses and their plats, including topographical plats.
7 The tract, reclassification of which is sought, consists
8 of 106 acres. It contains two quarry holes in excess of
9 300 feet deep. The testimony disclosed that, beginning in
10 1910 and extending down to 1964, the property was operated
11 as a stone quarry. Blue Mount stone became quite well
12 known, and was used as ballast for right-of-way railroads.
13 I venture to say that the entire railroad right-of-way of
14 the Northern Central Railroad from Baltimore to Harrisburg
15 is made up of Blue Mount stone. It is also used extensiv-
16 ly in the paving of roads; it's an unusually hard stone
17 and apparently serves its purpose well. The terrain other
18 than the quarry holes is very rough, precipitous in fact.
19 The actual operation of the quarry by the E. J. Baker Com-
20 pany ceased in 1964, and it was at or about that time that
21 the property was sold to the Arundel Corporation, which,

8

1 although it did not operate the quarry, did sell stockpiled
2 stone over a period of time. On November 8, 1967, the prop-
3 erty was purchased by Petitioner in this case.

4 Petitioner's testimony is substantially as follows.
5 Mr. George R. Moore, its President, testified that he was
6 in the construction business (apparently also in the scrap
7 metal business); that the company had purchased the property
8 initially with the idea that this could be used as a sani-
9 tary landfill; that such project had been abandoned because
10 of the strict requirements of the State Health Department,
11 and the apparently practical or economic inability of the
12 company to meet those standards; that they had the property
13 surveyed and determined that it had some seven million tons
14 of stone left in it; that they wanted to operate the quarry;
15 that they needed MH zoning in order to finance the purchase
16 of new equipment that was needed to operate the quarry.
17 That, in substance, is what I believe Mr. Moore had to say
18 about the subject.

19 Mr. Leonard J. Duerksen, who is a PhD in geology and
20 teaches at Franklin-Marshall College and is also a consul-
21 tant, made an in-depth survey of the property. His testi-

mony was limited to that survey, the quantity of stone, and that, if it was economically feasible to remove the stone, the property was a good quarry site.

Mr. Glynn M. Curry, a civil engineer still with the E. J. Baker Company, the former owner, testified substantially along the same lines as did Mr. Daersmith.

One other thing Mr. Moore testified to was that when he gave his testimony (May, 1969) there were fifty to sixty thousand tons of stone stockpiled on the property; that he had been selling it off over a period of eighteen months, and had sold approximately \$5,000.00 worth. This I translate into something less than five thousand tons, which means there is still a substantial quantity stockpiled on the site.

The other two witnesses that testified on behalf of Petitioner were Mr. John Hocheder, Jr., who is a professional land surveyor and civil engineer, registered in the State, and Mr. Frederick P. Klaus, who is a real estate broker and appraiser. The only part of their testimony which is pertinent on the question of error in the zoning is as follows: Mr. Hocheder, on page 52, was asked whether

or not the particular site was adaptable for R-6 residential purposes. His answer was: "Definitely not. The fact is, I even made some subdivision studies of parts of the property adjacent to the subject site, located on the north side of Big Falls Road, for eight lots averaging approximately an acre in size, and one larger three-acre lot."

On Pages 61 and 62, he was asked this question: "As a result of your studies you made with regard to the subject site, do you feel that the present zoning is erroneous?" There was an objection by Mr. Bowie, and it was overruled. His answer was, "Yes, yes. The only reason it is zoned R-6 is because the upper part of the county has never adopted on a modern land use map. Therefore it was all qualified as 'A' Residential use, the same as R-6 zoning. It hasn't been changed yet, and it is still in that classification. So therefore, because of the lack of utilities, it is erroneously zoned. It would be erroneously zoned for anything because of the grades." When asked what the highest and best use of the land was, he said for quarrying operation.

Mr. Klaus testified (page 65, in connection with the

offering of a photograph of the Federal Paper Board property at White Hall) that the property had been reclassified from R-6 to an M-L zone after this map was drawn in 1939. Mr. Klaus was obviously in error, because on the 1938 map it shows an original light industrial land both on the basic two inch to the mile plat and on Inset No. 8.

Incidentally, there's one comment I did not make about the plat and that is that, although dated July 1942, it couldn't have been approved and effective until January 2, 1945, when Baltimore County zoning went into effect. There was an abortive attempt at zoning earlier than that, sometime between 1942 and 1945, which was questioned in the courts and was struck down in an opinion by Judge Gresson in the Court of Appeals, sitting on the Court from this County.

On pages 87 and 88, the plat to which I referred (Pet. Ex. No. 4) was introduced, and also Pet. Ex. No. 5, which apparently is the Klaus copy of that plat.

On Page 91, Mr. Klaus was asked: "Now with regard to changes and reclassifications, have changes and reclassifications been acquired in this particular area?"

He then went into a dissertation which wasn't an answer to that question, but he did say on page 92: "The reason I took the picture is obvious, in that this area does have industry in the upper area of Baltimore County, which has been described as very rural. There are isolated places where there are industries. That is the only reason for the picture."

Further on page 92, he went on to say, " * * * and I have walked most of the property with one of the owners, that this property under no circumstances could be used for the development of R-6, R-10, C-20 or R-40. This is primarily due to the very evident topography, which is shown in the pictures I introduced to the Board."

On Page 93, he expressed his opinion that the highest and best use of this property would be, "a quarrying operation, and other related uses to a quarrying operation, which would be permitted in an M-H zone."

On Page 95, he testified that he checked other quarrying operations, that Campbell's was zoned M-H, that the Greenspring Quarry property was zoned M-H, that "I checked a quarrying operation way out Liberty Road, off a

side road, which is zoned M-H." Apparently he didn't know that this was another Campbell operation. That is where the Harriottville Quarry is located, and I know of no other quarry in that area. This testimony about those three places being zoned M-H was repeated under cross examination at page 116.

At page 96 he went again into the question to which Mr. Moore had gone into in his testimony, namely, that " * * * in obtaining financing for the buildings that were erected, one of the questions that was put to us always by the financial institutions, does this property have multiple uses; in other words, if the people who were to occupy the building went out of business, the institutions want to know if the property can be put to other uses. They were very reluctant to finance an operation that had one-shot purpose."

On page 97 he testified, "The property can lend itself and is easily adaptable to other uses within the M-H zone, and this is another reason why I feel that the request is a justifiable one, and would give this gentleman the right to use this property as the property is

usable for."

On page 100, Klaus said: "The processing of sand, for instance, is an example. Stone crushing and the processing of, - and, of course, a sanitary landfill. These are related uses that I feel would be another use to the property, in operation with the gravel operation, which is permitted in an M-H zone, and are not permitted as a special exception in an R-6 zone."

At page 110, Mr. Klaus said, "Well, it is in the woods. This is not the Bethlehem Steel Company operation, which is also M-H, by the way. This is an isolated piece of property, for which the only use is an M-H zone."

Now that's the testimony in this case bearing on the question of mistake or error.

How does this testimony meet the test of raising an issue over which reasonable minds might differ? The Court of Appeals has said on several occasions that the testimony of an expert is only as good as the reasons which he gives for his opinion. In Harvey v. Dough, (supra), p. 272, Judge Smith (quoting from Chief Judge Prescott in Miller v. Abraham, 279 Md. 263, 273) said this, "However, the pre-

vailing general rule, almost universally followed, is that an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant." (citing several cases).

What reasons have the various witnesses here given to justify their contention that there was an error in the original zoning? Mr. Hocheder's reasons are limited to his testimony that the property was not developed as R-6 land; but he went on to say that "it would be erroneously zoned for anything because of the grades." Klaus' reasons were, first, the same as Mr. Hocheder's, that you couldn't develop it for residential use; that the only use it did have was M-H. He said there were isolated places in the Seventh District where there were industries, those isolated places according to the map are limited to two, the Parkton light industry and the Federal Paper Board light industry in White Hall; that the highest and best use for the property was for quarrying; that other quarries were zoned M-H whereas this was not, and that the M-H zoning was necessary for financing.

Although the Court of Appeals said, in a case from

which I quoted earlier in the opinion, that it is not the responsibility of the Court to weigh and examine the reasons of the zoning authorities for the zoning classification on the comprehensive map, it is not realistic for me to point out that there were several things which the zoning authorities could have done with this property at the time the map was adopted. They could have looked upon it as a non-conforming use which eventually would work itself out (and that is a reasonable inference to be drawn from the fact it was classified "A" Residential on the map); or they could have zoned it specifically for an industrial use which would have permitted the quarry operation. There was no compelling reason for them to do either of those things. I merely point out there was a choice, and that the reasonable inference is that they exercised that choice. Now in exercising that choice, did they commit an error? We all know that many commercial and industrial uses do eventually work themselves out one way or the other. This is particularly true of quarry operations. Quarries are not inexhaustible; the sand, the gravel and stone eventually are worked (either the material is all excavated or it's not economically

feasible to remove any more). So that there would be justification for leaving the property as a non-conforming use.

Mr. Evans, in his argument, contended that the then use could not have been expanded more than twenty-five percent. First, I don't have this in the record before me; Mr. Evans would not let the Zoning Regulations come in, so that is only argument. More importantly, in Grassell v. Baltimore Aviation Service, (supra), Judge Hammond cited County Commissioners of Cecil County v. Phillips, 255 Md. 229, where it was held "that error in original zoning was not shown by failure to afford an industry extensive room to expand." So that being left a non-conforming use with a limited right to expand would not constitute error.

The testimony that it would be difficult to obtain financing is not what I would call truly expert testimony. Mr. Moore is a businessman, but not in the money lending business. Mr. Klaus is a real estate broker, but again not in a money lending business. There are many single purpose operations of which we are all aware which have no difficulty in obtaining financing, e.g., railroads, theaters, and distilleries. In any event, the objective

of zoning is not to provide a land use whereby one can increase one's worldly goods; nor is it a jumping off point so as to enable the obtaining of financing which could not otherwise be obtained. The objective of zoning is to provide an overall comprehensive plan for growth in an area. Whether or not rezoning would make it easier for Petitioner to obtain financing of new equipment is not a valid basis for rezoning; nor is it a valid basis for claiming that there was error in the original map. E. J. Baker Company successfully and profitably operated a quarry for almost twenty years after the adoption of the map without benefit of M-H zoning.

Next is the contention that the property could not be developed for residential purposes. Does that constitute error? The only case which is applicable in that respect is Bonnie View Country Club v. Glass, 242 Md. 46, 52, where error was found by the Board, sustained by the Circuit Court, and affirmed by the Court of Appeals. However, the Court in that case was very careful to point out that, "bearing in mind the above principles, we feel impelled to find that the conclusion reached by the Board relative to original error

was fairly debatable. We shall not repeat all the details testified to by applicant's experts as to why the original zoning was in error. The extraordinary situation existing in 1957 (the time of comprehensive zoning or rezoning) caused by the generally unknown mine shafts and subsurface rock formations, when coupled with the topography making the property unusually unfit for single-family residential development, render that conclusion such that reasoning minds could reasonably have reached the result the agency reached upon a fair consideration of the fact picture painted by the entire record." (Emphasis supplied). I'm convinced that the key fact there was this existence of a number of mine shafts unknown to anyone at the time the zoning map was adopted. See Zoning Board of Howard County v. Kanode, 258 Md. 586, where rezoning was denied although one of the primary arguments for reclassification was that the topography of the land prevented development for what in Howard County is known as R-12 classification. In other words, although in Bonnie View Country Club v. Glass, (supra), there was this topographical problem, I'm convinced that, if that had been the only peg on which Dr. Glass could

hang his hat and if he had not had the unknown mine shafts, he would not have been granted reclassification. The mere fact that the property can not be used for residential purposes does not, in and of itself, constitute error. This is not a case of a property which can be used for one thing and nothing else, and a particular zoning classification is required for that use. This property historically has been a stone quarry. It is still a stone quarry. The proposal is to operate it as a stone quarry. All of that can be done with a special exception under the present regulations which, in my judgment, is required in any event in order to really operate a quarry business, because they cannot blast without obtaining a special exception, and you cannot operate a quarry over any extended period of time without blasting. So that the property is susceptible to the very use to which it has been put ever since 1910, without any change in the zoning.

Finally, the argument is made that this is industrially different from other quarry properties. The testimony is to the effect -- and as far as I know it's absolutely accurate -- that the Harry T. Campbell Sons' property at

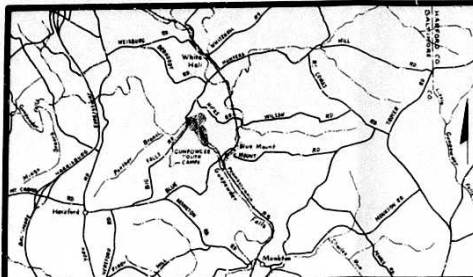
Texas, the Arundel property on Green Spring Avenue, and the Harry T. Campbell Sons' property at Marriottsville are all three zoned M-H. On the other hand, the Dyer property located on Berg's Lane and Nicodemus Road in the Fourth Election District, is not only not zoned M-H, but a request for M-H zoning was rejected by the County Board of Appeals on July 3, 1969, just about the time that this application was granted. It should be noted that in the Dyer case there was a special exception granted for the operation of a controlled excavation, and so far as I know the Dyer property is still being operated under that special exception. Contention is made that the Dyer property was different from the present property. There is nothing in the record to show there is any difference. So that you have on July 3, 1969, the Board refusing M-H zoning for the Dyer property, and on March 17, 1970, you have the Board granting M-H classification for this property. The Court of Appeals in the Surkovich case, (supra), p. 275, said: "For the Board of Appeals 'to blow hot and blow cold' as it has done in Arundel supra, and this case on basically the same facts on properties lying alongside of each other, we hold to be

arbitrary and capricious conduct." It is true that the Dyer property and the subject property are miles apart, but, in my judgment, that does not invalidate the analogy. Both are stone quarries; both have been operated for years as quarries -- Dyer since 1925, the subject property since 1910; both are in rural areas, and housing is sparse so far as the immediately adjoining properties are concerned. There is no evidence in the record as to whether the Dyer property is as precipitous as the subject property, but I don't think that makes any difference. To zone this property M-H would place a heavy industrial zone in an area which in theory and in fact is rural, a zone in which not only the quarry operation could be conducted, but also the many other uses specified in Zoning Regulations Sections 256.1 and 256.2. It is true, as contended by Mr. Evans, that spot zoning is not necessarily illegal, providing it serves the public purpose and blends in with the community. This is not that kind of case. This is the kind of spot zoning which the law frowns on. The decision of the County Board of Appeals will be reversed.

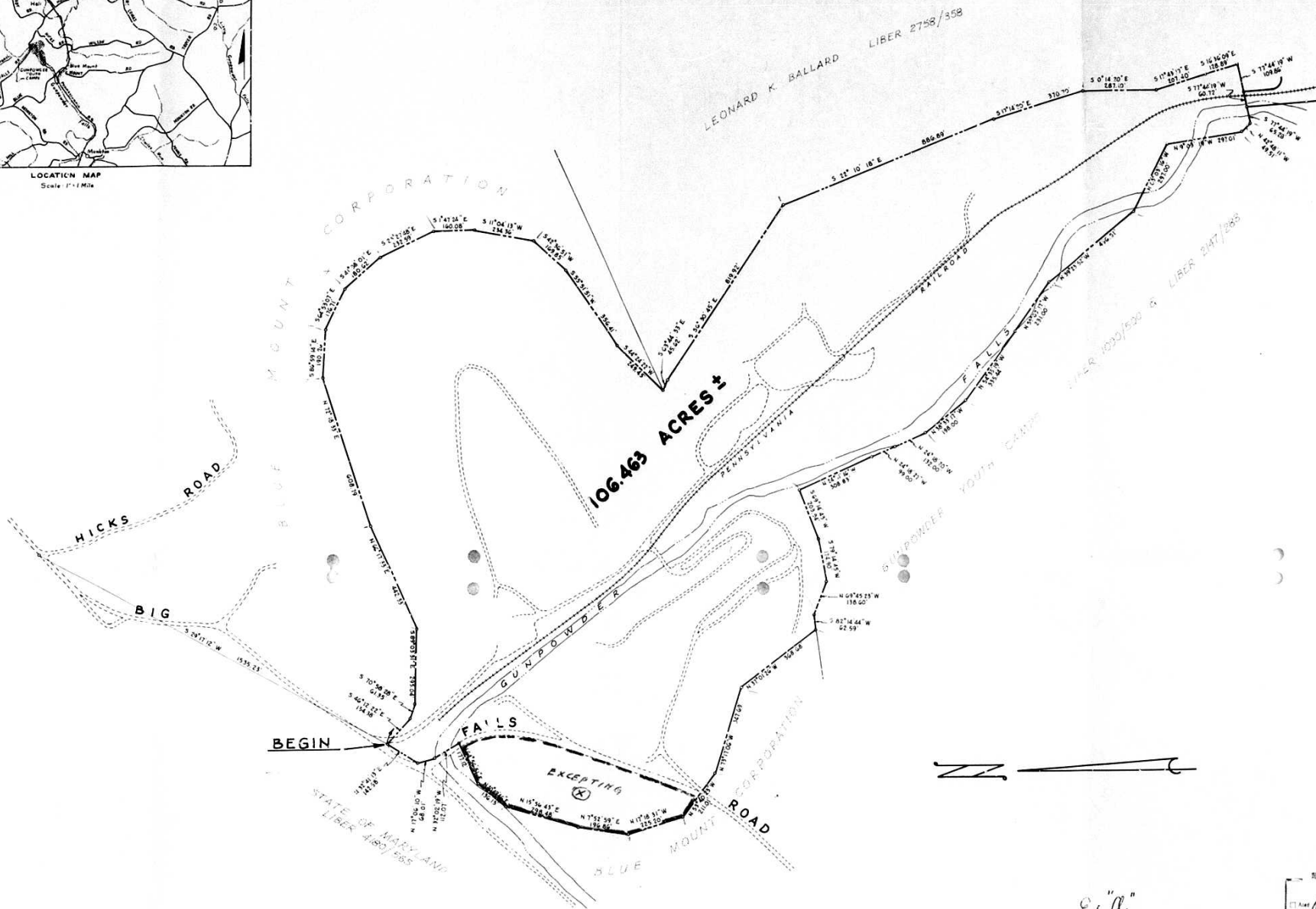
Mr. Iglehart, you prepare the necessary Order and

I'll sign it.

JUDGE



LOCATION MAP
Scale 1"=1 Mile



PREPARED BY
GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
CONSULTING ENGINEERS AND LAND SURVEYORS
303 ALLEGHENY AVENUE
TOWSON, MARYLAND



PLAT TO ACCOMPANY ZONING PETITION
BLUE MOUNT CORPORATION

BALTIMORE COUNTY, MARYLAND

ELECTION DIST. NO. 7
MAY 27, 1968

LOCATION MAP ADDED AUGUST 28, 1968

