

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, Virginia Goeller Nance, 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 D.R. 5.5 zone to an D.R. 16 zone; for the following reasons:

See attached memorandum.

See attached description

ORDER REVIEWED FOR FILING
DATE 11/19/71 BY 30666/2000

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property, for multiple family dwellings under D.R. 16 density classification.

Property is to be posted and advertised as provided 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.

DATE 11/19/71 BY 30666/2000
Contract purchaser: Virginia Goeller Nance
Address: 324 Taplow Road
Baltimore, Md. 21212

Herbert R. O'Connor, Jr.
Address: 1218 One Charles Center
Baltimore, Maryland 21201

ORDERED By The Zoning Commissioner of Baltimore County, this 27th day of July, 1971, 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 the public hearing be held before the Zoning Commissioner of Baltimore County in Room 136, County Office Building in Towson, Baltimore County, on the 2nd day of September, 1971, at 10:00 o'clock

John W. Menchline
Zoning Commissioner of Baltimore County.

(over)

VIRGINIA GOELLER NANCE # IN THE CIRCUIT COURT
Petitioner # FOR BALTIMORE COUNTY
vs. # IN EQUITY
BALTIMORE COUNTY # Case No. 74096/96/487
Respondent #

ORDER

This action having come on for hearing on Plaintiffs' Motion For Summary Judgment on their Petition For Declaratory Judgment and counsel having been heard, it is this 6th day of July, 1971,

ORDERED, by the Court, for the reasons set forth in its opinion given in open Court on July 2, 1973:

1. That as to the Plaintiffs' property involved in these proceedings (hereinafter referred to as "the property"), the action of the County Council of March 24, 1973 was in violation of the provisions of Section 22-21(b) of the Baltimore County Code and such action did not lawfully amend or change the recommendation of the Planning Board as to the property and therefore this Court declares that the property as described in Plaintiffs' Petition by a metes and bounds description containing a net area of 4.83 acres, more or less, shall continue to have the zoning classification DR16 which it had prior to the County Council's action of March 24, 1971, which action, insofar as the property is concerned, has by this Court been declared null and void.

2. That the Director of Planning and Zoning of Baltimore County shall, promptly following the date of this Order, obtain the zoning map governing the property from its custodian, the Zoning Commissioner of Baltimore County and, shall alter thereon

ORDER IN EQUITY CASE - 11/1/73 - PET. OF NANCE DIS. V. ZONING COMMISSIONER IN C.C.

the zoning classification thereon for the property to DR16. Following the alteration above declared and ordered the Director of Planning and Zoning of Baltimore County shall promptly return the zoning map, as so altered and changed, to the possession of the Zoning Commissioner of Baltimore County as the then effective zoning map of Baltimore County.

13/11/71 M. J. G. JUDGE

RE: PETITION FOR RECLASSIFICATION : BEFORE
from D.R. 5.5 to D.R. 16 : COUNTY BOARD OF APPEALS
N. & S. sides of Virginia Ave. :
between Marie & Helena Avenues : OF
15th District - Eastern Sector :
Virginia Goeller Nance, : BALTIMORE COUNTY
Petitioner : No. 72-45-R

OPINION

This case comes before the Board on an appeal by the Protestants from that part of an Order from the Zoning Commissioner, dated November 10, 1971, which granted a reclassification from D.R. 5.5 to D.R. 16 on 5.16 acres of the subject property, located on the south side of Virginia Avenue between Marie and Helena Avenues, in the Fifteenth Election District of Baltimore County (Essex), Maryland. No cross appeal was taken by the Petitioner from the same Order wherein the Zoning Commissioner denied the requested reclassification from D.R. 5.5 to D.R. 16 for the remaining 1.25 acres of the Petitioner's property located on the north side of Virginia Avenue. Therefore, the Zoning Commissioner's Order is final on the 1.25 acre portion, and the Board will decide only on the 5.16 acre issue that was appealed. Precedent for such procedure for the Board to hear only the appealed issue de novo and not the entire petition is found in Dahl v. Baylus, 298 Md. 157.

At the outset of the instant hearing the Petitioner made a preliminary motion to have the appeal dismissed on the grounds that the application for appeal was not timely perfected due to late payment of part of the filing fees. The time for filing an appeal was up on December 10, 1971, and the application met this deadline by being filed the day before with a \$35 filing fee and accompanied by a request from the Appellants that they be billed if the filing fee paid therein was incorrect. The correct fee was \$90, and the corrected payment was made December 27, 1971. In the interim, the Zoning Commissioner had advised the Petitioner by letter on December 15, 1971, Petitioner's Exhibit #6, that the case had been appealed. The Board is of the opinion that in making payment in this manner, the Appellants complied with the spirit and intent of Section 500.10 of the Baltimore County Zoning Regulations and, therefore, denied the motion to dismiss the

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appeal.

By way of Memorandum and written argument, counsel for Petitioner submitted letters to the Board subsequent to the hearing contending that the statutory requirement of giving twenty days' notice of a public hearing in two newspapers was not complied with (Section 22-21 of the Baltimore County Code) insofar as the Plaintiffs are concerned. He then cites that the Jeffersonian newspaper on February 11, 1971, did in fact carry such a notice, which was timely advertised before the March 4, 1971 public hearing.

The Board finds that other timely notices of the public hearing appeared in many local newspapers; such as, the News American, Morning and Evening Sun, Catholic Review, Afro-American and others. The Board, therefore, holds that counsel's argument of improper publication is not valid.

Another point of testimony reviewed by counsel in his written Memorandum and argument is that there were three different Logs of Issues circulated before the County Council adopted the zoning map; that none of these contained a statement in Issue E 46, which included the subject property, and that the map in the Planning Department is ambiguous, at least in light of the words used in the statement of this issue.

In refuting this argument, the Board will rely on the evidence presented in Petitioner's Exhibits #8 and #9 that a public hearing was held regarding the subject property, and will further rely on Circuit Court case Nottingham Village, Inc. and The Rouse Company v. Baltimore County, Maryland, in Equity, #93/82/70076, where the Court, in a Memorandum by W. Albert Menchline, Judge, said: "There is nothing in the statute requiring notice of a precise suggestion or change by the Council." Judge Menchline continues that in Hewitt v. Baltimore County, 230 Md. 48, 57: "We do not think the statutory language (as to notice) could be construed as requiring the County Commissioner to state in advance (what they could hardly know) the exact nature of any action which they might take with regard to matters brought to their attention at the contemplated hearing. . . ."

In the course of the hearing, testimony revealed that the subject 5.16 acres is located in an area just southwardly of the Back River Bridge and south of Eastern Boulevard. It has 591 feet of shore line along the tidewaters of Back River and

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fronts approximately 845 feet along the south side of Virginia Avenue (see plat Petitioner's Exhibit #3). The property is relatively cleared, unimproved land at grade with the street, where it is approximately 15 feet above sea level and slopes down to approximately 3 feet elevation along the river bank. The contiguous properties to the north and east are zoned D.R. 5.5 and generally improved with single family cottages, except that the aforementioned 1.25 acre tract is vacant land. The property to the west is zoned B.L., and north of that is B.R. land extending along the river to Eastern Boulevard. This B.L.-B.R. area is used as an automobile junk yard owned by the Petitioner's family, a public bingo hall and three cottages.

Zoning for the subject property prior to the adoption of the present zoning map was R-A (residential apartments), which permitted a density of 16 dwelling units per acre. The property was downshifted in zoning classification to D.R. 5.5 (dense residential 5.5 dwelling units per acre) by action of the Baltimore County Council upon its adoption of the current comprehensive zoning map on March 24, 1971. Petitioner claims that such downshifting by the County Council was, in the legal sense, arbitrary, discriminatory, capricious and constituted error.

To support such claim, the Petitioner produced testimony from Mr. Gavrellis, Director of Planning for Baltimore County, that the Baltimore County Planning Board had recommended to the County Council that the subject be designated D.R. 16 zoning on the proposed zoning map prior to its adoption. After the adoption of the map, they repeated the same recommendation in their written comments to the Zoning Commissioner, made, as required by law, in preparation for the Zoning Commissioner's hearings in the first zoning cycle (see Petitioner's Exhibit #1). Mr. Gavrellis stated that the site does lend itself to apartment house construction; that the Baltimore County Department of Traffic Engineering had, in their written comments (Petitioner's Exhibit #2), stated that automobile trip densities generated by the proposed reclassification would be increased from 320 trips under the existing D.R. 5.5 zoning to 760 trips under the proposed D.R. 16 zoning, but that this in itself would create no major traffic problems; that school needs

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were considered; that utilities are available, and that the subject was the only parcel downshifted where a site building plan had been filed and approval given by the County to execute a Public Works Agreement (see Petitioner's Exhibit #7). He acknowledged that the latter fact was one of the factors that influenced the Planning Board to recommend the D.R. 16 classification. Such reasoning, however, has not had the support of the Courts as pointed out in the Maryland Court of Appeals case George L. Carey v. Baltimore County, Maryland 262 Md. 491 where, in an opinion dated June 4, 1971, the Court, by Judge Finan, said: "We would observe, however, that even in those cases wherein the property owner has sought injunctive relief predicated on his acquisition of a vested right in a building permit, which has later been revoked or the work stopped through the intervention of municipal authorities because of a change in zoning or mistake in issuance of the permit, this Court has been reluctant to allow relief even where substantial sums have been spent on architectural fees and site preparation. . . . This was followed by citations of eight court cases.

Another factor influencing the Planning Board was the proposed development of Riverside Drive as a major collector street, as noted in the comments (Petitioner's Exhibit #1). However, we note from the testimony that there exists no reasonable probability of the fruition of such road development in the near future and, therefore, is given limited weight.

The Petitioner's realtor-appraiser expert witness testified that while the subject property never had been offered for sale for development of cottages, it was his opinion that such houses would not be marketable because of the close proximity to a junk yard and to the Back River sewage treatment plant across the river. However, he acknowledged that cottages, subject to these same locational and environmental factors and ranging in value from \$18,000 to \$30,000, have been built in the contiguous area. He further acknowledged, in reply to questions from the Board, that the site could be economically developed with townhouse apartments under the existing D.R. 5.5 zoning classification.

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Several of the Protestants, present at the hearing without benefit of being represented by counsel, testified in opposition to granting the reclassification. The main points of their protests were: The probable increase in traffic which would overburden an existing congested traffic condition; increased density of population in an area already lacking in open space and play areas, and a fear of overcrowding the schools. One Protestant testified that in 1970 he purchased a small lot for \$4,500, which is located two lots east of the subject, and built thereon a fine new brick house. The value of his property is in the \$35,000 to \$40,000 range. This challenges to some extent the Petitioner's theory that cottages would not be marketable on the subject site.

The Petitioner, after testifying that sewer and water utilities are available, was unable to satisfy the Board's questions on capacities and pressures of these utilities. The Protestants in turn impressed the Board with their uncontradicted testimony that the nearby sewer pumping station on Riverside Drive is frequently overloaded, and it is not uncommon to observe an overflow of raw sewage diverted into the river.

There was further testimony that approximately 300 community residents had a meeting with two of the County Councilmen in February, 1971, prior to the adoption of the new zoning map then being considered for zoning review, and specifically requested the downshifting in zoning of the subject and other contiguous tracts. Following this meeting, the County Council held a public hearing on March 4, 1971, and in their Log of Issues included the subject property in their discussions of Item E 46 and ultimately downshifted the subject to D.R. 5.5 (see Petitioner's Exhibits #8 and #9).

The Board is of the opinion that the subject property was properly before the County Council at the required public hearing before being decided upon. Furthermore, the Court has held that the recommendations of the Planning Board are not controlling upon action by the County Council. The County Council seemed well informed of the subject issue and apparently, in their wisdom, decided that downshifting the subject from D.R. 16 to D.R. 5.5 was in the best interest of the general welfare. The Board can find no compelling testimony or evidence that the County Council erred in their decision, and hereby finds that the Petitioner has failed to overcome the burden of proving that the

County Council, in fact, erred in placing such classification on the subject property upon adopting the zoning map on March 24, 1971.

While recognizing that the property has been downshifted possibly to the misfortune of the Petitioner, the Board feels compelled to rely upon the Court where it said in *McBee v. Baltimore County*, 221 Md. 312, Pg. 317: "When such new map is adopted it is entitled to the same presumption that it is correct as in an original zoning." A'o, see *Somerset v. County Council*, 229 Md. 42, at Pg. 48, reaffirming the presumption of correctness in comprehensive rezoning.

Therefore, for these reasons and from all the testimony and evidence presented, the Board hereby affirms the action of the County Council, reverses the Order of the Zoning Commissioner dated November 10, 1971, and denies the petitioned reclassification from D.R. 5.5 to D.R. 16 on the subject 5.16 acre parcel of land.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 26th day of April, 1972, by the County Board of Appeals, ORDERED that the reclassification from D.R. 5.5 to D.R. 16 on the 5.16 acres of the subject property petitioned for, be and the same is hereby DENIED.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John A. Slawik, Chairman

Walter A. Keller, Jr.

John A. Miller

ORDER RECEIVED FOR FILING
DATE 4/27/72
BY J. J. H. H. H.

RE: PETITION FOR RECLASSIFICATION
CAYTON
N/S and S/S of Virginia Avenue between Marie Avenue and Helena Avenue - 15th District
Virginia G. Nance - Petitioner
NO. 72-45-R (Item No. 21)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

The Petitioner requests a Reclassification from a D.R.5.5 Zone to a D.R.16 Zone for a parcel of property located on the north side and south side of Virginia Avenue between Marie Avenue and Helena Avenue, in the Fifteenth District of Baltimore County, and consisting of 6.41 acres of land, more or less.

Testimony on behalf of the Petitioner indicated that the subject property was zoned R.A. by Petition in 1966, and, subsequent thereto, under the adoption of the Comprehensive Zoning Map in March 1971, the property was "downshifted" and reclassified as a D.R.5.5 Zone. Prior to the adoption of the Comprehensive Zoning Map by the Baltimore County Council, the Planning Board recommended D.R.16 for this whole tract of land.

The subject tract is divided by Virginia Avenue, a thirty-six (36') foot paved street.

Mr. Benedict Frederick, Jr., a qualified real estate appraiser, testified that he felt the Baltimore County Council was in error in zoning this property due to the fact that it abuts Back River to the south, with the sewage disposal plant across the river from the property, and property used as a junk yard, zoned B.L. and B.R., to the west. He further testified that it was not likely that this property would be developed into individual homes due to these factors. Furthermore, in support of the Petitioner's allegation of error, it was stated that "downshifting" of not only this property but several other properties in the area was caused by the concern of the Baltimore County Council of too much high density zoning for this area and was not aimed at this specific tract of land.

Residents of the area, in protest of the subject Petition, testified that much traffic is generated in this area as a shortcut off of Eastern Boulevard to go southeast of Essex in order to avoid congested Eastern Boulevard. Furthermore, there was a general consensus of opinion among the Protestants that the granting of this D.R.16 Zone, which is to be developed as apartments, would overburden the schools and would be detrimental to their health, safety and general welfare.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the judgment of the Zoning Commissioner, the Baltimore County Council erred in placing the property to the south of Virginia Avenue and abutting Back River into a D.R.5.5 Zone. Its close proximity to B.R., directly across from the sewage disposal plant, and its contiguous boundary with the commercial zoning to the west does not make this portion of the subject property conducive to individual home development.

As for the property to the north of Virginia Avenue, consisting of 1.25 acres, the Baltimore County Council was not in error in that this property is contiguous to individual homes along Eugene, Goeller and Helena Avenues. This would be an adequate buffer between these residences and the property to the south of Virginia Avenue, consisting of 5.16 acres of land. Furthermore, the granting of this full parcel, as petitioned for, would be detrimental to the health and safety of the community as it would increase traffic beyond the capabilities of the surrounding road network.

For the foregoing reasons, it is ORDERED by the Zoning Commissioner of Baltimore County this 10th day of November, 1971, that the property south of Virginia Avenue, consisting of 5.16 acres of land, should be and the same is hereby reclassified from a D.R.5.5 Zone to a D.R.16 Zone, from and after the date of this Order, subject to the approval of the site plan by the Bureau of Public Services and the Office of Planning and Zoning.

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Zoning Commissioner of
Baltimore County

It is further ORDERED that the property to the north of Virginia Avenue, consisting of 1.25 acres of land, be and the same is hereby DENIED and that the property or area be and the same is hereby continued as and to remain a D.R.5.5 Zone.

DATE 4/27/72
BY J. J. H. H. H.

VIRGINIA GOELLER NANCE
12 Over Ridge Court
Baltimore, Maryland 21210

Petitioner

BALTIMORE COUNTY
County Office Building
Towson, Maryland 21204

Respondent

Serve On: County Solicitor
County Office Building
Towson, Maryland 21204

IN THE
CIRCUIT COURT
FOR SEP 1972
BALTIMORE COUNTY
OFFICE OF LAW

IN EQUITY

96/487/74086

PETITION FOR DECLARATORY JUDGMENT

Petitioner, Virginia Goeller Nance, by Herbert R. O'Connor, Jr., her attorney, brings this Petition For Declaratory Judgment against Respondent Baltimore County and respectfully represents:

1. Petitioner, with others, is the owner in fee simple of the following described property located in the fifteenth election district of Baltimore County.

BEGINNING for the same on the southeast side of Virginia Avenue, 60 feet wide, at a point distant 28.00 feet measured northeasterly along said southeast side of Virginia Avenue from its intersection with the southwest side of Marie Avenue, 50 feet wide, thence leaving said place of beginning and running thru the bed of Virginia Avenue (1) North 12 degrees 00 minutes West 66 feet, more or less, to the northwest side of Virginia Avenue, thence leaving Virginia Avenue and running the 3 following courses and distances, viz: (2) North 53 degrees 47 minutes 21 seconds East 120.13 feet, (3) North 36 degrees 12 minutes 39 seconds West 45.00 feet and (4) North 53 degrees 47 minutes 21 seconds East 117.50 feet to the southwest side of Eugene Avenue, 50 feet wide, thence running thru the bed of Eugene Avenue (5) North 48 degrees 00 minutes East 50 feet, more or less, to the northeast side of said Eugene Avenue, thence leaving Eugene Avenue and running the 3 following courses and distances, viz: (6) North 53 degrees 47 minutes 21 seconds East in part thru the bed of Goeller Avenue, in all, 402.50 feet, (7) South 36 degrees 12 minutes 39 seconds East 125.00 feet and (8) North 53 degrees 47 minutes 21 seconds East 115.02 feet to the northwest side of Virginia Avenue, thence running thru the bed of said Virginia Avenue (9) South 43 degrees 15 minutes East 78 feet, more or less, to the southeast side of Virginia Avenue, thence leaving said Virginia Avenue (10) South 16 degrees 41 minutes 46 seconds West 363 feet to the waters of Back River, thence running with and harking on said waters of Back River (11) Southeasterly

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101 feet, more or less, thence leaving said Back River and running (12) North 36 degrees 12 minutes 39 seconds West 172 feet, more or less, to the place of beginning.

Saving and excepting from the above described parcel all of the land located in the beds of Virginia Avenue, Eugene Avenue and Goeller Avenue.

Containing a net area of 4.83 acres, more or less.

2. In 1966 the property was zoned R.A., the then existing classification comparable to D.R. 16, which permitted construction of apartment units on the property.

3. In reliance upon said zoning, a contract of sale was entered into between the owners of the property and a certain purchaser, for the purpose of developing the property by the construction of apartment units thereon.

4. In connection with the proposed adoption of new zoning maps in 1971 by the Baltimore County Council, various recommendations were made by the Baltimore County Planning Board pursuant to Section 22-20 of The Baltimore County Code. The recommendation made with respect to the subject property was that the existing RA zoning be converted to D.R. 16, a comparable classification also permitting the construction of apartment units.

5. Section 22-21 of the Baltimore County Code provides as follows:

"Action by county council on adoption of zoning regulations and zoning maps

(a) After the county council has received a final report of the planning board recommending adoption of any zoning regulations or zoning maps, the county council shall hold one or more public hearings thereon, giving at least twenty days' notice thereof in at least two newspapers of general circulation in the county. During such twenty-day period, the final report of the planning board with accompanying maps and supporting exhibits, if any, together with any minority report and maps from any dissenting members of the planning board shall be shown and exhibited in the county office building, in each councilmanic district and at such other public place as the county council may designate for public inspection.

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After the expiration of such period of notice, and following the public hearing or hearings, the county council may by an ordinance adopt such regulations or maps subject, however, to such changes or amendments therein as the county council may deem appropriate.

"(b) Any change or amendment to be made in a zoning map as proposed by the planning board shall, before final adoption of such map, be brought to further public hearing, advertised and held in the same manner as provided above in subsection (a). If further changes or amendments to such map shall then be proposed in the county council, a final public hearing, limited to such further changes or amendments, shall be advertised and held in the same manner as provided above before final action on such map is taken by the county council.

"(c) Each change or amendment to be made in a zoning map as proposed by the planning board shall be voted upon individually by the county council, and each vote thereon shall be recorded in the council minutes. (Balto. Co. Code, 1968, sec. 22-21. Bill No. 80, 1960; No. 72, 1969, sec. 2; No. 103, 1970, sec. 1.)"

6. The zoning map covering the subject property, as referred to in Section 22-21 of the Baltimore County Code, did not show any contemplated change or "down-shifting" of zoning on said property.

7. A copy of the Baltimore County Council Log of Issues and Recommendations is attached hereto as Exhibit A. Issue E-16 relates to property described as follows:

"SW/S Riverside Dr. from
Delaware Ave. to Cox's Point Park"

Said description does not include the subject property owned by Petitioner.

8. By an attempted amendment on March 4, 1971, Issue E-46 was enlarged to include the subject property. Pursuant thereto on March 24, 1971 the County Council changed the classification of the property to D.R. 5.5.

9. This action of the County Council was taken in direct violation of Section 22-21 of the County Code in that the public hearing and advertised notice relative to the change or amendment to the zoning map as proposed by the Planning Board were not held and given respectively. The action of the County Council was

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therefore illegal and a nullity.

10. As a result of the illegal act of the County Council as aforesaid, Petitioner was deprived of a valuable property right without due process of law and said act therefore was in violation of the 14th amendment to the United States Constitution and of Article 23 of the Declaration of Rights.

11. Because of the action taken by the County Council in violation of Section 20-21 of the Code, a reclassification of Petitioner's property was attempted without any notice of the same given to the property owners, which additionally violated Petitioner's right of due process.

12. The attempted reclassification of the subject property would restrict the property to uses to which it is not reasonably adaptable, and amounts to a taking of Petitioner's property without due compensation.

WHEREFORE, Petitioner prays this Honorable Court

1. Declare the attempted reclassification of Petitioner's property from DR 16 to DR 5.5 to be illegal, unconstitutional and of no effect.

2. Declare that the proper and correct classification of the property is D.R. 16, and order the zoning maps be altered to show such correct classification.

3. Grant such other relief as may be proper.

Herbert R. O'Connor, Jr.

Francis X. Pugh

Attorneys for the Petitioner
1218 One Charles Center
Baltimore, Maryland 21204

RE: PETITION FOR RECLASSIFICATION
from D.R. 5.5 to D.R. 16
N. & S/S Virginia Avenue,
between Marie and
Helena Avenues,
15th District - Eastern Sector
Virginia Goeller Nance,
Petitioner-Appellant
Zoning File No. 72-45-R
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 9
Folio No. 188
File No. 4622

ANSWER TO ORDER OF APPEAL TO CIRCUIT
COURT FOR BALTIMORE COUNTY AND
CERTIFIED COPIES OF PROCEEDINGS BEFORE
THE ZONING COMMISSIONER AND BOARD
OF APPEALS OF BALTIMORE COUNTY

MR. CLERK:

Please file, & c.

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

cc: Herbert R. O'Connor, Jr., Esq.
Mrs. James I. Helmcomp, et al
Zoning

RE: PETITION FOR RECLASSIFICATION
from D.R. 5.5 to D.R. 16
N. & S/S Virginia Avenue,
between Marie and
Helena Avenues,
15th District - Eastern Sector
Virginia Goeller Nance,
Petitioner-Appellant
Zoning File No. 72-45-R
IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Misc. Docket No. 9
Folio No. 188
File No. 4822

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come John A. Stewik, Walter A. Reiter, Jr., and John A. Miller,
constituting the County Board of Appeals of Baltimore County, and in answer to the Order
for Appeal directed against them in this case, herewith return the record of proceedings
had in the above entitled matter, consisting of the following certified copies or original
papers on file in the Office of the Zoning Department of Baltimore County:

ZONING ENTRIES FROM DOCKET OF ZONING
COMMISSIONER OF BALTIMORE COUNTY

No. 72-45-R

May 18, 1971 Comments of the Baltimore County Zoning Advisory Committee filed
July 27 Petition of Virginia Goeller Nance for reclassification from D.R. 5.5 to
D.R. 16 on property located on the north and south sides of Virginia
Avenue, between Marie and Helena Avenues, 15th District, Eastern
Sector - filed
" 27 Order of Zoning Commissioner directing advertisement and posting of
property - date of hearing set for September 2, 1971 at 10:00 a.m.
Aug. 12 Certificate of Publication in newspaper - filed
" 19 Certificate of Posting of property - filed
Sept. 2 At 10:00 a.m. hearing held on petition by Zoning Commissioner - case
held sub curia
Nov. 10 Order of Zoning Commissioner granting reclassification on the property
south of Virginia, consisting of 5.16 acres, and denying reclassification
on the property north of Virginia Avenue, consisting of 1.25 acres.
Dec. 9 Order of Appeal to County Board of Appeals from Order of Zoning
Commissioner filed by Mrs. James I. Helmcomp, et al
Feb. 23, 1972 Hearing on appeal before County Board of Appeals
" 28 Continued hearing on appeal before County Board of Appeals - case
held sub curia

RE: PETITION FOR RECLASSIFICATION
From D.R. 5.5 to D.R. 16
N. & S. sides of Virginia Avenues
between Marie & Helena Avenues
15th District - Eastern Sector
Virginia Goeller Nance,
petitioner
IN THE
CIRCUIT COURT
OF
BALTIMORE COUNTY
No. 72-45-R

NOTICE OF APPEAL

MR. CLERK:

Please note an appeal to the Circuit Court of Balti-
more County from the Opinion and Order of the County Board of
Appeals, dated April 26, 1972, on behalf of Virginia Goeller
Nance, Petitioner.

Herbert R. O'Connor, Jr.
Attorney for Petitioner
1218 One Charles Center
Baltimore, Maryland 21201
685-1141

I HEREBY CERTIFY that a copy of the above Notice Of
Appeal was served on the County Board of Appeals, County Office
Building, Towson, Maryland 21204, prior to the filing hereof, and
a copy of same has been mailed to Mrs. James I. Helmcomp who
represented the Protestants at the hearing.

DATE: 5-12-72

Herbert R. O'Connor, Jr.

RE: PETITION FOR RECLASSIFICATION
From D.R. 5.5 to D.R. 16
N. & S. sides of Virginia Avenues
between Marie & Helena Avenues
15th District - Eastern Sector
Virginia Goeller Nance,
petitioner
IN THE
CIRCUIT COURT
OF
BALTIMORE COUNTY
No. 72-45-R

PETITION

Petitioner, Virginia G. Nance, by Herbert R. O'Connor, Jr.,
appeals from the Opinion and Order of the County Board of Appeals
dated April 26, 1972 which denied reclassification from D.R. 5.5
to D.R. 16 on 5.16 acres of land owned by Petitioner, and others,
thereby reversing the Order of the Zoning Commissioner of Baltimore
County dated November 10, 1971.

The property involved is a vacant, wooded tract of land,
which, together with adjacent land owned by Petitioners, is 6.41
acres in size, bordering on Back River. The property to the north
and east are improved with dwellings, and the property to the west
is a B.L. and B.R. zoned tract used for a junkyard.

The land was zoned R.A. (the then existing classification
comparable to D.R. 16) by the County in 1966. Prior to the
adoption of the comprehensive Zoning Map by the County Council in
1971, the Planning Board recommended D.R. 16 for the entire tract.
The Council reclassified it on March 24, 1971 as a D.R. 5.5 zone
without the proper advertising and notice as required by Section
22-20 of the County Code. A Petition for Reclassification was
filed with the Zoning Commissioner. After public hearing, the
Zoning Commissioner ordered that the property south of Virginia
Avenue, consisting of 5.16 acres, be reclassified to a D.R. 16
Zone and continued the D.R. 5.5 Zone classification for the 1.25
acre adjacent property north of Virginia Avenue. A group of resi-
dents appealed to the County Board of Appeals which, after public

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Apr. 26 Order of County Board of Appeals denying reclassification
May 12 Order for Appeal filed in the Circuit Court for Baltimore County by
Herbert R. O'Connor, Jr., Esq., attorney for petitioner
" 12 Petition to Accompany Order for Appeal filed in the Circuit Court for
Baltimore County
" 17 Certificate of Notice sent to all interested parties
June 6 Transcript of Testimony filed
Petitioner's Exhibit No. 1 - Report of Planning Board Item 21 -
7/15/71
" " " 2 - File 72-45-R
" " " 3 - Plat of subject property - 3/25/71
" " " 4 - Transcript - Public Hearing County
Council - 1/27/71 - Eastern Vocational
High School (Rel. to County Council)
" " " 5 - Transcript - Public Hearing County
Council - 3/4/71 - Eastern Vocational
High School (Rel. to County Council)
" " " 6 - Copy of letter from Zoning Commis-
sioner to Petitioner - 12/15/71
" " " 7 - Affidavit - Kaltenbach - 10/27/69
" " " 8 - Copy of pages 63 and 64 of transcript
of Public Hearing 3/14/71 (Council)
" " " 9 - Copy of pages 7 and 8 of transcript of
Public Hearing 3/14/71 (Council)
" " " 10 - Decision of Circuit Court in case 93/
81/70074 - Crane v. Baltimore County
Protestants' Exhibit A - List of protestants in hearing room
" " B - Copy of tax bill of Protestants - Zulaut
" " C - Copy of letter to Mr. O'Connor -
5 pages - 11/10/71
" " D - Copy of letter to Mr. DiNanna from
Mrs. Helmcomp - 12/7/71
" " E - Copy of letter from Mr. DiNanna to
Mrs. Helmcomp - 12/9/71
" " F - Copy of letter to Mr. DiNanna from
Mrs. Helmcomp - 12/21/71
" " G - Copy of Receipt #1447 - \$90.00 -
12/27/71
" " H - Copy of letter from Mr. DiNanna to
Mrs. Helmcomp - 12/27/71
June 7 Record of proceedings filed in the Circuit Court for Baltimore County

- 3 -

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

Respectfully submitted

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

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hearing, reversed the order of the Zoning Commissioner and denied
the reclassification.
The grounds for this appeal are three:
1) The action of the County Board of Appeals violates
Section 22-43, Article IV, Baltimore County Code, which provides:
"Any person who shall acquire for a valuable consid-
eration any interest in the lands covered by such cer-
tificate of approval of a subdivision, reliance upon the
information therein contained shall hold such interest
free of any right, remedy or action which could be pre-
sented or maintained by the county pursuant to the
provisions of this title."
By affidavit, Albert B. Kaltenbach, Director of Public
Works, stated that on February 24, 1969, a contract purchaser
(George L. Schnader, Jr., Inc.) acquired the approval of Baltimore
County to construct apartments allowed in a D.R. 16 Zone.
The present contract purchaser who contracted to buy the
property in reliance on the said approval, has declined to proceed
with settlement in view of the doubt raised by the County Council's
attempt to reclassify.
2) The appeal to the County Board of Appeals was not per-
fected on time. The Zoning Commissioner's order of November 10,
1971 was appealed by the Protestants on December 10, 1971. How-
ever, the required fee was not paid until December 27, 1971.
Article 22-21, Baltimore County Code allows appeals to the County
Board of Appeals: "Notice of such appeal shall be filed, in
writing, with the Zoning Commissioner within thirty days from the
date of any final order appealed from, together with the required
fee as provided in the zoning regulations."
The Board of Appeals found that by attempting to file a
\$35 fee on time in lieu of \$90 and by filing the latter correct
amount 15 days later the Protestants "...complied with the spirit

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and intent of Section 500.10 of the Baltimore County Zoning Regu-
lations..." No reference whatsoever is made in the Board of Ap-
peals' Opinion to the statute referred to above which was specifi-
cally cited at the hearing. It is submitted that the wording
"shall be filed...together with the required fee..." is unquali-
fied and does not admit of the flexibility demonstrated in the
opinion.
3) The action of the County Council respecting the subject
property was taken without the advertisement and notice required by
law. Section 22-20 of the Code provides, "... (c) After such
zoning regulations and zoning maps have been approved by the
Planning Board, it shall release a preliminary report thereon.
Thereafter, and subject to the giving of at least twenty days
public notice in two newspapers of general circulation in the
county, the Planning Board shall hold one or more public hearings..."
The next section of the Code outlines the procedural steps that
must be followed. On February 25, 1972, the first day of the
hearing of the Appeal, Mr. Gavrelis, Director of Planning, testi-
fied concerning the "...failure..." on the part of the Planning
Staff regarding Issue E-46. On the County Council's Log of Issues
and Recommendations, Issue No. E-46 was "SW/S Riverside Drive from
Delaware Avenue to Cox's Point Park". This does not include the
subject property. On the second day of hearings, February 25, 1972,
there was read into the record the statement of Councilman Garten-
felder made at the Council's meeting on March 4, 1971: "...After
talking to the Planning Board today, the area from Delaware Avenue
to Marie Avenue is, also, part of the Issue. It was left out as
an error..." It is clear that the attempt to broaden the scope of

MAR 26 1974

Issue No. 46 was made without the advertisement and notice required by law. This same issue was the point of a recent case in this Honorable Court. See Crane and Friedman v. Baltimore County, 93/81/70074.

WHEREFORE, Petitioner prays this Honorable Court:

1. Order the reclassification of the subject property attempted by the County Council on March 24, 1971 stricken as having been done in violation of Sections 22-43 and 22-21 of Article IV, Supra, and in the absence of this required notice and advertising, which absence violated the provisions of the County Code and principles of due process and equal protection; and order that the property be zoned D.R. 16, the classification comparable to the prior RA zoning.

2. In the alternative, reverse the ruling of the County Board of Appeals and reinstate the Order of the Zoning Commissioner of Baltimore County.

3. Grant such other relief as may be requisite.

Herbert R. O'Connor, Jr.
Herbert R. O'Connor, Jr.
1218 One Charles Center
Baltimore, Maryland 21201
685-1141

I HEREBY CERTIFY that a copy of the above Petition was served on the County Board of Appeals, County Office Building, Towson, Maryland 21204, prior to the filing hereof, and a copy of same has been mailed to Mrs. James T. Helmscamp who represented the Protestants at the hearing.

DATE: 5-12-72 Herbert R. O'Connor, Jr.

LEON A. CRANE
JACOB L. FRIEDMAN
VS
BALTIMORE COUNTY, MARYLAND,
A Municipal Corporation

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
IN EQUITY
93/81/70074

000000
MEMORANDUM

This Court specifically reaffirms the written opinions heretofore filed in this and consolidated cases and the declaration therein made that Council Bills 28 to 32 inclusive are valid ordinances of Baltimore County.

The parties hereto have submitted an agreed statement of facts, upon which motion for summary judgment was made by the complainants. On those facts it is plain that the Council on March 24, 1971 made a change of zoning as to Item NE 27 different in character from that which had been duly advertised and made the subject of hearing under the "final logs." Such attempted change of zoning was in violation of the provisions of Sec. 22-21 (b) of the Baltimore County Code in that "further change or amendment" was prohibited by its terms except after "further public hearing." This Court holds accordingly, that as applied to the subject property, the County Council action did not lawfully amend or change the recommendation of the planning board as to such property. This Court finds that such portion of the tract designated as NE 27 that lies to the west of Belair Road, by operation of the provisions of Sec. 22-21.1 of the Baltimore County Code remained within the zoning classification recommended by the board, namely BL-CNS, upon the passage of Bill No. 31.

The Court will on presentation pass its decree in this case declaring the general validity of Ordinances 28 through 32, but ordering the Director of Planning and Zoning to obtain the zoning map governing Item NE 27 from its custodian, the Zoning Commissioner, and to alter thereupon the zoning classification appearing

FILED 5-12-72
RECEIVED 1972

thereon for the land lying to the west of Belair Road that formed part of Item NE27 so that the same will appear as recommended by the planning board, namely, BL-CNS. Thereafter, the Director will return the said map as so changed to the Zoning Commissioner as the effective zoning map of Baltimore County.

The costs of these proceedings (including one-third of the costs of all prior consolidated hearings) will be divided between complainants and defendant.

W. Albert Menchine
W. ALBERT MENCHINE, JUDGE

LEON A. CRANE
JACOB L. FRIEDMAN
VS
BALTIMORE COUNTY, MARYLAND
A Municipal Corporation

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY
IN EQUITY
93/81/70074

ORDER
This action having come on for hearing on plaintiff's bill for declaratory judgment and further relief; agreed statement of facts and plaintiff's motion for summary judgment; testimony having been taken and read by the Court and counsel having been heard, it is this 12th day of December, 1971.

ORDERED, by the Court, for the reasons set forth in its memorandum issued on December 8, 1971:

1. That it reaffirms its earlier decisions and declares that Council Bills 28 to 32 inclusive (and the zoning maps incorporated therein by reference) passed by the County Council of Baltimore County are valid ordinances of Baltimore County.

2. That as to the plaintiff's property involved in these proceedings, the action of the County Council was in violation of the provisions of Section 22-21 (b) of the Baltimore County Code and such action did not lawfully amend or change the recommendation of the Planning Board as to such property and therefore this Court declares that such portion of the plaintiff's property designated as NE-27 on the zoning map incorporated by reference into Council Bill Number 31 that lies to the west of Belair Road, by operation of the provisions of Section 22-21.1 of the Baltimore County Code, remains within the zoning classification recommended by the Planning Board, namely BL-CNS, upon the passage of Bill Number 31.

3. That the Director of Planning and Zoning of Baltimore County shall, promptly following the date of this Order, obtain the zoning map governing Item NE-27 from its custodian, the Zoning Commissioner of Baltimore County, and, shall alter thereon the zoning classification thereon for the land owned by the plaintiff lying to the west of Belair Road that formed part of Item NE-27 so that plaintiff's land will appear as recommended by the Planning Board, namely, BL-CNS. Following the alteration above declared and ordered,

RECEIVED 1972

the Director of Planning and Zoning of Baltimore County shall promptly return the Zoning map, as so altered and changed, to the possession of the Zoning Commissioner of Baltimore County as the then effective Zoning map of Baltimore County.

4. That the cost of the proceedings is to be divided between the Complainants and Defendants.

/s/ W. Albert Menchine, Judge

1. ALBERT B. KALTENBACH, Director of Public Works, Baltimore County, did attend a meeting on February 18, 1969, at which there were present the following: Mr. George L. Schneider, Jr., representative of George L. Schneider, Jr., Inc.; Mr. George Reier, Division of Land Development, Baltimore County; and Mr. L. Alan Evans, representative of Evans, Hagan & Holderfer, surveyors and civil engineers. At this meeting, the final terms of the Chippendale Apartments Public Works Agreement were agreed upon by all of the parties. Pursuant to the said meeting, on February 24, 1969, George L. Schneider, Jr., Inc., through Evans, Hagan & Holderfer, did submit to Baltimore County the project known as the Chippendale Apartments, at which time, according to custom and usage, George L. Schneider, Jr., Inc. acquired approval of Baltimore County to construct the said Chippendale Apartments, which approval would allow him to execute his Public Works Agreement and receive the necessary building permits. There had not been, as of the time of this meeting of February 18, 1969, approval by Baltimore County to construct the Chippendale Apartments.

Albert B. Kaltenbach
Albert B. Kaltenbach, Director of
Public Works, Baltimore County

STATE OF MARYLAND, BALTIMORE

I HEREBY CERTIFY, That on this 27th day of October, 1969, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, aforesaid personally appeared ALBERT B. KALTENBACH, Director of Public Works, Baltimore County, and he made oath in due form of law that he is competent to testify and that he had personal knowledge of the facts set forth above.

AS WITNESS my hand and Notarial Seal.



My Commission Expires:

July 1970

MEMORANDUM RE PETITION OF VIRGINIA GOELLER NANCE ET AL
FOR CHANGE OF ZONING STATUS FROM D.R. 5.5 ZONE TO D.R. 16 ZONE

Petitioners, Virginia Goeller Nance et al, petition that the zoning status of the herein described property be reclassified, pursuant to the Zoning Law of Baltimore County, from D.R. 5.5 to D.R. 16 for the following reasons:

1. D.R. 16 zoning with respect to the property has been recommended by the Baltimore County Planning Board.

2. D.R. 16 zoning for the property in question would be consistent with the general character of the neighborhood, whereas D.R. 5.5 zoning would not.

3. The D.R. 16 classification recommended by the Baltimore County Planning Board is based on a consideration of the general character of the neighborhood and the peculiar suitability of the herein described property for uses contemplated under D.R. 16 zoning.

4. D.R. 5.5 zoning for the property in question, contrary to the recommendations of the Baltimore County Planning Board, is arbitrary, capricious, discriminatory and illegal.

5. The only feasible use of the property in question is such as would be permissible under D.R. 16 zoning.

6. D.R. 5.5 zoning of the property in question would be confiscatory and would deprive the owners of their property without due process of law.

EVANS, HAGAN & HOLD FER, INC.

SURVEYORS AND CIVIL ENGINEERS
4200 ELKROD AVENUE - BALTIMORE, MD 21214 (301) 426-2144
1117 NORTH STREET - BALTIMORE, MD 21202 (301) 426-2144
1117 NORTH STREET - BALTIMORE, MD 21202 (301) 426-2144

April 15 1971

Description of Portion of Chippendale Townhouses Property
For Zoning Reclassification from DR-5.5 Zone to DR-16 Zone

BEGINNING for the same on the southeast side of Virginia Avenue, 60 feet wide, at a point distant 28.00 feet measured northeasterly along said southeast side of Virginia Avenue from its intersection with the southwest side of Marie Avenue, 50 feet wide, thence leaving said place of beginning and running thru the bed of Virginia Avenue (1) North 12 degrees 00 minutes West 66 feet, more or less, to the northwest side of Virginia Avenue, thence leaving Virginia Avenue and running the 3 following courses and distances, viz: (2) North 53 degrees 47 minutes 21 seconds East 120.13 feet, (3) North 30 degrees 12 minutes 39 seconds West 45.00 feet and (4) North 53 degrees 47 minutes 21 seconds East 117.50 feet to the southwest side of Eugene Avenue, 50 feet wide, thence running thru the bed of Eugene Avenue (5) North 43 degrees 00 minutes East 50 feet, more or less, to the northeast side of said Eugene Avenue, thence leaving Eugene Avenue and running the 3 following courses and distances, viz: (6) North 53 degrees 47 minutes 21 seconds East in, art thru the bed of Goeller Avenue, in all, 402.50 feet, (7) South 36 degrees 12 minutes 39 seconds East 125.00 feet and (8) North 53 degrees 47 minutes 21 seconds East 115.82 feet to the northwest side of Virginia Avenue, thence running thru the bed of said Virginia Avenue (9) South 43 degrees 15 minutes East 78 feet, more or less, to the southeast side of Virginia Avenue, thence leaving said Virginia Avenue (10) South 16 degrees 41 minutes 46 seconds West 363 feet to the waters of Back River, thence running with and binding on said waters of Back River (11) Southwesterly 591 feet, more or less, thence leaving said Back River and running (12) North 36 degrees 12 minutes 39 seconds West 172 feet, more or less, to the place of beginning.

Saving and excepting from the above described parcel all of the land located in the beds of Virginia Avenue, Eugene Avenue and Goeller Avenue.
Containing a net area of 4.83 acres, more or less.

Note: This description has been prepared for zoning purposes only and is not intended to be used for conveyance.

MEMORANDUM OF PETITIONER

The property involved is a vacant wooded tract of land, 6.41 acres in size, bordering on Back River. The properties to the North and East are improved with dwellings, and the property to the West is a B.L. zoned tract used for a junk yard. Sewer and water are available to serve this site, and the petitioner prefers to construct townhouse apartments.

At the hearing held on September 2, 1971, Mrs. Virginia Nance testified that the property had been owned by her family for more than fifty years. Some years ago the owners sought and received R.A. zoning and pursuant thereto Mrs. Nance and her sisters and brothers, in good faith, entered into a contract of sale with a developer on September 24, 1970. The contract included the usual warranty as to the existing zoning and was conditioned upon the continuance of such zoning.

Because of the suitability of the property for apartment development (and quite possibly taking into consideration the adjacent junk yard) the Planning Board recommended conversion to D.R. 16. It appears that the County Council initially was in agreement with this recommendation, but on March 24, 1971, "downshifted" the zoning to D.R. 5.5. It further appears that the County Council acted in response to protests, directed not to the property in question, but against all apartment development in the

eastern portion of Baltimore County. Three comments appear pertinent in this regard:

1. Without apparent reason or basis, the Council arbitrarily selected the property in question to be one of the properties to be downshifted, while others were not.
2. The Council acted without due consideration to the contractual position of the Coeller family and the developer and the time and money which had in good faith been expended in implementing the aforementioned contract of sale.
3. Most importantly, a reading of the transcripts of the two public hearings which were held in this area of Baltimore County reveal that the basis and nature of the complaints expressed were for the most part not applicable to the property in question. The biggest complaints registered appeared to be traffic congestion and overcrowding in the schools. With respect to the latter, there was testimony at the hearing that no increase in school enrollment can be forecast in an apartment development in comparison with a residential development, because many apartment tenants are either older people or newly wed couples with no children. In any event, the testimony showed that the schools in the vicinity of the property in question are not overcrowded. In fact, vacant space in one nearby school building is being used temporarily for children requiring special training. Those children come from various parts of the County and the school in question is used only because it contains more space than needed for normal area education purposes.

With respect to traffic, it is relevant to note that the County Planning Board Report of July 15, 1971 states with respect to this property (Item No. 21):

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"The Department of Traffic Engineering's representative on the Zoning Advisory Committee stated that no major traffic problems would be created by granting D.R. 6 zoning. Furthermore, Virginia Avenue appears to be the right-of-way for the proposed Riverside Drive which will be a major collector serving the peninsula."

George Gavrelis, Director of Planning, testified and confirmed the original R.A. zoning and the original Planning Board recommendation of conversion to D.R. 16. Following the adoption of the zoning map by the County Council, the Board continued to recommend D.R. 16 zoning for the property immediately adjacent to Back River. The only modification was a recommendation of D.R. 5.5 zoning for the 1.25 acre strip on the northwest side of Virginia Avenue. Mr. Gavrelis also acknowledged the need in Baltimore County for apartment development to meet the growing desire among residents to rent rather than purchase homes.

Benedict J. Frederick, a realtor and a qualified expert on land use and values, testified as to the attractive nature of the improvements planned for the location. He also indicated difficulty in developing the land for individual residences in view of the adjacent B.L. zoned property used for a junk yard.

D.R. 16 zoning is appropriate for the subject property for the following reasons:

1. There is a demonstrated need in the County for apartment construction. Some people prefer to live in apartments. Some people cannot, for physical or financial reasons, purchase or maintain a house. The rights and needs of these people deserve consideration equal to the desires or convenience of persons living nearby.

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2. This property is ideally suited for apartment development. Utilities are available and the school and traffic problems, present elsewhere, are not here significant.

3. Because of the adjacent B.L. zoning and junk yard, the only practicable non-commercial development appears to be by apartments. Indeed, apartment development is denied, the only feasible future use which could be contemplated would be commercial.

4. For years the property had been zoned R.A., comparable to D.R. 16 and in good faith reliance thereon, a contract of sale was entered into as a result of which considerable time, effort and expense has been expended.

5. The downshifting of the zoning by the County Council was not due to the fact that D.R. 16 zoning was inappropriate, but was the result of general opposition to apartment zoning, not directed to this particular property. The selection of this property to be one of the properties to be downshifted was therefore arbitrary and capricious.

For all the above reasons, it can only be concluded that the County Council removed an existing, entirely appropriate zoning, without cause or justification; that the Council's action was arbitrary and discriminatory; that the Council failed to take into consideration the needs of some residents of eastern Baltimore County as reflected in the Planning Board's recommendation; that the Council unfairly removed from the owners the only feasible use of their property; and that the action of the Council was therefore a mistake.

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BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers Date: May 14, 1971
FROM: Ian J. Forrest
SUBJECT: Item 21

21. Property Owner: Virginia G. Nance, et al
Location: N & S/S Virginia Ave., bet. Marie and Helena Avenue
Present Zoning: D.R. 5.5
Proposed Zoning: Reclass. to D.R. 16
District: 15th Sector: Eastern
No. Acres: 6.41

Public water and sewer are available to the site.

Air Pollution Comment: The building or buildings on this site may be subject to registration and compliance with the Maryland State Health Air Pollution Control Regulations. Additional information may be obtained from the Division of Air Pollution, Baltimore County Department of Health.

[Signature]
Chief
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

IJF/vam

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF TRAFFIC ENGINEERING
JEFFERSON BUILDING
TOWSON, MARYLAND 21204
INTER-OFFICE CORRESPONDENCE

TO: Edward D. Hardesty Date: May 12, 1971
ATTN: Oliver L. Myers
FROM: C. Richard Moore
SUBJECT: Item 21 - Cycle Zoning
Property Owner: Virginia G. Nance, et al
Virginia Ave. bet. Marie & Helena Ave.
Reclassification to DR 16

The subject proposal is requesting a change from DR 5.5 to DR 16 of 6.4 acres. This proposal should increase the trip density from 320 to 760 trips per day. This increase alone, should create no major traffic problems.

It must be pointed out however, that Virginia Avenue, which is shown on the plans, appears to be the right of way for the proposed Riverside Drive improvement, which the County has scheduled for the fiscal year 76-77. The plan as shown does not provide sufficient parking as required by Bill 100.



CRM:mr

[Signature]
C. Richard Moore
Assistant Traffic Engineer

TO: Mr. Edward D. Hardesty Date: 5/10/71
ATTN: Mr. Myers

FROM: Planning Division
Fire Prevention Bureau

SUBJECT: Property Owner
Virginia G. Nance, et al

Location: N & S/S Virginia Avenue, bet. Marie & Helena Avenues

Item #21

Fire hydrants for the proposed site are required and shall be in accordance with Baltimore County standards. The hydrants shall be located at intervals of 500 ft.

Minimum width to the roads through site shall be 30 feet to assure passage of Fire Department equipment.

A. When pull-in parking is designed for both sides of a roadway, the minimum distance from curb to curb of the parking area shall be 64 feet.

B. Pull-in parking on one side only, the distance from curb to curb shall be 44 feet.

Respectfully,
[Signature]
H. Thomas Kelly
Fire Prevention Bureau

The owner shall be required to comply with all applicable requirements of the 101 Life Safety Code, 1967 Edition, and the Fire Prevention Code when construction plans are submitted for approval.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: S. Eric DiLenna, Zoning Commissioner Date: August 8, 1973
FROM: Planning Board
SUBJECT: Office of Law
Nance v. Baltimore County
Equity 74086

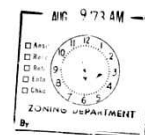
Enclosed please find Order of the Circuit Court for Baltimore County by Judge Walter M. Jenifer which should be self-explanatory. The Nance property in question is originally known as Issue E-46 under the proposed County Council changes to the recommended Planning Board zoning maps - Eastern Sector.

Should you have any questions, please do not hesitate to contact me.

[Signature]
G. Warren Miles
Assistant County Solicitor

GWM/blr

Encl.



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward Hordesty Date: May 7, 1971
 ATTN: Oliver L. Myers
 FROM: Ellsworth N. Diver, P.E.

SUBJECT: Item #21 (April - October Cycle 1971)
 Property Owner: Virginia G. Nance, et al.
 Location: N and S/S Virginia Ave., bet. Marie and Helena Ave.
 Present Zoning: D.R. 5.5
 Proposed Zoning: Reelass. to D.R. 16
 District: 1505 Sector: Eastern
 No. Acres: 6.41

The following comments are furnished in regard to the plat submitted to this office for review by the Zoning Advisory Committee in connection with the subject item.

Highways:

This site has frontage on Virginia Avenue, Eugene Avenue and Goeller Avenue.

Virginia Avenue is an existing County Road, which has been improved to local collector standards.

Eugene Avenue is an existing County Road, which shall ultimately be improved to minor residential standards. Highway improvements to this site, including curb and gutter, sidewalks and entrances in accordance with the standards of the Baltimore County Department of Public Works for a 30-foot closed road section on a 50-foot right-of-way will be required for any grading or building permit application.

Goeller Avenue is an existing County Road, which shall ultimately be improved to minor residential standards. Highway improvements to this site, including curb and gutter, sidewalks and entrances in accordance with the standards of the Baltimore County Department of Public Works for a 30-foot closed road section on a 50-foot right-of-way will be required for any grading or building permit application.

All access for apartment use should be taken from the local collector.

Storm Drains:

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisance or disease to adjacent properties, especially by the concentration of surface waters. Correction of any problem which may result, due to improper grading or improper installation of drainage facilities, would be the full responsibility of the Petitioner.

Item #21 (April - October Cycle 1971)
 Property Owner: Virginia G. Nance, et al.
 Page 2
 May 7, 1971

Storm Drains: (Cont'd)

There is an existing public storm drain system adjacent to the property to be developed. Supplemental public storm drains are not required.

Onsite drainage facilities serving only areas within the site do not require construction under a County contract. Such facilities are considered private and therefore must conform to the County Plumbing and Building Codes.

The property to be developed is located adjacent to the water front and therefore subject to tidal inundation. The Petitioner is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on first floor levels of residential or commercial development and other special construction features are required. Also be aware that private property terminates at mean high tide and all land between high and low tide is subject to regulations by the State Department of Water Resources as wetlands, and subject to regulations by the U. S. Corps of Engineers as navigable waters.

Sediment Control:

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings below this property, and sediment control is required by State law. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Grading studies and sediment control drawings will be necessary to be reviewed and approved prior to the recording of any record plat or the issuance of any grading and building permits.

Waters:

Public water can be made available to serve this property by extending an 8-inch main in Virginia Avenue between the existing mains in Marie and Helena Avenues and connecting the 6-inch mains in Eugene and Goeller Avenues to the Virginia Avenue main.

Service within the site from the public system must be in accordance with the Baltimore County Building, Plumbing and Fire Prevention Codes. The service connection to the meter shall be in accordance with the standards of the Baltimore County Department of Public Works.

Sanitary Sewer:

Public sanitary sewer facilities are available to benefit this property.

The Petitioner is entirely responsible for the construction of all additional sewerage required to serve the property development. Such additional sewerage is to be constructed onsite, that is, not within any public road.

Item #21 (April - October Cycle 1971)
 Property Owner: Virginia G. Nance, et al.
 Page 2
 May 7, 1971

Sanitary Sewer: (Cont'd)

rights-of-way, or easement, except for connection to public sanitary sewerage located therein. All private and/or onsite sewerage must conform with the Baltimore County Plumbing Code and/or the Joint Interim Policy of the Baltimore County Department of Public Works and the Baltimore County Plumbing Code, as applicable.

The plan for development of this property is subject to approval of the State Department of Health prior to acceptance of a preliminary or final plat for recordation.

Ellsworth N. Diver
 ELLSWORTH N. DIVER, P.E.
 Chief, Bureau of Engineering

END:HAM:OK:ms

cc: File (3)

Key Sheet: 1-SW
 Position Sheet: 2 NE 26
 Topo: NE 1 G
 Tax Map: 97

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Zoning Date: April 29, 1971

FROM: Jack Dietrich - Plans Review

SUBJECT: #21: Virginia G. Nance, et al.
 N. & S/S Virginia Avenue
 Between Marie and Helena Avenue
 District: 15

Petitioner to comply with all applicable requirements of the Baltimore County Building Code and regulations, when plans are submitted. Also, see Parking Lots Meeting 109, 10 11

Jack Dietrich
 Jack Dietrich - Plans Review



Official
 #72-45-R
CERTIFICATE OF POSTING
 ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: 15-4 Date of Posting: Dec 24-71
 Posted for: *Virginia G. Nance*
 Petitioner: *Virginia G. Nance*
 Location of property: *No. 4 S. S. Virginia Ave.*
 Location of Signs: *2 Signs on S. S. Virginia Ave.*
 Remarks: *Reelass. Maria & Helena Ave.*
 Posted by: *Paul H. Hines* Date of return: *Dec 24-71*

TELEPHONE
 404-2413

INVOICE
 BALTIMORE COUNTY, MARYLAND
 OFFICE OF FINANCE

No. 74019

DATE 5/12/72

TO: **Herbert R. O'Connor, Jr., Esq.**
 1210 One Charles Center
 Baltimore, Maryland 21201

REPORT TO ACCOUNT NO.	QUANTITY	TOTAL AMOUNT
Cost of documents from Zoning File No. 72-45-R (Certified)		\$20.00
North and South Sides of Virginia Avenue between Marie and Helena Avenues 15th District, Eastern Sector Virginia Goeller Nance		

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
 OFFICE OF FINANCE, REVENUE DIVISION
 MAIL TO COURTHOUSE, TOWSON, MARYLAND 21204

TELEPHONE
 404-2413

INVOICE
 BALTIMORE COUNTY, MARYLAND
 OFFICE OF FINANCE

No. 84950

DATE Sept. 2, 1971

TO: **Mrs. Virginia G. Nance**
 324 Taplow Road,
 Baltimore, Md. 21212

REPORT TO ACCOUNT NO.	QUANTITY	TOTAL AMOUNT
Cost of advertising and posting property of Virginia G. Nance		\$45.50
No. 72-45-R		

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
 OFFICE OF FINANCE, REVENUE DIVISION
 MAIL TO COURTHOUSE, TOWSON, MARYLAND 21204

PETITION MAPPING PROGRESS SHEET										
FUNCTION	Wall Map		Original		Duplicate		Tracing		207 Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, BA, CC, CA										
Reviewed by: <u>[Signature]</u>			Revised Plans: Change in outline or description Yes ☐ No ☐							
Previous case:			Map # <u>AB</u>							

5 Segm

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#72-45-R

District: 15 Date of Posting: Aug 12, 71
 Posted for: Virginia G. Nance, et al
 Petitioner: Virginia G. Nance, et al
 Location of property: N. & S. Virginia Ave. between Davis & Nelson Sts.
 Location of Signs: 3 Posters on small lot of property on N. & S. Virginia Ave. all between Nelson St. & Davis St.
 Remarks: None
 Posted by: [Signature] Signature Date of return: Aug 19, 71

Herbert R. O'Connor, Jr., Esq.
1215 One Charles Center
Baltimore, Md. 21201

Item 21

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

27th day of July, 1970

[Signature]
EDWARD D. HARDSKY
Zoning Commissioner

Petitioner Virginia G. Nance, et al

Petitioner's Attorney Herbert R. O'Connor, Jr.

Reviewed by [Signature]
Chairman of the
Advisory Committee

TELEPHONE 694-0413

INVOICE
BAL MORE COUNTY, MAK LAND
OFFICE OF FINANCE
Revenue Division
COURT HOUSE
TOWSON, MARYLAND 21204

NO 76680
DATE April 21, 1971

TO: Herbert R. O'Connor, Jr., Esq.
One Charles Center
Baltimore, Md. 21201

Zoning Dept. of Baltimore County

SUBMIT TO ACCOUNT NO.	QUANTITY	DETAILS ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS	TOTAL AMOUNT	
			AMOUNT	COST
01-622		Petition for Reclassification for Virginia G. Nance, et al	\$53.00	
				50.00

RETURN 1/3 PORTION WITH YOUR REMITTANCE
DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO OFFICE OF FINANCE, REVENUE DIVISION
COURTHOUSE, TOWSON, MARYLAND 21204

BALTIMORE COUNTY, MARYLAND
OFFICE OF PLANNING & REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

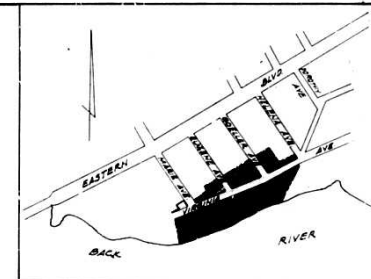
No 1447

DATE Dec. 27, 1971 ACCOUNT 01.662

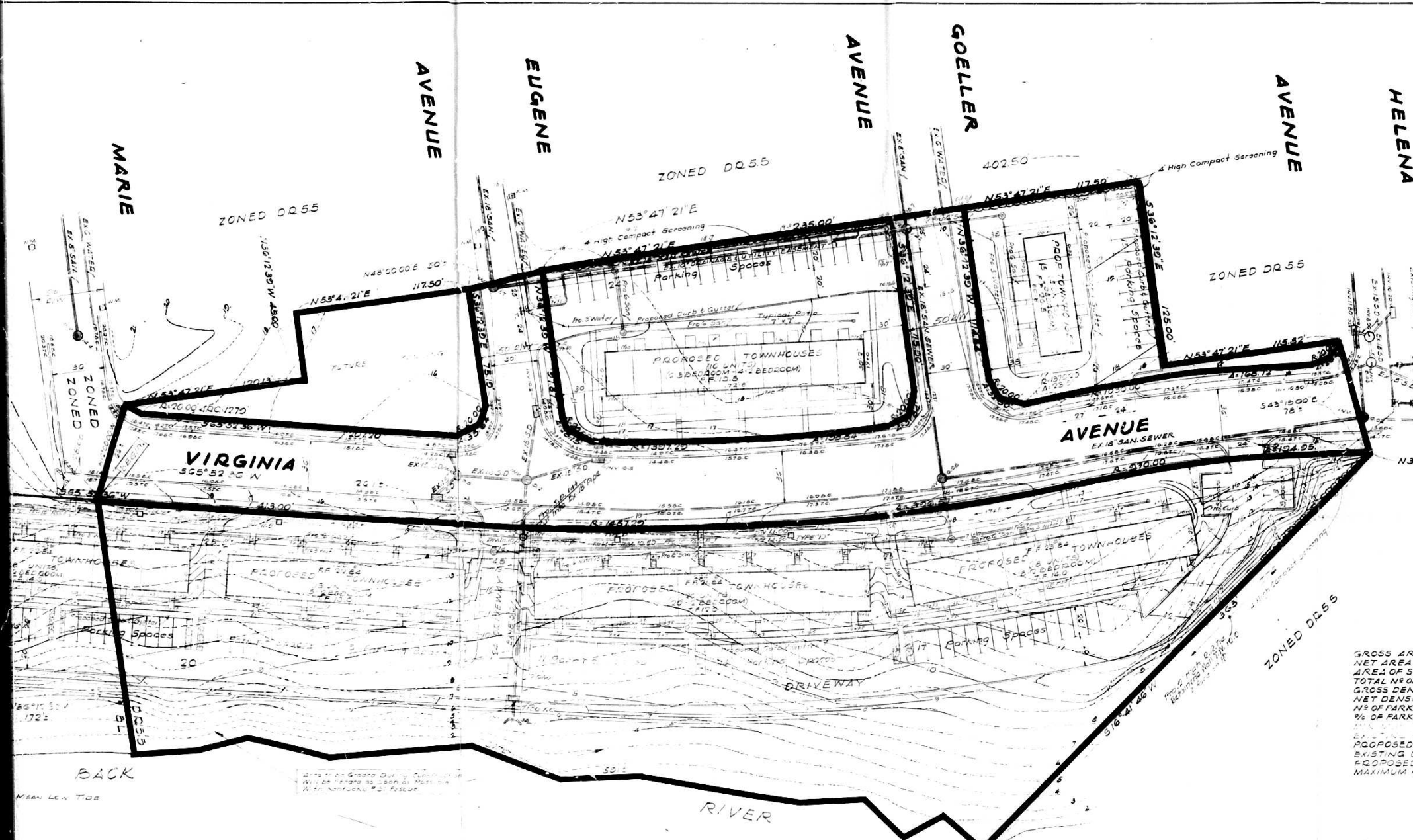
AMOUNT \$90.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

Appeal costs No. 72-45-R
Virginia G. Nance, et al
Mrs. Jim I. Helmcamp, et al, Appellants



LOCATION MAP
SCALE: 1"=500'



NOTES:

GROSS AREA	6.41 AC.
NET AREA	4.83 AC.
AREA OF STREETS	1.58 AC.
TOTAL NO. OF UNITS	86 UNITS
GROSS DENSITY	13.4 UNITS/AC
NET DENSITY	17.8 UNITS/AC
% OF PARKING SPACES	125 (5 1/2 S-20' - 180 Sq Ft.)
% OF PARKING	45%
PROPOSED ZONE	DQ 55
EXISTING USE	RESIDENTIAL
PROPOSED USE	TOWNHOUSES
MAXIMUM HEIGHT OF BUILDINGS	35

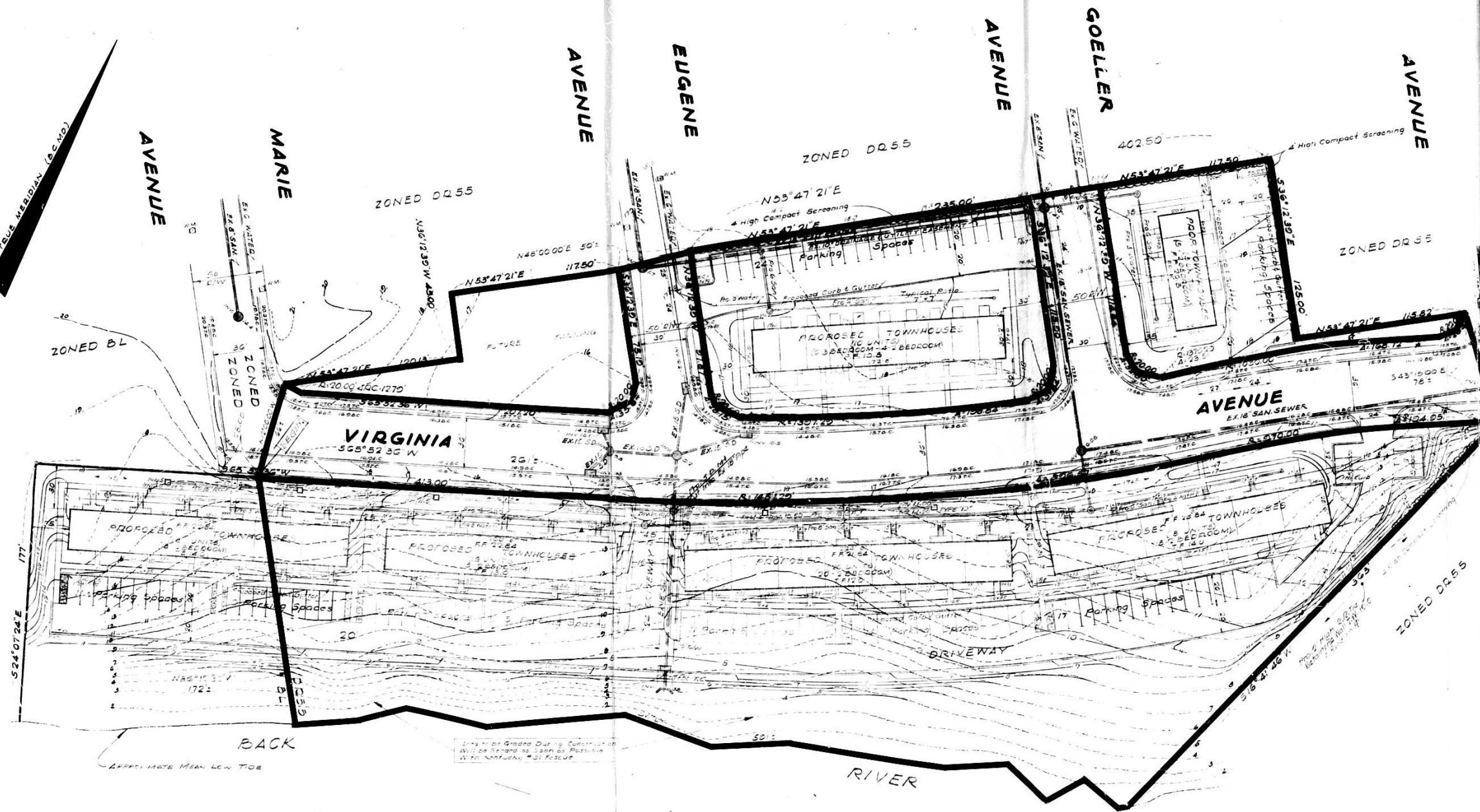
SITE PLAN OF
"CHIPPENDALE TOWNHOUSES"
ELECTION DISTRICT NO. 18

FOR
FRANK & CARL JULIO
BOX 170 LIBERTY ROAD
RANDALLSTOWN MD 21

BALTIMORE COUNTY MARYLAND

EVANS, HAGAN & HOLDEFER		
DATE	REVISION	BY
SURVEYORS AND CIVIL ENGINEERS		
4200 ELSBROOK AVENUE BALTIMORE, MD 21214		
(301) 426-2144		
339 POPLAR STREET / CAMBRIDGE, MD 21613 / (301) 228-3300		
115 E. MAIN STREET / WESTMINSTER, MD 21157 / (301) 844-1796		
115 S. WASHINGTON STREET / EASTON, MD 21401 / (301) 822-5433		
SURVEYED BY	COMPUTED BY	DRAWN BY
CHECKED BY	DATE	3/25/71
Drwg. No.	SCALE	1"=30'





— SITE PLAN —

"CHIPPENDALE TOWNHOUSES"

ELECTION DISTRICT NO. 13 FOR BALTIMORE COUNTY MARYLAND

FRANK & CARL JULIO
80X170 LIBERTY ROAD
RANDALLSTOWN MD. 21