

PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
the undersigned Executors and Trustees under the Will of Harvey S. Myers,
I, or we, Madeline B. Myers, 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 DR 5.5 zone to an
DR 16 zone; for the following reasons:
That there was error in the original zoning by the County Council
as set forth in full in the attached Schedule of Errors.

See attached description

and (2) that a Special Exception, under the existing Zoning Law and a Special Exception, be granted to the herein described property, due to
County, to use the herein described property, due to

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.
Madeline B. Myers
9508 Old Harford Road
Baltimore, Md. 21234
Legal Owner
Address: STENGEL, ASKEW & WILSON
By: James D. Nolan
208 West Pennsylvania Ave.
Towson, Maryland 21204
Petitioner's Attorney
Protestant's Attorney

ORDERED BY The Zoning Commissioner of Baltimore County, this 27th day
of July, 1977, that the subject matter of this petition be advertised, as
required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-
out Baltimore County, that property be posted, and that the public hearing be had before the Zoning
Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore
County, on the 3rd day of September, 1977, at 2:00 o'clock
James D. Nolan
Zoning Commissioner of Baltimore County.

(over)

7:35
1/5c
2/22/74

PETITION FOR RECLASSI- IN THE OFFICE OF LAW
FICATION from D.P.S.5 to D.R.16
N/S of Ebenezzer Road 140' CIRCUIT COURT
W of Kilkeas Court
Eleventh District - N.E. Sector FOR
BALTIMORE COUNTY
JOHN L. ASKEW, ESQUIRE and
MERCANTILE SAFE DEPOSIT AND TRUST COMPANY, EXECU-
TORS AND TRUSTEES UNDER THE WILL OF HARVEY S. MYERS
and MADELINE B. MYERS Petitioners
Zoning File No. 72-49-R

ORDER FOR APPEAL BY PETITIONERS

Mr. CLERK:

Please enter an appeal to the Court of Special Appeals from
the denial by the Circuit Court for Baltimore County by its Memorandum
Opinion and Order dated January 25, 1974, of the Petitioner's Appeal taken
in Miscellaneous Case No. 5101, Miscellaneous Docket 9, folio 326.

James D. Nolan
James D. Nolan
Nolan, Plumbhoff & Williams
Attorney for the Petitioners & Appellants
204 West Pennsylvania Avenue
Towson, Maryland 21204
Telephone: 823-7800

I HEREBY CERTIFY, that on this 2nd day of February, 1974,
a copy of the foregoing Order For Appeal By Petitioners was mailed to
The Honorable R. Bruce Alderman, Esquire, County Solicitor for Baltimore
County, County Office Building, Towson, Maryland 21204 and to Harry S.
Swartzwelder, Jr., Esquire, 400 Towson Building, 210 East Redwood Street,
Baltimore, Maryland 21205.

James D. Nolan
James D. Nolan

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS
TOWSON, MD.
Rec'd 2/27/74
9:50AM

RECEIVED

PETITION FOR RECLASSIFICATION IN THE
from D.R.5.5 to D.R.16 CIRCUIT COURT
N/S of Ebenezzer Road 140' W of Kilkeas Court
Eleventh District - N.E. Sector FOR
BALTIMORE COUNTY
Executors and Trustees under the Will of Harvey S. Myers, and
Madeline B. Myers, Petitioners
AT LAW

ORDER FOR PARTIAL APPEAL

Please enter an appeal on behalf of the Petitioners,
Madeline B. Myers and the Executors and Trustees under the Will of
Harvey S. Myers, each and all Appellants, from only that part of
the Opinion and Order of the County Board of Appeals of Baltimore
County dated July 17, 1973, in Case No. 72-49-R, denying the
requested reclassification to D.R.16 on a portion of the subject
tract; provided, however, that no appeal is hereby taken from that
part of the Opinion and Order reclassifying a part of the said
tract from D.R.5.5 to D.R.16.

James D. Nolan
James D. Nolan
Nolan, Plumbhoff & Williams
204 West Pennsylvania Avenue
Towson, Maryland 21204
823-7800

LAW OFFICE
NOLAN, PLUMHOFF
& WILLIAMS
TOWSON, MD.
Rec'd 2/27/73
3:30PM

CERTIFICATE OF COMPLIANCE

I hereby certify that a copy of the Order for Partial
Appeal to the Circuit Court for Baltimore County and the Petition
on Partial Appeal, both relating to the Opinion and Order of the
County Board of Appeals for Baltimore County dated July 17, 1973,
in Case No. 72-49-R, was delivered to the Board prior to the
filing of this Order, as shown below.

James D. Nolan
James D. Nolan
Attorney for Appellants

Service of a copy of the Order For Appeal and Petition On
Appeal in Case No. 72-49-R is admitted this 15th day of
August, 1973, by

James D. Nolan
County Board of Appeals

I hereby certify that a copy of the foregoing Order For
Appeal and Petition On Appeal was mailed to Harry S. Swartzwelder,
Jr., Esquire, Attorney for the Protestants and to Gerard V.
Caldwell, Attorney for the Protestants, on this 15th day of
August, 1973.

James D. Nolan
James D. Nolan
Attorney for Appellants

- 2 -

OFFICE PHONE
823-2792

RESIDENCE PHONE
663-1347

William G. Ulrich, Jr.
Registered Land Surveyor

18 FULLERTON HEIGHTS AVE. BALTIMORE, MD. 21230

FOR THE PURPOSE OF ZONING ONLY
RECLASSIFIED D.R. 16

Beginning for the same on the north side of Ebenezzer Road as shown on
Baltimore County H.R.W. Plat No. 63-087-3,4,5,6 at the distance westerly of
140.70 feet more or less from the west side of Kilkeas Court running thence and
binding on the divisional outlines of the property now being described north
8 degrees 11 minutes 12 seconds west 1300.13 feet, south 37 degrees 24 minutes
48 seconds west 418.70 feet, north 18 degrees 04 minutes 58 seconds east 204.98
feet, north 71 degrees 32 minutes 38 seconds west 494.41 feet, south 31 degrees
30 minute 28 seconds west 226.27 feet, south 39 degrees 59 minutes 32 seconds
east 144.63 feet, south 17 degrees 49 minutes 48 seconds west 549.32 feet,
south 40 degrees zero minutes east 51.32 feet, south 27 degrees 50 minutes 52
seconds west 69.34 feet to the aforesaid north side of Ebenezzer Road running thence
and binding on the north side of Ebenezzer Road by a curve to the left having a
radius of 6,651.48 feet a distance of 74.04 feet and thence still binding on the
north side of said road by a curve to the left having a radius of 5989.00 feet
a distance of 1260.80 feet to the place of beginning.

Gross Area - 32.967 acres more or less.

March 22, 1972

Lee N. Koehler, Esquire
208 West Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition For Reclassification
N/S of Ebenezzer Road, 140' W
of Kilkeas Court - 11th District
Executors & Trustees of the
Will of Harvey S. Myers -
Petitioners
NO. 72-49-R (Item No. 19)

Dear Mr. Koehler:

I have this date passed my Order in the above cap-
tioned matter. Copy of said Order is attached.

Very truly yours,

W. G. Ulrich, Jr.
W. G. Ulrich, Jr.
Zoning Commissioner

SBD:arl

Attachments

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

Mr. William J. Davison
President
Darleigh Manor-Joppavale Community
Association, Incorporated
4403 Vale Drive
Baltimore, Maryland 21236

Lee N. Koehler, Esquire
March 22, 1972
Page 2

cc: Mr. Wade H. Cromwell
President
Perry Hall Improvement Association,
Incorporated
P. O. Box 63
Perry Hall, Maryland 21228
Mr. Joseph C. Sangarmano
President
Perry Hall Senior High School PTSA
4601 Ebenezzer Road
Baltimore, Maryland 21236
Mr. Jesse H. House
President
Perry Hall Junior High Parent Teachers
Student Association, Incorporated
4300 Ebenezzer Road
Baltimore, Maryland 21236

BALTIMORE COUNTY, MARYLAND

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

TO: Edward D. Hardesty
Attn: Oliver L. Myers Date: May 12, 1971
FROM: C. Richard Moore
SUBJECT: Item 19 - Cycle Zoning
Property Owner: Executors & Trustees under Will of Harvey S. Myers
Ebenezzer Road & prop. Perry Hall Blvd.
DR 5.5 to DR 16

The subject petition is requesting a change of 33 acres from
DR 5.5 to DR 16. This should increase the trip density of the subject
property from 1,650 to 4,000 trips per day.

Until such time as Perry Hall Boulevard is built all access
to the subject property is via the intersection of Ebenezzer and Belair
Roads. At the present time, this intersection is at capacity with extensive
delays during certain periods. The development of this site as DR 16 can
only compound the existing problem. There are no plans in the Capital
Budget through 1977 to construct Perry Hall Boulevard.

C. Richard Moore
C. Richard Moore
Assistant Traffic Engineer

CRM:ar



William G. Ulrich, Jr.

DOROTHY COPPOLINO,
JEAN PACHUTA,
MALCOLM PRESTON,
RICHARD ROTH, and
JOSEPH LEONARD
Protestants - Appellants,
vs
U. GILES PARKER, et al
Constituting the
COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

IN THE
CIRCUIT COURT
FOR
BALTIMORE COUNTY

No. _____

ORDER FOR APPEAL

MR. CLERK:

Please note an Appeal, on behalf of Dorothy Coppolino, Jean Pachuta, Malcolm Preston, Richard Roth, and Joseph Leonard, Protestants - Appellants, in the above entitled case, from the County Board of Appeals to the Circuit Court for Baltimore County, in the matter of a Petition for Reclassification from "D.R. 5.5" Zone to a "D.R. 16" Zone located on the north side of Ebenezer Road 140' west of Kilkea Court in the Eleventh Election District of Baltimore County.

This Appeal is from the majority decision of the County Board of Appeals of Baltimore County on Petition #72-49-R and the Order passed pursuant to such majority decision dated July 17, 1973, by virtue of which the requested zoning was granted in part and denied in part.

This Appeal is filed pursuant to the provisions of Maryland Rules 82 and 84.

HARRY S. SUARYZULDER, JR.
210 E. Redwood Street
Baltimore, Maryland 21202
727-4929
Attorney for Protestants -
Appellants

HARRY S. SUARYZULDER, JR.
Attorney for Protestants -
Appellants

I HEREBY CERTIFY that a copy of the foregoing was mailed
JAMES D. NOLAN, ESQUIRE, 204 West Pennsylvania Avenue, this
day of August 1973, attorney for Petitioners and to the
County Board of Appeals, County Office Building, Towson, Maryland
21204.

RE: PETITION FOR RECLASSIFICATION : BEFORE
from D.R. 5.5 to D.R. 16 :
N/S of Ebenezer Road 140' : COUNTY BOARD OF APPEALS
W. of Kilkea Court :
11th District - NE Sector : OF
Executors and Trustees under the : BALTIMORE COUNTY
Will of Harvey S. Myers and :
Madeline S. Myers : No. 72-49-R

DISSENTING OPINION

This member of the Board disagrees with the findings of the majority and dissents from the Order. The summary of this case, as set out in the majority opinion, fairly describes the testimony and evidence. However, the conclusions drawn by the majority and myself differ. In reviewing these divergent conclusions, it is significant to me that the planned Perry Hall Boulevard is not now funded and no timing for its construction can be accurately estimated.

Area residents testified in opposition to this petition. Their testimony in opposition dealt with increased neighborhood density and its potential effect on school population. This testimony also included the fear that additional construction, which would result if this petition were granted, would cause increased runoff into the local streams and, thus, increase the flooding potential of said streams. There was testimony that flooding in this immediate neighborhood has been a problem in the past. Without attempting to detail the testimony of the protestant, these witnesses were in accord in describing adverse traffic conditions in the area, including the lack of good ingress and egress from this immediate section of Ebenezer Road. It was discussed that emergency vehicles could have difficulty getting in or out of the Perry Hall Senior High School and this entire local area, if Ebenezer Road were blocked off along the immediate section involved in this case.

The evidence and testimony presented by the petitioners in this case was excellent. At first glance, considering all of the facts set forth by the petitioners, one might be inclined to favor the granting of this petition or at least that part of same which would restore the density to that which existed prior to the adoption of the March 24, 1971 map. However, the sole question to be decided by this Board is whether or not the action by the County Council in placing the D.R. 5.5 classification on the entire subject

Myers - #72-49-R - Dissenting Opinion

property was in error. Was same an arbitrary and/or capricious action of the County Council? This member of the Board thinks not. After full reflection on all of the testimony and evidence, I am hard pressed to say that the County Council erred. In review, I cannot say that perhaps the potential flooding and runoff problem and/or the ingress and egress situation were not the valid reasons why the County Council, in their wisdom, chose to restrict the density to a D.R. 5.5 classification. If either, or both, of these reasons were the thoughts of the County Council, I would not fault that action. The burden of conclusively proving error rests with the petitioners, and this burden has not been overcome. It is my judgment that the Order of the Zoning Commissioner should be affirmed and this petition should be denied in toto.

Walter A. Reiter, Jr., Acting Chairman

Date: July 17, 1973

RE: PETITION FOR RECLASSIFICATION : BEFORE
from D.R. 5.5 to D.R. 16 :
N/S of Ebenezer Road 140' : COUNTY BOARD OF APPEALS
W. of Kilkea Court :
11th District - NE Sector : OF
Executors and Trustees under the : BALTIMORE COUNTY
Will of Harvey S. Myers, and :
Madeline S. Myers, : No. 72-49-R
Petitioners :
:

MAJORITY OPINION

This case comes before the Board on an appeal by the petitioners from an Order of the Zoning Commissioner which denied the requested D.R. 16 classification on a tract of approximately 32,907 acres in the Eleventh Election District of Baltimore County. The subject property is located on the north side of Ebenezer Road approximately 140 feet west of Kilkea Court, opposite the Perry Hall Senior High School. The entire parcel was zoned D.R. 5.5 by the County Council in the comprehensive zoning maps adopted March 24, 1971. The petitioners propose to construct approximately 456 garden type apartment units on this parcel, as indicated by Petitioners' Exhibit #7 in this case.

The first witness for the petitioners was Norman E. Gerber, Chief of the Planning Section of the Office of Planning and Zoning. Mr. Gerber testified that approximately 15 acres of the subject property was zoned R-A on the 1966 comprehensive zoning map, and there was further testimony from the other witnesses and the introduction of zoning file #68-139-R which indicated an additional 4,371 acres were zoned for apartments by Order of the Zoning Commissioner of Baltimore County under date of January 3, 1968. Mr. Gerber further indicated that the Planning Staff and the Planning Board recommended that apartment zoning be extended on the 1971 comprehensive zoning map to include the entire tract of approximately 32.9 acres. However, the County Council, in adopting the map on March 24, 1971, zoned the entire tract D.R. 5.5 which amounted to a downshift from apartment zoning for approximately 20 acres of the subject property. It is from this action that this petition arises.

In addition to Mr. Gerber, the petitioners produced five other expert witnesses. They were: Mr. John Hocheder, a professional engineer; Ormsby S. Moore and Hugh Gelston, Baltimore County real estate experts and appraisers; John W. Erdman,

Harvey S. Myers, et al - #72-49-R

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Assistant Commissioner of Traffic and Transit of Baltimore City, and Bernard Willemain, a land planning expert. The testimony of all these witnesses supported the granting of the petition, and indicated that the County Council was in error in not following the recommendation of the County's Planning Staff and Board. In brief, their testimony indicated there are adequate utilities in the area to support the proposed development of apartments, and they said the proposed development would not cause any overcrowding of schools or public highways and that such a proposal would not have any adverse effect. Additionally, the proposed Perry Hall Boulevard is planned to traverse a portion of the subject property.

Five of the neighborhood residents testified in opposition to the petitioners' case. Their opposition was based primarily upon fear of crowding of schools, increased traffic problems and possible flooding from the runoff of surface water. However, the expert testimony indicated that there would be no overcrowding of schools nor of the public highways and, in fact, that at such time when Perry Hall Boulevard is actually constructed, the traffic problems will be eased by the siphoning effect of the aforesaid road. Of course, any surface water runoff would have to be controlled in accordance with the Baltimore County Building Regulations. It is interesting to note that all of the opponents purchased their property in the neighborhood after the adoption of the 1966 comprehensive zoning maps which had classified at least 15 plus acres for apartment zoning. There was indication, at least from some of the opponents, that they were aware of the existence of the apartment zoning at the time they purchased their present homes.

In review, it appears that the subject property was purchased by Harvey S. Myers and wife (now deceased) some 15 plus acres of which was zoned for apartments at the time of the purchase. Subsequent to this, an additional 4,371 acres of the subject property was zoned for apartments under zoning file #68-139-R on January 3, 1968, the remaining balance of the subject property being zoned R-6. At the time of the adoption of the 1971 comprehensive zoning map for Baltimore County, the Baltimore County Planning Board and the Baltimore County Planning Staff recommended classifying the entire tract of 32,907 acres as D.R. 16. However, the County Council ignored these recommendations

Harvey S. Myers, et al - #72-49-R

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and, in fact, zoned the entire tract D.R. 5.5 which amounted to a downshift for the approximately 20 acres which had been previously zoned for apartments by virtue of a prior zoning map and by a prior zoning hearing. The majority of the Board feels that this action by the County Council was clearly in error and confiscatory in nature. The majority of this Board feels that the petitioners should at least be returned to the status which existed prior to the adoption of the 1971 comprehensive zoning map.

It is, therefore, the judgment of the majority of this Board that the Order of the Zoning Commissioner shall be reversed in part and affirmed in part; namely, that portion of the subject property described as Parcel #1, for identification, which comprises the approximately 20 plus acres which had been zoned for apartments prior to the adoption of the 1971 comprehensive zoning maps shall be returned to apartment classification of D.R. 16, and that portion of the subject property identified as Parcel #2, for identification purposes, comprising the balance of the subject property which had been zoned D.R. 5.5 by the 1971 comprehensive zoning maps, shall remain zoned as D.R. 5.5.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 17th day of July, 1973, by the County Board of Appeals, ORDERED that the reclassification petitioned for, be and the same is hereby GRANTED so that portion of the subject property which was zoned R-A on the 1966 comprehensive zoning map, and to the additional parcel, containing 4,371 acres, which was granted R-A zoning by Order of the Zoning Commissioner of Baltimore County under date of January 3, 1968; and

IT IS FURTHER ORDERED that the petition for reclassification pertaining to the remaining portion of the subject property, be and the same is hereby DENIED.

Harvey S. Myers, et al - #72-49-R

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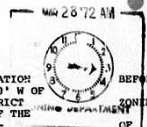
Any appeal from this decision must be in accordance with Chapter 1100, subtitle 8 of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

W. Giles Parker

Robert L. Gilland

JAN 21, 1975



PETITION FOR RECLASSIFICATION
N/S OF EBENEZER ROAD, 140' W OF
KILKEA COURT - 11TH DISTRICT
EXECUTORS AND TRUSTEES OF THE
WILL OF HARVEY S. MYERS -
PETITIONERS
NO. 72-49-R (ITEM NO. 19)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY
NO. 72-49-R
(Item No. 19)

ORDER FOR APPEAL

MR. ZONING COMMISSIONER:

Please enter an Appeal to the County Board of Appeals from your Order of March 22, 1972, and each and every part thereof, denying the requested reclassification; this Appeal being taken on behalf of the Petitioners and Legal Owners, Madeline B. Myers and the Executors and Trustees under the Will of Harvey S. Myers, parties thereby aggrieved.

James D. Nolan
James D. Nolan

I HEREBY CERTIFY that on this 28th day of March, 1972, a copy of the above Order was mailed to Mr. William J. Davison, President, Darleigh Manor-Joppavale Community Association, Incorporated; Mr. Wade H. Creaswell, President, Perry Hall Improvement Association, Incorporated; Mr. Joseph C. Sangermano, President, Perry Hall Senior High School PTSA and Mr. Jesse H. House, President, Perry Hall Junior High Parent Teachers' Association, Incorporated.

James D. Nolan
James D. Nolan

LAW OFFICE
NOLAN, FLEMMING
& WILSON
TOWSON, MD. 21204

DATE 3/24/72
BY J.C. Harris, clk

RE: PETITION FOR RECLASSIFICATION : BEFORE THE
N/S of Ebenezer Road, 140' W : ZONING COMMISSIONER
of Kilkea Court - 11th District : OF
Executors & Trustees of the :
Will of Harvey S. Myers - :
Petitioners : BALTIMORE COUNTY
FD. 72-49-R (Item No. 19) :
::: :::

The Petitioners request 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 of Ebenezer Road, one hundred and forty (140) feet west of Kilkea Court, in the Eleventh District of Baltimore County, consisting of 32.907 acres of land, more or less.

Testimony on behalf of the Petitioners indicated that the property is to be developed into garden type apartments in the amount of four hundred and fifty-six (456) units. It was also noted that if the classification were granted five hundred and twenty-six (526) units would be allowed. The property is located directly across from the Perry Hall Senior High School on Ebenezer Road. It was also indicated that Perry Hall Boulevard, as proposed, would lie to the west of the property.

An engineer, testifying for the Petitioner, indicated that water and sewer facilities are available to the property and that under its present classification one hundred and eighty-one (181) units could be built. It was indicated by a traffic expert that most of the traffic emanating from the subject property would use Ebenezer Road to Belair Road. He testified as to the proposed Perry Hall Boulevard, but that no funds were presently available for its construction.

Mr. Hugh E. Gelston, real estate consultant and appraiser testifying for the Petitioners, indicated that the property was zoned R.A. prior to the adoption of the Comprehensive Zoning Map on March 24, 1971. He further stated that the Baltimore County Planning Board recommended R.A. to the Baltimore County Council, but the Council classified the property in a D.R.5.5 Zone. He cited the need for apartments in the area and the proximity to the proposed Perry Hall Boulevard as some of the reasons

he felt the Comprehensive Zoning Map was in error. Another real estate expert indicated that the people of the area were against all apartment zoning prior to the adoption of the Map and stated so at the Baltimore County Council's public hearings.

Residents in the area, in protest of the subject Petition, testified to the high traffic volume at the intersection of Ebenezer Road and Belair Road, approximately one-half (1/2) mile to the west of the subject property. They indicated that the schools were overburdened at the present time. They further stated that presently proposed and now under construction are eight (80) acres of garden type apartments in a D.R.16 Zone, west of Belair Road near the intersection of Ebenezer Road.

Without reviewing the evidence further in detail but based on all the evidence presented at the hearing, in the opinion of the Zoning Commissioner, the Comprehensive Zoning Map as adopted by the Baltimore County Council on March 24, 1971, was not in error in classifying this property D.R.5.5. The subject tract is surrounded on three (3) sides by single family cottage type developments. The trip density emanating from this property would be such that Ebenezer Road and its intersection with Belair Road could not handle it. Furthermore, there are no plans or funds in the Capital Budget through 1977 to construct Perry Hall Boulevard as cited in Item No. 19 of the Baltimore County Planning Board's recommendations to the Zoning Commissioner.

The topography of the land is such that a cottage type development could be built as has been constructed on the surrounding tracts. It is true that the property can presently be developed into garden type apartments but only to the density as provided for under D.R.5.5. This would not create a hazard along the roadway in the area.

The burden of proving error on the Comprehensive Zoning Map for this subject tract is borne by the Petitioners. This burden of proof has not been met.

ORDER RECEIVED FOR FILING

DATE 3/24/72
BY J.C. Harris, clk

For the foregoing reasons, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 22nd day of March, 1972, that the above Reclassification be and the same is hereby DENIED and that the above described property or area be and the same is hereby continued as and to remain a D.R.5.5 Zone.

James D. Nolan
Zoning Commissioner of
Baltimore County

SCHEDULE OF ERRORS

COMMITTED BY THE COUNTY COUNCIL IN
CLASSIFYING THE SUBJECT TRACT DR 5.5

The Petitioners believe that the County Council committed at least the following errors in classifying the subject tract of land DR 5.5.

1. The subject tract of land consists of two contiguous parcels (herein referred to and described below as "Parcel #1" and "Parcel #2") located in the rapidly developing Perry Hall area, abutting on the East side of the proposed Perry Hall Boulevard. Parcel #1, consists of 20.29 acres more or less; is located on the North side of Ebenezer Road, approximately 1585 feet East of Carlisle Avenue, and is owned by the undersigned Petitioners, the Executors and Trustees under the Will of Harvey S. Myers. Parcel #2, consists of 13.05 acres more or less; is located approximately 278 feet from the North side of Ebenezer Road and approximately 144 feet from the West side of Kilkea Court, and is owned by the undersigned Petitioner, Madeline B. Myers.

Due to the rapidly expanding development and population of the Perry Hall area, and an accompanying scarcity in economically priced, individual residential building lots, a clear need, demand, and trend has been established in the area toward apartment housing. The zoning of the subject tract by the Council for individual, residential building lots on a DR 5.5 basis was and is clearly erroneous.

2. All public utilities are fully available to the subject tract in more than sufficient quantities to support DR 16 zoning, and

if the Council in any way relied on a lack of such utilities in denying a DR 16 classification for the subject tract, it was in error in doing so.

3. The Baltimore County Planning Board, after extensive investigation and expert analysis, recognized the need for apartment development in the area; determined that adequate public utilities and other necessary facilities were available to the subject tract, and passed a resolution recommending classification of the subject tract as DR 16. The Council's action in rejecting the Board's expert, considered opinions and recommendations without stating its reasons therefore, was clearly unreasonable, arbitrary and capricious; and, consequently, constitutes patent error.

4. Development of the subject tract on a DR 5.5 basis is at present adversely affected by the location of Perry Hall High School immediately to the South side of Ebenezer Road; and further, will be adversely affected in the very near future by the construction of the proposed Perry Hall Boulevard, which will abut the entire Eastern boundary of the subject tract. These two factors alone render DR 5.5 zoning for the subject tract impractical, undesirable and clearly erroneous.

5. It was error for the Council, if it did so, to deny DR 16 zoning on the subject tract on the grounds of inadequate access, since the property already enjoys good access to Belair Road via Ebenezer Road; and, furthermore, this existing good access will be improved to excellent access status when the impending construction of the proposed Perry Hall Boulevard is completed.

6. In developing a comprehensive zoning map for the

Northeast Sector, the County Planning Board allocated adequate areas for apartment development; allowing sufficient DR 16 acreage on which enough apartments could be constructed to provide for the foreseeable needs of the area's expanding population. The map finally adopted by the Council for the Northeast Sector, and in particular the Perry Hall area, has for proper land use planning purposes practically eliminated these expertly considered and planned DR 16 areas. As a result, an imbalance has been created in the assumptions, projections and principals on which the Planning Board developed its comprehensive plan for the Perry Hall area and a drastic underestimate of the projected residential density requirements of the area has been made. In view of all the qualifications of the subject tract, it was and is patent error for the Council not to meet these density requirements, in part at least, but classifying the subject tract as DR 16.

7. That DR 5.5 zoning is completely unsuitable for the subject tract for the reasons stated above and below, and DR 5.5 zoning is, in fact, provided in the Perry Hall area on the Northeast Sector map adopted by the Council in such excessive amounts that the area is now over-balanced by DR 5.5 zoning.

8. That if the Council failed to provide for DR 16 zoning on the grounds that it would adversely affect the area, this was and is error, in that the Council failed to state specifically its reasons for such a conclusion, and in the absence of such stated reasons, it can only be assumed that the Council erroneously presupposed that apartments are necessarily noisy, ill managed, and generally detrimental to the tranquility of all residential neighborhoods.

9. That the Council's error in placing this property in

a DR 5.5 classification is in large part explained by the vociferant atmosphere in which the Council was forced to conduct its deliberations for the new zoning maps with improper and extreme pressures from the news media and the public, including as to the public, actual physical threats against the life, family and property of at least one Councilman (Mr. Tyrie). These pressures had to result in an inability of all Council members to arrive at an objective and rational zoning classification for the subject tract and many other tracts located in other sections of the County; that is to say, the public hearings and private deliberations conducted by the Council were surrounded by an atmosphere far more hostile than mere "zoning by plebiscite," and therefore, the DR 5.5 classification of the subject tract was, and is the result of arbitrary, capricious, discriminatory, confiscatory and illegal action by the Council.

10. That it was, and is, patent error and, indeed, completely unlawful and a denial of due process of law to downshift Parcel #1 of this tract to DR 5.5, in view of the fact that RA zoning had been granted to Mr. Harvey S. Myers (now deceased and represented by the Executors and Trustees under his Will) by order of the Office of the Baltimore County Zoning Commissioner pursuant to Petition No. 58-139-R, on January 3, 1967.

11. That the Council's action in adopting the new zoning map amounts to nothing more than "mass spot zoning," and the Council's procedure in doing so was defective in the following respects:

a. That the Council was not acting pursuant to an adequate Master Plan as required by Section 22.12 et seq. of the Baltimore County Code, 1968 Edition;

LAW OFFICE
STENGEL, ASKEW
& WILSON
TOWSON, MD. 21204

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STENGEL, ASKEW
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STENGEL, ASKEW
& WILSON
TOWSON, MD. 21204

LAW OFFICE
STENGEL, ASKEW
& WILSON
TOWSON, MD. 21204

b. That the Council's public hearings, which purported to be legally conducted, proper legislative assemblies, were, in fact, not legal hearings as they were not conducted with proper precision, proper deliberation by the respective members of the Council, and no findings of fact were announced as to the greater bulk of properties in question, including the subject tract;

c. That the Council did not hold the adequate number of public hearings as required by Bill, 72;

d. That the Council did not act with proper deliberation on the numerous protests, including the subject tract, brought to its attention, but rather, under the guise of "legislative courtesy," automatically, uncritically, erroneously and illegally adopted the recommendations of each local Councilman, in complete disregard of the expert opinions and recommendations of the County Planning Board;

e. That the subject tract was not properly described in the Council's agenda and log of issues, and was treated with extreme imprecision by the Council at the time of the public disclosure of its proposed resolutions, and such imprecise and inaccurate treatment and description was and is wholly arbitrary, capricious, illegal and erroneous; and

f. That the Council failed in general, and specifically with reference to the subject tract, to properly describe by metes and bounds the properties which were subject to controversy and/or downshift zoning, and further, the Council failed in general, and specifically with reference to the subject tract, to give adequate public or private notice to the owners of properties scheduled for downshift zoning. Such failure to describe the subject tract and to give adequate personal or public notice of downshift zoning to its owners, was and is erroneous,

- 5 -

along with the 20 plus acre parcel as an entire unit.

Protestants on the other hand argue that there should not have been reclassification for either parcel.

The Court of Appeals has clearly set forth the proper scope of review, with the fundamental principles to be applied, for this Court in dealing with zoning appeals. Judge Singley, speaking for the Court in C.C. Haldemann v. Board of County Commissioners of Howard County, et al. 253 Md. 298 (1969), said:

"We have often repeated the principles here applicable: courts have no power to rezone and may not substitute their judgment for that of the expertise of the zoning authority. Kirkman vs. Montgomery County Council, 251 Md. 273, 247 A.2d 255 (1968); Bosley vs. Hospital for Consumptives, 246 Md. 197, 227 A.2d 746 (1967); Board of County Comm'rs for Prince George's County vs. Farr, 242 Md. 315, 218 A.2d 923 (1966). It has long been settled that the zoning authority's determination is correct if there were such legally sufficient evidence as would make the question fairly debatable. Ark Redi-Mix Concrete Corp. vs. Smith, 251 Md. 1, 246 A.2d 220 (1968); Mayor and City Council of Greenbelt vs. Bd. of County Comm'rs for Prince George's County, 247 Md. 670, 234 A.2d 140 (1967); Agneslane, Inc. vs. Lucas, 247 Md. 612, 233 A.2d 757 (1967). Further, the one who attacks the determination made by the authority must show that it was arbitrary, unreasonable or capricious. Kirkman vs. Montgomery County Council, supra; Agneslane, Inc. vs. Lucas, supra; Bosley vs. Hospital for Consumptives, supra; Mayor & City Council of Balto. vs. Sapers, 230 Md. 291, 186 A.2d 884 (1962)."

The question to be decided by this Court is whether or not the issues before the Board were fairly debatable issues and whether or not the determinations of the Board were supported by substantial evidence. This Court completely realizes that it has no authority to substitute its judgment for that of the zoning authority but is limited to the above determinations.

Petitioners and Protestants, each having filed an

arbitrary and illegal.

11. For such other and further reasons as may be disclosed by detail study throughout this case, including the hearing hereon, further error by the Council is hereby assigned and will be noted when and as found.

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STENGEL, ASKEW
& WILSON
TOWSON, MD. 21204

- 6 -

appeal to certain parts of the Board's ruling, have the burden of proving to this Court that the action of the Board was arbitrary, capricious or unreasonable with regards to that portion that is separately contested. A review of the exhaustive transcript reveals to this Court that there was ample evidence to make the issues "fairly debatable" before the Board, Petitioners and Protestants each presenting evidence to support their respective positions. It is this Court's opinion that neither side has established that the Board abused the discretion vested in it by law.

For the above reasons, the opinion of the County Board of Appeals of Baltimore County, is hereby APPROVED this 26 day of January, 1974, and both appeals, Petitioners and Protestants, are hereby DENIED.

H. Kemp MacDaniel
H. KEMP MACDANIEL
JUDGE

Copy to:
Harry S. Swartwelder, Jr., Esq.
James D. Nolan, Esq.
County Board of Appeals
Eugene Creed, Administrator

- 4 -

DOROTHY COPPOLINO,
JEAN PACHUTA,
MALCOLM PRESTON,
RICHARD ROTH, and
JOSEPH LEONARD
Protestants-Appellants
vs.
W. GILES PARKER, ET AL
Constituting the
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY
Madeline B. Myers & the Executors*
and Trustees under the Will of
Harvey S. Myers, namely,
John L. Askew, Esq. & Mercantile
Safe Deposit and Trust Company
Intervenors

PETITION FOR RECLASSIFICATION
from D.R. 5.5 to D.R. 16
W/S of Ebenezer Road 140'
W of Killea Court
Eleventh District - N.E. Sector
JOHN L. ASKEW, ESQ. and
MERCANTILE SAFE DEPOSIT & TRUST
COMPANY, EXECUTORS AND TRUSTEES
UNDER THE WILL OF HARVEY S. MYERS
and
MADELINE B. MYERS
Petitioners

MEMORANDUM OPINION AND ORDER

Dorothy Coppolino, Jean Pachuta, Malcolm Preston, Richard Roth, and Joseph Leonard, "Protestants," before the County Board of Appeals in Case No. 72-49-R filed an appeal from the Board's Opinion and Order dated July 17, 1973. (Misc. Case 5098, Docket 9, Folio 326), as did the Executors and Trustees under the Will of Harvey S. Myers and Madeline B. Myers, the original Petitioners, ("Petitioners") (Misc. Case 5101, Docket 9, Folio 328). Each contends in substance

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Case #72-49-R
Executors and Trustees under the Will of Harvey S. Myers, and Madeline B. Myers

REPORTED IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 37
September Term, 1974

DOROTHY COPPOLINO ET AL v.
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

and

JOHN L. ASKEW ET AL v.
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Morton,
Davidson,
Lowe, JJ.

Opinion by Davidson, J.

Filed November 18, 1974

Rec'd 11-19-74
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that the ruling of the Board favoring the other's position was arbitrary, capricious, illegal and improper. This Court heard both cases as a matter of convenience on December 11, 1973, at which time substantial and extensive argument was presented by counsel for all parties concerned, as to the evidence and the law. After reviewing the transcript of the record before the County Board of Appeals, reviewing the evidence and the law, this Court is now ready to make its decision.

This case arose in April, 1971, when Madeline B. Myers, as owner of 12.616 acres on the north side of Ebenezer Road in the Perry Hall section of Baltimore County, filed a co-petition with the Executors and Trustees under the Will of Harvey S. Myers, owners of 20.291 contiguous acres, to have said properties reclassified as a unit from D.R. 5.5 to D.R. 16. The entire parcel was zoned D.R. 5.5 by the County Council in the comprehensive zoning maps adopted March 14, 1971. The purpose for said co-petition was to allow the Petitioners to construct approximately 456 garden type apartment units on the entire parcel. Prior to the zoning by the County Council, the 20 plus acre parcel (owned by the estate) had been zoned R.A., which meant that this action constituted a downshift. Ruling that the County Council erred in this determination and stating that the action was confiscatory in nature, the Board returned the classification of this 20 plus acre parcel to D.R. 16 (apartment classification). But, the 12 plus acre parcel (owned by Mrs. Myers) was not rezoned by the Board and remained D.R. 5.5, having been previously zoned R-6. Petitioners argue that this 12 plus acre parcel should have been reclassified

- 2 -

This case presents the narrow question of whether the County Council of Baltimore County (Council) committed basic and actual "mistake", as that term is used in zoning law, when on 24 March 1971 it adopted a comprehensive zoning map on which the subject property, consisting of 32.907 ± acres, was classified as D.R.-5.5 (Density Residential, 5.5 dwelling units per acre).

Most of the facts are not in dispute. The subject property, roughly rectangular in shape, lies in an area bounded by Belair Road on the west, Joppa Road on the north and Ebenezer Road on the south. All of the land lying within this area was classified in the D.R.-5.5 zone by the comprehensive zoning map adopted by the Council on 24 March 1971. The subject property fronts on the north side of Ebenezer Road and lies approximately one mile to the east of its intersection with Belair Road. It is bounded on the east by a relatively large expanse of land zoned D.R.-5.5 which is developed with single family residences. On the north, the subject property adjoins land zoned D.R.-5.5 which is essentially undeveloped. On the west, the subject property is bounded by a relatively large expanse of land zoned D.R.-5.5 which is developed with single family residences and which, in turn, is bounded by land upon which the Perry Hall Elementary and Junior High Schools are located. The Perry Hall High School, located on the south side of Ebenezer Road, confronts the subject property on the south. The elementary

REPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 67
September Term, 1974

DOROTHY COPPOLINO ET AL V.
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

and

JOHN L. ASKEW ET AL V.
COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Morton,
Davidson,
Lowe,
JJ.

Opinion by Davidson, J.

Filed November 18, 1974

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school is operating at near capacity while the Junior and senior high schools are over-capacity. Several additions to existing school facilities and some new schools are being planned.

The subject property is unimproved and heavily wooded. The eastern portion of its frontage reaches an elevation of 190 feet, an elevation approximately 35 feet above that of Ebenezer Road. The property falls from the 190 foot elevation at its southeast corner to a 120 foot elevation at its northwest corner. A large stream and flood plain runs along a portion of the western boundary of the subject property and then cuts across its northern corner. Test borings made in the flood plain indicate that below the earth's surface there is rock which reaches a depth of approximately four feet and a visual inspection has revealed rock outcroppings all along the stream.

Since at least 1966 a new road, Perry Hall Boulevard, with a right-of-way of 110 feet, has been proposed to be located along a portion of the western boundary of the subject property. While the alignment and grade of this road already has been delineated, its actual design has not yet been developed. The Capital Budget indicates that Perry Hall Boulevard will not be constructed until FY 77-78. Until this road is built, all access to the subject property is via the intersection of Ebenezer and Belair Roads. Traffic at this intersection is at or over capacity so that

an extensive delay occurs during peak hours. The construction of Perry Hall Boulevard should alleviate traffic congestion at this intersection.

Originally, the subject property consisted of three separate parcels of land. Parcel "A", containing approximately 16 acres, was "L" shaped, with the east-west leg of the "L" being a rectangle containing all of the 1900 foot frontage along Ebenezer Road and the north-south leg of the "L" being a rectangle containing the southwestern portion of the tract. Parcel "B", containing about four acres of land, was roughly triangular in shape and adjoined the northern boundary of the north-south leg of the "L". It comprised the northwestern portion of the subject property. Parcel "C", containing about 12 acres of land, also an essentially rectangular piece of property, adjoined the eastern boundary of the north-south leg of the "L" and the northern boundary of the east-west leg of the "L". It contained all of the eastern portion of the property other than the rectangle of land comprising the east-west leg of the "L". When the three parcels are united into one, as in this application, they form, as noted earlier, an approximate rectangle.

Parcel "A" was classified in the R.A. zone (Residential-Apartments) by the comprehensive zoning map adopted by the Council in August, 1966. The same comprehensive zoning map classified both parcels "B" and "C" in the R.-6 zone (Residence, one or two family, lot area 6000 square feet). In 1967

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a petition was filed requesting reclassification of Parcel "B" from the R.-6 zone to the R.A. zone. The petition alleged that the comprehensive zoning map was in error with respect to Parcel "B". In a report dated 20 December 1967, the planning staff of the Office of Planning and Zoning (Planning Staff) said:

"We regard the requested rezoning as a logical but minor consequence of an adjusted alignment for Perry Hall Boulevard, and we thus have no objection to the reclassification. We do not believe that the reclassification should be regarded as a change which in itself would justify further rezoning in this area in the future."

The Zoning Commissioner (Commissioner) granted the requested reclassification of Parcel "B" to the R.A. zone on 3 January 1968. No appeal was taken.

On 3 August 1970 the Council amended the Baltimore County Zoning Regulations¹, which provided for the creation of a new set of zoning classifications, the classification of parcels "A" and "B", formerly R.A., was redesignated D.R.-16 (Density-Residential, 16.0 density units per acre) while that of parcel "C" was changed from R.-6 to D.R.-5.5.

On a proposed zoning map dated 10 September 1970, prepared by the Planning Staff and approved for public hearing

¹These amendments were approved by the County Executive and officially enacted on 5 August 1970.

by the Baltimore County Planning Board (Planning Board), the entire 32 ± acre subject property was assigned a D.R.-16 zoning classification. On a subsequent zoning map, dated 24 November 1970, recommended to the Council by the Planning Board, following its "second round" of public hearings, the 32 acre tract was again designated in the D.R.-16 zone. No reasons for these designations appear in the record. On 24 March 1971 the Council, after holding numerous public hearings, adopted a comprehensive zoning map for the area. The subject property, as a whole, was classified in the D.R.-5.5 zone. Thus, the recommendation of the Planning Staff and the Planning Board to extend D.R.-16 zoning to that portion of the subject property which was formerly parcel "C" was rejected. Moreover, those parts of the subject property originally parcels "A" and "B", both recommended by the Planning Staff and the Planning Board for retention in the D.R.-16 zone, were "downshifted" to the D.R.-5.5 zone. Several other properties lying on the south side of Ebenezer Road, previously classified as D.R.-16 and recommended for retention in that zone, were also "downshifted" to D.R.-5.5. The reasons for these actions do not appear in the record.

Within three weeks of the adoption of the comprehensive zoning map² the legal owners of the property petitioned

²The date upon which the zoning application was filed does not appear in the record. The provisions of Baltimore County Code (1972 Cum. Supp.) §§ 22-22 (c) and (d) support an inference that the application was filed prior to 16 April 1971.

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the Commissioner for a reclassification of the subject property to the D.R.-16 zone, alleging that there was error in the comprehensive zoning map with respect to the subject property. In its report concerning this petition the Planning Board noted that the intersection of Ebenezer and Belair Roads was operating at capacity; that the grant of the requested reclassification could change trip density from 1,650 trips per day to 4,000 trips per day; and that there were no plans in the Capital Budget through 1977 for the construction of Perry Hall Boulevard. The Board went on to say:

"The tract is surrounded on three sides by single-family houses, or vacant land for such use. The tract could be developed in apartments at D.R.-5.5 density. D.R.-16 zoning in the middle of the single-family development would constitute spot zoning. Furthermore, after reconsidering the Council's actions not only on this property but in 'downshifting' other properties from D.R.-16 to D.R.-5.5 on Perry Hall Boulevard, the petitioner's proposal for D.R.-16 represents an intrusion into a moderate density neighborhood."

The Board reversed the position it had taken prior to the adoption of the 1971 comprehensive rezoning map and recom-

³See Baltimore Zoning Regulations (1970) § 1801.1A. Among the permitted uses in D.R. zones are the following: one-family detached houses, two-family semi-detached houses, one-family group houses, two-family houses, town-house apartment buildings, garden apartments, other apartment buildings; and churches, hospitals, schools and research institutions. Section 1801.1A sets forth certain restrictions on these permitted uses.

mended that the subject property be retained in the D.R.-5.5 classification. After a hearing the Commissioner found that the subject property could be developed in the D.R.-5.5 classification; that the land surrounding the subject property on three sides was zoned D.R.-5.5, and that the development of the subject property in the D.R.-16 zone would generate a trip density which the intersection of Ebenezer and Belair Roads "could not handle." He concluded that the comprehensive zoning map was not in error in classifying the subject property in the D.R.-5.5 zone. On 22 March 1972 he denied the request for reclassification to the D.R.-16 zone.

An appeal was taken to the Board of Appeals (Board). The recommendation of the Planning Board was included as a part of the file. In addition a number of experts testified on behalf of the owners that the topography of the subject property, the presence of rock, drainage difficulties and all other physical characteristics, which would entail prohibitive development costs, as well as the proximity of Ebenezer Road and Perry Hall Boulevard made the subject property unsuitable for development in the D.R.-5.5 zone. In contrast they testified that all of these factors combined with the availability of water and sewer, the location of minimal but adequate shopping facilities and a social and recreational center (Perry Hall School) in close proximity to the subject property, made the tract eminently fitted for development in the D.R.-16 zone. Moreover, they said that the grant of the

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requested reclassification would not depreciate property values. They further stated that any adverse effect on traffic would be minimal and temporary and would be eliminated by the construction of Perry Hall Boulevard. Schools would not be overburdened, they maintained, because the number of school children generated by the 524 apartment units permitted in the D.R.-16 zone would be less than that generated by the 181 single family units permitted in the D.R.-5.5 zone. They concluded that the Planning Board recommendation for D.R.-16 zoning on the entire tract, made prior to the adoption of the 1971 map, was correct and that the Council was in error in designating the subject property in the D.R.-5.5 zone on that map.

The protestants, neighboring homeowners, pointed to a report of the Planning Board issued during the October to April Cycle 1971-72⁶ which indicated that as a result of the comprehensive rezoning of 1971 the county's inventory of vacant land zoned D.R.-16 was increased from 3,200 acres to 3,700 acres; that that inventory could house two and one-half times the population anticipated by 1975; and, consequently, that such inventory would satisfy the need for apartment development until 1975 by which time the Planning Board

⁶See Baltimore County Code (1972 Cum. Supp.) § 22-22 (c). This section establishes a schedule of semiannual recurring periods for the purpose of considering contemporaneous zoning reclassification petitions.

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would be planning for the comprehensive zoning of 1976.⁵ They offered testimony that the requested reclassification would have an adverse effect on the value of their properties; would exacerbate existing flooding problems on their properties; would aggravate already existing traffic congestion; and would place an additional burden on already over-capacitated schools.

On 17 July 1973 the action of the Commissioner was reversed in part and affirmed in part by the majority of the three member Board which felt that the Council's action was "clearly in error and confiscatory in nature," and that the petitioners "should at least be returned to the status which existed prior to the adoption of the 1971 comprehensive zoning map." Accordingly, the Board granted reclassification of 20 ± acres of the subject property (former parcels "A" and "B") to D.R.-16 and retained the remaining 13 ± acres (former parcel "C") in the D.R.-5.5 zone.

Two appeals were filed in the Circuit Court of Baltimore County, one by the protestants who appealed from that

⁵See Baltimore County Code (1972 Cum. Supp.) § 22-20 (d). This section requires the Planning Board to recommend to the Council a complete countywide zoning map within the one-year period immediately preceding April 16, 1976, and within the one-year period immediately preceding every fourth year thereafter. The provisions of this section are mandatory. Code § 22-21.1 requires the Council to adopt a countywide zoning map before October 16, 1976 and before October 16 of each of the later years in which the Planning Board is required to submit a recommended countywide map.

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portion of the order which reclassified former parcels "A" and "B" to the D.R.-16 zone, and the other by the owners of the subject property who appealed from that portion of the order which retained former parcel "C" in the D.R.-5.5 zone. On 25 January 1974 Judge H. Kemp MacDaniel found that the issues before the Board were "fairly debatable" and affirmed the decision of the Board. Both the protestants and the owners appealed to this Court.⁶

The applicable test for determining the scope of judicial review in a zoning case alleging error in a comprehensive rezoning has recently been restated in Trainer v. Lipchin, 269 Md. 667 (1973), in which the Court of Appeals, quoting from Stratkins v. Beauchamp, 268 Md. 643, 652-53 (1973), said:

"...Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. Montgomery County v. Pleasant, 266 Md. 462, 295 A.2d 216 (1972); Winn-Haber v. Charnock, 258 Md. 636, 267 A.2d 175 (1970); Chevy Chase Village v. Mont. Co., 258 Md. 27, 267 A.2d 861 (1970); Smith v. Bd. Comm'rs of Howard Co., 252 Md. 280, 249 A.2d 708 (1969). We shall follow that test in considering this appeal. While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning,

⁶Baltimore County did not appear in the proceedings either before the Circuit Court or before this Court.

perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. Rockville v. Henley, 268 Md. 469, 302 A.2d 45 (1973); Hollon v. Prince George's Co., 264 Md. 410, 417, 280 A.2d 772 (1972); Creswell v. Baltimore Aviation, 257 Md. 712, 721, 264 A.2d 838 (1970). Since, as we have also said, this burden is onerous, Cabin John Lda. v. Montgomery Co., 259 Md. 661, 271 A.2d 174 (1970); Creswell v. Baltimore Aviation, supra; Kelle v. Pigeon, 293 Md. 574, 253 A.2d 749 (1969). The task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one." (emphasis in original) 269 Md. at 672-73.

We find that the owners have failed to meet that test.

The owners initially contend that there was error in the 1971 comprehensive zoning map which "downshifted" former parcels "A" and "B" to the D.R.-5.5 zone. They maintain that the then equivalent of the D.R.-16 classification, R.A. (hereinafter referred to as D.R.-16), assigned to former parcel "A" by the comprehensive rezoning of 1966, is presumed to be correct; that the correctness of this action was reaffirmed in 1968 when the Commissioner granted reclassification of former parcel "B" to the D.R.-16 zone, and was again reaffirmed when the Planning Staff and the Planning Board recommended in 1970 not only that former parcels "A" and "B" should be retained in the D.R.-16 zone but also that former parcel "C" should be reclassified to the D.R.-16 zone. The owners maintain that the then existing zoning of the subject

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property could not properly be altered by the Council unless there was evidence of error in the D.R.-16 classification assigned in 1966 or change in the character of the neighborhood subsequent to the assignment of that classification.

In support of this position the owners point out that Baltimore County Code (1972 Cum. Supp.) §§ 22-20 and 22-22.1 now require that a comprehensive rezoning of the entire county take place at least once in every four years.⁷ They argue that the frequent use of the comprehensive rezoning technique, absent the "change or mistake" rule, will permit arbitrary and capricious action on the part of the Council, which will undermine the permanence and stability of zoning classifications intended to be protected by the presumption of validity accorded comprehensive rezoning.

The Court of Appeals and this Court have consistently held that the "change or mistake" rule is not controlling in cases involving comprehensive rezoning. Soull v. Coleman, 251 Md. 6, 12 (1968); Trustees v. Baltimore County, 221 Md. 550, 560-61 (1960); McBee v. Baltimore County, 221 Md. 312, 316-17 (1960); Roberts v. Grant, 20 Md. App. 247, 253 (1974). The reason for this rule was set forth cogently in McBee, supra, at 316-17, where the Court of Appeals pointed out that:

"Where the matter is studied comprehensively, the inquiry into time and space with respect to change is naturally more extensive than on a single application. In short, the County

⁷See note 5, supra.

Commissioners were here exercising a plenary power, delegated by the General Assembly, to legislate a new zoning for the whole County. The new map reflects changes occurring over a wide area, and takes into account future public needs and impact. Hence, the legislative body is not confined to a consideration of changes in the immediate neighborhood. The so-called "change or mistake" rule applicable to piecemeal rezoning cases as stated in N.W. Merchants Term. v. O'Rourke, 191 Md. 171, 171, is not controlling here, because the new legislation is itself a comprehensive plan designed to cover a substantial area and to supersede the old zoning throughout that area. When such a new map is adopted, it is entitled to the same presumption that it is correct as is an original zoning."

We see nothing in the "cyclical" zoning scheme adopted by the Council which impels a modification of this rule. The fact that comprehensive rezoning may occur in Baltimore County with greater frequency than has been the case in the past does not alter the fact that it will result from careful study of changes occurring in wide areas and an assessment of future public needs and purposes. Indeed, in our view, the system will enhance the stability and permanence of zoning classifications by assuring that the majority of zoning classifications are determined in accordance with a carefully considered integrated plan of development, based upon a full understanding of the present and future needs of a broad area, rather than upon a piecemeal review of limited scope. In any event, arbitrary and capricious action by the Council is prevented, and stability and permanence assured by the requirement that a comprehensive rezoning, in order to be valid, must

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bear a substantial relationship to the public health, comfort, order, safety, convenience, morals, and general welfare. Norbeck v. Montgomery County, 254 Md. 59, 66 (1969). Accordingly, we hold that under the cyclical zoning process established by Baltimore County the "change or mistake" rule is not controlling and that the absence of a showing of either change or mistake prior to a comprehensive rezoning does not constitute error.

The owners next complain that the Council erred in assigning the D.R.-5.5 classification to the subject property in that the subject property is unsuited for development in that zone. Indeed, the Board found the evidence before it sufficient not only to establish "error" but also to establish that the D.R.-5.5 zoning was "confiscatory in nature." In our view the evidence presented was not sufficient to establish either "mistake" or an "unconstitutional confiscation" or, indeed, even to make those issues fairly debatable.

A number of expert witnesses expressed the opinion that the subject property was "unsuitable" for development in the D.R.-5.5 zone because of its topography, rock outcroppings, and proximity to Ebenezer Road and the proposed Perry Hall Boulevard. Yet they themselves conceded that single-family houses could be developed on the subject property, although there was doubt as to whether the maximum permitted density of 181 units could be achieved. They admitted that no details concerning development costs of single-family

homes had been "worked up," making it impossible to know whether that type of development would result in a profit or a loss. Furthermore, they acknowledged that single-family houses have been built on land adjoining the subject property on the east and west, some of which had topography similar to that of the subject property, and some of which fronted along Ebenezer Road. Thus, the basis of the experts' opinion that the subject property was unsuitable for D.R.-5.5 development was confined exclusively to a consideration of the tract's development for single-family use. There was not an iota of evidence presented to show that the maximum 181 dwelling units permitted in the D.R.-5.5 zone could not be developed successfully in some manner other than detached homes on the subject tract.⁸ In addition, there was no evidence presented to show that the subject property was

⁸In their brief the owners assert that the flexibility allowed by the present D.R.-5.5 zoning classification was not available to them because much of the subject property falls within a residential transition area. Consequently, the tract is confined to single-family use. See Baltimore County Zoning Regulations (1970) § 1B01.1B. Section 1B01.1B.1.a. defines a residential transition area as:

"any D.R.-1, D.R.-2, D.R.-3.5, D.R.-5.5, or D.R.-10.5 zone or part thereof which lies (a) within 300 feet of any point on a dwelling other than on apartment building, or (b) within 200 feet of any point lying within a vacant lot or parcel which is itself wholly or partially classified as D.R. and which is the same or less in area."

Section 1B01.1B.1.b., which sets forth the use restrictions in such transition areas, would limit those portions of the

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unsuitable for development by way of special exception uses.⁹ Thus, the expert opinions that the subject property was not suitable for development in the D.R.-5.5 zone were totally unsupported by facts.

The Court of Appeals and this Court have stated that an opinion, even that of an expert, is not evidence strong or substantial enough to show error in the comprehensive rezoning or confiscation unless the reasons given by the expert as the basis for his opinion, or other supporting facts relied upon by him, are themselves substantial and strong enough to do so. *Stratakis v. Penachamp*, *supra*, at 643, 655 (1973); *Westview Park v. Hayes*, 256 Md. 575, 582 (1970); *Smith v. Co. Comm'rs of Howard County*, 252 Md. 280, 284 (1969); *Iverson v. Zoning Board*, 22 Md. App. 265, 270 (1974). Moreover, the Court of Appeals has repeatedly held that in order to obtain a rezoning on the basis of an

8 (cont.)

subject property lying within a residential transition area to single-family development. The contention in the brief is unsupported by the evidence. Accordingly, we cannot consider this factor on appeal. Md. Rule 1085.

⁹See Baltimore County Zoning Regulations § 1B01.1C, which establishes the following uses, among others, as permitted by way of special exception: conservatories for music or other arts; convalescent homes; community buildings; swimming pools; golf courses; country clubs; or other, similar civic, social, recreational or educational uses; and private colleges.

Under all of these circumstances the evidence before the Board that there was a mistake in the comprehensive rezoning or that the classification of the subject property in the D.R.-5.5 zone constituted a confiscatory action, was insufficient to make either of these issues fairly debatable. The Judge below was not correct in affirming that portion of the Board's order which granted reclassification of the 20 + acres, formerly comprising parcels "A" and "B", to the D.R.-16 zone. Accordingly, that portion of the order will be reversed.

The Board denied reclassification of former parcel "C" from the D.R.-5.5 zone to the D.R.-16 zone. In order for the requested reclassification to have been granted it was necessary for the owners, among other things, to establish by strong and convincing evidence, that the D.R.-5.5 classification with a D.R.-16 rezoning of 1971 was erroneous. As to parcels "A" and "B" with respect to former parcel "C" was wrong in that the Board's decision to rezone parcels "A" and "B" from D.R.-5.5 to D.R.-16 before the adoption of the 1971 comprehensive rezoning, former parcel "C" had been classified in the D.R.-5.5 zone since 1966. Weaker evidence than that which we have found to be insufficient to make the question of error as to former parcels "A" and "B" fairly debatable, manifestly, is insufficient to constitute the strong and convincing evidence of error required to be shown before a reclassification of former parcel "C" could be granted. On the

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unconstitutional confiscation, an applicant must show that he has been deprived of all reasonable use of his property and that it cannot be used for any of the permitted uses in the existing zone. *Rockville v. Stone*, 271 Md. 665, 662-64 (1974); *Trainer v. Lipchin*, *supra*, at 675-76; *Stratakis*, *supra*, at 654; *Mayor and Council of Rockville v. Hanley*, 268 Md. 469, 477 (1973); *Cabin John Ltd. v. Montgomery Co.*, 259 Md. 661, 670 (1970); *Montgomery Co. Council v. Kaurer*, 253 Md. 220, 229 (1969). Viewed in this light the expert testimony presented here does not pass muster.

The owners additionally assert that the Council erred because it failed to take into account the fact that Perry Hall Boulevard has to be constructed in FY 1977-78. Experts presented by the owners conceded that the intersection of Ebenezer and Belair Roads was overburdened at least in the evening peak hours. Nonetheless, they maintained that this problem was temporary in nature and would be alleviated when the proposed Perry Hall Boulevard was constructed.

The term error, as it is used in zoning law, does include the failure to take into account projects or trends reasonably foreseeable of fruition in the future. But in order to establish error there must be evidence to show that such developments were not, in fact, or could not have been, taken into account so that the Council's action was premised on a misapprehension. *Jobar Corp. v. Rodgers Forge*, 236 Md. 106, 112 (1964); *Rohde v. County Board*, 234 Md. 259, 267-68

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(1964); *Pressman v. Baltimore*, 222 Md. 330, 338-39 (1960); see *Miller v. Abraham*, 239 Md. 263, 268, 272-274 (1965). Here the record shows that the construction of Perry Hall Boulevard was planned as long ago as 1966; that in 1967 the Council granted reclassification to former parcel "B" because of a readjustment of that road; and that the Council had, in its Capital Budget, included money for the construction of that road in FY 1977-78. All of this evidence supports an inference that at the time of the comprehensive rezoning in 1971, the Council was aware of the proposed construction of Perry Hall Boulevard and the consequent possible improvement in the flow of traffic through the Ebenezer-Belair Road intersection. This inference is buttressed by the fact that it was reasonable for the Council, armed with such an awareness, to conclude it to be in the public interest to prevent the intensification of the then existing congestion problem, at least until 1976 when another comprehensive rezoning, based on then current traffic studies, would be undertaken. In contrast, there is nothing in the record to support an inference that at the time of the comprehensive rezoning in 1971 the Council was unaware of the planned construction of Perry Hall Boulevard. Consequently, there is insufficient evidence to make fairly debatable the question of whether the Council erred in failing to consider the effect of the proposed construction of Perry Hall Boulevard.

Finally, the owners contend that the Council erred in

ORDER AFFIRMED IN PART AND REVERSED IN PART. CASE REMANDED FOR THE ENTRY OF AN ORDER IN ACCORDANCE WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT OWNERS.

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failing to follow the recommendations of the Planning Staff and the Planning Board made prior to the comprehensive rezoning of 1971. Several expert witnesses testified that, in their opinions, the D.R.-16 classification assigned to former parcel "A" by the comprehensive rezoning of 1966 was correct; that the D.R.-16 classification recommended by the Planning Board and assigned to former parcel "B" by the grant of an individual map amendment in 1966 was correct; and that the recommendation of the Planning Staff and the Planning Board that former parcels "A" and "B" be retained in the D.R.-16 zone and former parcel "C" be placed in the D.R.-16 zone was correct. Consequently, they concluded that the Council erred by failing to follow such recommendations in assigning a D.R.-5.5 classification to the subject property.

The Court of Appeals and this Court have recognized that the recommendations of a planning body with respect to a comprehensive rezoning are not binding upon the legislative body. *Nottingham Village v. Belto. Co.*, 266 Md. 339, 354 (1972); *Miller*, *supra*, at 272; *Iverson*, *supra*, at 260. Moreover, the Planning Staff and the Planning Board recommendations for D.R.-16 zoning were made in the form of a map with no reasons articulated for the D.R.-16 classification proposed. Such recommendations, even though emanating from the Planning Staff and the Planning Board, are insufficient to make the issue of mistake or confiscation "fairly debatable." Cf. *Stratakis*, *supra*, at 656-57; *Heller v. Prince George's Co.*, 264 Md. 410, 418-19 (1972); *Habington v. City of Salisbury*, 258 Md. 350, 361-62 (1970).

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failing to follow the recommendations of the Planning Staff and the Planning Board made prior to the comprehensive rezoning of 1971. Several expert witnesses testified that, in their opinions, the D.R.-16 classification assigned to former parcel "A" by the comprehensive rezoning of 1966 was correct; that the D.R.-16 classification recommended by the Planning Board and assigned to former parcel "B" by the grant of an individual map amendment in 1968 was correct; and that the recommendation of the Planning Staff and the Planning Board that former parcels "A" and "B" be retained in the D.R.-16 zone and former parcel "C" be placed in the D.R.-16 zone were correct. Consequently, they concluded that the Council erred by failing to follow such recommendations in assigning a D.R.-5.5 classification to the subject property.

The Court of Appeals and this Court have recognized that the recommendations of a planning body with respect to a comprehensive rezoning are not binding upon the legislative body. *Nottingham Village v. Balto. Co.*, 266 Md. 339, 354 (1972); *Miller, supra*, at 272; *Iverson, supra*, at 269. Moreover, the Planning Staff and the Planning Board recommendations for D.R.-16 zoning were made in the form of a map with no reasons articulated for the D.R.-16 classification proposed. Such recommendations, even though emanating from the Planning Staff and the Planning Board, are insufficient to make the issue of mistake or confusion "fairly debatable." *cf. Stratakis, supra*, at 656-57; *Heller v. Prince George's Co.*, 264 Md. 410, 418-19 (1972); *Habibson v. City of Salisbury*, 258 Md. 350, 361-62 (1970).

basis of the evidence presented, the Board could not have properly granted the requested reclassification. Its decision to retain the 12+ acres, formerly comprising parcel "C", in the D.R.-5.5 zone was correct and the Judge below properly affirmed that portion of the Board's decision. Accordingly, that portion of the order will be affirmed.

ORDER AFFIRMED IN PART AND
REVERSED IN PART. CASE
REMAINED FOR THE ENTRY OF AN
ORDER IN ACCORDANCE WITH
THIS OPINION. COSTS TO BE
PAID BY APPELLANT OWNERS.

Myers vs. Coppolino - 9/226-328/5098-5101

- July 17, 1973 Board of Appeals Order: "... that the reclassification petitioned for, be and the same is hereby GRANTED to that portion of the subject property which was zoned R-A in the 1966 comprehensive zoning map, and to the additional parcel, containing 4.371 acres, which was granted R-A zoning by Order of the Zoning Commissioner of Baltimore County under date of January 3, 1968, and it is FURTHER ORDERED that the petition for reclassification pertaining to the remaining portion of the subject property, be and the same is hereby DENIED.
- " " Dissenting Opinion filed by Walter A. Ralier, Jr.
- Aug. 15 Order for Appeal filed in the Circuit Court for Baltimore County by Harry S. Swartzwelder, Jr., Esq., Attorney for Protestants, Dorothy Coppolino, et al
- " " Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County by Mr. Swartzwelder
- " " Certificate of Notice sent to all interested parties
- " " Order for Appeal filed in the Circuit Court for Baltimore County by James D. Nolan, Esq., Attorney for Petitioners
- " " Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County by Mr. Nolan
- " 16 Certificate of Notice sent to all interested parties
- " 30 Motion to extend time for transmittal of record for 60 days and Order granting same filed by Mr. Nolan
- Sept. 13 Motion to extend time for transmittal of record for 60 days and Order granting same filed by Mr. Swartzwelder
- Nov. 8 Transcript of testimony filed - 1 volume
- Protestants' Exhibit No. 1 - Map and Overlay, NE area Master Plan 1966
- " " 2 - Map of Planning Staff Recommendations Proposed Zoning Map, May 1970, Overlay 4-C
- " " 3 - Same map approved by Planning Board
- " " 4 - Official Zoning Map adopted 3/24/71
- " " 5 - 1966 map adopted by Council 8/1/66
- (All of the above exhibits were returned to the Planning Staff)
- Protestants' Exhibit No. 6 - Zoning File No. 68-139-R
- " " 7 - Plat of subject property 9/3/71, Indian Rock Village Apartments
- " " 8 - Preliminary Plan - Silver Gate Village, 12/4/68
- " " 9 - Plat Silver Gate addition 2/19/71 Recorded Book 34/121
- Protestants' Exhibit A - File in subject case - #72-49-R
- " " 8 - Report of Planning Board to Zoning Commissioner

Myers vs. Coppolino - 9/226-328/5098-5101

- Protestants Exhibit C - Copy of Page 1 from 1st Cycle Report
- " " D - List of Protestants
- Nov. 9, 1973 Record of proceedings filed in the Circuit Court for Baltimore County
- Record of proceedings pursuant to which said Order was entered and said Board acted are permanent records of the Zoning Department of Baltimore County, as are also the use district maps, and your Respondents respectively suggest that it would be inconvenient and inappropriate to file the same in this proceeding, but your Respondents will produce any and all such rules and regulations, together with the zoning use district maps, at the hearing on this petition or whenever directed to do so by this Court.

Respectfully submitted

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

RE: PETITION FOR RECLASSIFICATION IN THE
from D.R. 5.5 to D.R. 16
N/S of Ebaneser Road 140'
W. of Kilboe Court
11th District - NE Sector
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Executors and Trustees under the Will of Harvey S. Myers, and Madeline B. Myers, Petitioners-Appellants
Mico. Docket No. 9
Zoning File No. 72-49-R
Folio No. 326 & 328
Dorothy Coppolino, et al Protestants-Appellants
Folio No. 5098 & 5101

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. Elsenhart, Administrative Secretary
County Board of Appeals of Baltimore County

cc: James D. Nolan, Esq.
Harry S. Swartzwelder, Jr., Esq.
Gerard V. Caldwell, Esq.

BALTIMORE COUNTY BOARD OF EDUCATION

ZONING ADVISORY COMMITTEE MEETING OF APRIL 27, 1973 (CYCLE ZONING)

Petitioners: Executors & Trustees under Will of Harvey S. Myers
Location: Ebaneser Rd. & Park Ridge Hill Rd
District: 11
Present Zoning: D.R. 5.5
Proposed Zoning: D.R. 16
No. of Acres: 32.967

Comments: FROM THE EXISTING ZONING WE COULD EXPECT APPROX. 44 ELEMENTARY SCHOOLS WHILE A CHANGE TO D.R. 16 COULD YIELD 46 ELEMENTARY SCHOOLS. FROM A PRESENTLY ZONED BLOCK A CHANGE COULD ALSO YIELD APPROX. 10 TO 15 AND 8 TO 10 STUDENTS.

SCHOOL SERVING THIS AREA: (FROM SEPT. 22, 1970 ENROLLMENT)

	CAPACITY	ENROLLMENT	%
Perry Hill Elem.	760	736	-30
Perry Hill Jr. Hs.	1670	1342	+258
Perry Hill Sr. Hs.	1635	1845	+160

PROGRAMMED CONSTRUCTION	CAPACITY	YEAR	PROPOSED	DATE
" Charles M. Jones Jr. Sr.	1,200	1974-75	1976-77	
Perry Hill Sr. Addn.	400	1971-72	1972-73	
Perry Hill Jr. Addn.	350	1972-73	1973-74	
" Hines Road Elem "	650	1975-76	1976-77	

RE: PETITION FOR RECLASSIFICATION IN THE
from D.R. 5.5 to D.R. 16
N/S of Ebaneser Road 140'
W. of Kilboe Court
11th District - NE Sector
CIRCUIT COURT
FOR
BALTIMORE COUNTY
AT LAW
Executors and Trustees under the Will of Harvey S. Myers, and Madeline B. Myers, Petitioners-Appellants
Mico. Docket No. 9
Zoning File No. 72-49-R
Folio No. 326 & 328
Dorothy Coppolino, et al Protestants-Appellants
Folio No. 5098 & 5101

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Walter A. Ralier, Jr., W. Giles Parker and Robert L. Gilliland, 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. 72-49-R

- May 18, 1971 Comments of Baltimore County Zoning Advisory Committee - filed
- Planning Board Recommendation - filed
- July 27 Petition of Executors and Trustees under the Will of Harvey S. Myers, and Madeline B. Myers for reclassification from D.R. 5.5 to D.R. 16 on property located on the north side of Ebaneser Road 140' west of Kilboe Court, 11th District - filed
- " 27 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for September 3, 1971 at 2:00 p.m.
- Aug. 16 Certificate of Publication in newspaper - filed
- " 19 Certificate of Posting of property - filed
- Sept. 3 At 2:00 p.m. hearing held on petition by Zoning Commissioner - case held sub curia
- Mar. 22, 1972 Order of Zoning Commissioner denying reclassification
- " 28 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner filed by James D. Nolan, Esq., Attorney for Petitioners
- Sept. 5 Hearing on appeal before County Board of Appeals - case held sub curia

These are 3 petitions for reclassification in D.R. 16 (1973)
in this general area:

1. Nottingham Village 169.36 acres
 2. Ebaneser Realty Co., Inc. 23.21 acres
 3. Executors & Trustees under Will of Harvey S. Myers 32.967 acres
- TOTAL: 215.477 acres

UNDER THE EXISTING ZONING WE SEE A TOTAL YIELD OF APPROX. 283 ELEMENTARY SCHOOLS WHILE A CHANGE TO D.R. 16 COULD YIELD AS MUCH AS 299 ELEMENTARY, 448 JR. Hs. SCHOOLS, & 145 SR. Hs. SCHOOLS

THERE IS, ALSO, A PLANNED SUBDIVISION OF 796 AC. UNITS PLANNED FOR THE AREA WEST OF "BOULEVARD" BRIDGE STREET SOUTH SIDE RD THAT COULD YIELD FROM 150 TO 470 ADDITIONAL ELEMENTARY STUDENTS. SINGLE FAMILY HOMES ARE CONTINUING TO BE CONSTRUCTED IN SUCH DEVELOPMENTS AS RIMMELSBURG, PARK PLACE, & SILVERGATE VILLAGE.

BALTIMORE COUNTY ZONING ADVISORY COMMITTEE

May 18, 1971

Mr. George E. Gwells, Director
Office of Planning & Zoning
301 Jefferson Building
Towson, Maryland 21204

RE: Item #19 (April - October Cycle 1971)
Property Owners: Executors & Trustees
under will of Harvey S. Myers
Location: Ebenezer Rd. & Prop. Perry Hall Rd.
Present Zoning: D.R. 5.5
Proposed Zoning: D.R. 16
District: 11th Sector: Northeast
No. Acres: 32.907

Dear Sirs:

The Zoning Advisory Committee has reviewed the plans submitted with the above referenced petition and has made an on-site field inspection of the property. The following comments are a result of this review and inspection.

The subject property is presently an undeveloped tract of land which is partially vacant, heavily wooded. The property on three sides, that is, the west, north and east, are improved with frontages from new to five years of age, in excellent repair. The property to the south and on the south side of Ebenezer Road is improved with the Perry Hall Senior High School. Ebenezer Road in this location is improved with concrete curb and gutter. The petitioner's side is not improved. A large stream and flood plain runs along the westernmost outline of the subject property where the proposed Perry Hall Blvd. is to be located.

BUREAU OF ENGINEERING

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

Access to the parcel petitioned for zoning is to be from a proposed County Road through property owned by the Petitioner. 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 60-foot closed road section on a 60-foot right-of-way will be required for any grading or building permit application.

Item #19
Page 2
May 18, 1971

Storm Drains

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages 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.

The proposed complex is traversed by a stream which constitutes waters of the State. No change can be authorized for the course or cross-section of the stream without a permit from the State Department of Water Resources. This includes a culvert crossing, public or private. The owner is responsible for an engineering study to determine the area of this site which would be inundated by a 50-year storm and to provide all justification of public benefit necessary to, and to obtain the required State permit for any change in course or cross-section proposed. Public right-of-way will be required for the 50-year flood plain including 1 foot free board.

Public drainage facilities are required in conjunction with the proposed public road and for any off site drainage facilities and any on site facilities serving off site areas, in accordance with the standards of the Baltimore County Department of Public Works.

On site 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.

Sediment Control

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings before this property. 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.

Water

Public water can be made available to serve this property by constructing a public water main extension in the proposed road from the existing 8-inch main in Ebenezer Road.

The proposed private improvement must be reviewed by the Baltimore City, Water Division for adequacy of water supply.

Item 19
Page 3
May 18, 1971

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 Baltimore County Department of Public Works.

Sanitary Sewers

Public sanitary sewer facilities can be made available to benefit this property.

The Petitioner is entirely responsible for the construction of his on site private sanitary sewerage, which must conform with the Baltimore County Plumbing Code.

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.

HEALTH DEPARTMENT

Public water and sewer are available to the site.

Swimming Pool Comments: Prior to approval of a public pool on this site, two complete sets of plans and specifications of the pool and bathhouse must be submitted to the Baltimore County Department of Health for review and approval.

Air Pollution Comments: 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.

FIRE PREVENTION BUREAU

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

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.

Item #19
Page 4
May 18, 1971

DEPARTMENT OF TRAFFIC ENGINEERING

The subject petition is requesting a change of 33 acres from DR 5.5 to DR 16. This should increase the trip density of the subject property from 1,650 to 4,000 trips per day.

Until such time as Perry Hall Boulevard is built, all access to the subject property is via the intersection of Ebenezer and Belair Roads. At the present time, this intersection is at capacity with extensive delays during certain periods. The development of this site as DR 16 can only compound the existing problem. There are no plans in the Capital Budget through 1977 to construct Perry Hall Boulevard.

ZONING ADMINISTRATION DIVISION

Due to the foregoing comments by Department of Traffic Engineering any change to DR 16 in this area will only tend to compound the already existing problem of traffic congestion at the intersection of Ebenezer Road and Belair Road.

Very truly yours,

Oliver L. Myers
OLIVER L. MYERS, Chairman

CLM:JD

cc: Edward S. Myers

1c. to Planning, Eng.
208 West Baltimore Avenue
Towson, Md. 21204

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers Date: May 13, 1971
FROM: Ian J. Forrest
SUBJECT: Item 19

19. Property Owner: Executors & Trustees under will of Harvey S. Myers
Location: Ebenezer Rd. & Prop. Perry Hall Rd.
Present Zoning: D.R. 5.5
Proposed Zoning: D.R. 16
District: 11th Sector: Northeast
No. Acres: 32.907

Public water and sewer are available to the site.

Swimming Pool Comments: Prior to approval of a public pool on this site, two complete sets of plans and specifications of the pool and bathhouse must be submitted to the Baltimore County Department of Health for review and approval.

Air Pollution Comments: 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.

I. J. Forrest
Chief
Water and Sewer Section
BUREAU OF ENVIRONMENTAL HEALTH

13F/ca

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward Barletsky Date: May 11, 1971
ATTN: Oliver L. Myers
FROM: Elizabeth L. Myers, P.E.

SUBJECT: Item #19 (April - October Cycle 1971)
Property Owners: Executors & Trustees under will of Harvey S. Myers
Location: Ebenezer Rd. & Prop. Perry Hall Rd.
Present Zoning: D.R. 5.5
Proposed Zoning: D.R. 16
District: 11th Sector: Northeast
No. Acres: 32.907

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

Access to the parcel petitioned for zoning is to be from a proposed County Road through property owned by the Petitioner. 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 60-foot closed road section on a 60-foot right-of-way will be required for any grading or building permit application.

Storm Drains

The Petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages 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.

The proposed complex is traversed by a stream which constitutes waters of the State. No change can be authorized for the course or cross-section of the stream without a permit from the State Department of Water Resources. This includes a culvert crossing, public or private. The owner is responsible for an engineering study to determine the area of this site which would be inundated by a 50-year storm and to provide all justification of public benefit necessary to, and to obtain the required State permit for any change in course or cross-section proposed. Public right-of-way will be required for the 50-year flood plain including 1 foot free board.

Public drainage facilities are required in conjunction with the proposed public road and for any offsite drainage facilities and any onsite facilities serving offsite areas, in accordance with the standards of the Baltimore County Department of Public Works.

Key Sheet: M-10
Position Sheet: 35 and 36
Page 2
Topo: NE 9 and 10 E
Tax Map: 72

Item #19 (April - October Cycle 1971)

Property Owner: Executors & Trustees under will of Harvey S. Myers
Page 2
May 11, 1971

Storm Drains (Cont'd)

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.

Sediment Control

Development of this property through stripping, grading and stabilization could result in a sediment pollution problem, damaging private and public holdings before this property. 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.

Water

Public water can be made available to serve this property by constructing a public water main extension in the proposed road from the existing 8-inch main in Ebenezer Road.

The proposed private improvement must be reviewed by the Baltimore City, Water Division for adequacy of water supply.

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 Sewers

Public sanitary sewer facilities can be made available to benefit this property.

The Petitioner is entirely responsible for the construction of his onsite private sanitary sewerage, which must conform with the Baltimore County Plumbing Code.

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.

Elizabeth L. Myers
ELIZABETH L. MYERS, P.E.
Chief, Bureau of Engineering

END:ELM:OK:ms

cc: File (3)

TO: Mr. Ed. Barletsky Date: 5/10/71

FROM: Elizabeth L. Myers
P.E. & Assistant Engineer

SUBJECT: Item #19 (April - October Cycle 1971)

Executors & Trustees under will of Harvey S. Myers

Location: Ebenezer Road & Prop. Perry Hall Road

Item #19

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

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.

Elizabeth L. Myers

Elizabeth L. Myers
ELIZABETH L. MYERS, P.E.
Chief, Bureau of Engineering

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
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 2114

Date March 30, 1972 ACCOUNT 01-662

AMOUNT \$70.00

DISTRIBUTION

WHITE - CASHIER	PINK - AGENT	YELLOW - CUSTOMER
No. 72-49-R - cost of appeal - property of Harvey Myers - W/S Ebenezer Road, W. Killeka Court Joe D. Nolan, Esq.	750 DCB	700 DCB

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 2132

Date 3/7/72 ACCOUNT 01-662

AMOUNT \$10.00

DISTRIBUTION

WHITE - CASHIER	PINK - AGENT	YELLOW - CUSTOMER
No. 72-49-R - cost of posting property of Meyers, et al for appeal hearing - W/S Ebenezer Road - Jas. D. Nolan, Esq.	750 DCB	700 DCB

PROPOSED PERRY HALL

LOCATION MAP
SCALE 1" = 500'

TABULATION

Gross Area	32,907 A.
Area in Public Road & Parcel A	2,600 A.
Net Area	30,307 A.
Allowable Units (Gross) 52,807 X 10	528,070
Units Proposed	450
No. Parking Spaces Required (1.5/Unit)	675
No. Parking Spaces Proposed	757
Gross Density 450 / 32,907	13.66
12 Units (1-Bedroom)	6
12 Units (2-Bedroom)	39
PARKING RATIO 1.65 CARS PER UNIT	
Local Open Space Required (1.0/100,000)	32,907 A.
Local Open Space Proposed	1.0/100,000

SECTION - ONE
SILVER - GATE VILLAGE
EXISTING - ZONING
DR-5.5
EXISTING USE
RESIDENTIAL

EX. ZONING DR-5.5
EX. USE VACANT

Prop. Modified
61.8 54.5 134

S 40° 00' E 513.2

S 27° 50' E 69.34

PROPOSED HIGHWAY WIDENING

RADIUS 5985.00

EBENEZER

Board of Education of Baltimore County
RRG 4149-14

ROAD

INDIAN ROCK VILLAGE APTS
PRELIMINARY LAYOUT

BALTO. CO. MARYLAND ELECT. DIST. NR. 11

SCALE 1" = 50'

MARCH 1975

OWNER



WILLIAM G. ULRICH, JR.
COUNTY SURVEYOR
OFFICE HOUSE 1000

GEORGE WILLIAM STEPHENS, JR.
AND ASSOCIATES, INC.
ENGINEERS
307 ALLEGANY BLVD.
TOWSON, MARYLAND

JAN. 21, 1975

Pio Marceda, Jr Etal
61B3452-134

S 40° 00' E 51.32'

PROPOSED PERRY HALL

ROAD

PROPOSED FLOOD PLAIN

EX. R-A ZONING

EX. R-G ZONING
PROP. R-A ZONING

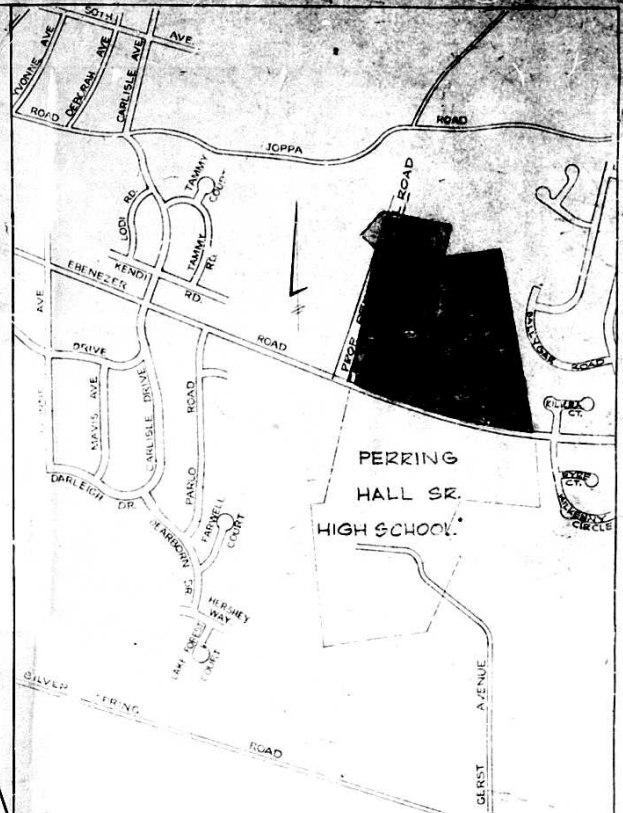
EX. ZONING
R-G
EX. USE
VACANT

LOCATION MAP
SCALE 1" = 500'

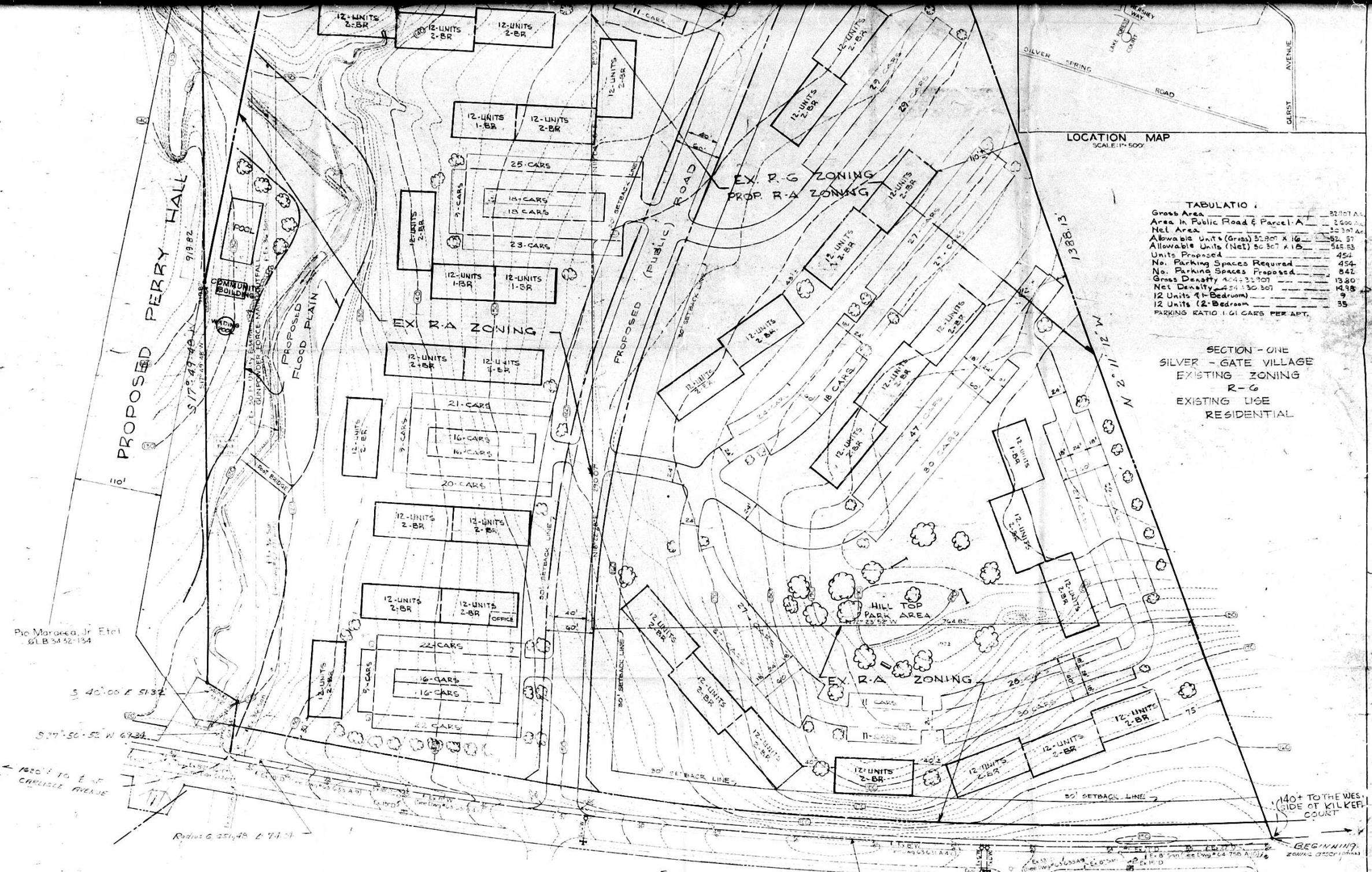
TABULATION

Gross Area	32,807 A.
Area in Public Road & Parcel-A	2,600 A.
Net Area	30,207 A.
Allowable Units (Gross) 50,000' x 10'	52,571
Allowable Units (Net) 50,000' x 10'	52,571
Units Proposed	454
No. Parking Spaces Required	454
No. Parking Spaces Proposed	842
Gross Density 454/32,807	13.80
Net Density 454/30,207	14.98
12 Units (1-Bedroom)	9
12 Units (2-Bedroom)	35
PARKING RATIO 1.61 CARS PER APT.	

SECTION - ONE
SILVER - GATE VILLAGE
EXISTING ZONING
R-G
EXISTING USE
RESIDENTIAL



HILL TOP
PARK AREA



LOCATION MAP
SCALE: 1" = 500'

TABULATION

Gross Area	32,807 A.C.
Area in Public Road & Parcel A	2,600 A.C.
Net Area	30,207 A.C.
Allowable Units (Gross) 50,807 x 1/6	8,468
Allowable Units (Net) 50,807 x 1/6	5,455
Units Proposed	454
No. Parking Spaces Required	454
No. Parking Spaces Proposed	842
Gross Density 4.44/1 A.C.	13.80
Net Density 4.44/1 A.C.	14.98
12 Units 1-Bedroom	9
12 Units 2-Bedroom	35
PARKING RATIO 1.61 CARS PER APT.	

SECTION - ONE
SILVER - GATE VILLAGE
EXISTING ZONING
R-6
EXISTING USE
RESIDENTIAL

Pio Marone, Jr. Etel
61 B 54 52-134

S 40° 00' E 51.32'

S 27° 50' 52" W 67.34'

1820' TO E OF
CARLISLE AVENUE

Radius 6,251.45' 2' 41.24"

EBENEZER

Board of Education of Baltimore County
RRG 4149-14

ROAD

**INDIAN ROCK VILLAGE APTS
PRELIMINARY LAYOUT**

BALTO. CO., MARYLAND ELECT. DIST. NO. 11
SCALE: 1" = 50' REVISED
MARCH, 1969
APRIL, 1971
OWNER



WILLIAM G. ULRICH, JR.
COUNTY SURVEYOR
DOVER HOUSE TOWNSHIP



JAN. 21, 1976