

JOHN B. DOLLENBERG
PAUL E. DOLLENBERG
JOHN F. STEINBERG
JOHN F. STEINBERG
JOHN F. STEINBERG
JOHN F. STEINBERG

DOLLENBERG BROTHERS

Regional Professional Engineers & Land Surveyors
700 WASHINGTON AVENUE AT YORK ROAD
TOWSON 4, MD.

VALLEY 8-4470

April 9, 1971

Zoning Description

All that piece or parcel of land situated, lying and being in the Eleventh and Fourteenth Election Districts of Baltimore County, State of Maryland and described as follows to wit:

C.S.A. DISTRICT

Beginning for the same at a point where the south side of the Baltimore City Water Conduit Right of Way, 60 feet wide, is intersected by the centerline of proposed Perry Hall Boulevard, said point being distant South 85 degrees 17 minutes 16 seconds West 3160 feet from the intersection of the centerline of White Marsh Boulevard with the centerline of John F. Kennedy Highway and running thence said bearing and distance to proposed Perry Hall Boulevard the two following lines viz: South 2 degrees 00 minutes West 364.90 feet and southerly by a line curving toward the right having a radius of 2503.13 feet for a distance of 162.08 feet (the chord of said arc bearing South 6 degrees 08 minutes 40 seconds West 361.76 feet), thence leaving said Boulevard and running the three following courses and distances viz: South 73 degrees 59 minutes 30 seconds East 750 feet, North 7 degrees 05 minutes 20 seconds East 54.51 feet and North 1 degree 19 minutes 20 seconds East 407.04 feet to intersect the southernmost side of the Baltimore City Water Conduit Right of Way and thence said line on the southernmost side of said water conduit right of way the two following lines viz: Westerly by a line curving toward the right having a radius of 520 feet for a distance of 51.61 feet (the chord of said arc bearing South 85 degrees 59 minutes 20 seconds East 51.59 feet) and South 88 degrees 59 minutes 53 seconds East 695.39 feet to the place of beginning.

Containing 14.30 Acres of land more or less.



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VALLEY 8-4470

April 9, 1971

Zoning Description

All that piece or parcel of land situated, lying and being in the Eleventh and Fourteenth Election Districts of Baltimore County, State of Maryland and described as follows to wit:

C.S.A. DISTRICT

Beginning for the same at a point where the south side of the Baltimore City Water Conduit Right of Way, 60 feet wide, is intersected by the centerline of proposed Perry Hall Boulevard, said point being distant South 85 degrees 17 minutes 16 seconds West 3160 feet from the intersection of the centerline of White Marsh Boulevard with the centerline of John F. Kennedy Highway and running thence said bearing and distance to proposed Perry Hall Boulevard the five following lines viz: South 2 degrees 00 minutes West 364.90 feet, southerly by a line curving toward the right having a radius of 2503.13 feet for a distance of 162.08 feet (the chord of said arc bearing South 6 degrees 08 minutes 40 seconds West 361.76 feet), South 18 degrees 15 minutes West 150 feet, Southwesterly by a line curving toward the right having a radius of 1811.93 feet for a distance of 2846.17 feet (the chord of said arc bearing South 63 degrees 15 minutes West 2562.46 feet) and North 71 degrees 45 minutes West 1406.94 feet to the center of proposed Radecke Boulevard, thence binding in the center of said Radecke Boulevard the two following courses and distances viz: North 15 degrees 09 minutes 50 seconds East 275.94 feet and North 15 degrees 00 minutes East 1650 feet to the south side of the aforesaid Baltimore City Water Conduit Right of Way and thence binding on the south side of said right of way North 88 degrees 59 minutes 53 seconds East 3295 feet to the place of beginning.

Containing 170.04 Acres of land more or less.

Being a part of the land of the petitioners herein as shown on a plat filed in the office of the zoning department.



ALVIN A. STEINBERG
ATTORNEY AT LAW

812 LUTHERA FEDERAL BUILDING
28 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204
BAL-810

August 18, 1972

Honorable John Slowik
Baltimore County Board of Appeals
County Office Building
Towson, Maryland 21204

Re: Petition of Nottingham Village, Inc.
Case No. 72-50-R

Dear Mr. Slowik:

I am writing this letter in reply to the correspondence addressed to you by Mr. Thomas under date of August 16, 1972, a copy being sent to my office.

As I previously advised your office, I was in Hawaii the last week in July. Consequently, I was not in Baltimore when Mr. Thomas sent his correspondence of July 24th and July 25th.

Since the Nottingham Village, Inc. case was only decided on July 6, 1972 by the Court of Appeals of Maryland, it was necessary for me to request a copy from the Clerk of the Court.

Because the same issues were argued before the Court of Appeals as were presented before this Honorable Board, I felt it was incumbent upon me to advise your Board of the Court of Appeals' decision.

After reading the entire opinion, it was decided to base the Petitioner's case upon such decision.

Although Mr. Thomas suggests that the Court of Appeals' decision has "absolutely nothing to do with the case before the Board (see the last paragraph of the Court of Appeals decision)", I respectfully submit that Mr. Thomas refers to a motion made by Baltimore County and fails to point out that the first seventeen

Honorable John Slowik August 18, 1972 Page 2

pages of the eighteen page decision concerns the issues presented by Nottingham Village, Inc.

In closing, I again state that it is the position of the Petitioner that the issue is whether or not Baltimore County or the Baltimore County Council erred in adopting the Zoning Map, pertaining to the herein subject property, has been decided by the Court of Appeals of Maryland; and therefore, the same principles of law and conclusions should be applied by this Honorable Board in its deliberations of the subject matter.

Very truly yours,

ALVIN A. STEINBERG
MELVIN A. STEINBERG

MAS:as
cc: W. Lee Thomas, Esquire
162 West Pennsylvania Avenue
21204

Rec'd 8/21/72 - 9:48 am

ROYSTON, MUELLER, THOMAS & McLEAN

ATTORNEYS AT LAW

DARRELL W. ROYSTON
ALVIN A. STEINBERG
W. LEE THOMAS
ALVIN A. STEINBERG
ALVIN A. STEINBERG
ALVIN A. STEINBERG

ALL WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

AREA CODE 301
823-1800

August 16, 1972

Mr. John Slowik
Baltimore County Court of Appeals
County Office Building
Towson, Maryland 21204

RE: Petition of Nottingham Village, Inc.
Case #72-50-R

Dear Mr. Slowik:

I am sure you will recall that at the conclusion of the hearing of the above entitled case, Petitioners' and Protestants' attorneys were given consecutive two week periods of time within which to submit Memoranda to the Board. The Petitioners' Memorandum was delivered to the Board on July 11, 1972, several days before the end of the initial two week period. Thirteen days later, on July 24, 1972, Mr. Steinberg requested an extension of time from the Board until August 9, 1972 to file his brief. I pointed out in my letter of July 25, 1972 that the extension further delayed consideration of, and decision in, the case and, unless justified, should not be granted. Although the extension was granted, to my knowledge, no Memorandum was filed by Mr. Steinberg by the August 9, 1972 extension date.

I received in the mail this morning what is apparently a carbon copy of a letter to the Board dated August 14, 1972 with a copy of an Opinion of the Court of Appeals of Maryland filed on July 6, 1972 attached. Although the Court of Appeals' decision has absolutely nothing to do with the case before the Board (see the last paragraph of the Court of Appeals' Decision), I assume that this is the "Memorandum" for which it was necessary for Mr. Steinberg to obtain an extension of time. If my assumption is correct, I would sincerely

ROYSTON, MUELLER, THOMAS & McLEAN

Mr. John Slowik

August 16, 1972

request that the Board give prompt consideration to the case presented by Petitioners and the Memorandum supplied by Petitioners.

If this is not meant by Mr. Steinberg to be the "Memorandum" for which extension was granted, then I request that the Board refuse to accept any further Memorandum from Mr. Steinberg in this case because of his failure, without apparent reason, to comply either with the original time schedule established by the Board or the extended deadline granted him by the Board.

Very truly yours,

W. Lee Thomas

WLT:mg

cc: W. Giles Parker
cc: Walter A. Reiter, Jr.
cc: Melvin A. Steinberg
cc: James H. Cook

Baltimore County
Department of Public Works
COUNTY OFFICE BUILDING
TOWSON, MARYLAND 21204

July 23, 1970

John B. Funk Associates, Inc.
Suite 304, Chesapeake Building
Towson, Maryland 21204

Reference: Radecke Avenue
From Rossville Boulevard
(Ridge Road to Silver Spring Road)

Gentlemen:

It is our understanding your firm has been assigned the engineering contract for Radecke Avenue to Silver Spring Road (Ridge Road) to Silver Spring Road. This work will consist of the preparation of line and grade drawings only to the stage such that they can be completed by the developer's engineers when convenient adjacent to the proposed facility are utilized to their fullest potential.

Specifically the requirements for this design will be as delineated below:

- Surveys: All pertinent topography within 200 feet of the center line located by station plus and right angle offset. Cross-sections every 100 feet in rough terrain, and 200 feet in areas where the topography is flat or rolling, with profiles on center line of construction and proposed right of way line. Center line to be staked in field and concrete monuments set at control points.
- Computations and Plotting: Making of necessary computations to reference into Baltimore County Metropolitan District Datum and Coordinate System. Plotting of field notes and cross sections from surveys.
- Reports: Preparation of a preliminary report including studies, location plan and sketches. These sketches shall be prepared in consultation with the Director and must be approved by him and a representative of the agency of the County for whom the program is scheduled.

John B. Funk Associates, Inc. -2- July 23, 1970

- Line and Grade Drawings: These drawings shall be prepared on standard County plan and profile drawings 11x17 inch horizontal, 1/8" vertical and show proposed improvements with sufficient detail and clarity to satisfy the requirements of the Bureau of Engineering.
- Rights of way: Study and plans shall indicate rights of way requirements including slope and storm drainage easements necessary to construct the project.
- Storm Drains: Preparation of drainage area map, preliminary computations, and schematic drainage layout with pipe size and inverts. Location of proposed ditches to be shown where required on super-elevated stations, and side ditches if required on other sections.
- Utilities: Plans and report shall include location of existing and proposed utilities of all types with provisions made for crossings and proper cover and/or clearance as required. Plans shall indicate any adjustment required for existing services.
- Cost Estimate: Preparation of an estimate of quantities and total cost based on similar projects in Baltimore County.
- Design Criteria: Design to be in accordance with ASCE Standards - 30 miles per hour channelization at all major intersections to be defined.
- Preliminary Field Investigations: The investigation is to be held contingent to submittal of plans.

The first phase of the design will consist of a preliminary report and related surveys for which a proposal is to be tendered with payment for all actual work performed based on 2.5 times the technical payroll. Once the preliminary report is submitted and approved another proposal is to be submitted giving a final lump sum fee for completion of all work as defined above.

It is requested you make arrangements with Mr. Ellsworth H. Dyer, Chief, Bureau of Engineering for a meeting to clarify all the points of this letter before submitting any proposals.

Very truly yours,

ALVIN A. STEINBERG
Director of Public Works

EDJ:JTK

Re: Dr. Dyer, Treasurer and Files

Rec'd 8/17/72 - 9:48 am

RE: PETITION FOR RECLASSIFICATION :
from D.R. 5.5 zone to M.L.R., B.R.,
D.R. 16 and B.M. zones, and for
C.T. and C.S.A. District
SW corner Interstate 95 and
White Marsh Boulevard
11th and 14th Districts
Northeast Sector
Nottingham Village, Inc.
Petitioner

BEFORE
COUNTY BOARD OF APPEALS
FOR
BALTIMORE COUNTY
No. 72-50-R

OPINION

This case comes before the Board on an appeal by the Protestants from an Order of the Zoning Commissioner dated December 17, 1971 granting the petitioned reclassification in zoning. The subject property is a four hundred thirty-two acre vacant tract located on the southwest corner of Interstate 95 (John F. Kennedy Expressway) and White Marsh Boulevard, in the 11th and 14th Election Districts of Baltimore County, Maryland, in the section known as "White Marsh".

The existing zoning of the 432 acres is D.R. 5.5 (Density Residential, 5.5 dwellings per acre). The Petitioner, Nottingham Village, Inc., et al, seeks to have the D.R. 5.5 zoning reclassified to the following zoning:

Parcel 1	170.04 acres	to a Business Major (B.M.) zone, and from an undistricted to a Commercial, Town Center Core (C.T.) District
Parcel 2	21.20 acres	to a Business Roadside (B.R.) zone, and from an undistricted to a Commercial Supporting Area (C.S.A.) District on 14.30 acres within Parcel 2, and being identified as Parcel 5
Parcel 3	77.40 acres	to a Manufacturing Light Restricted (M.L.R.) zone
Parcel 4	163.36 acres	to a Density Residential 16 units per acre (D.R. 16) zone
Total:	432.0 acres	

Each of the above noted five parcels are described by metes and bounds in the zoning descriptions prepared by Dallenberg Brothers, dated April 9, 1971, and are part of zoning file No. 72-50-R, which is in evidence as Protestants' Exhibit E. The parcels are also shown outlined on the plats accepted in evidence as Petitioner's Exhibits

Nottingham Village, Inc. - No. 72-50-R

Nos. 2 and 13.

Petitioner's Exhibit No. 13 indicates that the Petitioner owns a total of 929,081 acres. There was testimony from Mr. R. McLean Campbell, President of Nottingham Village, Inc., that firms with which he is associated own 1500 acres in this locality. All tracts are contiguous to each other. However, only 432 acres of this total are the subject of this appeal.

To sustain the Zoning Commissioner's Order, it is the Petitioner's burden in this proceeding to show that the members of the Baltimore County Council erred by zoning the subject property D.R. 5.5 when they adopted the Comprehensive Zoning Map for the area on March 24, 1971 (Zoning Map 4-C). In pursuing this objective, the Petitioner presented testimony which revealed that Nottingham has owned the subject property since 1942, during which time it was leased to the Harry T. Campbell & Sons Corporation. This firm conducted a quarrying operation by mining sand and gravel from the site. During the period no other development or use of the site was possible. However, the terms of the lease provided that as the minerals were depleted, the affected area would be freed from the leasehold. Some of the subject land now has been freed, and all of it could be freed upon six months' notice, thereby permitting other uses of the property for the first time in thirty years. Mr. Campbell related the history of the subject tract, and stated that about ten years ago, in anticipation of the eventual termination of the mineral lease, he began to question what would be the best possible future use of the site for the company and the general welfare. To obtain an answer to this the Petitioner hired some of the best available professional consultants to make in depth studies of the problem and to present their recommendations, freely arrived at, to the Petitioner.

The economic consulting firm of Larry Smith and Company initiated the first study. Subsequently, in 1968, on their advice, the Petitioner engaged the engineering firm of Gruen and Associates to make further detailed studies and specific plans for a balanced type development on the 930 acres owned by the Petitioner. Concurrently assisting in the study, the Petitioner hired other consultants, including the firms of Whitman Reardon & Associates and John Funk & Associates, to solve technical problems in specialized disciplines

Nottingham Village, Inc. - No. 72-50-R

for developing adequate road and utility services. The resulting balanced type plan that was proposed included recommendations to the effect that in addition to housing and offices there is a great need for commercial services in the northeast section of the County strong enough to support a regional shopping center on the subject site. To this end, the Petitioner sought out the services of the James Rouse Company because of its expertise in commercial development and as a potential lessee and developer for the 170 acre tract in Parcel 1. The Rouse Company liked the proposition and it became involved in plans to develop and lease an ultramodern regional shopping center which would be constructed as an enclosed mall and contain department stores, as well as other retail stores and office space. Rouse further recommended that roadside services be developed which, among other services, would include a motel.

In May of 1969, armed with their research data and technical reports, Mr. R. McLean Campbell and Mr. P. Douglas Dallenberg, President and Vice President respectively of Nottingham Village, Inc., presented the plans to Baltimore County governmental authorities to solicit their cooperation, approval and guidance in order to implement their plan. They met with Mr. George Gavelis, Director of Planning for Baltimore County, his Deputy Director, Leslie Graef, and other Planning Department professional staff members, thereby initiating a series of meetings for lengthy and thorough discussions regarding the proposed plans for the subject property. These meetings were expanded to include other Baltimore County department heads and personnel, such as Mr. Albert Kattanbach, Director of Public Works, Mr. Eugene Clifford, Director of Traffic Engineering, and others in the discussions. At all times the Petitioner made his experts available to the County authorities for detailed consultations regarding the proposed plans and to solve any problems which might arise. Subsequent testimony indicated that the proposals submitted by Nottingham were well received by the County planner as being sound and desirable land use planning practices, but with some reservation at that time (1969) as to the proposal being perhaps premature.

However, considering that there would be stages of construction commensurate with the availability of facilities, the Planning Director advised the Planning Board to make recommendations on the Northeast Comprehensive Zoning Map then

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being reviewed, that would give Nottingham the prerequisite zoning substantially as requested, to permit the development of the subject property. The Planning Board followed this advice and further recommended in their Preliminary Guide Plan Report (Petitioner's Exhibit No. 4, page 12, dated September 10, 1970) that the area be designated a Town Sector Center. The Planning Board members signed the recommended zoning map on November 19, 1970 (see Petitioner's Exhibit No. 5) and forwarded it to the Baltimore County Council as required by law, for its review, public hearings, possible changes and ultimate adoption. The County Council members signed and passed into law a new set of zoning maps for the entire County on March 24, 1971, including Map 4-C embracing the Nottingham property. However, in doing so, they failed to follow the recommendations of the Planning Board regarding Nottingham which were set out in the Log of Issues (Protestants' Exhibit "I", Item NE 12), and assigned instead a D.R. 5.5 zoning category to the entire subject property.

Thereupon Nottingham sought to overturn the Council's action by filing a zoning petition with the Baltimore County Zoning Commissioner in the first zoning cycle, April-October, 1971, following the adoption of the new zoning map. In this administrative process, the Planning Board reentered the picture and prepared recommendations to the Zoning Commissioner, as required by law. (See Petitioner's Exhibit No. 6, Item 16). In their comments, the Planning Board members again supports the petition, but with some modification, by recommending that the petitioned 163.36 acres to D.R. 16 be granted on only 77 acres, that D.R. 5.5 be retained on the remainder, and that the portion of the tract for which B.R. - C.S.A. zoning was requested should instead be zoned M.L.R. The Planning Board summarized its recommendations by stating:

"The Board believes that this area of the County requires a strong center to serve the needs of the people and to generate additional growth; and, further, that development of this town center and large office complex will generate such growth."

After hearing the case, the Zoning Commissioner granted the entire petition, whereupon the Protestants appealed, which is the instant case.

The Board of Appeals, hearing the case de novo, heard nineteen hours of testimony spread over seven days; accepted forty-five exhibits into evidence; received a twenty-eight page memorandum of law and fact from the Petitioner's counsel, and re-

Nottingham Village, Inc. - No. 72-50-R

ceived a lengthy response from Protestants' counsel which incorporated the Maryland Court of Appeals' decision in Nottingham vs. Baltimore County. All of this has been carefully considered by the Board. The Petitioner and its witnesses were convincing in their testimony to the Board and withstood the cross-fire of Protestants' counsel, as well as penetrating questions from the Board. Much of their present testimony, they stated, was basically the same information given previously over the years to the County Planners, department heads, the County Council and the Zoning Commissioner. The Zoning Commissioner, in his Order, clearly and succinctly summarized the major points of the Petitioner's testimony and that of his experts. For the sake of condensing this lengthy episode to testimony, which for the most part was repeated to the Board, only will be couched here. It may be well to point out that due to the lapse of time since this case came before the Zoning Commissioner, it was stated that the probable fruition of new road construction in the future is much closer at hand than heretofore, as supported in expert testimony given by Mr. John Funk, Petitioner's traffic and road engineering consultant.

It was Mr. Funk's opinion that the proposed network of roads would be adequate and would be constructed timely to handle all of the traffic which is anticipated to be generated by the proposed development.

Mr. Thomas Shafer, civil engineer of Whitman Reardon & Associates, testified that sewer and water utilities are sufficient and could be reinforced with proper interconnecting of several systems to satisfy the needs of the proposal without adversely affecting the surrounding area.

Mr. Jerome J. Michaels, economist, real estate consultant and Vice President of Larry Smith & Company, concluded from his ten year study that the proposal is feasible, that it constitutes good planning and land use, and that it is needed now even in the face of other existing and emerging competitive projects. Twenty-four hundred apartments could be constructed and some office space is planned.

Mr. Stephen Stunda, development director and Vice President of White Marsh Mall, Inc., a wholly owned Rouse Company subsidiary, would be responsible for the commercial development. He testified that construction of one and one quarter million square feet of commercial floor space is proposed for use by four department stores and one

Nottingham Village, Inc. - No. 72-50-R

hundred twenty-five to one hundred fifty smaller retail stores. Construction would be phased over a period of six to eight years.

Mr. Crawford Westbrook, Director of Planning and Vice President of Gruen & Associates, stated that he had translated all the independently arrived at findings of the other professional consultants into the recommended comprehensive plan for the subject proposal, and that throughout the study the Petitioner's goal was to propose a development that would be in accordance with the County planners' own guidelines for a Town Sector Center, which criteria he feels is fully satisfied in this proposal.

Each consultant who testified for the Petitioner stated that in his opinion the County Council had, in fact, erred by zoning the property D.R. 5.5.

The Petitioner, uniquely, has the support of the neighboring improvement association, whose members live in a development adjacent to the subject. Their spokesman and representative, Mrs. Mae C. Coulter, so testified, and submitted into evidence a written resolution stating the Association's position in the matter. (Petitioner's Exhibit No. 17). Also, Mr. Wade Cresswell, President of the Furry Hall Improvement Association, which organization originally had protested the petition when it was before the Zoning Commissioner, now testified that many members have changed their attitude and are in favor of the petition. Therefore, upon recommendation of their officers, the organization decided not to appeal the Zoning Commissioner's Order granting the petition.

The protesting appellants in this proceeding narrowed down to Mr. James T. French, his wife, and Mr. Harry Tate. Mr. Tate, although summoned by the Petitioner, failed to make an appearance before this Board, or to testify. Mr. and Mrs. French were called upon by the Petitioner's counsel to testify as adverse witnesses. Testimony revealed that they had very limited knowledge of what the Petitioner was requesting or of the nature of the proposed development plan. They could not see the site from their home, nor did they know its general boundaries. They mainly objected to any development in the vicinity because they were fearful that traffic congestion, air pollution and people pollution would result, thereby causing a change in the character of the neighborhood. They were also fearful of the possibility of increased flooding in the area from storm drainage.

Nottingham Village, Inc. - No. 72-50-R

Mr. Bernard Willemain, a reputable land planner, testified on behalf of the Protestants. Mr. Willemain has extensive knowledge of the subject property and is thoroughly familiar with the many problems relative to the site planning, including the providing of utilities, streets and other services. He recognized and respected the expertise of the Petitioner's consultants but was unaware that many of the questions which he raised wherein he testified that the large scale of the subject proposal calls for examination in detail of the entire utilities systems had, in fact, been answered in earlier testimony by Petitioner's expert witnesses. Mr. Willemain had studied the subject site in 1957 for feasibility of developing it as a first class industrial park, but due to lack of sewerage services then and because of the encumbrance of the mineral lease, the plan could not be implemented at that time. He feels strongly that such a concept is still correct. He further acknowledged that apartments are needed in the area and that the petitioned use may be the best ultimate use of the property, but not at this point in time.

The Board believes that Protestants' objections are without foundation except the Board shares their deep concern and fear of the possibility that the development may aggravate periodic flooding conditions across highways downstream. However, there was testimony that two lakes could be constructed on the site to impound excessive surges of storm water and thereby control its runoff downstream, if government authorities would require such provisions before approving a site development plan.

The Board believes the Petitioner's plan has been cogently developed. The efficacy of the consultants' studies and testimony bears out that a comprehensive development plan, compatible with the general welfare and with the land use goals of Baltimore County, has been well thought out, properly planned, and gives consideration to the common needs in the Northeast Sector of Baltimore County. The plan for the site satisfies the criteria for granting the zoning and districting which is requested.

The Board is convinced, in view of all of these facts which were presented in testimony and evidence, that the Petitioner has overcome the burden of proving that the County Council erred in placing the subject in D.R. 5.5 zoning when it adopted the Comprehensive

Nottingham Village, Inc. - No. 72-50-R

Zoning Map on March 24, 1971. Therefore, for the reasons cited and after carefully reviewing and considering all the testimony and evidence presented, the Board hereby affirms the Order of the Zoning Commissioner dated December 17, 1971 and amended December 27, 1971, and hereby grants the requested petition.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 15th day of January, 1973, by the County Board of Appeals, ORDERED that the petitioned for reclassification be and the same is hereby GRANTED:

From a D.R. 5.5 classification to

Parcel 1	170.04 acres	a Business Major (B.M.) zone, and from an undistricted to a Commercial, Town Center Core (C.T.) District
Parcel 2	21.20 acres	a Business Roadside (B.R.) zone, and from an undistricted to a Commercial Supporting Area (C.S.A.) District on 14.30 acres within Parcel 2 and being identified as Parcel 5
Parcel 3	77.40 acres	a Manufacturing Light Restricted (M.L.R.) zone
Parcel 4	163.36 acres 432.0 acres	a Density Residential 16 (D.R. 16) zone total in petition.

Each of the above noted five parcels are described by metes and bounds in the "Zoning Descriptions" prepared by Dallenberg Brothers, dated April 9, 1971; said zoning descriptions being attached hereto and made a part of this Order.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle 9 of the Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

John A. Slawik, Chairman

W. Gilles Parker

Walter A. Keller, Jr.

NOTTINGHAM VILLAGE, INC.,
RECLASSIFICATION AND
REDISTRICTING PETITION,
S/W and N/W corner,
Interstate 95 and White
Marsh Boulevard, 11th &
14th Districts -
Northeast Sector
Case No.: 72-50-R

BEFORE THE COUNTY BOARD
OF APPEALS OF
BALTIMORE COUNTY
Case No.: 72-50-R

ORDER OF DISMISSAL

Mr. Chairman:

Please dismiss the Appeal of Ralph D. Natale in the within case.

WILLIAM S. BALDWIN

FRANK E. CIOONE

ATTORNEYS FOR
RALPH D. NATALE

We HEREBY CERTIFY THAT on this 31st day of May, 1972, a copy of the foregoing Order of Dismissal was hand delivered to W. Lee Thomas, Esquire, Richard Reid, Esquire and James H. Cook, Esquire, attorneys for the Petitioner.

WILLIAM S. BALDWIN

FRANK E. CIOONE

RE: PETITION FOR RECLASSIFICATION AND REDISTRICTING SW/corner of Interstate 95 and White Marsh Boulevard - 11th and 14th Districts - Nottingham Village, Incorporated - Petitioner No. 72-50-R (Item No. 16)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

AMENDED ORDER

It is hereby ORDERED by the Zoning Commissioner of Baltimore County this 17th day of December, 1971, that the order dated December 17, 1971, passed in this matter should be and the same is hereby AMENDED to read as follows:

"that the following parcels of property should be and the same are hereby reclassified: Parcel No. 1 from a D.R.5.5 Zone to a B.M. Zone, containing 170.04 acres of land, more or less; Parcel No. 2 from a D.R.5.5 Zone to a B.R. Zone, containing 21.20 acres of land, more or less; Parcel No. 3 from a D.R.5.5 Zone to a M.L.R. Zone, containing 77.04 acres of land, more or less; and Parcel No. 4 from a D.R.5.5 Zone to a D.R.16 Zone, containing 163.36 acres of land, more or less, from and after the date of this Order.

It is further ORDERED that the herein described properties or areas should be and the same are hereby Redistricted from Undistricted to a C.T. District for Parcel No. 1 and from Undistricted to a C.S.A. District for Parcel No. 2, from and after the date of this Order.

All of the above are subject to the approval of a site plan by the State Highway Administration, the Bureau of Public Services and the Office of Planning and Zoning."

Sh. D. Thomas
Zoning Commissioner of
Baltimore County

The granting of this Petition should not be detrimental to the health, safety, and general welfare of the surrounding area. Furthermore, the Comprehensive Zoning Map, as adopted by the Baltimore County Council, is presumed to be correct, and the burden is upon the Petitioner to show error. This burden has been met.

For the foregoing reasons, IT IS ORDERED by the Zoning Commissioner this 17th day of December, 1971, that the following parcel of property should be and the same are hereby reclassified: Parcel No. 1 from a D.R.5.5 Zone to a B.M. Zone, containing 170.04 acres of land, more or less; Parcel No. 2 from a D.R.5.5 Zone to a B.R. Zone, containing 21.20 acres of land, more or less; Parcel No. 3 from a D.R.5.5 Zone to a M.L.R. Zone, containing 77.04 acres of land, more or less; and Parcel No. 4 from a D.R.5.5 Zone to a D.R.16 Zone, containing 163.36 acres of land, more or less, from and after the date of this Order.

It is further ORDERED that the herein described properties or areas should be and the same are hereby Redistricted from Undistricted to a C.T. District for Parcel No. 1 and from Undistricted to a C.S.A. District for a parcel of land containing 14.30 acres of land, more or less, and being located within the requested M.L.R. Zone, known as Parcel No. 3, from and after the date of this Order.

All of the above are subject to the approval of a site plan by the State Highways Administration, the Bureau of Public Services and the Office of Planning and Zoning.

Sh. D. Thomas
Zoning Commissioner of
Baltimore County

RE: PETITION FOR RECLASSIFICATION AND REDISTRICTING SW/corner of Interstate 95 and White Marsh Boulevard - 11th and 14th Districts - Nottingham Village, Incorporated - Petitioner No. 72-50-R (Item No. 16)

BEFORE THE
ZONING COMMISSIONER
OF
BALTIMORE COUNTY

The Petitioner seeks Reclassifications for the following parcels of property: Parcel No. 1 from a D.R.5.5 Zone to a B.M. Zone, containing 170.04 acres of land, more or less; Parcel No. 2 from a D.R.5.5 Zone to a B.R. Zone, containing 21.20 acres of land, more or less; Parcel No. 3 from a D.R.5.5 Zone to a M.L.R. Zone, containing 77.04 acres of land, more or less; and Parcel No. 4 from a D.R.5.5 Zone to a D.R.16 Zone, containing 163.36 acres of land, more or less. The Petitioner further requests a change from Undistricted to a C.T. District for Parcel No. 1, as described above, and an additional request for a change from Undistricted to a C.S.A. District for a parcel of land containing 14.30 acres of land, more or less, and being located within the requested M.L.R. Zone, known as Parcel No. 3. All of the above described property is located west of the John F. Kennedy Memorial Highway in the vicinity of White Marsh Boulevard, in the Eleventh and Fourteenth Districts of Baltimore County.

By Orders dated January 25, 1971, this Zoning Commissioner, the then Deputy Zoning Commissioner, denied similar requests by the Petitioner concerning the same property. These decisions were based on the evidence presented at the public hearing at that time. It must be stated that the decision concerning the present Petition is based solely on the evidence presented at this public hearing, and, in no way, does one decision have a bearing upon the other.

Evidence on behalf of the Petitioner indicated that the subject property has been owned by the Campbell interests since 1942. The subject tract is part of an overall fifteen hundred

(1500) acre tract. This land had been previously subject to mineral leases and had been mined for many years, but the land has been released from these mineral leases since 1968, and, at that time, Nottingham Village, Incorporated, then the legal owner, undertook a study to determine the proper land use of the subject and adjoining properties which would better benefit the community, Baltimore County, and Nottingham Village, Incorporated.

Real estate consultants were retained by the Petitioner to make this study, and they determined that the main reasons such development, as proposed on the subject property, would be of benefit to everyone involved is because there is the availability of existing schools, acquired school sites, and proposed school site acquisitions as provided for by the Board of Education.

Mr. R. McLean Campbell, President of Nottingham Village, Incorporated, stated that his Corporation would be the developer of the whole tract of land except the regional shopping center which would be developed by the Rouse Company. In addition, thereto, an office park is proposed along with apartment and low density housing.

Mr. Jerome Michael, Vice President of Larry Smith & Company, Economic Consultants, a qualified economist and consultant in real estate, stated that his firm had studied the proposed development of this acreage for the past nine (9) years. His principle task was to determine the economic need of the area of Baltimore County and its economic justification. A trade area was developed considering population density, accessibility, natural barriers, and existing services.

The present population of the trade area was estimated to be two hundred and seventy-seven thousand (277,000) people with a projection of increase of one hundred thousand (100,000) people within the next ten (10) years. It was determined by this study that if the projection bears truth in 1980 there would be an unmet need of approximately one million (1,000,000) square feet of market and store accessibility.

It was also determined and presented into evidence that high density percentage of total housing units has risen from 5.4 percent in 1961 to 80.7 percent in 1970. The study estimated an additional need for thirty thousand (30,000) additional units in this trade area. In addition and in conjunction with the rise in population, more general office space would be needed.

The Petitioner also proposes a motel and restaurant complex of necessity in order to serve the development and the traveling public, said facility being immediately adjacent to Interstate 95 (I-95), the John F. Kennedy Memorial Highway. He further testified that as a result of the development, as proposed on the subject property, Baltimore County would realize an approximately One Million, Four Hundred Thousand (\$1,400,000.00) Dollar increase in tax revenue as opposed to the amount it would receive if the property were developed in its present zoning classification.

Mr. Stephen Stunda, Development Director for the Rouse Company, testified that Rouse Company would develop a commercial center in excess of one million (1,000,000) square feet. He testified that there is a present and future need for such a facility in the northeast quadrant of Baltimore County. The development of the commercial center would be the only Rouse Company participation in the overall development of the subject property.

Mr. Thomas Shafer, a qualified utility engineer with Whitman Regardt & Associates, Utilities Engineers, stated that he has studied this land since 1962 and that there is a sixteen (16") inch water main in the bed of Old Philadelphia Road, a twelve (12") inch water main in Bucks Schoolhouse Road, and a twelve (12") inch water main in Silver Spring Road. All three (3) water mains would be used to serve the subject property.

As to sewer capacity, it was indicated that the forty-eight (48") inch White Marsh interceptor would serve the entire tract and that it would be more than adequate to handle all sewerage flow requirements of the development. The Maryland Department of Water Resources approved the Petitioner's plans as

evidenced by a letter from Mr. Norton, Chief of Surface Water Management, Maryland Department of Water Resources. Mr. Shafer indicated that in his opinion, the existing utilities are more than sufficient to handle the needs of the proposed development.

Testimony concerning traffic and proposed road networks in the area was presented by Mr. John B. Funk, a civil and consultant engineer, who was Chairman of the Baltimore County Department of Public Works for eight (8) years and later Chairman of the State Roads Commission of Maryland. He indicated that he has been familiar with the White Marsh area for approximately two (2) years in addition to the many years with the County and State. Three (3) principle roads would serve the subject property, namely: Perry Hall Boulevard, to be a four (4) lane road intersecting "at grade" at White Marsh Boulevard, Perry Hall Boulevard being a developer's road as a result of a Public Works Agreement with Baltimore County; Radecke Boulevard, which is programmed for construction from Rossville Boulevard, south of the subject property to Silver Spring Road, directly through the developer's tract, with funds already allocated for its construction; and White Marsh Boulevard.

Mr. Funk indicated that a corridor hearing was held on April 7, 1971, advising the citizens of the area of the possible route of White Marsh Boulevard. A recommended route has been made and approved by Federal and State Agencies, and bids for the construction of White Marsh Boulevard will be let in 1972. Completion is anticipated on or before the opening of the development of the subject tract.

Mr. Funk further stated that, in his expert opinion, the development of the site as proposed and the projected traffic emanating from this development would not overtax the road network as proposed to be developed. He also stated that traffic from the subject site would be geared toward the John F. Kennedy Memorial Highway, Pulaski Highway, and other major arteries to the east.

Mr. Crawford Westbrook, an eminently qualified city planner associated with Gruen Associates of New York City, was present through the voluminous testimony that has been set forth, herein. In rendering an opinion, Mr. Westbrook stated that construction of the John F. Kennedy Memorial Highway opened the northeast area of Baltimore County for development. Prior to that time, it had been stymied by a lack of proper road networks. He stated that the additional acquisition of school sites by the Board of Education, the accessibility of all utilities, and the existing plus proposed road networks make the subject tract ideal for development as proposed.

He further stated that in his review of the documents of the Baltimore County planning staff, the Baltimore County Planning Board, and proposals to the Baltimore County Council, prior to the adoption of the Comprehensive Zoning Map on March 24, 1971, all of these facts were presented. In addition, thereto, he thought that it was unique that such a tract be developed and/or controlled by one individual (corporation) and that haphazard development not take place.

He also cited the existence of the Essex Community College and Franklin Square Hospital less than two hundred (200') feet to the east of the subject tract. He claims that this reinforces the concept of a sector center with adequate facilities for the support thereof.

The only protest submitted by residents of adjoining areas was supplied by Mr. Wade H. Creswell, President of the Perry Hall Improvement Association, Incorporated, wherein he presented letters to the effect that his Association and the Darleigh Manor-Joppavale Community Association, Incorporated, indicated that the proposed development could be premature, in that, to the best of their knowledge, the roads would be unable to handle the traffic, and the existing schools would be overburdened.

Without reviewing the evidence further in detail but based on all the evidence indicated above and presented at the

public hearing, in the judgment of the Zoning Commissioner, the Comprehensive Zoning Map, as adopted by the Baltimore County Council on March 24, 1971, was in error in not classifying this property in the zones as were proposed to them and to the Zoning Commissioner. This conclusion is reached for the following reasons:

1. In 1968, the mineral leases were released, and the property is now available for development.

2. Water and sewerage are adequate and available to the property.

3. The construction and opening of the John F. Kennedy Memorial Highway or Interstate 95 (I-95) has opened the northeast area of Baltimore County for extensive development.

4. Though this is not a primary reason and is not, per se, justification for reclassifying the subject property as requested, the economic benefit for Baltimore County, as testified to by Mr. Jerome Michael, justified the development of the subject tract in its highest and best use.

5. The eminent construction of the proposed network would further enhance the development of this northeast area and excessive traffic should not be a burden. It was also testified to by Mr. John B. Funk that the development of this tract would coincide with the construction of the roadways, as indicated above. Excellent access would be available, and the volume requirements should be met.

6. The present school facilities plus those proposed by the Board of Education would provide educational facilities to meet the demand generated by this development.

7. The uniqueness of having one individual (corporation) develop and have control over the entire tract would preclude development of the area not planned and eliminates the possibility of spot and strip zoning.

The evidence presented at the previous hearings and the resultant Orders of January 25, 1971, was entirely different and not conclusive as the evidence presented at the public hearing on this subject petition. The development of this tract, in conjunction with the adjoining roadways and acquired-proposed school sites, would not, at this time, make this Petition premature. In fact, this would benefit the northeast section of Baltimore County and Baltimore County as a whole.

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PETITION FOR RECLASSIFICATION FROM DR-5.5 TO RM AND FOR REDISTRICTING TO A CT DISTRICT, FOR RECLASSIFICATION FROM DR-5.5 TO BR AND FOR REDISTRICTING TO A CSA DISTRICT AND FROM DR-5.5 TO DR-16 AND FROM DR-5.5 TO MLR BY NOTTINGHAM VILLAGE, INC., a Maryland Corporation. (Properties located on the North and South sides of the proposed extension of White Marsh Boulevard near the intersection of White Marsh Boulevard with Interstate I-95 in Baltimore County, Maryland, the 11th and 14th Election Districts.)

MEMORANDUM

The designation of the land for which Reclassification is requested as DR-5.5 on the Baltimore County Zoning Maps is erroneous for the following reasons, among others:

1. The Baltimore County Planning Board has designated this tract of land as a Sector Center in its plan for comprehensive development of Baltimore County.

2. A Sector Center by definition encompasses in addition to cottage residential land uses, additional land uses such as commercial use, office use, and high density residential use.

3. The development of this tract as would be permitted under the requested Reclassification would conform in all respects with the planned development of the area contemplated by and recommended by the Baltimore County Planning Board and the Baltimore County Department of Planning and Zoning after years of general and special study of the area.

4. Previously, the tract was subject to mineral leases and thus impossible to develop until such leases were released by the Lessee during 1968 and 1970.

5. The tract has excellent access from existing route U.S. 40, State route 7, the Baltimore County Beltway and the John F. Kennedy Expressway. The tract is located at the intersection of the John F. Kennedy Expressway with the White Marsh Boulevard interchange.

White Marsh Boulevard is to be extended from its existing interchange with the John F. Kennedy Expressway westerly through the subject tract to Route 7, and such extension is in the Maryland State Roads Commission building program. The alignment through the

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subject tract is fixed by previous rights-of-way takings of the State Roads Commission. The corridor alignment from the westernmost boundary of the subject tract westerly has been made the subject of a study by a consultant for the Maryland State Roads Commission whose report has been received by the State Roads Commission. The Maryland State Roads Commission subsequently advertised for, and held on April 7, 1971, a public hearing for the purpose of determining the exact corridor of White Marsh Boulevard for such extension.

6. Baltimore County has obtained an alignment study for construction of Radecke Boulevard north of Silver Spring Road. The point of intersection of Radecke Boulevard with Silver Spring Road was established by this Baltimore County alignment study. Road construction is scheduled.

7. The alignment of Radecke Boulevard south of the subject tract has been fixed by Baltimore County, and the Baltimore County Department of Public Works has requested engineering funds for the route. Construction funds in connection with the extension of Radecke Boulevard have been requested by the Baltimore County Department of Public Works for the year 1972-1973.

8. Perry Hall Boulevard will intersect both Radecke Boulevard and White Marsh Expressway as shown on the attached plan.

9. Although the area road network presently existing is more than sufficient to provide excellent access to the tract, the road extensions planned by Baltimore County and the State of Maryland as set forth in paragraphs 5, 6, 7, and 8 above will make even more accessible the land for which Reclassification is requested in that there will then be six major highways crossing the tract with a seventh major highway approximately three-quarters of a mile from the tract.

10. The tract is fully serviced by all public utilities.

(a) The 43 inch White Marsh sanitary interceptor now crosses the property along the White Marsh Run and such interceptor has more than sufficient capacity for the proposed development.

(b) Existing domestic water lines are located along the tract's northern and southern boundaries and improvements thereto, including a pressure reducing station, are now under construction.

(c) Electric service is available to the tract.

(d) Natural gas service is available to the tract.

11. The Baltimore County Board of Education, in anticipating development of the tract, has obtained school sites immediately north and immediately south of the tract for the purpose of enhancing nearby school facilities when and if needed.

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EXHIBIT #2

Recommendations from planning staff to Planning Board (used by Planning Board at public hearings)

At least five public hearings have been held since 1969 by Planning Board and County Council and there was no public protest to our plans and to the recommendations of the planning staff and Planning Board.

We first knew of disagreement when, without explanation, the entire area was removed from the map and placed in DR 5.5 classification.

EXHIBIT #3

Recommendations from Planning Board to County Council (used by County Council at public hearings)

MR. JEROME MICHAEL, Vice President of Larry Smith Company, Economic Consultants

Mr. Michael was qualified. For approximately nine years his firm has studied the proposed development of this acreage.

Principal task was to determine economic need in this area of the County and economic justification.

Their studies have continued to the present.

They first defined the trade area which would be serviced by the planned development. In developing trade area they considered population density, accessibility, natural barriers, and existing facilities and services.

The present population of the trade area is approximately 277,000 people.

By use of customary methods based on population, income levels and expected consumer spending they determined that approximately \$55,000,000.00 was department store market in the trade area.

In general, department stores generate \$50.00 to \$55.00 gross revenue per square foot; therefore, the present minimum need of 1,000,000 square feet exists.

It was determined that only 400,000 square feet (approximately) of such need was now met.

In his opinion 300,000 to 700,000 square feet of the department store need now exists in the trade area.

Projection is for an increase of 100,000 persons in the trade area by 1980 with a corresponding increase to a total of \$85,000,000.00 of market. Therefore, a minimum of 1,555,000 square feet of department store retail area will then be needed.

There will, therefore, be a minimum unmet need of approximately 1,100,000 square feet.

As to high density classification, it was determined first that the total additional housing units needed in the trade

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EXHIBIT #4

area to house the 100,000 increase in population would be 37,000 residences.

Building Permit Table

From official Baltimore County figures it was determined that high density percentage of total housing unit has risen steadily from 5.4% in 1961 to 90.7% in 1970.

An estimated 30,000 apartments would, therefore, be needed for the trade area.

The proposed area for high density residential is ideal because of the tract location, ease of access, service facilities to be provided on the tract, employment to be provided on the tract, and because the mixture of high density residential, commercial and industrial represents good comprehensive planning.

Using Baltimore County figures, it was determined that the population increase would require 700,000 to 800,000 square feet of general office space. Thirty percent to forty percent of this need would be expected to be met on site. This does not include specific research office facilities which complement the other portion of the planning development. The planned 260,000 square feet of general office space is therefore justified.

The proposed motel and restaurant in the BR zone are necessary to serve the development (in particular the research office facilities) and the traveling public. Such facilities are lacking on I-95 and should be provided at this major intersection.

There is great economic benefit to the county if the proposed development is built.

EXHIBIT #5

Potential Tax Benefit

The net annual tax yield to the county after paying all costs of education would be in excess of \$1,900,000.00. This compares with a net yield of approximately \$96,000.00 if the area were developed under present zoning. Therefore, the county would realize approximately \$1,804,000.00 more each year from the development as proposed.

In his opinion, it would be error to deny this petition on either the basis that need is not present or that there would be no economic benefit to the county. The contrary is true.

His opinion as to need is shared by the county authorities who have designated the area as a sector center.

His computations as to economic benefit to the county are from official County and Board of Education records.

NOTTINGHAM IMPROVEMENT ASSOCIATION, INC.

Mrs. Coulter, Secretary of that Association which is adjacent to the Campbell tract read the Resolution of the Association.

Nottingham Improvement Association, Inc. resolution approving and recommending the proposed zoning reclassifications

EXHIBIT #6
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12. There is nothing in the proposed development for the land which would interfere with adequate police or fire protection.

13. The population of this area of Baltimore County has been increasing dramatically and there has been no corresponding adequate provisions made for commercial facilities to service the increased population. The previous recommendations of the Baltimore County Planning Board and the Department of Planning and Zoning to the effect that this area be designated a Sector Center, and that the Zoning classifications now requested be granted are evidence of the previous failure to provide commercial and related facilities for the area.

14. The placing of the subject tract of land in a DR-5.5 category failed to take into account proper usage which could be made of the land, failed to take into account the needs of Baltimore County and area residents, failed to take into account the designation of the area as a Sector Center by the Baltimore County Planning Board, and failed to take into account the comprehensive plan for the tract as reviewed by, approved by, and recommended by the Baltimore County Planning and Zoning officials and the Baltimore County Planning Board, whose primary duties are to provide for the comprehensive planned development of the County.

By reason of the errors cited and by reason of other errors attendant to the classification of the subject land as DR-5.5, these Reclassification Requests and Districting Requests are made.

Respectfully submitted,

W. Lee Thomas
W. Lee Thomas,
Atty. for Petitioner

WUT/IX
9/14/71

ITEM #16 (April-October cycle, 1971)
PETITION FOR RECLASSIFICATION FROM DR-5.5 TO RM AND FOR REDISTRICTING TO A CT DISTRICT, FOR RECLASSIFICATION FROM DR-5.5 TO BR AND FOR REDISTRICTING TO A CSA DISTRICT AND FROM DR-5.5 TO DR-16 AND FROM DR-5.5 TO MLR BY NOTTINGHAM VILLAGE, INC., a Maryland Corporation. (Properties located on the North and South sides of the proposed extension of White Marsh Boulevard near the intersection of White Marsh Boulevard with Interstate I-95 in Baltimore County, Maryland, the 11th and 14th Election Districts.)

BEFORE THE
ZONING COMMISSIONER
FOR
BALTIMORE COUNTY

MEMORANDUM OF THE PRINCIPAL POINTS OF TESTIMONY PRESENTED BY EXPERT WITNESSES AND EXHIBITS INTRODUCED BY THE PETITIONER

MR. R. MCLEAN CAMPBELL, President, Nottingham Village, Inc.

The acreage for which rezoning is requested has been owned by corporations controlled by the Campbell family since 1942.

Land was previously subject to mineral lease agreements for extraction of minerals. As minerals were removed, land was intended for development. Preliminary land use studies commissioned from Larry Smith & Company, Real Estate Consultants, in 1967.

In 1968 this land was released from mineral leases and consultants were hired for purpose of determining proper land use for the benefit of the county, community, and the company.

Recommendations were made that part of acreage be used to provide needed commercial services in this section and company met with County because of their expert qualifications in commercial development. Discussions initiated with staff of the Office of Planning and Zoning.

The staff welcomed the opportunity to have comprehensive planning for this acreage. One reason was the availability of school sites.

Plot and description of school sites, improved, owned in fee and planned

Area designated as sector center by Baltimore County Planning Board.

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Plat of water, sewer and storm drains available to the site

The witness was qualified.

For approximately three years his firm has studied the proposed development plan with specific reference to public utilities.

As to water availability - There are three principal water systems available to serve the land. The first is a 16" main in Old Philadelphia Road. The second is a 12" main in Bucks Schoolhouse Road, and the third is a 12" main in Silver Spring Road.

The first two systems are now in the second pressure zone and the third is now in the third pressure zone. However, a water tank is now under construction north of Ebenezer Road and, when completed, will result in the third mentioned system also being in the second zone. Therefore, all three systems will very shortly be in the second pressure zone.

The maximum water requirements for the development have been computed and the figures have been checked and cleared with municipal authorities and with the fire underwriters and fire insurance companies. The absolute maximum demand would be 2,000,000 gallons a day. This demand could be met by the 16" main system in Old Philadelphia Road alone. It would not be necessary to use the other two systems. Good planning, however, might dictate on-site connection between two or more of the systems available.

In addition to sufficient capacity, it was determined through pressure tests and official records that there is more than sufficient pressure available to supply the development without in any way interfering with existing water users or with possible future water users.

As to sewer capacity - The White Marsh Interceptor, a large 48" interceptor, serves the entire tract. This interceptor connects to the southeast through pumping stations to the Baltimore City treatment plant.

They have investigated the system beginning at the tract and ending at the treatment plant and it is more than adequate to handle all sewerage flow requirements of the development.

The system at present is utilized only to 10% of its capacity. It's use by the development would require a very small portion of the existing excess capacity.

As to storm drain facilities - The principal storm drain is White Marsh Run. It is improved from Route 7 to a point west of I-95. From the latter point westerly the channel is unimproved.

The State environmental authorities wish the remainder of the channel to remain unimproved. The storm drain system is engineered on a 100 year storm basis, whereas most systems are only engineered on a 25 or 50 year storm basis.

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EXHIBIT #9

The Maryland Department of Water Resources after studying our plans have approved our plans in full.

Letter from Mr. Norton, Chief of Surface Water Management of Maryland Department of Water Resources

It is his opinion that the existing utilities are more than sufficient to handle the needs of the proposed development.

It is his further opinion that all utility needs could be met without in any way interfering with utility services to the surrounding areas and further that the surrounding areas will suffer no detriment because of the development's use of such utilities.

In his opinion the Council was in error in denying the reclassifications if the denial was based on lack of these utilities. It is his opinion that it would be error to deny this petition on the basis that utilities are not available since utilities are, in fact, available.

MR. JOHN B. FUNK, Consulting Traffic Engineer

Mr. Funk in listing his qualifications mentioned that for a period of eight years he was chairman of the Baltimore County Department of Public Works and that for a further period of eight years he was chairman of the State Roads Commission of Maryland. Further, that he is presently a consultant in private practice who performs his duties for the State of Maryland, municipalities of this State and others.

Mr. Funk has been familiar with the White Marsh area for approximately 18 years and has been especially familiar with it over the past ten years during which time I-95 was constructed while he was chairman of the State Roads Commission.

He is further familiar with the precise area in that he has been engaged in planning of the road networks of the area as a consultant to the developer, to Baltimore County Maryland and to the State Roads Commission of Maryland.

The three principal roads serving the development are Perry Hall Boulevard, Radecke Boulevard and White Marsh Boulevard. As to Perry Hall Boulevard, he has prepared for the developer a plan showing Perry Hall Boulevard as a developer's road. This plan has been approved by the developer. This road will be constructed with funds of the developer although, as is customary, a public works agreement will be involved. The developer determines the timing of construction on this road.

Perry Hall Boulevard will be four lanes (two in each direction) with an "at grade" intersection at White Marsh. Initially, the intersection will be light controlled. When the traffic warrants it a second stage of "trumpet" intersection will be constructed, and, if the traffic warrants construction in the future, a third stage interchange with a full ramp system could be constructed.

All right-of-ways which would be required for any of the stages have been set aside by the developer, and off site land acquisition is not necessary.

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EXHIBIT #10

Letter dated July 23, 1970 to Mr. Funk in regard to Radecke Boulevard

EXHIBIT #11

Baltimore County Capital Budget Excerpts

The funds for Radecke are budgeted and some funds have already been expended.

Radecke Boulevard will be available on-site at or before the time of developers opening of the development.

Radecke Boulevard also will have four lanes and an intersection with White Marsh. Will initially be light controlled. In the future, if traffic warrants, a ramp system can be installed. All land necessary for any such system has been set aside by the developer.

Mr. Funk has been retained by the State Roads Commission of Maryland as a consultant for the purpose of designing the White Marsh Boulevard extension from the existing interchange with I-95 westerly to Belair Road and thence to Ferring Parkway.

He has prepared studies for the State and in accordance with law has prepared and assisted in holding the necessary corridor hearing on April 7, 1971. At this hearing an exact route for White Marsh Boulevard was selected. Over 28 agencies of the State were involved in various clearances and approvals and they presented comments to the consultant. The State Roads Commission then recommended the route to the federal agency involved since the road will be constructed under a Federal Aid Program. The recommended route has been approved by the federal agency and the alignment thereof fixed.

At the request of the State Roads Commission details were submitted by Mr. Funk and he was asked to supply the State

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EXHIBIT #12

Letter to Mr. Funk dated August 1, 1971 from State Highway Administration

Monies are available for the construction of White Marsh Boulevard extended and bids for construction of the road will be let in the spring of 1972. Completion will be on or before the time of the opening of the development.

Four lanes will ultimately be provided for White Marsh Boulevard and these lanes will be capable of handling 60,000 vehicles per day and in excess of any anticipated need.

The following actions have been taken for White Marsh Boulevard:

- Key portion of right-of-way was acquired from the developer approximately ten years ago.
- Preliminary corridor plans have been prepared and submitted to the State by the consultant.
- The corridor public hearing has been held.
- The State and all agencies of the State have approved the route selected.
- The Federal Government has approved the route alignment.
- The design and contract documents for the road are to be prepared by the consultant.
- Monies are available for the construction of the road (both State and Federal)
- All construction plans have been coordinated with the Radecke and Perry Hall Boulevards.
- Contract for the construction of the road will be let in the Spring of 1972.

He has done extensive traffic studies as to expected traffic in the area and has coordinated these with the official State and County traffic figures and projections.

In his opinion access to the site is excellent and projected traffic will not overtax the roads.

The roads are either definitely planned, or since paid for by the development, construction time can be controlled by the developer; therefore, they will be available at the time of opening of the development.

In his opinion if the requested zoning was denied by the Council because of alleged road inadequacy, Council was in error.

It would be error to deny this petition on the basis of access or traffic considerations in that excellent access is available and volume requirements can be met.

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MR. CRAWFORD WESTROCK, Vice President Gruen Associates

He is in charge of planning for Gruen Associates and with a B.S. and a M.C.P. (Master of City Planning) degree. He has had experience in over 100 major projects in 22 states and 70 communities. He has worked for many municipalities including some as large as Boston and some as small as Phoenix and has testified at many previous zoning hearings.

His firm was retained in 1969 and prepared overall and specific plans for the tract after consultation with the County Planning staff and Planning Board. Suggestions of the Planning staff were encompassed in his plan.

The concept is that there is to be a Sector Center on the tract which will be the nucleus for development of the present area and the surrounding area. Most intensive use will be buffered by less intensive uses.

Highway access to the site will be unique with a total of 25 traffic lanes providing access. This is extremely rare and such excellent access probably hasn't happened more than twice on the East coast. The access is much more than adequate.

The utilities again present an unusual situation in that the present sewer line is used only to 10% of capacity and the 16" water line alone is sufficient for the project even though two additional water lines could serve the project. All utilities are available including electricity, gas and telephone service.

The existing White Marsh Run guarantees that there will be no downstream problems from storm drainage.

In his opinion, there is a present deficiency or need of 700,000 square feet of department store retail space. This in a net figure after taking into account existing zones and proposed department store retail space. The unmet need will be even greater with each passing year.

The School Board has acquired or has proposed a total of 10 sites in the immediate area. This would provide educational facilities far in excess of any demand generated by this development.

The Essex Community College and Franklin Square Hospital, both in close proximity, again reinforce the entire concept of Sector Center and the initiators of those facilities have very wisely provided themselves with sufficient land for expansion in the future.

He is in agreement with Mr. Michaels as to the economic benefit to the County. Without this major Sector Center, the tax burden resulting from development in a uniform low density manner would be very heavy. The Sector Center concept, however, would return annually to the County a net of approximately \$2,000,000.00. It is very important to remember that this benefit to the County will last over 30, 50 or 70 years. It is not a one-time economic benefit.

In his professional opinion, based on his own studies and on the testimony previously presented, error was committed by the

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County Council in their failure to zone the tract as requested by the Petitioner.

Respectfully submitted,

W. L. Thomas, for Nottingham Village, Inc.

and

James H. Cook, for The Rouse Company

IN THE COURT OF APPEALS OF MARYLAND

No. 14 (Adv.)

September Term, 1972

NOTTINGHAM VILLAGE, INC., et al.

v.

BALTIMORE COUNTY, MARYLAND

Barnes
McWilliams
Singley
Smith
Duggan
Powers, Ralph M.
(specially assigned),
JJ.

Opinion by Singley, J.

Filed: July 6, 1972

Nottingham Village, Inc. (Nottingham) and The Rouse Company (Rouse) which are respectively the owner of a 930 acre tract located in Baltimore County (the County) and the lessee of a 150 acre parcel of the same tract, believing themselves aggrieved by a comprehensive Zoning Map adopted by the County Council on 24 March 1971, filed a bill of complaint in the County's circuit court seeking declaratory and injunctive relief. From a decree dismissing the bill of complaint, Nottingham and Rouse have appealed.

Both the facts of the case and the issues presented are enormously complex. The crux of the controversy, however, lies in the fact that the Nottingham tract, zoned R-6 (detached residences, minimum lot size 6,000 square feet) except for 35 acres zoned RA (residential, apartment) was rezoned DR 5.5 (density residential, 5.5 dwelling units per acre) by the comprehensive rezoning adopted in 1971 by the County Council. Nottingham had sought RA zoning for 185 acres; BF (business, roadside) for 20 acres; BM (business, major) for 140 acres with a CT district (commercial, town-center core) superimposed thereon (BM-CT) and R-6 for the remaining 585 acres, in conformity with a development plan prepared by its consultants.

THE FACTS

Perhaps a clearer understanding of the background can be achieved by setting out the facts in chronological order:

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28 April 1969: County Office of Planning and Zoning releases "1980 Guideplan," a county-wide master plan in preliminary form.

2 June 1969: County Council passes Bill No. 72, directing Planning Board to prepare county-wide zoning map or maps.

Summer, 1969: Planning Board divides county into five sectors and prepares Master Plans and Comprehensive Zoning Maps for each. Nottingham's tract was in Northeast Sector.

14 October 1969: Public presentation by Planning Board of proposed Plan and Map for Northeast Sector. BM zone; increase in RA zone, remainder R-6 recommended for Nottingham tract.

4 November 1969: Public hearing before Planning Board on Northeast Sector Map. Nottingham requests RA, BR, BM-CT and R-6 zoning previously described.

February 1970: Planning Board approves Map for Northeast Sector, granting portions of RA, BM and BR zoning requested by Nottingham.

January 1970-May 1970: Council delays consideration of Maps pending amendment of Zoning Regulations and adoption of procedure for consideration of Maps, by

Resolution No. 3 and Bill No. 42, respectively.

3 August 1970: Passage of Council Bill No. 100, amending and Zoning Regulations of Bill No. 103, setting up procedure for adoption of Maps.

22 September 1970: Planning Board releases revised 1980 Guideplan, Sector Master Plan and Zoning Map for Northeast Sector. Nottingham tract classified DR 16 (residential, 16 dwelling units per acre, a statutory equivalent of RA); BR; BM-CT, and DR 5.5 (a statutory equivalent of R-6); apartment and business zones larger than those on February 1970 map.

8 October 1970: Public hearing on 1980 Guideplan for County, Sector Master Plan and Comprehensive Zoning Map for Northeast Sector. Nottingham requests CSA district (commercial, supporting area) for part of land zoned BR.

November 1970: Planning Board submits final report and Zoning Maps to County Council. Recommended for Nottingham tract were DR 16, 190 acres; BM-CT, 147 acres; MLR (manufacturing light, restricted), 77 acres; BR, 18 acres, and DR 5.5, 498 acres.

18 January 1971: Public hearing on Zoning Map for Northeast Sector before County Council. Nottingham renews request for SA district in part of BR zone.

17 March 1971: Second hearing before County Council on Zoning Map for Northeast Sector. For first time, two property owners protest against Nottingham zoning.

24 March 1971: Zoning Map for Northeast Sector, placing all of Nottingham tract in DR 5.5 zone, passed by County Council, Council Bill No. 31.

THE ISSUES

Nottingham and Rouse say that there are four reasons why the decree of the circuit court should be reversed:

- (i) Baltimore County failed to comply with the requirements of Bill No. 103 relating to notice;
- (ii) Baltimore County failed to comply with the requirements of Section 303 of the Charter and Bill No. 103 relating to meeting and voting on proposed changes in the Zoning Maps;
- (iii) The Zoning Map was not adopted in accordance with a comprehensive plan; and
- (iv) The court erred in permitting counsel for Baltimore

County to use leading questions in interrogating members of the County Council.

(1)

Baltimore County Code (1968, as amended) (the County Code) Title 22, § 22-21 provides, in part:¹

"Sec. 22-21. Action by county council on adoption of zoning regulations and zoning maps.

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

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

1. Council Bill No. 103 (1970) amended subsection (a) and added subsections (b) and (c).

In *Swarthmore Co. v. Kaestner*, 258 Md. 517, 531-532, 266 A.2d 341 (1970), Judge Barnes, speaking for the Court, construed Title 22, § 22-21 of the County Code which, at the time, was not significantly different from that contained in subsection (a):

"It is clear from the language of this section of the ... [Code] that the County Council is required to have a hearing on the recommendations of the planning board for changes in the zoning regulations or zoning maps, but that after the expiration of such period of notice (20 days) the County Council may adopt the recommended regulations or maps but it may also make such changes or amendments therein as the county council may deem appropriate. In short, the County Council need not follow the recommendations of the planning board and need not have any further or additional hearing in regard to the changes or amendments the County Council may see fit to make. We have held that the County Council is not required to follow the recommendations of the Planning Board. *Miller v. Abrahams*, 239 Md. 265, 272, 211 A.2d 309, 314 (1965). We have also indicated that a substantial change may be validly made in a proposed comprehensive zoning map after the public hearing has been held on the originally proposed comprehensive zoning map and no additional notice or hearing was required by statutory language quite similar to that used in Sec. 22-21 of the Baltimore County ... [Code]. *Hewitt v. County Commissioners of Baltimore County*, 220 Md. 48, 50, 151 A.2d 144, 148 (1959). Indeed, in *222 Md. v. County Comm. v. Smith*, 92 Md. 1, 3, 216 A.2d 220 (1966) we sustained a change made by the County Council in that case on a proposed comprehensive zoning map requested on the same day the ordinance was passed, where there had been no prior discussion, proposal or request for the change made at the hearing on the proposed comprehensive zoning map and, of course, no notice or hearing ... regard to the requested change." (Emphasis in original)

Nottingham and Rouse say that the enactment of Council Bill No. 103, less than two weeks after the decision in *Swarthmore v. Kaestner*, supra, was intended to fill the void recognized in that case.

Whether or not this is true, the court below found as a fact, and we agree, that the requirements of subsection (a) were complied with. As regards compliance with subsection (b), the court found that the notice given prior to the second hearing on the Northeast Sector Map clearly showed, by means of a "sticker" placed on the Zoning Map and the entries made on the "log of issues" that the Council proposed to consider the zoning of the Nottingham tract within five specified classifications: DR 5.5, BM-CT, BR, DR 16, and MLR:

"* * * There is no doubt that the sticker applied to the plat showed only that the Council was considering as proposed changes in the Board's recommendations for [the Nottingham] tract ... five ... separate zoning classifications for the property in question, and did not delineate separate areas for their application. While it is true that they happen to be the same zoning classifications applied to the specific areas by the Planning Board, the notice made it crystal clear that the Council intended to give consideration to zoning changes in the area within the listed classifications. * * *

"* * * There is no doubt that the notice actually given informed the property owners and interested members of the public: (a) that it was the intent and purpose of the County Council to give further consideration to the nature of the zoning to be applied to the [Nottingham] tract ... and (b) that it would act within those 5 zoning classifications appearing under the heading: 'Proposed County Council Resolution.' There is nothing in the statute requiring notice of a precise suggestion or change by the Council."

The chancellor found apposite a paragraph from the opinion written for the Court by Chief Judge Brune in *Hewitt v. Baltimore County*, 220 Md. 48, 56, 151 A.2d 144 (1959):

"We do not think the statutory language could be construed as requiring the County Commissioners to state in advance (what they could hardly know) the exact nature of

any action which they might take with regard to matters brought to their attention at a contemplated hearing. Indeed, it is difficult to see how (without either pre-judgment or prophecy) the notice here given could have been much more explicit or informative than it was. The appellants certainly had no right to assume that the legislative body entrusted with the sole power to enact a comprehensive zoning or rezoning ordinance in Baltimore County was bound to adopt the proposals or recommendations submitted by the Zoning Commissioner."

The short answer is that no "further changes" were proposed at the second public hearing, with the result that the provision for a final hearing contemplated by subsection (b) never became applicable, as the chancellor found. The answer to the contention that the Council must set a final hearing on the specific zoning classification it ultimately adopted is found in the passage from the opinion in *Hewitt*, quoted above.

(11)

Nottingham and Rouse next contend that there was a failure to comply with Art. III, § 303 of the County's Charter, and County Code, Title 22, § 22-21 (c).

The Charter provides, in § 303:

"... Action by Council. In all of its functions and deliberations, the County Council shall act as a body and shall have no power to create standing committees or to delegate any of its functions and duties to a smaller number of its members than the whole."

This was further explained in the reporter's Note:

"The manifest purpose of this section is to require the Council to act as a unit in all of its deliberations. The Charter Board believed that a legislative body of only

seven members could reasonably be required to transact its business without resort to the use of standing committees."

Title 22, § 22-21 (c) provide:

"(c) Each change or amendment to be made in a zoning map as proposed by the planning board shall be voted upon individually by the county council, and each vote thereon shall be recorded in the council minutes."

What happened was essentially this. While the xxxxxx Council toured each of the five sectors by bus, it was decided that each councilman would be primarily responsible for zoning in his councilmanic district. After the first Council hearing, it became the councilman's duty to recommend to the Council which issues should be "closed," in other words to identify those instances in his district where the Planning Board's recommendation should be adopted, thus making unnecessary a second public hearing. It would seem that the Council members interacted as a group, but without formal vote, in the construction of the "log," or list of issues recommended for consideration for the second hearing. By this procedure the number of issues was reduced from some 700 to about 200. On 24 March 1971, the Council acted as a body in closing issues.

As a practical matter, what was really done was to assign to each councilman responsibility for the ascertainment of facts in support of a recommendation which would form a basis for Council action. We find nothing in Art. III, § 303 of the Charter or in Title 22, § 22-21 which proscribes this. The Council acted as a

body in adopting the Zoning Maps. The vote on the Northeast Sector Map was unanimous.

We think that Judge Menchine had it just about right when he said:

"More than a century ago in *Board of School Commissioners v. County Commissioners*, 20 Md. 447 (1808), it was said at page 459: 'It would violate the independence of the several departments of Government, and disturb the constitutional distribution of power among them, if the judiciary should intervene and arrest the exercise of wholesome legislative authority upon the ground of repugnance to the Constitution, unless the usurpation of power was clear and indisputable, not merely inferential and argumentative.'

"In the case of *Fell v. Maryland*, 42 Md. 71 (1875), only of slightly younger vintage, the Court of Appeals rejected a contention that there had been an unlawful delegation of legislative power, and said at page 89: 'Every intendment ought to be made in support of the legislative enactment, and it is not to be declared invalid, except for the plainest and most conclusive reasons.'

"The ancient principles declared in the above cases are the continuing law of the State. See *Johnson v. Annapolis*, 191 Md. 301, 315 (60 A.2d 737 (1948)): 'Every presumption favors the validity of a statute.'

"The case of *Savage v. District of Columbia*, 54 A.2d 562 (Nun. C.A. D.C. (1947)), although factually very different from the subject cases, discussed the delegation of legislative power in terms very descriptive of the course followed by the Council here, saying at page 565: 'It is fundamental, also, that the legislature can not delegate its power to make a law, but it is equally well established that it can * * * delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action depend.'

"This Court is persuaded that application of these rules of law to the evidence requires rejection of complainants' contention that County Council's actions were products of the unlawful delegation of power.

"There is not the slightest indication in the language of Section 303 of the Charter (or in the Reporter's Notes to the same) that would justify the conclusion that the section intended to prevent the Council as a body from utilizing special knowledge likely to be possessed by individual councilmen with respect to actual or desirable future uses of lands within the district in which he is required by law to reside, or to deny it the benefit of that special knowledge he is likely to possess concerning the views of those home district constituents who are most likely to be affected by zoning in the area.

"While it is clear that the 'final logs' were in large measure the product of individual councilmanic selection, it has not been shown that any councilman was discouraged or prevented from suggesting change or amendment to any of the Planning Board's recommendations so they might be brought to further public hearing."

"The contentions relating to the inartfully described 'retirements' or 'close outs' of issues requires special comment. It seems to this Court that complainants misconstrue that state of the law as to an important, binding obligation upon the Council in the adoption of comprehensive zoning bills. There is absolutely nothing in the law that requires Council action of any kind in this area. Section 22-21.1 of the Baltimore County Code (Bill 72 (1969), as amended by Bill 42 (1970)) provides imperatively that: 'Before March 31, 1971, the Council shall adopt the entire county-wide map previously recommended by the Planning Board, with such revisions as may be made in accordance with Section 22-21.'

"The so-called 'retirements' or 'close outs' merely operated as adoptions of recommendations of the Planning Board. Such a result followed as a matter of law unless a majority of the Council voted to change or amend a particular recommendation. The action of the County Council in dealing with such issues at all, either at or prior to the meeting of March 24, 1971, was wholly unnecessary, and can scarcely be said to be objectionable as a wrongful delegation of power.

"It is urged upon the Court that these Council actions were in fact the sole product of actions by a single councilman. The evidence simply does not warrant, justify or compel such a conclusion. Every councilman participated in visitations to the sites of all or substantially all of the properties set forth on the 'bus lists'; every councilman thereafter sat in the series of hearings that followed the preparation of the 'final lots', and every councilman participated in and were

recorded officially on the final votes by which the relatively small number of changes and amendments to the Planning Board's recommendations were effected. Those changes and amendments themselves tend to demonstrate by their varied nature and effect that their final determination was a product of Council action.

"There is, in short, no showing that rises above conjecture that utilization by the County Council of the skill and judgment of individual councilmen operated to constrain Council action or constituted the performance by an individual of a Council function." (Emphasis supplied in lower court's opinion)

County Code § 22-21.1 referred to in the opinion of the court below, as amended and re-enacted by Council Bill No. 42, passed on 4 May 1970, required the Council to adopt, with such revisions as it might properly make, the county-wide Zoning Map recommended by the Planning Board. This requirement extended only to the Zoning Map, and is not, as Nottingham and Rouse seem to imply, at variance with § 523 of the Charter, which requires Council approval of Zoning Maps adopted by the Office of Planning and Zoning. This requirement was met by the passage of Council Bill No. 31.

(iii)

Nottingham and Rouse next argue that the Zoning Map adopted when Bill No. 31 was passed on 24 March 1971 is invalid because it was not made in accordance with a comprehensive plan. To buttress this argument, they say that County Code, Title 22, § 22-18 requires that "... zoning maps and regulations shall be made in accordance with a comprehensive plan." The comprehensive plan they equate with the Master Plan provided for elsewhere in the County Code.

Underlying this argument is a common misconception - a confusion between the planning function, the end product of which is the Master Plan, specifically provided for in County Code, Art. II, Pla. Law, §§ 22-12 through 22-17, and the zoning function, covered by Code, Art. III, Zoning, §§ 22-18 through 22-31. Zoning or rezoning in accordance with a comprehensive plan is a legislative function, *Board of County Commissioners of Prince George's County v. Levitt & Sons, Inc.*, 235 Md. 151, 158, 200 A.2d 670 (1964). There is no requirement that the comprehensive plan adopted by the Legislative Body must conform to the recommendations of the Master Plan, *Board of County Commissioners for Prince George's County v. Edmonds*, 240 Md. 680, 685, 215 A.2d 209 (1965); *Miller v. Abraham*, 239 Md. 263, 272, 211 A.2d 309 (1965); 1 Rathkopf, *The Law of Zoning and Planning* Ch. 9, § 1 (3d ed. 1956, 1972). The Court of Appeals of Kentucky drew what we regard as the proper distinction:

"... [A] zoning agency is not bound to follow every detail of a land use plan. As we understand it, such a plan is simply a basic scheme generally outlining planning and zoning objectives in an extensive area. It is in no sense a final plan and is continually subject to modification in the light of actual land use development. It serves as a guide rather than a strait jacket." *Hard v. Knippenberg*, 416 S.W.2d 746, 748 (Ky. 1967).

While it is true that other jurisdictions have by statute required that zoning ordinances be in accordance with the master plan, *Haar, In Accordance with a Comprehensive Plan* 68 Harv. L. Rev.

1154, 1157 (1955), neither the State nor Baltimore County have a comprehensive plan is something more than a detailed zoning map, *Hewitt v. Baltimore County*, *supra*, 220 Md. at 58, and should apply to a substantial area, be the product of long study, and control land use consistent with the public interest, *Trustees of McDonough v. Baltimore County*, 221 Md. 550, 561, 158 A.2d 637 (1960). In other words, an important characteristic of a comprehensive plan is that it be well thought out and give consideration to the common needs of the particular area, *Huff v. Board of Zoning Appeals*, 214 Md. 48, 58-59, 133 A.2d 83 (1957); *Anne Arundel County v. Ward*, 186 Md. 330, 340, 46 A.2d 634 (1946). A comprehensive plan is unlikely to have tangible physical existence save as it appears in the zoning ordinance itself, *Angermeier v. Sea Girt*, 27 N.J. 298, 142 A.2d 624, 630 (1958), and the concept of comprehensiveness may be found in the fact that it zones all, or substantially all, of a political subdivision, that it regulates all uses - good, bad and indifferent, or that it covers all of the usual factors of land utilization: height, area and use, *Haar, supra* at 1158-1167; 1 Metznerbaum, *Law of Zoning* 19 (2d ed. 1955).

We hold, therefore, that the passage of the Zoning Regulations on 3 August 1970 and the adoption of the Zoning Map on 24 March 1971 after the 1980 Guideplan had been presented and considered, could not be challenged as an invalid exercise of legislative authority because there had been no formal adoption of the Master

Plan. While County Charter § 523 would seem to provide that the 1980 Guideplan will take effect only when approved by an ordinance of the County Council, whether or not the Guideplan is regarded as a Master Plan, the adoption of a Master Plan is nowhere made a condition precedent to the formulation of the comprehensive plan. The Guideplan was before the Council, and was only one of the elements from which the comprehensive plan was derived.

(iv)

It is recognized as a general rule that leading questions may be asked a witness on cross-examination, but that one qualification to this rule is that leading questions may not ordinarily be asked of a witness who demonstrates a bias in favor of the examiner, *Rush v. French*, 1 Ariz. 99, 25 P. 816, 828 (1874); 3 Wigmore, *Evidence* § 773, at 165-166 (rev. ed. 1970); McCormick, *Law of Evidence* § 6(b), at 10 (1954).

A typical example of this qualification occurred when Nottingham and Rouse called members of the County Council as adverse witnesses by virtue of the provisions of Maryland Code (1957, 1971 Repl. Vol.) Art. 35, § 9. On cross-examination, the court overruled objections taken to leading questions asked by the County solicitor, apparently because the questions only sought to adduce summaries of testimony already given on direct examination, which the County solicitor wished to emphasize. In its ruling from the bench, the court reasoned:

"It is just when cross-examination is used, it is simply an impossible task for the other side to pinpoint issues by questions that are not directing the attention of the witness to the particular areas."

As we pointed out in *Williams v. Wheeler*, 252 Md. 73, 79, 249 A.2d 104 (1969), Art. 35, § 9 mitigates some of the harshness of the common law by permitting a party who calls an adverse witness to interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party. But the statute is to be construed strictly, and does not alter the common law except as explicitly provided, *Mason v. Poulson*, 43 Md. 161, 177 (1875).

We have held that matters concerning the nature and scope of cross-examination are within the sound discretion of the trial court, and that only upon a showing of a prejudicial abuse of that discretion will a ruling be disturbed, *Smith v. Stinson*, 246 Md. 536, 541, 229 A.2d 67 (1967); *Marlow, Infant v. Davis*, 227 Md. 204, 210-211, 176 A.2d 215 (1961); *Wilhelm v. Hadley*, 218 Md. 152, 158, 145 A.2d 22 (1958).

We feel compelled to apply the teachings of our predecessors which, in analogous situations, have considered the allowance of leading questions and held it to be within the court's discretion, *Stoner v. Devillbiss*, 70 Md. 144, 160-161, 16 A. 440 (1889). In *Frownfelter v. State, Use Carroll Co.*, 66 Md. 80, 88, 5 A. 410 (1886) we held that leading questions "... may be properly used for

the purpose of bringing the mind of the witness to the point about which it is desired to interrogate him." What we held in *Smith v. Stinson, supra*, 246 Md. at 541, is consistent with the rule of *Stoner and Frownfelter*. There, we affirmed the trial court's refusal to allow defense counsel's use of leading questions in the cross-examination of his client, an adverse witness called by the plaintiff. Our holding was not based on the fact that the questions were leading, but instead that the refusal was within the court's discretion in that the questions sought to elicit testimony on cross-examination which was not within the scope of the direct examination. We find no prejudice or abuse of discretion here.

One final question remains. The County moved to dismiss the appeal on the ground that Nottingham and Rouse had not exhausted their administrative remedies and are in fact pursuing an appeal from an adverse ruling of the Baltimore County Zoning Commission, relying on *Myers v. Chief of Fire Bureau*, 237 Md. 583, 207 A.2d 467 (1965). Nottingham and Rouse counter with the contention that when there is a constitutional attack upon the general validity of the applicable statute (here, the contention that Bill No. 31, adopting the Zoning Map was not enacted in compliance with a Charter provision requiring the Council to act as a body), failure to exhaust administrative remedies is not available as a defense. We think this point is well taken, *Richmark Realty v. Whittier*, 226 Md. 273,

280-281, 173 A.2d 196 (1961); Schneider v. Pullen, 198 Md. 64, 68-69, 81 A.2d 226 (1951); Kracke v. Weinberg, 197 Md. 333, 343-344, 79 A.2d 387 (1951) and see Williams v. Loyola College, 257 Md. 316, 336, 263 A.2d 5 (1970).

MOTION TO DISMISS DENIED; DECREE
AFFIRMED, COSTS TO BE PAID BY
APPELLANTS.

NOTTINGHAM VILLAGE, INC., et al. RECLASSIFICATION AND REDISTRICTING PETITION, S/W and N/W corner, Interstate 95 and White Marsh Boulevard, 11th & 14th Districts - Northeast Sector : : : : :
Case No. 72-50-R

MEMORANDUM OF LAW AND FACT

The principal test of whether a tract of land in Maryland should or should not be rezoned was first set forth in Kracke v. Weinberg (Dictum) 197 Md. 294 (1951) and in Wakefield v. Kraft, 202 Md. 136, 141 (1953). The rules established by these and by numerous later cases place upon Petitioners the burden of proving that the original zoning of the tract was arbitrary, capricious, discriminatory or illegal. The Petitioner must also rebut the presumption that the original zoning was well planned and designed to be permanent. In Wakefield, at 141, it was stated: " * * it must appear, therefore, that either there as a mistake in the original zoning or that the character of the neighborhood was changed to an extent which justifies the amendatory action." If such mistake or change is proven then the presumption is rebutted and reclassification must be granted.

The County Board of Appeals has discretion in determining error to justify zoning reclassification and its findings will not be reversed by the Courts unless such findings are considered "clearly erroneous" by the Courts. Finney v. Halle, 241 Md. 224 (1966).

Proof presented to the zoning body (such as this Board) may, however, be so strong as to require the zoning body to grant the rezoning sought. In such case if the zoning body neglects its duty and denies rezoning contrary to the evidence in the case, the

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courts will reverse the zoning body.

In the case of Board of County Commissioners of Prince Georges County, Maryland, et al. v. Oak Hill Farms, Inc., 232 Md. 274 (1963), it was definitively stated that a zoning authority may not ignore the facts and base a denial of reclassification on surmise or conjecture. If such is attempted, this arbitrary and capricious action of the zoning authority will require court intervention and a court order to grant reclassification. In Oak Hill, the County Commissioners of Prince Georges County, acting as a zoning body, refused to rezone a 21 acre tract of land for high density apartment use. The Circuit Court, upon appeal by the property owner, reversed the action of the County Commissioners. On subsequent appeal by the County Commissioners and aggrieved neighbors, the Court of Appeals affirmed the action of the Circuit Court in directing reclassification. The Court of Appeals made reference to three principal factors:

1. The technical staff of the Planning Commission had recommended denial of apartment zoning;
2. The Planning Commission, after further investigation, rejected the technical staff recommendation and reported unanimously to the Council that it believed the "reclassification of the subject property to the R-10 zone would provide the best possible use of these properties;"
3. Acknowledged experts testified as to the strong need for high density land use; that the best use of the land was for high-rise apartments and further, that this use would be in harmony with the planned future development of the neighboring area and would not adversely

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affect the welfare, health, or safety of the Community.

The Circuit Court found that "the technical staff report has no real merit in opposing the rezoning," and that such staff report was contrary to the evidence in the case and dealt largely in abstractions without meaningful specifics. The Court further found that the Planning Commission, in possession of more specific information, had properly rejected the report of its own technical staff and had properly recommended to the zoning authority that the reclassification be granted. The zoning authority's subsequent refusal to accept that recommendation was clearly erroneous in that by so doing, they acted against the weight of the evidence. Such action by the zoning authority was unsupported by substantial evidence and was, therefore, arbitrary and capricious. The Court of Appeals agreed with the Circuit Court's finding of unsubstantiality of evidence and with its conclusion that the Council's action was arbitrary and capricious and reclassification was directed.

The parallel between Oak Hill and the instant case is obvious. The principal difference is that in Oak Hill some minor justification for the zoning authorities negative action would be found in the negative technical staff report while in the instant case there is no justification to be found anywhere in the record for the negative action of the Baltimore County Council in ignoring Petitioner's request.

In the case of Bosley, et al. v. Hospital for Consumptives of Maryland, et al., 246 Md. 197, reclassification of a tract of land in Baltimore County, Maryland was granted by this Board and affirmed by the Baltimore County Circuit Court and by the Maryland Court of Appeals. The underlying reason for reclassification was, in part, error on the part of the County Commissioners (then the

zoning authority) in that the zoning classification in which they placed the property was inconsistent with the circumstances and with the knowledge that the County Commissioners had, or had available to them, at the time of classification.

In the instant case, there appears a more compelling example of inconsistency in that all evidence presented or available demands classification in accordance with Petitioner's request. In Bosley, the findings of the Circuit Court for Baltimore County as adopted by the Court of Appeals, were that "...there was a lack of careful consideration for this particular property at the time of the adoption of the map; and certainly that there was no consideration of it in the light of Goucher Boulevard as it came to be laid out." The same lack of careful consideration underlying the Bosley decision is manifestly evident in the case at issue.

The case of Surkovich, et al. v. Doub, et al., 258 Md. 263 (1969) considered in general the question of mistake in original zoning and recited the rationale underlying the doctrine of mistake. The Court stated at page 271 " * * * when we consider the question of mistake we consider the 'matter of whether or not the Council made a basic and actual mistake as that term is used in zoning law, at the time when it classified the property * * *'. The Court further laid down the rule that " * * * one of the main concepts of zoning * * * is that there should be a comprehensive, long-range view of the entire area." The County Council in our White Marsh case has obviously not followed this "main concept" of zoning and, in fact, its action results in the tearing asunder and destruction of the entire concept. The Council's action ignores the Sector Center designation placed on the Petitioner's tract by the Planning Board and planning authorities and thus would negate all long-range planning for the entire area as established by the

Baltimore County Department of Planning and Zoning and by the Baltimore County Planning Board. The inevitable result of the Council's capricious action would be that the residents of that area of the county would be denied an effective Sector Center, would be denied needed shopping facilities, and high density residential facilities, and that all such results would be in contravention of the well established long-range, comprehensive plans made for the area by all of the Planning and zoning experts and authorities employed by Baltimore County primarily to ensure proper long-range comprehensive development of the County.

We respectfully submit that not only the overwhelming evidence but all evidence presented favors and requires the classifications requested here by Petitioners and, further, that the Petitioners have (A) proven error in original zoning; (B) rebutted the presumptions of reasonableness and permanency of the original DR5.5 zoning of the subject tract; and (C) shown clearly that the reclassification is in the public interest and is in complete accordance with the long-range planning concepts of the Baltimore County Planning and Zoning authorities.

A. Proof of original error is overwhelming and uncontradicted.

The Court of Appeals has often recognized that the same factors may constitute both error and change and that it is often not necessary and, in fact, sometimes impossible, to differentiate between the two. White et al. v. County Board of Appeals et al., 219 Md. 136 (1958). Changing trends and failure to foresee or provide for population increase are recognized as a foundation for rezoning in Maryland. West Ridge, Inc. v. McNamara, 222 Md. 448 (1960); McGinnis, et al. v. Trustees of the Sheppard and Enoch Pratt Hospital, et al., 246 Md. 704 (1967). In order properly to examine the action of the Baltimore County Council in erroneously

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classifying the subject tract as DR5.5, we must look not only to the evidence that was available to aid the County Council but we must also look to the County Council's failure to use or consider such evidence.

The evidence available was in substance the same evidence presented to the staff of the Baltimore County Department of Planning and Zoning, to the Zoning Subcommittee of the Baltimore County Planning Board, to the Baltimore County Planning Board, to the Baltimore County Zoning Commissioner at the hearing of September 3, 1971, to the area residents of the Perry Hall and Nottingham Improvement Associations and to this Board. Although obviously, the facts presented to each of these entities vary in small detail, in sum and substance, the facts presented to all of the named entities were identical.

Summarized, the facts presented included the following:

1. The Nottingham tract was unavailable for development prior to 1968 - 1969 in that the tract was then under lease to an independent corporation for the extraction of sand and gravel. Only in the 1968 - 1969 period was the subject tract of land depleted of such sand and gravel and, therefore, released from the restraints imposed by the extraction contracts.
2. This large undeveloped acreage owned by the Petitioner had previously acted as a "cork in a bottle" and prevented proper development of the Northeast Corridor between the Kennedy Expressway and Route 1.
3. The Baltimore County technical staff and experts recognized that the availability of a portion of the Petitioner's land for development would remove the artificial "cork" and allow proper development of the corridor. They further recognized that the

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subject tract because of its location, size and characteristics would act as the Sector Center for the entire Northeast Baltimore County area.

4. The proposed Sector Center and comprehensive development of the tract is in accordance with all of the comprehensive planning and zoning goals recommended by the technical staff and experts and accepted by the Baltimore County Planning Board as evidenced by the fact that the technical staff and the Planning Board have unanimously and consistently recommended that the classifications requested by Petitioner be granted. In fact, by establishing a Sector Center on Petitioner's land these planning authorities have keyed the ultimate development of the entire corridor and area with the establishment of Sector Center facilities at the White Marsh location. The adopted Master Plan (1980 Guideplan) (Petitioner's Exhibit #28) evidences that the only Sector Center for this area with a population of approximately 200,000 people is the Sector Center placed on Petitioner's land by the Baltimore County Planning Board. Compatibility of a Petitioner's plans with the projected plans of zoning officials and with the reports of planning bodies is recognized as an important element in zoning reclassification requests. Among the numerous cases which so hold are Dill, et al. v. The Johns Corporation, 242 Md. 16 (1966); Suburban Properties, Inc. v. Mayor and Council of Rockville, 241 Md. 1 (1965) and Board v. Oak Hill Farms, supra.

5. Traffic data and information as to access to the site was known to all of the entities set forth above but inferentially such knowledge was either not possessed by or utilized by the County Council. The testimony of John Funk who is one of the foremost, if not the foremost, expert on traffic and roads in the State of Maryland is, in and of itself, sufficient proof beyond any reason-

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able doubt that the proposed Sector Center before completion of construction will be amply served by road networks more than sufficient to handle maximum traffic needs. Mr. Funk's testimony, absolutely uncontradicted is that:

(i) As a consultant for the State of Maryland, State Highway Administration, he had the responsibility of preparing and concluding a corridor hearing for the White Marsh Expressway extension from the Kennedy Expressway through the Petitioner's land and to U. S. Route 1 (and ultimately to Perring Parkway). His testimony is that the location of the White Marsh extension to U. S. Route 1 is absolutely fixed first by the ceding of rights-of-way by the Petitioner throughout its property and secondly, by selection of an approved corridor after the public hearing required by law. Mr. Funk further testified that under his contract with the State Highway Administration, he will next prepare the engineering drawings for the exact alignment of the White Marsh Expressway following which the contract for actual construction will be let. He explained in fine detail that through a combination of monies already allocated by the State, Federal participatory funds and developer's contributions, there was no doubt that funds necessary for construction of this extension of White Marsh Boulevard were available. There was and could be no contradictory evidence presented.

(ii) Mr. Funk further testified that he has been retained as a consultant by Baltimore County, Maryland to prepare the necessary road alignment studies and construction details as to the programed extension of Radecke Avenue between its fixed termini at the Baltimore County Beltway to the South and North of Silver Spring Road to the North. The fact that there is an existing bridge specifically built to carry Radecke Avenue over the Baltimore County Beltway and that there has been partial

construction of Radecke Avenue North of Silver Spring Road leaves no doubt that the general route of Radecke Avenue is permanently fixed. Mr. Funk testified that by his report submitted to his employer, Baltimore County, Maryland, the specific location of Radecke Avenue between these fixed termini is also fixed. His testimony further explained the monetary commitment made by Baltimore County for Radecke Avenue construction and the procedure and timing used by Baltimore County in allocating specific funds for construction. It is important to note that his explanation as to how and when funds are actually utilized is in full conformity with the invariable procedures of Baltimore County, Maryland in cases of similar road construction. It is further important to note that his knowledge of these procedures is unparalleled in that the uncontradicted testimony is that Mr. Funk himself, while serving Baltimore County as Director of the Baltimore County Department of Public Works, established for County use the same budgetary procedures as to which he testified.

(iii) Mr. Funk after being retained by the Petitioner, prepared and presented to Petitioner a plan for the development of Perry Hall Boulevard to serve as a "ring road" around the Sector Center. His plan was not only presented to the Petitioner but presented to and acted upon by Baltimore County, Maryland. His further testimony is that Perry Hall Boulevard is a developer's road and is to be constructed at the entire cost of the developer.

(iv) Finally, Mr. Funk testified that all mentioned roads would be available for use when needed by users of the planned development.

Even without additional substantiation, Mr. Funk's testimony standing alone, proves conclusively that the road network planned by the State and County authorities and by the Petitioner must be accepted as a fact and goes far beyond the "reasonably probable of fruition" test laid down by the Court of this State and discussed below.

Mr. Funk's testimony, however, does not stand alone. There have been presented to the Board numerous exhibits substantiating his oral testimony to wit: Petitioner's exhibits numbers 20, 21, 22, 23(a), 23(b), 24, 25(a) and 25(b).

In addition, Mr. Norman Ray, a Planner who has served in the Department of Planning and Zoning for many years, who served for approximately 3 years as the Chief Planner for the entire Northeast Sector of Baltimore County and who has recently been elevated to the status of Chief Planner for Traffic and Roads for Baltimore County in its entirety, testified at length as to the three roads mentioned above, their status, and his concurrence with the facts testified to by Mr. Funk.

Finally, Mr. Willamain, who testified for the Protestants, (a) was not present during Mr. Funk's testimony on either direct or cross examination and was, therefore, unable to comment on it, and (b) undertook no studies as to area road networks and, in fact, is a land planner and not an expert in traffic or road patterns. Mr. Willamain did, however, acknowledge that Mr. Funk is a recognized expert and found no reason to disagree with his conclusions.

Cases in which road access considerations are deemed important by the Courts in determining whether or not reclassification is justified include Meginness, et al. v. Trustees of the Sheppard and Enoch Pratt Hospital, et al., 246 Md. 704 (1967) The Jobar Corporation, et al. v. Rodgers Forge Community Association, Inc., et al., 236 Md. 106 (1964); Rohde, et al. v. County Board of Appeals For Baltimore County, et al., 234 Md. 259 (1964) and Scheydt, et al. v. Pratt Properties, Inc., 229 Md. 31 (1962)

The law pronounced by the Court of Appeals of Maryland is

to the effect that if evidence as to planned road construction is sufficient to show construction "reasonably probable of fruition in the foreseeable future" then such evidence must be considered by the Zoning Board. Numerous cases set forth this requirement including Rohde, et al. v. County Board of Appeals for Baltimore County, et al., supra and Trustees of McDonogh Educational Fund and Institute, Etc., et al. v. Baltimore County Maryland et al., 221 Md. 550 (1960). In the McDonogh case the Court of Appeals said, at 576-577

"Of course, the county council was not confined in its deliberations upon the recommended new comprehensive plan exclusively to the roadways then in existence. If this were so it would destroy many of the advantages of zoning. A comprehensive plan, as we have stated above, is specifically designed 'to control and direct the use of land and buildings according to present and planned future conditions.' We think the council was entitled to consider any proposed new highways, or proposed improvements to existing highways, that were reasonably probable of fruition in the foreseeable future in determining the proper classifications for the subject property."

Evidence as to the planned road network for the area then should have been considered by the County Council in the instant case.

6. The availability of utilities to serve the site was considered under three parts:

- (i) Storm water facilities
- (ii) Water facilities
- (iii) Sanitary sewer facilities.

(i) Mr. Thomas Shaffer, a professional utilities engineer employed by Whitman Requard & Associates testified without contradiction as to the present and future availability of facilities for the drainage of storm water from the subject tract

of land. His testimony on this point is not only uncontradicted but in fact, Protestant's witness Mr. Willamain is in agreement with Mr. Shaffer. Mr. Willamain mentioned specifically that sufficient "storage ponds" can be constructed by the Petitioner on its own property to impound storm waters.

(ii) The testimony of Mr. Shaffer as to water availability to the site was buttressed by studies undertaken by Mr. Shaffer and his firm over a period of many years. His conclusions are that not only will the three available water supply lines be sufficient to service the proposed development, but that one line alone (i.e. the 16" line in Route 7) is itself sufficient to supply all water needs of the development without decrease in water quantity or pressure to others utilizing the existing water lines. He did comment that "good engineering practice" would indicate utilization of all three lines by an interconnecting water system but he emphasized that such interconnection is not necessary. The details of his studies as to the average water flow, maximum day water flow and fire-flow requirements are uncontradicted. In response to a question by a Board member, he succinctly stated that there is no difficulty in connecting all of the Petitioner's property to an adequate water supply. Mr. Willamain testified to the effect that there "would be no significant difference" on water demand as between DR5.5 development and development under the requested classification.

(iii) Mr. Shaffer's further testimony as to the availability of sanitary sewer facilities for the White Marsh tract was buttressed by continuing studies undertaken by Mr. Shaffer and by his employer, Whitman Requard & Associates. His testimony is to the effect that the 48" sanitary sewer line serving the property is unusual only in that such excellent facilities are seldom available to developers and in that respect, the subject property is unique.

In his direct testimony, he traced the path of affluent to and from the subject property through existing pumping stations to its ultimate destination, Back River Treatment Plant. His opinion at the conclusion of direct examination was that the sanitary sewer facilities now available are more than sufficient to meet the development needs of the entire area including Petitioner's tract. He further pointed out that if Petitioner's 923 acres were developed under existing zoning the average daily flow would be 1.60 million gallons while if the same 923 acres were developed after granting of the requested reclassification for part of such acreage the average daily flow would be only 1.99 million gallons. He testified that this maximum flow increase of .39 million gallons was not significant to effect treatment facilities. Mr. Willamain who was not present during Mr. Shaffer's testimony on cross examination, attempted to inject a note of doubt as to availability of sanitary sewage facilities by referring to "intensive development" planned in the Tri-Valley, Heatherfield and Hampden areas. Even after the myth of intensive development in these areas was destroyed by questions from the Board, during which Mr. Willamain was forced to admit that intensive development was not planned for and would not occur in the areas mentioned, he attempted to indicate that there would in the future be a reversal of normal affluent flow directions in order to alleviate pressure on the Jones Falls system and that consequently, this reversal of flow from the northern and Northwestern portions of Baltimore County would pass through and perhaps overtax the Back River Treatment Plant. Mr. Willamain did not say that the Back River Treatment Plant would not be able to handle even that reverse flow but his testimony rather was to the effect that it might overtax the Treatment Plant. Unknown to Mr. Willamain, this red herring which he so carefully reeled in had been gutted and filleted by Mr. Shaffer in his

testimony on cross examination. Unknown to Mr. Willamain, Mr. Shaffer had testified that his firm in 1968, on behalf of Baltimore City, had undertaken a comprehensive study of the Back River Treatment Plant and that the study report had recommended a series of improvements or enhancements to the Plant which would enable the Plant to handle all anticipated waste for treatment. He had further testified that over \$10,000,000.00 was programed for the improvements and that improvements were now being made to the sludge handling facilities of the Plant, although, in accordance with the schedule established by the report, the majority of the work will not be completed until 1974. The combination of Mr. Shaffer's testimony on direct and cross examination and the exhibits presented in substantiation thereof, lays to rest any assertion that sanitary sewer facilities are less than adequate. It is interesting to note that Mr. Willamain had no knowledge of the 1968 Whitman Requard & Associates report to Baltimore City dealing specifically with capacity and improvement of the Back River Treatment Plant.

Here again the test of "reasonably probable of fruition in the foreseeable future" as announced in McDonogh, supra and other cases is fully met by Petitioner's uncontradicted evidence.

Cases illustrating the importance of the availability of utilities serving property for which classification has been requested include Finney v. Halle, supra (change) and Trustees of McDonogh Educational Fund and Institute, Etc., et al. v. Baltimore County, Maryland, et al., supra (error).

7. Mr. Crawford Westbrook of Gruen Associates, land planners and engineers, testified as to his and his company's extensive studies over a three year period of the White Marsh area and as to the coordination between the expert advisors, the Baltimore Department of Planning and Zoning staff and the Planning Board, the

Department of Public Works and the State Highway Administration. He continued by explaining how a comprehensive plan for use of Petitioner's White Marsh tract in accordance with the Master Plan and recommendations of Baltimore County evolved. His testimony that "The comprehensive plan for the White Marsh properties is in full and complete accord with the northeastern Sector Center proposed by the Baltimore County Planning Department for the White Marsh properties" is uncontradicted and, in fact, would not be contradicted.

Mr. Shaffer, Mr. Funk, Mr. Westbrook, and Mr. Michael all were asked specifically whether or not, in their respective expert opinions, the classification action of the Baltimore County Council was proper. Each testified that the Council's action was improper and erroneous and each fully substantiated his opinion by reference to fact. Of perhaps equal importance is the testimony of Mr. Norman Ray, who was the chief planner for the Northeastern Area through and including the time of Council action. Mr. Ray, as chief planner, had primary responsibility for amassing and coordinating reports and studies for that area in order that appropriate decisions might intelligently be made. He testified that he knows of no reason for the unexpected and unexplained action of the Council; that he knows of no justification for the Council's action and that, in his expert opinion, the Council was in error in refusing to grant Petitioner's request for zoning in conformity with the Sector Center designation and the planned development of the County.

Of less importance but of same weight is the opinion of Mr. Willamain to the effect that industrial rather than residential is an appropriate classification for the Petitioner's tract.

The important fact is that all experts, including those

employed by and serving Baltimore County, are in agreement. All are of the opinion that the Council's action was erroneous, arbitrary and capricious. The testimony and exhibits presented are compelling evidence of the fact that Petitioner's have sustained their burden of proving original error on the part of the Baltimore County Council. The Council's ignoring of all of its advisors is the type of capricious action condemned by the Court of Appeals in Find, et al. v. Board of Zoning Appeals of Baltimore County, et al., 207 Md. 355 (1955) and other cases.

B. THE BALTIMORE COUNTY COUNCIL DID NOT UTILIZE THE TIME NECESSARY TO ABSORB PETITIONERS SUBSTANTIATING EVIDENCE AS TO ITS REQUESTS; NOR DID THE COUNCIL ASSURE THE EVIDENCE AVAILABLE TO IT FROM COUNTY PLANNING SOURCES. THUS THE USUAL PRESUMPTION OF CORRECTNESS IS SHOWN TO BE NON-OPERATIVE AND IS REBUTED.

All members of the Board are aware of the immense nature of the task facing the Baltimore County Council in 1970-1971. A complete classification as to zoning of one of the largest counties in the United States would be an awesome task even for a large body of experts working full time for a period of many years. The Baltimore County Council on the other hand consists of members who are not experts in planning or zoning but who are, instead, businessmen, lawyers, insurance agents and business employees. In addition, their duties on the Baltimore County Council are part-time duties only. The nature of their usual duties required them not only to govern the County during the period of time in question, but to consider and adopt a complete new set of zoning classifications and definitions, to consider and adopt an operating budget for the county and finally to reclassify every acre of land in private ownership in the county. It was impossible for them to adequately perform their task of classification of land without relying extensively on the technical staff and the experts employed

by the Baltimore County Department of Planning and Zoning and on the Baltimore County Planning Board, those agencies whose primary concern is with planning and zoning and proper development of the County. That the Baltimore County Council did not rely on the technical staff of the Baltimore County Department of Planning and Zoning, on the Zoning Subcommittee of the Baltimore County Planning Board, on the Baltimore County Planning Board, and on the independent experts who had studied the Petitioner's tract for periods of time ranging from one to four years is evident. Had they relied on all or any part of this impressive array of expert ability and expert studies, they would not have placed the land in a DR5.5 classification against every recommendation of all the experts and all of the technical and advisory bodies. The only possible explanation is that this expert evidence and opinion was either ignored by the Council or, through the Council's own omissions was not known to the Council. In either event, error by the Council was thus not only made possible but made inevitable.

It is easy to see that the Council did not have available to it the voluminous testimony presented to this Board, and previously presented to the Baltimore County Planning Staff and Planning Board. This Board, in seven days of hearing, heard the testimony of approximately ten witnesses and accepted into evidence over forty exhibits. One witness alone, Mr. Crawford Westbrook, testified for over one hour and twenty minutes in substantiation of his testimony that the County Council erred in not classifying the Petitioner's property in accordance with the Petitioner's and with the Planning Board's request. In all, over 19 hours of testimony was heard by this Board over a period of seven days. The County Council on the other hand by its own ruling limiting the time of presentation, heard approximately seven minutes of testimony from Nottingham Village, Inc. and approximately five minutes of testimony from The

Rouse Company as to the requested reclassifications and as to the long term planned use of a tract of land encompassing approximately 930 acres. Mr. R. McLean Campbell testified that the Petitioner had requested at least one hour to present the facts to the County Council but that the County Council had instead limited testimony to the minutes mentioned. Mr. Campbell further testified that Petitioners were not allowed the time to make a thorough presentation and, in fact, the presentation that was made to the Council was cut off with a "buzzer" and cries that this was a "Hollywood" presentation and it must end.

The general decorum at the subject County Council meeting is also important in understanding why an adequate presentation by Petitioners could not be made. The newspaper accounts of that particular County Council public hearing might make amusing reading to one unaffected by such hearing, but to one understanding that the hearing was to be a fact-finding excursion by the Council, the decorum at the hearing was deplorable. Although this Board is well aware of the unruly nature of the hearing, it is important to recall Mr. Stunda's testimony to the effect that those in attendance were shouting, jumping up and down and were without any semblance of order. It should here be made perfectly clear that this lack of order was not directly connected to Petitioner's request for reclassification. As Mr. Stunda pointed out, the public in attendance seemed to be "against everything" and were, unfortunately, overly vocal in their generalized protests. Mr. Stunda, of course, is an interested witness in view of his employment with a Rouse Company subsidiary. Therefore reference should be made to an individual who was not particularly friendly to the Petitioner's request at the time of that public hearing. Mr. Wade H. Creswell whose Perry Hall Improvement Association had no previous information about the Petitioner's

plans nor about availability of utilities and roads attended the hearing in his capacity as President of that organization. Mr. Creswell testified that the Petitioner's were not able to finish their presentation and that things got "kind of mixed up." When he was asked about the length of the Petitioner's presentation he said in part "I doubt if Nottingham, and this is just trying to look back at that confusion, I doubt if they were actually on there, oh, fifteen minutes." When Mr. Creswell was asked by the Board Chairman as to the details of the Nottingham presentation, he stated: "I would say this, in the confusion generally that existed, with several hundred people screaming their heads off down there that night, it was a little difficult to keep track of anything, and there was a lot of hostility, toward everybody, as I recall." This devastating comment as to the sole opportunity that was afforded the Petitioner to acquaint the Council of the studies underlying Petitioner's request is perhaps more succinctly summed up by Mr. Creswell when in answer to another question by a member of the Board he referred to "that thing we had down at the high school" and then made abundantly clear that "that thing" was the purported fact-finding session of the County Council.

It seems obvious that the County Council by its own rules and its own inability to conduct a proper hearing prevented the imparting to it of vital studies and other evidence underlying Petitioner's request. This combination of its own line restricting rules and the lack of a decorous hearing in which it could ascertain the facts, necessarily lead the Council into their grievous error and into their arbitrary and capricious action.

It is equally apparent that the County Council ignored all recommendations and reports of the technical staff and experts who were specifically charged with aiding the Council in its

decision making processes. If they had not ignored such recommendations and studies they would have been forced to grant Petitioner's requests since all recommendations and evidence substantiated such requests.

Again, every advisory body including the technical staff of the Baltimore County Department of Planning and Zoning, the Chief Planner for the Northeast area of Baltimore County, the Zoning Subcommittee of the Baltimore County Planning Board, the Baltimore County Planning Board, the Zoning Commissioner of Baltimore County at his September, 1971 hearing, the Perry Hall Improvement Association and the Nottingham Village Improvement Association (the latter two being associations immediately to the North and South of the subject tract) who studied the development proposal or who used their own expertise, recommended, and still recommend, that the Petitioner's be allowed to develop their property as a Sector Center with ancillary uses in accordance with the Baltimore County Master Plan. Only the Baltimore County Council, who refused to examine and consider the expert studies and advice presented and who, in fact, refused, or who were unable to afford, the Petitioners a fair opportunity to explain their proposals and to present to the Council the results of the voluminous studies, did not recommend the requested reclassifications but instead recommended a classification which both Mr. Westbrook and Mr. Willamain testified is inappropriate for development of the property. Mr. Westbrook testified without contradiction that DR5.5 development of the site is impossible. The reason for the Council's failure to perform their duty must in part be surmised, but a partial explanation can be found in their refusal to grant Petitioner more than a few minutes of time and in their inability to control an unruly crowd at the Council's only fact-finding hearing.

In the case of Oak Hill Farms, Inc., supra, the Court reversed the zoning authority and ordered reclassification principally because the zoning authority ignored the recommendations of its own advisory body, the Planning Commission. That zoning authority did have some justification for its refusal to zone in that the technical staff of the Planning Commission had recommended (although without proper cause) denial. In the instant case there was no justification for the County Council's arbitrary decision in that both the technical staff and the Planning Board consistently recommended approval of the requests by Petitioner and, in fact, based the projected future development of that section of the County (re: Sector Center designation) on approval being granted by the County Council.

C. DENIAL OF THE REQUESTED RECLASSIFICATION BY THE COUNTY COUNCIL IS NOT IN THE PUBLIC INTEREST

An ancillary burden which the Petitioner should and did meet is that of proving that the requested reclassifications are in the public interest and that the benefits to the public in general to be derived from the reclassifications would outweigh any alleged detriment.

Petitioners believe that it would have been sufficient to prove, as was proven, that the technical staff and the experts in the Baltimore County Department of Planning & Zoning and the Planning Board of Baltimore County approved of and recommended the project. It seems inconceivable that the large technical staff in the Baltimore County Department of Planning and Zoning, whose primary task during the period of time in question was to recommend to the County Council proper comprehensive zoning for the County and to give reasons for their recommendations would be completely ignored by the County Council. It seems equally inconceivable that

the Planning Board, whose duties and experience should give their recommendations great weight, would similarly find that their recommendations were ignored by the County Council without discernable reason and that the Council apparently made no effort to ascertain the underlying reasons for the staff and Board's unanimous recommendations for the granting of Petitioner's requested zoning. Both the staff and the Planning Board are charged with the task of utilizing their expert knowledge in furtherance of comprehensive planning for the County. They accomplished their task. They fulfilled their role. The Council's complete disregard of their unanimous recommendations without contrary evidence being presented to the County Council was not only an arbitrary and capricious action on the part of the Council but was also an example of disregard without reason of the public interest.

Petitioners, however, were not content to rely on the obvious. Instead, they presented to all who would listen the facts which were presented clearly to this Board including the fact that the proposed development is in the public interest and is of great material benefit to the County.

Mr. Jerome Michael of Larry Smith & Company testified at great length as to the following:

1. There is a large present unmet need for department store facilities in the trade area which would be served by the proposed Sector Center; further, population projections based on extensive studies of Federal, State, and municipal data as supplemented by staff studies performed for the Petitioner indicates that in the near future, (i.e., by 1980), there will still be unmet need for department store facilities even after construction of the contemplated four department store Sector Center. All of Mr. Michael's population statistics and studies were uncontradicted.

Contradiction of fact is impossible. Mr. Michael further testified as to the income levels of residents and the figures so testified to remain uncontradicted.

The only attempted attack on Mr. Michael's findings was made as a passing comment by Mr. Willamain who stated, in effect, that the income level of residents of The White Marsh trade area were not as high as income levels of residents of other trade areas. The value of this comment is microscopic as can be seen from the facts elicited from Mr. Willamain on cross-examination that (a) Mr. Willamain had "no idea" of the income level of the residents of the trade area; (b) Mr. Willamain did not do a population study using Federal or other data; (c) Mr. Willamain did not attempt to do an income study of the area; (d) Mr. Willamain did not do an income level study for any trade area in Baltimore County; and (e) Mr. Willamain made no effort to prepare a market survey for the particular trade area.

As was stated by the Court of Appeals in the case of Miller v. Abrahams, 239 Md. 263 (1965) at page 273, "The prevailing general rule almost universally followed, is that an experts opinion is of no greater probative value than the soundness of his reasons given therefor will warrant." This concept of the law found in numerous Maryland decisions makes it evident that a gratuitous "opinion" without any supporting facts (such as Mr. Willamain's) must be given the weight it deserves - none.

2. Mr. Michael further expounded on the results of his and his employer's study as to the need for apartments in the area. Here again, the underlying reasons and rationale for his conclusions were clearly presented. His studies encompassed official Baltimore County studies and statistics, Federal statistics and comprehensive developmental housing trends of other

geographical regions of the country. His conclusions that apartments are needed in the area to serve the demand of the population are not only buttressed by testimony of Mr. Crawford Westbrook of Gruen Associates but were also admitted to be correct by Mr. William who also testified as to the lack of apartments in the area and the need for the same. Here again, the facts cannot be disputed.

3. Mr. Michael's opinion that H-R roadside facilities in the area were necessary to serve the area residents and the traveling public were seconded by Mr. Westbrook. In fact, not only are the Baltimore County technical staff and experts in agreement but such facilities are included in Petitioner's plan at the specific request and recommendation of that staff and those experts who are charged with recommending zoning development in Baltimore County which will be in the public interest. There was no attempt made to rebut these facts.

4. Mr. Michael's testimony as to the need for office facilities stands alone and uncontradicted.

5. The results of Mr. Michael's study as to direct economic benefit to be realized by the County from construction of the proposed facilities were presented in exhibit form to the Board. Reference to that exhibit indicates that once the facilities have been erected there will be an annual monetary benefit to the County of \$2,000,000.00 in excess of the tax expected through DR 5-5. Not only does Mr. Michael's testimony as to need and public benefit stand uncontradicted, it is enhanced and supported by the results of similar but independent studies undertaken by Gruen Associates and, as to the retail core, independent studies undertaken by the proposed co-developer, The House Company.

Petitioners have shown before this Board and, in fact, have shown to all who would listen, that not only are there substantial

needs which can and should be met by development of this tract but that such development would add large sums to the tax revenues of the County. In contradistinction, there is not one scintilla of evidence of detriment to the county should this development proceed in accordance with the County's and the Petitioner's plans.

There being no evidence to the contrary, it is impossible for the decision of the Baltimore County Council to be in the best interest of Baltimore County and in compliance with their assigned task of protecting the public interest. Their failure to so meet an assigned task is error and is an arbitrary and capricious action which should be remedied by this Board.

Balancing benefits against alleged detriments of reclassification has a proper place in the Board's deliberation along with consideration of demonstrated error. Hardisty, et al. v. Board of Zoning Appeals of Baltimore County, 211 Md. 172 (1956) (where, however, the rezoning was reversed because of proof that undue traffic congestion would result from rezoning - a problem proven not to exist in the instant case).

A further rule of law is that zoning decisions do not depend on a plebiscite of neighbors. Mettee, et al. v. County Commissioners of Howard County, et al., 212 Md. 357 (1957)

The instant case is unusual in that the Petitioners requesting reclassification would, in fact, benefit if a plebiscite of neighbors were allowed to control the zoning decision. Since the unfortunate loss of the elusive Mr. Tate, only two protestants remain, Mr. & Mrs. French. Although certain aspects of their appeal are covered in the Memorandum previously submitted to this Board in support of Petitioner's Motion to Dismiss the appeal, their bona fides should be commented on.

Mr. French was most candid. His unsolicited statement immediately after being sworn best expressed his lack of interest. That statement was as follows: "My name is James French. I work at Bethlehem Steel. My wife has made all of the arrangements, so I haven't anything else to say."

Mrs. French, in her testimony, showed quite clearly that she knew virtually nothing of the petition and that she had no real interest in the proceedings. Mrs. French refused to answer questions as to (i) who sent her to Mr. Schlachman, her original attorney; (ii) who was actually paying the costs of the appeal; (iii) what the costs of the appeal were to the date of hearing and what the ultimate cost would be; and (iv) who is really behind the appeal taken in her name. When questioned persistently, she could only say that she talked about the project with "customers who came into Food Fair where I work." Mrs. French, groping for something to say which would indicate a bona fide reason for appeal, did answer certain questions posed to her by her counsel. In virtually every instance, her answers were completely inaccurate. She testified that Route 7 would provide the main access to the site and that she was concerned about traffic congestion on Route 7. It was pointed out to her by a Board member that there is no access to the site from Route 7. She was wrong. In response to another question by her counsel, she described the tract for which zoning is requested as a "40 acre tract, isn't it." She was wrong. In response to a third question, she admitted she did not have any idea as to the number of stores but did know that there would be a total of "1,000 square feet of store area" developed. She was wrong. With three strikes she should be declared out.

In contradistinction, the members of both the Perry Hall and the Nottingham Village Improvements Associations comprising respectively 168 and 50 homes were fully aware of the Petitioners'

proposals and had independently made conscious judgments not to oppose the proposals. Mr. Creswell, a most articulate witness, impressed upon the Board the knowledge of the members of his association as to the exact proposal of Petitioners and he testified that not one member of his association desired to have an appeal taken. Mrs. Coulter on behalf of Nottingham Village Improvement Association testified that the membership of her association unanimously voted to support the Petitioners' request and she presented to the Board an Association Resolution evidencing such support. These were actions taken by responsible citizens living immediately to the North and South of the subject property and such actions were taken as a result of community interest and not as a result of prodding or requests for support from Petitioners. Both Mr. Creswell and Mrs. Coulter made it abundantly clear that presentations made by Petitioners to their respective associations were made at the requests of the associations so that the association members might learn of the proposed White Marsh development. Mr. Creswell went so far as to testify that his association refused to appeal the decision of the Zoning Commissioner even in the face of pressure to appeal exerted by a particular County Councilman.

In conclusion, Petitioners respectfully suggest that they have met all burdens of proof imposed on them; that they have proven irrebuttable error on the part of the County Council; that they have proven how such error was caused by Council action or inaction; that they have proven the incorrectness of the initial presumption of legislative validity; that they have proven the proposed development to be in the public interest and to be without detriment to the community; and that they have proven that the proposed development is supported by all concerned and responsible groups of area citizens. Petitioners, therefore, request that this Board

sustain the action of the Zoning Commissioner for Baltimore County and grant the reclassifications and district designations requested by Petitioners.

W. Lee Thomas
Attorney for Nottingham Village, Inc.

James H. Clark
Attorney for White Marsh Mall, Inc.

NOTTINGHAM VILLAGE, INC., : BEFORE THE COUNTY BOARD
RECLASSIFICATION AND : OF APPEALS OF
REDISTRICTING PETITION, : BALTIMORE COUNTY
S/W and N/W corner, :
Interstate 95 and White :
Marsh Boulevard, 11th & :
14th Districts :
Northeast Sector :
Case No. 72-50-R : Case No. 72-50-R

MEMORANDUM

The Court of Appeals of Maryland, in numerous decisions pertaining to appeals from County Board of Appeals to the Circuit Court and to the Court of Appeals itself, has uniformly held that such appeals may be taken only by parties who are aggrieved by the Judgment, Order, or Decree.

Section 22-27 of the Baltimore County Code, 1968, authorizes appeal from the decision of the Zoning Commissioner to the County Board of Appeals by "any person or persons, jointly or severally, or any taxpayer or any official, office, department, board or bureau of the County, feeling aggrieved by any decision of the Zoning Commissioner * * * emphasis supplied."

A provision identical in content of the Baltimore County Zoning Regulations (Section 500.10) authorizes appeals to the County Board of Appeals by an aggrieved person.

The question of whether or not an Appellant is truly "aggrieved" has been considered and decided many times by the Court of Appeals of Maryland. One of their most recent decisions

is Brynarski, et al. vs. Montgomery County Board of Appeals, et al., 247 Md. 137.

In Brynarski, the Court of Appeals, in considering whether or not adjacent property owners were aggrieved stated that the word "aggrieved" has never been legislatively defined but that there have been many cases in Maryland and in other jurisdictions considering the meaning of the word "aggrieved." The Court, at page 144, stated:

"Generally speaking, the decisions indicate that a person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board. The decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally."

After this general statement, the Court made, among others, three specific holdings:

1. An adjoining, confronting or nearby property owner is deemed prima facie to be specially damaged and, therefore, personally aggrieved.
2. A person whose property is far removed from the subject property ordinarily will not be considered a person aggrieved.
3. A person whose sole reason for objecting is to prevent competition is not a person aggrieved. The Board of Appeals cited cases in support of each holding.

The City of Greenbelt, Maryland, et al. vs. Jaeger, 237 Md.

456 was a case in which the City of Greenbelt appealed from a favorable Circuit Court decision on requested rezoning of property owned by Jaeger. Jaeger moved to dismiss the appeal as to the City alleging that the City was not "an aggrieved party." The Court of Appeals, after careful consideration of the record, dismissed the appeal filed by the City and held specifically that the City was not an aggrieved party. The Court pointed out that the City was not an adjoining or nearby property owner and that the subject property was not within its corporate limits. Testimony had been presented by the City to the effect that housing units were under development in the City of Greenbelt which would amply provide present and prospective apartment needs in and around the City and that, therefore, the proposed apartments to be developed on Jaeger's land were not needed. The Court of Appeals, at page 463, stated:

"The fact that a large number of apartments, which might suffer from competition offered by the apartments planned to be built on the rezoned land, were being built within the corporate limits of Greenbelt would not give the owner of the apartments in Greenbelt, much less the City of Greenbelt, standing as an aggrieved party."

In their decision in the City of Greenbelt case, the Court of Appeals cited with approval the case of Kretzman vs. Ramsburg, et al., 224 Md. 209. The point under consideration in Kretzman was whether or not a competitor had the right to intervene in a suit in equity filed by a property owner against the Board of County

Commissioners of Howard County wherein such property owner prayed a Declaratory Decree to the effect that the Howard County Zoning regulations as applied to his property were unconstitutional and void. The Howard County Circuit Court entered the decree requested and restrained the Board from interfering with the owner's use of the property for shopping center purposes. An appeal from that decree to the Court of Appeals of Maryland was taken by a competitor of the property owner. The Court of Appeals considered the extent of the competitor's interest in the controversy since as a condition, precedent to a ruling on the merits, the Court determined that it must first find that the Appellant has such an interest in the subject matter of the suit as entitle him to appeal. Absent such interest, his appeal must be dismissed.

In determining this matter, the Court found no evidence of any threatened depreciation in the value of Kretschman's property (which was located 1 1/2 miles from the proposed shopping center) and found that there were no special damages which would give him standing to appeal. The Court further considered Kretschman's expressed opposition to the shopping center use of the property. His expressed opposition was fear of competition for his package liquor store should construction of the shopping center be allowed. The Court of Appeals examined the decisions in other jurisdictions and thereafter held that the prevention of competition is not a proper element of zoning. In doing so, they cited cases from Connecticut, New Jersey, North Carolina, Virginia, Massachusetts, New York, and Pennsylvania. In so holding that fear of competition does not make a party an aggrieved person so as to allow appeal, the Court cited with approval the case of Circle Lounge & Grille, Inc. vs. Board

of Appeals of Boston, 324 Mass. 427, 86 N.E. 2d 290, wherein the Supreme Judicial Court of Massachusetts stated in part:

"* * * it is reasonable to suppose that the Plaintiff's business would suffer to some extent at least by the establishment of a 'Howard Johnson' Restaurant at the edge of Cleveland Circle. But injury from business competition has generally been considered damnum absque injuria. It was no part of the purpose of the Zoning Regulations to protect business from competition. In fact, they would often operate to increase competition by limiting the areas within which certain business can be carried on. We cannot believe that a person is aggrieved within the meaning of the statute here in question merely because a variance, even if improvidently granted, will increase competition in business."

The Court of Appeals of Maryland in recapitulating its decision found that the Kretschman case involved rival shopping center sites in the same vicinity and that the threat of competition was the danger from which Kretschman sought to protect himself and thus he was attempting to use the protection of the Zoning regulations to stifle competition. The Court held that he was not entitled to do so and that the zoning laws gave him no standing to do so where they are invoked only in an attempt to prevent competition.

Kretschman was recently again cited as precedent by the Court of Appeals on this point in the case of Aspen Hill Venture vs. Montgomery County Council, No. 288 September Term 1971 filed April 10, 1972 (Daily Record May 17, 1972).

The recent case of Commissioners of Cambridge v. Henry, et al., 263 Md. 370 is also in point. In that case, a zoning ordinance authorized appeals to the Board of Appeals by any "person aggrieved." Henry and others disagreeing with a decision made under the ordinance attempted to by-pass the Board of Appeals by filing in the Circuit Court a bill to enjoin the proposed construction. Judge Hammond, for the Court of Appeals, cited the applicable section of the ordinance dealing with appeals by a "person aggrieved" and stated in part at page 374:

"If Cambridge is bound by the Ordinance, the Board must consider whether the Complainants are persons aggrieved within the meaning of the ordinance. If they are, it should then consider whether the park is a non-conforming use which legally could contain the proposed building * * * (emphasis supplied)

There can be no doubt that the Appellants here are not persons "aggrieved" within the meaning of the statute or within the decisions of the Court of Appeals of Maryland. The great distance from their lots to the subject property, their inability to see the subject property from their lots, and their previous total lack of concern for the zoning proposed for the subject site are proof positive that they have no standing as an aggrieved party.

If, in fact, they are acting solely as surrogates for others, who are thus indirectly attempting to improperly use the Zoning Regulations and Zoning Procedures of Baltimore County to eliminate competition, then their appeal is manifestly improper and should be dismissed. The Court of Appeals of Maryland will not allow such appeals and the Baltimore County Board of Appeals should be guided by the decisions in the City of Greenbelt and Kretschman cases cited above.

Even if this Board finds that competition is not the sole reason for the appeal, it is clear that the Appellants are not aggrieved parties under the test laying down in the Brynarski and other cases. They are far removed from the Nottingham tract, they are not within sight distance of the tract, they do not have ready access to the tract, and they have previously demonstrated no concern for the zoning process. They have no specific interest or property rights which would affect them in a way different from the public in general. Therefore, under the specific holding of Brynarski, they are not aggrieved persons and their appeals, therefore, should not be entertained.

Motion is made that the Appeals filed be dismissed with

-5(a)-

-6-

prejudice in that the Appellants are not persons aggrieved by the decision of the Zoning Commissioner within the meaning of the statute.

W. Lee Thomas, Attorney for
Nottingham Village, Inc.

Nottingham Improvement Association, Inc.

(NOTTINGHAM)
Baltimore, Maryland 21237

September 7, 1971

TO WHOM IT MAY CONCERN:

At a duly called Special Meeting of Nottingham Improvement Association on September 3, 1971, the membership present acted unanimously in directing this writing, signed by the President and attested by its Acting Secretary, to be the Association's POSITION regarding the zoning changes and development plans for the southwest corner of Interstate 95 and the White Marsh Boulevard.

1. That the Association, being the representative body for the majority of homeowners in the development of Nottingham Village and immediate adjacent area, has an awareness of the planned Sector Center Development north and south of White Marsh Boulevard (as it will be extended) near its intersection with I-95.
2. That the area involved under the zoning changes and development plans of Nottingham Village, Inc. is in part contiguous to the Association area and, therefore, is of direct interest to the Association.
3. That the homeowners represented by the Association ought to and do have a civic and economic interest in an orderly development of the subject area.
4. That the Petitioner (Nottingham Village, Inc.) has presented a responsible, planned proposal for the orderly development of the area.
5. That an orderly overall plan such as proposed by the Petitioner will, in the opinion of the Association, tend to preserve and stabilize the

Nottingham Improvement Association, Inc.

(NOTTINGHAM)
Baltimore, Maryland 21237

the present property values of the area homeowners as well as point to new and sizable tax bases on the proposed developments.

6. That the plan by the Petitioner offers an excellent opportunity to rehabilitate the land as it presently exists under a one-owner, overall plan in contrast to piece-meal, separate and perhaps competitive plans under diverse owners.

THEFORE, our Association approves the Petitioner's proposals as to the zoning changes.

ATTEST

Ernest A. Robinson
Acting Secretary

Ernest A. Robinson
Ernest A. Robinson, President

STATE OF MARYLAND
DEPARTMENT OF WATER RESOURCES
STATE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401
June 29, 1971

Mr. P. Douglas Dollenberg
Vice President - Property Development
Nottingham Properties, Inc.
102 W. Pennsylvania Avenue
Towson, Maryland 21204

Re: Floodplain Analysis for Whitmarsh Run,
Baltimore County

Dear Doug:

The above project has received the necessary analysis and review. Your proposal of leaving the Whitmarsh Run in its natural state and the reservation of the floodplain area precludes the necessity of obtaining a permit from this office.

The Department hereby approves the plans as presented for this project. When the floodplain area has been defined by metes and bounds as for an easement, the Department would request a copy of a plat.

If there are any questions or needs for technical advice, please do not hesitate to call.

Very truly yours,
Robert S. Norton, Jr.
Robert S. Norton, Jr., Chief
Surface Water Management

RSN:MAP:sc

AN AGENCY OF THE MARYLAND DEPARTMENT OF NATURAL RESOURCES

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. Oliver Myers Date: May 13, 1971
 FROM: Ian J. Forrest
 SUBJECT: Item 16

16. Property Owner: Nottingham Village, Inc.
 Location: SW Cor. Interstate 95 & White Marsh Blvd.
 Present Zoning: D.R. 5.5
 Proposed Zoning: Reclass to B.M.; B.R.; M.L.R.;
 D.R. 16
 District: 11th & 14th Sector: Northeast
 No. Acres: 446.30

Public water and sewer can be made available to the site.

Food Service Comments: Prior to construction, renovation and/or installation of equipment for this food service facility, complete plans and specifications must be submitted to the Division of Food Control, Baltimore County Department of Health, for review and approval.

Swimming Pool Comments: Prior to approval of a public pool on this site, two complete sets of plans and specifications of the pool and bathroom 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

LJF/ca

John B. Funk Associates, Incorporated
 August 2, 1971
 Page 2

4. A statement to the effect that your office is adequately staffed in consideration of your present work load to perform to the satisfaction of the Highway Administration and within the specified time.
5. Your estimate for the best completion time for
 - a. P. I. plans
 - b. Strip metes and bounds right of way plats
 - c. Construction plans and other contract documents, ready for advertising

You are further requested to submit with your proposal letter a detailed derivation supporting your proposed fee and an itemized list of your payroll burdens and overhead expenses, expressed as a percent of your actual, technical salaries.

Upon receipt of your proposal letter and concurrence in the fees, an agreement will be prepared incorporating all terms, the agreed-upon fees, and the Specifications as a part thereof.

No work is to be initiated on this Project until Notice to Proceed has been issued by the State Highway Administration.

Very truly yours,

Walter E. Woodford, Jr.
 Walter E. Woodford, Jr.
 Chief Engineer

WEW:mc
 Attachment



STATE OF MARYLAND
 STATE ROADS COMMISSION
 300 WEST PRESTON STREET
 BALTIMORE, MD. 21201

COMMISSION MEMBERS:
 DAVID H. FISHER
 Chairman of Commission
 R. WALTER BUCKLEY, JR.
 H. HARLEY P. BROWNFIELD
 WALTER BUCKLEY
 LESLIE H. EVANS
 JAMES B. JONES, JR.
 FRANK J. JONES
 WILLIAM A. JOHNSON

Mr. Edward D. Hardesty
 Zoning Commissioner
 County Office Bldg.
 Towson, Maryland 21204

ITEM 16
 Re: Z.R.C. Meeting
 April 27, 1971
 Property Owner: Nottingham Village, Inc.
 Location: SW Cor. Interstate 95 and White Marsh Blvd.
 Present Zoning: D.R. 5.5
 Proposed Zoning: Reclass to B.M., B.R., M.L.R., D.R. 16 - District 11th and 14th - Sector Northeast
 No. Acres: 446.30

Dear Mr. Hardesty:

The location of the proposed street connecting with White Marsh Boulevard and the type of connection has not yet been resolved.

The existing storm drain structures in and along State Highways in the area were designed in accordance with zoning existing at the time.

If the subject area is developed as planned, some structures could be rendered inadequate to handle the increased storm water.

Very truly yours,

Charles Lee, Chief
 Development Engineering Section
 by John E. Meyers
 Asst. Development Engineer

CLJEM:bk

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 16 - Cycle Zoning
 Property Owner: Nottingham Village, Inc.
 SW corner I-95 and White Marsh Blvd.
 Reclassification to BM, BR, MLR, DR 16

The subject petition is requesting 170 acres of BM which will generate 62,000 trips a day if developed as 15 million square feet of floor space. Or if the 153 acres is developed to its maximum, 75,000 trips a day. The 163 acres of DR 16 can be expected to generate 19,500 trips a day. Of this 19,500, approximately 3,000 will use the commercial facilities in the 153 acres. The 77 acres of MLR land should generate 6,500 trips a day.

Since there are no existing roads in the area, the land can, presently, not handle this development. However, with White Marsh Boulevard built from Belair Road to the Kennedy Expressway with an interchange at Radecke Boulevard, and a grade separation at Perry Hall Boulevard; and with the completion of Radecke Avenue from Rossville Boulevard to Perry Hall Boulevard; Perry Hall Boulevard from Radecke to Belair Road; and Rossville Boulevard from Route 40 to Belair Road, this development would not create any major capacity problems.

The Capital Budget through the fiscal year 76-77 has none of the roads mentioned above in the Capital Program. Therefore, the granting of this petition could only create problems on the narrow roads which now exist in this area.

C. Richard Moore
 C. Richard Moore
 Assistant Traffic Engineer

CRM:nr

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Edward D. Hardesty, Zoning Commissioner
 Attn: Mr. Oliver L. Myers Date: May 10, 1971
 Office of Zoning Commissioner
 FROM: H. B. Staab - Industrial Development Commission
 SUBJECT: Item No. 16: Owner: Nottingham Village, Inc.
 Location: SW corner Interstate 95 and White Marsh Boulevard
 Present Zoning: D.R. 5.5
 Proposed Zoning: Reclass to B.M., B.R., M.L.R., D.R. 16
 Districts: 11th and 14th Sector: Northeast
 No. Acres: 446.30

The Industrial Development Commission has reviewed the subject site. The petition as presented offers a carefully planned development for the eastern area of the County.

We feel this petition should be given favorable consideration.

H. B. Staab
 H. B. STAAB
 Director

TO: Mr. Edward D. Hardesty, Zoning Commissioner Date: 5/10/71
 Attn: Mr. Oliver L. Myers

FROM: Planning Division
 Fire Prevention Bureau
 SUBJECT: Property Owners
 Nottingham Village, Inc.

Location: SW corner Interstate 95 and White Marsh Blvd.

Item # 16 Zoning Agency

Fire hydrants for the proposed site are required and shall be in accordance with Baltimore County Standards.

A second means of access is required for the site.

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

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

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

Respectfully submitted:

H. Thomas Kelly
 H. Thomas Kelly
 Fire Prevention Bureau

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

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Edward D. Hardesty
 Zoning Commissioner Date: May 12, 1971
 FROM: Project Planning Division
 SUBJECT: Zoning Advisory Agenda Item #16

April 27, 1971
 Nottingham Village, Inc.
 SW Cor. Interstate 95 and White Marsh Blvd.

The Office has reviewed the subject site plan and offers the following comments:

This project will be counted on at a later date as it follows the normal subdivision procedure.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Edward Hardesty Date: May 11, 1971
 ATTN: Oliver L. Myers
 FROM: Elsworth H. Diver, P.E.
 SUBJECT: Item #16 (April - October Cycle 1971)
 Property Owner: Nottingham Village, Inc.
 Location: SW cor. Interstate 95 and White Marsh Blvd.
 Present Zoning: D.R. 5.5
 Proposed Zoning: Reclass. to B.M.; B.R.; M.L.R.; D.R. 16
 Districts: 11th and 14th Sector: Northeast
 No. Acres: 446.30

The subject plans encompass the same property previously reviewed by the Zoning Advisory Committee and known as Items #212 and #214 (1969-1970), Zoning Order #71-175 R and #71-175 P. The comments furnished by this office in connection with Items #212 and #214 were identical and remain valid and in effect. We are enclosing herewith a xerox copy of the comments prepared for Item #214 which are applicable to the current zoning petition.

Elsworth H. Diver
 Elsworth H. Diver, P.E.
 Chief, Bureau of Engineering

END:RAM:RMD:iss
 cc: File (3)
 Attachments

CERTIFICATE OF PUBLICATION

TOWSON, MD., August 19, 1971.
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each week, at least, for the period of 19 days, the first publication appearing on the 1st day of August, 1971.

THE JEFFERSONIAN
By: *[Signature]*
Manager

Cost of Advertisement, \$

OFFICE OF
THE ESSEX TIMES
ESSEX, MD. 21221 August 23 - 1971
THIS IS TO CERTIFY, that the annexed advertisement of
The Zoning Commissioner of Baltimore County
was inserted in THE ESSEX TIMES, a weekly newspaper published in
Baltimore County, Maryland, once a week for ~~one~~ **three**
weeks before the 23 day of August 1971 that is to say, the same
was inserted in the issue of August 19, 1971.

STROMBERG PUBLICATIONS, Inc.

By: *[Signature]*

BALTIMORE COUNTY BOARD OF EDUCATION
ZONING ADVISORY COMMITTEE MEETING
OF April 27, 1971 (CYCLE ZONING)

Petitioners: Nottingham Village, Inc.
Location: 1/2 mi. W. of 95 & White Marsh Blvd.
District: 11 & 14
Present Zoning: DR 5.5
Proposed Zoning: BR, BR, MUR, DR 16 (16.16)
Total Acres: 446.30

Comments: From the existing zoning we could expect approx.
219 elementary pupils (from 16.16 acres at DR 5.5). Because of
the lack of information concerning the number of garden lots
as compared with the number of TH. ARTS A 50-50 percent was
used & the elementary pupil estimated yield was 510. We
could also expect approx. 418 Jr. H. students & 130 Sr. H. students.

Schools servicing this area: (from Sept. 22, 1970 enrollment)

	CAPACITY	ENROLL.	%
Perry Hill Elem.	760	730	-30
Perry Hill Jr. H.	1070	1367	+288
Perry Hill Sr. H.	1675	1745	+160

PROGRAMMED CONSTRUCTION	CAPACITY	Year PROGRAMMED	Est. to BR 16
* Carter Manor Jr. Sr.	1,200	1974-75	1976-77
* Perry Hill Jr. H.	400	1971-72	1973-74
* Perry Hill Jr. H.	350	1973-74	1975-76
* Hanes Road Elem.	650	1975-76	1976-77

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Planning Board
FROM: Planning Board
SUBJECT: Item 211 (1970-1971)
Property Owner: Nottingham Village, Inc.
1/2 mile W. of 95 & White Marsh Blvd., C/A
District: 11 & 14
Present Zoning: DR 5.5 (unclassified area)
Proposed Zoning: BR, BR, MUR, DR 16
No. Acres: 446.30

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

Background

The John P. Kennedy Expressway, White Marsh Parkway and Redwooded Silver Spring Road are State roads. Therefore, drainage requirements for these roads will be subject to the requirements and regulations of the Maryland State Roads Commission.

At Silver Spring Road (104), White Marsh Parkway Road and White Marsh Parkway Road (104), the drainage requirements for these roads will be subject to the requirements and regulations of the Maryland State Roads Commission.

Due to the proximity of the subject property, and since the subject property is not included in the plan, the need for drainage facilities for the subject property is not included in the plan. The need for drainage facilities for the subject property is not included in the plan. The need for drainage facilities for the subject property is not included in the plan.

Recommendation

The provisions for accommodating storm water or drainage have been indicated on the subject plan; however, storm drainage of surface, subsurface and underground or flood plain waters will be required in connection with the proposed development of this property.

Item 211 (1970-1971)
Property Owner: Nottingham Village, Inc.
Page 2
May 27, 1970

Storm Drainage (Cont'd)

The petitioner must provide necessary drainage facilities (stormwater or retention) to prevent flooding or damage to adjacent properties, especially by the concentration of surface waters. Collection of any waters which may result, due to improper grading or improper distribution of drainage facilities, shall be the full responsibility of the petitioner.

The John P. Kennedy Expressway, White Marsh Parkway and Redwooded Silver Spring Road are State roads. Therefore, drainage requirements for these roads will be subject to the requirements and regulations of the Maryland State Roads Commission.

Grading Considerations

Development of the property through sitegrading, grading and stable dikes could result in a serious pollution problem, causing private or public health damage to the property. A grading permit is, therefore, necessary for all grading, including the siting of top soil.

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

Waterways

The subject property is generally situated within the limits of the present Baltimore Sanitary District. A 16-inch water main exists in the subject property. A 16-inch water main exists in the subject property. A 16-inch water main exists in the subject property.

Although public water supply is available to serve the development of this property by extension of the Baltimore City Water Main, the supply is limited. Therefore, a study of the water supply system to determine the extent of reinforcements and/or replacement that may be required to provide adequate water supply for the proposed development and use is suggested in conjunction with the proposed development prior to execution of a Public Works Agreement.

After the petitioner, or his engineer, furnishes the other bodies of the Board of Commissioners with the plans for water supply, including five plans, that show, clearly and in detail, the Baltimore City Water Main, supply, with details of the extent of improvements and/or replacement that may be required to provide adequate water supply for the proposed development and use is suggested in conjunction with the proposed development prior to execution of a Public Works Agreement.

There are 3 petitions for reclassification to DR 16 (16.16)
in this general area:

1. Nottingham Village	163.36 acres
2. Eastern Realty Co., Inc.	22.21 acres
3. Executors & Trustees of the will of Harvey S. Myers	32.90 acres
TOTAL:	218.47 acres

Under the existing zoning we see a total yield of approx.

293 elementary pupils while a change to DR 16 could yield as much as 895 elementary, 448 Jr. H. pupils, & 145 Sr. H. pupils.

There is, also, a planned subdivision of 996 apt. units planned for the area west of Belair Rd. opposite Silver Spring Rd. that could yield from 150 to 470 additional elementary students. Single family homes are continuing to be constructed in such developments as Rindbergh, Park Place, & Silvergate Villages.

Item 211 (1970-1971)
Property Owner: Nottingham Village, Inc.
Page 3
May 27, 1970

Sanitary Sewer

The North Branch of the White Marsh Interceptor sewer exists through this property as shown on the subject plan. A extension of the South Branch of the White Marsh Interceptor sewer will be required to serve the subject property. A study of the sewer system to determine the extent of reinforcements and/or replacement that may be required to provide adequate sewerage facilities for the proposed development is suggested in conjunction with the proposed development prior to execution of a Public Works Agreement.

It is recommended that the petitioner, or his engineer, furnish the other bodies of the Board of Commissioners with the plans for sewerage, including five plans, that show, clearly and in detail, the Baltimore City Sewer Main, supply, with details of the extent of improvements and/or replacement that may be required to provide adequate sewerage facilities for the proposed development and use is suggested in conjunction with the proposed development prior to execution of a Public Works Agreement.

Controls

The subject property is traversed by rights-of-way and utilities of agencies other than Baltimore County and the Maryland State Roads Commission. Therefore, the proposed development of this property is also subject to the review and approval of those agencies concerned.

[Signature]
HARRISON H. DAVIS, P.E.
Chief, Bureau of Engineering

NOTES

cc: J. Loe
J. Schuster
W. Ray Shreve
107, 108, 109 & 110 2001 State Road

NOTTINGHAM VILLAGE, INC.
CASE # 72-50-R

Exhibits not received from Zoning

Pet. Exhibit #2 - Recommendations from Planning staff to Planning Board (used by Planning Board at public hearing)

Pet. Exhibit #3 - Recommendations from Planning Board to County Council (used by County Council at public hearing)

Pet. Exhibit #12 - Letter to Mr. Funk dated 8/1/71 from State Highway Administration

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 11-4-14 Date of Posting: Aug. 18-71
Posted for: Planning Bd. Sept. 5, 1971
Petitioner: Nottingham Village, Inc.
Location of property: Interstate 95 & White Marsh Blvd.
Location of Signs: Q. Postal Bldg. East Side of White Marsh Blvd. at White Marsh Rd. Intersect. to E. 1st St. Intersect.
Remarks: None
Posted by: Paul H. Hines Date of return: Aug. 24-71

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 11-4-14 Date of Posting: Jan. 20-72
Posted for: Nottingham Village, Inc.
Petitioner: Nottingham Village, Inc.
Location of property: Interstate 95 & White Marsh Blvd.
Location of Signs: Q. Postal Bldg. East Side of White Marsh Blvd. at White Marsh Rd. Intersect. to E. 1st St. Intersect.
Remarks: None
Posted by: Paul H. Hines Date of return: Jan. 22-72

PETITION MAPPING PROGRESS SHEET

FUNCTION	Wall Map		Original		Duplicate		Tracing		SDO Sheet	
	date	by	date	by	date	by	date	by	date	by
Descriptions checked and outline plotted on map										
Petition number added to outline										
Denied										
Granted by ZC, RA, CC, CA										
Reviewed by: <u>PH</u>	Revised Plans: Change in outline or description Yes <u> </u> No <u> </u>									
Previous case: <u>71-175-R</u>	Map # <u>E-48</u>									

TELEPHONE 494-2415 INVOICE No. 76640 DATE April 14, 1971

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Revenue Division
COUNT HOUSE
TOWSON, MARYLAND 21204

To: Robert S. System, Inc., Thomas C. Nelson
500 W. Fayette Ave.
Towson, Md. 21204

Zoning Dept. of Baltimore County

QUANTITY 1 TOTAL AMOUNT \$50.00

DEBIT TO ACCOUNT NO. 01-622 RETURN THIS PORTION WITH YOUR REMITTANCE DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS

1 Petition for Reclassification & Redistricting for Nottingham Village & 1/2 Side of the proposed extension of White Marsh Blvd. W. the Intersection of White Marsh Blvd & I-95

50.00

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

TELEPHONE 494-2415 INVOICE No. 84955 DATE 9/8/71

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Revenue Division
COUNT HOUSE
TOWSON, MARYLAND 21204

To: W. Lee Thomas, Esq.
Nottingham Village, Inc.
183 W. Pennsylvania Ave.
Towson, Md. 21204

Zoning Office
180 County Office Bldg.
Towson, Md. 21204

QUANTITY 1 TOTAL AMOUNT \$25.50

DEBIT TO ACCOUNT NO. 01-622 RETURN THIS PORTION WITH YOUR REMITTANCE DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS

1 Cost of advertising and posting property of Nottingham Village, Inc.

25.50

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

TELEPHONE 494-2415 INVOICE No. 74021 DATE 5/28/72

BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE

Revenue Division
COUNT HOUSE
TOWSON, MARYLAND 21204

To: William S. Schickel, Esq.
24 W. Pennsylvania Avenue
Towson, Md. 21204

County Board of Appeals
(Zoning)

QUANTITY 1 TOTAL AMOUNT \$30.00

DEBIT TO ACCOUNT NO. 01-712 RETURN THIS PORTION WITH YOUR REMITTANCE DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORDS

1 Cost of copies of documents - File 72-50-R, File 71-175-R & File 71-174-RX

61 @ \$.50/copy

30.00

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

W. Lee Thomas, Esq.
183 W. Pennsylvania Avenue
Towson, Maryland 21204

Reclassification No. 36

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

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

Your Petition has been received and accepted for filing
this 14 day of July 1970

Robert S. System, Inc.

Petitioner: Nottingham Village, Inc. Reviewed by: William S. Schickel
Petitioner's Attorney: W. Lee Thomas Chairman of Advisory Committee

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

No. 1531

DATE 2/10/72 ACCOUNT 01-662

AMOUNT \$20.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

72-50-R - posting property of Nottingham Village for appeal hearing - Interstate 95 & White Marsh Blvd. Frank E. Clouse, Esq.

20.00 REC

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

No. 1492

DATE 1/17/72 ACCOUNT 01-662

AMOUNT 70.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

No. 72-50-R - Appeal Costs - Nottingham Village Cor. Interstate 95 & White Marsh Blvd. Frank E. Clouse, Esq.

70.00 REC

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

No. 1490

DATE 1/17/72 ACCOUNT 01-662

AMOUNT 70.00

DISTRIBUTION
WHITE - CASHIER
PINK - AGENCY
YELLOW - CUSTOMER

No. 72-50-R - Appeal Costs - Nottingham Village Cor. Interstate 95 & White Marsh Blvd. Frank E. Clouse, Esq.

70.00 REC

10

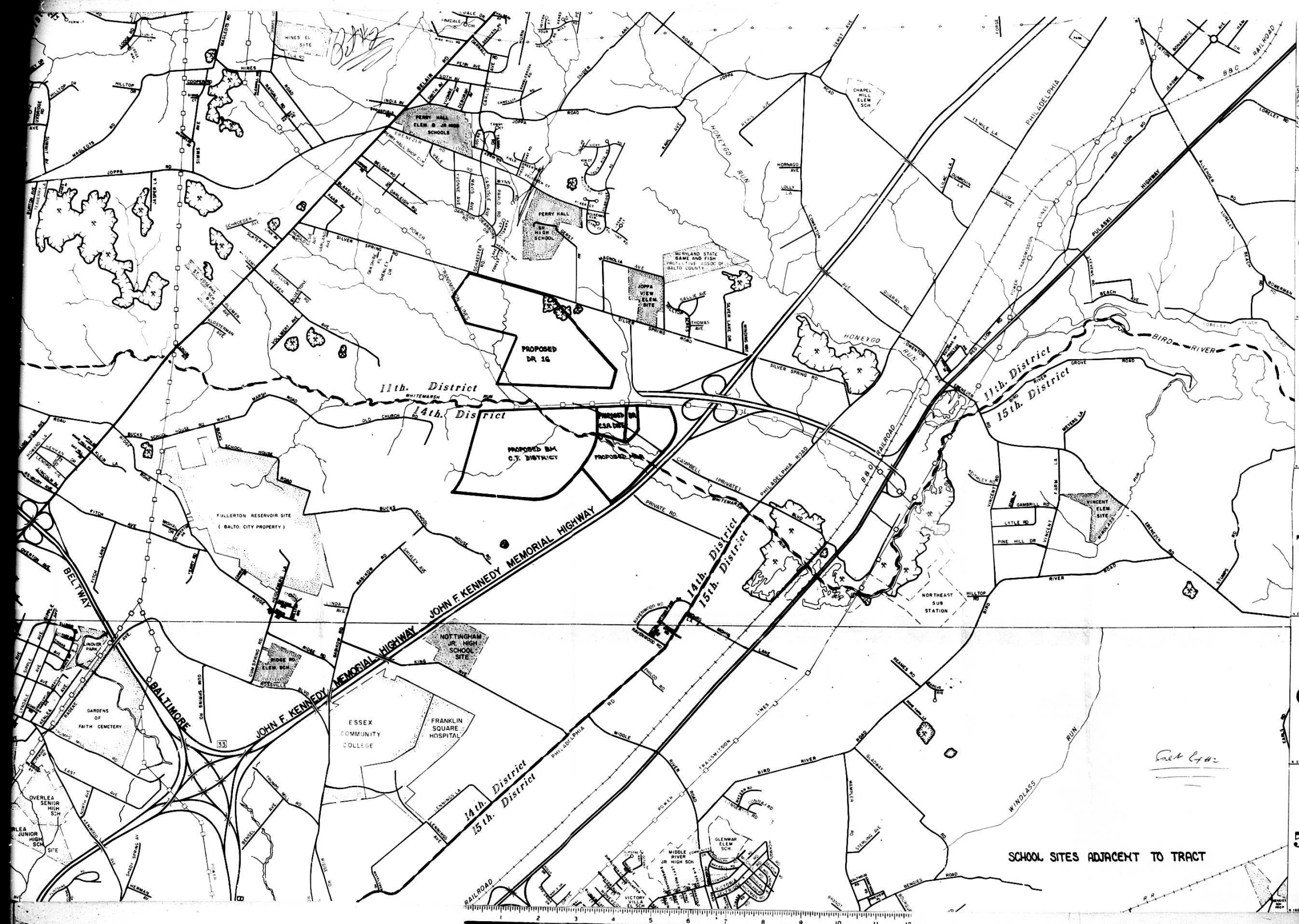
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SCHOOL SITES ADJACENT TO TRACT



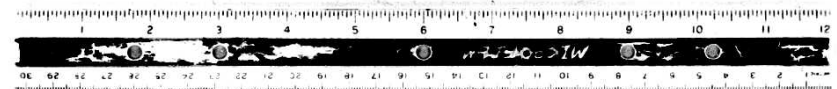
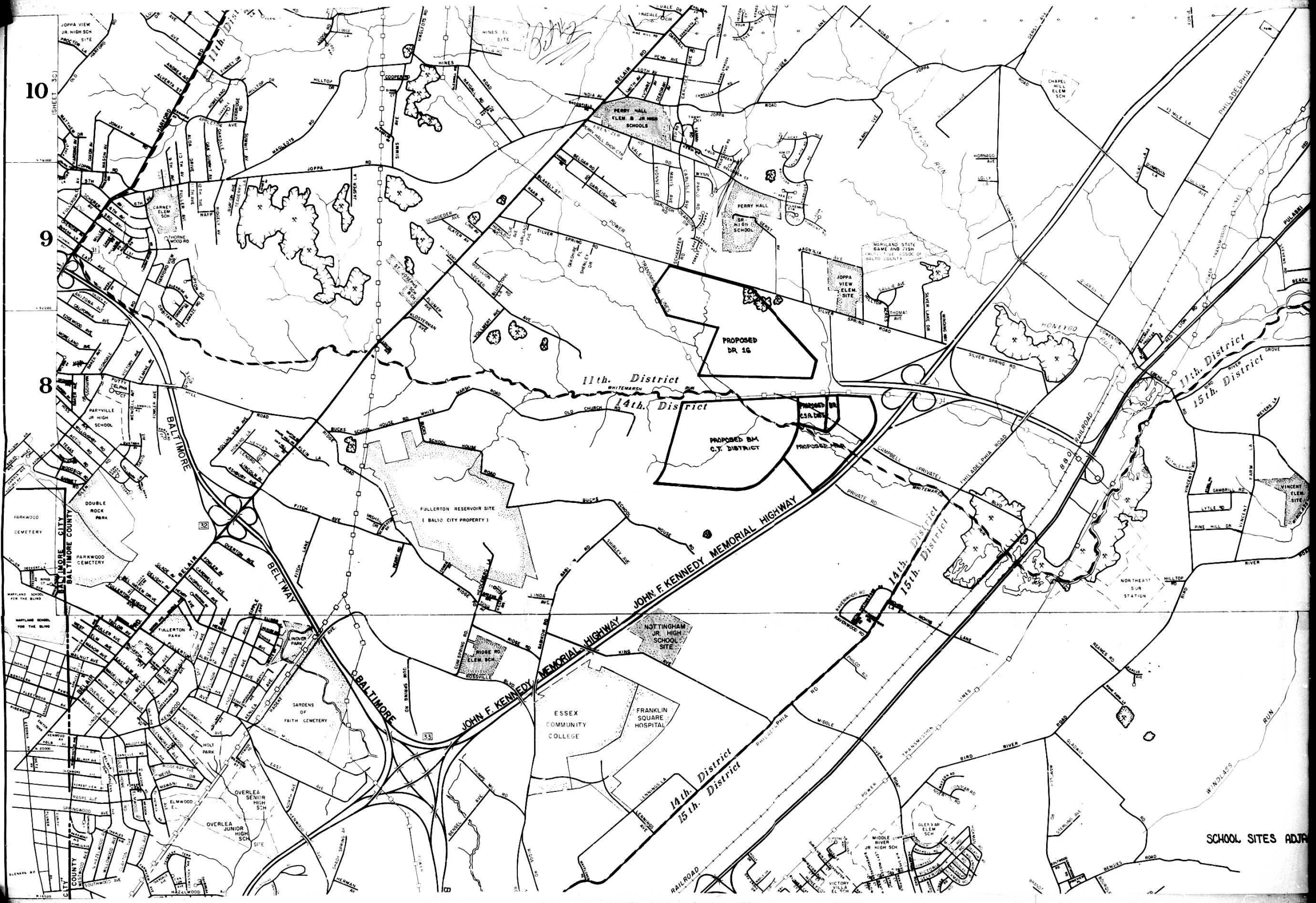
MAY 14 1973

10

(SHEET 3C)

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MAY 14 1973

Existing 12" Water - Zone 3
Maximum Gradient:
Elevation 515

Hydrant Flow Test
(2-17-71)
Hydrant Elevation: El. 164
Static Pressure: 150 p.s.i.
Flow available @
residual: 3600 g.p.m.

Hydrant Flow Test
(8-21-70)
Hydrant Elevation: El. 165
Static Pressure: 86 p.s.i.
Flow Available @ 20 p.s.i.
residual: 1120 g.p.m.

Existing 12" Water - Zone #2
Maximum Gradient:
Elevation 350

Hydrant Flow Test
(9-9-70)
Hydrant Elevation: El. 75
Static Pressure: 112 p.s.i.
Flow Available @ 20 p.s.i.
residual: 2490 g.p.m.

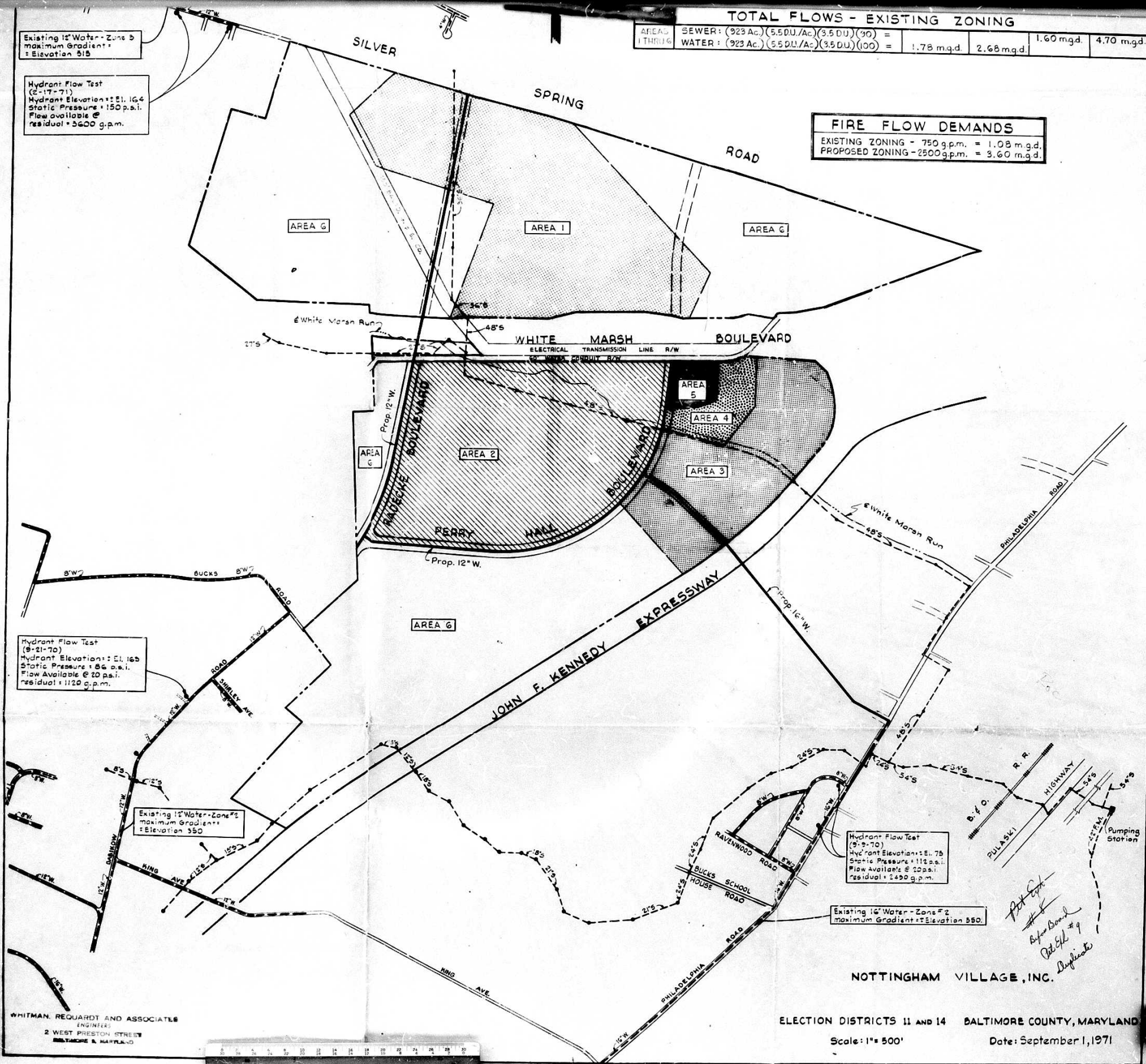
Existing 16" Water - Zone #2
Maximum Gradient: Elevation 550

TOTAL FLOWS - EXISTING ZONING

AREA 1 THRU 6	SEWER: (923 Ac.) (5.5 DU./Ac.) (3.5 DU.) (90) =				
	WATER: (923 Ac.) (5.5 DU./Ac.) (3.5 DU.) (100) =	1.78 m.g.d.	2.68 m.g.d.	1.60 m.g.d.	4.70 m.g.d.

FIRE FLOW DEMANDS

EXISTING ZONING - 750 g.p.m. = 1.08 m.g.d.
PROPOSED ZONING - 2500 g.p.m. = 3.60 m.g.d.



WHITMAN, REQUARDT AND ASSOCIATES
ENGINEERS
2 WEST PRESTON STREET
BALTIMORE & HARTFORD

ELECTION DISTRICTS 11 AND 14 BALTIMORE COUNTY, MARYLAND
Scale: 1" = 500'
Date: September 1, 1971

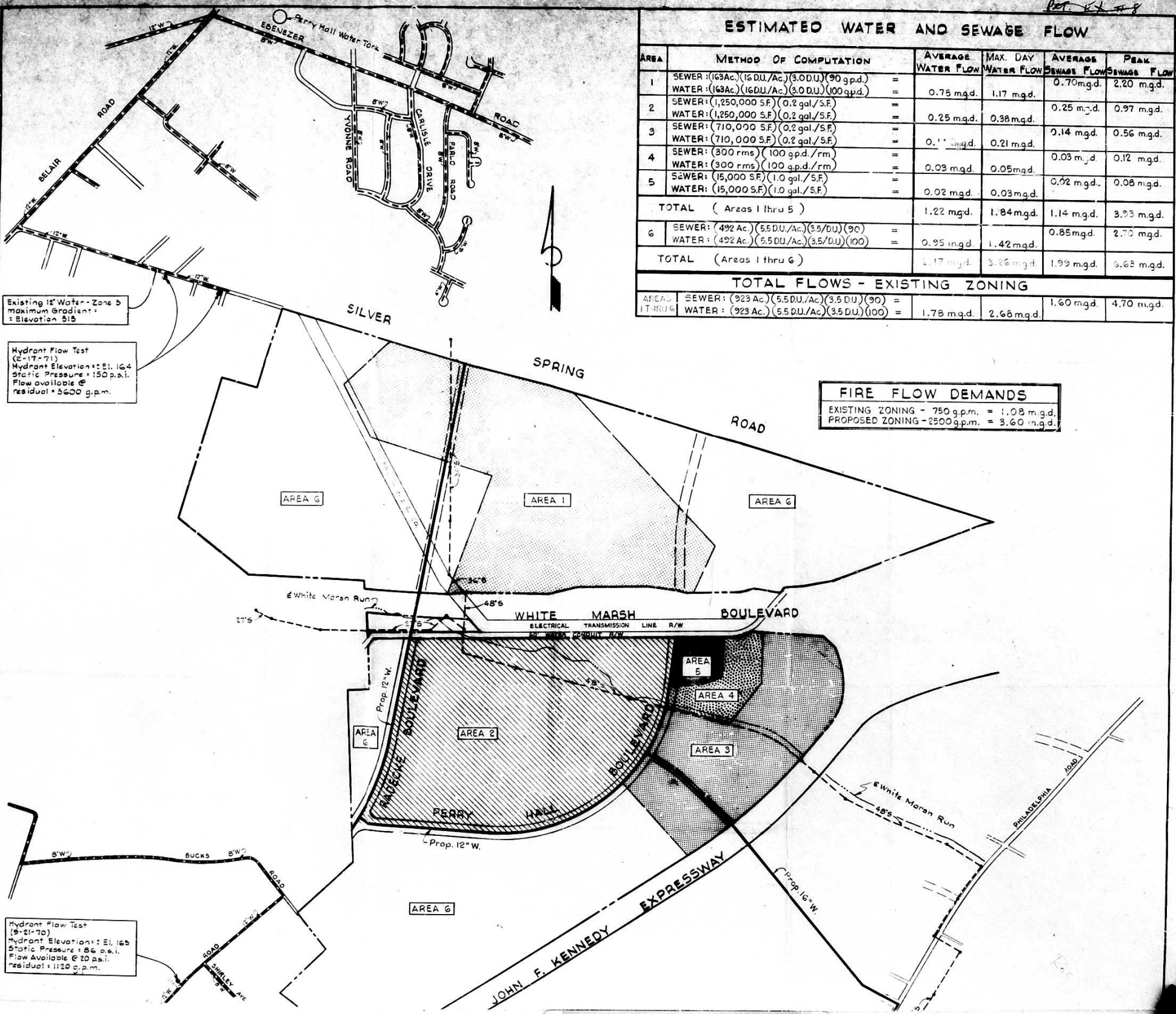
Zoning File # 72-504

Ref. 62-18

ESTIMATED WATER AND SEWAGE FLOW

AREA	METHOD OF COMPUTATION	AVERAGE WATER FLOW	MAX. DAY WATER FLOW	AVERAGE SEWAGE FLOW	PEAK SEWAGE FLOW
1	SEWER: (163 Ac.) (16 DU./Ac.) (3.0 DU.) (90 gpd.) = WATER: (163 Ac.) (16 DU./Ac.) (3.0 DU.) (100 gpd.) =	0.75 mgd.	1.17 mgd.	0.70 mgd.	2.20 mgd.
2	SEWER: (1,250,000 S.F.) (0.2 gal./S.F.) = WATER: (1,250,000 S.F.) (0.2 gal./S.F.) =	0.25 mgd.	0.38 mgd.	0.25 mgd.	0.97 mgd.
3	SEWER: (710,000 S.F.) (0.2 gal./S.F.) = WATER: (710,000 S.F.) (0.2 gal./S.F.) =	0.11 mgd.	0.21 mgd.	0.14 mgd.	0.56 mgd.
4	SEWER: (300 rms) (100 gpd./rm) = WATER: (300 rms) (100 gpd./rm) =	0.03 mgd.	0.05 mgd.	0.03 mgd.	0.12 mgd.
5	SEWER: (15,000 S.F.) (1.0 gal./S.F.) = WATER: (15,000 S.F.) (1.0 gal./S.F.) =	0.02 mgd.	0.03 mgd.	0.02 mgd.	0.08 mgd.
TOTAL (Areas 1 thru 5)		1.22 mgd.	1.84 mgd.	1.14 mgd.	3.93 mgd.
6	SEWER: (492 Ac.) (5.5 DU./Ac.) (3.5 DU.) (90) = WATER: (492 Ac.) (5.5 DU./Ac.) (3.5 DU.) (100) =	0.95 mgd.	1.42 mgd.	0.85 mgd.	2.70 mgd.
TOTAL (Areas 1 thru 6)		2.17 mgd.	3.26 mgd.	1.99 mgd.	6.63 mgd.
TOTAL FLOWS - EXISTING ZONING					
AREA 1 THRU 6	SEWER: (923 Ac.) (5.5 DU./Ac.) (3.5 DU.) (90) = WATER: (923 Ac.) (5.5 DU./Ac.) (3.5 DU.) (100) =	1.78 mgd.	2.66 mgd.	1.60 mgd.	4.70 mgd.

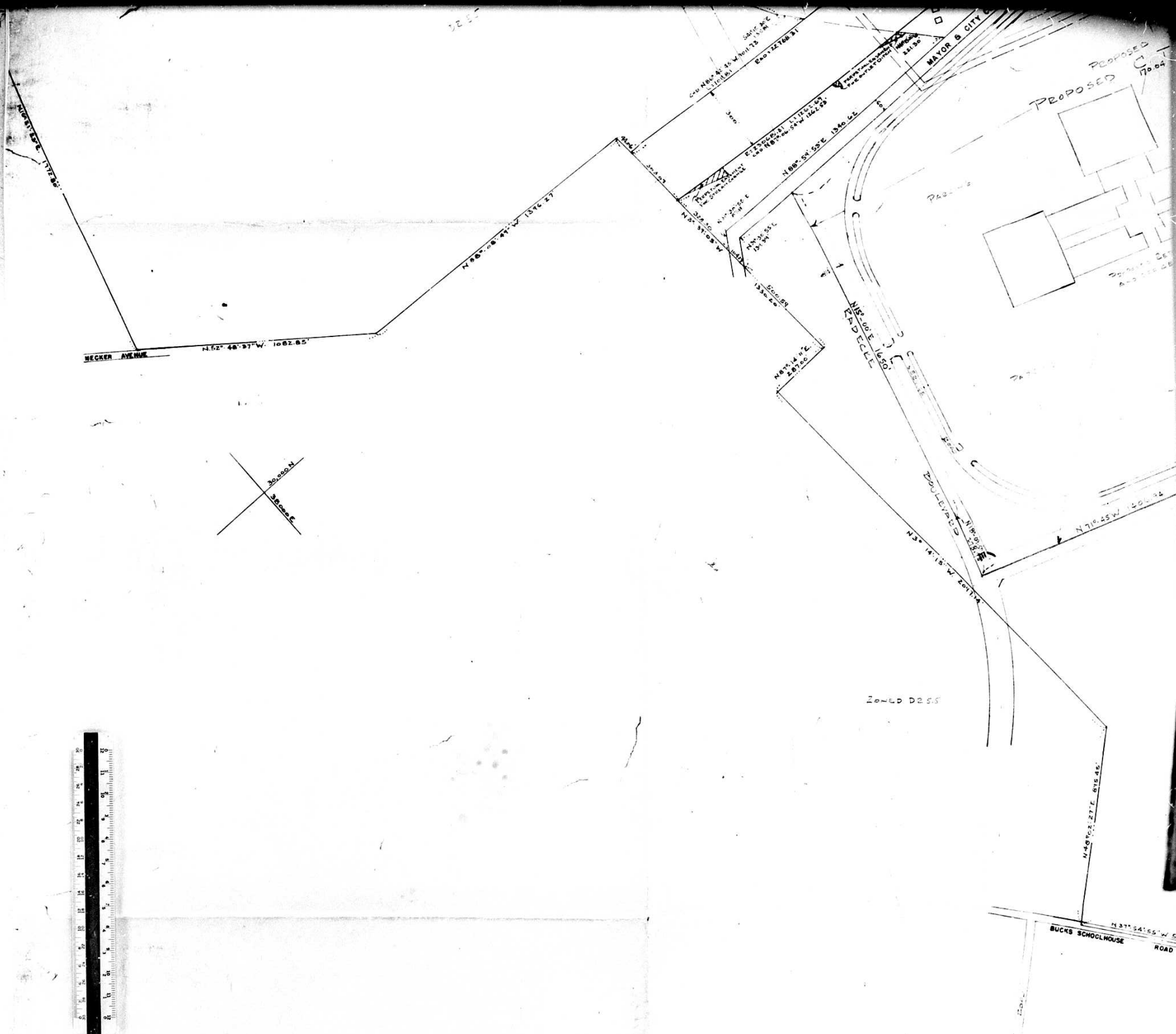
FIRE FLOW DEMANDS
 EXISTING ZONING - 750 g.p.m. = 1.08 mgd.
 PROPOSED ZONING - 2500 g.p.m. = 3.60 mgd.



Existing 12" Water - Zone 3
 maximum Gradient:
 = Elevation 515

Hydrant Flow Test
 (2-17-71)
 Hydrant Elevation: El. 164
 Static Pressure: 150 p.s.i.
 Flow available @
 residual = 3600 g.p.m.

Hydrant Flow Test
 (9-21-70)
 Hydrant Elevation: El. 165
 Static Pressure: 86 p.s.i.
 Flow Available @ 10 p.s.i.
 residual = 1120 g.p.m.



PROPERTY OF
NOTTINGHAM VILLAGE, INC.

LOCATED IN

11TH & 14TH DISTRICTS

BALTIMORE CO. MD.

TOTAL AREA = 929.081 ACRES:

GROSS AREA TO BE ZONED BM = 170.04 ACRES

NET AREA TO BE ZONED BM = 153.0 ACRES

NET AREA IN C.T. DISTRICT = 153.0 ACRES

EXISTING ZONING D-55
PROPOSED ZONING BM
AND C.T. DISTRICT FOR BM ZONE

NO EXISTING BUILDINGS
ALL PROPOSED BUILDINGS WILL CONFORM
WITH HEIGHT AND AREA REGULATIONS PER BALTIMORE
COUNTY ZONING REGULATIONS (SECTION 2344 Z35)

PARKING DATA

FLOOR SPACE FOR RETAIL TRADE

$$1,250,000 \div 200 = 6250 \text{ SPACES REQUIRED}$$

FLOOR SPACE FOR OFFICES

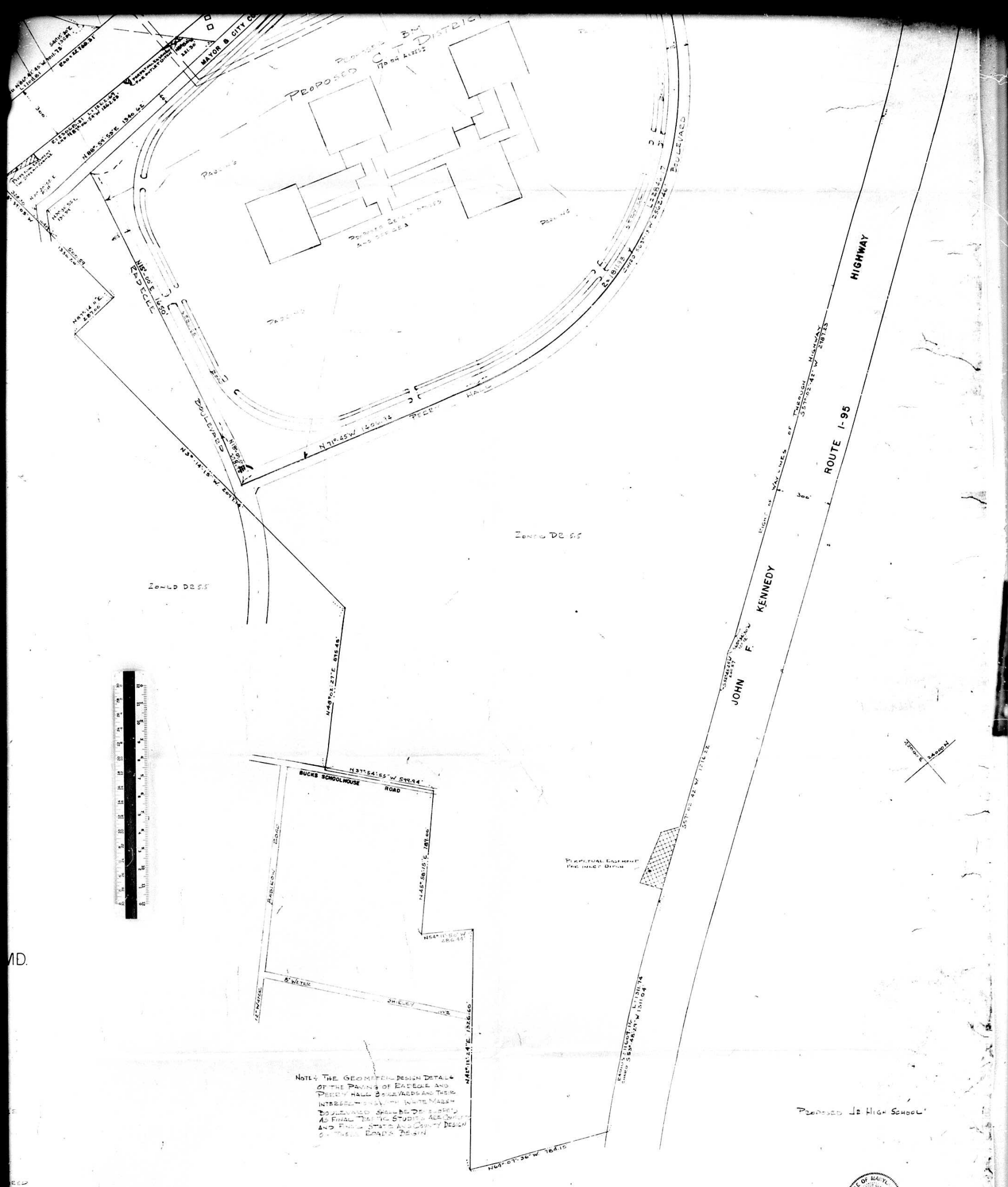
FIRST FLOOR 87,000	$\div 300$	=	290	"	"
2ND + 3RD FLOORS 17,000	$\div 500$	=	34	"	"
TOTAL			686	SPACES REQUIRED	
			690	SPACES PROVIDED	

NOTE: PARKING SPACES WILL BE PROVIDED AS REQUIRED
BY BALTIMORE COUNTY ZONING REGULATIONS (SECTION 4092)

NOTE: THE GEOMETRIC DESIGN OF THE PARKING OF EACH BUILDING SHALL BE IN ACCORDANCE WITH THE INTERSECTION OF THE BOULEVARD SPACES AS FOLLOWS: 1. 50' 2. 50' 3. 50' 4. 50' 5. 50' 6. 50' 7. 50' 8. 50' 9. 50' 10. 50'

MAP 4C
NE 7-6, H
8-6, H
9-6, H
*
5/26/71

3000000

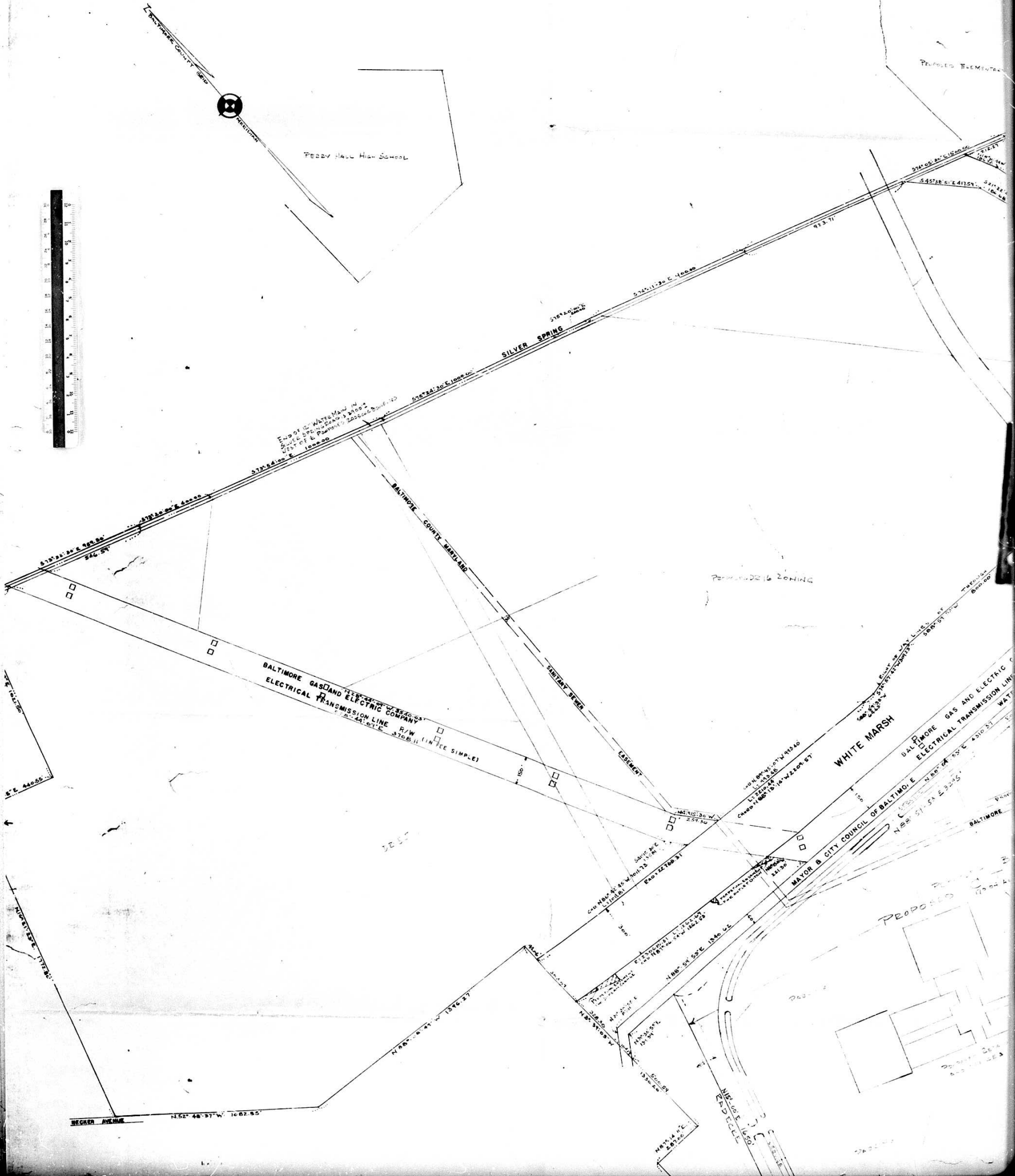
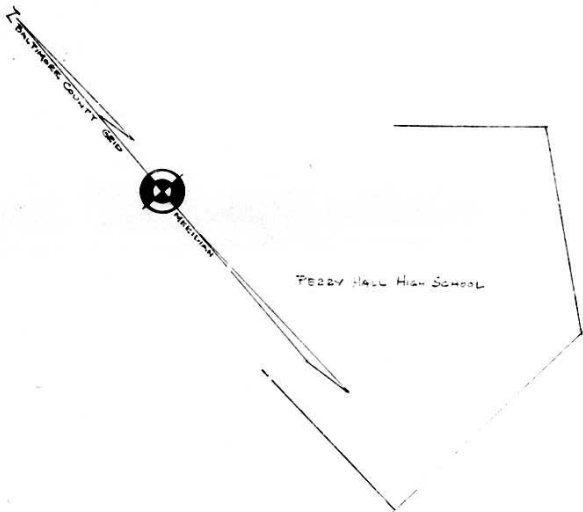


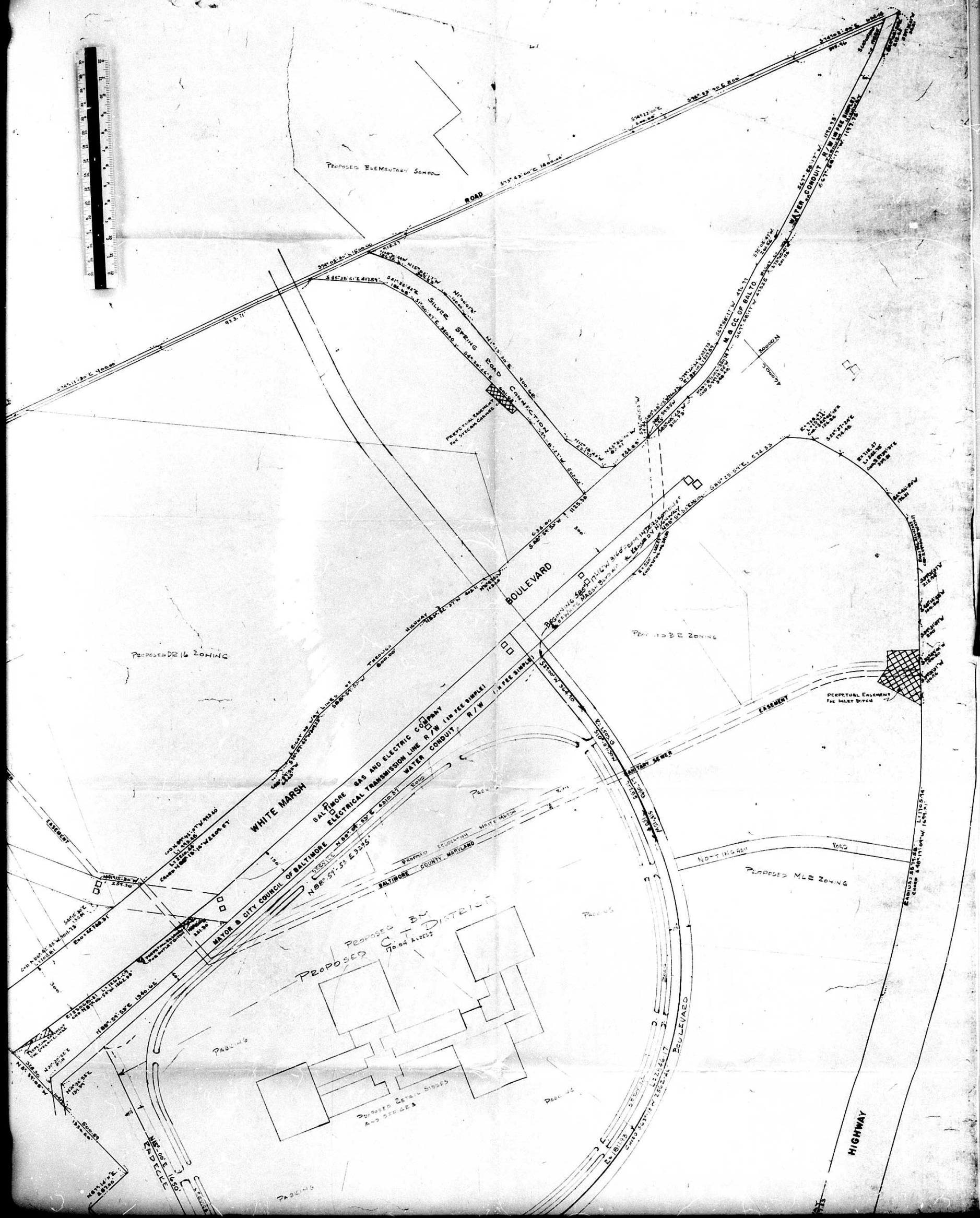
NOT: THE GEOMETRIC DESIGN DETAILS OF THE PAVING OF RADCLIFF AND PERRY HALL BOULEVARDS AND THEIR INTERSECTION WITH WHITE MARSH BOULEVARD SHALL BE DEVELOPED AS FINAL TRAFFIC STUDIES ARE COMPLETED AND FINAL STATE AND COUNTY DESIGN OF THESE ROADS DESIGN.

PROPOSED JR HIGH SCHOOL



SCALE - 1" = 200' APRIL 12, 1971
DOLLENBERG BROTHERS
SURVEYORS & CIVIL ENGINEERS
705 WASHINGTON AVENUE
TOWSON, MARYLAND





NE 52° 48' 37" W 1062.83'

N 60° 00' 00" W 1594.21'

MAJOR & CITY COURSE
N 88° 51' 55" E 1380.05'
N 88° 51' 55" E 1380.05'
N 88° 51' 55" E 1380.05'

Proposed
Eastfield Boulevard
N 3° 14' 15" W 2011.11'

PARKING DATA

APARTMENTS
2400 DWELLING UNITS @ 15 SPACES PER UNIT = 2400 SPACES REQUIRED
3500 SPACES PROVIDED

OFFICES
1ST FLOOR 225,000^{sq} ft ÷ 300 = 750 SPACES REQUIRED
2ND FLOOR 225,000^{sq} ft ÷ 500 = 450 SPACES REQUIRED
TOTAL = 1200 SPACES REQUIRED
1800 SPACES PROVIDED

MOTEL
300 ROOMS @ 1/2 SPACE PER ROOM = 150 SPACES REQUIRED
350 SPACES PROVIDED

RESTAURANT
15,000^{sq} ft ÷ 10 = 150 SPACES REQUIRED
350 SPACES PROVIDED

NOTE:
PARKING SPACES WILL BE PROVIDED AS REQUIRED BY
BALTIMORE COUNTY ZONING REGULATIONS (SECTION 2)

APARTMENT DENSITY

GROSS AREA = 16336 ACRES
NET AREA = 138.40

PERMITTED DENSITY
GROSS 16 UNITS PER ACRE = 2614
NET 18 UNITS PER ACRE = 2491
TOTAL UNITS PERMITTED 2491

DESIGN DENSITY
GROSS 14.68 UNITS PER ACRE
NET 17.34 UNITS PER ACRE
TOTAL UNITS = 2400

ZONING PLAN PROPERTY OF NOTTINGHAM VILLAGE, INC.

LOCATED IN

11TH & 14TH DISTRICTS

BALTIMORE CO. MD.

TOTAL AREA = 929.081 ACRES:

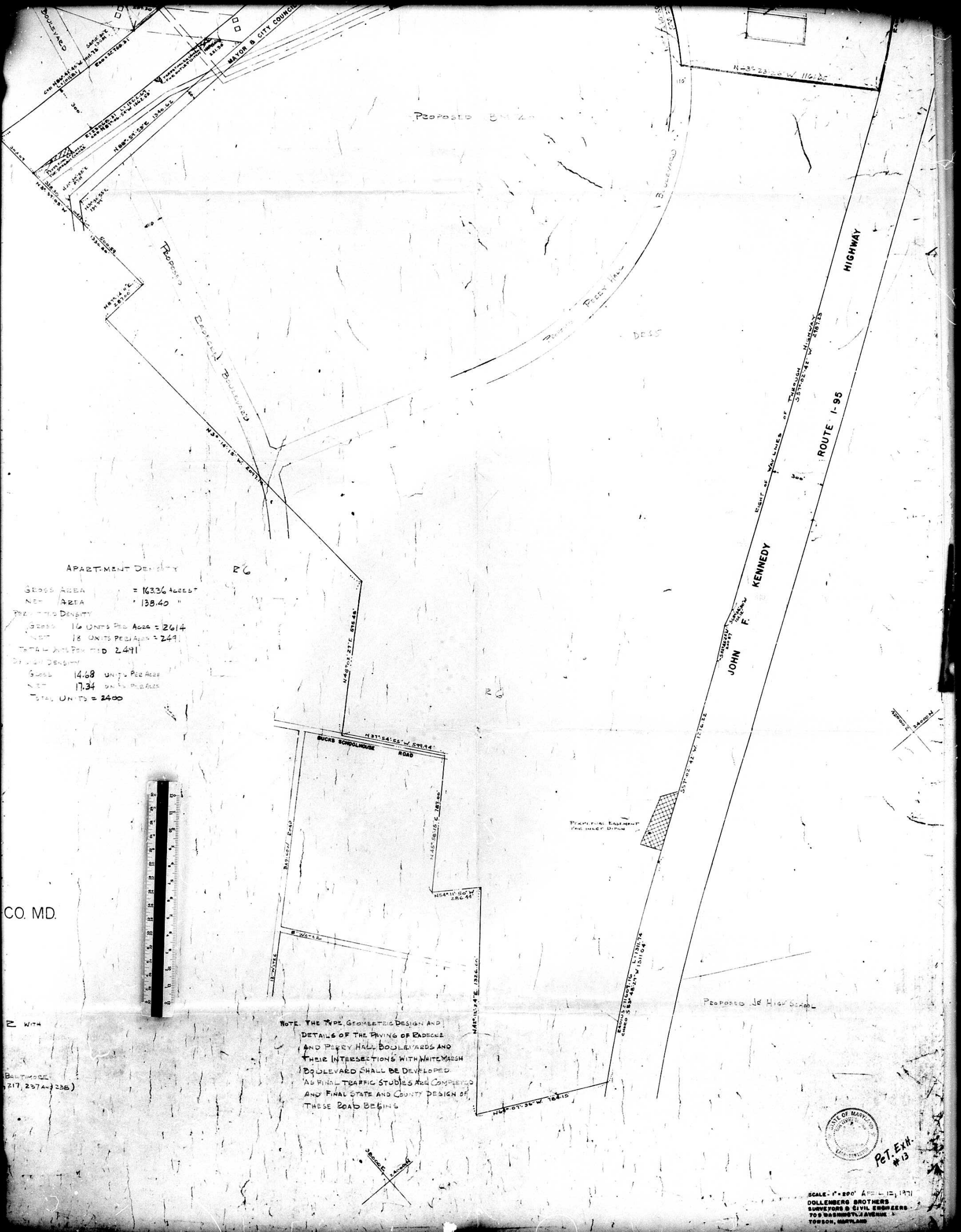
AREA TO BE ZONED DR16 = 163.36
AREA TO BE ZONED B12 = 21.20 ACRES
AREA TO BE ZONED MLR = 77.40 ACRES
AREA IN SA DISTRICT = 14.30 ACRES

EXISTING ZONING DISTRICTS
PROPOSED ZONING DR16 B12 MLR WITH
A C-3A DISTRICT FOR THE B12 ZONE
NO EXISTING BUILDINGS
ALL PROPOSED BUILDINGS WILL CONFORM
WITH HEIGHT AND AREA REGULATIONS PER BALTIMORE
COUNTY ZONING REGULATIONS (SECTIONS 216, 217, 227 & 228)

NOTE: THE TYPE GEOMETRIC
DETAILS OF THE TRIVING
AND PERRY HALL BOUL
THEIR INTERSECTIONS
BOULEVARD SHALL BE
AS FINAL TRAFFIC STUDY
AND FINAL STATE AND CO
THESE ROAD BEGINS

Map 4C
NE 1/4, H
8-6, H
9-6, H
10-6, H
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Bel E 400



APARTMENT DENSITY

R6

GROSS AREA = 16336 ACRES
 NET AREA = 138.40 "
 PERMITTED DENSITY
 GROSS 16 UNITS PER ACRE = 2614
 NET 18 UNITS PER ACRE = 2491
 TOTAL UNITS PER ACRE 2491
 DESIGN DENSITY
 GROSS 14.68 UNITS PER ACRE
 NET 17.34 UNITS PER ACRE
 TOTAL UNITS = 2400



CO. MD.

2 WITH

BALTIMORE
 (217, 237 AND 238)

NOTE: THE TYPE, GEOMETRIC DESIGN AND
 DETAILS OF THE PAVING OF EADELCE
 AND PERRY HALL BOULEVARDS AND
 THEIR INTERSECTIONS WITH WHITE MASH
 BOULEVARD SHALL BE DEVELOPED
 AS FINAL TRAFFIC STUDIES ARE COMPLETED
 AND FINAL STATE AND COUNTY DESIGN OF
 THESE ROAD BEGINS



PET. EXH.
 #13

SCALE: 1" = 200' APRIL 12, 1971
 DOLLEBERG BROTHERS
 SURVEYORS & CIVIL ENGINEERS
 709 BASHNUTT AVENUE
 TOWSON, MARYLAND



PEDDY HALL HIGH SCHOOL

SILVER SPRING

WHITE MARSH

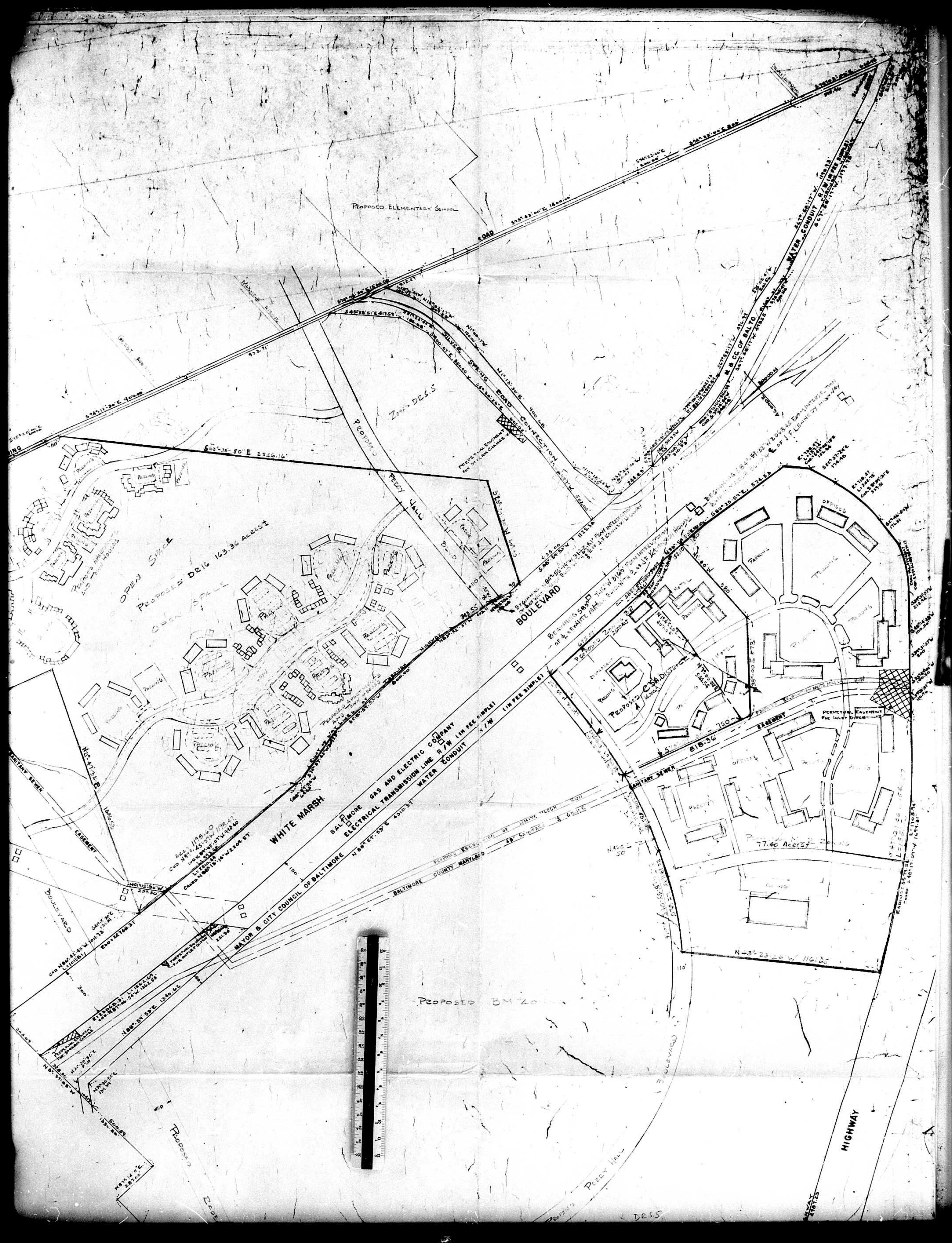
BALTIMORE GAS AND ELECTRIC COMPANY
BALTIMORE GAS AND ELECTRIC TRANSMISSION LINE R/W
N 28° 44' 04" W 1000.00'
N 28° 44' 04" E 300.00' (IN FEE SIMPLE)

OPEN SPACE
PROPOSED DEIG 163.36 ACRES

MAYOR & CITY COUNCIL OF BALTIMORE
BALTIMORE GAS AND ELECTRIC TRANSMISSION LINE
N 86° 14' 55" E

HIGHWAY 100
N 52° 46' 37" W 1007.85'

MAY 14 1935



PRESENTED BY

APARTMENTS

2400 DWELLING UNITS @ 1300 S.F. PER UNIT = 3,120,000 S.F. PER UNIT
 2500 DWELLING UNITS @ 1300 S.F. PER UNIT = 3,250,000 S.F. PER UNIT

OFFICES

1ST FLOOR 225,000 S.F. ± 300 = 700 OFFICE SPACES
 2ND FLOOR 225,000 S.F. ± 500 = 750 OFFICE SPACES
 TOTAL = 1,450 OFFICE SPACES
 1500 OFFICE SPACES PER UNIT

HOTEL

300 ROOMS @ 1000 S.F. PER ROOM = 300,000 S.F. PER ROOM
 350 ROOMS @ 1000 S.F. PER ROOM = 350,000 S.F. PER ROOM

RESTAURANT

15,000 S.F. ± 150 = 300 SEATING REQUIRED
 150 SEATING PER UNIT

NOTE

PARKING SPACES WILL BE PROVIDED AS REQUIRED BY
 BALTIMORE COUNTY ZONING REGULATIONS (SECTION 23.02)

APARTMENT DEVELOPMENT

GROSS AREA = 16,336 ACRES
 NET AREA = 139.40 ACRES

PROPOSED DEVELOPMENT

GROSS = 16,336 ACRES ± 26.4
 NET = 139.40 ACRES ± 26.4
 TOTAL AREA REQUIRED 2491

DEVELOPMENT

GROSS = 14.68 UNITS PER ACRE
 NET = 17.34 UNITS PER ACRE
 TOTAL UNITS = 2400

ZONING PLAN
 PROPERTY OF
 NOTTINGHAM VILLAGE, INC.
 LOCATED IN

11TH & 14TH DISTRICTS BALTIMORE CO. MD.

TOTAL AREA = 929.081 ACRES ±

AREA TO BE ZONED D2.5 = 168.36 ACRES
 AREA TO BE ZONED D2.5 = 212.0 ACRES
 AREA TO BE ZONED MLE = 774.0 ACRES
 AREA IN C.A. DISTRICT = 14.30 ACRES

EXISTING ZONING D2.5
 PROPOSED ZONING D2.5 WITH
 A C.A. DISTRICT FOR THE BUILDING

NO EXISTING BUILDINGS
 ALL PROPOSED BUILDINGS WILL CONFORM
 WITH HEIGHT AND AREA REGULATIONS PER BALTIMORE
 COUNTY ZONING REGULATIONS (SECTION 23.02, 23.04, 23.06)

NOTE: THE TYPE, GEOMETRIC DESIGN AND
 DETAILS OF THE PAVING OF EADELLE
 AND PERRY HALL BOULEVARDS AND
 THEIR INTERSECTIONS WITH WHITE MARSH
 BOULEVARD SHALL BE DEVELOPED
 AS FINAL TRAFFIC STUDIES ARE COMPLETED
 AND FINAL STATE AND COUNTY DESIGN OF
 THESE ROAD BEGINS



