

# PETITION FOR ZONING RE-CLASSIFICATION AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

I, or we, William W. Boyce, Jr., et al, legal owner... of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition (1) that the zoning status of the herein described property be re-classified, pursuant to the Zoning Law of Baltimore County, from an D.R. 5.5 zone to an RR zone; for the following reasons:

The County Council was in error when it assigned the D.R. 5.5 zoning classification to the subject property at the time of the adoption of the Map covering this area on March 24, 1971.

See attached description

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

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

County P. H. WALKER CONSTRUCTION CORP.  
Patrick Walker, President  
2105 N. Charles Street  
Contract purchaser  
Address Baltimore, Maryland 21218

Ernest C. Trimble, Esquire  
Attorney  
Address 404 Jefferson Building  
Towson, Maryland 21204

ORDERED By The Zoning Commissioner of Baltimore County, this 3rd day of August, 1972, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commission of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 16th day of September, 1972, at 2:00 o'clock.

S. Eric DiNenna  
Zoning Commissioner of Baltimore County.

(over)

September 6, 1972

John W. Heslian, III, Esq.  
102 W. Pennsylvania Avenue  
Towson, Maryland 21204

Re: William W. Boyce, Jr., et al  
(Walker Construction Corp.)  
File No. 72-60-R

Dear Mr. Heslian:

Enclosed herewith is copy of the Opinion and Order passed today by the County Board of Appeals in the above entitled case.

Very truly yours,

Muriel E. Buddemeyer

Encl.

cc: Ernest C. Trimble, Esq.  
Gerald E. Topper, Esq.  
Board of Education  
Mr. S. E. DiNenna  
Mr. Frank Fisher  
Mr. Norman Garber  
Mr. J. Ogil

RE: PETITION FOR RECLASSIFICATION IN THE  
from D.R. 5.5 zone to B.R. zone  
N/S Railroad Avenue 480 feet  
SW of Seminary Avenue  
9th District, Central Sector  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
AT LAW  
William W. Boyce, Jr., et al,  
Petitioners  
P. H. Walker Construction Corp.,  
Contract Purchaser  
Misc. Docket No. 9  
Zoning File No. 72-60-R  
Folio No. 236  
Bertha Sembly, et al,  
Protestants-Appellants  
File No. 4918

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

MR. CLERK:

Please file, &c.

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

cc: Ernest C. Trimble, Esquire  
John W. Heslian, III, Esquire  
Gerald E. Topper, Esquire  
Zoning

RE: PETITION FOR RECLASSIFICATION IN THE  
from D.R. 5.5 zone to B.R. zone  
N/S Railroad Avenue 480 feet  
SW of Seminary Avenue  
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Bertha Sembly, et al,  
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TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

## ZONING ENTRIES FROM DOCKET OF ZONING COMMISSIONER OF BALTIMORE COUNTY

No. 72-60-R  
May 18, 1971 Comments filed by the Baltimore County Zoning Advisory Committee  
Aug. 3 Petition of William W. Boyce, Jr., et al, (P. H. Walker Construction Corp., Contract Purchaser) for reclassification from D.R. 5.5 to B.R. on property located on the southwest side of Seminary Avenue, 9th District, Central Sector - filed  
3 Order of Zoning Commissioner directing advertisement and posting of property - date of hearing set for September 16, 1971 at 2:00 p.m.  
30 Certification of Publication in newspaper - filed  
Sept. 7 Certification of Posting of property - filed  
16 At 2:00 p.m. hearing held on petition by Zoning Commissioner - case held sub curia  
Feb. 8, 1972 Order of Zoning Commissioner granting reclassification  
Mar. 6 Order of Appeal to County Board of Appeals from Order of Zoning Commissioner filed by John W. Heslian, III, Esquire, attorney for protestants, Bertha Sembly, et al  
June 14 Hearing on appeal before County Board of Appeals - case held sub curia

Sembly vs. Boyce - 9/26/49

Sept. 6, 1972 Order of the County Board of Appeals: "... that that portion of the subject tract petitioned for reclassification from D.R. 5.5 to B.R. zoning, which lies southeast of the center line of Roland Run, is hereby reclassified to B.R. zoning, and it is FURTHER ORDERED, that the petitioned reclassification from D.R. 5.5 to B.R. for that portion of the tract which lies northwest of the center line of Roland Run is hereby Denied."

Oct. 4 Order of Appeal filed in the Circuit Court for Baltimore County by Gerald E. Topper, Esq., attorney for protestants, Bertha Sembly, et al  
5 Certificate of Notice sent to all interested parties  
12 Petition to Accompany Order for Appeal filed in the Circuit Court for Baltimore County  
19 Transcript of Testimony filed - 1 volume  
Petitioners' Exhibit No. 1 - Plat of subject property by Evans, Hagan & Hildebrand, 5/4/70  
2 - Page 31 of Planning Board Report to Zoning Commissioner - 1st cycle  
3 - Copy of Log of Issues that County Council used at public hearing - Issue #C-28  
4 - Written comments of H. LaRue - four pages  
19 Record of proceedings filed in the Circuit Court for Baltimore County

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

Respectfully submitted

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

LAWS OFFICES  
HESSIAN & IGLEHART  
SUITE 400, 1000 BROAD & BONE BUILDING  
100 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204

March 6, 1972

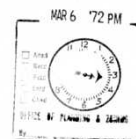
S. Eric DiNenna, Esquire  
Zoning Commissioner of Baltimore County  
County Office Building  
Towson, Maryland 21204

Re: Petition for Reclassification  
N/S of Railroad Avenue, 480'  
SW of Seminary Avenue - 9th  
District  
William W. Boyce, Jr., et al -  
Petitioners  
NO. 72-60-R (Item No. 13)

Dear Mr. DiNenna:

Please enter an appeal to the County Board of Appeals from your Decision of February 8, 1972, granting the Petitioners, William W. Boyce, Jr., et al, the reclassification sought in the above entitled petition, on behalf of the following protestants:

Bertha Sembly  
603 West Seminary Avenue  
Lutherville, Maryland  
Marie L. Webb  
513 West Seminary Avenue  
Lutherville, Maryland  
Edna M. Brown  
1429 Railroad Avenue  
Lutherville, Maryland  
Louis G. Koetzel, Jr.  
1608 Greenway Avenue  
Lutherville, Maryland



S. Eric DiNenna, Esquire  
March 6, 1972  
Page Two

A check payable to the order of Baltimore County, Maryland, in the amount of \$70.00 in payment of the appeal fee is enclosed.

Very truly yours,

S. E. Hessian

JWH:vh

Enclosure

cc: Ernest C. Trimble, Esq.

February 8, 1972

Ernest C. Trimble, Esquire  
404 Jefferson Building  
Towson, Maryland 21204

Re: Petition for Reclassification  
N/S of Railroad Avenue, 480'  
SW of Seminary Avenue - 9th  
District  
William W. Boyce, Jr., et al -  
Petitioners  
NO. 72-60-R (Item No. 13)

Dear Mr. Trimble:

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

Very truly yours,

S. ERIC DI NENNA  
Zoning Commissioner

SED:arl

Attachments

cc: John W. Heslian, III, Esquire  
102 West Pennsylvania Avenue  
Towson, Maryland 21204



## REPORTED

IN THE COURT OF SPECIAL APPEALS  
OF MARYLANDNo. 153  
September Term, 1974

WILLIAM W. BOYCE, et al.

v.

BERTHA SEMBLY, et al.

Thompson,  
Davidson,  
Lowe, JJ.  
Opinion by Davidson, J.  
Concurring Opinion by Lowe, J.

Filed: March 7, 1975

-4-

\$1.5 million. At present, there are five frame buildings located on the southeastern portion of the subject property, all of which are 50 to 60 years old and in a "bad state of repair." Their utility for operation as a modern-day lumber yard is substantially impaired because none of them is designed to accommodate forklift trucks, necessitating the piling of lumber by hand. At one time a residence and a shed had been located on the southwestern portion of the subject property, but those buildings have been razed. Currently, that portion of the tract has no development upon it.

At present, access to the subject property is limited to Railroad Avenue, which runs along a small portion of the northeastern sector of the subject property and then deadends. That street has a 20-foot right-of-way and a paved width of 15 feet. The Northern Central Railway right-of-way which adjoins Railroad Avenue on the east, as well as a portion of the southeastern sector of the subject property, contains one railroad track over which two to four freight trains travel daily. School Lane appears to provide access to the northwestern section of the subject property. The 20-foot-wide pavement of that road ends, however, 60 feet from the northern boundary of the subject property.

The subject property was classified in the R-6 zone (Residence, one or two family, lot area 6,000 square feet), which was the then equivalent of the D.R.-5.5 zone, by the comprehensive zoning map which preceded that of 1971. On

This case presents the narrow question of whether the County Council of Baltimore County (Council) committed basic and actual "mistake" or "error" as those interchangeable terms are used in zoning law, when on 24 March 1971 it adopted a comprehensive zoning map on which the subject property, consisting of 5.84 ± acres, was classified as D.R.-5.5 (Density Residential, 5.5 dwelling units per acre).

Most of the facts are not in dispute. The subject property, located in a community known as Lutherville, lies in an area bounded by Seminary Avenue on the north, the Harrisburg Expressway on the west, and the Baltimore Beltway on the south. (See location map attached hereto.) It is roughly triangular in shape and fronts on the west side of Railroad Avenue approximately 480 feet south of its intersection with Seminary Avenue.

On the west side of Railroad Avenue, approximately 250 feet north of the subject property, there is a relatively small parcel of land, located at the corner of the southwest quadrant of the intersection of Railroad Avenue and Seminary Avenue, which was reclassified to the B.L. zone (Business, Local) by a local map amendment adopted subsequent to 1955, on which a Citgo service station has long been and still is in operation. In the northwest quadrant of the intersection there is also a comparatively small parcel of land zoned B.L. upon a portion of which a refinishing shop, called The Wood Butcher, was developed around

10 September 1970 the Zoning Commissioner (Commissioner) of Baltimore County granted an application, requesting reclassification of the subject property to the B.R. zone. An appeal was taken to the Board of Appeals (Board). While that appeal was pending, the Council was considering the adoption of a new comprehensive zoning map. The Log of Issues and Recommendations to the Council, Relative to the Central Sector, used at the public hearing preceding adoption of the 1971 comprehensive zoning map, indicates that the existing zoning of the subject property was R-6; that the Planning Board recommended that the subject property be designated D.R.-5.5; that the property owner was requesting a B.R. zoning classification in a local map amendment case then pending; and that a proposed Council resolution recommended D.R.-16 zoning for the subject tract. On 24 March 1971 the Council adopted a comprehensive zoning map on which the subject property was classified in the D.R.-5.5 zone.

Within three weeks of the adoption of the comprehensive zoning map<sup>2</sup> the owner of the property and the contract purchaser of the tract [hereinafter called applicants] petitioned the Commissioner for a reclassification of the subject property to the B.R. zone, alleging that there was

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

-2-

1960. A furniture store known as Leers, containing about 15,000 square feet, is presently under construction on the remaining portion of that B.L. zoned land. At the corner of the southeast quadrant of the intersection there exists still another relatively small parcel of land which was classified in the B.L. zone in 1955, upon a portion of which a small grocery store has been located for many years. Subsequent to 1955 a relatively small parcel of land adjoining this B.L. zoned tract on the south was reclassified from the then R-10 zone (Residence, one or two family, lot area 10,000 square feet) to the B.L. zone. An office building has been developed on this B.L. zoned tract. Adjoining this B.L. zoned parcel on its south is a tract of land zoned D.R.-3.5 (Density Residential, 3.5 dwelling units per acre), a portion of which confronts the northern portion of the subject property.<sup>1</sup>

Moving south along the east side of Railroad Avenue and confronting the southern portion of the subject property there is a parcel of land which, subsequent to 1955, was reclassified by a local map amendment from the then R-10 zone to the D.R.-16 zone (Density Residential, 16 dwelling units per acre). An apartment complex, known as the Cardiff of Charles Apartments, consisting of 160 units, has been developed on a portion of that tract. Lying between this D.R.-16

<sup>1</sup>The record is devoid of any evidence showing the development, if any, existing on this parcel.

-6-

error in the comprehensive zoning map with respect to the subject property. After a hearing the Commissioner concluded that the comprehensive zoning map was in error in classifying the subject property in the D.R.-5.5 zone. On 8 February 1972 he granted the requested reclassification to the B.R. zone. An appeal was taken to the Board and, on 6 September 1972, the action of the Commissioner was reversed in part and affirmed in part by the Board which believed that the applicants had "met the burden of proof in showing error in original zoning on that portion of the petitioned tract southeastwardly of the stream, but not on that portion northwestwardly of the stream." Accordingly, the Board granted reclassification of the 2.3 ± acres of the subject property, which lie on the southeast side of the center line of Roland Run to the B.R. zone, and retained the remaining 3.54 ± acres of the subject property, which lie on the northwest side of the center line of Roland Run, in the D.R.-5.5 zone.

The protestants, neighboring property owners, filed an appeal in the Circuit Court for Baltimore County from that portion of the order which reclassified the southeastern portion of the tract to the B.R. zone. On 29 January 1974 Judge Lester Barrett found that "[t]he testimony of the Protestants in this case supported the correctness of the County Council's comprehensive zoning of March 1971" and that "the testimony produced by the Petitioner-Appellee is not

-3-

parcel and the Beltway, on the east side of the railroad right-of-way, there is a relatively large tract of land which, subsequent to 1955, was reclassified by a local map amendment from the then R-10 zone to the B.R. zone (Business, Roadside). "Warehouse office storage"-type buildings have been developed on this parcel. The record further shows that the Lutherville Supply & Equipment Company, which sells heavy machinery, earth-movers and cranes, is also located on the land east of the subject property and across the railroad track. It is unclear, however, whether this business enterprise is located on the D.R.-16 zoned land or the B.R. zoned land.

The subject property, which is fairly level, has a low elevation lying approximately 15 to 20 feet below the roadbed of the Northern Central Railway, which adjoins Railroad Avenue on the east. It is bisected by the Roland Run Stream which traverses the subject property from north to south. That portion of the subject property lying to the west of Roland Run Stream is further bisected by a tributary of the Roland Run Stream which passes through that portion of the subject property from west to east. Parallel to Roland Run and its tributaries there are 10-foot-wide easements for utilities and sewers.

For 60 years a building materials and lumber supply yard, located on the southeastern sector of the subject property, has been in operation. This nonconforming use is still being carried on, with annual sales in 1971 of

-7-

sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council." An order was entered reversing that portion of the Board's order which had reclassified the 2.3 ± acres lying on the southeastern portion of the subject property to the B.R. zone. It is from this order that the applicants appeal.

The applicants initially contend that the trial court applied an improper standard in determining whether the action of the Board should be reversed. They point out that while the trial court found the evidence adduced by the protestants supported the correctness of the 1971 comprehensive zoning and that the evidence adduced by the applicants was insufficient to overcome the presumption of correctness which attaches to a comprehensive rezoning, it did not determine whether the action of the Board was arbitrary and discriminatory or "fairly debatable." The applicants conclude that under these circumstances the trial court impermissibly weighed the evidence and substituted its judgment for that of the Board. We do not agree.

The applicable test for determining the scope of judicial review in a zoning case alleging error in a comprehensive rezoning has recently been restated in *Trainer v. Lipshin*, 269 Md. 687, 672-73, 309 A.2d 471, 474 (1973), in which the Court of Appeals, quoting from *Stratakis v. Beauchamp*, 258 Md. 643, 652-53, 304 A.2d 244,

249 (1973), said:

"...Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. We shall follow that test in considering this appeal.

"While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. Since, as we have also said, this burden is onerous, the task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one." (Emphasis in original.) (Citations omitted.)

Under this test "strong evidence" of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the Board in granting a reclassification is arbitrary and capricious.

Here, the trial court's finding that the "testimony produced by the Petitioner-Appellee is not sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council" is, in essence, a determination that there was not evidence of mistake in the comprehensive zoning strong and

preparing the plan that then existing facts were not taken into account. Overton, supra, at 225 Md. 216-17, 170 A.2d 174-75 (topography); or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning. Jobar Corp., supra, at 236 Md. 116-17, 202 A.2d 617-18 (need for apartments). See Rohde, supra, at 234 Md. 267-68, 199 A.2d 221.

Because

facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not "fairly debatable."

In applying the change-mistake rule to test the validity of comprehensive rezoning, the Court of Appeals has long recognized the inherent difficulty in attempting to distinguish between "error" and "change" and has frequently found it important to differentiate between the two. See, e.g., Rohde, supra, at 234 Md. 267, 199 A.2d 221; Pressman, supra, at 222 Md. 339, 160 A.2d 383; White, supra, at 219 Md. 174, 148 A.2d 423-24. The fact of the matter is that "error" and "change" are opposite sides of the same coin. On the one hand there can be a change in conditions so pervasive as to constitute a change in the

substantial enough to make that issue fairly debatable and that, consequently, the action of the Board in granting the reclassification was arbitrary and capricious. The trial court's further finding that the evidence adduced by the protestants supported the correctness of the 1971 comprehensive zoning, while correct, was not required for a resolution of the issue in this case. Until the presumed validity of the comprehensive zoning map has been overcome, evidence supporting its correctness is immaterial. Thus, while the trial court made a gratuitous finding, he applied the appropriate standard for judicial review. He neither weighed the evidence nor substituted his judgment for that of the Board.

Secondly the applicants contend that the Council erred in placing the subject property in the D.R.-5.5 zone because, at the time of the adoption of the 1971 comprehensive zoning map, it failed to take certain facts into account.

In this case, in order to grant the requested reclassification, the Board needed strong and substantial probative evidence that there was "mistake" or "error" in the comprehensive zoning of 1971. In order to assess the evidence before the Board, it is necessary to understand the inherent nature of the terms "mistake" or "error" as they are used in zoning law. A perusal of cases, particularly those in which a finding of error was upheld,

Moreover, in reviewing the evidence before the Board, it must also be noted that the opinion or conclusion of an expert or lay witness is of no greater probative value than that warranted by the soundness of his underlying reasons or facts. Surkovich v. Doub, 258 Md. 263, 272, 265 A.2d 447, 451 (1970); Anderson v. Sawyer, 23 Md.App. 612, \_\_\_ A.2d \_\_\_. The Court of Appeals and this Court have stated that an opinion, even that

3 (Cont.)

character of the neighborhood which demonstrates that the Council's initial assumptions as to the character of the neighborhood were incorrect. In such cases it has been held that evidence of change in the character of the neighborhood is substantial enough to overcome the presumption of validity ordinarily accorded to a comprehensive rezoning. See, e.g., Rohde, supra, at 234 Md. 267-68, 199 A.2d 221; White, supra, at 219 Md. 174, 148 A.2d 423-24; Himmelheber v. Charnock, 258 Md. 636, 641-42, 267 A.2d 179, 182 (1970); Wier v. Witney Land Co., 257 Md. 600, 614-15, 263 A.2d 833, 840-41 (1970). On the other hand there can be less significant changes, such as the construction of sewers or roads, which may also indicate that certain other initial assumptions of the Council were incorrect. In such cases it has been held that evidence of change is sufficiently strong to establish error in the comprehensive rezoning so that the presumption of validity generally accorded is overcome. See, e.g., Rockville v. Stone, supra, at 271 Md. 662, 319 A.2d 541, 544; Rohde, supra, at 234 Md. 267-68, 199 A.2d 221; White, supra, at 219 Md. 174, 148 A.2d 423-24. In either event, because the evidence of change demonstrates that the initial premises of the Council were invalid, the presumption of validity accorded to comprehensive rezoning vanishes. Thus, whether the evidence of change is viewed as establishing "change in the character of the neighborhood" or "error in comprehensive rezoning" the result is the same. When subsequent events demonstrate that any significant assumption made by the Council at the time of the comprehensive rezoning was invalid, the presumption of validity accorded to the comprehensive rezoning is overcome.

indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. Bonnie View Club v. Glass, 242 Md. 46, 52-53, 217 A.2d 647, 651 (1966); Jobar Corp. v. Rodgers Forge Community Ass'n., 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 612, 615, 617-18, 620-21 (1964); Overton v. County Commissioners, 225 Md. 212, 216-17, 170 A.2d 172, 174-75 (1961); see Rohde v. County Board of Appeals, 234 Md. 259, 267-68, 199 A.2d 216, 218-19 (1964). Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect. As the Court of Appeals said in Rockville v. Stone, 271 Md. 655, 662, 319 A.2d 536, 541 (1974):

"On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning."

of an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon him, are themselves substantial and strong enough to do so. Stratakis, supra, at 268 Md. 655, 304 A.2d 250; Coppolino v. County Board of Appeals of Baltimore County, 23 Md.App. 358, 371-72, 328 A.2d 55, 62 (1974). Viewed in the light of the principles applicable to "error" or "mistake" the testimony presented here does not pass muster.

The applicants contend that at the time of the comprehensive rezoning of 1971 the Council erred in placing the subject property in the D.R.-5.5 zone because they failed to take into account the fact that the subject property was then unsuitable for residential development. A witness qualified in the fields of real estate and real estate appraisal and the contract purchaser of the subject property testified that it was "unsuitable" for residential development because of its physical characteristics and its proximity to the railroad tracks. They stated that much of the land in the western sector of the subject property lay in the flood plain, and was not usable for any purpose; that in order to provide access to the western portion of the tract it would be necessary to bridge Roland Run Stream at great expense; and

The applicants do not contend that the assignment of a residential classification, D.R.-5.5, to the subject property constituted impermissible classification.

See Rohde, supra, at 234 Md. 267-68, 199 A.2d 220-21; Engel v. Rockville, 230 Md. 43, 45-47, 185 A.2d 378, 379-80 (1962); Pressman v. Baltimore, 222 Md. 330, 338-39, 160 A.2d 375, 383 (1960); White v. County Board of Appeals, 219 Md. 136, 144, 148 A.2d 420, 423-24 (1959); cf. Dill v. The Jobar Corp., 242 Md. 16, 20-21, 217 A.2d 564, 567-68 (1966); Marcus v. Montgomery County Council, 235 Md. 535, 540-41, 201 A.2d 777, 780 (1965); Offutt v. Board of Zoning Appeals, 204 Md. 551, 558, 105 A.2d 219, 221-22 (1954); Wakefield v. Kraft, 202 Md. 136, 144-45, 149, 96 A.2d 27, 30 (1953); Hoffman v. City of Baltimore, 197 Md. 294, 307, 79 A.2d 367, 373-74 (1951).

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning. Bonnie View Club, supra, at 242 Md. 48-49, 52, 217 A.2d 649, 651 (mineshaft and subsurface rock formation); by adducing testimony on the part of those

that, in any event, the maximum permitted density of 35 units could not be achieved either by single-family residential development or apartment development because the eastern portion of the subject property, adjoining the railroad right-of-way, was undesirable for residential development while the western portion contained insufficient usable land for the construction of 35 units. They concluded that residential development on the subject property would be economically unfeasible and that the only reasonable use which could be made of it consisted of commercial use on the eastern portion of the tract with off-street parking located on the western portion. They acknowledged that the subject property presently contains a profitable nonconforming use and that a single-family residence had been located on the western portion of the tract. They further conceded that the subject property was adjoined on the west and north by land upon which single-family development had taken place; that single-family development presently existed along the right-of-way of the railroad on land adjoining or lying in close proximity to the subject property; and that single-family residential development had recently occurred on land adjoining the railroad right-of-way in other communities located near Lutherville. There were no facts presented to show how much of the land contained in the total tract was unusable; how many units or physically could be located on the tract; how much it would

cost to bridge Roland Run in order to provide access to the western portion of the subject property. Moreover, there was no explanation as to why it would be impossible to provide access for residential development vi. School Lane; or why it was any more undesirable here to locate residential units next to the right-of-way of the Northern Central Railroad than it had been to locate residential units next to the railroad within the same and neighboring communities.

This evidence was insufficient to make the question of "error" or "mistake" fairly debatable for two reasons. First, because the conclusion that the subject property was unsuitable for residential development was not supported by adequate reasons or facts, it was entitled to little if any probative value. It was not sufficiently strong and substantial to overcome the presumption of validity of the comprehensive zoning. Secondly, there was no evidence to show that at the time of the comprehensive zoning the Council was unaware of the readily visible physical characteristics and location of the subject property and failed, in fact, to take them into account. Indeed, the existence of easements for public sanitary sewers supports an inference that the Council was, in fact, aware of the physical characteristics of the subject property. Thus, there was no evidence to show that the initial premises of the Council with respect to the subject property were incorrect and that consequently the classification assigned at the time of the comprehensive rezoning was improper.

The applicants next contend that at the time of the comprehensive zoning of 1971 the Council erred in failing to

take into account various physical changes which had occurred in the area between the adoption of the 1955 comprehensive zoning map and the 1971 comprehensive zoning map. These changes included the development of a large furniture store on land in the northwest quadrant of the intersection of Railroad Avenue and Seminary Avenue on land zoned as commercial by the 1955 comprehensive zoning map and the development of extensive commercial and apartment uses on land, in close proximity to the subject property, which had been reclassified from single-family residential zones to commercial and apartment zones after the adoption of the 1955 comprehensive zoning map. The zoning map shows that none of the changes in zoning classification or development have occurred in the area bounded by the Harrisburg Expressway on the west, Seminary Avenue on the north, Railroad Avenue on the east, and the Beltway on the south. Thus, the immediate neighborhood within which the subject property lies has been left essentially unchanged and contains no land classified in the commercial zone other than that at the intersection of Railroad Avenue and Seminary Road, which has been so classified since 1955. Moreover, the zoning map shows that all of the commercial uses existing in a much broader area are located at road intersections. There is not an iota of evidence in the record to indicate that at the time of the comprehensive zoning of the subject property the Council was unaware of either the zoning reclassi-

fications or development which had taken place between 1955 and 1971. Indeed, the presumption that the Council was aware of these occurrences is buttressed by the fact that it was reasonable for the Council, cognizant that commercial uses had already been extended at various road intersections in the area, to conclude that the intrusion of additional commercial zoning into the area at a location other than a road intersection, was contrary to the public interest. Consequently, there is insufficient evidence to make fairly debatable the question of whether the Council erred in failing to consider the effect of the zoning and development which had taken place between 1955 and 1971.

The applicants additionally contend that the Council erred in failing to take into account the projected widening of the Harrisburg Expressway and the Beltway interchange as well as the extension of Charles Street. The only evidence presented as to the impact of these roads on the subject property was that of the applicants' expert, qualified as an expert in real estate and real estate appraisal. He testified that the Beltway interchange requires a "lot of bridge work" and "will go way up in the air," so that it might be seen from the subject property in the wintertime when the trees are barren of leaves. He conceded, however, that at the time of the comprehensive zoning map, the Council anticipated the widening of the Harrisburg Expressway and the Beltway interchange. More-

over, he acknowledged that even at the time of the Council hearing no plan for an extension of Charles Street had been finalized, making uncertain when, if at all, such an extension might take place. The evidence with regard to widening of the Harrisburg Expressway and the Beltway interchange is insufficient to establish either error or mistake because it supports, rather than rebuts, the presumption that at the time of the comprehensive zoning the Council was aware of the fact that these roads were to be widened. The evidence with respect to the proposed extension of Charles Street is insufficient because it is too speculative in nature to have properly been considered. At the time of comprehensive rezoning, the Council is required to take into account only existing facts and those projects or trends which are reasonably probable of fruition in the foreseeable future. *Hunter v. County Commissioners*, 252 Md. 305, 310, 250 A.2d 81, 84 (1969) see *Chapman v. Montgomery County*, 259 Md. 641, 649-50, 271 A.2d 156, 160-61 (1970); *Johar Corp., supra*, at 236 Md. 112, 202 A.2d 615; *Rohde, supra*, at 234 Md. 264, 199 A.2d 218-19; *Trustees of McDonough Educational Fund and Institute*, 221 Md. 550, 570-71, 158 A.2d 637, 645 (1960).

The applicants also contend that the Council erred because it failed to take into account the B.R. zoning classification of the subject property, which they assert existed at the time of the comprehensive rezoning, and further failed

to take into account the fact that the property owner was seeking a commercial classification for his property. They maintain that at the time of the comprehensive rezoning the Council considered only the possibility of reclassifying the subject property from the R-6 zone to the D.R.-16 zone. In support of this position they rely on the Log of Issues and Recommendations to the Baltimore County Council, Relative to the Central Sector, used at the public hearing preceding adoption of the 1971 comprehensive zoning map. This log indicates that the then existing zoning of the subject property was R-6; that the Planning Board recommended that the subject property be designated D.R.-5.5, the new equivalent of R-6; that the property owner was requesting a B.R. zoning classification in a local map amendment case then pending; and that a proposed Council resolution recommended D.R.-16 zoning for the subject tract. This evidence, rather than overcoming the presumption that the Council was aware of all of the relevant existing facts at the time of the comprehensive rezoning, supports it.

The record clearly shows that at the time of the comprehensive zoning the subject property had been reclassified to the B.R. zone by the Zoning Commissioner but that that action by the Commissioner was then pending on appeal. Because an appeal was pending, the reclassification granted by the Zoning Commissioner was deprived of the force and effect

of law.<sup>5</sup> Consequently, the existing classification of the subject property was properly reflected in the log as R-6. Moreover, the log patently indicates that a request for reclassification to the B.R. zone was then pending, thus putting the Council on notice of the property owner's desire to have the subject property placed in that classification. Under these circumstances there can be no doubt that the Council was aware of the facts as they then existed, and in particular, of the classification sought by the property owner. Accordingly, its decision to place the subject property in the D.R.-5.5 zone was not premised on a misapprehension.

Finally, the applicants contend that the Council erred in failing to take into account the fact that their property had been utilized for the past 60 years as a building materials and lumber supply yard; that this nonconforming use had always been compatible with the adjoining residential uses; that this nonconforming use could be continued even if the requested reclassification were denied; and that the requested reclassification was sought only for the purpose of permitting the owner to update and improve his

<sup>5</sup> Baltimore County Zoning Regulations (Interim ed. 1971) § 500.3a provides:

"Any such reclassification when granted by the Zoning Commissioner shall in the absence of an appeal, have the force and effect of law."

present facilities and to protect his right to continue that business in the event that the building should be destroyed by fire.<sup>6</sup>

This contention is without merit for several reasons. There is no evidence to indicate that the Council was unaware of this nonconforming use which had been in existence for 60 years. Moreover, nonconforming uses are by definition inherently incompatible with permitted uses in a zone.<sup>7</sup> Indeed, it is public policy in Baltimore County to drive such nonconforming uses out of permanent existence by preventing the expansion of such uses or their restoration if substantial damages are incurred.<sup>8</sup> Finally, in response

<sup>6</sup> Baltimore County Zoning Regulations (Interim ed. 1971) § 104 provides, in pertinent part:

"...in case any nonconforming business of manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) per cent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate."

Baltimore County Zoning Regulations (Interim ed. 1971) § 255.1a (29) classifies a lumberyard as a permissible use in a manufacturing zone, thus presumably designating such use as a manufacturing one.

<sup>7</sup> See Baltimore County Zoning Regulations (Interim ed. 1971) § 101, which defines a nonconforming use as:

"A legal use of a building or of land that antedates the adoption of these regulations and does not conform to the use regulations for the zone in which it is located."

<sup>8</sup> See note 6, *supra*.

to the applicants' argument that they were seeking B.R. zoning solely as "insurance" to guarantee the right to rebuild the present use in the event of a casualty, it need only be noted, as the applicants conceded, that once the reclassification was granted, nothing could prevent the development of any of the uses permitted in the B.R. zone on the subject property.<sup>9</sup> Consequently, the evidence again was insufficient to make the question of error fairly debatable.

When all is said and done, this record is totally devoid of any evidence to show that at the time of the comprehensive zoning of the subject property the Council failed to take into account any factor or circumstance then existing relevant to the subject property and its environs so that its initial assumptions and premises in determining the appropriate classification for the subject property were erroneous. Nor was there any evidence of any events occurring subsequent to the time of the comprehensive rezoning, which would show that the Council's assumptions and premises at the time of the comprehensive rezoning had been proved invalid by the passage of time. Under all of the circumstances in this case the presumption of validity accorded to the comprehensive rezoning was not overcome and the question of "error" or

<sup>9</sup> These uses include, among others, the following: restaurants, office buildings, bakeries, department stores, food stores, laundromats, automobile sales rooms, bowling alleys, night clubs, warehouses, laboratories, kennels, farm implement stores, and store or monument works. Baltimore County Zoning Regulations (Interim ed. 1971) § 236.

In the very recent zoning case of Rockville v. Stone, 271 Md. 655, 319 A.2d 536 (1974), the Court of Appeals observed that "despite the intriguing factual and procedural posture present here, there is really very little new under the sun in this State as far as zoning cases are concerned". One element of the factual posture was that the rezoning involved was a down zoning, applied for by the City of Rockville Planning Commission, granted by the City over the opposition of the landowners, reversed by the circuit court, and reinstated by the Court of Appeals. The down zoning nullified a piecemeal rezoning which the City had previously granted. The Court of Appeals concluded that the evidence before the legislative body made each of the issues of change and of mistake fairly debatable. It commented that the original mistake was an assumption which proved, with the passage of time, to be erroneous.

It seems to me that the failure of an expected change to take place could be characterized, with equal effect, as a change, negative in nature, or as a mistake in making the assumption in the first place. But an assumption may be sound at the time it is made, even though subsequent events do not bear it out.

The dilemma is one of words, not principles. This is why I urge simplicity, not proliferating complexity, in expressing the legal requirement for a zoning change. I think we should make it clear that whether we say "mistake" or "error" in the original zoning, we mean exactly the same thing. I think we should make it clear that whether we say "change in the character of the neighborhood", or "change in conditions", or "change in circumstances", we mean exactly the same thing. A change in "conditions" or a "change in circumstances", which affects the "character of the neighborhood" obviously indicates a "change in the character of the neighborhood", and any attempt to give different meanings to these phrases is a distinction without a difference. A change of "conditions" or of "circumstances" which does not affect the character of the neighborhood is irrelevant in any event.

I see no significance in attempting to put on a different basis, a failure to consider facts in existence at the time of zoning, or a failure to foresee a future which was foreseeable at the time of zoning, or a failure to foresee a future which was not foreseeable at the time of zoning.

The cases I have cited, and from which I have quoted, are not intended to show that I disagree with the law which governs the outcome of the case now before us. The cases are cited to show that in no case has there been a significant distinction among "mistake", "error", or "change". In no case has

public good, takes away some of the rights of individuals to use their property as they please, and at the same time gives them rights to restrict injurious uses of the property of others. This cannot be done by piecemeal legislation. It can only be upheld as part of a general plan for a community which sets apart certain areas for residence purposes, and permits commercial business in other areas where it is established or where such use is obviously suitable. Such a plan must be attuned to the public health, welfare and safety. It must not be arbitrary nor can it be discriminating except insofar as is necessary for the proper establishment of the various kinds of districts permitted.

The very nature of a non-conforming use is the fact that it is incompatible with the neighborhood.

The fact that in March 1971 the subject tract had been reclassified B.R. by the Zoning Commissioner and such case then being on appeal by the Protestants does not intimate error by the County Council. The Council was preparing a comprehensive land use map, fully considered all zoning conditions in the area and fully recognized the needs of the community in its deliberation.

The testimony of the Protestants in this case supported the correctness of the County Council's comprehensive zoning of March 1971 in testifying to the residential, historic character of the surrounding neighborhood. The Protestants testified as to the safety hazard resulting from increased traffic and the additional truck traffic on the dead end Railroad Avenue where the subject tract is located. (Transcript pp 104, 105, 112-121, 123, 127). They testified Railroad Avenue from its intersection at Seminary Avenue is only fifteen feet in width and is completely residential in character until it reaches the subject tract; that such a change in classification will have a detrimental effect especially in the small black community which surrounds the tract.

It appears to the Court that the recent cases of Stratakis v.

there been a significant distinction based on whether known facts were overlooked, foreseeable facts were not foreseen, or unforeseeable changes later occurred. Rarely has the Court even treated mistake and change as separate concepts.

I believe that the majority opinion in this case unnecessarily takes the long way around. I prefer the short way around, expressed by Chief Judge Brune for the Court in Rohde v. County Board, supra, when he said:

"The applicant produced considerable expert testimony to show that either as a result of lack of anticipation of trends of development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing."

The test that the courts should apply in any review of legislative action on a rezoning request is this: Did the applicant produce evidence sufficient to overcome the presumption of correctness of the existing zoning, and to make fairly debatable the issue of whether the existing zoning was in error at the time of the hearing.

Boauchamp, 268 Md. 642 and Trainer v. Linchin, 269 Md. 667, are controlling as to the disposition of this case. In Trainer, the Court stated at Page 672:

"In our view, Stratakis v. Bauchamp, 269 Md. 643, 304 A. 2d 244 (1973), which involved a similar challenge to the same set of comprehensive zoning maps, is virtually dispositive of the issues presented by this case. The applicable test noted there and recognized by the parties here is:

"... Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. Montgomery County v. Pleasants, 266 Md. 462, 295 A. 2d 216 (1972); Himmelscher v. Charnock, 258 Md. 636, 267 A. 2d 179 (1970); Chevy Chase Village v. Mont. Co., 258 Md. 27, 264 A. 2d 861 (1970); Smith v. Co. Comm'rs of Howard Co., 252 Md. 280, 249 A. 2d 708 (1969). We shall follow that test in considering this appeal.

"While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. Rockville v. Henley, 248 Md. 469, 302A. 2d 45 (1973); Heller v. Prince George's Co., 264 Md. 410, 412, 286 A. 2d 772 (1972); Creswell v. Baltimore Aviation, 257 Md. 712, 721, 264 A. 2d 838 (1970). Since, as we have also said, this burden is onerous, Cabin John Ltd. v. Montgomery Co., 259 Md. 661, 271 A. 2d 174 (1970); Creswell v. Baltimore Aviation, supra; Wells v. Pierpont, 253 Md. 554, 253 A. 2d 749 (1969), the task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one." 268 Md. at 652-53 (emphasis in original)."

PETITION FOR RECLASSIFICATION  
from D.R. 5.5. zone to B.R. zone  
N/S Railroad Avenue 480 feet S.W.  
of Seminary Avenue  
9th District, Central Sector  
William W. Boyce, Jr. et al  
(P.H. Walker Construction Corp.  
Contract Purchaser)  
Petitioners  
vs  
BERTHA SEMBLY, et al  
Protestants-  
Appellants

IN THE CIRCUIT COURT  
FOR BALTIMORE COUNTY  
Case #4914  
Misc. 9 Folio 236  
No. 72-60-R

# MEMORANDUM OPINION

This case arises from an appeal by the Protestants of a decision of the County Board of Appeals of Baltimore County on September 6, 1972, ordering that portion of the subject tract petitioned for reclassification from D.R. 5.5 to B.R. zoning, which lies southeast of the center line of Roland Run, be reclassified to B.R. That portion of the tract which lies northwest of the center line of Roland Run sought to be reclassified from D.R. 5.5 to B.R. zoning was denied by the Board, from which no appeal was taken.

The Baltimore County Council adopted the county wide Comprehensive Zoning Map on March 24, 1971, which designated the subject property's zoning as D.R. 5.5. Thereafter, by petition filed August 3, 1971, Petitioner sought reclassification of the subject property from D.R. 5.5 to B.R. zoning. On February 8, 1972, the Zoning Commissioner, finding error in the original zoning map, granted Petitioner's request. Protestants appealed the decision of the Zoning Commissioner to the Board of Appeals and the decision of the Board of Appeals affirmed the decision of the Zoning Commissioner and reclassified the area, which lies southeast of the center line of Roland Avenue from D.R. 5.5 to B.R. zoning, which is the subject of this appeal.

The Court is of the opinion that the testimony produced by the Petitioner-Appellee is not sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council, which rezoning application was filed less than five months after the adoption of such comprehensive zoning map.

For the above reasons, the action of the Board of Appeals reclassifying the zoning of the subject property from D.R. to B.R. zoning be and is hereby reversed.

January 29, 1974

Judge

*Porter & Barrett*

The subject property is located on the north side of Roland Avenue, 480 feet southwest of Seminary Avenue, in the 9th Election District, Lutherville, Baltimore County. The subject property is presently being used as a lumber yard by virtue of a non-conforming use status. It has been used in that manner for the past sixty years.

As previously stated, the Board of Appeals on September 6, 1972, ordered 2.3 acres of the tract reclassified from D.R. 5.5 to B.R. zoning. That is the portion of the subject tract southerly of the stream which bisects the property and which has been in a non-conforming use status for over sixty years. The area surrounding the tract is zoned D.R. 5.5 with the exception of a small area zoned B.L. at the intersection of Seminary Avenue and the railroad tracks which bisect Lutherville. This small commercial area consisting of a gas station, food store, furniture shops and several other similar uses has been in existence for many years. Petitioner's request for reclassification was based on his alleged need to protect his lumber business because of its non-conforming use status in a residential district.

There can be little question that the County Council was aware of the nature of the area when it classified the subject property as D.R. 5.5. To have done otherwise would probably have constituted spot zoning and would have introduced a major zoning change in the neighborhood.

As stated in the case of Hewitt v. County Commissioners of Baltimore County, 220 Md. 46:

"This Court has consistently rejected spot zoning in its opprobrious sense. It has repeatedly referred to the statutory requirement, which is substantially the same under the general Enabling Act as under the Public Local Laws of Baltimore County, that zoning shall be in accordance with a comprehensive plan. In Mayor and City Council of Baltimore v. Byrd, 191 Md. 632, 62 A. 2d 588, 590, this Court, in the majority opinion by Chief Judge Marbury said: 'Zoning is an exercise of the police power which, for the

## BALTIMORE COUNTY, MARYLAND

### INTER-OFFICE CORRESPONDENCE

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

13. Property Owner: Wm. W. Boyce, Jr., et al  
Location: NE/S Northern Central Branch of Penna. R.R., 600' NE of Balto. Beltway  
Present Zoning: D.R. 5.5  
Proposed Zoning: Reclass to B.R.  
District: 8th Sector: Central  
No. Acres: 5.84

Public water and sewer are available to the site.

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.

*John J. Smith*  
Chief  
Water and Sewer Section  
BUREAU OF ENVIRONMENTAL HEALTH

LJF/ca

RE: PETITION FOR RECLASSIFICATION :  
from D.R. 5.5 zone to B.R. zone :  
N/S Railroad Avenue 480 feet SW :  
of Seminary Avenue :  
9th District, Central Sector :  
William W. Boyce, Jr., et al :  
(P. H. Walker Construction Corp. :  
Contract Purchaser) :  
Petitioners :  
Baltimore County :  
No. 72-60-R

# OPINION

This case comes before the Board on an appeal by the Protestants from an Order of the Zoning Commissioner dated February 8, 1972 granting the Petitioner's request to reclassify the subject property from D.R. 5.5 (Density Residential 5.5 dwelling units per acre), to B.R. (Business Roadside).

The subject property is located on the north side of Railroad Avenue 480 feet southwest of Seminary Avenue, in the 9th Election District, Lutherville, Baltimore County, Maryland. The total tract owned by the Petitioner consists of 6.33 acres, of which 5.84 acres are the subject of this appeal. A parcel of land approximately 86 x 250 feet in the southwest corner of the tract is excluded from the petition and from the appeal. (See plat accepted in evidence as Petitioner's Exhibit No. 1). The subject property now holds a nonconforming status for use as a lumber yard and a building supplies store. It has been used in this fashion for the past sixty years, compatibly with the neighborhood, according to testimony presented. This tract is divided into two segments by a stream known as Roland Run. The southerly segment of the tract is the site of the existing buildings and business activity. This segment bounds on Railroad Avenue, which adjoins and parallels the main line tracks of the North Central Branch of the Pennsylvania Railroad. The northerly segment of the tract is vacant, low lying, rather inaccessible land, and is oriented toward the backyards of existing detached residential dwellings.

There was testimony that a thriving and growing business is conducted at the site. The owner, by virtue of the existing nonconforming use status, may legally continue such use without further zoning. However, he seeks the protection of B.R. zoning

the subject property and make it virtually impossible for use in a residential classification. Properties on Seminary Avenue and along Railroad Avenue, for a distance of approximately 250 feet, have been reclassified from R-6 to BL (business local) and on one of the properties there exists a service station. If one were to attempt to build and sell houses on the subject property, the detrimental effect of the narrow Railroad Avenue approach, together with the necessity of passing a filling station as well as the noise and reverberations of passing trains, would make it impossible to find buyers for the homes. The aforementioned reclassification was granted in Case No. 5841. In addition to the aforementioned change which adversely affects the subject property, there are also two (2) reclassifications on the opposite side of the railroad and a little northeast of the subject property. Those cases, known as No. 4445 and 4647, involve a reclassification from an R-10 zone to a BL zone. All of the aforementioned reclassifications make it apparent that there was either a mistake in the original zoning of those properties and/or changes in the neighborhood which required or justified the reclassification requested. Your petitioner feels that this property is even more deserving of the reclassification requested for the reasons recited herein and others to be presented at the hearing hereof. There are several other changes in the neighborhood which cause the Council action to be erroneous and which also justify the reclassification of the subject property. No. 65-78 and No. 5826 involved a reclassification from R-10 to RA. Case No. 64-60R and Case No. 3890 involved a reclassification of property generally to the south of the subject property from an R-10 to a BR classification.

The existing non-conforming use is expected to continue in the decades to come. However, if this property is permitted the reclassification requested, the community would benefit by reason of the improvements which could be made to the property and the

William W. Boyce, Jr. - No. 72-60-R

2.

that he may improve, enlarge, or replace the deteriorating buildings, which he now is somewhat limited from doing under the nonconforming use status. Too, if the buildings were destroyed or abandoned for at least one year, the nonconforming use status would be invalidated and the property would then be restricted to the underlying D.R. 5.5 zoning use. It is the Petitioner's contention that the County Council erred in not reclassifying the subject property to B.R. zoning when it adopted the Comprehensive Zoning Map for the area on March 24, 1971, in that the Councilmen failed to recognize the long standing nonconforming use of the subject; its proximity and orientation toward the railroad; its unsuitability for residential development because of adverse location and topography, and the fact that this relatively small property is traversed by a stream, a flood plain and by two ten foot wide utility easements. The Petitioner further cites as a basis for his claim of "error" that the Councilmen were misinformed of the actual zoning status of the property when they adopted the Comprehensive Zoning Map on March 24, 1971, inasmuch as the (zoning) Log of Issues (Petitioner's Exhibit No. 3), on which the Council relied in arriving at their zoning map decisions, indicated that the property was zoned R-6, when, in fact, the property already had been reclassified by the Deputy Zoning Commissioner to B.R. on September 10, 1970 in zoning case No. 71-67-R. (See Petitioner's Exhibit No. 4).

The Protestants testified that they are fearful that granting the reclassification may increase the volume of traffic in the neighborhood, that it may generate other petitions for additional commercial reclassifications, and thereby cause a change in their neighborhood.

There was further testimony by the Petitioner that the present use of the property is its best use and is the use he intends to continue, whether the subject is rezoned or not. This he has a legal right to do. However, one of the Petitioner's witnesses testified that the land west of the stream could not be feasibly developed for anything.

The Board believes the Petitioner has met the burden of proof in showing error in original zoning on that portion of the petitioned tract southeastwardly of the stream, but not on that portion northwestwardly of the stream.

business being operated there could better serve the community, the same community which has supported the business for the past many years.

The County Council failed to recognize the expertise of the Deputy Zoning Commissioner who on September 10, 1970, reclassified the subject property to the BR zoning and instead the County Council considered only two (2) alternatives, D.R. 5.5 and D.R. 16.

Respectfully submitted,

ERNEST C. TRIMBLE,  
Attorney for Petitioners.

William W. Boyce, Jr. - No. 72-60-R

3.

For these reasons, and from all the testimony and evidence presented, the Board hereby grants the petitioned B.R. zoning, to that portion of the property lying on the southeast side of the center line of Roland Run, and denies the requested petition to B.R. zoning for that portion lying on the northwest side of the center line of Roland Run.

## ORDER

For the reasons set forth in the foregoing Opinion, it is this 6th day of September, 1972, by the County Board of Appeals ORDERED, that that portion of the subject tract petitioned for reclassification from D.R. 5.5 to B.R. zoning, which lies southeast of the center line of Roland Run, is hereby reclassified to B.R.; and it is

FURTHER ORDERED, that the petitioned reclassification from D.R. 5.5 to B.R. for that portion of the tract which lies northwest of the center line of Roland Run is hereby Denied.

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

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

John A. Slawik, Chairman

Walter A. Reiter, Jr.

John A. Miller

MEMORANDUM SUBMITTED IN CONNECTION WITH THE  
ZONING APPLICATION OF WILLIAM W. BOYCE, JR.,  
et al - OWNERS, and P.H. WALKER CONSTRUCTION  
CORP. - CONTRACT PURCHASERS

On behalf of the above-named Owners and Contract Purchasers, it is respectfully submitted that the action of the County Council in classifying the subject 5.84 acres of land, more or less, D.R. 5.5 was erroneous for the following reasons:

The County Council made a mistake in zoning the subject property D.R. 5.5 at the time of the adoption of the zoning map on March 24, 1971. The authorities failed to take into account the non-conforming use of the property for a building supply and lumber yard which had existed on the property for many years. The authorities failed to recognize the impossibility of developing the land under a D.R. 5.5 classification in view of its extensive frontage on the Northern Central Railroad; its narrow access by way of Railroad Avenue (bordering the aforesaid railroad); and the topography of the land criss-crossed by the Roland Run and a 10 foot utility easement. Had the authorities given sufficient consideration to the subject property, it would have been apparent that the topography, streams and easements, together with the size of the tract in one ownership (i.e. 6 acres more or less) would permit the commercial use of the subject property without any detriment to the health, safety or general welfare of the individual homes existing on the periphery of the subject tract. Other properties adjacent to the railroad have been reclassified partly because the zoning authorities did recognize their mistake in assigning a residential zoning classification to properties bordering on the railroad.

It is respectfully submitted that there have been many changes in the neighborhood which indicate that property bordering the railroad require classifications other than residential. Many of the reclassifications which have been granted adversely affect

## BALTIMORE COUNTY, MARYLAND

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

TO: Edward D. Hardesty  
Attn: Oliver L. Myers  
FROM: C. Richard Moore  
SUBJECT: Item 13 - Cycle Zoning  
Property Owner: Wm. W. Boyce, Jr. et al  
Northern Central Branch of Penna. R.R. NE  
of Baltimore Beltway  
Reclassification to BR  
Date: May 11, 1971

The subject petition was reviewed as Item 71-67 and the previous comment remains valid. Railroad Avenue and School Lane are not designed to carry commercial traffic. Therefore, any commercial operation at the end of these streets will create traffic problems.

C. Richard Moore  
Assistant Traffic Engineer

CRM:nr

## BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

Mr. Edward D. Hardesty  
TO: Zoning Commissioner  
FROM: Project Planning Division  
SUBJECT: Zoning Advisory Agenda Item #13  
Date: May 11, 1971

April 27, 1971  
William W. Boyce, Jr. et al  
NE/S Northern Central Branch of  
Penna. R. R., 600' NE of  
Baltimore Beltway

This office has reviewed the subject site plan and offers the following comments:

Railroad Avenue and School Lane are not capable of handling the volume of commercial traffic that the development of this site could create.

## REPORTED

IN THE COURT OF SPECIAL APPEALS  
OF MARYLANDNo. 153  
September Term, 1974

WILLIAM W. BOYCE, et al.

v.

BERTHA SEMBLY, et al.

Thompson,  
Davidson,  
Lowe, JJ.Opinion by Davidson, J.  
Concurring Opinion by Lowe, J.

Filed: March 7, 1975

This case presents the narrow question of whether the County Council of Baltimore County (Council) committed basic and actual "mistake" or "error" as those interchangeable terms are used in zoning law, when on 24 March 1971 it adopted a comprehensive zoning map on which the subject property, consisting of 5.84 ± acres, was classified as D.R.-5.5 (Density Residential, 5.5 dwelling units per acre).

Most of the facts are not in dispute. The subject property, located in a community known as Lutherville, lies in an area bounded by Seminary Avenue on the north, the Harrisburg Expressway on the west, and the Baltimore Beltway on the south. (See location map attached hereto.) It is roughly triangular in shape and fronts on the west side of Railroad Avenue approximately 480 feet south of its intersection with Seminary Avenue.

On the west side of Railroad Avenue, approximately 250 feet north of the subject property, there is a relatively small parcel of land, located at the corner of the southwest quadrant of the intersection of Railroad Avenue and Seminary Avenue, which was reclassified to the B.L. zone (Business, Local) by a local map amendment adopted subsequent to 1955, on which a Cito service station has long been and still is in operation. In the northwest quadrant of the intersection there is also a comparatively small parcel of land zoned B.L. upon a portion of which a refinishing shop, called The Wood Butcher, was developed around

1960. A furniture store known as Leers, containing about 15,000 square feet, is presently under construction on the remaining portion of that B.L. zoned land. At the corner of the southeast quadrant of the intersection there exists still another relatively small parcel of land which was classified in the B.L. zone in 1955, upon a portion of which a small grocery store has been located for many years. Subsequent to 1955 a relatively small parcel of land adjoining this B.L. zoned tract on the south was reclassified from the then R-10 zone (Residence, one or two family, lot area 10,000 square feet) to the B.L. zone. An office building has been developed on this B.L. zoned tract. Adjoining this B.L. zoned parcel on its south is a tract of land zoned D.R.-3.5 (Density Residential, 3.5 dwelling units per acre), a portion of which confronts the northern portion of the subject property.<sup>1</sup>

Moving south along the east side of Railroad Avenue and confronting the southern portion of the subject property there is a parcel of land which, subsequent to 1955, was reclassified by a local map amendment from the then P-10 zone to the D.R.-16 zone (Density Residential, 16 dwelling units per acre). An apartment complex, known as the Cardiff of Charles Apartments, consisting of 160 units, has been developed on a portion of that tract. Lying between this D.R.-16

<sup>1</sup>The record is devoid of any evidence showing the development, if any, existing on this parcel.

parcel and the Beltway, on the east side of the railroad right-of-way, there is a relatively large tract of land which, subsequent to 1955, was reclassified by a local map amendment from the then R-10 zone to the B.R. zone (Business, Roadside). "Warehouse office storage"-type buildings have been developed on this parcel. The record further shows that the Lutherville Supply & Equipment Company, which sells heavy machinery, earth-movers and cranes, is also located on the land east of the subject property and across the railroad track. It is unclear, however, whether this business enterprise is located on the D.R.-16 zoned land or the B.R. zoned land.

The subject property, which is fairly level, has a low elevation lying approximately 15 to 20 feet below the roadbed of the Northern Central Railway, which adjoins Railroad Avenue on the east. It is bisected by the Roland Run Stream which traverses the subject property from north to south. That portion of the subject property lying to the west of Roland Run Stream is further bisected by a tributary of the Roland Run Stream which passes through that portion of the subject property from west to east. Parallel to Roland Run and its tributaries there are 10-foot-wide easements for utilities and sewers.

For 60 years a building materials and lumber supply yard, located on the southeastern sector of the subject property, has been in operation. This nonconforming use is still being carried on, with annual sales in 1971 of

\$1.5 million. At present, there are five frame buildings located on the southeastern portion of the subject property, all of which are 50 to 60 years old and in a "bad state of repair." Their utility for operation as a modern-day lumberyard is substantially impaired because none of them is designed to accommodate forklift trucks, necessitating the piling of lumber by hand. At one time a residence and a shed had been located on the southwestern portion of the subject property, but those buildings have been razed. Currently, that portion of the tract has no development upon it.

At present, access to the subject property is limited to Railroad Avenue, which runs along a small portion of the northeastern sector of the subject property and then deadends. That street has a 20-foot right-of-way and a paved width of 15 feet. The Northern Central Railway right-of-way which adjoins Railroad Avenue on the east, as well as a portion of the southeastern sector of the subject property, contains one railroad track over which two to four freight trains travel daily. School Lane appears to provide access to the subject property from the east. The 20-foot-wide pavement of that street, however, 60 feet from the northern boundary of the subject property.

The subject property was classified in the R-6 zone (Residence, one or two family, lot area 6,000 square feet), which was the then equivalent of the D.R.-5.5 zone, by the comprehensive zoning map which preceded that of 1971. On

10 September 1970 the Zoning Commissioner (Commissioner) of Baltimore County granted an application requesting reclassification of the subject property to the B.R. zone. An appeal was taken to the Board of Appeals (Board). While that appeal was pending, the Council was considering the adoption of a new comprehensive zoning map. The Log of Issues and Recommendations to the Council, Relative to the Central Sector, used at the public hearing preceding adoption of the 1971 comprehensive zoning map, indicates that the existing zoning of the subject property was R-6; that the Planning Board recommended that the subject property be designated D.R.-5.5; that the property owner was requesting a B.R. zoning classification in a local map amendment; case then pending; and that a proposed Council resolution recommended D.R.-16 zoning for the subject tract. On 24 March 1971 the Council adopted a comprehensive zoning map on which the subject property was classified in the D.R.-5.5 zone.

Within three weeks of the adoption of the comprehensive zoning map<sup>2</sup> the owner of the property and the contract purchaser of the tract [hereinafter called applicants] petitioned the Commissioner for a reclassification of the subject property to the B.R. zone, alleging that there was

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

error in the comprehensive zoning map with respect to the subject property. After a hearing the Commissioner concluded that the comprehensive zoning map was in error in classifying the subject property in the D.R.-5.5 zone. On 8 February 1972 he granted the requested reclassification to the B.R. zone. An appeal was taken to the Board and, on 6 September 1972, the action of the Commissioner was reversed in part and affirmed in part by the Board which believed that the applicants had "met the burden of proof in showing error in original zoning on that portion of the petitioned tract southeastwardly of the stream, but not on that portion northwestwardly of the stream." Accordingly, the Board granted reclassification of the 2.3 ± acres of the subject property, which lie on the southeast side of the center line of Roland Run to the B.R. zone, and retained the remaining 3.54 ± acres of the subject property, which lie on the northwest side of the center line of Roland Run, in the D.R.-5.5 zone.

The protestants, neighboring property owners, filed an appeal in the Circuit Court for Baltimore County from that portion of the order which reclassified the southeastern portion of the tract to the B.R. zone. On 29 January 1974 Judge Lester Barrett found that "[t]he testimony of the Protestants in this case supported the correctness of the County Council's comprehensive zoning of March 1971" and that "the testimony produced by the Petitioner-Appellee is not

sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council." An order was entered reversing that portion of the Board's order which had reclassified the 2.3 ± acres lying on the southeastern portion of the subject property to the B.R. zone. It is from this order that the applicants appeal.

The applicants initially contend that the trial court apportioned an improper standard in determining whether the action of the Board should be reversed. They point out that while the trial court found the evidence adduced by the protestants supported the correctness of the 1971 comprehensive zoning and that the evidence adduced by the applicants was insufficient to overcome the presumption of correctness which attaches to a comprehensive rezoning, it did not determine whether the action of the Board was arbitrary and discriminatory or "fairly debatable." The applicants conclude that under these circumstances the trial court impermissibly weighed the evidence and substituted its judgment for that of the Board. We do not agree.

The applicable test for determining the scope of judicial review in a zoning case alleging error in a comprehensive rezoning has recently been restated in Trainer v. Lipechin, 269 Md. 667, 672-73, 309 A.2d 471, 474 (1973), in which the Court of Appeals, quoting from Stratakis v. Beauchamp, 268 Md. 683, 682-83, 304 A.2d 248,

249 (1973), said:

"...Where a legislative body, or a board of county officials, pursuant to authority conferred upon it, has granted a rezoning of property, the question on judicial review is whether or not such action is arbitrary and discriminatory or fairly debatable. We shall follow that test in considering this appeal.

"While, in recent years, we have had occasion to enunciate a number of important principles applicable to the law of zoning, perhaps none is more rudimentary than the strong presumption of the correctness of original zoning and of comprehensive rezoning. To sustain a piecemeal change in circumstances such as those present here, strong evidence of mistake in the original zoning or comprehensive rezoning or evidence of substantial change in the character of the neighborhood must be produced. Since, as we have also said, this burden is onerous, the task confronting appellants [appellees], whose application followed the comprehensive rezoning by merely four months, is manifestly a difficult one." (Emphasis in original.) (Citations omitted.)

Under this test "strong evidence" of error is required to make the issue of mistake in comprehensive zoning fairly debatable and unless such strong evidence is presented by the applicant, the action of the Board in granting a reclassification is arbitrary and capricious.

Here, the trial court's finding that the "testimony produced by the Petitioner-Appellee is not sufficient to overcome the presumption of correctness which attaches with the adoption of a comprehensive zoning map by the County Council" is, in essence, a determination that there was not evidence of mistake in the comprehensive zoning strong and

substantial enough to make that issue fairly debatable and that, consequently, the action of the Board in granting the reclassification was arbitrary and capricious. The trial court's further finding that the evidence adduced by the protestants supported the correctness of the 1971 comprehensive zoning, while correct, was not required for a resolution of the issue in this case. Until the presumed validity of the comprehensive zoning map has been overcome, evidence supporting its correctness is immaterial. Thus, while the trial court made a gratuitous finding, he applied the appropriate standard for judicial review. He neither weighed the evidence nor substituted his judgment for that of the Board.

Secondly the applicants contend that the Council erred in placing the subject property in the D.R.-5.5 zone because, at the time of the adoption of the 1971 comprehensive zoning map, it failed to take certain facts into account.

In this case, in order to grant the requested reclassification, the Board needed strong and substantial probative evidence that there was "mistake" or "error" in the comprehensive zoning of 1971. In order to assess the evidence before the Board, it is necessary to understand the inherent nature of the terms "mistake" or "error" as they are used in zoning law. A perusal of cases, particularly those in which a finding of error was upheld,

indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or mistake is established when there is probative evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension. Bonnie View Club v. Glass, 242 Md. 46, 52-53, 217 A.2d 647, 651 (1966); Johar Corp. v. Rodgers Forge Community Ass'n., 236 Md. 106, 112, 116-18, 121-22, 202 A.2d 612, 615, 617-18, 620-21 (1964); Overton v. County Commissioners, 225 Md. 212, 216-17, 170 A.2d 172, 174-76 (1961); see Rohde v. County Board of Appeals, 234 Md. 259, 267-68, 199 A.2d 216, 218-19 (1964). Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect. As the Court of Appeals said in Rockville v. Stone, 271 Md. 655, 662, 319 A.2d 536, 541 (1974):

"On the question of original mistake, this Court has held that when the assumption upon which a particular use is predicated proves, with the passage of time, to be erroneous, this is sufficient to authorize a rezoning."

See Rohde, supra, at 234 Md. 259, 267-68, 199 A.2d 220-21; Engel v. Rockville, 230 Md. 43, 45-47, 185 A.2d 378, 379-80 (1962); Pressman v. Baltimore, 222 Md. 330, 338-39, 160 A.2d 379, 383 (1960); White v. County Board of Appeals, 219 Md. 136, 144, 148 A.2d 420, 421-22 (1959); cf. Dill v. The Johar Corp., 242 Md. 16, 20-21, 24, 217 A.2d 564, 567-68 (1966); Marcus v. Montgomery County Council, 35 Md. 535, 540-41, 201 A.2d 777, 780 (1964); Offutt v. Board of Zoning Appeals, 204 Md. 551, 558, 105 A.2d 219, 221-22 (1954); Wakefield v. Kraft, 202 Md. 136, 144-45, 149, 96 A.2d 71, 79 (1953); Hoffman v. City of Baltimore, 197 Md. 294, 304, 79 A.2d 367, 373-74 (1951).

It is presumed, as part of the presumption of validity accorded comprehensive zoning, that at the time of the adoption of the map the Council had before it and did, in fact, consider all of the relevant facts and circumstances then existing. Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary to show that the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council. This evidentiary burden can be accomplished by showing that specific physical facts were not readily visible or discernible at the time of the comprehensive zoning, Bonnie View Club, supra, at 242 Md. 48-49, 52, 217 A.2d 649, 651 (mine shaft and subsurface rock formation); by adducing testimony on the part of those

preparing the plan that then existing facts were not taken into account, Overton, supra, at 225 Md. 216-17, 170 A.2d 174-75 (topography); or by producing evidence that the Council failed to make any provision to accommodate a project, trend or need which it, itself, recognized as existing at the time of the comprehensive zoning, Johar Corp., supra, at 236 Md. 116-17, 202 A.2d 617-18 (need for apartments). See Rohde, supra, at 234 Md. 267-68, 199 A.2d 221.

Because

facts occurring subsequent to a comprehensive zoning were not in existence at the time, and, therefore could not have been considered, there is no necessity to present evidence that such facts were not taken into account by the Council at the time of the comprehensive zoning. Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not "fairly debatable."

In applying the test to the facts of this case, the Court of Appeals has long recognized the inherent difficulty in attempting to distinguish between "error" and "change" and has frequently found it unimportant to differentiate between the two. See, e.g., Rohde, supra, at 234 Md. 267, 199 A.2d 221; Pressman, supra, at 222 Md. 339, 160 A.2d 383; White, supra, at 219 Md. 134, 148 A.2d 423-24. The fact of the matter is that "error" and "change" are opposite sides of the same coin. On the one hand there can be a change in conditions so pervasive as to constitute a change in the

Moreover, in reviewing the evidence before the Board, it must also be noted that the opinion or conclusion of an expert or lay witness is of no greater probative value than that warranted by the soundness of his underlying reasons or facts. Surkovich v. Doh, 258 Md. 263, 272, 265 A.2d 447, 451 (1970); Anderson v. Sawyer, 23 Md.App. 612, 614, 265 A.2d 612, 614. The Court of Appeals and this Court have stated that an opinion, even that

3 (Cont.)

character of the neighborhood which demonstrates that the Council's initial assumptions as to the character of the neighborhood were incorrect. In such cases it has been held that evidence of change in the character of the neighborhood is substantial enough to overcome the presumption of validity ordinarily accorded to a comprehensive rezoning. Rockville v. Stone, supra, at 271 Md. 661-62, 319 A.2d 536, 541; Himmelstein v. Charnock, 258 Md. 636, 641-42, 207 A.2d 179, 182 (1960); Mier v. Whitney Land Co., 257 Md. 600, 610-11, 203 A.2d 833, 835-36 (1970). On the other hand, "change" can be less significant changes, such as the construction of sewers or roads, which may also indicate that certain other initial assumptions of the Council were incorrect. In such cases it has been held that evidence of change is sufficiently strong to establish error in a comprehensive rezoning so that the presumption of validity ordinarily accorded is overcome. See, e.g., Rohde, supra, at 234 Md. 267-68, 199 A.2d 221; White, supra, at 219 Md. 134, 148 A.2d 422-23. In either event, because the evidence of change demonstrates that the initial premises of the Council were invalid, the presumption of validity accorded to comprehensive rezoning vanishes. Thus, whether the evidence of change is viewed as establishing "change in the character of the neighborhood" or "error in comprehensive rezoning" the result is the same. When subsequent events demonstrate that any significant assumption made by the Council at the time of the comprehensive rezoning was invalid, the presumption of validity accorded to the comprehensive rezoning is overcome.

or an expert, is not evidence strong or substantial enough to show error in a comprehensive rezoning unless the reasons given by the witness as the basis for his opinion, or other supporting facts relied upon him, are themselves substantial and strong enough to do so. Stratakis, supra, at 268 Md. 655, 304 A.2d 250; Coppolino v. County Board of Appeals of Baltimore County, 23 Md.App. 358, 371-72, 323 A.2d 55, 62 (1974). Viewed in the light of the principles applicable to "error" or "mistake" the testimony presented here does not pass muster.

The applicants contend that at the time of the comprehensive rezoning of 1971 the Council erred in placing the subject property in the D.R.-5.5 zone because they failed to take into account the fact that the subject property was then unsuitable for residential development. A witness qualified in the fields of real estate and real estate appraisal and the contract purchaser of the subject property testified that it was "unsuitable" for residential development because of its physical characteristics and its proximity to the railroad tracks. They stated that much of the land in the western sector of the subject property lay in the flood plain, and was not usable for any purpose; that in order to provide access to the western portion of the tract it would be necessary to bridge Roland Run Stream at great expense; and

The applicants do not contend that the assignment of a residential classification, D.R.-5.5, to the subject property constituted impermissible confiscation.

that, in any event, the maximum permitted density of 35 units could not be achieved either by single-family residential development or apartment development because the eastern portion of the subject property, adjoining the railroad right-of-way, was undesirable for residential development while the western portion contained insufficient usable land for the construction of 35 units. They concluded that residential development on the subject property would be economically unfeasible and that the only reasonable use which could be made of it consisted of commercial use on the eastern portion of the tract with off-street parking located on the western portion. They acknowledged that the subject property presently contains a profitable nonconforming use and that a single-family residence had been located on the western portion of the tract. They further conceded that the subject property was adjoined on the west and north by land upon which single-family development had taken place; that single-family development presently existed along the right-of-way of the railroad on land adjoining or lying in close proximity to the subject property; and that single-family residential development had recently occurred on land adjoining the railroad right-of-way in other communities located near Lutherville. There were no facts presented to show how much of the land contained in the total tract was unusable; how many units physically could be located on the tract; or how much it would

cost to bridge Roland Run in order to provide access to the western portion of the subject property. Moreover, there was no explanation as to why it would be impossible to provide access for residential development via School Lane; or why it was any more undesirable here to locate residential units next to the right-of-way of the Northern Central Railroad than it had been to locate residential units next to the railroad within the same and neighboring communities.

This evidence was insufficient to make the question of "error" or "mistake" fairly debatable for two reasons. First, because the conclusion that the subject property was unsuitable for residential development was not supported by adequate reasons or facts, it was entitled to little if any probative value. It was not sufficiently strong and substantial to overcome the presumption of validity of the comprehensive zoning. Secondly, there was no evidence to show that at the time of the comprehensive zoning the Council was unaware of the readily visible physical characteristics and location of the subject property and failed, in fact, to take them into account. Indeed, the existence of easements for public sanitary sewers supports an inference that the Council was, in fact, aware of the physical characteristics of the subject property. Thus, there was no evidence to show that the initial premises of the Council with respect to the subject property were incorrect and that consequently the classification assigned at the time of the comprehensive rezoning was improper.

The applicants next contend that at the time of the comprehensive zoning of 1971 the Council erred in failing to

take into account various physical changes which had occurred in the area between the adoption of the 1955 comprehensive zoning map and the 1971 comprehensive zoning map. These changes included the development of a large furniture store on land in the northwest quadrant of the intersection of Railroad Avenue and Seminary Avenue on land zoned as commercial by the 1955 comprehensive zoning map and the development of extensive commercial and apartment uses on land, in close proximity to the subject property, which had been reclassified from single-family residential zones to commercial and apartment zones after the adoption of the 1955 comprehensive zoning map. The zoning map shows that none of the changes in zoning classification or development have occurred in the area bounded by the Harrisburg Expressway on the west, Seminary Avenue on the north, Railroad Avenue on the east, and the Beltway on the south. Thus, the immediate neighborhood within which the subject property lies has been left essentially unchanged and contains no land reclassified in the commercial zone other than that at the intersection of Railroad Avenue and Seminary Road, which has been so classified since 1955. Moreover, the zoning map shows that all of the commercial uses existing in a much broader area are located at road intersections. There is not an iota of evidence in the record to indicate that at the time of the comprehensive zoning of the subject property the Council was unaware of either the zoning reclassi-

fications or development which had taken place between 1955 and 1971. Indeed, the presumption that the Council was aware of these occurrences is buttressed by the fact that it was reasonable for the Council, cognizant that commercial uses had already been extended at various road intersections in the area, to conclude that the intrusion of additional commercial zoning into the area at a location other than a road intersection, was contrary to the public interest. Consequently, there is insufficient evidence to make fairly debatable the question of whether the Council erred in failing to consider the effect of the zoning and development which had taken place between 1955 and 1971.

The applicants additionally contend that the Council erred in failing to take into account the projected widening of the Harrisburg Expressway and the Beltway interchange as well as the extension of Charles Street. The only evidence presented as to the impact of these roads on the subject property was that of the applicants' expert, qualified as an expert in real estate and real estate appraisal. He testified that the Beltway interchange requires a "lot of bridgework" and "will go way up in the air," so that it might be seen from the subject property in the winter time when the trees are barren of leaves. He conceded, however, that at the time of the comprehensive zoning map, the Council anticipated the widening of the Harrisburg Expressway and the Beltway interchange. More-

over, he acknowledged that even at the time of the Council hearing no plan for an extension of Charles Street had been finalized, making uncertain when, if at all, such an extension might take place. The evidence with regard to widening of the Harrisburg Expressway and the Beltway interchange is insufficient to establish either error or mistake because it supports, rather than rebuts, the presumption that at the time of the comprehensive zoning the Council was aware of the fact that those roads were to be widened. The evidence with respect to the proposed extension of Charles Street is insufficient because it is too speculative in nature to have properly been considered. At the time of comprehensive zoning, the Council is required to take into account only existing facts and those projects or trends which are reasonably probable of occurring in the foreseeable future. *Hunter v. County Council*, 201 Md. 305, 310, 250 A.2d 81, 84 (1969). See *Chapman v. Montgomery County*, 259 Md. 641, 649-50, 271 A.2d 156, 160-61 (1970); *Jobar Corp., supra*, at 236 Md. 112, 202 A.2d 615; *Rohde, supra*, at 234 Md. 264, 199 A.2d 218-19; *Trustees of McDonough Educational Fund and Institute*, 221 Md. 550, 570-71, 158 A.2d 637, 648 (1960).

The applicants also contend that the Council erred because it failed to take into account the B.R. zoning classification of the subject property, which they assert existed at the time of the comprehensive rezoning, and further failed

to take into account the fact that the property owner was seeking a commercial classification for his property. They maintain that at the time of the comprehensive rezoning the Council considered only the possibility of reclassifying the subject property from the R.-6 zone to the D.R.-16 zone. In support of this position they rely on the Log of Issues and Recommendations to the Baltimore County Council, Relative to the Central Sector, used at the public hearing preceding adoption of the 1971 comprehensive zoning map. This log indicates that the then existing zoning of the subject property was R.-6; that the Planning Board recommended that the subject property be designated D.R.-5.5, the new equivalent of R.-6; that the property owner was requesting a B.R. zoning classification in a local map amendment case then pending; and that a proposed Council resolution recommended D.R.-16 zoning for the subject tract. This evidence, rather than overcoming the presumption that the Council was aware of all of the relevant existing facts at the time of the comprehensive rezoning, supports it.

The record also shows that at the time of the comprehensive zoning the subject property had been reclassified to the B.R. zone by the Council. The Council's action by the Commissioner was then pending on appeal. Because an appeal was pending, the reclassification granted by the Zoning Commissioner was deprived of the force and effect

of law.<sup>5</sup> Consequently, the existing classification of the subject property was properly reflected in the log as R.-6. Moreover, the log patently indicates that a request for reclassification to the B.R. zone was then pending, thus putting the Council on notice of the property owner's desire to have the subject property placed in that classification. Under these circumstances there can be no doubt that the Council was aware of the facts as they then existed, and in particular, of the classification sought by the property owner. Accordingly, its decision to place the subject property in the D.R.-5.5 zone was not premised on a misapprehension.

Finally, the applicants contend that the Council erred in failing to take into account the fact that their property had been utilized for the past 60 years as a building materials and lumber supply yard; that this nonconforming use had always been compatible with the adjoining residential uses; that this nonconforming use could be continued even if the requested reclassification were denied; and that the requested reclassification was sought only for the purpose of permitting the owner to update and improve his

<sup>5</sup> Baltimore County Zoning Regulations (Interim ed. 1971) § 100.3a provides:

"Any such reclassification when granted by the Zoning Commissioner shall in the absence of an appeal, have the force and effect of law."

present facilities and to protect his right to continue that business in the event that the building should be destroyed by fire.<sup>6</sup>

This contention is without merit for several reasons. There is no evidence to indicate that the Council was unaware of this nonconforming use which had been in existence for 60 years. Moreover, nonconforming uses are by definition inherently incompatible with permitted uses in a zone.<sup>7</sup> Indeed, it is public policy in Baltimore County to drive such nonconforming uses out of permanent existence by preventing the expansion of such uses or their restoration if substantial damages are incurred.<sup>8</sup> Finally, in response

<sup>6</sup> Baltimore County Zoning Regulations (Interim ed. 1971) § 104 provides, in pertinent part:

"...in case any nonconforming business of manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75) per cent of its replacement cost at the time of such loss, the right to continue or resume such nonconforming use shall terminate."

Baltimore County Zoning Regulations (Interim ed. 1971) § 253.1A (29) classifies a lumberyard as a permissible use in a manufacturing zone, thus presumably designating such use as a manufacturing one.

<sup>7</sup> See Baltimore County Zoning Regulations (Interim ed. 1971) § 101, which defines a nonconforming use as:

"A legal use of a building or of land that antedates the adoption of these regulations and does not conform to the use regulations for the zone in which it is located."

<sup>8</sup> See note 6, *supra*.



When their rezoning application was denied by the Mayor and Council of Rockville, there being no statutory appeal procedure, appellants in Perland v. Rockville, 230 Md. 43, 185 A.2d 378 (1962), alleged that the denial was arbitrary and confiscatory. The court below denied relief, but the Court of Appeals reversed. It said, at 46-47:

"There was clear evidence of original mistake or change of condition, in addition to the evidence of practical inability to improve the lots for residential use, and that the granting of the application would conform the use to the recommended future use of the whole area, as set out in the proposed comprehensive plan. \* \* \* There was not sufficient evidence to the contrary to make the issue fairly debatable."

In Overton v. County Commissioners, 225 Md. 212, 170 A.2d 172 (1961), a zoning reclassification was opposed by protesting neighbors. The rezoning was granted by the governing body, affirmed by the Circuit Court, and affirmed by the Court of Appeals. One of the contentions on appeal was the combined allegation

"that there was no substantial evidence of a basic mistake in the original zoning or of a substantial change in the character of the neighborhood to warrant the reclassification".

The planning staff had recommended the rezoning on the ground that there was a mistake in the original classification. The governing board found that there had been a mistake. The lower court and the Court of Appeals said the issue was fairly debatable. The Court of Appeals, quoting from West Ridge, Inc. v. McNamara, 222 Md. 448, 160 A.2d 907 (1960), and referring to its decisions there cited, said, in part, at 218-19:

"These cases recognize the familiar rules that in the case of piecemeal rezoning, there must be a showing of either an error in original comprehensive zoning or such a change in conditions as to warrant rezoning, that if either of these is shown, or if there are facts from which the legislative body could reasonably have made such a finding (i.e., that the matter is at least fairly debatable), the courts may not interfere with the legislative action \* \* \*."

The Court in Overton confined its decision to the question of whether a mistake was made in the original classification, and said that there was ample evidence before the legislative body from which it could find mistake in the original comprehensive zoning.

In Rehde v. County Board, 234 Md. 259, 199 A.2d 216 (1964), the Court of Appeals affirmed a circuit court order affirming the County Board of Appeals in granting an application for rezoning. The Court said, at 267-68:

"To warrant piecemeal rezoning, there must be a showing of error in the comprehensive zoning when made or a subsequent change of conditions, or both. It is sometimes difficult to say whether some evidence shows original error or a change in conditions, and it may not be necessary to resolve the question. Prisman v. City of Baltimore, 222 Md. 330, 160 A.2d 379. That, we think, is the situation here. The applicant produced considerable expert testimony to show that either as a result of lack of anticipation of trends of development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing."

After commenting that a comprehensive zoning map was entitled to a presumption of correctness, and the burden was on the applicants for reclassification to show an error in the map or a change of conditions in the neighborhood, the Court of Appeals held in Johar Corp. v. Rodgers Forge, 236 Md. 106, 202 A.2d 612 (1964), that a Board's decision was not in accordance with law when it declined

to permit evidence of projects which were reasonably probable of fruition in the foreseeable future. It said in effect that the Board was wrong when it felt that it was limited to a consideration of evidence of the situation existent at the time of the hearing, and no potential, even though imminent, future changes in that situation or future needs of the public could be considered. On the original appeal to the circuit court, that court had remanded the case to the Board for further hearing. Upon further hearing, the Board found both original error and change, and granted the rezoning. When that order was appealed, the circuit court reversed. The Court of Appeals reversed the lower court, and held that the evidence before the Board at the second hearing made both original error and change fairly debatable issues, and that the Board's grant of the rezoning should not be disturbed by the courts.

In the very recent zoning case of Rockville v. Stone, 271 Md. 655, 319 A.2d 536 (1974), the Court of Appeals observed that, "despite the intriguing factual and procedural posture present here, there is really very little new under the sun in this State as far as zoning cases are concerned". One element of the factual posture was that the rezoning involved was a down zoning, applied for by the City of Rockville Planning Commission, granted by the City over the opposition of the landowners, reversed by the circuit court, and reinstated by the Court of Appeals. The down zoning nullified a piecemeal rezoning which the City had previously granted. The Court of Appeals concluded that the evidence before the legislative body made each of the issues of change and of mistake fairly debatable. It commented that the original mistake was an assumption which proved, with the passage of time, to be erroneous.

It seems to me that the failure of an expected change to take place could be characterized, with equal effect, as a change, negative in nature, or as a mistake in making the assumption in the first place. But an assumption may be sound at the time it is made, even though subsequent events do not bear it out.

The dilemma is one of words, not principles. This is why I urge simplicity, not proliferating complexity, in expressing the legal requirement for a zoning change. I think we should make it clear that whether we say "mistake" or "error" in the original zoning, we mean exactly the same thing. I think we should make it clear that whether we say "change in the character of the neighborhood", or "change in conditions", or "change in circumstances", we mean exactly the same thing. A change in "conditions" or a "change in circumstances", which affects the "character of the neighborhood" obviously indicates a "change in the character of the neighborhood", and any attempt to give different meanings to these phrases is a distinction without a difference. A change of "conditions" or of "circumstances" which does not affect the character of the neighborhood is irrelevant in any event.

I see no significance in attempting to put on a different basis, a failure to consider facts in existence at the time of zoning, or a failure to foresee a future which was foreseeable at the time of zoning, or a failure to foresee a future which was not foreseeable at the time of zoning.

The cases I have cited, and from which I have quoted, are not intended to show that I disagree with the law which governs the outcome of the case now before us. The cases are cited to show that in no case has there been a significant distinction among "mistake", "error", or "change". In no case has

there been a significant distinction based on whether known facts were overlooked, foreseeable facts were not foreseen, or unforeseeable changes later occurred. Rarely has the Court even treated mistake and change as separate concepts.

I believe that the majority opinion in this case unnecessarily takes the long way around. I prefer the short way around, expressed by Chief Judge Byrne for the Court in Rehde v. County Board, *supra*, when he said:

"The applicant produced considerable expert testimony to show that either as a result of lack of anticipation of trends of development in 1955 or as a result of changes in trend which have occurred since then, whether anticipated or not, the existing zoning was in error at the time of the hearing."

The test that the courts should apply in any review of legislative action on a rezoning request is this: Did the applicant produce evidence sufficient to overcome the presumption of correctness of the existing zoning, and to make fairly debatable the issue of whether the existing zoning was in error at the time of the hearing.

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

FROM: Planning Division  
Fire Prevention Bureau

SUBJECT: Property Owner:

William W. Boyce, Jr., et al

Location: NE/8 Northern Central Branch of Penna. R.R., 600' NE of Balto. Beltway

Item # 13

Pending Agenda

Fire hydrants for the proposed site are required and shall be in accordance with Baltimore County Standards. The hydrants shall be located at intervals of 300 feet.

The owner shall be required to comply with all applicable requirements of the 1970 Life Safety Code, 1967 Edition, and the Fire Prevention Code when construction plans are submitted for approval.

Respectfully submitted:

*H. Thomas Kelly*  
Fire Prevention Bureau

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

TO: Edward Hardisty Date: May 7, 1971  
ATTN: Oliver L. Myers  
FROM: Ellsworth N. Diver, P.E.  
SUBJECT: Item #13 (April - October Cycle 1971)  
Property Owner: Mr. W. Boyce, Jr., et al  
Location: N/8 Northern Central Branch of Penna. R.R.,  
600' N/E of Baltimore Beltway  
Present Zoning: D.R. 5.5  
Proposed Zoning: Residential, to R.R.  
District: 833 Sector: Central  
No. Acres: 5.84

The subject property constitutes the same property previously reviewed by the Zoning Advisory Committee and known as Item #30 (1969-1970), Zoning Order #71-07 B. The comments furnished by this office in connection with Item #30 remain valid and in effect. We are enclosing herewith a xerox copy of those comments which are applicable to the current petition.

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

END: EAM:RMD:iss

cc: File (3)

Attachment

BALTIMORE COUNTY DEPARTMENT OF PLANNING

ZONING ADVISORY COMMITTEE MEETING

OF APRIL 27 & 28 (CYCLE ZONING)

Petitioner: Boyce, Jr.  
Location:  
District: 8  
Present Zoning: D.R. 5.5  
Proposed Zoning: R.R.  
No. of Acres: 5.84

Comments: WOULD RESULT IN A LOSS OF APPROX. 15 ELEMENTARY SCHOOLS

## BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

To: Edward H. Boyce, Jr., Esq.  
 ATTN: Oliver L. Myers  
 FROM: Baltimore County, Md.  
 Date: June 10, 1970

SUBJECT: Item No. 1502-2770  
 Re: Zoning Change, William W. Boyce, Jr. et al  
 School Lane, 450' S/W of Baltimore Avenue  
 District: 8th  
 Present Zoning: R-6  
 Proposed Zoning: Reclassification to R  
 No. Acres: 6.33 acres

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

## Highways

Since sufficient information or detail is not indicated on the plan, the need and requirements for public and/or private roads, including right-of-way and present width, horizontal and vertical alignment, etc. will be determined at such time as the proposed development of this site is reviewed by the Joint Subdivision Planning Committee or when application is submitted for a building permit.

Railroad Avenue, School Lane and Burton Avenue all have the possibility of change to provide adequate circulation in this area. The 15' right-of-way also falls within this category, but the status of the right-of-way is unknown.

## Storm Drainage

The petitioner must provide necessary drainage facilities (temporary or permanent) to prevent creating any nuisances or damages to adjacent properties, especially by the concentration of surface waters. Correction of any problems which may result, due to improper grading or improper installation of drainage facilities, will be the full responsibility of the petitioner.

A study will be required at the time this site develops to determine the drainage considerations and structures necessary.

## Sediment Control

Development of this property through striping, grading and stabilization could result in a sediment pollution problem, depending on the nature and public health concerns of the property. A grading permit is, therefore, necessary for all grading, including the stripping of top soil.

Zoning Comment: Item 210  
 Property Owner: William W. Boyce, Jr. et al  
 Page 2  
 June 10, 1970

## Sediment Control (Cont'd)

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

## Water and Sewer

Public water and sewer are available to serve this site.

*Beaumont M. Dyer*  
 FLEMING H. DYER, P.E.  
 Chief, Bureau of Engineering

## STREETS/ROADS

\*S - 33 Key Sheet  
 45 x 46 IN. Position Sheet  
 IN 12-A Topo

## THE TOWSON TIMES

TOWSON, MD. 21204 August 30, 1971

THIS IS TO CERTIFY, that the annexed advertisement of  
 The Zoning Commissioner of Baltimore County

was inserted in THE TOWSON TIMES, a weekly newspaper published  
 in Baltimore County, Maryland, once a week for One week  
 weeks before the 30th day of Aug., 1971. That is to say, the same  
 was inserted in the issue of August 23, 1971.

STROMBERG PUBLICATIONS, Inc.

*Ruth Morgan*

## CERTIFICATE OF PUBLICATION

TOWSON, MD. August 26, 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 a week  
 for one week before the 26th day of August, 1971.  
 day of September 1971, the 26th day of August  
 appearing on the 26th day of August  
 1971.

THE JEFFERSONIAN,

Manager.

Cost of Advertisement, \$

## BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE - REVENUE DIVISION  
 MISCELLANEOUS CASH RECEIPT

DATE May 10, 1973 ACCOUNT 01-662

AMOUNT \$5.00

WHITE - CASHIER DIST. - AGENT YELLOW - CUSTOMER

Anne Kay Kramer, Treasurer (Mrs.)

Cost of posting property of William W. Boyce, Jr., et al, Petitioner

1/4 of Railroad Avenue, 480' SW of Seminary Avenue - 8th District

Case No. 72-60-R

## BALTIMORE COUNTY, MARYLAND

OFFICE OF FINANCE - REVENUE DIVISION  
 MISCELLANEOUS CASH RECEIPT

DATE March 10, 1972 ACCOUNT 01-662

AMOUNT \$70.00

WHITE - CASHIER DIST. - AGENT YELLOW - CUSTOMER

No. 72-60-R - Appeal costs - property of

Wm. W. Boyce, Jr. et al, N/S Railroad Ave. 480' S/W

Seminary Ave. - John W. Hession, III, Esq.

(Lutherville Conn. Ass'n., Appellant) 700 CMC

CERTIFICATE OF POSTING  
 ZONING DEPARTMENT OF BALTIMORE COUNTY  
 Towson, Maryland

District: 922 Date of Posting: Aug. 26-1971  
 Posted for: RECLASSIFICATION  
 Petitioner: Wm. W. Boyce, Jr.  
 Location of property: N/S OF RAILROAD AVE. 480' S/W OF SEMINARY AVE.  
 Location of Sign: N/S OF RAILROAD AVE. 480' S/W OF SEMINARY AVE.  
 Remarks: Charles H. Hession  
 Posted by: Charles H. Hession Date of return: Sept. 7, 1971

## PETITION MAPPING PROGRESS SHEET

| FUNCTION                                           | Work Map |    | Original |    | Duplicate |    | Tracing |    | 200 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<br>ZC, BA, CC, CA                       |          |    |          |    |           |    |         |    |           |    |
| Reviewed by: <i>ASM</i>                            |          |    |          |    |           |    |         |    |           |    |
| Revised Plans.<br>Change in outline or description |          |    |          |    |           |    |         |    |           |    |
| Previous case: 71-67-R                             |          |    |          |    |           |    |         |    |           |    |
| Map # 9-3C                                         |          |    |          |    |           |    |         |    |           |    |

CERTIFICATE OF POSTING  
 ZONING DEPARTMENT OF BALTIMORE COUNTY  
 Towson, Maryland

District: 922 Date of Posting: MARCH 26-1972  
 Posted for: APPEAL  
 Petitioner: R. H. WALKER & WILLIAM W. BOYCE, JR.  
 Location of property: N/S OF RAILROAD AVE. 480' S/W OF SEMINARY AVE.  
 Location of Sign: W/S OF RAILROAD AVE. 490' S/W OF SEMINARY AVE.  
 Remarks: Charles H. Hession  
 Posted by: Charles H. Hession Date of return: MARCH 30-1972

Ernest C. Trimble, Esq.  
 404 Jefferson Building  
 Towson, Md. 21204

Reclassification  
 Item 13

## 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 3rd day of August 1970  
*Eric Dyer*  
 Zoning Commissioner

Petitioner: William W. Boyce, Jr. et al

Petitioner's Attorney: Ernest C. Trimble

Reviewed by: *Oliver L. Myers*  
 Chairman of  
 Advisory Committee

TELEPHONE  
 494-8415

BALTIMORE COUNTY, MARYLAND  
 OFFICE OF FINANCE

No. 84960

DATE 9/16/71

To: Ernest C. Trimble, Esq.  
 404 Jefferson Building  
 Towson, Md. 21204

Revenue Division  
 COURT HOUSE  
 TOWSON, MARYLAND 21204

FILED  
 Zoning Office,  
 111 County Office Bldg.,  
 Towson, Md. 21204

| REPORT TO ACCOUNT NO.                                        | 01-662                                                         | RETURN THIS PORTION WITH YOUR REMITTANCE | TOTAL AMOUNT |
|--------------------------------------------------------------|----------------------------------------------------------------|------------------------------------------|--------------|
| QUANTITY                                                     | DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORD | COST                                     |              |
| Cost of advertising and posting property of W. W. Boyce, Jr. |                                                                | \$132.00                                 |              |
| No. 72-60-R                                                  |                                                                |                                          |              |
| 4                                                            |                                                                |                                          |              |

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

TELEPHONE  
 494-8415

BALTIMORE COUNTY, MARYLAND  
 OFFICE OF FINANCE

No. 76644

DATE April 15, 1971

To: Messrs. Whitford, Taylor, Prosser, Trimble

Jefferson Building  
 Towson, Md. 21204

Revenue Division  
 COURT HOUSE  
 TOWSON, MARYLAND 21204

| REPORT TO ACCOUNT NO.                                         | 01-662                                                         | RETURN THIS PORTION WITH YOUR REMITTANCE | TOTAL AMOUNT |
|---------------------------------------------------------------|----------------------------------------------------------------|------------------------------------------|--------------|
| QUANTITY                                                      | DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORD | COST                                     |              |
| Petition for Reclassification for William W. Boyce, Jr. et al |                                                                | \$6.00                                   |              |
| 4                                                             |                                                                |                                          |              |

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

TELEPHONE  
 494-8415

BALTIMORE COUNTY, MARYLAND  
 OFFICE OF FINANCE

No. 74037

DATE 10/19/72

To: Gerald E. Tappan, Esq.  
 1610-11 Lantry Building  
 Baltimore, Md. 21202

Revenue Division  
 COURT HOUSE  
 TOWSON, MARYLAND 21204

County Board of Appeals  
 (Zoning)

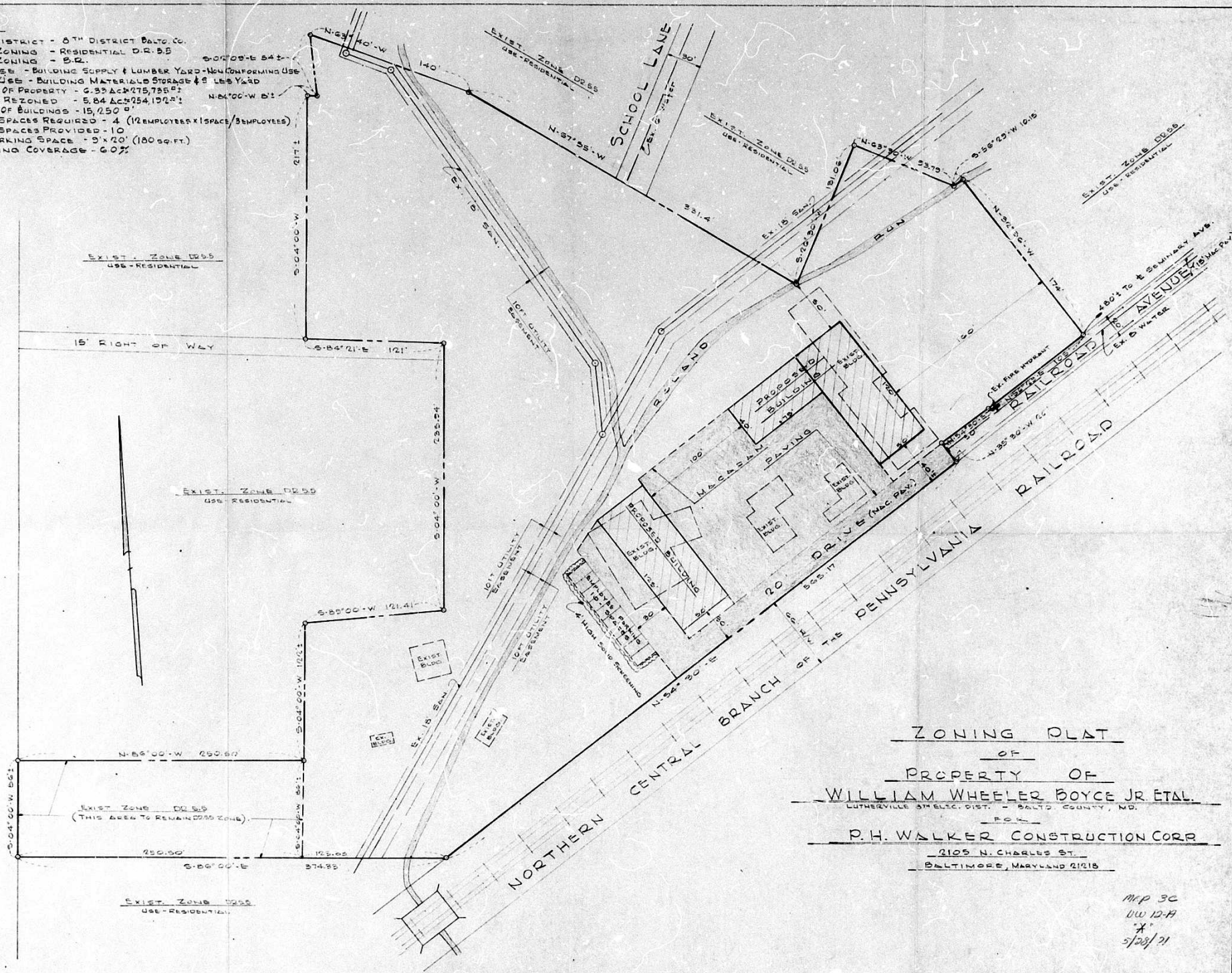
| REPORT TO ACCOUNT NO.                                                     | 01-712                                                         | RETURN THIS PORTION WITH YOUR REMITTANCE | TOTAL AMOUNT |
|---------------------------------------------------------------------------|----------------------------------------------------------------|------------------------------------------|--------------|
| QUANTITY                                                                  | DETACH ALONG PERFORATION AND KEEP THIS PORTION FOR YOUR RECORD | COST                                     |              |
| Cost of certified documents - Case No. 72-60-R                            |                                                                | \$13.00                                  |              |
| N/S Railroad Ave. 480' S/W of Seminary Ave. 8th District - Central Sector |                                                                |                                          |              |
| Wm. W. Boyce, Jr., et al, Petitioner                                      |                                                                |                                          |              |
| 4                                                                         |                                                                |                                          |              |

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

# NOTES:

ELECTION DISTRICT - 8TH DISTRICT BALTO. CO.  
 EXISTING ZONING - RESIDENTIAL D.R. 55  
 PROPOSED ZONING - S.12.  
 PRESENT USE - BUILDING SUPPLY & LUMBER YARD-NEW CONFORMING USE  
 PROPOSED USE - BUILDING MATERIALS STORAGE & 8 LBS YARD  
 TOTAL AREA OF PROPERTY - 6.33 AC. (275,735 S.F.)  
 AREA TO BE REZONED - 5.84 AC. (254,192 S.F.)  
 TOTAL AREA OF BUILDINGS - 15,250 S.F.  
 NO. PARKING SPACES REQUIRED - 4 (12 EMPLOYEES X 1 SPACE/3 EMPLOYEES)  
 NO. PARKING SPACES PROVIDED - 10  
 SIZE OF PARKING SPACE - 9' X 20' (180 SQ. FT.)  
 % OF BUILDING COVERAGE - 60%

BURTON AVENUE



## NOTE:

ALL EXISTING BUILDINGS TO BE RAZED



**EVANS, HAGAN & HOLDRIDGE, INC.**  
 SURVEYORS AND CIVIL ENGINEERS  
 4200 BALBOA AVENUE / BALTIMORE, MD. 21214  
 (301) 426-2144

*L. H. Evans*  
 DATE MAY 4, 1970 SCALE 1" = 40'